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# DTPA-J

Direct Taxes Professionals' Association Journal

Volume 2 - 2019-20 | March, 2020



## BUDGET 2020



"LET'S CONTINUE OUR WORK FROM HOME"



## DTPA Picnic at Kalyan Bharati Foundation (Heritage Project Kheadaha, Challapara, Kolkata - 700150) 26th January, 2020





# EDITORIAL



A very happy new accounting year to all our esteem members and wish them all a healthy and wealthy financial year 2020-2021. Economy was already facing critical challenges and COVID-19 has further detreated the world wide economy including India. But it is always said that every challenge has an opportunity and we professional have too cope with this situation in the best positive and possible ways.

The IMF expects growth in Asia to stall at zero percent in 2020, the worse performance in 60 years with china's growth declining from 6.10 % in 2019 to a projected 1.2% in this year and Asia still looks to fare better than other region in terms of activity.

The top priority should be to support and protect the health sector to contain the virus and introduce measures that slow contagion. Further it requires protecting people, jobs and industries directly, not just through financial institutions. RBI announce second tranche of liquidity boost and reduced revers repo rate by 25 basis points and gives 50000 crores to banks and another 50000 crores to SIDBI, NABARD to lend to MFIs and NBFCs through targeted long-term repo operations.

At the outset, I request all our esteem member to have patience and follow government guidelines for COVID-19 and keep our self and our family safe and utilize lockdown period to enhance our knowledge and skill.

**Together We Can We Will.**

With Regards

**CA Mahendra K Agarwal**

Chairman DTPA- Journal Committee

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## FROM THE DESK OF THE PRESIDENT



Dear Members,

Writing a message to members could never have been so difficult as it is today amidst the outbreak of COVID-19 - a time which, probably no one of us had imagined in our lives, a time which most of us had not seen in our lives and wish that it's a time we never ever have to see again in future. The trajectory of the disaster is so deep that almost 15 lakh people across the world are already infected and deaths nearing a lakh, it's a situation that the life has almost come to a halt.

There is complete lock down till 14<sup>th</sup> of April 2020 in the country and in all likelihood announcement for a two week's extension seems just a few steps away. DTPA Journal, second volume, was ready in the last week of march and was awaiting its release in the first week of April as per schedule, however, due to lock down, we all decided to wait. Having been forced to fight with the concurrent lock down, believe me, the professionals, in their seventies, even took up to online working and once again it proved to be true that 'necessity is the mother of all inventions'. I write the word 'invention' with utmost care because I feel working online over zoom or online from home is no less than an 'invention' for a 'sexagenarian' or a 'septuagenarian'. While all are frustrated with the lock inside situation, the online work over phones and computers, gave rise to the ways of working from home and keeping in touch with all our office and business associates.

Almost in this online environment, I requested the chairman of our Journal Committee that we should not delay the journal any further and we bring out an E-Journal this time. I am glad and thankful to the committee for agreeing to my view in the first expression itself and thus we present before you the first E-Journal of DTPA, wherein we have tried to accommodate the latest write ups, as could be made possible.

Moving back to the period prior to lock down, we professionals have been preparing to complete our clients' settlement of disputes work under the Vivad Se Vishwas Scheme and this sudden lock down put all schedules to deferment. The Hon'ble Prime Minister's lightning release of advisory, Finance Ministry's quick release of an Ordinance and Our State Govt's relief initiatives in supply of essentials and enforcing the social distancing helped us restrict the infected to a lesser number compared to other countries as of now.

The Ministry of Finance has already released a Rs. 170 lakh crores package and is planning a further relief of Rs 200 lakh crores for businesses, as per latest news flashed in the media. While, we must applaud the initiatives taken, it is the duty of all of us to contribute to the PM Care Fund as well CM Fund in this hour of serious crisis and we at DTPA are collecting donations and appeal to all of you to extend a generous hand in this work.

DTPA office bearers, Study Circle team, I T Committee, CSR Committee have all extended a great support in this lock down period. The I T Committee and Study Circle Team have enabled Zoom APP; over which we are holding almost two webinars a day. While I with the continuous support and co-operation of my colleagues in the Office Bearer Group and Executive Committee and the expert suggestions from Former Presidents make every possible attempt to achieve the goals and objects of the Association, might be missing on some important issues, for which I request all of you to Feel free to communicate at [president@dtpa.org](mailto:president@dtpa.org).

I request all of you to follow Government advisory regarding stay in home and social distancing. I also Wish you all get through this crisis safe and healthy with all your family members.

With regards

**CA Narendra Kumar Goyal**

President - DTPA

9<sup>th</sup> April 2020



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## AUDITING UNDER THE SHADOW OF 'COVID 2019'

CA Narendra Kumar Goyal

In view of pandemic – COVID-2019, the resulting long lock down and disruption of work, the audit for 2019-20 will involve additional pre cautionary steps .A few of these steps are given here-in-below , particularly in the context of SME sector ,which by and large follows accounting standards.

### 1. Check the validity of assignment :

Some time bound assignments like stock verification, valuation, impairment measurement etc. may have crossed the completion deadline and may have become irrelevant due to lock down . In such cases the auditor will have to talk to the management whether they want to extend the date of completion. May be some of the assignments will be cancelled out as a cost cut measure following Corona lock down. The techniques followed while carrying out these exercises will also vary as the process is being carried out after the cut off date.

### 2. Verification of cash assets and inventory:

Since the auditors have not been able to review the appropriateness of the process followed by the auditee, the auditor will just be able to review the papers which the client has prepared while carrying out the verification. The date of verification may be closing date and may be any other date there after if the entity was also under lock down. In case there was an interim physical verification, the deviations found there in will also have to reconciled while finalising the inventory as at the year end. The auditor will be required to high light the facts related to such verification appropriately in their Report.

### 3. Significant events occurring during corona disaster:

The entity may have suffered loss of some key person or may have lost some of its asset due to theft or leakage due to improper upkeep. The effects of these losses, if significant, will have to be considered and will have to be reported as “**Matter of Emphasis**“.

### 4. Losses arising due to perishable nature, expiry or validity period:

In some industries like Dairies Pharma or paints and

chemicals, some of the stock may lose its date of validity as on the Balance Sheet date. Necessary accounting for such losses resulting out of such expiry should be provided for in the books.

### 5. Licenses or insurance expired during lock down period:

When the lock down opens, an entity may find that during the lock down period, some of its licenses or insurance have expired. Some licenses like BIS license take pretty **longer** to get renewed and if not renewed on time, may lead to loss of production or sale approval even after the opening of lock down.

Similarly if an accident has taken place during lock down after the expiry of insurance validity , the loss will be subject to force majeure application. The effect of such occurrence has to be studied and accounted for appropriately with due discussion with management. In case the management has a different view regarding treatment the fact should be mentioned with amount involved.

### 6. Loss of profit insurance policy claims:

The auditee may have availed a loss of profit policy and may have lodged a claim. But standard warranties may have a force majeure standard warranty and therefore such claims in this special situation may not be acceptable to the insurer on the same lines of the losses as mentioned above .The standard warranty in respect of Force Majeure should be analysed in detail and the effect of such occurrence has to be accounted for appropriately with due discussion with management. In case the management has a different view regarding treatment the fact should be mentioned with amount involved .

### 7. Depreciation /impairment :

Depreciation on plant and machinery under trial run , which was scheduled for commissioning in the lock down period now will be commissioned after opening of the lock down when the financial year would have changed.

The press release or Ordinance does not have any provision to allow depreciation if such commissioning

takes place within 30th June. In such cases the lock down period costs will have to be further considered as part of trial run period pending allocation and the depreciation will not be accounted for.

Similarly, certain assets may have to be additionally tested for impairment due to long closure.

#### 8. Debtors and advances:

The auditor should ascertain if any of the debtors' or advances' key person has been a Corona victim. If it be so, the chances of realisation may have reduced. Factual analysis may be carried out and necessary provision should be made.

Some debts and advances will further become irrecoverable in view of slow down and interruption in sales, necessary provision has to be made for such cases.

#### 9. Additional Expenses / in admissible expenses during lock down :

- (a) In some cases of continuous plants, the cost of starting the plants after a complete closure are quite significant. The auditor should take into

account such expenditure and ensure that the same are booked in accounts for FY 2020-21.

- (b) Similarly due work from home , there may have been some one time costs and some recurring costs, which considering their materiality and nature would require accounting treatment partially in the accounts of F Y 2019-20 and partially in FY 2020-21.

(c) Additional care should be taken to ensure that all liabilities are accounted for considering the fact the bills in this may not have come to the auditee by the time the audit is undertaken. Necessary comparison of figures must be carried out.

(d) It must also be ensured that lock down period expenses are logical and genuine as certain expenses like conveyance , restaurant bills etc were not possible to have been incurred during lock down .

(e) Salaries wages liability should be accounted for as per advisory of the Governments and in case the auditee has not paid the same as per advisory, note for contingency must be thought of





# PAPER ON VIVAD SE VISHWAS BILL, 2020

CA Ashish Rustagi

## Introduction:

The Central Government has introduced “Sabka Vishwas Scheme” in Indirect Tax during September 2019 to December 2019 giving relief in form of payment of part tax dues, waiver of interest and penalty and immunity from prosecution.

As per the FM Budget Speech this scheme was successful to large extent as more than 1,89,000 cases were settled.

The Central Government brought similar scheme in direct tax by giving relief in form of waiver of Interest, penalty and immunity from prosecution provided the dispute tax is paid on or before 31-03-2020. This scheme is brought not through notification but by way of bill introduced in Lok Sabha on 5th Feb, 2020 and notice for amended bill has been given on 14th Feb, 2020 to the Lok Sabha. The bill has been passed on 4<sup>th</sup> of March, 2020.

## Object:

As per Statement of Object and reasons of the scheme the objects in brief are as under.

### a) Reduce Litigation

The pendency of appeals filed by taxpayers as well as Government has increased due to the fact that the number of appeals that are filed is much higher than the number of appeals that are disposed.

As on the 30th November, 2019, the amount of disputed direct tax arrears is Rs. 9.32 lakh crores. Considering that the actual direct tax collection in the financial year 2018-19 was Rs.11.37 lakh crores, the disputed tax arrears constitute nearly one year direct tax collection. Therefore this **Dispute to Trust scheme** is focused to reduce the litigation, pending before the various forums as on specified date.

### b) Timely Tax Collection

This scheme will help the government to generate timely revenue.

### c) Better utilization of time and energy at large

The taxpayers will be able to deploy the time, energy and

resources saved by opting for such dispute resolution towards their business activities.

**CBDT vide Circular no. 7/2020 dated 04.03.2020 has clarified several queries which have been received from the stakeholders by issuing frequently asked questions(FAQ)**

## Important Definition:

### a) Appellant:

i) a person in whose case an appeal or a writ petition or special leave petition has been filed either by him or by the income-tax authority or by both, before an appellate forum and such appeal or petition is pending as on the specified date;

ii) a person in whose case an order has been passed by the Assessing Officer, or an order has been passed by the Commissioner(Appeals) or the Income Tax Appellate Tribunal in an appeal, or by the High Court in a writ petition, on or before the specified date, and the time for filing any appeal or special leave petition against such order by that person has not expired as on that date;

iii) a person who has filed his objections before the Dispute Resolution Panel under section 144C of the Income-tax Act, 1961 and the Dispute Resolution Panel has not issued any direction on or before the specified date;

iv) a person in whose case the Dispute Resolution Panel has issued direction under sub-section (5) of section 144C of the Income-tax Act and the Assessing Officer has not passed any order under sub-section (13) of that section on or before the specified date;

v) A person who has filed an application for revision under section 264 of the Income-tax Act and such application is pending as on the specified date;

**b) Declarant:** A person who files declaration under section 4.

**c) Disputed Income:** The whole or so much of the total income as is relatable to the disputed tax;

**d) Disputed fee:** The fee determined under the

provisions of the Income-tax Act, 1961 in respect of which appeal has been filed by the appellant;

**e) Disputed Interest:** The interest determined in any case under the provisions of the Income-tax Act, 1961, where—

(i) Such interest is not charged or chargeable on disputed tax;

(ii) An appeal has been filed by the appellant in respect of such interest;

**f) Disputed penalty:** The penalty determined in any case under the provisions of the Income-tax Act, 1961, where—

(i) Such penalty is not levied or leviable in respect of disputed income or disputed tax, as the case may be;

(ii) An appeal has been filed by the appellant in respect of such penalty;

**g) Disputed tax:** In relation to an assessment year or financial year, as the case may be, means the income-tax, including surcharge and cess (hereafter in this clause referred to as the amount of tax) payable by the appellant under the provisions of the Income-tax Act, 1961, as computed hereunder: -

(A) In a case where any appeal, writ petition or special leave petition is pending before the appellate forum as on the specified date, the amount of tax that is payable by the appellant if such appeal or writ petition or special leave petition was to be decided against him;

(B) In a case where an order in an appeal or in writ petition has been passed by the appellate forum on or before the specified date, and the time for filing appeal or special leave petition against such order has not expired as on that date, the amount of tax payable by the appellant after giving effect to the order so passed;

(C) In a case where the order has been passed by the Assessing Officer on or before the specified date, and the time for filing appeal against such order has not expired as on that date, the amount of tax payable by the appellant in accordance with such order;

(D) In a case where objection filed by the appellant is pending before the Dispute Resolution Panel under section 144C of the Income-tax Act as on the specified date, the amount of tax payable by the appellant if the Dispute Resolution Panel was to confirm the variation proposed in the draft order;

(E) In a case where Dispute Resolution Panel has issued any direction under sub-section (5) of section 144C of the Income-tax Act and the Assessing Officer has not passed the order under sub-section (13) of that section on or before the specified date, the amount of tax payable by the appellant as per the assessment order to be passed by the Assessing Officer under sub-section (13) thereof;

(F) In a case where an application for revision under section 264 of the Income-tax Act is pending as on the specified date, the amount of tax payable by the appellant if such application for revision was not to be accepted:

Provided that in a case where Commissioner (Appeals) has issued notice of enhancement under section 251 of the Income-tax Act on or before the specified date, the disputed tax shall be increased by the amount of tax pertaining to issues for which notice of enhancement has been issued:

Provided further that in a case where the dispute in relation to an assessment year relates to reduction of tax credit under section 115JAA or section 115JD of the Income-tax Act or any loss or depreciation computed thereunder, the appellant shall have an option either to include the amount of tax related to such tax credit or loss or depreciation in the amount of disputed tax, or to carry forward the reduced tax credit or loss or depreciation, in such manner as may be prescribed.

**h) Specified date:** means the 31st day of January, 2020

**i) Tax arrears means:**

(i) The aggregate amount of disputed tax, interest chargeable or charged on such disputed tax, and penalty leviable or levied on such disputed tax; or

(ii) Disputed interest; or

(iii) Disputed penalty; or

(iv) Disputed fee,

As determined under the provisions of the Income-tax Act;

**Scheme Explained:**

**1) Declaration by the appellant [Section 4(1)]:-** The eligible appellant in respect of any appeal, revision, writ petition and SLP pending before CIT (A), ITAT, High Court, Supreme Court, DRP (u/s. 144C) and CIT (Revision) as on specified date shall, file a declaration to the Designated Authority (Who shall not be below the rank of CIT) in prescribed form in accordance with the provisions of section 4.

Separate Declaration for each assessment will have to be filled for declarant.

**2) Specified date: -** Specified date is 31st Jan 2020. However where any assessment order, appeal, Writ Petition order is received before 31st Jan 2020, and the time limit to file the appeal/SLP before the appellant Forum or High Court/ Supreme Court has not expired as on 31-01-2020, such cases are also covered by the scheme.

**3) Disputed Tax Payable [Section 3]**

| The disputed tax payable by the appellant/declarant shall be as under. <b>Sr. No</b> | <b>Nature of Tax arrear</b>  | <b>Amount payable on or before 31-03-2020*</b>   | <b>Amount payable on or after 01-04-2020 # but on or before the last date</b>  |
|--|--|--|--|
| 1.   | In case where the tax arrears is the aggregate amount of disputed tax, interest and penalty  | Amount of disputed tax.  | Aggregate amount of disputed tax and ten per cent of disputed tax: Provided that where the ten percent. of disputed tax exceeds the aggregate amount of interest and penalty, the excess shall be ignored for the purpose of computation of amount payable under this Act. |
| 2.   | In case where the tax arrears include the tax, interest or penalty determined in any assessment on the basis of search under section 132 or section 132A of the Income-tax Act.                              | Amount of disputed tax and twenty-five per cent of the disputed tax: Where twenty-five percent of disputed tax exceeds the aggregate amount of interest and penalty levied on disputed tax, the excess shall be ignored for the purpose of computation of amount payable under this Act. | Amount of disputed tax and thirty-five percent of disputed tax: Where the thirty-five percent of disputed tax exceeds the aggregate amount of interest and penalty levied on disputed tax, the excess shall be ignored for the purpose of computation of amount payable.   |
| 3.   | Tax arrears relate to disputed interest or disputed penalty or disputed fee.   | Twenty-five per cent of disputed interest or disputed penalty or disputed fee.   | Thirty per cent of disputed interest or disputed penalty or disputed fee.  |
| 4.   | Any appeal or Writ Petition or SLP filed by Income Tax Authority   | One half of the amount of amount payable calculated in 1, 2 & 3.   | One half of the amount of amount payable calculated in 1, 2 & 3.   |
| 5.   | Appeal filed before CIT(A) or objections filed before DRP by appellant on the issue which is already favoured by Income Tax Appellate Tribunal (where the decision on such issue is not reversed by the High | One half of the amount of amount payable calculated in 1, 2&3.   | One half of the amount of amount payable calculated in 1, 2&3.   |

\*Vide Chapter IV of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 the figures, letters and words 30th Day of June, 2020 shall be substituted

#Vide Chapter IV of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 the figures, letters and words 1<sup>st</sup> Day of July, 2020 shall be substituted

**Certificate by the designated authority [Section 5(1)]:-** Within a period of fifteen days from the receipt of the declaration, the designated authority shall determine the amount payable by the declarant and shall issue a certificate in prescribed form showing the tax arrears and the amount payable by the declarant.

The DA has powers to rectify the certificate for errors apparent.

No appeal can be made against the order of designated authority.

**5) Payment of Disputed Tax [Section 5(2)]:-** On receipt of such certificate the declarant/appellant shall, pay the disputed tax within fifteen days of receipt of certificate.

**6)** The appellant should intimate the designated authority as regard the payment of disputed tax in prescribed form.

**7) Pending appeal/Writ/ SLP stands withdrawn [Section 4(3) & 4(4)]:-**

? The appeal filed by the declarant before CIT(A) or ITAT in respect of the disputed amount covered in the declaration and such pending as on 31-01-2020 shall be deemed to have been withdrawn only after the certificate under 5 is issued by the DA.

? As regards Appeal, Writ or SLP filed before High court / Supreme Court and was pending as on 31-01-2020 will have to be withdrawn by the appellant with leave of the court wherever required and shall submit the proof/application of appeal withdrawal along with intimation of payment of disputed tax to the designated authority.

? Whether the department is in appeal before the Tribunal, HC, SC and the appellant filed the declaration under the scheme and paid 50% of the disputed tax, the department shall withdraw such appeals.

**8) Declaration nullified [Section 4(6)]:-** The declaration shall be deemed to have not been filed, if

- ? If the declaration is found to be false;
- ? The conditions referred into declaration are not complied/violated by the declarant;
- ? The act of the declarant is not as per the undertaking given by him as per the declaration.

As a result the appellant shall be disqualified for the scheme.

**9) Immunity/ benefit of the scheme [Refer Section 5(3) and 6]:-** After payment of the disputed tax, the successful appellant shall enjoy the following immunity/benefit.

- a) No Proceedings against any offence shall be constituted by the income tax authorities
- b) No interest will be charged on tax arrears
- c) No penalty will be levied

d) The appellant forum/court shall not proceed with the pending appeal

e) Filing the declaration shall not be construed as accepting the disputed issue by the appellant.

f) The issue covered by the declaration shall not be reopened by the income tax authority.

**10) Refund [Section 7]:-** No refund shall be issued under this scheme in respect of the payments made under this scheme by the appellant/declarant:

In case, where the appellant has paid the regular tax (before filing the declaration) in respect of the tax arrears covered by the scheme and such tax payment exceeds the disputed tax worked out under this scheme. Then the excess tax paid shall be refunded but without interest.

**11) Tax arrears not covered [Section 9(a)]:-**

The following tax arrears in respect of assessment/reassessment are not covered by the scheme.

- a) Search assessment u/s 143(3) or 144 or 153A or 153C where the search was initiated u/s.132 or 132A and where the tax arrears exceed five crore rupees in each assessment year.
- b) Where prosecution is launched on or before the date of filing of declaration.
- c) In respect of any undisclosed income or undisclosed asset outside India.
- d) Assessment/reassessment based on any information received under an agreement referred to in section 90 or section 90A of the Income-tax Act.

**12) Disqualified assessee [Section 9(b)]**

The following person shall not be qualified for the benefits of this scheme if such person **on or before** the date on which declaration is filed.

a) Detention order is passed under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and the same is not revoked.

- b) Prosecution for any offence is launched under
  - ? The Unlawful Activities (Prevention) Act, 1967
  - ? The Narcotic Drugs and Psychotropic Substances Act, 1985
  - ? The Prevention of Money Laundering Act, 2002
  - ? The Prohibition of Benami Property Transactions Act, 1988
  - ? The Prevention of Corruption Act, 1988

c) Prosecution is launched by the Income Tax Authority
 

- ? Under Indian Penal Code or,
- ? For enforcement of any civil liability or,
- ? Such person is convicted of any such offence due to prosecution launched by the Income Tax Authority.

d) Person notified under Section 3 of Special Court Act, 1992.

**13) Last Date of scheme:** The last date of the scheme is not yet notified but as per FM budget speech the last date is 30-06-2020.

**14) Powers to Make Rule [Section 12]:-**

The CBDT assumes powers to make the rules for the following

- (a) the form in which a declaration may be made, and the manner of its verification under section 4;
- (b) the form and manner in which declarant shall furnish undertaking under sub-section (5) of section 4;
- (c) the form in which certificate shall be granted under sub-section (1) of section 5;
- (d) the form in which payment shall be intimated under sub-section (2) of section 5;
- (e) determination of disputed tax including the manner of set-off in respect of brought forward or carry forward of tax credit under section 115JAA or section 115JD of the Income-tax Act or set-off in respect of brought forward or carry forward of loss or allowance of depreciation under the provisions of the Income-tax Act
- (f) the manner of calculating the amount payable under this Act
- (g) Any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

Note: As on date, the rules are not yet prescribed by CBDT.

**Certain Issues**

- 1) Hearing of appeal attended in last week of January 2020 but order not received till the last date. Whether appellant is eligible for scheme? In my opinion the assessee should be able to file as the same is pending as on 31.01.2020.
- 2) Application under section 263 before CIT, pending as on 31-01-2020 whether eligible for scheme? In my opinion the assessee should be able to file as the same is pending as on 31.01.2020.
- 3) Before 31-01-2020 the belated appeal before appellant firm filed with request of condonation of delay whether the appellant is covered by the scheme?

A similar issue has come up before Hon'ble Bombay High Court in the context of "KVSS, 1998" in which it was held that such appeal is entitled for the scheme. *AvantikaPratapSinhMorarji vs. CIT [Writ Petition No. 1691 of 2005]*

4) Where CIT (A) has sent the matter for AO's remand report? Whether covered by the scheme?

5) Where the ITAT sent back to CIT (A) to give adequate opportunity of hearing or instructions for verifying the facts. Whether covered by the scheme? In my opinion as appeal is pending and the same has been set aside with specific direction the appellant is eligible for the scheme.

6) The Tribunal sent back the appeal to the files of the AO with instructions whether eligible for the scheme? In my opinion in case the appeal is set aside with direction of denovo assessment the assessee is not eligible to apply for the scheme as the appeal is not pending as the assessment is to be made denovo.

7) Whether against the tribunal order miscellaneous application against the order is filed. Whether eligible for the scheme? In my opinion Yes.

8) Whether proceedings before AAR/ Settlement Commission pending on 31-01-2020 covered?

9) TDS- Appeal filed u/s 201 order for non-payment of TDS pending, which the assessee has agreed to settle it under the scheme. Whether relief is allowed in case, where in Assessment Order u/s 143(3), addition u/s 40(a)(i)/(ia) for not paying the TDS in the following cases:

- 
- a) Where in pending appeals against the 143(3) order, the assessee decides to go under the scheme.
- b) Where the assessee did not opt to go under the scheme for the pending appeal filed against the assessment order 143(3).
- c) In case of search assessment settling the TDS issue u/s 201 under this scheme, assessee will pay the amount equal to TDS or 125/135% of TDS liability as applicable to search cases.
- d) The time limit for filling the appeal or further appeal has not expired as on specified date, and the appellant did not file appeal before the due date. Whether he can avail the benefit of scheme.

10) Regular assessment was completed with substantive addition for the year for which the appeal before ITAT is pending, subsequently reassessment u/s 148 was made with additions for which the appeal before CIT (A) is pending as on specified date, whether the assessee can avail benefit of scheme for both the appeals or can choose to go for either of the appeal? In my opinion the assessee can go into scheme against both the orders by paying the taxes.

11) If the deductee receiving the income in his own pending appeal, decided to go under the scheme for his disputed tax without availing the TDS credit not paid by the deductor and paid the entire disputed tax, whether the deductor will be continued to and assessee in default u/s 201?

12) The appellant filed appeal against additions made which is pending before ITAT. In the meantime, the AO passes the penalty order u/s 271(1)(c) in relation to the same additions, which are in appeals and the appellant decided to go under the scheme.

What relief he can get under the scheme which are covered in the pending ITAT appeal? In my opinion tax has to be paid whereas the penalty will be waived.S

13) A) Where the substantive addition is made in the hands of Mr. A and protective assessment in the hands of Mr.B and Mr.A decided to go under the scheme for substantive addition. What is the fate of the protective assessment?

B) Where the substantive addition is made in the hands of Mr. A in Assessment year 1 and protective assessment for the similar issue is made in the hands of Mr.A for

assessment year 2 and Mr.A decided to go under the scheme for substantive addition. What is the fate of the protective assessment?

14) Assessee appeal before tribunal having 10 issues, was decided by the ITAT in December 2019 allowing six issues in favour of the assessee and confirming the addition in balance four. If the assessee decides to avail the scheme, how to work out the disputed tax of the said appeal?

15) In the assessment order additions are there on 6 issues, and the assessee has filed appeal only on 3 issues. The appellant has decided to go under the scheme for the pending appeal, whether the interest relief under the scheme shall be available for the interest charged by the AO as regards the six issues or the relief on interest will be proportionate to the 3 issues pending in appeal?

16) Department has not filed appeal against the order of ITAT as on 31.01.2020. However the department is in the process of filing the appeal against the same as intimated by the Assessing officer. Will the delay in filing the appeal be condoned as in the past and the assessee need to go for the scheme against the relief granted by ITAT.







## COVID – 19 - A FINANCIAL CRISIS AND AN ECONOMIC OPPORTUNITY

CA Jayant Gokhale

The fear and apprehension caused by the Corona Virus (or COVID - 19) epidemic is sweeping across the world. But chances are less than one in a million (0.0001%) that any reader of this article even knows a person who is infected. However, it is not just the infection by COVID - 19 but its social impact on daily life that really hits you. Its side effects which will send a shiver down your spine on each reader's financial situation is even more sweeping; though most would be just starting to realise it. My guess is that at least 30 to 60% of the readers of this article will be affected by the financial repercussions of COVID - 19.

Let us first look at the global repercussions before considering the national / local impact and their net impact on you.

Since the first infection by COVID – 19, the virus has spread rapidly and despite best efforts by various governments is now affecting at least 120 countries. More importantly – there is as at date, no known cure. The huge uncertainty about treatment / cure has caused havoc in financial markets. And this is not just panic or speculation. This is based on hard economics. The uncertainty of control, the lockdowns and restrictions imposed by governments authorities desperate to halt an uncontrolled spread of this virus has led to entire cities and regions being shutdown. Critical manufacturing activities have shutdown and free movement of goods has considerably slowed. And this is just the beginning. No one knows how long and how sustained this lull in commercial activity will be.

Result. Global markets have lost 1/6th of their value in just 2 days. Some thing which has not happened in last 18 years. The last similar fall was nearly 50 years ago – and we may still be headed that way.

Some would say that the economic upheaval is not due to COVID – 19. The Oil price collapse, global tensions, Iran / Syria / Korea, trade wars and Brexit are all responsible. I do not agree. The stock market plunge and oil price crisis are not contributors to the effect. Rather, they are the direct result of the COVID-19 panic. Take the oil price

crash. Due to shut downs in various plants, reduced air travel and resulting drop in consumption of oil. Since China accounts for 20% of global oil imports; sellers (Saudi (+ OPEC ) and Russia ) were desperately trying to sell in a shrinking market. The pressure caused by COVID-19 caused the cartel to break, leading to a 25% fall in oil prices ( more may follow). Financial markets hate uncertainty and the cumulative effect of COVID-19, helplessness of leaders across the world has led to very real fears of recession – leading to crashing of the markets. The backdrop of the Saudi unpredictability, US-China trade war, Trump's abrogation of global leadership by an inward looking "America First" policy, squabbles within NATO and Brexit provide a perfect backdrop for the world economy to lose equilibrium. It is rightly said "Vinasha Kale – Vipareet buddhi". The global economy was sluggish (except for US, China and to a certain extent India). COVID-19 has effectively knocked down China. The world needs an imaginative and aggressive economic thrust from US but its President and leadership does not inspire confidence as even COVID-19 does not seem to have been dealt with efficiently. Hence COVID-19 seems to have left the global economics rudderless and directions less.

So do I foresee a period of severe economic and fiscal misery in the coming year. No – not at all! Rather, being an optimist – I see a year of opportunity before us. But to get our priorities right - we must IMMEDIATELY and successfully deal with on a war footing – the threat of COVID-19. Despite its huge population - India has, till date, done fairly well in dealing with COVID-19. Nature (by way of our hot climate) may have given a helping hand; but we still need to back this up with sustained governmental effort in support for combating the spread of infection. Assuming that we do so successfully, a world of opportunity lies before us.

India is the 3rd largest importer of oil and considering the present slump in oil prices; the Indian economy may end up saving as much as Rs.1.4 lakh crores in oil imports alone. This amounts to 20 % of our fiscal deficit which

could be reduced or used to provide the stimulus necessary to help the Indian economy to cope with the expected global recession. Since Indian markets are partly insulated from global influences; the adverse impact on the Indian stock market may be limited; [ Further, since the economy was already clocking a growth rate of 4 to 5% - even with an adverse impact, our GDP growth rate will be well above the other major economies].

Further India's imports and exports account for less than 20% of GDP. So 80% of GDP is domestic consumption, which in a growing economy should continue to fuel production. Even at current rates of GDP growth - Indian market will continue to attract capital since we have greater resilience in the economy and the – Rupee rate may not change significantly. One must remember, the global financial markets are in turmoil because they are bracing for a global recession which would last for a year or more. Comparatively India will be a safe haven. **The game changer will be China.** In 2019 ( before COVID-19 ) – Chinese exports of machinery and equipment amounted to Rs.48 Lakh crores and items like furniture, lighting and plastic goods to Rs.10 lakh Crores. The Chinese supply lines to USA and to other countries have already been damaged as there would be some consumer resistance to Chinese goods. Assuming that COVID-19 is fairly dealt with by Aug 2020; there will probably be some limitations (for 3 to 6 months) that Chinese exporters will face in many countries even post COVID-19. Thus, Chinese exports could reasonably be expected to be significantly depressed for a year. This will open up huge

opportunities for those countries that have not been significantly hit by COVID-19 and who can manufacture substitutes for Chinese goods at a reasonable price. India can qualify in all these parameters and has the entrepreneurial skills and experience to push sales in USA, UK and EU.

This takes us to the big question; will such an effort materialize. The Chief economist of the International Monetary Fund (IMF); Ms. Gita Gopinath has said “*policy makers will need to implement substantial targeted fiscal, monetary ..... measures to help affected businesses;*” Using the cash bounty given by lower oil prices; the Indian Government needs to act fast to facilitate setting up of plants that will provide domestic industry and foreign manufacturers good, durable quality of industrial inputs at a reasonable price. A preliminary look shows potential for automobile parts, mobile assembly kits, garments, electrical goods of a vast range, pharma and chemical intermediates and a host of other areas. Long term contracts can be tied up quickly so the Government support does not attract WTO restrictions. Such measures will also generate employment, boost GDP and lift India's economy as never before. But for this; speedy and effective action by the Government is essential. COVID-19 has triggered a global crisis, which can also be turned into an opportunity for India. M. F. Weiner wrote in 1976 in the journal Medical Economics “**Don't wise a Crisis.**” The question is - will we and our Government take the COVID-19 crisis and turn it into an opportunity?





## RELAXATIONS FROM COMPLIANCES :: SEBI / MCA

[ due to CoVID-19 virus pandemic ]

CS Atul Kumar Labh

The CoVID-19 virus has hit populations around the world and has resulted in many restrictions, including free movement of people, thereby hampering businesses and day to day functioning of companies. It has been declared a 'pandemic' by the World Health Organization (WHO).

In wake of the current nationwide lock down as directed by Government of India, a need was felt to extend the

timelines and in order to support and enable companies in India to focus on taking necessary measures to address the CoVID-19 threat, including the economic disruptions caused by it, Securities and Exchange Board of India (SEBI) and Ministry of Corporate Affairs (MCA) have come forward by giving several type of relaxations in compliances to these companies under its Acts, Rules and Regulations to reduce their compliance burden and other risks.

A brief summary of these relaxations are as follows :

### (A) SEBI::

#### Relaxations from Compliances due to CoVID-19 virus pandemic

| Sl. No.  | Regulation   | Particulars   | Frequency            | Due Date / Existing Provision | Extended Date / Relaxed Provision |
|--|--|---|----------------------|-------------------------------|-----------------------------------|
| <b>SEBI (LODR)....Equity / Preference Shares Segment</b> |  |   |                      |                               |                                   |
| 1  | 7(3)   | Compliance certificate on share transfer facility                                   | Half Yearly          | 30.04.2020                    | 31.05.2020                        |
| 2  | 13(3)  | Statement of Investor complaints  | Qly                  | 21.04.2020                    | 15.05.2020                        |
| 3  | 24A<br><i>read with</i><br><br>Circular No CIR/CFD/CMD1/27/2019 dated February 8, 2019 | Secretarial Compliance Report   | Yly                  | 30.05.2020                    | 30.06.2020                        |
| 4  | 27(2)  | Corporate Governance Report   | Qly                  | 15.04.2020                    | 15.05.2020                        |
| 5  | 31   | Shareholding Pattern  | Qly                  | 21.04.2020                    | 15.05.2020                        |
| 6  | 33   | Financial Results   | Qly (Optional) & Yly | 15.05.2020 & 30.05.2020       | 30.06.2020 & 30.06.2020           |
| 7  | 40(9)  | Certificate from Practicing Company Secretary on timely issue of share certificates | Half Yly             | 30.04.2020                    | 31.05.2020                        |
| 8  | 44(5)  | Holding of AGM by Top 100 listed entities by market capitalization for FY 19-20     | Yly                  | 31.08.2020                    | 30.09.2020                        |

|  |              |  |             |  |  |
|--|--------------|--|-------------|--|--|
| 9                                      | 17(2)        | Time gap between two Board Meetings & Audit Committee Meetings   |             | Not to exceed 120 days   | Stipulations removed (between the period 01.12.2019 to 30.06.2020).<br><br>However, there must be at least four meetings in a year |
| 10                                     | 19(3A)       | The nomination and remuneration committee shall meet at least once in a year                                 | Yly         | 31.03.2020   | 30.06.2020   |
| 11                                     | 20(3A)       | The Stakeholders Relationship committee shall meet at least once in a year.                                  | Yly         | 31.03.2020   | 30.06.2020   |
| 12                                     | 21(3A)       | The Risk Management Committee shall meet at least once in a year.  | Yly         | 31.03.2020   | 30.06.2020   |
| 13                                     | 47           | Publication in the newspapers, viz, information such as notice of the board meeting, financial results, etc. |             |  | Publications exempted for all events scheduled till May 15, 2020   |
| 14                                     | 29(2)        | Prior intimation of Board Meetings to the Stock Exchange   | As and when | (a) at least 5 days before the meeting, if financial results are to be considered;<br><br>(b) 2 working days in other cases. | 2 days for all Board Meetings to be held till July 31, 2020  |
| 15                                     | 39(3)        | Intimation regarding loss of share certificate and issuance of duplicate share certificates                  | As and when | 2 days from the receipt of the information   | No penalty even if reported beyond the stipulated time for all the intimations between March 1, 2020 to May 31, 2020               |
| <b>SEBI Takeover Regulations .....</b> |              |  |             |  |  |
| 1                                      | 30(1), 30(2) | Disclosure by Promoters / Promoter group and other applicable entities                                       | Yly         | 07.04.2020   | 01.06.2020   |
| 2                                      | 31(4)        | Declaration by promoter regarding encumbrance of shares  | Yly         | 07.04.2020   | 01.06.2020   |

| <b>SEBI Depositories and Participants Regulations .....</b> |       |   |             |            |   |
|---|-------|---|-------------|------------|---|
| 1   | 74(5) | Certificate from the Issuer / Participant to the Depositories   | Qly         | 15.04.2020 | Lock Down Period as declared by GOI over and above the prescribed time limits |
| 2   | 76    | Reconciliation of Share Capital Audit Report  | Qly         | 30.04.2020 | Lock Down Period as declared by GOI over and above the prescribed time limits |
| <b>Miscellaneous .....</b>                                  |       |   |             |            |   |
| 1   |       | Processing of Remat Requests  | As and when |            | Lock Down Period as declared by GOI over and above the prescribed time limits |
| 2   |       | Processing of Transmission Requests   | As and when |            | Lock Down Period as declared by GOI over and above the prescribed time limits |
| 3   |       | Processing of request for Issue of Duplicate Share Certificates   | As and when |            | Lock Down Period as declared by GOI over and above the prescribed time limits |
| 4   |       | Processing of Requests for Name Deletion/ Name Change/ Transposition/ Pending Share Transfers (Re-lodgement cases in the case of share transfers) | As and when |            | Lock Down Period as declared by GOI over and above the prescribed time limits |
| 5   |       | Processing of Requests for Consolidation / Split / Replacement of Share Certificates / Amalgamation of Folios                                     | As and when |            | Lock Down Period as declared by GOI over and above the prescribed time limits |
| 6   |       | Handling Investor Correspondence / Grievances / SCORES complaint  | As and when |            | Lock Down Period as declared by GOI over and above the prescribed time limits |

|    |  |   |          |            |   |
|----|--|---|----------|------------|---|
| 7  |  | Submission of Half Yearly Report to SEBI pursuant to Circular No. CIR/MIRSD/7/2012 dated July 5, 2012   | Half Yly | 30.06.2020 | Lock Down Period as declared by GOI over and above the prescribed time limits |
| 8  |  | Compulsory Internal Audit of RTAs by CA / CS / CMA holding Certificate of Practice and Certified Information Systems Auditor (CISA) / Diploma Information Systems Auditor (DISA) pursuant to Circular dated April 20, 2018, issued by SEBI                  | Yly      | 30.06.2020 | Lock Down Period as declared by GOI over and above the prescribed time limits |
| 9  |  | Submission of Audit Report by CISA / CISM qualified or equivalent auditor by QRTAs to SEBI along with comments of the Board pursuant to Circular dated September 8, 2017 issued by SEBI on Cyber Security and Cyber Security Resilience framework for QRTAs | Yly      | 30.06.2020 | Lock Down Period as declared by GOI over and above the prescribed time limits |
| 10 |  | Submission of Compliance Report by QRTAs duly reviewed by the Board of Directors of the QRTA to SEBI on Enhanced monitoring of QRTAs pursuant to Circular dated August 10, 2018 issued by SEBI  | Qly      | 30.05.2020 | Lock Down Period as declared by GOI over and above the prescribed time limits |

**(B) MCA(Companies Act, 2013/LLP Act, 2008) ::****Relaxations from Compliances due to CoVID-19 virus pandemic**

| Sl. No. | Reference                          | Particulars                                | Due Date / Existing Provision | Extended Date / Relaxed Provision  |
|---------|------------------------------------|--|-------------------------------|--|
| 1       | MCA-21 (both CA, 2013 / LLP, 2008) | Filing of any form with MCA attracting fee |                               | No additional fees shall be charged for late filing during a moratorium period from 01 <sup>st</sup> April, 2020 to 30 <sup>th</sup> September, 2020 |
| 2       | Section 173 of CA, 2013            | Time gap between two Board Meetings        | Not to exceed 120 days        | May extend to 180 days till next two quarters, i.e., 30 <sup>th</sup> September, 2020  |

|    |   |  |  |  |
|----|---|--|--|--|
| 3  | CARO, 2020  | Audit Report   | To be applicable from FY 2019-2020   | Shall be applicable from FY 2020-2021  |
| 4  | Schedule IV to CA, 2013                           | Separate Meeting of Independent Directors                    | At least once in a FY  | Not mandatory for FY 2019-2020   |
| 5  | Section 73(2)(c) of CA, 2013                      | Deposit Repayment Reserves                                   | To create the deposit repayment reserve of 20% of deposits maturing during the financial year 2020-21 before 30th April, 2020              | May be complied by 30 <sup>th</sup> June, 2020   |
| 6  | Rule 18   | The Companies (Share Capital & Debentures) Rules, 2014       | To invest or deposit at least 15% of amount of debentures maturing in specified methods of investments or deposits before 30th April, 2020 | May be complied by 30 <sup>th</sup> June, 2020   |
| 7  | Section 10A of CA, 2013                           | Commencement of Business                                     | Within 180 days of incorporation   | Additional period of 180 days allowed. Now may be complied with within 360 days of incorporation   |
| 8  | Section 149 of CA, 2013                           | Residency of Director  | Minimum residency in India for a period of at least 182 days by at least one director of every company                                     | Not mandatory for 2019-2020  |
| 9  | Rule 4(2)   | The Companies (Meetings of Board and its Powers) Rules, 2014 | Certain items of Board Meeting can be transacted through audio visual means, only if, physical quorum is present                           | Physical quorum not necessary for the board meetings held upto 30.06.2020  |
| 10 | Filing of various forms with MCA (as given below) | Companies Fresh Start Scheme, 2020                           |  | Waiver of the entire additional filing fee, <i>if any</i> , if the form is filed by 30.09.2020 under the Scheme with the immunity from prosecution/penalty as associated with belated filing of the Form |

Dated : April 17, 2020

## MCA - FORMS-EXEMPTED

| S No. | Form No.                     | Description   |
|-------|------------------------------|---|
| 1     | 23C                          | Appointment of Cost Auditors  |
| 2     | MR-2                         | Form of Application to the Central Government for approval of appointment or reappointment and remuneration or increase in remuneration or waiver for excess or over payment to managing director or whole time director or manager and commission or remuneration to directors |
| 3     | ADT-2                        | Application for removal of auditor(s) from his/their office before expiry of term   |
| 4     | NDH-2                        | Application for extension of time   |
| 5     | DIR-3C                       | Intimation of Director Identification Number by the company to the registrar  |
| 6     | INC-12                       | Application for grant of License under section 8  |
| 7     | MSC-1                        | Application to ROC for obtaining the status of dormant company  |
| 8     | DIR-12                       | Particulars of appointment of directors and the key managerial personnel and the changes among them   |
| 9     | INC-4                        | Intimation for Change in Member/Nominee   |
| 10    | INC-6                        | One Person Company – Application for Conversion   |
| 11    | INC-22                       | Notice of Situation or Change of situation of Registered Office of the Company  |
| 12    | INC-27                       | Conversion of public company into private company or private company into public company  |
| 13    | 20B                          | Annual Return   |
| 14    | 21A                          | Annual Return for company having no share capital   |
| 15    | 23B                          | Notice by Auditor   |
| 16    | 23D                          | Information by cost auditor to Central Government   |
| 17    | 23AC                         | Filing balance sheet and other documents with the Registrar   |
| 18    | 23AC-XBRL                    | Form for filing XBRL document in respect of balance sheet and other documents with the Registrar.   |
| 19    | Form 66                      | Form for submission of Compliance Certificate   |
| 20    | AOC-4                        | Form for filing financial statement and other documents with the Registrar  |
| 21    | AOC-4 CFS                    | Form for filing consolidated financial statements and other documents with the Registrar  |
| 22    | AOC-4(XBRL)                  | Form for filing XBRL document in respect of financial statement and other documents with the Registrar  |
| 23    | ADT-1                        | Information to the Registrar by company for appointment of auditor  |
| 24    | ADT-3                        | Notice of Resignation by the Auditor  |
| 25    | BEN-2                        | Return to the Registrar in respect of declaration under section 90  |
| 26    | CRA-2                        | Form of Intimation of appointment of cost auditor by the company to Central Government  |
| 27    | CRA-4                        | Form for filing Cost Audit Report with the Central Government   |
| 28    | DPT-3                        | Return of deposits  |
| 29    | DPT-4                        | Statement regarding deposits existing on the commencement of the Act  |
| 30    | GNL-2                        | Form for submission of documents with the Registrar   |
| 31    | INC-5                        | One Person Company- Intimation of exceeding threshold   |
| 32    | IEPF-1                       | Statement of amounts credited to the Investor Education and Protection Fund   |
| 33    | IEPF-2                       | Statement of unclaimed or unpaid amounts  |
| 34    | IEPF-3                       | Statement of shares and unclaimed or unpaid dividend not transferred to the Investor Education and Protection Fund  |
| 35    | IEPF-4                       | Statement of shares transferred to the Investor Education and Protection Fund   |
| 36    | IEPF-6                       | Statement of unclaimed or unpaid amounts to be transferred to the Investor Education and Protection Fund  |
| 37    | IEPF-7                       | Statement of amounts credited to IEPF on account of shares transferred to the fund  |
| 38    | IEPF-5 e-verification report | Application to the authority for claiming unpaid amounts and shares out of Investor Education and Protection Fund (IEPF) – E-verification report  |
| 39    | I-XBRL                       | Form for filing XBRL document in respect of cost audit report and other documents with the Central Government   |



|    |                          |  |
|----|--------------------------|--|
| 40 | MGT-7                    | Annual Return  |
| 41 | MR-1                     | Return of appointment of key managerial personnel  |
| 42 | MSC-3                    | Return of dormant companies  |
| 43 | NDH-1                    | Return of Statutory Compliances  |
| 44 | NDH-3                    | Return of Nidhi Company for the half year ended  |
| 45 | NDH-4                    | Application for declaration as Nidhi Company and for updation of status by Nidhis  |
| 46 | PAS-3                    | Return of allotment  |
| 47 | SH-11                    | Return in respect of buy-back of securities  |
| 48 | A-XBRL                   | Form for filing XBRL document in respect of compliance report and other documents with the Central Government  |
| 49 | DIR-3<br>KYC/Web<br>form | Application for KYC of Directors   |
| 50 | FC-1                     | Information to be filled by Foreign company  |
| 51 | FC-2                     | Return of alteration in the documents filed for registration by foreign company  |
| 52 | FC-3                     | Annual accounts along with the list of all principal places of business in India established by foreign company  |
| 53 | FC-4                     | Annual Return of a Foreign Company   |
| 54 | INC-22A                  | Active Company Tagging Identities and Verification (ACTIVE)  |
| 55 | INC-20A                  | Declaration for commencement of business   |
| 56 | AOC-5                    | Notice of address at which books of account are maintained   |
| 57 | DIR-11                   | Notice of resignation of a director to the Registrar   |
| 58 | GNL-3                    | Particulars of person(s) or key managerial personnel charged or specified for the purpose of sub-clause (iii) or (iv) of clause 60 of section 2  |
| 59 | INC-20                   | Intimation to Registrar of revocation/surrender of license issued under section 8  |
| 60 | INC-28                   | Notice of order of the Court or Tribunal or any other competent authority  |
| 61 | MGT-6                    | Return to the Registrar in respect of declaration under section 89 received by the company   |
| 62 | MGT-10                   | Changes in shareholding position of promoters and top ten shareholders   |
| 63 | MGT-14                   | Filing of Resolutions and agreements to the Registrar under section 117  |
| 64 | MGT-15                   | Form for filing Report on Annual General Meeting   |
| 65 | Form 27<br>LLP           | Form for registration of particulars by Foreign Limited Liability Partnership (FLLP)   |
| 66 | FORM 3                   | Information with regard to limited liability partnership agreement and changes, if any, made therein   |
| 67 | FORM 8                   | Statement of Account & Solvency  |
| 68 | FORM 15                  | Notice for change of place of registered office  |
| 69 | FORM 11                  | Annual Return of Limited Liability Partnership (LLP)   |
| 70 | FORM 4                   | Notice of appointment, cessation, change in name/ address/designation of a designated partner or partner and consent to become a partner/designated partner  |
| 71 | FORM 5                   | Notice for change of name  |
| 72 | FORM 12                  | Form for intimating other address for service of documents   |
| 73 | FORM 22                  | Notice of intimation of Order of Court/ Tribunal/CLB/ Central Government to the Registrar  |
| 74 | FORM 31                  | Application for compounding of an offence under the Act  |
| 75 | FORM 23                  | Application for direction to Limited Liability Partnership (LLP) to change its name to the Registrar   |
| 76 | Form 29<br>LLP           | Notice of (A) alteration in the certificate of incorporation or registration; (B) alteration in names and addresses of any of the persons authorised to accept service on behalf of a foreign limited liability partnership (FLLP) (C) alteration in the principal place of business in India of FLLP (D) cessation to have a place of business in India |



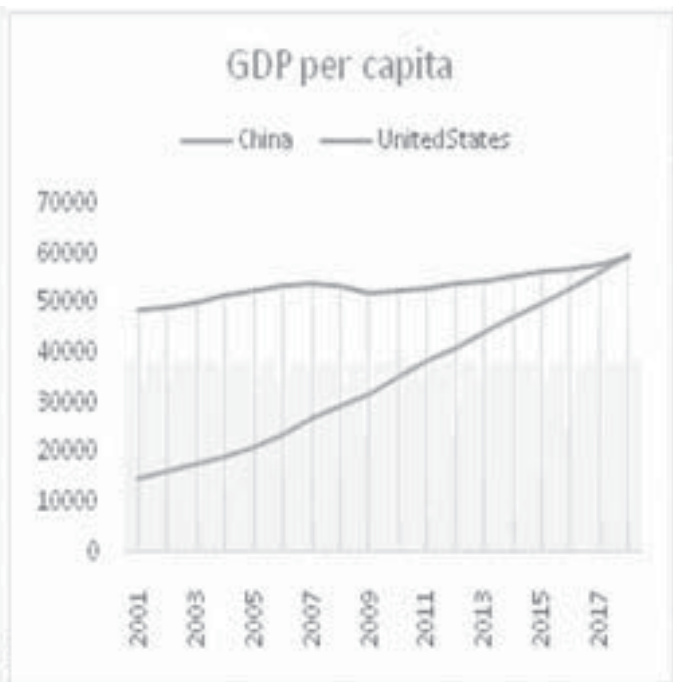
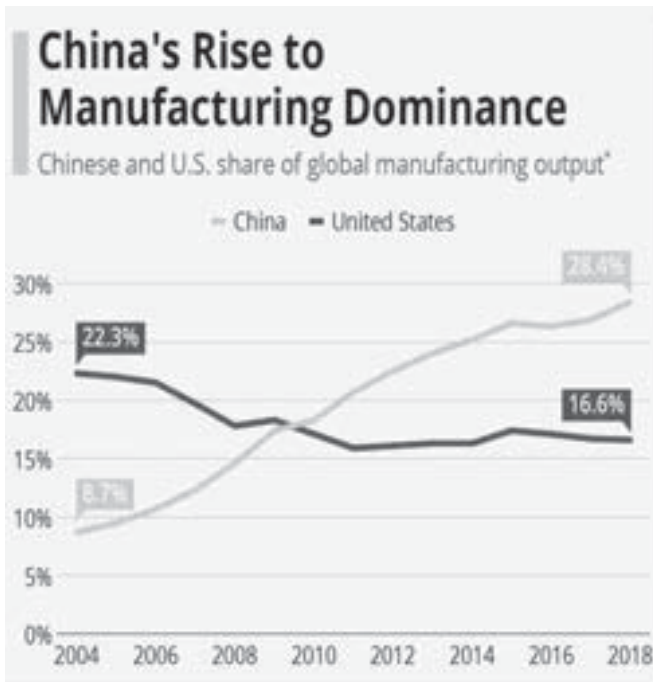
## A WORLD WITHOUT CHINA

CA Kamal Bagrodia & Ms. Muskan Bagrodia



Amidst lockdowns and increasing anxiety among people all over the world, world leaders have started blaming China for their negligence and acknowledge the pandemic as a biological weapon used for world dominance. Common people face the fear of using Chinese products in their daily lives, especially as the vaccine has not been developed to combat Covid-19. Before the pandemic, when we decided our own

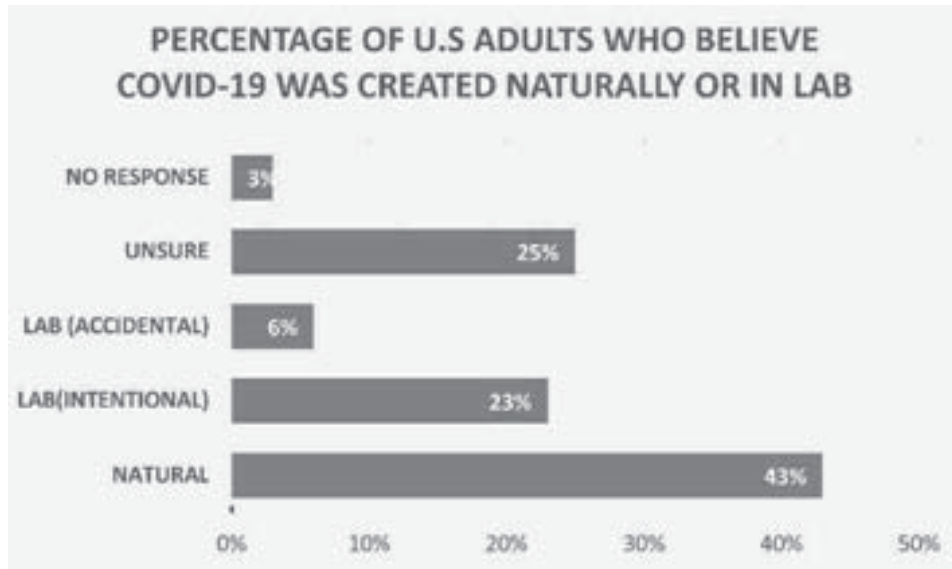
freedom, we were surrounded by Chinese products and were readily and candidly using these products. Each and every object had a label “Made in China” and even if the product was manufactured in other countries, the raw materials were mostly acquired from China. China quadrupled its economy from 2003 majorly through establishing manufacturing dominance in international trade.



SOURCE: United Nations Statistics Division SOURCE: World Bank

An American lawyer recently filed a \$20 trillion lawsuit against China for the innovation and spread of the novel coronavirus. President Trump asked for honest release of number of cases by China after accusing WHO for siding with china and threatened to stop UN agency's funding. Brazil Education Minister insinuated that China was behind the world health crisis. Japan recently announced \$52 billion emergency financial package in

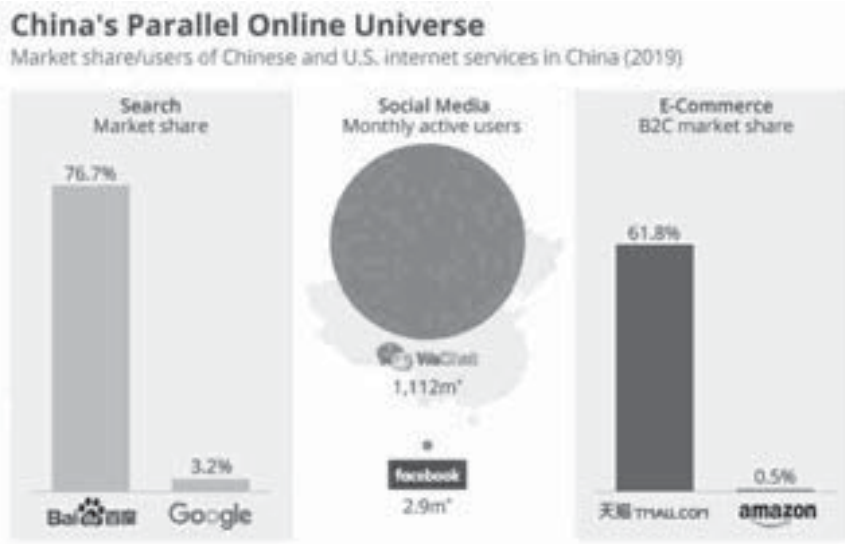
response to the threatening pandemic. It aims at helping struggling businesses and households to combat impact of the widespread infection. An advice of shifting businesses from infected areas have been suggested (hinting China majorly). The negligence shown by the organisation and China has led to the spread of this contagiously deadly disease.



SOURCE: Pew Research Centre, Data collected between March 10-16

After implementation of Work from Home schemes, a video calling application Zoom suddenly emerged as one of fastest proliferating companies. After gaining immense populace, the news of China using this application to access information around the world came out after digging deep into the server usage. Most of the servers were located in China and the Republic has a national security law under which the government can ask for

data from any Chinese company. Students, teachers, executives who were connecting through Zoom feared about hackers and cyber-crime, and major governmental meetings were also held through this application. The world did not fear about the hacking of the application but was concerned about information that China collected through this video calling application.



SOURCE: Analysys China, Statista Digital Market Outlook

Internet censorship in China or the Great Firewall of China blocks many websites and social media application around its premises. The Chinese government restricts its citizen from learning about governmental actions and has many restrictions on Chinese companies to disclose all facts when asked for. China has emerged as one of the most powerful

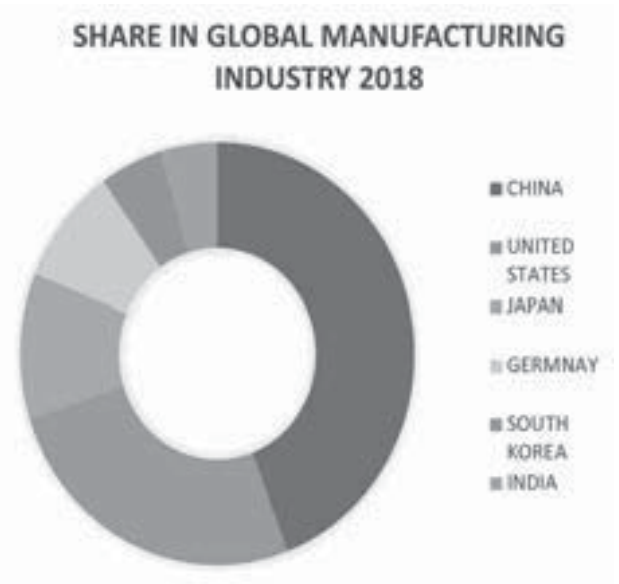
developing nations in the world after implementing various barriers on its citizens and almost keeping them away from world interdependence. After various allegations by world superpowers, the first world trade question that comes up is that, after the situation becomes better will the world boycott china or will china successfully supersede all the nations?

In 2015, the manufacturing industrial sector contributed approximately 40% of China's GDP. It accounted for nearly 50% of global manufacturing output in 2017. Manufacturing PMI and expectation of production surged amidst Covid-19 and forecasting that China will play no

role after normalization is naivety. Although the manufacturing sector might see a pitfall because the demand from United States might plummet as it is now one of the worst hit countries by Covid-19 and dissatisfaction among citizens is increasing for China.



SOURCE : National Bureau of Statistics of China.



SOURCE : United Nations Statistics Division

The courage shown by the Indian Prime Minister in March 2020, when India had negligible number of cases relative to its population gained popularity not only among its citizens but was also applauded world-wide. This could act as a huge opportunity for India to show progress in "Make in India" program. As the name suggests, this program aims at holistic development of India diversified from facilitating investment to building world-class manufacturing infrastructure. It is the time when countries will acknowledge goods from India

amidst widespread despair for Chinese goods. Recently, United States requested India for supply of Hydroxychloroquine which is a drug that will be used for treatment of Covid-19 patients, but the raw materials were again acquired from China.

Rising tides float all boats implying that Covid-19 will not only impact countries individually but will disastrously influence World Trade and Economy!



## SECTION 206C (1H) OF THE INCOME TAX ACT 1961- TAX COLLECTION AT SOURCE (TCS) ON SALE OF GOODS

FCA Mohan Lal Gupta

With a view to widen and deepen the tax net, the Finance Bill, 2020 presented before Parliament on 1st February 2020, inter-alia, proposed a new sub-section (1H) under Section 206C of the Income Tax Act, 1961 vide clause 93 requiring every seller of goods whose turnover in the business exceeded Rs.10.00 crores in the immediately preceding financial year to collect tax at source @ 0.01% of the sale consideration exceeding Rs.50.00 lakhs from the buyer. In case, such buyer does not have PAN or Aadhaar Number., then TCS shall be collected at the rate of 1% under clause (ii) of sub-section (1) of section 206CC.

The said Finance Bill received Presidential assent on 27th March 2020 and Section 206C(1H) found its place in the statute book of Income Tax Act 1961 and is effective from 1st day of October 2020 vide Section 95 of the Finance Act 2020.

Section 206C (1H) of the Income Tax Act 1961 as newly inserted into the statute book of Income Tax Act 1961 reads as under :

Every person, being a seller, who receives any amount as consideration for sale of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year, other than the goods being exported out of India or goods covered in sub-section (1) or sub-section (1F) or sub section (1G) shall, at the time of receipt of such amount, collect from the buyer, a sum equal to 0.1 per cent of the sale consideration exceeding fifty lakh rupees as income-tax:

Provided that if the buyer has not provided the Permanent Account Number or the Aadhaar Number to the seller, then the provisions of clause (ii) of sub-section (1) of section 206CC shall be read as if for the words "five per cent.", the words "one per cent." had been substituted:

Provided further that the provisions of this sub-section shall not apply, if the buyer is liable to deduct tax at source under any other provision of this Act on the goods purchased by him from the seller and has deducted such amount.

Explanation.—For the purposes of this sub-section,—

(a) "buyer" means a person who purchases any goods, but does not include,—

(A) the Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the trader presentation of a foreign State; or

(B) a local authority as defined in the Explanation to clause (20) of section 10; or

(C) a person importing goods into India or any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein;

(b) "seller" means a person whose total sales, gross receipts or turnover from the business carried on by him exceed ten crore rupees during the financial year immediately preceding the financial year in which the sale of goods is carried out, not being a person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.;

Thus, for the sake of easy understanding, let us discuss as hereunder:

### Basic features :

- 1) Section 206C(1H) is effective from 01.10.2020.
- 2) Section 206C(1H) is applicable to every seller whose turnover during the immediately preceding financial year exceeds Rs.10.00 crores.
- 3) Such seller will be required to collect TCS at the rate of 0.1 per cent from every buyer on purchase of goods by such buyer if the total purchases by such buyer exceeds Rs.50.00 lakhs.  
TCS will be collected on the value of goods exceeding Rs.50.00 lakhs. For instance, XYZ Limited sold goods to Mr. Y valuing Rs.51.00 lakhs. In such case, TCS would be collected on (Rs.51lakhs- Rs.50 lakhs), i.e. on Rs.1.00 lakh only.
- 4) Such TCS will not be collected in the case of goods which are exported out of India or goods covered in sub-section (1) or sub-section (1F) or sub section (1G) of Section 206C of the Income Tax Act, 1961.

- 5) TCS is required to be collected only in respect of sale value exceeding Rs.50.00 lakhs during the year.
- 6) If the buyer of such goods as discussed above does not provide Permanent Account Number or Aadhaar Number, then TCS shall be collected at the rate of 1.00 per cent from such buyer.
- 7) TCS collected as above, will be deposited within 7 days from the end of the month in which the same is collected except in the case of 31st March of the financial year, in which case the due date of deposit would be 30th April of the subsequent financial year.
- 8) TCS return in Form 27EQ will be submitted within 15 days from the end of the quarter in respect of which TCS return is to be furnished except in the case of last quarter in which case the due date of the return would be 15th May of the subsequent financial year.
- 9) One important point to note is that Section 206C(1H) is different than other provisions of TDS and TCS in the sense that obligation to collect TCS is on receipt of consideration for sale of goods and thus the liability for depositing TCS will be when the payment is received from the buyer.

#### Operational difficulties:

- 1) The seller will have to charge TCS from the buyer on each and every invoice exceeding Rs.50.00 lakhs.
- 2) The seller will have to maintain an account of TCS collected in respect of each and every buyer, deposit the amount collected, furnish statement of TCS collected, issue TCS certificates etc.
- 3) The work volume and compliance requirement will be enormous.
- 4) Such TCS will be applicable on all goods whether the same is liable for GST or not.
- 5) This will have huge impact not only on the volume of work or compliance but will also have an impact on working capital management since in many businesses, the volume of transactions seem to be significant, but such business operate on a very thin margin.

#### Other factors:

- 1) Question may arise in the minds of many that whether such TCS needs to be collected on a) the Basic Value + GST thereon; or needs to be collected on the Basic Value only?

CBIC through a corrigendum on 07.03.2019 to its Circular No.76/50/2018-GST dated 31/12/2018 clarified

that for the purpose of determination of value of supply under GST, TCS would not be includible as it is an interim levy not having the character of tax.

However, in absence of any specific circular of clarification by CBDT, it is not clear as to whether the TCS will be levied on the GST charged in the tax invoice or not.

In my opinion, in the absence of any clarity in this regard, TCS should be collected on the basic value plus GST.

- 2) TCS is required to be collected in respect of consideration for sale of goods. The term "goods" has not been defined under Income Tax Act 1961. In such scenario, in my opinion, one should refer to the definition of goods under "Sale of Goods Act 1930" which defines goods as under:

Goods means every kind of moveable property other than actionable claims and money and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

- 3) TCS on sale of goods covered under Section 206C(1)/206C(1F)/206C(1G) shall be collected as per the provisions of respective sub-sections. It means that TCS on sale of alcoholic liquor for human consumption, tendu leaves, timber, scrap, minerals (coal/ignite/iron ore), foreign remittance through Liberalised Remittance Scheme (LRS), overseas tour package, shall be collected according to the applicable rates and provisions as mentioned under the respective sub-sections.

#### Conclusion:

There are clauses in the Finance Act 2020, which reads as:

If any difficulty arises in giving effect to the provisions of subsection (1G) or sub-section (1H), the Board may, with the approval of the Central Government, issue guidelines for the purpose of removing the difficulty.

Every guideline issued by the Board under sub-section (1-I) shall be laid before each House of Parliament, and shall be binding on the Income-tax authorities and on the person liable to collect the sum.

Further to this, it will not be out of place to mention that GST having been introduced and there being a complete trail available particularly in respect of the transaction which aggregates to Rs.50.00 lakhs or more, there seems no justification to introduce this provision which would increase the volume of work, compliance burden and difficulty in working capital management for the trade and industry which even till today is finding it difficult to cope with the compliance provisions under the GST Law.

In view of the above, Section 206C(1H) of the Income Tax Act 1961 needs to be withdrawn.



## IN-DEPTH ANALYSIS OF REVERSE CHARGE MECHANISM

CA Madhulika Jain

Reverse Charge Mechanism, popularly known as RCM, was in existence before GST and is not a new concept as we were already dealing with it in service tax regime, though it was only for specified services. Then what is draconian in GST? Under GST, in addition to the specified services, it is also made applicable on supplies of specified goods, for notified services from an e-commerce operator and on supplies from unregistered dealers to registered persons. Also imposing a 100% reverse charge is definitely a big change. There are both pros and cons of this reverse charge mechanism, on one hand it is definitely burdensome for the small supply receivers, but on the other hand, it has increased tax compliance for the country as a whole and has also increased transparency.

RCM provisions have been amended manifold, so one needs to be updated with the latest provisions. Generally, the supplier of goods or services is liable to pay GST. However, in specified cases like imports and other notified supplies, the liability may be cast on the recipient under the reverse charge mechanism. Reverse charge means the liability to pay tax is on the recipient of supply of goods or services instead of the supplier of such goods or services in cases wherever RCM is applicable.

*As per Section 2(98) of the CGST Act, 2017 "reverse charge" means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or subsection (4) of section 5 of the Integrated Goods and Services Tax Act.*

### **There are three type of reverse charge scenarios provided in law:-**

**Supply of certain goods and services specified by CBEC:** First Scenario, as per the provisions of section 9(3) of CGST, 2017/section 5(3) of IGST Act, 2017, the Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or

services or both. List of notified goods and services has been provided in the end of the article.

**Supply from an Unregistered dealer to a Registered dealer:** Second scenario, section 9(4) of CGST/section 5(4) of IGST Act, 2017 provides that the tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both. Accordingly, whenever a registered person procures supplies from an unregistered supplier, he needs to pay GST on reverse charge basis.

However, in respect of Supply of taxable goods and/or services or both by an un-registered supplier from 1st July 2017 to 12th October 2017, to a registered person, it was taxable in the hands of Registered person. The RCM provision U/s 9(4) of CGST Act/ U/s 5(4) of IGST Act was kept in abeyance from 13th October 2017 till CGST Amendment Act, 2018 came into operation (i.e till 1st Feb 2019). CGST amendment Act, 2018, which came into operation w.e.f 1st Feb 2019 has amended the RCM provision U/s 9(4) of CGST Act / U/s 5(4) of IGST Act. Now only specified classes of registered person shall be liable to pay tax under RCM in respect of supply of specified categories of goods or services or both received from unregistered person.

**Accordingly, as per Notification No. 7/2019-C.T(Rate), dated 29th March, 2019 RCM on Real Estate Sectors was notified.** In case of a project developer or construction of apartment by the developer, 80% of inputs and input services [other than capital goods, TDR/JDA, FSI, long-term lease (premium)] shall be purchased from registered persons. On shortfall of purchases from 80% tax shall be paid by the builder @18% on RCM basis. However, Tax on cement purchased from unregistered person shall be paid @28% under RCM, and on capital goods under RCM at applicable rates in terms of Section 9(4) the CGST Act, 2017. Thus in the present scenario Section 9(4) is only applicable for the "Promoters" who are engaged in Supply of the above mentioned services, without any exemption limit.

**Services through an e-commerce operator:** Third scenario is covered by 9(5) of the CGST Act /section 5(5) of the IGST Act, 2017 provides that, the Government may, on the recommendations of the Council, by notification, specify categories of services the tax on supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services. Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax.

Provided further that where an electronic commerce operator does not have a physical

Presence in the taxable territory and also he does not have a representative in the said

Territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

For example, UrbanClap provides services of plumbers, electricians, teachers, beauticians etc. UrbanClap is liable to pay GST and collect it from the customers instead of the registered service providers.

### **Registration**

As per Section 24 of the CGST Act, 2017, a person who is required to pay tax under reverse charge has to compulsorily register under GST and the threshold limit of Rs. 20 /40 lakhs (Rs. 10/20 lakhs for special category states) is not applicable to him.

### **Input Tax Credit**

A supplier cannot take ITC of GST paid on goods or services used to make supplies on which the recipient is liable to pay tax. The recipient can take the ITC of the RCM paid by cash (or cash ledger) in the same month provided that such goods or services are used or will be used for business or furtherance of business. Therefore, the RCM paid by the recipient itself becomes the ITC once payment done in cash.

### **Time of Supply**

The time of supply is the point when the supply is liable to GST. One of the factor relevant for determining time of supply is the person who is liable to pay tax. In reverse charge, the recipient is liable to pay GST. Thus, time of supply for supplies under reverse charge is different from the supplies which are under forward charge.

In case of supply of goods, time of supply is earliest of: -

- (a) date of receipt of goods; or
- (b) date of payment as per books of account or date of debit in bank account, whichever is earlier; or
- (c) the date immediately following thirty days from the date of issue of invoice or similar other documents.

In case of supply of services, time of supply is earliest of: -

- (a) date of payment as per books of account or date of debit in bank account, whichever is earlier; or
- (b) the date immediately following sixty days from the date of issue of invoice or similar other documents.

Where it is not possible to determine time of supply using above methods, the time of supply would be the date of entry in the books of account of the recipient.

### **Compliances in respect of supplies under reverse charge mechanism:**

**1. Tax Invoice:** As per section 31 of the CGST 2017 read with Rule 46 of the CGST 2017, every tax invoice has to mention whether the tax in respect of supply in the invoice is payable on reverse charge. Similarly, this also needs to be mentioned in receipt voucher as well as refund voucher, if tax is payable on reverse charge.

Self-invoicing is to be done when you have purchased from an unregistered supplier and such purchase of goods or services falls under reverse charge. This is due to the fact that your supplier cannot issue a GST-compliant invoice to you, and thus you become liable to pay taxes on their behalf. Hence, self-invoicing, in this case, becomes necessary.

**2. Maintenance of accounts by registered persons:** Every registered person is required to keep and maintain records of all supplies attracting payment of tax on reverse charge.

**3. Payment of RCM:** Any amount payable under reverse charge shall be paid by debiting the electronic cash ledger. In other words, reverse charge liability cannot be discharged by using input tax credit. However, after discharging reverse charge liability, credit of the same can be taken by the recipient, if he is otherwise eligible.

**4. Return details:** Invoice level information in respect of all supplies attracting reverse charge, rate wise, are to be furnished separately in the table 4B of GSTR-1 by the supplier. The recipient needs to disclose the same in the table 3.1.(d) and 4(3) of GSTR-3B.



5. **Advance on services:** Advance paid for reverse charge supplies on services is also leviable to GST. The person making advance payment has to pay tax on reverse charge basis.

6. **Applicability of GST Compensation Cess:** GST Compensation Cess will be applicable on tax paid under reverse charge mechanism also. The purpose is to compensate States for loss of revenue on the implementation of GST. This will be applicable for 5 years from the date GST gets implemented.

7. **Applicability of RCM on composition dealers:** It is pertinent to note that the composition scheme does not restrict tax payable under Reverse Charge Mechanism.

Therefore, RCM is payable wherever applicable. The RCM rate applicable to the supplies is the rate at which GST has to be paid. This means that rate under composition scheme should not be used for reverse charge purposes. Also, no ITC is available for tax paid under reverse charge for a composition dealer.

#### Reverse charge on specified goods

The supply of goods under Reverse Charge Mechanism has notified vide **Notification No. 4/2017-C.T. (Rate), dated 28-6-2017** as amended from time to time under Section 9(3) of the CGST Act, 2017 and the same is reproduced in the Table below :-

**Table-1**

| S. No. | Tariff Item, Sub-heading, or Chapter | Description of Supply of Goods     | Supplier of Goods  | Recipient of Supply  |
|--------|--------------------------------------|------------------------------------|--|--|
| (1)    | (2)                                  | (3)                                | (4)  | (5)  |
| 1.     | 0801                                 | Cashew nuts, not shelled or peeled | Agriculturist  | Any registered person  |
| 2.     | 1404 90 10                           | Bidi wrapper leaves(tendu)         | Agriculturist  | Any registered person  |
| 3.     | 2401                                 | Tobacco leaves                     | Agriculturist  | Any registered person  |
| 4.     | 5004 to 5006                         | Silk yarn                          | Any person who manufactures silk yarn from raw silk or silk worm cocoons for supply of silk yarn | Any registered person  |
| 4A     | 5201<br>(Effective from 15-11-2017)  | Raw cotton                         | Agriculturist  | Any registered person  |
| 5.     | –                                    | Supply of lottery                  | State Government, Union Territory or any local authority   | Lottery distributor or selling agent.<br><i>Explanation.</i> – For the purposes of this entry, lottery distributor or selling agent has the same meaning as assigned to it in clause (c) of Rule 2 of the Lotteries (Regulation) Rules, 2010, made under the 2 provisions of sub-section (1) of Section 11 of the Lotteries (Regulations) Act, 1998. |

Table-1

|    |   |   |   |                       |
|----|---|---|---|-----------------------|
| 6. | Any Chapter (Effective from 13-10-2017) | Used vehicles seized and confiscated goods, old and used goods, waste and scrap | Central Government, State Government, Union territory or a Local authority. | Any registered person |
| 7. | Any Chapter (Effective from 28-5-2018)  | Priority Sector Lending Certificate   | Any registered person   | Any registered person |

**Explanation.** – (a) In this Table, “tariff item”, “sub-heading”, “heading” and “Chapter” shall mean respectively a tariff item, sub-heading, heading or chapter, as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(b) The rules for the interpretation of the First Schedule to the said Customs Tariff Act, 1975, including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

#### Reverse charge on specified services

The supply of services under reverse charge mechanism has been notified vide **Notification No. 13/2017-C.T. (Rate), dated 28-6-2017** as amended from time to time under Section 9(3) of the CGST Act, 2017 and the list of services that will be under reverse charge as notified by the Central Government is given in table below :-

Table-2

| Sr. No. | Category of Supply of Services  | Supplier of Service          | Recipient of service  |
|---------|---|------------------------------|---|
| (1)     | (2)   | (3)                          | (4)   |
| 1.      | <p><b>GTA Services :</b><br/>Supply of Services by a Goods Transport Agency (GTA) who has not paid central tax @ 6% in respect of transportation of goods by road to –</p> <p>(a) any factory registered under or governed by the Factories Act, 1948; or</p> <p>(b) any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or</p> <p>(c) any cooperative society established by or under any law; or</p> <p>(d) any person registered under CGST/IGST/SGST/or UTGST Act; or</p> <p>(e) anybody corporate established, by or under any law; or</p> <p>(f) any partnership firm whether registered or not under any law including association of persons; or</p> | Goods Transport Agency (GTA) | <p>(a) any factory registered under or governed by the Factories Act, 1948; or</p> <p>(b) any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or</p> <p>(c) any cooperative society established by or under any law;</p> <p>(d) any person registered under CGST/IGST/SGST/UTGST Act; or</p> <p>(e) anybody corporate established, by or under any law; or</p> <p>(f) any partnership firm whether registered or not under any law including association of persons; or</p> <p>(g) any casual taxable person located in the taxable territory.</p> |

Table-2

|  |  |  |   |
|--|--|--|---|
|  | (g) any casual taxable person; located in the taxable territory. "Provided that nothing contained in this entry shall apply to services provided by a goods transport agency, by way of transport of goods in a goods carriage by road, to –<br>(a) a Department or Establishment of the Central Government or State Government or Union territory; or<br>(b) local authority; or<br>(c) Governmental agencies, which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under Section 51 and not for making a taxable supply of goods or services." |  |   |
| <b>NOTE:</b>   |  |  |   |
| <p>(i) <i>The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.</i></p> <p>(ii) <i>RCM not applicable if</i></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> <i>GTA opts to pay tax under forward charge @12% (Notification no.22/2017 IT(Rate))</i></li> <li><input type="checkbox"/> <i>GTA Services to persons other than specified above or unregistered recipient.</i></li> <li><input type="checkbox"/> <i>GTA Services to government departments, local authority or government agencies which has taken registration only for the purpose of deducting TDS and not for making taxable supply.</i></li> </ul>   |  |  |   |
| 2.   | <b>Legal Services</b><br>Services provide by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly.   | An individual advocate including a senior advocate or firm of advocates. | Any business entity located in the taxable territory. |
| <b>Note:</b>   |  |  |   |
| <p>(i) <i>'Legal service' means any service provided in relation to advice, consultancy or assistance in any manner and includes representational services before any Court, Tribunal or Authority.</i></p> <p>(ii) <i>The business entity located in the taxable territory who is litigant, applicant or petitioner, as the case may be, shall be treated as the person who receives the legal services for the purpose of this notification.</i></p> <p>(iii) <i>Any service provided by a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to</i></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> <i>An advocate or partnership firm of advocates providing legal services.</i></li> <li><input type="checkbox"/> <i>Any person other than a business entity</i></li> <li><input type="checkbox"/> <i>A business entity with aggregate TO up to 20 lacs (10 lacs for special category states) in preceding FY.</i></li> <li><input type="checkbox"/> <i>The central government, the state government, union government, local authority, government authority or government entity.</i></li> </ul> <p><i>Any services provided by a senior advocate by way of legal services to</i></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> <i>Any person other than a business entity</i></li> <li><input type="checkbox"/> <i>A business entity with aggregate TO up to 20 lacs (10 lacs for special category states) in preceding FY.</i></li> <li><input type="checkbox"/> <i>The central government, the state government, union territory, local authority, government authority or government entity.</i></li> </ul> <p><i>(Exemption Notification no.12/ 2017 CT(Rate))</i></p> |  |  |   |

|   |   |   |  |
|---|---|---|--|
| 3   | <b>Arbitral Services</b><br>Services supplied by an arbitral Tribunal to a business entity.   | <b>An arbitral Tribunal</b>   | Any business entity located in the taxable territory.                    |
| <p><b>NOTE:</b><br/>Any services provided by an arbitral tribunal to the following are exempt:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Any person other than a business entity</li> <li><input type="checkbox"/> A business entity with an aggregate TO up to Rs.20 lacs (10 lacs in case of special category states) in the preceding FY</li> <li><input type="checkbox"/> The central government, state government, union territory, local authority, government authority or government entity.<br/>(Exemption Notification no.12/ 2017 CT(Rate))</li> </ul> |   |   |  |
| 4   | <b>Sponsorship Services</b><br>Service provided by way of Sponsorship Service to anybody corporate or partnership firm.   | <b>Any person</b>   | Anybody corporate or partnership firm located in the taxable territory.  |
| 5   | <b>Government Services :</b><br>Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding the following :<br>(A) renting of immovable property service, and<br>(B) services specified below :-<br>(i) services by the Department of posts by way of speed post, life insurance, express parcel post and agency services provided to a person other than Central Government, State Government or Union territory or local authority;<br>(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;<br>(iii) transport of goods or passengers. | Central Government, State Government, Union territory or Local Authority  | Any Business Entity located in the taxable territory.                    |
| 5A  | <b>Services by the Government:</b> Services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017 (with effect from 25-1-2018).  | Central Government, State Government, Union territory or Local Authority. | Any person registered under the Central Goods and Services Tax Act, 2017 |
| <p><b>NOTE:</b><br/>(i) Many government services are exempt specifically under exemption notification no.12/2017 –CT(Rate), such services should be excluded from RCM<br/>(ii) “renting of immovable property” means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property.</p>                                    |   |   |  |

|  |   |   |  |
|--|---|---|--|
| 5B   | Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter.   | Any Person                                  | Promoter   |
| 5C   | Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter. <b>(SI.5B &amp; 5C changes carried vide Notification No.05/2019-C.T (Rate) dated 29.03.2019 with effect from 1<sup>st</sup> April,2019)</b> | Any person                                  | Promoter   |
| <p><b>NOTE:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The term “apartment” shall have the same meaning as assigned to it in clause (e) under Section 2 of the <b>Real Estate (Regulation and Development) Act, 2016</b> (16 of 2016).</li> <li><input type="checkbox"/> The term “promoter” shall have the same meaning as assigned to it in clause (zk) under Section 2 of the <b>Real Estate (Regulation and Development) Act, 2016</b> (16 of 2016).</li> <li><input type="checkbox"/> The term “project” shall mean a Real Estate Project (REP) or a Residential Real Estate Project (RREP);</li> <li><input type="checkbox"/> The term “Real Estate Project (REP)” shall have the same meaning as assigned to it in clause (zn) of Section 2 of the <b>Real Estate (Regulation and Development) Act, 2016</b> (16 of 2016).</li> <li><input type="checkbox"/> The term “Residential Real Estate Project (RREP)” shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent of the total carpet area of all the apartments in the REP.</li> <li><input type="checkbox"/> “Floor Space Index (FSI)” shall mean the ratio of a building’s total floor area (gross floor area) to the size of the piece of land upon which it is built.</li> </ul> |   |   |  |
| 6  | <b>Services by the Director:</b> Services supplied by a director of a company or a body corporate to the said company or the body corporate.  | A director of a company or a body corporate | A company or a body corporate located in the taxable territory               |
| <p><b>NOTE:</b><br/>This entry should be read with entry no.1 of schedule III of the CGST Act, 2017. It is pertinent to note that salary to directors for which TDS are deducted under section 192 of Income tax Act, no RCM is applicable as it not a supply at all. However, where directors are paid sitting fees or board meeting fees as professional charges then RCM is applicable.</p>   |   |   |  |
| 7  | <b>Insurance Agent Service:</b> Services provided by an insurance agent to person carrying on insurance business.   | An Insurance Agent                          | Any person carrying on insurance business, located in the taxable territory. |
| <p><b>Note:</b><br/>“Insurance agent” shall have the same meaning as assigned to it in clause (10) of Section 2 of the Insurance Act, 1938 (4 of 1938).</p>  |   |   |  |

|    |  |   |   |
|----|--|---|---|
| 8  | <b>Recovery Agent Service:</b> Services provided by a recovery agent to a banking company or a financial institution or a non-banking financial company.   | A Recovery Agent  | Banking company or financial institution or a non-banking financial company, located in the taxable territory.  |
| 9  | <b>Copyright Service</b><br>Supply of Services by a music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of Section 13 of the Copyright Act, 1957 relating to original dramatic, musical or artistic works to a music company, producer or the like.                  | Music composer, photographer, artist, or the like.                        | The Music company, producer or the like, located in the taxable territory.  |
| 9A | Supply of services by an author by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of subsection (1) of section 13 of the Copyright Act, 1957 relating to original literary works to a publisher.<br><b>( Sl.9 &amp; 9A changes carried vide Notification No.22/2019-C.T (Rate) dated 30.09.2019 with effect from 1'st October,2019</b> | Author  | Publisher located in the taxable territory:-<br>Provided that nothing contained in this entry shall apply where:-<br>(i) the author has taken registration under the Central Goods and Services Tax Act,2017 (12 of 2017), and filed a declaration , in form at annexure I, within the time limit prescribed therein, with the jurisdictional CGST or SGST commissioner, as the case may be, that he exercises the option to pay central tax on the service specified in column (2), under forward charge in accordance with Section 9 (1) of the Central Goods and Service Tax Act, 2017 under forward charge, and to comply with all the provisions of Central Goods and Service Tax Act, 2017 (12 of 2017) as they apply to a person liable for paying the tax in relation to the supply of any goods or services or both and that he shall not withdraw the said option within a period of 1 year from the date of exercising such option;<br>(ii) the author makes a declaration, as prescribed in Annexure II on the invoice issued by him in Form GST Inv-I to the publisher. ”; |
| 10 | <b>Reserve Bank Services :</b><br>Supply of services by the members of Overseeing Committee to (Reserve Bank of India Effective from 13-10-2017)   | Members of Overseeing Committee constituted by the Reserve Bank of India. | Reserve Bank of India   |

|  |   |   |   |
|--|---|---|---|
| 11   | <b>Services by DSAs:</b><br>Services supplied by individual Direct Selling Agents (DSAs) other than a body corporate partnership or limited liability partnership firm to bank or non-banking financial company (NBFCs) Effective from 27-7-2018).  | Individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm. | A banking company or a non-banking financial company, located in the taxable territory. |
| 12   | Services provided by Business Facilitator (BF) to a banking company.  | Business facilitator (BF)   | A banking company, located in the taxable territory.                                    |
| 13   | Services provided by an agent of Business Correspondent (BC) to Business Correspondent (BC).  | An agent of Business Correspondent (BC).  | A business correspondent, located in the taxable territory.                             |
| 14   | Security Services (services provided by way of supply of security personnel) provided to a registered person :<br><b>Provided</b> that nothing contained in the entry shall apply to,-<br>(i)(a) a Department or Establishment of the Central Government or State Government or Union territory; or<br>(b) local authority; or<br>(c) Government agencies; which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under Section 51 of the said Act and not for making a taxable supply of goods or services; or (ii) a registered person paying tax under Section 10 of the said Act.<br>Sl. No. 12 to 14 vide <b>Notification No. 29/2018-C.T. (Rate) dated 31-12-2018.</b> w.e.f. 1-1-2019) | Any person other than a body corporate.   | A registered person, located in the "taxable territory."                                |
| <p><b>Note:</b><br/>RCM on security services is not applicable in the following cases:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Security services supplied by a body corporate</li> <li><input type="checkbox"/> Security services supplied to any government department or establishment of central or state or any government agency or local authority, who have taken registration only for the purpose of deducting TDS under section 51 of the CGST Act,2017</li> <li><input type="checkbox"/> Security services provided to unregistered person or Composition dealer</li> </ul> |   |   |   |

|    |   |   |   |
|----|---|---|---|
| 15 | Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate.<br><b>Notification No.29/2019-Central Tax (Rate), dated 31.12.2019.</b>   | Any person, other than a body corporate who supplies the service to a body corporate and does not issue an invoice charging central tax at the rate of 6% to the service recipient.   | Any body corporate located in the taxable territory”.   |
| 16 | Services of lending securities of Securities under Lending scheme, 1997 (Scheme). Securities and Exchange Board of India (SEBI), as amended.<br><b>SI.16 changes have carried vide Notification No.22/2019-C.T (Rate) dated 30.09.2019 with effect from 1<sup>st</sup> October, 2019.</b> | Lender i.e. a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the scheme of SEBI. | Borrower i.e. a person who borrows the securities under the Scheme through an approved intermediary of SEBI). |

The cited table is showing the list of services as notified by the Government and approved by the GST Council for levy of GST under reverse charge.

*Explanation.* – For purpose of this notification,-

- (a) “Body Corporate” has the same meaning as assigned to it in clause (11) of Section 2 of the Companies Act, 2013.
- (b) The words and expressions used and not defined in this notification but defined in the Central Goods and Services Tax Act, the Integrated Goods and Services Tax Act, and the Union Territory Goods and Services Tax Act shall have the same meanings as assigned to them in those Acts.
- (c) A “Limited Liability Partnership” formed and registered under the provisions of the Limited Liability Partnership Act, 2008 (6 of 2009) shall

also be considered as a partnership firm or a firm.

- (d) Provisions of this notification, insofar as they apply to the Central Government and State Governments, shall also apply to the Parliament and State Legislatures.

Additional Services on which tax is payable by recipient under IGST Act, 2017 on Reverse charge basis under GST. In addition to cited (Table -2) services, the following two additional services has been notified by the Central Government vide **Notification No. 10/2017-Integrated Tax(Rate) Dated 28-06-2017** wherein whole of the tax shall be payable by the recipient on services under Section 5(3) of IGST Act,2017 on Reverse charge basis.



(Table-3)

| Si. No. | Category of Supply of Services   | Supplier of Service                            | Recipient of service   |
|---------|--|--|--|
| (1)     | (2)  | (3)  | (4)  |
| 1       | Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient.  | Any person located in a non-taxable territory. | Any person located in the taxable territory other than non-taxable online recipient.         |
| li      | Services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the Customs Station of clearance in India. | A person located in a non-taxable territory.   | Importer, as defined in Sec 2(26) of the Customs Act, 1962, located in the taxable territory |

It is pertinent to note that if an importer of service is registered, RCM will be applicable but if not registered then needs to get compulsory registration and discharge RCM liability.

**Conclusion:** One needs to be cautious as to when and where the provisions of RCM are applicable. Case by case analysis needs to be done, who is the provider of

service and who is the receiver of service and whether the RCM provisions are applicable. Wrong interpretation could lead to litigations in future. Say for security services, supplier of service should be any person other than a body corporate and receiver of service should be a registered taxable person.





## THE COMPANIES (WINDING UP) RULES, 2020 – A SNAPSHOT

CA Mayur Agrawal

The Ministry of Corporate Affairs ('MCA') Continuing with its crackdown on 'fly by night and dummy' entities has hit Thor's Hammer of compliances on the Companies vide various notifications in last two years. As they say when bulls fight crops suffers, same is the case of the small and medium companies which have been searching for ways to come out of the corporate web. The existing Compulsory & Voluntary winding -up under IBC require NCLT approval. NCLT which are already over burdened need some space and The Companies (Winding Up) Rules, 2020 seek to inter-alia reduce the burden of the NCLT by enabling summary procedures for liquidation to be filed with the central government.

The MCA vide notification dated 24 January 2020, has notified the Companies (Winding Up) Rules, 2020 ('The Rules'). The Rules are applicable to companies going into "winding up for the circumstances mentioned u/s 271" as well as "Summary procedure for liquidation u/s 361" of Companies Act, 2013. The Rules comprise of 191 rules and 95 forms and shall become applicable from 1st April 2020. In this article we have summarized Companies (Winding Up) Rules, 2020. The list below depicts options available with the companies to de-corporatize:

- ❖ By striking off name of Co. u/s 248 of Cos. Act
- ❖ Compulsory winding – up under IBC;
- ❖ Voluntary winding – up under IBC;
- ❖ By merger u/s 230-240 of Cos. Act;
- ❖ Summary Proceedings for winding – up u/s 361;

- ❖ Compulsory winding – up u/s 271 of Cos. Act
- ❖ Conversion of Company

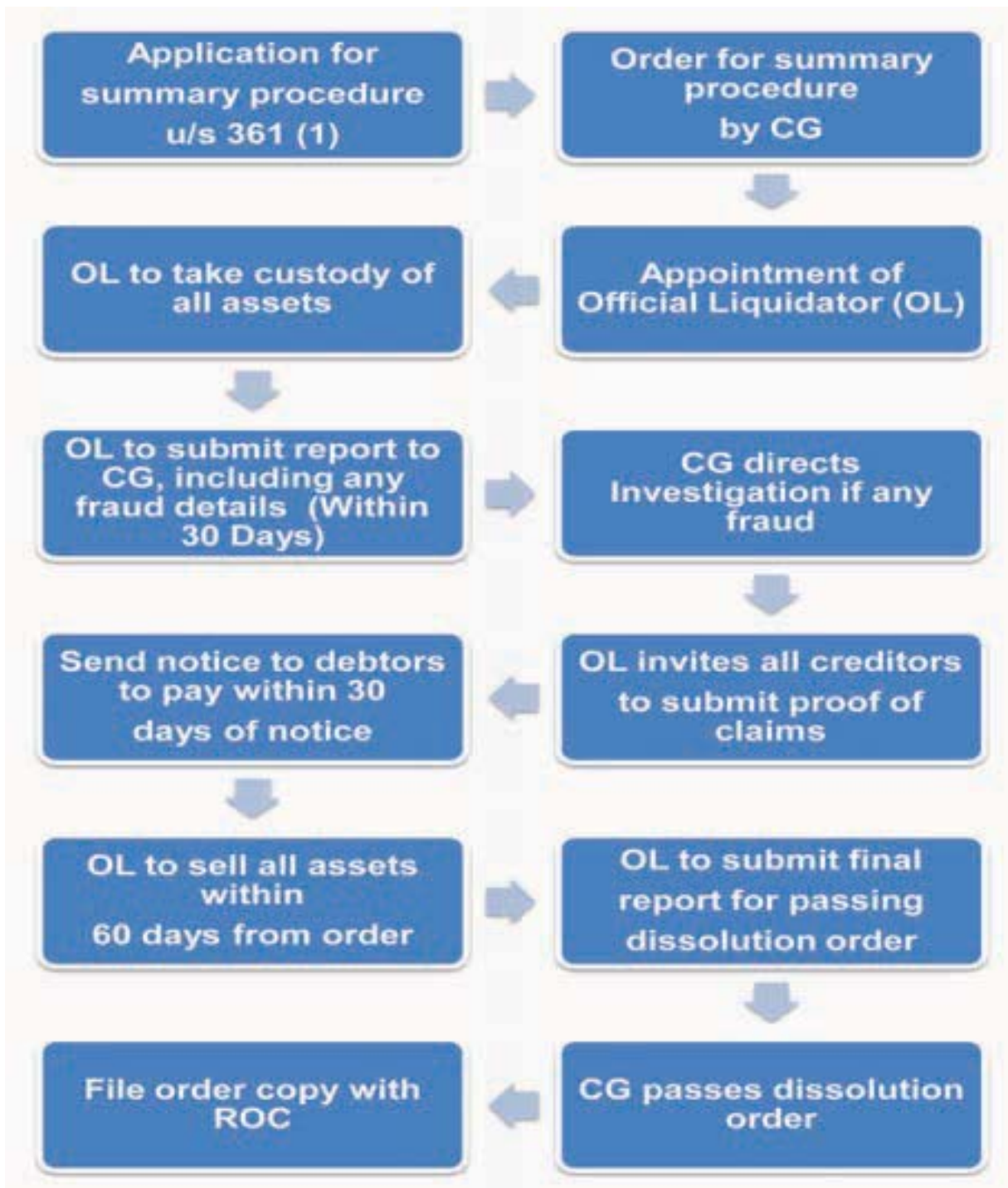
### Summary Proceedings for winding-up u/s 361 of The Companies Act, 2013

As per Section 261 (1) of the Companies Act, 2013 and rule 190 of The Rules, any company belonging to the class of companies as under, based on the latest audited Balance Sheet the Central Government may order it to be wound up by summary procedure:

- The company with book value of assets not exceeding 1 Crore rupees; or
- the company which has taken deposit and total outstanding deposits is not exceeding 25 lakh rupees; or
- the company of which the total outstanding loan including secured loan does not exceed 50 lakh rupees; or
- the company of which turnover is upto 50 crore rupees; or
- the company of which paid up capital does not exceed 1 crore rupees.



If a company falls under the aforesaid limits can adopt the steps and procedure for wound up under summary procedure:



**Compulsory winding-up u/s 271 of The Companies Act, 2013 (The Act)**

A petition to the Tribunal for the winding up of a company shall be presented by—

- (a) the company;
- (b) any contributory or contributories;
- (c) all or any of the persons specified in clauses (a)

and (b);

(d) the Registrar;

(e) any person authorised by the Central Government in that behalf; or

(f) in a case falling under clause (b) of section 271, by the Central Government or a State Government.

A petition for winding up of a company under these

rules shall be presented in Form WIN 1 (petition other than by company) or WIN 2 (petition by company) shall be presented in triplicate before the tribunal. The petition must be verified by affidavit in Form WIN 3. Further as per section 272 of the Act the petition shall be accompanied by a statement of affairs and the rules prescribe the format as Form WIN 4. The information in the statement of affairs shall not be older than 30 days and the statement must be verified by an affidavit in WIN 5. The notice of the petition shall be advertised not less than fourteen days before the date fixed for hearing in any daily newspaper in English and vernacular language widely circulated in Form WIN-6.

The rules further describe the procedure for appointment of Liquidator. As per sec 275, Company liquidator (CL) or Provisional Liquidator (PL) shall be an Insolvency Professional under the IBC. In cases where the company is not the applicant, notice of the application for appointment of provisional liquidator shall be given to the company in Form WIN 7. The order appointing the PL shall set out the restrictions and limitations on his powers imposed by the Tribunal and the order shall be in Form WIN 8. The Registrar shall within a period not exceeding 7 days from the date of order of the appointment, send intimation to the CL or PL in Form WIN 9. The CL or PL shall file a declaration in Form WIN 10 disclosing conflict of interest or lack of independence, if any, within 7 days from the date of appointment.

As per sub section (1) of section 277, and rules there under the order for winding up shall be in Form WIN 11 and shall be sent by the Registrar within a period not exceeding seven days to the CL in WIN 12 and ROC in WIN 13. The CL shall file the copy of the order in form INC 28 with ROC within 30 days of the receipt. The order within fourteen days shall be advertised by the petitioner in a newspaper in Form WIN 14.

The CL shall submit a report under subsection (1) of section 281 in Form WIN 16. The Tribunal shall, within 7 days from the receipt of such report, fix a date its consideration. The CL shall also make quarterly reports, referred to in section 288(1) of the Act, to the Tribunal in Form WIN 37 with respect to the progress of winding up of the company.

The rule 28 to 35 provides for the procedure of settlement of list of contributories. The CL shall prepare and file in the Tribunal within 21 days of the winding up order a provisional list of contributories of the company with their names, addresses and other required details in Form WIN 17. The CL shall notify all contributories in Form WIN 18 date appointed for settlement by Tribunal. The Tribunal shall hear any objection and settle the final list of contributories in Form WIN 20. The Tribunal may add to the list of contributories by a supplemental list or lists.

The Tribunal may direct for constitution of an advisory committee (AC) having not more than 12 person and meeting of the creditors and contributories as per section 287(3) of the Act shall be convened to determine the persons who may be the members of the AC. The CL shall report the result thereof to the Tribunal in Form WIN 23 within 7 days. The meeting of AC shall be called as per need or on request of CL or 1/3 rd members & shall act on majority of members.

No property or asset belonging to company which is being wound up by the Tribunal shall be sold by the CL without the previous sanction of the Tribunal. Every sale shall be held by the CL, through an agent or an auctioneer approved by the Tribunal. Further all sales shall be made by public auction or by inviting sealed tenders or by electronic bidding or in such manners as the Tribunal may direct.

The CL shall apply to the Tribunal within 10 days of the winding-up of the affairs of the company along with audited final accounts and auditors certificate thereon for orders as to the dissolution of the company. The Tribunal may, after hearing the CL and any other person make such orders as it may think fit as to the dissolution of the company. The CL shall pay the balance in his hands on the date of the order of dissolution into the Company Liquidation Dividend and Undistributed Assets Account.

The winding up of a company shall, for purposes of section 302, be deemed to be concluded at the date on which the order dissolving the company has been reported by the Company Liquidator to the Registrar of Companies.



## KEY AMENDMENTS RELATING TO TDS AND TCS

Advocate Narayan Jain & CA Dilip Loyalka



The Finance Act, 2020 has made several amendments in provisions relating to Tax Deduction at Source (TDS) as well as Tax Collection at Source (TCS). Many new provisions have also been inserted. The key amendments are summarised here.

### A. TAX DEUCTION AT SOURCE

**1. TDS reintroduced on dividend paid to residents [Sec 194]**

W.e.f. 1.4.2020, TDS has been reintroduced under section 194 at the rate of 10 percent on payment of dividend to resident exceeding Rs.5000. In case the dividend is paid in cash, the threshold limit continues to be Rs.2500.

**2. TDS at 20% on dividend paid to non-residents [First Schedule to the Finance Act]**

W.e.f. 1.4.2020, TDS is to be deducted at the rate of 20% on payment of dividend to non resident.

For the purpose of computing surcharge on TDS, surcharge exceeding 15% shall be excluded. That means if in a case where surcharge of 25% or 37%, are applicable, the same shall be limited to 15%.

**3. Co-operative society to withhold taxes on payment of interest [Sec 194A]**

W.e.f. 1.4.2020, TDS will be applicable in case of co-operative society making payment or allowing credit of interest other than interest on securities to any resident if the total sales, turnover or gross receipts of co-operative society exceeds Rs.50 crore in the financial year immediately preceding the year of payment or credit of interest and the aggregate amount of interest exceeds Rs.50,000 in case of senior citizen payee and Rs. 40,000 in any other case.

**4. Central Government empowered to notify persons or class or persons for lower rate/nil rate of TDS [Sec 194A(5)]**

W.e.f. Asst Year 2021-22, Central Government has been empowered to notify persons or class of persons for no deduction or lower deduction of tax at source by way of Notification.

**5. TDS provisions applicable where material purchased from customer's associate [Sec 194C]**

W.e.f. 1.4.2020 TDS at the rate of 2% on work done will apply to payment to residents for manufacturing or supplying of a product in accordance with the customer specification by using material purchased not only from the customer but also a party related to the customer as per sec. 40A(2)(b).

**6. Rate of TDS on fees for technical services other than professional services and royalty on cinematograph films reduced to 2% [Sec 194J]**

W.e.f. 1.4.2020, TDS on fees for technical services other than professional services paid to residents has been reduced from 10% to 2%.

Similarly TDS on royalty for sale, distribution or exhibition of cinematograph films shall also be deducted at the rate of 2%.

**7. TDS made applicable on distribution of income by a mutual fund [Sec 194K]**

W.e.f. 1.4.2020, section 194K has been introduced to provide that any person responsible for paying to a resident any income in respect of units of a Mutual Fund specified under sec 10(23D) or units from the administrator of the specified undertaking or units from the specified company, shall at the time of credit of such income to the account of the payee or at the time of payment thereof by any mode, whichever is earlier, deduct income-tax thereon at the rate of 10% subject to threshold of Rs. 5,000.

*However no TDS shall be deducted where income is in the nature of capital gains.*

**8. Interest on bonds listed in stock exchange in IFSC subjected to TDS at reduced rate of 4% instead of 5%. Period of borrowing for concessional rate of TDS extended [Sec 194LC]**

W.e.f. 1.4.2020, the rate of TDS shall be 4% on the interest payable to a non-resident, in respect of monies borrowed in foreign currency from a source outside India, by way of issue of any long term bond or Rupee Denominated Bond (RDB) on or after 1.4.2020 but before 1.7.2023 and which is listed only on a recognised stock exchange located in any IFSC. Prior to the amendment, such interest was subject to TDS of 5%.

**Further the concessional rate of TDS of 5% on other borrowings mentioned in sec 194LC shall continue to be available if the borrowings are made before 1.7.2023.**

**9. Extension in period of applicability of concessional rate of TDS in relation to interest on certain bonds and Government securities [Sec 194LD]**

Concessional rate of 5% TDS in relation to interest on certain bonds and Government securities will be extended for another 3 years till 1.7.2023. It will also be applicable on interest payable to Foreign Institutional Investor or Qualified Foreign Investor in respect of the investment made in Municipal Debt Security between 1.4.2020 and 1.7.2023.

**10. Banks co-operative society and post office to deduct TDS on cash withdrawals [Sec 194N]**

W.e.f. 1.7.2020 Banks, co-operative society and post offices are required to deduct tax at source at the rate of 2% on cash withdrawal exceeding Rs. 20 lakh. It is further provided that TDS shall be deducted at the rate of 5% in case cash withdrawal exceeds Rs 1 crore during the financial year if such recipient of cash has not furnished the return of income for 3 consecutive previous years for which the time for furnishing return u/s 139(1) has expired immediately preceding the previous year.

The Finance Act, 2019 had introduced the TDS provisions relating to withdrawal of cash exceeding Rs. 1 crore in a financial year at the rate of 2%.

**11. Widening the scope of TDS on E-commerce transactions [Sec 194-O]**

W.e.f. 1.10.2020, TDS at the rate of 1% will be applicable on payment of certain sum by e-commerce operator to e-commerce participant. The TDS is to be deducted and paid by e-commerce operator for sale of goods or provision of service facilitated by it through its digital or electronic facility or platform.

E-commerce operator is required to deduct tax at the time of credit of amount of sale or service or both to the account of e-commerce participant or at the time of payment thereof to such participant by any mode, whichever is earlier.

The tax at 1% is required to be deducted on the gross amount of such sales or service or both. Any payment made by a purchaser of goods or recipient of services directly to an e-commerce participant shall be deemed to be amount credited or paid by the e-commerce operator to the e-commerce participant and shall be included in the gross amount of such sales or services for the purpose of deduction of income-tax.

The sum credited or paid to an e-commerce participant (being an individual or HUF) by the e-commerce operator shall not be subjected to TDS if the gross amount of sales or services or both of such individual or HUF, through e-

commerce operator, during the previous year does not exceed Rs. 5 lakh and such e-commerce participant has furnished his Permanent Account Number (PAN) or Aadhaar number to the e-commerce operator.

“e-commerce operator” is defined to mean any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

As per sec 194-O(6), e-commerce operator shall be deemed to be the person responsible for paying to e-commerce participant.

“e-commerce participant” is defined to mean a person resident in India selling goods or providing services or both including digital products, through digital or electronic facility or platform for electronic commerce.

“electronic commerce” is defined to mean the supply of goods or services or both, including digital products, over digital or electronic network.

“services” is defined to include fees for technical services and fees for professional services, as defined in section 194J.

Consequential amendments have been made in section 197 (for lower rate of TDS), in section 204 (to define person responsible for paying any sum) and in section 206AA (to provide for tax deduction at 5% in non-PAN/non-Aadhaar cases).

Further the CBDT with approval of Central Government is empowered to issue guidelines to remove any difficulty that may arise to give effect to the above provisions which shall be binding both on the assessee as well as the department. The guidelines are required to be laid before each house of the Parliament.

**12. Central Government empowered to notify persons or class or persons for lower rate of TDS [Sec 197A(1F)]**

The Central Government was empowered to notify for no deduction of tax for certain class of persons. Now Central Government can notify both for no deduction or lower deduction of tax to any person or class of persons.

**B. TAX COLLECTION AT SOURCE**

**1. Foreign currency dealer to collect TCS on exchange of foreign currency exceeding Rs. 7 lakh [Sec 206C(1G)(a)]**

**W.e.f. 1.10.2020, authorized dealer will be required to collect tax at the rate of 5% from the remitter if the aggregate sum remitted is exceeding Rs. 7 lakh during the financial year for remittance outside India under the LRS scheme of RBI.**

**The collection is to be made at a reduced rate of 0.5% if the payment is made for the purpose of pursuing education and is being remitted out of the loan obtained from any financial institution as referred to**

in section 80E.

The collection is to be made only if the aggregate sum remitted is exceeding Rs. 7 lakh during the financial year. That means that there shall be no collection if the remittance in a financial year does not exceed Rs 7 lakh.

Further no collection shall be made where the remittance is made to an overseas tour operator referred to in section 206C(1G)(b). In other words, there shall not be any double collection of tax at source.

For this purpose, "authorised dealer" means a person authorised by RBI under sec 10(1) of FEMA 1999 to deal in foreign exchange or foreign security.

The above provision shall not apply if the buyer is:

(i) liable to deduct TDS under any other provision of this Act and has deducted such amount;

(ii) the Central Government, a State Government, an Embassy, a High Commission, a Legation, a Commission, a Consulate, the Trade representation of a Foreign State, a Local Authority defined in section 10(20) or any other person as the Central Government may, by Notification in the Official Gazette, specify subject to such conditions as may be specified therein.

Further the CBDT with approval of Central Government is empowered to issue guidelines to remove any difficulty that may arise to give effect to the above provisions, which shall be binding both on the assessee as well as department. The guidelines are required to be laid before each house of the Parliament.

**2. Foreign tour operator to collect TCS from the buyer [Sec 206C(1G)(b)]**

W.e.f. 1.10.2020, tour operator will be required to collect tax at the rate of 5% on the sum paid by the buyer of overseas tour package.

For this purpose, "overseas tour program package" means any tour package which offers visit to a country or countries or territory or territories outside India and includes expenses for travel or hotel stay or boarding or lodging or any other expenditure of similar nature or in relation thereto.

The above provision shall not apply if the buyer is:

(i) liable to deduct TDS under any other provision of this Act and has deducted such amount;

(ii) the Central Government, a State Government, an Embassy, a High Commission, a Legation, a Commission, a Consulate, the Trade representation of a Foreign State, a Local Authority defined in section 10(20) or any other person as the Central Government may, by Notification in the Official Gazette, specify subject to such conditions as may be specified therein.

Further the CBDT with approval of Central Government is empowered to issue guidelines to remove any difficulty that may arise to give effect to the above provisions which shall be binding both on the assessee as well as department.

**3. Seller to collect TCS on sale other than export sale exceeding Rs. 50 lakh [Sec 206C(1H)]**

W.e.f. 1.10.2020, sellers whose sales, turnover or gross receipts exceed Rs. 10 crores during the preceding financial year on sale other than export sale will be required to collect tax at the rate of 0.1% of the aggregate sale consideration with respect to all buyers (other than importer) buying any goods exceeding Rs.50 lakh. The rate of TCS will be 1% in case where the buyer fails to provide PAN or Aadhaar number to the seller.

The above provision shall not apply if the buyer is liable to deduct TDS under any other provision of Income Tax Act on the goods purchased by him from the seller and the seller has deducted such amount.

For this purpose, "buyer" means a person who purchases any goods, but does not include:

(A) the Central Government, a State Government, an embassy, a High Commission, Legation, Commission, Consulate and the Trade representation of a Foreign State; or

(B) a Local Authority defined in section 10(20) of the Act; or

(C) a person importing goods into India or any other person as the Central Government may, by Notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein

"Seller" means a person whose total sales, gross receipts or turnover from the business carried on by him exceed Rs.10 crore during the financial year immediately preceding the financial year in which the sale of goods is carried out, not being a person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

Further the CBDT is empowered to issue guidelines to remove any difficulty that may arise to give effect to the above provisions which shall be binding both on the assessee and the department.

**Conclusion :** The scope of TDS and TCS is expanding year after year. It is desirable that all concerned should make proper and timely deductions and deposit the same within prescribed dates. The statement of TDS, as prescribed, should also be furnished well in time.

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## IMPACT OF COVID-19 AND VALUATION CONSIDERATIONS

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### BACKGROUND:

Months after novel coronavirus first made its headlines, the World Health Organisation (WHO) on March 12, 2020 has declared COVID-19 outbreak a pandemic. Seeming to affect only a part of China in the initial periods of spread, COVID-19 steadily assumed true form of a pandemic impacting not just the worldwide health systems, but also the global economy. While situation in hand is unprecedented for the millennial generation driving the global consumption splurge, both advanced and developing economies of the world are hit equally hard due to extended lockdowns, global border closures and resultant economic pause.

By now, it is evident that COVID-19 has resulted in macro-economic crisis, wherein almost all the countries and sectors are expected to be impacted adversely. As per early prediction, world economy is expected to lose USD 9 Trillion in 2020-21 and global stock markets have already experienced multiple all time large single day falls. Due to global lockdown, both consumption and supply are impacted adversely, pausing the economic activity and creating fiscal gaps which may not be possibly filled even in longer run.

In longer run, COVID-19 is expected to alter global consumption patterns, with individuals and economies prioritizing basic commodities against discretionary spend. This can improve long-due investor interest in market segments such as conventional agriculture, affordable medicine and sustainable technology. At the same time, this trend shift can severely impact investments in business models trading on millennial splurge. In the space of consumer technology, premier e-marketplaces/technologies with strong customer base and scalable product together are expected to garner both consumer and investor attention, leaving clone technologies/business models in deep sea.

The COVID-19 crisis has already slowed down, if not paused the investment activities globally. Considering

independent consumption trend shift together with haphazard global economic recovery policies, post-COVID-19 investments also are expected to face slack. With altered risk appetite, investor focus would shift to business's ability to break even along with being scalable, new markets would be assessed for more and more sustainable business models and valuations would be rigid as in buyer's market.

### VALUATION IN TIME OF COVID-19:

Fair Value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants as on valuation date. Whereas, orderly transaction is a transaction that assumes exposure to the market for a period before the valuation date to allow for marketing activities that are usual and customary for transactions involving such assets or liabilities and it is not a forced transaction. In current situation, determining whether a transaction is an orderly transaction and assessing freewill of market participants itself would be a challenge for the Valuer since extent of impact of COVID-19 and longevity of such impact are not known. In COVID-19 scenario the markets are facing an uncertain future, historical inputs would render worthless and there are limited to no comparable evidences. As a result, Valuation of any asset/business would become widely subjective.

These factors call for specific attention of finance professionals, especially in the space of valuation, since the crisis in hand seem to upend every valuation assumption that seemed valid a short while ago. This is incumbent when it comes to valuation of Indian assets on account of pre-existing market volatility factors and gaps in reliable information sources. Adding to this, there are no specific methodologies or guidelines available for Valuation adjustments/corrections in situations of global crisis like COVID-19.

Valuers will have to be extra diligent in assessment of inputs and assumptions while valuing any



asset/business in COVID-19/post COVID-19 recovery situations. In addition to this, valuers are also required to make additional disclosures in report with respect to Valuation uncertainty, subjectivity and reliability of assumptions to enable informed decision of the users.

This note deliberates on specific considerations that Valuer may consider while arriving at best estimate valuations under Cost, Market and Income approaches of Valuation, along with fair reporting concerns amidst COVID-19/post COVID-19 recovery situations.

## 1. COST APPROACH

Cost approach is a valuation technique that reflects the amount that would be required to replace the current service capacity of net assets (often referred to as current replacement cost).

Cost approach is recommended in following situations:

- I Asset being valued can be quickly recreated with substantially the same utility as the asset to be valued;
- I In case where liquidation value is to be determined;
- I Cases where income approach and/or market approach cannot be used, due to information limitation or otherwise.

Two most commonly used valuation methods under the Cost approach are:

- Replacement Cost Method, also known as 'Depreciated Replacement Cost Method' involving valuing an asset based on the cost that a market participant shall have to incur to recreate an asset with substantially the same utility (comparable utility) as that of the asset to be valued, adjusted for obsolescence.
- Reproduction Cost Method involves valuing an asset based on the cost that a market participant shall have to incur to recreate a replica of the asset to be valued, adjusted for obsolescence.

Under the replacement cost or the reproduction cost method, the estimated cost of creating an asset is required to be adjusted for depreciation on account of obsolescence in the asset to be valued.

The following are common types of obsolescence:

- (a) Physical obsolescence represents the loss in value on account of decreased usefulness of the asset as the useful life expires.

- (b) Functional (technological) obsolescence represents the loss in value on account of new technological developments; whereby the asset to be valued becomes inefficient due to availability of more efficient replacement assets.

- (c) Economic (external) obsolescence represents the loss in value on account of decreased usefulness of the asset caused by external economic factors such as change in environmental or other regulations, excess supply, high interest rates, etc.

### Specific considerations during COVID-19/post COVID-19 recovery situation for Valuation under Cost Approach:

Valuers widely resort to considering historical cost benchmarks for determination of recreation costs, due to non-availability or non-reliability of latest comparable inputs on cost. While ascertaining costs that a market participant shall have to incur to recreate an asset or replica of the asset, valuer should duly adjust the historical cost benchmarks with market and economic corrections on account of COVID-19.

Market corrections can include revised inputs with respect to availability of resources, demand for such resources and validity of the processes in changed technological/technical scenarios. In some cases, revision in demand for the asset itself would alter the demand of the resources, thereby impacting the cost of recreation.

In altered market situation reproduction cost for some assets could be comparatively higher because of various strains in the systems for recreating the asset, in such situations, this approach should duly be sanitized with the other approaches in terms of its demand to justify such higher costs and thereby higher value.

Economic corrections can include change in value of money on account of inflation or deflation, which would have direct impact on the costs to be incurred for recreation.

In present scenario, it might not be possible for a valuer to obtain information pertaining to live benchmarks of recreation costs. Any information so obtained also would be subjective, considering that market and economy would not be stabilized. However, valuer may consider historical cost inputs with earlier mentioned corrections for replacement or reproduction cost method. Another consideration for valuer shall be to assess the longevity of such market corrections or economic corrections and

adjust the valuation inputs accordingly, i.e. only long-term and irreversible corrections are to be factored in valuation, whereas short-term corrections can be addressed by way of disclosure in the report.

To a certain extent, market and economic corrections specified would be also factored in Functional (technological) obsolescence and Economic (external) obsolescence. Whereas the additional consideration in ascertaining Functional (technological) obsolescence would be to assess the utility of the asset itself from changed market perspective.

For example, machinery for automobile assembling would be priced high in a general economic scenario where there is wide and growing demand for automobiles, free civilian movement, free market for oil, abundant availability of resources and favourable consumer/industry credit terms. In current scenario, considering instability in oil markets, restrictions imposed on civilian movement, long-term consumption shift and innovation of sustainable automobile technology to adapt new markets, demand for existing automobiles and manufacturing machinery would necessarily come down thereby reducing the price. Impact of all these factors should be suitably considered in historical cost corrections or obsolescence adjustments.

Though cost approach may seem to be more feasible to be adopted for valuation in current situation, valuer should also appreciate the fact that cost approach is based on potentially erroneous assumption that yield or value in use of the asset would be similar to replacement/reproduction costs. Whereas in current situation it is challenging to assess correctness of this assumption, unless value determined under Cost approach is benchmarked with value determined under Market or Income approaches.

## 2. MARKET APPROACH

Market approach is a valuation approach that uses prices and other relevant information generated by market transactions involving identical or comparable (i.e., similar) assets, liabilities or a group of assets and liabilities, such as a business.

Market approach is recommended in following situations:

• Where the asset to be valued or a comparable or identical asset is traded in the active market;

• Where there is a recent, orderly transaction in the asset to be valued; or

• Where there are recent comparable orderly transactions in identical or comparable asset(s) and information for the same is available and reliable.

The following are the commonly used methodologies under Market approach:

**Market Price Method:** Under this method, valuer shall consider the traded price observed over a reasonable period while valuing assets which are traded in the active market.

**Comparable Companies Multiple Method:** Also known as Guideline Public Company Method, it involves valuing an asset based on market multiples derived from prices of market comparable traded on active market.

**Comparable Transactions Multiple Method:** Also known as 'Guideline Transaction Method', it involves valuing an asset based on transaction multiples derived from prices paid in transactions of asset to be valued/ market comparable (comparable transactions).

The market multiples and transaction multiples are generally computed on the basis of trading prices of market comparable in an active market and financial metrics (such as EBITDA, PAT, Sales or Net book value etc) or non-financial metrics (such as volume of sales/user base, etc).

### **Specific considerations during COVID-19/post COVID-19 recovery situation for Valuation under Market Approach:**

#### **Market Prices:**

While considering active market prices of traded asset or market multiples of comparable traded asset, valuer should ensure that volatility and long-term/permanent correction in such market prices are duly adjusted.

Historical average of market prices would no more be relevant for consideration for valuation in present scenario, since it would be erroneous to assume that pre-COVID-19 stability in market prices would be achieved. In present scenario, bearish investors are resorting to extensive sell whereas bullish/value investors may adopt buying in staggered intervals to average the portfolio. Hence, market during this period would undergo severe disruptions making volatility adjustments a challenging task. Though it is general presumption that market prices of stock reflect investor sentiments on real-time basis, it is not true for the reasons specified earlier. Further, demand or consumption shifts would appropriately reflect in prices of the stock only in periods where

markets completely recover from COVID-19 impact.

Valuers in this case should critically assess the business model sustainability and financial capabilities of the Companies, whose market prices of stock are being analysed for Valuation under Market Approach. Further, in case traded prices of the asset/comparable asset for a reasonable demand adjusted period or reliable inputs for volatility adjustments are not available, valuer should abstain from considering Market Price or Comparable Companies Method.

### Transaction Multiples :

For determination of transaction multiples, existence of transactions closer to valuation date and such transactions being orderly transaction is a prerequisite. However, in current situation, where investment activity is slacked identifying transactions closer to valuation date close to impossible. Similar to traded market prices, demand or consumption shifts would appropriately reflect only in transactions undertaken in markets completely recovered from COVID-19 impact.

Further on account of COVID-19, investment transactions are majorly being undertaken in a buyer's market scenario, i.e. most companies are resorting/would resort to distress sale or procurement of costlier funding to sustain, cutting down the valuation significantly. Hence, transactions undertaken in current situation cannot be considered as orderly transactions for determining transaction multiples, unless freewill of buyer in specific and reasonable market exposure is established. However, if reduction in valuation due to changed market scenario is expected to be permanent/long-term, multiples of transactions reflecting such reduced valuation can be adopted.

Also, Valuer should ensure that historical financial/non-financial metrics of the asset/entity being valued using comparable companies multiple or comparable transactions multiple method are duly adjusted for changes in operational scenario. It would be erroneous to assume that an asset/ a company can generate same volume of sales or achieve same profitability margins as in historical period with changes in demand, availability and cost of resources.

In alternate cases, considering financial inputs pertaining to COVID-19 impact period, where immediate operational performance may be hampered for non-permanent factors, would adversely impact the valuation even though other metrics of valuation are stable. Hence,

to balance the impact of changes in economic and operational scenario, Valuer may adopt a combination of multiples instead of singular multiple for valuation under Market approach, i.e. EBITDA multiple/PAT multiple along with asset multiple or any non-financial metric multiple.

Valuer should also consider revising Discount for lack of marketability assumptions considering widened sentimental gap between investment in traded and non-traded stocks in changed market scenario.

Considering the factors specified earlier, Market approach would derive best estimate value of an asset/company given reliable information/inputs, including for valuation adjustments, is available. Any subjectivity in such inputs should be flagged in the valuation report.

### 3. INCOME APPROACH

Under income approach, the fair value measurement is done on the basis of the value indicated by current market expectations about future cashflows that assets/business can generate. This approach involves discounting future amounts (cash flows/income/cost savings) to a single present value using appropriate Discount rate.

Income approach is recommended in following situations:

- where the asset does not have any market comparable or comparable transaction;
- where the asset has fewer relevant market comparables;
- where the asset is an income producing asset for which the future cash flows are available and can reasonably be projected;

Most commonly adopted valuation method under Income Approach for valuation of a business/ income generating asset is discounted free cashflow ("DCF") methodology.

The DCF method values the asset by discounting the cash flows expected to be generated by the asset for the explicit forecast period and also the perpetuity value (or terminal value) in case of assets with indefinite life.

The following are important inputs for the DCF method:

- (a) Projected Cash flows: Cashflows expected to be generated by the asset or entity,
- (b) Discount rate: Rate of return expected by a market

participant from a particular investment and shall reflect not only the time value of money but also the risk inherent in the asset being valued as well as the risk inherent in achieving the future cash flows (and)

- (c) Terminal value: Terminal value represents the present value at the end of explicit forecast period of all subsequent cash flows to the end of the life of the asset or into perpetuity if the asset has an indefinite life.

### **Specific considerations during COVID-19/Post COVID-19 recovery situation for Valuation under Income Approach:**

#### **Financial Projections:**

Valuer should always critically and constructively analyse the financial projections prepared by the management and its underlying assumptions to assess the reasonableness of the estimated future cash flows. In doing so, Valuer must assess whether changed operational conditions, including revised sales demand position and cost estimates, have been appropriately factored in the projected cashflows.

Valuer should appreciate that cashflows adjusted for risk and changed operational cashflows does not necessarily mean that valuation should be built on pessimistic estimates. Projections might be built based on estimate that operational conditions are expected to better and asset/ entity would continue to earn increased cashflows, however it should be ensured that such increased cashflow expectations are backed with appropriate evidences of demand and cost trends. Valuer may consider COVID-19 impact adjusted comparable or industry average estimated growth rates, industry analyses for estimate cost and demand trends for such purposes.

#### **Discount Rate :**

Discount rate adopted in income approach represents return expectations of investors and cost of procurement of funds. Discount rate should reflect the riskiness of the projected cashflows. Such risk shall include both market-wide non-diversifiable risk, addressed through market rate of return (risk free rate plus market risk premium) and firm specific-diversifiable risk, addressed through additional risk premium (alpha).

In determination of market rate of return, valuer should appropriately consider changed economic scenario, including revised inflation rates, long-term interest rates

and economy growth rates. Here again, only permanent corrections in market inputs should be factored in valuation and non-permanent corrections can be addressed by way of disclosure in the report.

In general practice, historical average of interest rate and market return inputs would be considered to adjust the volatility. During COVID-19 impact period, discount rates and market indices would be highly volatile, hence cannot be adopted for determining discount rates. Further, revised investor sentiments would be reflected only in periods when market completely recovers from COVID-19 impact. However, if the market inputs for a longer historical period covering at least two to three recession or crisis periods are available, Valuer may consider the same for determining discount rates. Instead, valuer may consider adopting forward-looking approach for determination of discount rate, instead of historical approach, subject to availability of reliable inputs.

In determination of additional risk premium, valuer should ensure that firm specific risks and risks attached to projected cashflows are appropriately considered. However, valuers often find it difficult to obtain reliable comparable benchmarks to determine additional risk premium in scientific manner. In such cases and specifically in current scenario, valuer may consider return /IRR expectations for investments made during/post COVID-19 as benchmark for determining discount rate under survey method.

In determining discount rate, valuer should appreciate that risk factors to be considered in valuation are different from factors leading to uncertainty of value being incorrect. While risk factors are to be appropriately quantified and adjusted, uncertainty in valuation either on account of information limitations or otherwise, should be duly disclosed in the report either quantified or unquantified.

#### **Going concern :**

Another important consideration for a valuer adopting DCF method would be to assess validity of going concern assumption. If the asset/entity is not expected to generate cashflows for indefinite period, Valuer should determine terminal value using liquidation or exit multiple method instead of growth model. Further, when asset/entity is not expected to have going concern, length of explicit period for projected cashflows should be in line with useful life of the assets/expected period of

cashflow sustenance of the entity.

#### Probabilities :

If there are multiple scenarios for cashflow capability of the asset/entity, Valuer can adjust probabilities and outcomes of such scenarios through option pricing model (binomial mode) for arriving at fair value, if such probabilities can be reliably quantified. In case probabilities cannot be quantified reliably or scenarios cannot be summarised for various factors impacting valuation, valuer can disclose impact of such scenarios on valuation in the report through sensitivity analyses.

#### 4. VALUERS' JUDGEMENT ON THE PERIOD AND DEPTH OF COVID-19 IMPACT:

In the course of valuation, it is very important for the Valuer to take diligent and judgement call on the period of impact of COVID-19 on the market relevant for the asset being valued.

Impact of COVID-19 can vary from market to market (stable markets like USA vs developing economies like India) and also from market segment to segment (consumer necessities vs travel or luxury commodities)

Possible future scenarios:

- 1) The impact period is very short, say a few months and the market is expected to recover in a span of couple of years, at the same time post-recovery market trends can be reasonably predicted.
- 2) The impact is much broader, where impact period could stretch up to a year and the period of recovery

could range beyond 3 years, but such recovery period can be reasonably predicted, if not post-recovery market trends.

- 3) The impact is much deeper, where there is no sight as to period of impact, recovery period or post-recovery trends.

In case of valuation under first and second scenarios, suitable adjustments to the cashflow projections, discount rate, market multiple or valuation inputs should be made with a diligent and elaborate analysis of the extent of impact. However, for valuation in the third scenario, valuer in no reasonable manner can assess future outcome, as extend impact of COVID-19 could lead to demolition of many foundations of the market. Hence, in such scenario apart from imparting reasonable valuation adjustments, Valuer shall also duly disclaim the report about the depth of impact with sensitivity analyses.

#### CONCLUSION:

For valuation under COVID-19/ post COVID-19 recovery situation, given that there could be a certain degree of uncertainty in valuation under all the approaches of valuation, valuer may consider adopting one or more approaches to determine the reasonable range of value of the asset/ entity instead of concluding the fair value under a singular approach. For all uncertainties in valuation, whether adjusted or not, valuer should make appropriate disclosures in valuation report, with quantifications wherever possible. Also, analysis of the future outlook, scenarios of recovery and adequate disclosure of the same in the report are very vital.





## COVID-19- A BLESSING IN DISGUISE FOR DEBT RESTRUCTURING

CA Pooja Kakarania(Agarwal)

During the testing times, India has imposed the most stringent lockdown in the world in response to the COVID-19 pandemic. This pandemic can be stopped through containment but at a significant economic cost. Uncompromising on the health of its Citizens the Government has ensured relief in as many ways as possible. Policymakers are supporting vulnerable households and smaller businesses to mitigate the impact of this severe shock. In this battle, The Reserve Bank of India has set out various developmental and regulatory policies that directly address the stress in financial conditions caused by COVID-19. The policies consist of:

- a. expanding liquidity in the system sizeably to ensure that financial markets and institutions are able to function normally in the face of COVID-related dislocations;
- b. reinforcing monetary transmission so that bank credit flows on easier terms are sustained to those who have been affected by the pandemic;
- c. easing financial stress caused by COVID-19 disruptions by relaxing repayment pressures and improving access to working capital; and
- d. improving the functioning of markets in view of the high volatility experienced with the onset and spread of the pandemic.

The first and foremost set of measures is intended to ensure that liquidity is sizeably expanded in order to ensure that Financial markets and Institutions and all related constituents are able to function as normally as possible in the face of the COVID-related dislocations.

The CRR (Cash Reserve Ratio) is the minimum amount of money that a Commercial Bank needs to keep with the RBI (Reserve Bank of India) which cannot be used for any of the commercial purposes of the bank, namely lending of loans to the corporations and individuals. As a one-time measure on 27th March 2020, to help banks tide over the disruption caused by COVID-19, it has been

decided to reduce the cash reserve ratio (CRR) of ALL banks by 100 basis points to 3.0 per cent of net demand and time liabilities (NDTL) with effect from the reporting fortnight beginning March 28, 2020. This reduction in the CRR would release primary liquidity of about 1,37,000 crore uniformly across the banking system in proportion to liabilities of constituents. This dispensation will be available for a period of one year ending on March 26, 2021. Thus, the effects of reduction in CRR would lead to:

- i. The Banks have to set aside lesser amount as deposits with the RBI and have more liquidity available which shall lead to reduction in lending costs,
- ii. In order to boost growth and sustainability in the economy, the Banks will have more money to lend at a Lower interest rate which shall help Borrowers to continue their Businesses,
- iii. Since Banks have more Liquidity it needs to be deployed in Investment grade Bonds, commercial papers and non-convertible debentures,
- iv. On Real estate sector, customers will be able to get home loans at lower rate of interest rates thus facilitating the real estate sector to sell the ongoing projects, also expansion of 1 year has been extended to developers for completion of their projects by NBFCs.

The long-term effect of this Pandemic is going to be massive and most unexpected. The COVID-19 induced economic as well as social uncertainty and consequences were absolutely not accounted for by any of the Countries. A necessary first step is required to be prepared by us once the Lockdown is lifted so that we can ensure minimum impact on our businesses and personal lives. In this regard, there are some notable challenges, we shall recognize them and try to lessen the impact as much as possible:

- a. Most of us have availed Home Loans from various Banks, but how many of us have actually analysed the best Loan for us. Now that we have stayed in our Homes

for the longest times in our lives , its time, to analyse what is the excess cost that we are paying in the form of Home loan interest in order to stay there. The most important questions to ask yourself is –

1. Is your Home Loan Rate of Interest the most competitive?
2. Recheck your Rate of Interest once every Six months to know the difference between the Rate of interest at which your loan was sanctioned and your ongoing Rate of Interest.
3. Do you really need a tenure of 20 years to repay your Home Loan?

#### Example I

Vicky took a Home Loan of Rs.1,00,00,000 on 2/4/2018 from XYZ Bank @8%p.a for 20years. When asked for his EMI Statement for the period 1st April 2019-31st March 2020, he was surprised to find out that he has been paying the same amount of EMI of Rs.83,664 for an interest rate @8.65%. Pooja advised Vicky in a constructive manner that for a Loan of Rs.1 crore he was paying a total Interest of Rs.1,00,74,561 during the 20years as on 2nd April 2018. This amount increased by Rs.4,00,000 as on 1st April 2019 when his interest rate spiked up.

In the current scenario, since the RBI has cut the Repo rates, a marginal reduction in the home loan rates is expected. Hence, this is the best time to continue with your plan of buying your new home and making sure that you pay minimum interest on your Total Loan.

If Vicky hired Pooja as a consultant, she would ensure that he is paying the minimum interest amount for his total Loan, by reducing his Total Rate of Interest, as she analyses the rates of all the major Bank players. Due to COVID we have to ensure that we minimize these costs, which can be done only by generating more financial awareness.

The next question that arises in the minds of most of our clients is regarding availing the facility of Moratorium provided by the Banks, this is a very subjective question which I shall again explain through few examples:

#### Example II

Ramesh has an ongoing Term loan for which he is paying regular EMIs, he asked Pooja his financial Consultant the benefit of the moratorium facility. Since, Ramesh is a businessman with enough savings , Pooja recommended him to continue paying the EMIs without

availing of this benefit, as this would lead to a deferment of the payment , however he would end up paying higher interest on his existing loans as interest would be levied on every deferred payment.

Conclusion- Moratorium is harmful for Ramesh.

#### Example III

Sid is a businessman with Home Loan EMIs linked to his Working Capital Loan. Since, the Rate of Interest of Working Capital Loan is always higher as compared to Home Loans, Pooja advised Sid to defer his EMIs as he would save on the differential interest and the end result would be a benefit for Sid without affecting his CIBIL score.

Conclusion - Moratorium is beneficial for Sid.

#### Example IV

Adarsh is an exporter, due to the COVID situation, all his orders are on Hold. He has availed Letters of Credit from Banks against his orders, he shall avail the Moratorium benefit as once the lockdown is lifted he can start processing his orders and the Bank shall defer his tenure for 3months while his business in non-operational.

There are innumerable examples and every case is different, we as professionals and businessmen shall realize that in coming times the need of Loan from Banks will be indispensable as our expenses for Rent, Salaries, electricity and other Administration related shall continue as earlier. Also, we can expect delayed payments from our Debtors due to close down of the businesses for a long tenure. Here I would remind you that As Mahatma Gandhi said in his famous address at Kingsley Hall, London in October 1931:

“.....In the midst of death life persists, in the midst of untruth truth persists, in the midst of darkness light persists.”

Our Government ,financial Institutions, Banks and all functionaries are working in their maximum potential so that we can stay safe during this pandemic, and provide us sufficient ray of hope in order to fight and overcome these dark times. On 17th April, the Governor of RBI addressed the nation and revealed that the IMF (International Monetary Fund) on 14th April 2020, released its global growth projections, revealing that in 2020, the global

economy is expected to plunge into the worst recession, yet India is among the handful countries that is projected to cling on to positive growth at 1.9%. It was shared that

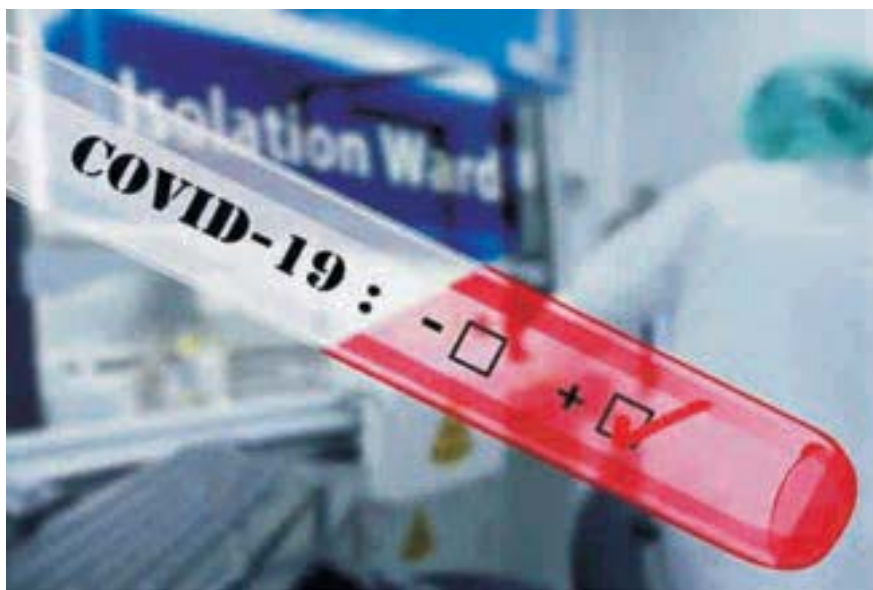
the regional offices of RBI have supplied fresh currency of Rs.1.2lakh crore from 1st March till 14th March to currency chests to meet the increased demand of cash, hence increasing liquidity in Banks. This will lead to excess funds available with Banks and hence relaxing norms for providing Loans, reducing margins and increase in activity in corporate Bonds market.

In such a situation, our means of finance shall resort to Loans in different forms- like Working Capital to meet our Short term expenses as banks have eased their criterions for Working Capital financing by reassessing the Working Capital cycle of Borrowers and reducing margins, Bank Guarantees can be availed to complete the contracts in hand as margins for these financing have been reduced, Home Loan as the Government will provide the lowest rates for availing the same.

Due to continuing expenses for businesses and professionals, people with existing loans will have higher chances of defaults in payments, which will lead to high NPAs in Banks, the RBI has relaxed norms for qualification of an NPA for an account and specifically stated not to include the moratorium period while calculating the NPA. There are various ways through which an NPA account can be settled, such as the Banks

and Financial Institutions are currently required to hold an additional provision of 20% if a resolution plan has not been implemented within 210 days from the date of such default. Settlement of NPA's is subjective to each case and each Bank, but it is very important to receive a settlement ensuring maximum benefit of the client.

The decision in respect of Finance is essential for development of businesses as well as to ensure financial stability and liquidity for smooth functioning of all vulnerable stakeholders. Hence, alongside liquidity measures, efforts have been undertaken to diminish the burden of debt servicing brought about by disruptions on account of the fall-out of the COVID-19 pandemic. Such efforts, in turn , will prevent the transmission of financial stress to the real economy, and will ensure the continuity of viable businesses and provide relief to borrowers in these extraordinarily troubled times. It is our decision to make the sure that even though social distancing separates us, we understand the resolute of our Government and support them in order to support ourselves. As our Prime Minister, Narendra Modi ji said: "Jaan Bhi aur Jahaan Bhi", we have to prepare for the upcoming times by protecting each other from the unseen viruses- Corona Virus and the Financial Virus.







## BUDGET 2020 – A FEW ISSUES

CA Sumantra Guha

The Economic Survey 2020 was presented before both the Houses of Parliament - Lok Sabha and Rajya Sabha on 31 January 2020 by the Hon'ble Finance Minister and the Chief Economic Adviser to the Government of India (GOI). The Survey holds significance as it facilitates the common people to know about the current situation of economic affairs of the country and makes them aware of the key economic decisions of the GOI that impact their lives.

The Indian economy is going through one of its toughest phases since the last decade. Global economic slowdown, NBFC crisis, high inflation and various other factors have had its toll on the Indian economy. With the GDP growth dwindling from 6.5% plus in fiscal year 2018-19 to 5% in fiscal year 2019-20, the aspiration of making Indian economy a USD 5 trillion economy becomes a difficult task for the Government of India.

A reading of the Survey will indicate that the thrust is on achieving the target of making India a USD 5 trillion market by 2025. To make this happen, India needs to spend about USD 1.4 trillion during the period on infrastructure so that lack of infrastructure does not become a deterrent to the growth of the Indian economy. Other factors recommended by the Survey to achieve this ambition include promotion of pro-business policies, encourage ease of doing business, limited government intervention and so on. The idea is to create a business-friendly environment which would boost job creation and spurt in the consumer demand.

The Survey has projected India's economic growth at 6% to 6.5% for the fiscal year 2020-21, as compared to a projected economic growth of 5% in fiscal year 2019-20. The Survey highlighted the fact that 2.62 crore new jobs were created in rural and urban areas between fiscal year 2011-12 and 2017-18. Growth is expected to bounce back in the second half of fiscal year 2020-21.

The Survey said there are tentative signs of bottoming out of slowdown in manufacturing activity and global

trade, which will have a positive impact on growth in the next fiscal year. The Survey suggests a framework to enable ethical wealth creation in India, which will in turn propel growth and help India become a USD 5 trillion economy by 2025. The Survey further suggests that fiscal deficit target for current fiscal year may need to be relaxed to revive growth probably indicating a slew of measures, including taxcuts.

The Survey throws light on new ideas to boost growth and accelerate wealth creation. These are – Thalonomics, Adoption of China model, Trust and others. The Survey reviews and analyses the overall economic progress made in the last fiscal year along with the key policy challenges.

- India witnessed a GDP growth of 4.8% in the first half of fiscal year 2019-20 amidst weakened global trade and demand
- Growth of Agriculture and allied activities, Public administration, defense and other services was higher in the first half of fiscal year 2019-20 in comparison to second half of fiscal year 2018-19.
- Current Account Deficit contracted to 1.5% of GDP in first half of fiscal year 2019-20
- Remarkable inflow of FDI and increase of foreign exchange reserves
- Headline inflation rose to 7.35% in December 2019-20 due to food inflation
- Gross GST monthly collections crossed INR 1,000 billion for five times in fiscal year 2019-20 till December 2019
- Reforms in the corporate tax rates

The Survey also calls for creation of wealth through:

- Entrepreneurship of the working class
- Pro-business policies

- Elimination of policies that weaken the markets  
Integration of 'Assemble in India' into 'Make in India'
- Privatization to boost job creation

The Survey goes on to provide for adoption of China- like strategies such as specialization in labour intensive sectors, export primarily to richer countries and so on.

The Survey states that India has gained significantly from Ease of Doing Business rankings; jumping from 142 in 2014 to 63 in 2019 as per the World Bank Doing Business Report, 2020. However for India to be ranked amongst the top 50 countries, the Survey acknowledged that a lot of effort is required.

The 2020 Budget was the third Budget placed by the Central Government the last twelve months. As in the previous Budget placed in July 2019, this Budget reiterates the Government's long term vision for growth, development and ease of living.

What this Budget does not do is acknowledge the ground realities. What are the ground realities? The ground reality is that the economy is in a stalled mode.

The facts are –

- a) GDP growth during 2019-20 at 5% is the lowest in 11 years
- b) Growth of private consumption during 2019-20 at 5.8% is the lowest in 7 years
- c) Growth of investments at 1% is the lowest in 17 years
- d) Growth of manufacturing at 2% is the lowest in 15 years
- e) Growth of agriculture at 2.8% is the lowest in 4 years.
- f) The consumer inflation which was 1.97% in January 2019 touched 7.35% in December 2019.
- g) Food inflation which was 7.89% in October 2019 touched 10.01% in November and reached 14.12% in December 2019.

What the economy therefore faces in the real danger of stagflation – flats are not selling, cars are not selling, two wheelers are not selling, but consumer price inflation is going up.

While the Govt. has not directly acknowledged this scenario, the growth figures for 2017-18 and 2018-19 have been revised downward with retrospective effect, an indirect withdrawal of the claim that India is the fastest

growing large economy in the world.

The figures in the Budget continue this story of the downturn. Tax receipts which were estimated at Rs.16.50 lakh crores in the 2019-20 Budget are shown in the revised estimates for 2019-20 at Rs. 15.05 lakh crores a shortage of over Rs. 1.45 lakh crores. The estimated tax receipts for 2020-21 are lower than the estimated budgeted tax receipts for 2019-20. As a result of the above, Govt. revenue payments are down and revenue deficit is up for 2019 - 20.

The Govt. has, in order to boost its cash flow for 2020-21, has relied heavily on disinvestment. The revised disinvestment figures for 2019-20 are Rs. 65,000 crores. This is supposed to go up to Rs. 2,10,000 crores during 2020-21.

There are no announcements of structural reforms. There are only announcements of ongoing schemes and announcements of a few such new schemes. What is surprising, however is the allocation for schemes such as MNREGA, National Health Mission, National Social Assistance, Jobs and Skill Development and even the budgeted food subsidy allocations have been reduced. The allocation for Pradhan Mantri Awas Yojana, National Education Mission, Mid-day Meals in schools, Women Empowerment etc. have been increased only marginally.

There is also worrying imposition of import duty on many items, a sign that India is withdrawing into a protectionist mode something that will hurt the effort to boost exports.

In spite of this tightening of the belt the Fiscal Deficit both in absolute terms and as percentage of GDP has gone up. The Finance Minister has also made an acknowledgement that there are large off budget liabilities and payments, which if accounted for, would make the fiscal deficit even higher.

It is therefore obvious that the Government is working under severe budgetary constraints.

For fiscal 2021, the government has pegged the nominal GDP growth at 10%, which appears realistic. Given the subdued environment, both domestically and globally, there are downside risks to this number as well.

### **Settlement of Dispute Schemes**

#### **1. Vivad se Vishwas Scheme:**

It is proposed to bring out a scheme by the Central

Government for reducing direct tax litigation. Taxpayers in whose case appeals are pending at any level can take the benefit from this scheme. Under the Scheme, taxpayer would be required to pay only the amount of the disputed taxes and there will be complete waiver of interest and penalty provided they make payment by 31<sup>st</sup> March, 2020. For disputed penalty, interest and fee not connected with the disputed tax, the taxpayer would be required to pay only 25% of the same for settling the dispute. A tax payer shall be required to pay 110% of the disputed tax (the excess 10% shall be limited to the amount of related penalty and interest, if any) and 30% of penalty, interest and fee in case of payment after 31<sup>st</sup> March, 2020.

## 2. **Settlement of Dispute Scheme for VAT, CST and Entry Tax:**

The Government of West Bengal has announced an attractive settlement Scheme for all VAT, Sales Tax,

CST etc. and Entry Tax cases which are lying pending upto 31<sup>st</sup> January, 2020.

The scheme will offer taxpayers to settle their VAT, CST etc. cases by depositing 25% of the disputed tax by 31<sup>st</sup> March, 2020. For tax payers who are not able to avail this facility, the scheme provides the option of payment of 25% on half of the disputed tax (VAT, CST etc.) before 31<sup>st</sup> March, 2020. On the balance half of the disputed tax (VAT, CST etc.) they will be required to pay 30% in maximum of 6 monthly instalments from April, 2020. For Entry Tax, only the admitted tax needs to be paid within 31<sup>st</sup> March, 2020. For those who are unable to avail this facility, the scheme allows payment of 50% of admitted tax within 31<sup>st</sup> March and balance 50% with nominal interest in maximum of 6 monthly instalments.





# PENALTY FOR FALSE ENTRY IN BOOKS OF ACCOUNT OR FAKE INVOICES UNDER THE INCOME TAX ACT AND THE GST ACT

Advocate Narayan Jain

## Synopsis:

Introduction

### Object

#### Penalty in what circumstances

Quantum of **Penalty under** section 271AAD

What will be considered “false entries” for the purpose of **penalty under** section 271AAD

Penalty shall also be levied on any other person who causes any false entry etc.

Section 271AAD of the Income tax Act :

Provisions

Important Points relating to section 271AAD

Definition of books of account under section 2(12A) of the Income tax Act

Onus to prove

Benefit of section 273B

#### Penalty provisions under the GST Act

Penalty against other person(s)

Prosecution provisions under sec. 132 of the GST Act

Imprisonment not less than 6 months and the Offence is cognizable and non-bailable under the GST Act

Scope of the term “tax” under the GST Act

Conclusion

### 1. Introduction :

The Finance Act, 2020 has introduced new penalty provision under section 271AAD to curb malpractices of issuing fake invoice. Section 271AAD shall apply with effect from 1<sup>st</sup> April, 2020.

### 2. Object

The Explanatory Memorandum to the Finance Bill, 2020 has stated that in the recent past after the launch of Goods & Services Tax (GST), several cases of fraudulent claims of Input Tax Credit (ITC) have been caught by the GST authorities. It has been revealed in these cases

that fake invoices are obtained by suppliers registered under GST to fraudulently claim ITC and reduce their GST liability. These invoices are found to be issued by racketeers who do not actually carry on any business or profession. They only issue invoices without actually supplying any goods or services. The GST shown to have been charged on such invoices is neither paid nor is intended to be paid. Such fraudulent arrangements deserve to be dealt with harsher provisions under the Act.

The penalty provision has been inserted to discourage taxpayers to manipulate their books and claim wrong input credit under GST.

### 3. Penalty in what circumstances

The new provision has been inserted to provide for levy of penalty on a person, if it is found during any proceeding under the Act that in the books of account maintained by him there is a (i) false entry or (ii) any entry relevant for computation of total income of such person has been omitted to evade tax liability.

Thus the new section 271AAD has been inserted to penalise person maintaining books of account in case of a false entry or omission of an entry relevant for computing total income.

### 4. Quantum of Penalty under section 271AAD

The penalty payable by such person shall be equal to the aggregate amount of false entries or omitted entry. It has also been provided that any other person, who causes in any manner a person to make or cause to make a false entry or omits or causes to omit any entry, shall also pay by way of penalty a sum which is equal to the aggregate amounts of such false entries or omitted entry.

### 5. What will be considered “false entries” for the purpose of penalty under section 271AAD

What is false entry is explained vide explanation

below the said section 271AAD. The false entries will include use or intention to use –

(a) forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence; or

(b) invoice in respect of supply or receipt of goods or services or both issued by the person or any other person without actual supply or receipt of such goods or services or both; or

(c) invoice in respect of supply or receipt of goods or services or both to or from a person who do not exist.

Therefore false entries will include forged or falsified documents, false invoices, receipt of goods or services without actual supply or receipt of such goods or invoices using fake IDs.

Thus we may summarise that False entry include use or intention to use:

(i) forged documents or falsified documents (such as false or fake invoices)

(ii) invoice in respect of supply or receipt of goods or services or both without actual supply or receipt thereof

(iii) invoice in respect of supply or receipt of goods or services or both to or from a person who does not exist

It may be noted that in case of false entry in books of account, it is immaterial whether it has impact on computation of income or not. If there is false entry in books of account, penalty shall be levied.

However in case of omission of entry in books of account, it must have impact on computation of income in order to attract penalty provision under section 271AAD.

#### **6. Penalty shall also be levied on any other person who causes any false entry etc.**

In view of section 271AAD (2), the Penalty shall also be levied on any other person who causes the person required to maintain books of account to make or causes to make any false entry or omit or cause to omit any entry in books of account. For the purpose of this section such other person may cover an accountant or book

keeper, consultant or advisors etc.

#### **7. Section 271AAD of the Income tax Act : Provisions**

For ready reference the newly inserted section 271AAD reads as under :

Sub section (1) *“Without prejudice to any other provisions of this Act, if during any proceeding under this Act, it is found that in the books of account maintained by any person there is—*

(i) *a false entry; or*

(ii) *an omission of any entry which is relevant for computation of total income of such person, to evade tax liability, the Assessing Officer may direct that such person shall pay by way of penalty a sum equal to the aggregate amount of such false or omitted entry.”*

#### **Sub-section (2) of section 271AAD reads as under :**

*nt of such false o“Without prejudice to the provisions of sub-section (1), the Assessing Officer may direct that any other person, who causes the person referred to in sub-section (1) in any manner to make a false entry or omits or causes to omit any entry referred to in that sub-section, shall pay by way of penalty a sum equal to the aggregate amount omitted entry.”*

#### **8. Important Points relating to section 271AAD**

This section 271AAD begins with *“without prejudice to any other provision...”*, hence penalty under this section shall be **in addition to any other penalty** under the Income-tax Act.

a) The penalty can be imposed if during any proceeding under this Act, it is found that in the books of account maintained by any person there is either a false entry; or an omission of any entry, to evade tax liability.

b) **Penalty how much :** a sum equal to aggregate of amount of false entries or omitted entries

c) Power to levy penalty is with Assessing Officer

- d) There must be books of account maintained by a person. That implies that in case of person who is not required to maintain books of account then in such case penalty may not be levied under section 271AAD. Further a question will arise whether this penalty can be levied in case of person who is required to maintain books of account but such person had not maintained books of account
- e) Penalty shall be levied on “any person”. The word used by legislature is any person and not any assessee.
- f) To levy penalty there must be either of following two conditions should be satisfied (i) false entry in books of account; or (ii) omission of any entry in books of account which is relevant for/ has impact on computation of total income, to evade tax liability.

#### 9. Definition of books of account under section 2(12A) of the Income tax Act

It is quite important to refer to the definition of Books of account which is provided in section 2(12A) of the Income tax Act.

**“books or books of account”** includes ledgers, day-books, cash books, account-books and other books, whether kept in the written form or as print-outs of data stored in a floppy, disc, tape or any other form of electro-magnetic data storage device.

#### 10. Onus to prove

To levy penalty, element of mens rea must be an essential ingredient. That means intention is paramount. It is important to note that false entry or omission of entry re the basic ingredients and onus to prove the same is on the Revenue/ department.

#### 11. Benefit of section 273B

As per section 273B, penalty shall not be imposed if assessee can prove that there was reasonable cause for the failure. However, **section 271AAD** is not included in section 273B.

#### 12. Penalty provisions under the GST Act

**The Finance Bill 2020 vide Clause 124 has amended section 122 of the GST Act to make the mediator/ beneficiary liable with the same degree of penalty as a taxable person i.e. supplier or transporter etc. when the question of fake invoicing comes. Sub-section (1A) has been inserted in section 122 of the GST Act. It may be noted that the GST Act provides, vide its Section 122, provisions for levy of penalty for various offences, which are not covered in section 73 and 74 of the GST Act. The concerned person shall be liable to penalty of an amount specified in the said section 122.**

**Relevant provisions of said section 122 of the GST Act are mentioned here.**

**122 (1)** Where a taxable person who—

*(i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;*

*(ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;*

*(vii) takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;*

*(ix) takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;*

*(x) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;*

**Such person shall be liable to pay a penalty of Rs.10,000 or an amount equivalent to the tax evaded or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.**

Sec 122 (1A) : Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit

availed of or passed on. [Inserted by the *Finance Act, 2020*]

Sec 122(3): Any person who aids or abets any of the offences specified in sub-section (1); shall be liable to a penalty which may extend to Rs.25,000.

It is important to note that on going through the above provisions, it is evident that for any of the defaults mentioned above both the beneficiary as well as the wrongdoer will be liable for penalty for an amount equal to the tax evaded or Input

Tax Credit availed.

On a conjoint reading of both the sections 271AAD of Income tax Act and section 122(1A) of the GST Act, we will find that there may be situations that can lead to imposition of penalty under both the sections for the assessee.

The provisions applicable in various circumstances *vis a vis* relevant sections of the Income Tax Act and GST Act are analysed here below.

| Sl. | Circumstance  | GST Act, 2017<br>Section 122(1A)   | Income Tax Act<br>Section 271AAD  |
|-----|---|--|---|
| 1.  | Supply of any goods or services or both without issue of an invoice   | The person can be treated as beneficiary of a transaction covered under Clause (i) of Section 122(1) and thus liable for penalty equivalent to the amount of tax evaded under sec 122(1A) of GST Act | Supply without Invoice will lead to lower Turnover and hence lower income declaration by assessee resulting in omission of entry necessary for computation of total income. The Assessing Officer may levy penalty under sec 271AAD(1)(ii). |
| 2.  | Issue of Invoice, by the person or any other person without actual supply or receipt of such goods or services or both  | The person can be treated as beneficiary of a transaction covered under Section 122(1) (ii) and thus liable for penalty equivalent to the amount of tax evaded under sec 122(1A) of GST Act          | Under sec 271AAD(1)(i) the Assessing officer may classify the transaction as a False Entry and may direct such person to pay by way of penalty a sum equal to the aggregate amount of such false entry.                                     |
| 3.  | Taking or utilising input tax credit (ITC) without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of the relevant Act or the Rules made thereunder | The person can be treated as beneficiary of a transaction covered under sec 122(1)(vii) and hence liable u/s 122(1A) for penalty equivalent to the amount of input tax credit (ITC) availed          | Under sec 271AAD(1)(i) the Assessing Officer may classify the transaction as a False Entry and may direct such person to pay by way of penalty a sum equal to the aggregate amount of such false entry                                      |
| 4.  | Forging or falsifying of documents such as a false invoice or, in general, a false piece of documentary evidence  | The person can be treated as beneficiary of a transaction covered under section 122(1)(i) and hence liable for penalty equivalent to the amount of tax evaded under sec 122(1A) of GST Act           | Under sec 271AAD(1)(i) the Assessing Officer may classify the transaction as a false entry and may direct such person to pay by way of penalty a sum equal to the aggregate amount of such false entry                                      |

In addition to above instances, there can be many more situations where the assessee may get covered in both the sections. In both the sections the onus for default has been placed on the beneficiary as well as the initiator of the transaction.

### 13. Penalty against other person(s)

Section 271AAD(2) of the Income Tax Act states that any person who causes the person referred to in sub-section (1) [hereafter referred to as "other person"] to make a false entry or omits or causes to omit any entry then such other person

shall also be liable to pay penalty equal to aggregate amount of such false or omitted entry. Hence, provision has been made for imposing penalty on the assessee as well as any other person involved in making the false entry or causing omission of any entry in books of assessee.

Similarly, section 122(1A) of GST Act states that "Any person who retains the benefit of a transaction covered under clauses(i),(ii),(vii) or clause (ix) of sub-section(1) of Section 122 and at whose instance such transaction is conducted shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit (ITC) availed of or passed on." Here also, the objective of this amendment is to penalise the beneficiary and the wrongdoer of the transactions specified in clause (i),(ii),(vii) or clause (ix) of section 122(1) liable for penalty.

#### 14. Prosecution provisions under sec. 132 of the GST Act

**The Finance Act, 2020 vide its Clause 125 has also amended section 132 of the GST Act, which provides for Punishment for certain offences related to Fake Invoicing.** The purpose is to extend punishment under this section to a person who causes to commit such offence and also to a person who retains benefit of such offences mentioned in section 132. It further makes the offence of availing ITC without lawful invoice a cognizable and non bailable offence.

**Provisions of Section 132(1) of the GST Act as substituted by the Finance Act, 2020 are discussed below.**

**Sec 132(1)** provides : Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences], namely:-

*(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;*

*(c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill; [as substituted by the Finance Act, 2020].*

*(e) evades tax or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d); [as substituted by the Finance Act, 2020].*

*(f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;*

*(j) tampers with or destroys any material evidence or documents;*

*(l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of section 132 of the GST Act.*

**Such person shall be punishable as below in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken :**

- a) *if the amount exceeds Rs. 5 Crore, with imprisonment for a term which may extend to 5 years and with fine;*
- b) *if the amount exceeds Rs.2 Crore but does not exceed Rs. 5 Crore, with imprisonment for a term which may extend to 3 years and with fine;*
- c) *if the amount exceeds Rs.1 Crore but does not exceed Rs. 2 Crore, with imprisonment for a term which may extend to one year and with fine.*

#### 15. Imprisonment not less than 6 months and the Offence is cognizable and non-bailable under the GST Act

Section 132 of the GST Act also provides that the imprisonment referred to above shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, **be for a term not less than 6 months.** Further notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offences specified in **clause (a)/(b)/(c) or (d) of sec. 132(1) of the GST Act, shall be cognizable and non-bailable.**

#### 16. Scope of the term "tax" under the GST Act

It maybe noted that for the purposes of prosecution under section 132 of the GST Act, the term "tax" shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act and cess levied under the Goods and Services Tax (Compensation to States) Act.

#### 17. Conclusion

From the above discussion, we can make out that accounting and book keeping needs to be done by keeping above points in mind. Proper reconciliation of books for the purpose of Income tax as well as for the purpose of GST and the Returns filed (Income tax and GST Returns) is vital in order to avoid any inconvenience. Any negligence or error or mistake on the part of the assessee can expose him to imposition of penalties under the Income tax as well as GST. It is important to periodically check and make cross verification of vendors as well as customers/ clients.





## ALTERNATE TAX REGIME, WHETHER A BONANZA TO TAX PAYER!

R.D. Kakra, Advocate

Our Finance Minister Smt. Nirmala Sitharaman to fire up the economy and put Country's tax rate on par with other Asian Countries and attract investment before Diwali 2019, reduced effective Corporate tax rate for New Manufacturing Company to 15% from 25%. Provided the companies do not claim other incentives. During presentation of Budget for 2020-21 on the same principle the Finance Minister proposed an Alternate Tax Regime by way of new section 115 BAC and the same will apply in relation to the assessment year 2021-22 and subsequent assessment years. The silent features are discussed here below:

### Four vs. Seven Tax Slab under Alternate Tax Regime :

The word Alternate itself indicates that there is other tax regime exist already, hence the proposed scheme u/s 115 BAC is optional one. The Individual or HUF taxpayers, from assessment year 2021-22 onwards, have the option to pay tax in respect of the total income under the new optional income tax regime at lower rates provided they forgo specified exemptions and deductions.

### Total Income and Slab Rate on Existing Tax Regime and Alternate Tax Regime.

| Existing Tax Regime      |     | Alternate Tax Regime      |     |
|--------------------------|-----|---------------------------|-----|
| Up to Rs. 2,50,000       | Nil | Up to Rs. 2,50,000        | Nil |
| Rs. 2,50,001 – 5,00,000  | 5%  | Rs. 2,50,001 – 5,00,000   | 5%  |
| Rs. 5,00,001 – 10,00,000 | 20% | Rs. 5,00,001 – 7,50,000   | 10% |
| Above Rs. 10,00,000      | 30% | Rs. 7,50,001 – 10,00,000  | 15% |
|                          |     | Rs. 10,00,001 – 12,50,000 | 20% |

- Standard Deduction: Rs 50,000 & P.Tax as contained in section 16.
- House Rent Allowance [u/s 10(13A)]: Depends on salary structure and rent paid.
- Housing Loan Interest (u/s 24): Rs 3.5 lakh for affordable housing, Rs 2 lakh for others.
- Investments under Sec 80C: Rs 1.5 lakh.
- Leave Travel Allowance [section 10(5)]: Tax free if

The new alternate tax regime is taxpayer specific and optional, it vary from case to case depending upon the aggregate amount of deductions/exemptions claimed by the Individual/HUF taxpayer under the existing tax regime. In both the tax regime, exemption limit has been retained at Rs. 250000/- but the slab rate have been reoriented. In existing tax regime individual having income upto Rs. 5 lakhs will not be required to pay any income tax as they will continue to get tax rebate u/s 87A upto Rs. 12500/- . In Alternate Tax Regime u/s 115 BAC the tax slab rate start from 2.5 lakh, hence a individual have to pay 5% tax on income exceeding Rs. 2.5 lakh (Rs. 250001 to 500000 @ 5%). Individual Taxpayers & Tax Professional are conversant with the existing say old tax regime and before opting for the Alternate Tax Regime, they must carefully consider , what( exemptions and deductions) goes out and what benefits stays/ available if they chooses the alternate tax regime, become operative from assessment year 2021-22.

### What goes out

*Some of the 70 exemptions and deductions you won't get in new regime. Check which of these you are claiming now.*

- claimed once in block of two years.
- NPS (National Pension System) Contribution (80CCD): Rs 50,000.
- Medical Insurance Premium (80D): Rs. 25,000 (Rs. 50,000 for parents and senior citizens).
- Savings Bank Interest: Rs 10,000 under Sec 80TTA.
- Interest Income (for senior citizens): Rs 50,000 under Sec 80TTB.

- Education Loan Interest (80E): Interest paid for eight consecutive years. (No limit).
- Disability of self or dependant (80DD): Rs 75,000 to Rs 1.25 lakh depending on disability.
- Treatment of self or dependant for specified disease (80 DDB): Rs 40,000 (Rs 1 lakh for senior citizens).
- Donations to specified entities (u/s 80G, 80GGA, 80GGC): 50-100% of the amount donated.
- Deductions under section 32AD, 33AB, 33ABA, 35AD or section 35CCC.
- Allowances to MP MLAs as contained in section 10(17).

#### What stays

Some 50 tax exemptions have been left untouched in the Budget. These include:

- Standard Deduction on Rent: 30% of the rent received.
  - Agricultural Income: No limit.
  - Income from Life Insurance: If insurance cover is 10 times the annualised premium.
  - Retrenchment Compensation: Rs 5 lakh.
  - VRS proceeds: Rs 5 lakh.
  - Leave encashment on retirement: Rs 3 lakh (No limit for govt workers).
  - Section 80CCD sub section 2 (Employer contribution on account of employee in notified pension scheme and section 80JJA for new employment can be claimed).
  - Section 10(14) notified allowances.
- (a) Transport Allowance granted to a divyang employee to meet expenditure for the purpose of commuting between place of residence and place of duty;
  - (b) Conveyance Allowance granted to meet the expenditure on conveyance in performance of duties of an office;
  - (c) Any Allowance granted to meet the cost of travel on tour or on transfer;
  - (d) Daily Allowance to meet the ordinary daily charges incurred by an employee on account of absence from his normal place of duty.

#### Option to be exercised:

- (a) The option shall be exercised for every previous year where the individual or the HUF has no business income, and in other cases the option once exercised for a previous year shall be valid for that previous year and all subsequent years.
- (b) The option shall become invalid for a previous year or previous years, as the case may be, if the Individual or HUF fails to satisfy the conditions and other provisions of the Act shall apply;

(c) the concessional rate shall not apply unless option is exercised by the individual or HUF in the form and manner as may be prescribed,-

- i) where such individual or HUF has no business income, along with the return of income to be furnished under section 139 (1); and
- ii) in any other case, on or before the due date specified under sub-section (1) of section 139 of the Act for furnishing the return of income for any previous year relevant to the assessment year commencing on or after 1st April, 2021 and such option once exercised shall apply to subsequent assessment years;

(d) **Limited Option in case of taxpayers having business income:** Option can be withdrawn only once where it was exercised by the individual or HUF having **business income** for a previous year other than the year in which it was exercised and thereafter, the individual or HUF shall never be eligible to exercise option under this section, except where such individual or HUF ceases to have any business income in which case, option shall be available as in case of taxpayers having no business income.

#### Set off of Loss or depreciation not permitted:

- a) The income of such taxpayer is to be computed without set off of any loss carried forward or depreciation from any earlier assessment year if such loss or depreciation is attributable to any of the deductions referred to in para (3) above. Likewise the income of such taxpayer is to be computed in case of loss under the head house property without any set off of such loss with any other head of income.
- b) The loss or depreciation shall be deemed to have been given full effect to and no further deduction for such loss or depreciation shall be allowed for any subsequent year so however, that where there is a depreciation allowance in respect of a block of asset which has not been given full effect to prior to the assessment year beginning on 1st April, 2021, corresponding adjustment shall be made to the written down value of such block of assets as on 1st April, 2020 in the prescribed manner, if the option is exercised for a previous year relevant to the assessment year beginning on 1st April, 2021;

#### Unit in the International Financial Services Centre:

If the individual or HUF has a Unit in the International Financial Services Centre [section 2 (zc) of the Special Economic Zones Act, 2005], as referred to in section 80LA(1A), the deduction under section 80LA shall be available to such Unit subject to fulfillment of the conditions contained in that section; and

**AMT (Alternate Minimum Tax ) shall not apply:**

It has been proposed to amend section 115JC so as to provide that the provisions relating to Alternate Minimum Tax (AMT) shall not apply to such individual or HUF having business income.

#### Carry forward and set off of AMT credit not permitted:

It has also been proposed to amend section 115JD so as to provide that the provisions relating to carry forward and set off of AMT credit, if any, shall not apply to such individual or HUF having business income.

Thus the taxpayers need to check their tax liability under the existing regime and new optional regime and should carefully decide whether to go for new tax regime. An individual who is currently availing more deductions and exemption may choose to avail them and continue to pay tax as per the old regime.

#### Bonanza for New Salaried Taxpayer

The ATR is beneficial most to Pensioners as well as young new salaried persons (Alternate Tax Regime) as they have no investments in tax saving schemes and further they have the option to choose as many times as they desire in future.

#### COVID - 19 & Incentive to ATR Taxpayer

The present pandemic, corona virus, situation brings a welcome provisions to all taxpayers who likes to donate in PM CARES Fund and can claim 100 percent deduction in taxable income as well as wishes to avail the benefit of concessional tax for F.Y. 2020-21. Finance Ministry on

31<sup>st</sup> March, 20 issued a clarification and announced that PM CARES Fund will get the same tax treatment as available to Prime Minister National Relief Fund and all donations to PM CARES FUND are eligible for 100 percent deduction under section 80 G of the Income Tax Act. Further, the limit on deduction of 10 percent of gross income shall also not be applicable for donation made to PM CARES Fund. Furthermore, all assessee has been allowed to make this deposit till 30<sup>th</sup> June, 2020 and claim 100 percent deduction from income of F.Y. 2019-20. Taxpayer availing this 80G deduction will not loose his option right of choosing ATR for income of F.Y.2020-21. This PM CARES Fund provision is a part of "THE TAXATION AND OTHER LAWS" (Relaxation of certain provisions) Ordinance, 2020 promulgated by Central Govt. on 31<sup>st</sup> March, 2020.

#### CONCLUSION

To decide whether to choose Existing Tax Regime or switch over to Alternate Tax Regime, An individual taxpayer should look into their level of Income and level of tax savings investments, Deductions/Exemptions availed during the respective financial year, Thus the New tax regime is taxpayer specific. FM gives all taxpayers except having Business Income; the option of migrating to new lower tax regime for Income upto Rs. 15 Lakhs provided the taxpayer forgo all deductions/exemptions sec 10, 80C – 80U, standard deduction u/s 16, HRA & Leave Travel. The following chart helps the taxpayer to decide whether to continue existing tax regime or switch over to alternate tax regime.

| Taxable Income (Rs.) | Effective Tax Rate (%) | Tax Saving With Zero Exemption* (New Regime) | No Benefit of New Regime if you have Deductions* Worth At Least (Rs.) |
|----------------------|------------------------|--|---|
| 5 lakh               | 0                      | Nil  |   |
| 7.5 lakh             | 15.6                   | 26,000                                       | 1.25 lakh   |
| 10 lakh              | 20.8                   | 39,000                                       | 1.87 lakh   |
| 12.5 lakh            | 26.0                   | 65,000                                       | 2.5 lakh  |
| 15 lakh to 50 lakh   | 31.2                   | 78,000                                       | 2.5 lakh  |
| 50 to 1 cr           | 34.3                   | 85,800                                       | 2.5 lakh & above  |
| 1 cr - 2 cr          | 35.9                   | 89,700                                       | 2.5 lakh & above  |
| 2 cr – 5 cr          | 39.0                   | 97,500                                       | 2.5 lakh & above  |
| 5 cr and above       | 42.7                   | 1,06,860                                     | 2.5 lakh & above  |

\*Deductions/exemptions that will go in New Regime: HRA LTA, Standard Deduction, 80C Investments (eg PF, LIC), Medical Insurance, Interest Income exemption, Education Loan Interest 80G (80C – 80U), section 10.

EXPLAIN ABOVE – Taxable Income 5 lakh to 7.5 lakh, ATR slab rate 10%, current slab rate 20%

\*Taxable Income 7.5 lakh, tax saving Rs. 26,000 (In case forgo all deductions) \*\*Deductions claimed 1.25 lakh, Standard Deduction Rs. 50,000, u/s 80C Rs. 75,000 (PF & LIC).

\*\*BETTER to continue under the current tax regime.

Furthermore a careful consideration and precautions required in respect of impact of Dividend Income earned during the year. All Individual will have to bear tax on their dividend income. It will be added to their taxable income and taxed at the applicable slab rate. The more ones dividend income and the higher will be the tax slab.

Thus its best for each taxpayer to work out individually whether this alternate tax regime making him poorer or richer.



## COMPANIES AUDITOR REPORT ORDER (CARO) RULES, 2020 - Analysis

CA Vivek Agarwal

The MCA has issued the Companies (Auditor's Report) Order, 2020 (CARO 2020), on 25th February 2020. This order has been issued in supersession of the Companies (Auditor's Report) Order, 2016, and was applicable for reporting on financial statements of companies whose financial year commences on or after 1st April 2019 but was deferred by one year to Accounting year 2020-21 due to Covid 19. CARO 2016 was issued by MCA in supersession of CARO 2015.

Now, the MCA has kept the applicability of CARO 2020 to companies same as CARO 2016. The CARO 2020 will not apply to the auditor's report on consolidated financial statements except for clause (xxi) of Clause 3 in regard to any qualifications or adverse remarks by the respective auditors in the Companies (Auditor's Report) Order (CARO) reports of the companies included in the consolidated financial statements. If there is any such remark, then the auditor of CFS, has to indicate the details of the companies and the paragraph numbers of the CARO report containing the qualifications or adverse remarks. The exemption to small companies has been removed and instead CARO 2020 has defined small company itself.

The total number of clauses in the new CARO is 21. CARO 2020 has enhanced the auditor's reporting requirements in certain areas, such as Loans given, application of Short Term fund, Long term Funds etc.

The provisions of the CARO 2020 are furnished below:

CARO 2020 is applicable from FY 2019-20 and the matters specified therein shall be included in each report made by the auditor under Section 143 of the Companies Act, 2013 on the account of every company to which CARO 2020 applies.

Section 143 (11) of the Act stipulates that the Central Government may order for the inclusion of statement on specified matter in the auditor's report for specified class or description of companies. Accordingly, CARO 2020 is issued in pursuance of Section 143 (11) of Companies Act 2013 for inclusion of the matters specified therein in auditors' report. Hence, CARO 2020 should be complied by the statutory auditor of every company on which it applies.

CARO 2020 has been issued after consultation with the

National Financial Reporting Authority constituted under section 132 of the Companies Act, 2013.

### Applicability

CARO 2020 is applicable to every company including a foreign company as defined in clause (42) of Section 2 of the Companies Act 2013, except

- i. a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);
- ii. an insurance company as defined under the Insurance Act, 1938 (4 of 1938);
- iii. a company licensed to operate under section 8 of the Companies Act;
- iv. a One Person Company as defined in clause (62) of section 2 of the Companies Act and a small company as defined in clause (85) of section 2 of the Companies Act; and
- v. a private limited company, not being a subsidiary or holding company of a public company, having a paid up capital and reserves and surplus not more than one crore rupees as on the balance sheet date and which does not have total borrowings exceeding one crore rupees from any bank or financial institution at any point of time during the financial year and which does not have a total revenue as disclosed in Schedule dIII to the Companies Act (including revenue from discontinuing operations) exceeding ten crore rupees during the financial year as per the financial statements.

### Auditor's report to contain matters specified in paragraphs 3 and 4. –

Every report made by the auditor under section 143 of the Companies Act on the accounts of every company audited by him, to which this Order applies, for the financial years commencing on or after the 1st April, 2019, shall in addition, contain the matters specified in paragraphs 3 and 4, as may be applicable:

Provided this Order shall not apply to the auditor's report on consolidated financial statements except clause (xxi) of paragraph 3.

1. **Matters to be included in auditor's report.** - The auditor's report on the accounts of a company to which

this Order applies shall include a statement on the following matters, namely:-

**Property, Plant and Equipment [clause 3 (i)]**

i. (a) (A) whether the company is maintaining proper records showing full particulars, including quantitative details and situation of Property, Plant and Equipment;

(B) whether the company is maintaining proper records showing full particulars of intangible assets;

(b) whether these Property, Plant and Equipment have

been physically verified by the management at reasonable intervals; whether any material discrepancies were noticed on such verification and if so, whether the same have been properly dealt with in the books of account;

(c) whether the title deeds of all the immovable properties (other than properties where the company is the lessee and the lease agreements are duly executed in favour of the lessee) disclosed in the financial statements are held in the name of the company, if not, provide the details thereof in the format below:-

| Description of property | Gross carrying value | Held in name of | Whether promoter, director or their relative or employee | Period held – indicate range, where appropriate | Reason for not being held in name of company* |
|-------------------------|----------------------|-----------------|--|---|---|
| -                       | -                    | -               | -  | -   | *also indicate if in dispute                  |

(d) whether the company has revalued its Property, Plant and Equipment (including Right of Use assets) or intangible assets or both during the year and, if so, whether the revaluation is based on the valuation by a Registered Valuer; specify the amount of change, if change is 10% or more in the aggregate of the net carrying value of each class of Property, Plant and Equipment or in tangible assets;

(e) whether any proceedings have been initiated or are pending against the company for holding any benami property under the Benami Transactions (Prohibition) Act, 1988 (45 of 1988) and rules made thereunder, if so, whether the company has appropriately disclosed the detail in its financial statements;

**Comments**

The auditor have to comment on Intangible assets also under this clause. It was not required in CARO 2016.

The pertinent question is how the records would be kept in case of self-generated Intangible Assets, Goodwill, Logo, trademark etc.

The auditor have to disclose, if there has been any revaluation, whether the revaluation has been done by registered valuer and if the change in net value of the asset is more than 10%, then the amount of change has to be informed here.

**A new reporting on benami cases has also been added. The promoters may not share details of Benami Cases with the auditors, only Management Representations will do in that cases.**

**Inventory [Clause 3 (ii)]**

ii. (a) whether physical verification of inventory has been conducted at reasonable intervals by the management and whether, in the opinion of the auditor, the coverage and procedure of such verification by the management is appropriate; whether any discrepancies of 10% or more in the aggregate for each class of inventory were noticed and if so, whether they have been properly dealt with in the books of account;

(b) whether during any point of time of the year, the company has been sanctioned working capital limits in excess of five crore rupees, in aggregate, from banks or financial institutions on the basis of security of current assets; whether the quarterly returns or statements filed by the company with such banks or financial institutions are in agreement with the books of account of the Company, if not, give details;

**Comments**

CARO 2016 used to ask reporting for material discrepancies, but CARO 2020 has defined materiality to be 10% for each class of inventory.

Secondly a new reporting of compliance with working capital is required for company having sanctioned limit in excess of Rs five crore form banks or financial institutions. The auditor is required to report about the quarterly disclosure made by company to bank. This adds to extra reporting by auditors who can be held liable if there is a gap.

There may be minor difference in details of debtors, stock valuation etc, Whether Quarterly Debtor confirmation is required in verification.

#### **Loan given by Company [Clause 3 (iii)]**

*iii. whether during the year the company has made investments in, provided any guarantee or security or granted any loans or advances in the nature of loans, secured or unsecured, to companies, firms, Limited Liability Partnerships or any other parties, if so, -*

*(a) whether during the year the company has provided loans or provided advances in the nature of loans, or stood guarantee, or provided security to any other entity [not applicable to companies whose principal business is to give loans], if so, indicate-*

*(A) the aggregate amount during the year, and balance outstanding at the balance sheet date with respect to such loans or advances and guarantees or security to subsidiaries, joint ventures and associates;*

*(B) the aggregate amount during the year, and balance outstanding at the balance sheet date with respect to such loans or advances and guarantees or security to parties other than subsidiaries, joint ventures and associates;*

*(b) whether the investments made, guarantees provided, security given and the terms and conditions of the grant of all loans and advances in the nature of loans and guarantees provided are not prejudicial to the company's interest;*

*(c) in respect of loans and advances in the nature of loans, whether the schedule of repayment of principal and payment of interest has been stipulated and whether the repayments or receipts are regular;*

*(d) if the amount is overdue, state the total amount overdue for more than ninety days, and whether reasonable steps have been taken by the company for recovery of the principal and interest;*

*(e) whether any loan or advance in the nature of loan granted which has fallen due during the year, has been renewed or extended or fresh loans granted to settle the overdues of existing loans given to the same parties, if so, specify the aggregate amount of such dues renewed or extended or settled by fresh loans and the percentage of the aggregate to the total loans or advances in the*

*nature of loans granted during the year [not applicable to companies whose principal business is to give loans];*

*(f) whether the company has granted any loans or advances in the nature of loans either repayable on demand or without specifying any terms or period of repayment, if so, specify the aggregate amount, per centage thereof to the total loans granted, aggregate amount of loans granted to Promoters, related parties as defined in clause (76) of section 2 of the Companies Act, 2013;*

#### **Comments**

This paragraph is a major change in CARO 2020, earlier the reporting was only of loan given to parties covered in Section 189 of Companies Act, 2013, but the clause under CARO 2020 covers all loan granted by the company.

If the loan has been granted, the aggregate amount during the year has to be reported along with balances at balance sheet date, moreover, the loan given to Subsidiary, Associates and joint ventures has to be reported separately and to other separately.

The auditor is also required to report that if any new loan has been given to settle old loan or there has been extension in existing loan, the amount and % age of such loan to total loan has to be reported. This clause will be an issue to many corporates and detailed reporting will be seen in upcoming audit reports.

If there any is any loan repayable on demand or without any terms and condition, then same should be disclosed separately with aggregate amount.

How to document the reasonable steps taken by company/management to recover loans, whether lawyer certificate etc will be required.

#### **Loan to director and investment by the company [Clause 3 (iv)]**

*iv. in respect of loans, investments, guarantees, and security, whether provisions of sections 185 and 186 of the Companies Act have been complied with, if not, provide the details there of;*

#### **Comments**

This clause is same as CARO 2016

#### **Deposits [Clause 3 (v)]**

*v. in respect of deposits accepted by the company or amounts which are deemed to be deposits, whether the directives issued by the Reserve Bank of India and the provisions of sections 73 to 76 or any other relevant provisions of the Companies Act and the rules made*

thereunder, where applicable, have been complied with, if not, the nature of such contraventions be stated; if an order has been passed by Company Law Board or National Company Law Tribunal or Reserve Bank of India or any court or any other tribunal, whether the same has been complied with or not;

**Comments**

**This clause is same as CARO 2016**

**Cost Records [Clause 3 (vi)]**

vi. whether maintenance of cost records has been specified by the Central Government under sub-section (1) of section 148 of the Companies Act and whether such accounts and records have been so made and maintained;

**Comments**

**This clause is same as CARO 2016**

**Statutory Dues [Clause 3 (vii)]**

vii. (a) whether the company is regular in depositing undisputed statutory dues including Goods and Services Tax, provident fund, employees' state insurance, income-tax, sales-tax, service tax, duty of customs, duty of excise, value added tax, cess and any other statutory dues to the appropriate authorities and if not, the extent of the arrears of outstanding statutory dues as on the last day of the financial year concerned for a period of more than six months from the date they became payable, shall be indicated;

(b) where statutory dues referred to in sub-clause (a)

have not been deposited on account of any dispute, then the amounts involved and the forum where dispute is pending shall be mentioned (a mere representation to the concerned Department shall not be treated as a dispute);

**Comments**

**This clause is same as CARO 2016 except the goods and services tax has been added.**

**Disclosure under Income Tax [Clause 3 (viii)]**

viii. whether any transactions not recorded in the books of account have been surrendered or disclosed as income during the year in the tax assessments under the Income Tax Act, 1961 (43 of 1961), if so, whether the previously unrecorded income has been properly recorded in the books of account during the year;

**Comments**

**This is a new clause for reporting in various scheme like Voluntary Disclosure Scheme, Viwad Se Viswas etc. The accounting of disclosures made has to be reported.**

**If the company reports any figure over here, will this attract fraud reporting paragraph also. This is to be clarified.**

**Repayment of Loan [Clause 3 (ix)]**

ix. (a) whether the company has defaulted in repayment of loans or other borrowings or in the payment of interest thereon to any lender, if yes, the period and the amount of default to be reported as per the format below:-

| Nature of borrowing, including debt securities | Name of lender*  | Amount not paid on due date | Whether principal or interest | No. of days delay or unpaid | Remarks, if any |
|--|--|-----------------------------|-------------------------------|-----------------------------|-----------------|
|  | *lender wise details to be provided in case of defaults to |                             |                               |                             |                 |
|  | banks, financial institutions and Government.              |                             |                               |                             |                 |

(b) whether the company is a declared wilful defaulter by any bank or financial institution or other lender;

(c) whether term loans were applied for the purpose for which the loans were obtained; if not, the amount of loan so diverted and the purpose for which it is used may be reported;

(d) whether funds raised on short term basis have been

utilised for long term purposes, if yes, the nature and amount to be indicated;

(e) whether the company has taken any funds from any entity or person on account of or to meet the obligations of its subsidiaries, associates or joint ventures, if so, details thereof with nature of such transactions and the amount in each case;

(f) whether the company has raised loans during the year on the pledge of securities held in its subsidiaries, joint ventures or associate companies, if so, give details thereof and also report if the company has defaulted in repayment of such loans raised;

#### Comments

This is again detailed reporting required in CARO 2020. In CARO 2016 it was limited to default in repayment of loans and borrowing to a financial institution, banks, government or dues to debenture holders but in CARO 2020 the reporting is about default in payment of loan or interest to any lenders and the reporting has to be done lender wise in given format.

The Auditor have to Report whether all loans has been used for the purpose for which it was taken, term loan and Short-Term Loan, it brings back earlier CARO paragraphs

The Auditor also has to make additional reporting of loan taken to meet obligation of subsidiaries, associates and joint ventures, as well as loan taken by pledge of shares of Subsidiary, associates or joint venture.

#### Utilisation of IPO and further public offer [Clause 3 (x)]

x. (a) whether moneys raised by way of initial public offer or further public offer (including debt instruments) during the year were applied for the purposes for which those are raised, if not, the details together with delays or default and subsequent rectification, if any, as may be applicable, be reported;

(b) whether the company has made any preferential allotment or private placement of shares or convertible debentures (fully, partially or optionally convertible) during the year and if so, whether the requirements of section 42 and section 62 of the Companies Act, 2013 have been complied with and the funds raised have been used for the purposes for which the funds were raised, if not, provide details in respect of amount involved and nature of non-compliance;

#### Comments

This clause is same as CARO 2016 and preferential allotment clause (xiv) of CARO 2016 has been added here.

#### Reporting of Fraud [Clause 3 (xi)]

xi. (a) whether any fraud by the company or any fraud on the company has been noticed or reported during the year, if yes, the nature and the amount involved is to be indicated;

(b) whether any report under sub-section (12) of section 143 of the Companies Act has been filed by the auditors inform ADT-4as prescribed under rule 13 of Companies (Audit and Auditors) Rules, 2014 with the Central Government;

(c) whether the auditor has considered whistle-blower complaints, if any, received during the year by the company;

#### Comments

This clause is same as CARO 2016 only para b and c are additional, these are for compliance of Sec 143 and additional responsibility of whistle blower complaints

#### Nidhi Company [Clause 3 (xii)]

xii. (a) whether the Nidhi Company has complied with the Net Owned Fundsto Deposits in the ratio of 1: 20 to meet out the liability;

(b) whether the Nidhi Company is maintaining ten percent. unencumbered term deposits as specified in the Nidhi Rules, 2014 to meet out the liability;

(c) whether there has been any default in payment of interest on deposits or repayment thereof for any period and if so, the details thereof;

#### Comments

This clause is same as CARO 2016 only para C is additional

#### Related Party Transaction [Clause 3 (xiii)]

xiii. whether all transactions with the related parties are in compliance with sections 177 and 188 of Companies Act where applicable and the details have been disclosed in the financial statements, etc., as required by the applicable accounting standards;

#### Comments

This clause is same as CARO 2016

#### Internal Audit [Clause 3 (xiv)]

xiv. (a) whether the company has an internal audit system commensurate with the size and nature of its business;

(b) whether the reports of the Internal Auditors for the period under audit were considered by the statutory auditor;

#### Comments

This clause has made a comeback, it was not there in



**CARO 2016.** The para b of the clause is new, it derives itself from Standards on Auditing where using the work of Internal Auditors is discussed.

Earlier this clause talked about Internal control relating to Purchase and sales only, now the scope is very wide

#### **Non Cash Transaction [Clause 3 (xv)]**

*xv. whether the company has entered into any non-cash transactions with directors or persons connected with him and if so, whether the provisions of section 192 of Companies Act have been complied with;*

#### **Comments**

This clause is same as CARO 2016 only para C is additional

#### **Register under RBI Act 1934 [Clause 3 (xvi)]**

*xvi. (a) whether the company is required to be registered under section 45-IA of the Reserve Bank of India Act, 1934 (2 of 1934) and if so, whether the registration has been obtained;*

*(b) whether the company has conducted any Non-Banking Financial or Housing Finance activities without a valid Certificate of Registration (CoR) from the Reserve Bank of India as per the Reserve Bank of India Act, 1934;*

*(c) whether the company is a Core Investment Company (CIC) as defined in the regulations made by the Reserve Bank of India, if so, whether it continues to fulfil the criteria of a CIC, and in case the company is an exempted or unregistered CIC, whether it continues to fulfil such criteria;*

*(d) whether the Group has more than one CIC as part of the Group, if yes, indicate the number of CICs which are part of the Group;*

#### **Comments**

The para a of this clause is same as CARO 2016. The para b to d are new. The auditor is required to report on activities carried by the company of NBFC, HFC without valid certificates. The Company is a CIC or the number of CIC in group. This has been asked to be reported after recent issues in NBFC,

#### **Cash Losses [Clause 3 (xvii)]**

*xvii. whether the company has incurred cash losses in the financial year and in the immediately preceding financial year, if so, state the amount of cash losses;*

#### **Comments**

This is new reporting requirements of CARO 2020, calculation of cash losses to be done. This is visible from Cash Flow but now separate reporting is also

required.

#### **Resignation of Auditors [Clause 3 (xviii)]**

*xviii. whether there has been any resignation of the statutory auditors during the year, if so, whether the auditor has taken into consideration the issues, objections or concerns raised by the outgoing auditors;*

#### **Comments**

**CARO 2020 takes auditor resignation more seriously and after recent increase in numbers of resignation and their timings it's a welcome move, how the auditor has taken care of issues of earlier auditor.**

#### **Capable to Meet Liabilities [Clause 3 (xix)]**

*xix. on the basis of the financial ratios, ageing and expected dates of realisation of financial assets and payment of financial liabilities, other information accompanying the financial statements, the auditor's knowledge of the Board of Directors and management plans, whether the auditor is of the opinion that no material uncertainty exists as on the date of the audit report that company is capable of meeting its liabilities existing at the date of balance sheet as and when they fall due within a period of one year from the balance sheet date;*

#### **Comments**

**CARO 2020 brings additional clause on capability of company to meet its liability, its again in line with going concern reporting which was made stringent by SA 570 lately, the above clause give more clarity of cash flows and will give some tension to new companies and its fund management. The auditors should take detail justification for above and do a walkthrough.**

#### **Corporate Social Reporting [Clause 3 (xx)]**

*xx. (a) whether, in respect of other than ongoing projects, the company has transferred unspent amount to a Fund specified in Schedule VII to the Companies Act within a period of six months of the expiry of the financial year in compliance with second proviso to sub-section (5) of section 135 of the said Act;*

*(b) whether any amount remaining unspent under sub-section (5) of section 135 of the Companies Act, pursuant to any ongoing project, has been transferred to special account in compliance with the provision of sub-section (6) of section 135 of the said Act;*

#### **Comments**

**The Reporting about CSR was missing and now its brought in by CARO 2020. This clause is again an issue as some companies were not taking CSR in**

true sense and added responsibility has been given to auditor.

**The major issue is that the section 135(5)&135(6) of Companies Act 2013 has not yet been notified still auditors have to report on same.**

#### **Justification [Clause 3 (xxi)]**

*xxi. whether there have been any qualifications or adverse remarks by the respective auditors in the Companies (Auditor's Report) Order (CARO) reports of the companies included in the consolidated financial statements, if yes, indicate the details of the companies and the paragraph numbers of the CARO report containing the qualifications or adverse remarks.*

#### **Comments**

**The auditor have to give proper reasoning for qualification or adverse remarks in audit report. A new paragraph introduced by CARO 2020**

#### **Reasons to best a tedforunf a vourable or qualified answers.-**

(1) Where, in the auditor's report, the answer to any of the questions referred to in paragraph 3isunfavourableorqualified,the auditor's reports hall also state the basis for such unfavourable or qualified answer, as the case maybe.

(2) Where the auditor is unable to express any opinion on any specified matter, his report shall indicate such fact together with reasons as to why it is not possible for him to give his opinion on same

#### **Comments**

The above two para again increase the responsibility of the auditor in respect to cases where auditor is not able to express any opinion on any matter or has to give detail reason for unfavourable or qualified comments on any of the para stated above.



## **Notification No. 01/2020 – Central Tax dated 1st January, 2020 Corresponding N/No. 01/2020 – Integrated Tax**

- With this notification, provisions of sections 92 to 112, **except section 92, section 97, section 100 and sections 103 to 110** of the Finance(No.2) Act,2019 has been made applicable w.e.f. 1<sup>st</sup> January,2020.
- Section 93- For composite dealer, Aggregate Turnover shall not include the value of exempt supplies of service by way of extending deposits, loans or advances.
- Section 94 - A proviso has been inserted to Section 22, which states that the Govt. on recommendation of Council and at the request of a state, may enhance the aggregate T.O. from 20 Lakh to 40 Lakhs for the supplier of goods.
- Section 95 – Changes has been made to section 25 by which Aadhaar number has been made mandatory in case of new registration. In case of other than Individuals, Aadhaar no. of Karta, MD, WTD, authorized representative, authorized signatory shall be furnished.
- Section 96 – A new Section 31A has been inserted after Section 31 of CGST Act,2017 which provides facility of digital payment to the recipient of supply of goods or services or both.
- Section 98 – Proviso to 44(1) has been inserted, stating that the commissioner on recommendation of council may extend the time limit for furnishing Annual Return.
- Section 99 – Sub-section (10) & (11) has been added to section 49 of CGST Act,2017. With the new insertion, cash balance lying in any head in

the electronic cash ledger can be utilized to discharge the liability of any head.

- Section 112 – Sub-section (3A) has been inserted to Section 171 of CGST Act,2017 whereby the authority as constituted in sub-section (2) concludes that the registered person has profiteered , a penalty equivalent to 10% of the amount so profiteered shall be imposed on such registered person; no penalty shall be leviable if the profiteered amount is deposited within 30 days of the date of passing of the order by the Authority.

### **Notification No. 02/2020 – Central Tax dated 1<sup>st</sup> January,2020**

The following rules have been made further to amend the Central Goods and Services Tax Rules, 2017: -

- These rules may be called the Central Goods and Services Tax (Amendment) Rules, 2020, they shall come into force on the date of their publication in the Official Gazette.
- In **rule 117 sub-rule (1A) of the CGST Rules**, with effect from 31st December 2019, the date for submitting the declaration electronically in FORM GST TRAN-1 has been extended till **31<sup>st</sup> March 2020** as against earlier period of 31st December 2019.
- In **rule 117 sub-rule (4), in clause (b), in sub-clause (iii), in the proviso**, the date of submission of statement in FORM GST TRAN-2 by the registered persons filing the declaration in FORM GST TRAN-1 in accordance with sub-rule (1A), has been substituted with 30th April

2020 as against earlier period of 31<sup>st</sup> January, 2020.

| RETURN            | OLD DUE DATE     | REVISED DUE DATE |
|-------------------|------------------|------------------|
| Form GST TRAN - 1 | 31 December 2019 | 31 March 2020    |
| Form GST TRAN - 2 | 31 January 2020  | 30 April 2020    |

- In the said rules, in **FORM REG-01, in Part-B**, for serial numbers **12 and 13** and the entries relating thereto for details regarding SEZ Unit and SEZ Developer, **period of validity** is also to be **specified** before mentioning designation of approving authority and after mentioning approval order number and date of order.
- In the said rules, in **FORM GSTR-3A**, in **serial number 2** under the heading "Notice to Return Defaulter u/s 46 for Not filing Return", for the words "**tax liability will**", the words "**tax liability may**" shall be substituted. After **serial number 4**, this serial number shall be inserted – "**5. This is a system generated notice and does not require signature.**" In serial number 3, for the words "tax period will", the words "tax period may" shall be substituted. After serial number 4, the following serial number shall be inserted, namely - "5. This is a system generated notice and does not require signature."
- A detailed explanation in relation to e-invoicing - Form GST INV-01 has been released.

#### **Notification No. 03/2020 – Central Tax dated 1<sup>st</sup> January 2020**

- Amending the notification no 62/2019 – Central Tax, dated 26<sup>th</sup> November, 2019, persons whose principal place of business or place of business lies in the State of Jammu and Kashmir till **31<sup>st</sup> December, 2019** shall have an option to transfer the Input Tax Credit from the registered GSTIN in the state of Jammu and Kashmir to the new GSTIN in the Union Territory of Jammu and Kashmir or in the Union Territory of Ladakh from **1<sup>st</sup> January, 2020**.
- The balance of State taxes in electronic cash ledger of persons whose principal place of

business lies in the Union Territory of Ladakh from **1<sup>st</sup> January 2020** shall be transferred as balance of Union Territory Tax in the electronic cash ledger.

#### **Notification No. 04/2020 – Central Tax dated 10<sup>th</sup> January 2020**

- Amending the notification no 74/2019 – Central Tax, dated 26<sup>th</sup> December, 2019, the amount of late fee payable under section 47 of the Act shall stand waived for the registered persons who failed to furnish the details of outward supplies in FORM GSTR-1 for the months/quarters from July, 2017 to November, 2019 by the due date but furnishes the said details in FORM GSTR-1 between the period 19<sup>th</sup> December, 2019 and **17<sup>th</sup> January, 2020**.

#### **Notification No. 05/2020 – Central Tax dated 13<sup>th</sup> January 2020**

- The Central Board of Indirect Taxes and Customs authorised the following persons as the Revisional Authority under section 108 of the said Act –
  - the Principal Commissioner or Commissioner of Central Tax for decisions or orders passed by the Additional or Joint Commissioner of Central Tax; and
  - the Additional or Joint Commissioner of Central Tax for decisions or orders passed by the Deputy Commissioner or Assistant Commissioner or Superintendent of Central Tax.

#### **Notification No. 06/2020 – Central Tax dated 3<sup>rd</sup> February 2020**

With this notification, the time limit for filing of annual return/audit report in respect to period 1<sup>st</sup> July, 2017 to 31<sup>st</sup> March, 2018 has been extended.

| Registered person, whose principal place of business is in  | Due date for furnishing return for the FY 2017-18 |
|---|---|
| Chandigarh, Delhi, Gujarat, Haryana, Jammu and Kashmir, Ladakh, Punjab, Rajasthan, Tamil Nadu, <b>Uttar Pradesh</b> , Uttarakhand   | 5 <sup>th</sup> February 2020                     |
| Andaman and Nicobar Islands, Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Dadra and Nagar Haveli and Daman and Diu, Goa, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Lakshadweep, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Odisha, Puducherry, Sikkim, Telangana, Tripura, West Bengal, Other Territory. | 7 <sup>th</sup> February 2020                     |

**Due date for Uttar Pradesh has been shifted to 7<sup>th</sup> February, 2020 vide corrigendum dated 4<sup>th</sup> February 2019.**

**Notification No. 07/2020 – Central Tax dated 3<sup>rd</sup> February 2020**

Amending the notification no. 44/2019 – Central Tax, dated 9<sup>th</sup> October, 2019, a proviso has been inserted providing staggered dates for filing of GSTR-3B for the months of January, February and March, 2020 for different category of Taxpayers.

| Taxpayers having Aggregate Turnover in PFY | Due Date                      | Registered person, whose principal place of business is in  |
|--|-------------------------------|---|
| 5 crore or more                            | 20 <sup>th</sup> of the month | For all the States  |
| Below 5 crores                             | 22 <sup>nd</sup> of the month | States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep                               |
| Below 5 crores                             | 24 <sup>th</sup> of the month | States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi |

**Notification No. 08/2020 – Central Tax dated 2<sup>nd</sup> March 2020**

For further amending the Central Goods & Services Tax Rules, 2017, Central Government, on the recommendation of Council makes the following rules which is as follows –

- These rules may be called the Central Goods and Service Tax (Second Amendment) Rules, 2020.
- In the Central Goods and Services Tax Rules, 2017, with effect from the 1st March 2020, in rule 31A, for sub-rule (2), the following sub-rule shall be substituted, namely:-

The value of supply of lottery shall be deemed to be

100/128 of the face value of the ticket or of the price as notified in the Official Gazette by the Organising State, whichever is higher.

Elaborated as for the purposes of this sub-rule, the expression “Organising State” has the same meaning as assigned to it in clause (f) of sub-rule (1) of rule 2 of the Lottery (Regulation) Rules, 2010.”

CBIC has modified a uniform rate 28% for Lottery. From 1<sup>st</sup> Mar'2020, the value of supply for lottery shall be 100/128 of the face value of the ticket or the price as notified in the official Gazette by the Organising State, whichever is higher.

**Notification No. 01/2020 – Central Tax (Rate) dated 21<sup>st</sup> February 2020**

The Central Government makes the following

amendment in the Notification – No. 1/2017 – Central Tax (Rate), dated 28<sup>th</sup> June 2017 –

In the said notification –

- In Schedule - II – 6%, S. No. 242 and entries relating to thereto shall be omitted.

| S. No. | Chapter/ Heading/Subheading | [Notification No. 1/2017 – Central Tax (Rate), dated. 28 <sup>th</sup> June 2017] Schedule – II<br>Description of Goods  |
|--------|-----------------------------|--|
| 242    |                             | Lottery run by State Governments<br>Explanation 1.- For the purposes of this entry, value of supply of lottery under sub-section (5) of section 15 of the Central Goods and Services Tax Act, 2017 shall be deemed to be 100/112 of the face value of ticket or of the price as notified in the Official Gazette by the organising State, whichever is higher.<br>Explanation 2.- (1) "Lottery run by State Governments" means a lottery not allowed to be sold in any state other than the organising state. (2) Organising state has the same meaning as assigned to it in clause (f) of sub-rule (1) of rule 2 of the Lotteries (Regulation) Rules, 2010. ] |

In Schedule IV - 14%, for S. No. 228 and the entries relating thereto, the following S. No. and the entries shall be substituted, namely

| S. No. | Chapter/ Heading/ Sub-heading | [Notification No. 1/2017 – Central Tax (Rate), dated. 28 <sup>th</sup> June, 2017] Schedule – II<br>Description of Goods  |
|--------|-------------------------------|---|
| 282    |                               | Lottery authorized by State Governments<br>Explanation 1.- For the purposes of this entry, value of supply of lottery under sub-section (5) of section 15 of the Central Goods and Services Tax Act, 2017 shall be deemed to be 100/128 of the face value of ticket or of the price as notified in the Official Gazette by the organising State, whichever is higher.<br>Explanation 2.- (1) "Lottery authorized by State Governments" means a lottery which is authorized to be sold in State(s) other than the organising state also. (2) Organising state has the same meaning as assigned to it in clause (f) of sub-rule (1) of rule 2 of the Lotteries (Regulation) Rules, 2010 |

**This notification shall come into force on the 1st day of March 2020.**

**Notification No. 09/2020 – Central Tax dated 16th March 2020**

Central Government on recommendation of Council notifies that the foreign airlines company as covered U/R 4(2) of Companies (Registration of Foreign Companies) Rules, 2014 are not required to furnish reconciliation statement in FORM GSTR-9C.

However, the foreign airlines company is required to submit for each GSTN a statement of receipt & payments for the financial year in respect to its Indian Business Operation duly certified by a CA by September 30 of the year succeeding the FY

**Notification No. 10/2020 – Central Tax dated 21<sup>st</sup> March 2020**

CBIC has notified special procedure to be followed till 31<sup>st</sup> May, 2020 for the persons whose principal place of business or place of business was in the erstwhile Union territory of Daman and Diu or in the erstwhile Union territory of Dadra and Nagar Haveli till the 26th day of January, 2020; and is in the merged Union territory of Daman and Diu and Dadra and Nagar Haveli from the 27th day of January, 2020 onwards.

- The said registered person shall ascertain the tax period for the month of January, 2020 and February, 2020 as below:-
  - (a) January, 2020: 1st January, 2020 to 25th January 2020
  - (b) February, 2020: 26th January, 2020 to 29th February 2020
- The said registered person shall have an option

to transfer the Input Tax Credit from the registered GSTIN in the erstwhile Union territory of Daman and Diu and the erstwhile Union territory of Dadra and Nagar Haveli till the 25th day of January, 2019 to the new GSTIN in the Union Territory of Daman and Diu and Dadra and Nagar Haveli.

- The balance of Union territory taxes in electronic credit ledger of persons whose principal place of business lies in the Union Territory of Daman & Diu, as on 25<sup>th</sup> January, 2020 shall be transferred as balance of Union Territory Tax in the electronic credit ledger.

#### **Notification No. 11/2020 – Central Tax dated 21<sup>st</sup> March 2020**

CBIC has prescribed the special procedures to be followed by registered persons who are corporate debtors under Insolvency Bankruptcy Code, 2016 whose affairs are being undertaken by interim resolution professionals or resolution professionals from the date of the appointment of the IRP/RP till the period they undergo the corporate insolvency resolution process.

- **Registration:-** The said class of persons shall, with effect from the date of appointment of IRP / RP, be treated as a distinct person of the corporate debtor, and shall be liable to take a new registration (hereinafter referred to as the new registration) in each of the States or Union territories where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP:

Provided that in cases where the IRP/RP has been appointed prior to the date of this notification, he shall take registration within thirty days from the commencement of this notification, with effect from date of his appointment as IRP/RP.

- **Return:-** The said class of persons shall, after obtaining registration file the first return under section 40 of the said Act, from the date on which he becomes liable to registration till the date on which registration has been granted.
- **Input tax credit: -**

(1) The said class of persons shall, in his first return, be eligible to avail input tax credit on invoices covering the supplies of goods or services or both, received since his appointment as IRP/RP but bearing the GSTIN of the

erstwhile registered person, subject to the conditions of Chapter V of the said Act and the rules made thereunder, except the provisions of sub-section (4) of section 16 of the said Act and sub-rule (4) of rule 36 of the Central Goods and Service Tax Rules, 2017 (hereinafter referred to as the said rules).

(2) Registered persons who are receiving supplies from the said class of persons shall, for the period from the date of appointment of IRP / RP till the date of registration as required in this notification or thirty days from the date of this notification, whichever is earlier, be eligible to avail input tax credit on invoices issued using the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the said Act and the rules made thereunder, except the provisions of sub-rule (4) of rule 36 of the said rules.

- Any amount deposited in the cash ledger by the IRP/RP, in the existing registration, from the date of appointment of IRP/RP to the date of registration in terms of this notification shall be available for refund to the erstwhile registration.

#### **Notification No. 12/2020 – Central Tax dated 21<sup>st</sup> March 2020**

Amending the notification no 21/2019 – Central Tax, dated 23rd April, 2019, a proviso has been inserted to the said notification whereby a **waiver from furnishing** the statement in outward supply of goods or services or both in **FORM GSTR1** of the said rules **or** the statement containing the details of payment of self-assessed tax in **FORM GST CMP-08** for all the tax periods in the financial year 2019-20 **has been given** to the persons who have, instead of furnishing the statement containing the details of payment of self-assessed tax in FORM GST CMP-08 have furnished a return in FORM GSTR-3B for the tax periods in the financial year 2019-20.

#### **Notification No. 13/2020 – Central Tax dated 21<sup>st</sup> March 2020**

The Central Government vide Notification No. 13/2020-Central Tax dated 21<sup>st</sup> March 2020 has deferred the date of implementation of E-Invoicing to 1<sup>st</sup> October, 2020 for those registered persons whose aggregate turnover whose aggregate turnover in a financial year exceeds one hundred crore rupees.

The said notification has also exempted the following persons from requirement of E-invoicing even if the aggregate turnover exceeds the specified limit:-

- Where the supplier of taxable service is an insurer or a banking company or a financial institution, including a non-banking financial company
- Where the supplier of taxable service is a goods transport agency supplying services in relation to transportation of goods by road in a goods carriage.
- Where the supplier of taxable service is supplying passenger transportation service
- Where the supplier of taxable service is a registered person supplying services by way of admission to exhibition of cinematograph films in multiplex screens.

**Notification No. 14/2020 – Central Tax dated 21<sup>st</sup> March 2020**

The Central Government vide **Notification No. 14/2020-Central Tax dated 21<sup>st</sup> March 2020** has deferred the date of implementation of **Dynamic Quick Response (QR) code** to **1<sup>st</sup> October,2020** for those registered persons **whose aggregate turnover in a financial year exceeds five hundred crore rupees.**

The said notification has also exempted the following persons from requirement of QR Code even if the aggregate turnover exceeds the specified limit:-

Where the supplier of taxable service is an insurer or a banking company or a financial institution, including a non-banking financial company

Where the supplier of taxable service is a goods transport agency supplying services in relation to transportation of goods by road in a goods carriage.

Where the supplier of taxable service is supplying passenger transportation service

Where the supplier of taxable service is a registered person supplying services by way of admission to exhibition of cinematograph films in multiplex screens.

**Notification No. 15/2020 – Central Tax dated 23rd March 2020**

With this notification, Due date for filing of **Annual Return and audit i.e. GSTR-9 and GSTR 9C has been extended for the Financial Year 2018-19 to 30<sup>th</sup> June,2020**

**Notification No. 17/2020 – Central Tax dated 23rd March 2020**

CBIC has notified that the provisions of sub-section (6B) or sub-section (6C) of Section 25 of CGST Act,2017 shall not apply to a person who is not a citizen of India or to a class of persons other than the following class of persons, namely: -

- Individual
- authorized signatory of all types
- Managing and Authorized partner; and
- Karta of a Hindu undivided family.

**Notification No. 18/2020 & 19/2020– Central Tax dated 23rd March 2020**

In order to be eligible for registration under GST, CBIC has made authentication of possession of Aadhaar number mandatory w.e.f. April 1, 2020. Also, notifies specific class of persons who shall undergo authentication of Aadhaar number in order to be eligible for registration -

- Authorized signatory of all types
- Managing and Authorized partners of a partnership firm; and
- Karta of a Hindu undivided family,

Provides that if Aadhaar number is not assigned or a person fails to undergo authentication of Aadhaar number, then they shall be offered alternate and viable means of identification in the manner specified in rule 9 of the said rules.

**Notification No. 20/2020 – Central Tax dated 23rd March 2020**

Amending the notification no 26/2019 – Central Tax, dated 28<sup>th</sup> June,2019, persons whose principal place of business lies in the erstwhile State of Jammu and Kashmir and is required to deduct tax under section 51 of CGST Act,2017 shall furnish the return in FORM GSTR-7 for the month of July'19 to October'19 on or before 24<sup>th</sup> March,2020.

and for the person whose principal place of business is in the Union territory of Jammu and Kashmir or the Union territory of Ladakh shall furnish the return in FORM GSTR-7 for the month of November'19 to February'19 on or before 24<sup>th</sup> March,2020

**Notification No. 21/2020 – Central Tax dated 23rd March 2020**

Amending the notification no 45/2019 – Central Tax, dated 9<sup>th</sup> October,2019, persons whose principal place of



business lies in the erstwhile State of Jammu and Kashmir or the Union territory of Jammu and Kashmir or the Union territory of Ladakh shall furnish the details of outward supply of goods or services or both in FORM GSTR-1 for the quarter October-December,2019 till 24th March,2020.

**Notification No. 22/2020 – Central Tax dated 23rd March 2020**

Amending the notification no 46/2019 – Central Tax, dated 9<sup>th</sup> October,2019, persons whose principal place of business lies in the erstwhile State of Jammu and Kashmir and having aggregate Turnover of more than 1.5 crore rupees in the preceding financial year or current financial year shall furnish the details of outward supply of goods or services or both in FORM GSTR-1 for the month of October,2019 till 24th March,2020 and for the person whose principal place of business is in the Union territory of Jammu and Kashmir or the Union territory of Ladakh and having aggregate Turnover of more than 1.5 crore rupees in the preceding financial year or current financial year shall furnish the details of outward supply of goods or services or both in FORM GSTR-1 for the months of November,2019 to February,2020 till 24th March,2020

**Notification No. 23/2020 – Central Tax dated 23rd March 2020**

Amending the notification no 28/2019 – Central Tax, dated 28<sup>th</sup> June,2019, persons whose principal place of business lies in the erstwhile State of Jammu and Kashmir and having aggregate Turnover of more than 1.5 crore rupees in the preceding financial year or current financial year shall furnish the details of outward supply of goods or services or both in FORM GSTR-1 for the month from July-September,2019 till 24th March,2020

**Notification No. 24/2020 – Central Tax dated 23rd March 2020**

Amending the notification no 27/2019 – Central Tax, dated 28<sup>th</sup> June,2019, persons whose principal place of business lies in the erstwhile State of Jammu and Kashmir shall furnish the details of outward supply of goods or services or both in FORM GSTR-1 for the quarter July-September,2019 till 24th March,2020

**Notification No. 25/2020 – Central Tax dated 23rd March 2020**

Amending the notification no 44/2019 – Central Tax, dated 9<sup>th</sup> October 2019, persons whose principal place of business lies in the erstwhile State of Jammu and Kashmir shall furnish their return in FORM GSTR-3B for the month of October,2019, on or before 24<sup>th</sup> March,2020 and for the person whose principal place of business is in the Union territory of Jammu and Kashmir or the Union territory of Ladakh, shall furnish their return in FORM GSTR-3B for the month of November,2019 to February,2019, on or before 24th March,2020.

**Notification No. 26/2020 – Central Tax dated 23rd March 2020**

Amending the notification no 29/2019 – Central Tax, dated 28<sup>th</sup> June 2019, persons whose principal place of business lies in the erstwhile State of Jammu and Kashmir shall furnish their return in FORM GSTR-3B for the month of July,2019 to September,2019, on or before 24<sup>th</sup> March,2020

**Notification No. 27/2020 – Central Tax dated 23rd March 2020**

With this notification, CBIC has prescribed the *special procedure* for furnishing the details of outward supply of Goods or services or both in Form GSTR-1 by such class of registered persons having aggregate turnover of **up to 1.5 crore rupees** in the preceding financial year or the current financial year.

| S.I. No. | Quarter for which details in FORM GSTR-1 are furnished | Time period for furnishing details in FORM GSTR-1 |
|----------|--|---|
| 1        | April,2020 to June2020                                 | 31 <sup>st</sup> July 2020                        |
| 2        | July,2020 to September2020                             | 31 <sup>st</sup> October2020                      |

**Notification No. 28/2020 – Central Tax dated 23rd March 2020**

With this notification, CBIC has notified the time limit for filing of GSTR-1 by such class of registered persons having aggregate turnover of **more than 1.5 crore rupees** in the preceding financial year or the current financial year, for each of the months from April,2020 to September, 2020 till the eleventh day of the month succeeding such month.

**Notification No. 29/2020 – Central Tax dated 23<sup>rd</sup> March 2020**

| Registered person, whose principal place of business is in  | Due date for furnishing return                      |
|---|---|
| Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep                                  | 22 <sup>nd</sup> of the month succeeding such month |
| Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi. | 24 <sup>th</sup> of the month succeeding such month |

**Notification No. 30/2020 – Central Tax dated 3<sup>rd</sup> April 2020**

- With this notification, CBIC has inserted a proviso in sub-rule(3) of Rule 3, any registered person paying tax under section 10 for Financial year 20-21 can file **FORM GST CMP-02** on or before 30th June2020 and also furnish the statement in **FORM GST ITC-03** upto 31st July,2020.
- Also, with the same notification, CBIC has inserted a proviso in sub-rule(4) of Rule 36, stating that the said condition under the rule applies cumulatively for the period

With this notification, CBIC prescribes due date for filing of GSTR-3B in respect to period **April,2020 to September,2020** in a staggered manner.

For taxpayers having an aggregate Turnover exceeding 5 crore rupees in the previous financial year, due date for filing of Form GSTR-3B shall be 20<sup>th</sup> of the month succeeding such month.

For taxpayers having an aggregate Turnover of up to rupees five crore in the previous financial year, due date shall be either 22<sup>nd</sup> or 24<sup>th</sup>

February,2020 to August,2020 and cumulative adjustment of input tax credit for the said months shall be furnished in FORM GSTR-3B, for the tax period September,2020.

**Notification No. 31/2020 – Central Tax dated 3<sup>rd</sup> April 2020**

- Amending the notification no 13/2017 – Central Tax, dated 28<sup>th</sup> June 2017, following provisos have been inserted stating the Rate of Interest per annum shall be the following in case of failure in filing the returns in GSTR FORM-3B beyond the due dates given as following:

| Taxpayers having Aggregate Turnover in PFY | Rate of interest   | Tax Period   | Due dates for FORM GSTR-3B  |
|--|--|--|---|
| 5 crores or more                           | For first 15 days from the due date – Nil<br>Thereafter 9% | <ul style="list-style-type: none"> <li>February2020</li> <li>March 2020</li> <li>April 2020</li> </ul> | On or before 24 <sup>th</sup> June2020  |
| More than 1.5 crores but up to 5 crores    | NIL  | <ul style="list-style-type: none"> <li>February2020</li> <li>March 2020</li> <li>April 2020</li> </ul> | On or before 29 <sup>th</sup> June2020<br>On or before 30 <sup>th</sup> June2020  |
| Up to 1.5 crores                           | NIL  | <ul style="list-style-type: none"> <li>February2020</li> <li>March 2020</li> <li>April 2020</li> </ul> | On or before 30 <sup>th</sup> June,2020<br>On or before 3 <sup>rd</sup> July,2020<br>On or before 6 <sup>th</sup> July,2020 |

The effective date of the notification is 20<sup>th</sup> March,2020

**Notification No. 32/2020 – Central Tax dated 3<sup>rd</sup> April 2020**

- Amending the notification no 76/2018 – Central Tax, dated 31<sup>st</sup> December 2018, following

provisos have been inserted stating the amount of late fee payable u/s 47 shall be waived if the returns in GSTR FORM-3B are filed within the due dates given as following: (effective date of the notification is 20<sup>th</sup> March,2020)

| Taxpayers having Aggregate Turnover in PFY | Rate of interest   | Tax Period   | Due dates for FORM GSTR-3B  |
|--|--|--|---|
| 5 crores or more                           | For first 15 days from the due date – Nil<br>Thereafter 9% | <ul style="list-style-type: none"> <li>February2020</li> <li>March 2020</li> <li>April 2020</li> </ul> | On or before 24 <sup>th</sup> June2020  |
| More than 1.5 crores but up to 5 crores    | NIL  | <ul style="list-style-type: none"> <li>February2020</li> <li>March 2020</li> <li>April 2020</li> </ul> | On or before 29 <sup>th</sup> June2020<br>On or before 30 <sup>th</sup> June2020  |
| Up to 1.5 crores                           | NIL  | <ul style="list-style-type: none"> <li>February2020</li> <li>March 2020</li> <li>April 2020</li> </ul> | On or before 30 <sup>th</sup> June,2020<br>On or before 3 <sup>rd</sup> July,2020<br>On or before 6 <sup>th</sup> July,2020 |

The effective date of the notification is 20<sup>th</sup> March,2020

**Notification No. 33/2020 – Central Tax dated 3<sup>rd</sup> April 2020**

- Amending the notification no 4/2018 – Central Tax, dated 23<sup>rd</sup> January, 2018, following provisos have been inserted after the third proviso stating the amount of late fee payable u/s 47 shall be waived for the following months if the details in GSTR FORM-1 are filed on or before 30<sup>th</sup> June, 2020.
  - March 2020
  - April 2020
  - May 2020
  - Quarter ending 31<sup>st</sup> March 2020

**Notification No. 34/2020 – Central Tax dated 3<sup>rd</sup> April 2020**

Amending the notification no. 21/2019 – Central Tax, dated 23<sup>rd</sup> April 2019, following provisos have been inserted:

- Proviso inserted in the second paragraph states

that the statement containing the details of payment of self-assessed tax in **FORM GST CMP-08** for the quarter ending 31<sup>st</sup> March 2020 can be furnished till 7<sup>th</sup> July, 2020.

- Proviso inserted in the third paragraph states that the return in **FORM GSTR-4** for the Financial year ending 31<sup>st</sup>March, 2020 can be furnished till 15<sup>th</sup> July, 2020.

**Notification No. 35/2020 – Central Tax dated 3<sup>rd</sup> April 2020**

- With this notification, CBIC has stated that any time limit for completion or compliance that falls during the period from the 20<sup>th</sup> March, 2020 to the 29<sup>th</sup> June, 2020 and such compliance has not been made, the time limit for completion or compliance of such action, shall be extended upto 30<sup>th</sup> June, 2020.
- However, no extension has been provided for the below sections along with the said rules:
  - Time and value of supply provisions (chapter IV- sec 12-15 of the CGST Act, 2017)

- b) Conversion of composition person to normal taxpayer
- c) Registration u/s 25 and 27 of the CGST Act, 2017
- d) Issue of tax invoice u/s 31 of the CGST Act, 2017
- e) Furnishing of GSTR 1 u/s 37, levy of late fee u/s 47, payment of interest u/s 50, power to arrest u/s 69, liabilities of partners of firm to pay tax u/s 90, penal provisions u/s 122 and detention and seizure of goods in transit u/s 129 of the CGST Act, 2017
- f) Furnishing of returns u/s 39. However, the said extension shall be applicable for the following returns:
  1. TDS deductor (GSTR 7)
  2. TCS collector (GSTR 8)
  3. ISD (GSTR 6)
  4. Non-resident taxable person (GSTR 5)
    - a) Inspection of goods in movement for EWB purposes.

- Also, it has been provided that any E-way bill generated and whose period of validity expires during 30<sup>th</sup> March, 2020 to 15<sup>th</sup> April, 2020, the validity of such E-way bills shall be deemed to have been extended till 30<sup>th</sup> April, 2020.

**The effective date of the notification is 20<sup>th</sup> March, 2020**

**Notification No. 36/2020 – Central Tax dated 3<sup>rd</sup> April 2020**

Amending the notification no.

29/2020 – Central Tax, dated 23<sup>rd</sup> March 2020, following provisos have been inserted stating the due date for filing FORM GSTR-3B for May 2020:

- For taxpayers having an aggregate Turnover exceeding 5 crore rupees in the previous financial year, Form GSTR-3B shall be furnished on or before 27<sup>th</sup> June 2020.
- For taxpayers having an aggregate Turnover of up to rupees five crore in the previous financial year, due date shall be either 12<sup>th</sup> or 14<sup>th</sup> July 2020, according to the principal place of business as following:

| Registered person, whose principal place of business is in  | Due date for furnishing return for May, 2020 |
|---|--|
| Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep                                  | On or before 12 <sup>th</sup> July 2020      |
| Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi. | On or before 14 <sup>th</sup> July 2020      |

# **CIRCULAR NO. 131/01/2020 - GST DATED. 23RD JANUARY 2019**

**Topic: Standard Operating Procedure to be followed by exporters**

## **SKKA Comments:**

Recently, many cases of fraud have been witnessed by the government related to credit or refunds claimed unethically on Integrated GST (exports). Therefore, the board has taken measures to apply stringent risk parameters-based checks on refunds related to IGST on exports based on which certain exporters are taken up for further verification. Refund scroll in these cases are in suspension till the completion of Verification process. Further, the export consignments / shipments of concerned exporters are subjected to 100 % examination at the customs port.

In the favour of the exporters, the government has decided to inform the exporters (whose refunds are suspended till verification) either through CGST or customs. To complete the verification as soon as possible, the exporters are required to fill in the relevant information in the format attached as Annexure "A" of this Circular and submit the same to CGST authorities. If required, the jurisdictional authority may seek further information for verification.

Verification shall be completed within 14 working days of furnishing of information by the exporter. If verification is not completed within this period, the jurisdiction officer will bring it to the notice of a nodal cell to be constituted in the jurisdictional Pr. Chief Commissioner / Chief Commissioner Office.

After completion of 14 working days from date of submission of details, the exporter may also take matter to the Jurisdictional Pr. Chief Commissioner/Chief Commissioner of Central Tax by sending an email. (E-mail Ids of jurisdictional chief commissioner are in Annexure B).

The Pr. Chief Commissioner/Chief Commissioner of Central Tax should take appropriate action to get the verification completed in next 7 days. In case, any refund remains pending for more than one month, the exporter

may register his grievance at <http://www.cbic.gov.in/issue/> by giving all relevant details like GSTIN, IEC, Shipping Bill No., Port of Export etc. All such grievances shall be examined by a Committee headed by Member GST, CBIC for resolution of the issue.

**Circular No. 132/02/2020 - GST dated. 18<sup>th</sup> March,2020.**

**Topic: Appeal in-regards-to non-constitution of Appellate Tribunal.**

## **SKKA Comments:**

It has been found that the appellate process is being kept pending by several appellate authorities on the grounds that the appellate tribunal has been not constituted. The Board has hereby issued the clarification in this regard.

**According to Sec 107(1) of CGST Act, Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person."**

The relevant rule for the same is rule 109A of Central Goods and Services Tax Rules, 2017 which reads as follows –

Appointment of Appellate Authority- (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to –

- (a) **the Commissioner (Appeals) where such decision or order is passed by the Additional or Joint Commissioner**
- (b) **any officer not below the rank of Joint Commissioner (Appeals) where such decision or order is passed by the Deputy or**

**Assistant Commissioner or Superintendent, within three months from the date on which the said decision or order is communicated to such person.**

Again, the appeal the order passed by appellate authority under Section 107 of the CGST Act lies with appellate tribunal. Aggrieved person may appeal to the appellate Tribunal against order passed under sec 107 and 108 of the Act within 3 months from the date on which order communicated to him.

The Appellate Tribunal has not been constituted yet. To remove difficulty, the Government, has issued **the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019.**

It has been provided that the **appeal to tribunal can be made within three months (six months in case of appeals by the Government) from the date of communication of order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.**

The appellate authority while passing order may mention in the preamble that appeal may be made to the appellate tribunal whenever it is constituted.

Therefore, Time Limit to make application to appellate tribunal will be counted from **the date on which President or the State President enters office.**

**Circular No. 133/03/2020 - GST dated. 23rd March,2020.**

**Topic:** Apportionment of input tax credit (ITC) in cases of business reorganization under section 18 (3) of CGST Act read with rule 41(1) of CGST Rules - reg.

**SKKA Comments:**

According to sub-section (3) of section 18 of the CGST Act, "Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilized in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed."

Further, according to sub-rule (1) of rule 41 of the CGST Rules: "A registered person shall, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason, furnish the details of sale, merger, demerger, amalgamation, lease or transfer of business, in FORM GST ITC-02, electronically along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee: Provided that in the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.

- For the purpose of this sub-rule, it is hereby clarified that the "value of assets" means the value of the entire assets of the business, whether or not input tax credit has been availed thereon.

The Board clarifies hereby the issue in respect of apportionment and transfer of ITC in the event of merger, demerger, amalgamation or change in the constitution/ownership of business –

| S.No. | Issue   | Clarification  |
|-------|---|--|
| 1     | In case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme. However, it is not clear as to whether the value of assets of the new units is to be considered at State level or all-India level. | Under CGST Act, a person/ company is required to obtain separate registration in different States and each such registration is considered a distinct person for the purpose of the Act. Accordingly, for the purpose of apportionment of ITC pursuant to a demerger under sub rule (1) of rule 41 of the CGST Rules, the value of assets of the new units is to be taken at the State level (at the level of distinct person) and not at the all-India level. |
| 2     | Is the transferor required to file FORM GST ITC – 02 in all States where it is registered?  | No. The transferor is required to file FORM GST ITC-02 only in those States where both transferor and transferee are registered.   |

|   |  |  |
|---|--|--|
| 3 | The proviso to rule 41 (1) of the CGST Rules explicitly mentions 'demerger'. Other forms of business reorganization where part of business is hived off or business is transferred as a going concern etc. have not been covered in the said rule. Wherever business reorganization results in partial transfer of business assets along with liabilities, whether the proviso to rule 41(1) of the CGST Rules, 2017 shall be applicable to calculate the amount of transferable ITC ? | Yes, the formula for apportionment of ITC, as prescribed under proviso to sub-rule (1) of rule 41 of the CGST Rules, shall be applicable for all forms of business re-organization that results in partial transfer of business assets along with liabilities.   |
| 4 | Whether the ratio of value of assets, as prescribed under proviso to rule 41 (1) of the CGST Rules, shall be applied in respect of each of the heads of input tax credit viz. CGST/ SGST/ IGST/ Cess?  | No, the ratio of value of assets shall be applied to the total amount of unutilized input tax credit (ITC) of the transferor i.e. sum of CGST, SGST/UTGST and IGST credit. The said formula need not be applied separately in respect of each heads of ITC (CGST/SGST/IGST). Further, the said formula shall also be applicable for apportionment of Cess between the transferor and transferee.   |
| 5 | How to determine the amount of ITC that is to be transferred to the transferee under each tax head (IGST/CGST/SGST) while filing of FORM GST ITC-02 by the transferor?   | the transferor shall be at liberty to determine the amount to be transferred under each tax head (IGST, CGST, SGST/UTGST) within this total amount, subject to the ITC balance available with the transferor under the concerned tax head. It should be transferred in such way under each head so that the sum of itc under each head does not exceed the total amount eligible to be transferred.  |
| 6 | it is not clear as to which date shall be relevant to calculate the amount of unutilized ITC balance of transferor.  | Rule 41 of the CGST Rules prescribes that the registered person shall file the details in FORM GST ITC-02 for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee. This implies that the apportionment formula shall be applied on the ITC balance of the transferor as available in electronic credit ledger on the date of filing of FORM GST ITC - 02 by the transferor.  |
| 7 | Which date shall be relevant to calculate the ratio of value of assets, as prescribed in the proviso to rule 41 (1) of the CGST Rules, 2017?   | The ratio of the value of assets should be taken as on the "appointed date of demerger". <b>"Appointed date of demerger" is the date from which the scheme for demerger comes into force and it is specified in the respective scheme of demerger.</b> In other words, for the purpose of apportionment of ITC, while the ratio of the value of assets should be taken as on the "appointed date of demerger", the said ratio is to be applied on the ITC balance of the transferor on the date of filing FORM GST ITC - 02 to calculate the amount to transferable ITC. |

**Circular No. 134/04/2020 - GST dated. 23rd March,2020.**

**Topic:** Clarification in respect of issues under GST law for companies under Insolvency and Bankruptcy Code, 2016 - Reg.

**SKKA Comments:**

Board hereby clarifies various issues being faced by entities covered under Insolvency & Bankruptcy Code, 2016 in the table below:-

| S.No. | Issue  | Clarification   |
|-------|--|---|
| 1     | How are dues under GST for pre-CIRP period be dealt? | The dues of the period prior to the commencement of CIRP will be treated as 'operational debt' and claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC. The tax officers shall seek the details of supplies made / received and total tax dues pending from the corporate debtor to file the claim before the NCLT. Moreover, section 14 of the IBC mandates the imposition of a moratorium period, wherein the institution of suits or continuation of pending suits or proceedings against the corporate debtor is prohibited. |

|   |   |  |
|---|---|--|
| 2 | Should the GST registration of corporate debtor be cancelled?   | GST registration should not be cancelled under the provisions of section 29 of the CGST Act, 2017. The proper officer may, if need be, suspend the registration. In case the registration of an entity undergoing CIRP has already been cancelled and it is within the period of revocation of cancellation of registration, it is advised that such cancellation may be revoked by taking appropriate steps in this regard.   |
| 3 | Is IRP/RP liable to file returns of pre-CIRP period?  | No. In accordance with the provisions of IBC, 2016, the IRP/RP is under obligation to comply with all legal requirements for period after the Insolvency Commencement Date. Accordingly, it is clarified that IRP/RP are not under an obligation to file returns of pre-CIRP period.   |
| 4 | Should a new registration be taken by the corporate debtor during the CIRP period?  | The corporate debtor who is undergoing CIRP is to be treated as a distinct person of the corporate debtor and shall be liable to take a new registration in each State or Union territory where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP. Further, in cases where the IRP/RP has been appointed prior to the issuance of notification No.11/2020- Central Tax, dated 21.03.2020, he shall take registration within 30 days of issuance of the said notification, with effect from date of his appointment as IRP/RP. |
| 5 | How to file First Return after obtaining new registration?  | The IRP/RP will be liable to furnish returns, make payment of tax and comply with all the provisions of the GST law during CIRP period. The IRP/RP is required to ensure that the first return is filed under section 40 of the CGST Act, for the period beginning the date on which it became liable to take registration till the date on which registration has been granted.   |
| 6 | How to avail ITC for invoices issued to the erstwhile registered person in case the IRP/RP has been appointed before issuance of notification No.11/2020- Central Tax, dated 21.03.2020 and no return has been filed by the IRP during the CIRP | The said class of persons shall, in his first return, be eligible to avail input tax credit on invoices covering the supplies of goods or services or both, received since appointment as IRP/RP and during the CIRP period but <b>bearing the GSTIN of the erstwhile registered person</b> , subject to the conditions of Chapter V of the CGST Act and rule made thereunder. This exception is made only for the first return filed under section 40 of the CGST Act.  |
| 7 | How to avail ITC for invoices by persons who are availing supplies from the corporate debtors undergoing CIRP, in cases where the IRP/RP was appointed before the issuance of the notification No.11/2020 - Central Tax, dated 21.03.2020?      | Registered persons who are receiving supplies from the said class of persons shall, for the period from the date of appointment of IRP / RP till the date of registration as required in this notification or 30 days from the date of this notification, whichever is earlier, be eligible to avail input tax credit on invoices issued using the GSTIN of the erstwhile registered person  |
| 8 | Some of the IRP/RPs have made deposit in the cash ledger of erstwhile registration of the corporate debtor. How to claim refund for amount deposited in the cash ledger by the IRP/RP?  | Any amount deposited in the cash ledger by the IRP/RP, in the existing registration, from the date of appointment of IRP / RP to the date of notification specifying the special procedure for corporate debtors undergoing CIRP, shall be available for refund to the erstwhile registration under the head refund of cash ledger, even though the relevant FORM GSTR-3B/GSTR-1 are not filed for the said period.  |

**Circular No. 135/05/2020 - GST dated. 31<sup>st</sup> March,2020.**

**Topic:** Clarification on refund related issues – Reg.

**SKKA Comments:**

**Bunching of refund claims across Financial Years –**

As per para 8 of Circular No. 125/44/2019-GST dated. 18-11-2019, The applicant, at his option, may file a refund claim for a tax period or by clubbing successive tax periods. The period cannot spread across different financial years. Registered persons having aggregate turnover of up to Rs. 1.5 crore in the preceding financial year or the current financial year opting to file FORM



GSTR-1 on quarterly basis, can only apply for refund on a quarterly basis or clubbing successive quarters as aforesaid. However, refund claims under categories listed at (a), (c), (e) of para 3 of Circular 125/44/2019 must be filed by the applicant chronologically. i.e.

(a) Refund of unutilized ITC on account of exports without payment of tax,

(c) Refund of unutilized ITC on account of supplies made to SEZ Unit/SEZ Developer without payment of tax.

(e) Refund of unutilized ITC on account of accumulation due to inverted tax structure.

This means that an applicant, after submitting a refund application under any of these categories for a certain period, shall not be subsequently allowed to file a refund claim under the same category for any previous period. This principle / limitation, however, shall not apply in cases where a fresh application is being filed pursuant to a deficiency memo having been issued earlier.

The issue has been examined and it has been decided to remove the restriction on clubbing of tax periods across Financial Years. Accordingly, Circular No. 125/44/2019-GST dated 18.11.2019 stands modified to that extent i.e. **the restriction on bunching of refund claims across financial years shall not apply.**

#### **Refund of accumulated input tax credit (ITC) on account of reduction in GST Rate-**

Refund of accumulated ITC as per sub-section (3) of section 54 of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. However, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of sub-section (3) of section 54 of the CGST Act. Therefore, a person would not get refund of accumulated ITC for inverted duty structure where Input and Output supplies are same.

#### **Change in manner of refund of tax paid on supplies other than zero rated supplies –**

For the refund of tax paid falling in categories specified at S. No. (i) to (l) of para 3 of Circular No. 125/44/2019 i.e.

(i) Refund of excess payment of tax

(j) Refund of tax paid on intra-State supply which is subsequently held to be inter State supply and viceversa

(k) Refund on account of assessment/provisional

assessment/appeal/any other order

(l) Refund on account of “any other” ground or reason.

no separate debit of ITC from electronic credit ledger is required to be made by the applicant at the time of filing refund claim, being claim of tax already paid. However, the total tax would have been normally paid by the applicant by debiting tax amount from both electronic credit ledger and electronic cash ledger. At present, in these cases, the amount of admissible refund, is paid in cash even when such payment of tax or any part thereof, has been made through ITC. As this could lead to allowing unintended encashment of credit balances, this issue has been engaging attention of the Government.

Now, Board clarifies that any such refund of tax paid on supplies other than zero rated supplies will now be admissible proportionately in the respective original mode of payment i.e. in cases of refund, where the tax to be refunded has been paid by debiting both electronic cash and credit ledgers, the refund to be paid in cash and credit shall be calculated in the same proportion in which the cash and credit ledger has been debited for discharging the total tax liability for the relevant period for which application for refund has been filed. Such amount shall be accordingly paid by issuance of order in **FORM GST RFD-06** for amount refundable in cash and **FORM GST PMT-03** to re-credit the amount attributable to credit as ITC in the electronic credit ledger.

#### **Guidelines for refunds of Input Tax Credit under Section 54(3) –**

The refund of ITC availed in respect of invoices not reflected in FORM GSTR-2A was also admissible and copies of such invoices were required to be uploaded. However, in wake of insertion of sub-rule (4) to rule 36 of the CGST Rules, 2017 various references have been received from the field formations regarding admissibility of refund of the ITC availed on the invoices which are not reflecting in the FORM GSTR-2A of the applicant.

It has been decided that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant.

#### **New Requirement to mention HSN/SAC in Annexure 'B' –**

HSN wise details of goods and services are not available in FORM GSTR-2A and therefore it becomes very

difficult to distinguish ITC on capital goods and/or input services out of total ITC for a relevant tax period. This is important as refund of credit on Capitalgoods and/or services is not permissible in certain cases. it has been decided to amend the statement of invoices relating toinward supply as provided in Annexure–B of the circular No. 125/44/2019-GST dated 18.11.2019 i.e.

HSN/SAC Code should be added in the statement to easily identify between the supplies of goods and services. In cases where supplier is not mandated to mention HSN/SAC code on invoice, the applicant need not mention HSN/SAC code in respect of such an inward supply.

### **Circular No. 136/06/2020 - GST dated. 3<sup>rd</sup> April,2020.**

**Topic:Various measures announced by Government for providing relief to taxpayers in view ofCovid-19.**

#### **SKKA Comments:**

#### **Various Reliefs –**

| SL No. | Notification   | Remarks  |
|--------|--|--|
| 1      | Notification No. 30/2020-Central Tax, dated 03.04.2020 | Taxpayers opting for Composition Scheme have option to file CMP-02 till 30 <sup>th</sup> June,2020 and allowed cumulative application of Rule 36(4) from Feb'20 to Aug'20 in return of Sept'20.  |
| 2      | Notification No. 31/2020-Central Tax, dated 03.04.2020 | For turnover less than 5Cr. Nil rate of Interest. For turnover more than 5Cr. Nil For 1 <sup>st</sup> 15 days thereafter 9% upto 24/06/20 for period Feb'20 to Apr'20. this shall be subject to filing of returns within dates as notified in this notification. |
| 3      | Notification No. 32/2020-Central Tax, dated 03.04.2020 | Late fee shall be waived for late filing GSTR-3B for period Feb'20 to April'20 provided the return shall be filed within the dates as notified in Notification.  |
| 4      | Notification No. 33/2020-Central Tax, dated 03.04.2020 | Waiver of late fee for delay in furnishing the FORM GSTR-1 for taxpayers for the tax periods March 2020 to May, 2020 and for quarter ending 31st March 2020 if the same are furnished on or before 30th day of June, 2020.                                       |
| 5      | Notification No. 34/2020-Central Tax, dated 03.04.2020 | Extension of due date of furnishing Form GST CMP08 for payment of self-assessed tax for the quarter ending 31st March, 2020 till the 7th day of July, 2020 and filing FORM GSTR-4 for the financial year ending 31st March, 2020 till the 15th day of July, 2020 |
| 6      | Notification No. 35/2020-Central Tax, dated 03.04.2020 | Extension of due dates of compliances falling between the period from 20 <sup>th</sup> march'20 to 29 <sup>th</sup> June,20 to 30 <sup>th</sup> June'20.   |

#### **Clarification of various issues –**

| S.No. | Issues   | Clarification   |
|-------|--|---|
| 1     | Measure taken for person who opting for Composition Scheme | (a) The said class of person have been allowed to –<br>(1) furnish the statement of details of payment of self-assessed tax in FORM GST CMP-08 for the quarter January to March 2020 by 07.07.2020; and (2) furnish the return in FORM GSTR-4 for the financial year 2019-20 by 15.07.2020.<br>(b) taxpayers opting for the composition scheme for the financial year 2020-21, have been allowed, to- (1) file an intimation in FORM GST CMP-02 by 30.06.2020; and (2) furnish the statement in FORM GST ITC-03 till 31.07.2020 |

|     |   |   |
|-----|---|---|
| 2   | Whether due date of furnishing FORM GSTR-3B for the months of February, March and April 2020 has been extended?   | The due dates for furnishing FORM GSTR-3B for the months of February, March and April 2020 has not been extended through any of the notifications referred in para 2 above. However, as per notification No. 31/2020- Central Tax, dated 03.04.2020, NIL rate of interest for first 15 days after the due date of filing return in FORM GSTR-3B and reduced rate of interest @ 9% thereafter has been notified for those registered persons whose aggregate turnover in the preceding financial year is above Rs. 5 Crore. Nil rate of Interest for persons having turnover less than 5 Crore. Late fee also waived but this would be available only if due tax is paid by filing return in FORM GSTR-3B by the date(s) as specified in the Notification. |
| 3   | Condition for availing reduced rate of Interest for persons having turnover more than 5 Crore.  | The rate of interest has been notified as Nil for first 15 days from the due date, and 9 per cent per annum thereafter, for the said months. The reduced rate of interest is subject to the condition that the registered person must furnish the returns in FORM GSTR-3B on or before 24th day of June 2020. If GSTR – 3B not filed upto 24 <sup>th</sup> June,20 then interest at 18% per annum shall be payable from the due date of return, till the date on which the return is filed. In addition, regular late fee shall also be leviable for such delay along with liability for penalty.   |
| 4   | How to calculate the interest for late payment of tax for the months of February, March and April 2020 for persons whose turnover is greater than 5 Crore?  | Nil rate for 1 <sup>st</sup> 15 days then @ 9% upto 24.06.2020. if return filed after 24.06.2020. then rate of Interest @ 18% from due date of return to date of filing of return.  |
| 5   | Conditions for availing the NIL rate of interest for the months of February, March and April 2020, for a registered person whose aggregate turnover in preceding financial year is up to Rs. 5 Crore? | The conditions for availing the NIL rate of interest is that the registered person must furnish the returns in FORM GSTR-3B on or before the date as mentioned in the notification No. 31/2020-Central Tax, dated 03.04.2020. If returns are not furnished on or before the date mentioned in the notification then interest at 18% per annum shall be charged from the due date of return, till the date on which the return is filed. In addition, regular late fee shall also be leviable for such delay along with liability for penalty.   |
| 6   | Whether the due date of furnishing FORM GSTR-1 under section 37 has been extended for the months of February, March and April 2020?   | No. Only late fee has been waived for delay in furnishing the FORM GSTR-1 for the tax periods March, 2020, April 2020, May, 2020 and quarter ending 31st March 2020 if the same are furnished on or before the 30th day of June, 2020.  |
| 7   | Whether restriction under rule 36(4) of the CGST Rules would apply during the lockdown period?  | The return in FORM GSTR-3B for the tax period of September 2020 shall be furnished with cumulative adjustment of input tax credit for the said months i.e. from Feb'20 to Aug'20 in accordance with the condition under rule 36(4).   |
| 8   | What will be the status of e-way bills which have expired during the lockdown period?   | The validity of E-way bill which expires during 20 <sup>th</sup> march to 15 <sup>th</sup> April'20 shall be extended till the 30 <sup>th</sup> day of April,2020.  |
| 9   | Measures taken for taxpayers who are required to deduct tax at source under section 51, Input Service Distributors and Non-resident Taxable persons   | The said class of taxpayers have been allowed to furnish the respective returns for the months of March 2020 to May 2020 on or before the 30th day of June 2020.  |
| 10. | Measures taken for taxpayers who are required to collect tax at source under section 52   | The said class of taxpayers have been allowed to furnish the statement specified in section 52, for the months of March 2020 to May 2020 on or before the 30th day of June 2020.  |
| 11. | The time limit for compliance of some of the provisions of the CGST Act is falling during the lock-down period announced by the Government. What should the taxpayer do?                              | Time limit for completion or compliance of any action which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020, and where completion or compliance of such action has not been made within such time, has been extended to 30th day of June, 2020.  |

**Circular No. 137/07/2020 - GST dated. 13<sup>th</sup> April,2020.****SKKA Comments:****Clarification on various issue –**

| <b>S.No</b> | <b>Issues</b>   | <b>Clarification</b>   |
|-------------|---|--|
| 1           | Advance is received for services contract which got cancelled the supplier has issued the invoice before supply of service and paid the GST thereon. Whether he can claim refund of tax paid or is he required to adjust this tax liability in his returns ?  | In this case, Supplier is required to issue credit note. He shall declare the details of such credit note in the return for the month in which credit note is issued. There is no need to file separate refund claim. However, in the case where is no output liability against which credit note can be adjusted then, in such situation supplier can claim refund of tax paid under "Excess payment of tax" through FORM GST RFD-01.   |
| 2           | An advance is received for a Service contract which got cancelled. The supplier has issued receipt voucher and paid the GST on such advance received. Whether he can claim refund of tax paid on advance or he is required to adjust his tax liability in his returns?                                    | He is required to issue a "refund voucher" in terms of section 31 (3) (e) of the CGST Act read with rule 51 of the CGST Rules. The taxpayer can apply for refund of GST paid on such advances by filing FORM GST RFD-01 under the category "Refund of excess payment of tax".  |
| 3           | Goods supplied by a supplier after issue of tax invoice are returned by the recipient. Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns?  | In this case, Supplier is required to issue credit note. He shall declare the details of such credit note in the return for the month in which credit note is issued. There is no need to file separate refund claim. However, in the case where is no output liability against which credit note can be adjusted then, in such situation supplier can claim refund of tax paid under "Excess payment of tax" through FORM GST RFD-01.   |
| 4           | Letter of Undertaking (LUT) furnished for the purposes of zero-rated supplies has expired on 31.03.2020. Whether a registered person can still make a zero-rated supply on such LUT and claim refund accordingly or does he have to make such supplies on payment of IGST and claim refund of such IGST ? | As per notification No. 35/2020 Central Tax dated 03.04.2020, where the requirement under the GST Law for furnishing of any report, document, return, statement or such other record falls during between the period from 20.03.2020 to 29.06.2020, has been extended till 30.06.2020. Therefore, time limit for filing of LUT for the year 2020-21 shall stand extended to 30.06.2020 and the taxpayer can continue to make the supply without payment of tax under LUT provided that the FORM GST RFD-11 for 2020-21 is furnished on or before 30.06.2020. Taxpayers may quote the reference no of the LUT for the year 2019-20 in the relevant documents. |
| 5           | Whether the date of deposit of TDS payment has also been extended vide notification N. 35/2020-Central Tax dated 03.04.2020?  | The due date for furnishing of return in FORM GSTR-7 along with deposit of tax deducted for the said period has also been extended till 30.06.2020 and no interest under section 50 shall be leviable if tax deducted is deposited by 30.06.2020.  |
| 6           | As per section 54 (1), a person is required to make an application before expiry of two years from the relevant date. If in a particular case, date for making an application for refund expires on 31.03.2020, can such person make an application for refund before 29.07.2020?                         | As per notification No. 35/2020 dated 03.04.2020, where the timeline for any compliance required as per sub-section (1) of section 54 of the CGST Act, 2017 falls during the period from 20.03.2020 to 29.06.2020, the same has been extended till 30.06.2020. Accordingly, the due date for filing an application for refund falling during the said period has also been extended till 30.06.2020.   |

## FROM THE DESK OF GENERAL SECRETARY ACTIVITIES SINCE 01.01.2020

| Date                       | Name of Programme  | Speaker  |
|----------------------------|--|--|
| 14.01.2020                 | S. C. meeting on "Assessment of income under section 115BBE (Demonetisation period) and penalty provisions as per section 271AAC." at DTPA Conference Hall                                       | CA Anand Kr. Tibrewal  |
| 16.01.2020                 | DTPA Jointly programme with MCC, BCC, CCC & ACAE at Oberoy Grand Hotel, Special Session & Interaction with Shri Anurag Singh Thakur, Hon'ble Minister for State for Finance & Corporate Affairs. |  |
| 16.01.2020                 | Gazal Programme at Shisha  |  |
| 26.01.2020                 | DTPA Picnic at Kalyan Bharati Foundation (Heritage Project Kheadaha, Challapara, Kolkata - 700150)   |  |
| 29.01.2020                 | Saraswati Puja at DTPA CONFERENCE HALL   |  |
| 01.02.2020                 | Live Budget meeting at DTPA Conference Hall  | CA Anand Kr. Tibrewal<br>& CA Ankit Kanodia  |
| 02.02.2020                 | Inter Study Circle Cricket Tournament at Space Circle Club   |  |
| 03.02.2020                 | Union Budget meeting at Kalamandir   | Sr. Adv. N. K. Poddar,<br>Adv. K. Vaitheeswaran,<br>CA. Naveen Khariwal &<br>Prof. Suman Mukherjee |
| 22.02.2020 &<br>23.02.2020 | Residential Conclave at Holiday INN, Ulberia   | Adv. Narendra Kumar Jain,<br>CA Ashok Shah & CA. Vivek Agarwal                                     |
| 28.02.2020                 | Third Meeting of the Executive Committee at DTPA Conference Hall   |  |
| 05.03.2020                 | "Vivad Se Vishwas Scheme"  | Adv. Shri S. M. Surana   |
| 16.03.2020                 | Seminar Jointly with Business Standard on Alternate Tax Regime, Changes in TDS and TCS Provisions and Vivad Se Vishwas Scheme.   | Adv. Narayan Jain,<br>Adv. RD Kakra and CA. Sunil Surana   |



## DTPA NEW MEMBERS LIST APPROVED ON 28.02.2020

| SL. NO. | NAME                    | QUALIFICATION  | PROPOSED BY             |
|---------|-------------------------|--|-------------------------|
| 1       | MS. SAVITACHOUDHARY     | B.COM, C.A., DISA                                      | MR. SAJJAN KR. SULTANIA |
| 2       | MR. DEVANSH BHOTIKA     | CA.  | MR. SHYAMAGARWAL        |
| 3       | MR. VIKASH SHARMA       | ACA, B.COM(H), CFA                                     | MR. N. K. GOYAL         |
| 4       | MR. RAHUL SURANA        | B.COM(H), CA   | MR. ANAND KR. GUPTA     |
| 5       | MR. SANTOSH KR. AGRAWAL | FCA, B.COM(H)  | MR. VISHNU LOHIA        |
| 6       | MS. VIDHI CHANDAK       | B.COM, FCA, DISA(ICAI),<br>REGISTERED VALUER(SFA)-IBBI | MR. M. C. JAGWAYAN      |
| 7       | MR. SIDDHRTH PARAKH     | FCA, CS, ACMA, M.COM, DISA(ICAI)                       | MR. RAVINDRAAGARWAL     |
| 8       | MR. MANOJAGARWALA       |  | MR. RAJESHAGRAWAL       |





## S. C. Meeting on “Assessment of income under section 115BBE (Demonetisation period) and penalty provisions as per section 271AAC.” at DTPA Conference Hall on 14th January, 2020



## DTPA Jointly programme with MCC, BCC, CCC & ACAE at Oberoy Grand Hotel, Special Session & Interaction with Shri Anurag Singh Thakur, Hon'ble Minister for State for Finance & Corporate Affairs on 16th January, 2020





## Live Budget meeting at DTPA Conference Hall on 1st February 2020



## Union Budget meeting at Kalamandir on 3rd February 2020







## Residential Conclave at Holiday INN , Ulberia on 22nd & 23rd February 2020



## “Vivad Se Vishwas Scheme” on 5th March 2020



**Seminar Jointly with Business Standard on Alternate Tax Regime, Changes in TDS and TCS Provisions and Vivad Se Viswas Scheme on 16th March 2020**



**Direct Taxes Professionals' Association**

(Registered under Societies Registration Act, 1961. Registration No. S/60583 of 1988-89)

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