

Gist of Direct  
tax, Indirect  
tax,  
Internation al  
Tax, RBI,  
Company  
Law  
Provisions for  
March 2020

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# Measures to combat COVID-19

Prime Minister calls for complete lockdown of entire nation till 14th April 2020



Prime Minister Shri Narendra Modi called for a complete lockdown of the entire nation for 21 days beginning at midnight of 24th March 2020 in an effort to contain the COVID-19 Pandemic.

In a special televised address to the Nation the Prime Minister said that even those nations with the best of the medical facilities could not contain the virus and that Social Distancing is the only option to mitigate it.

“All of you are also witnessing how the most advanced countries of the world have been rendered absolutely helpless by this pandemic. It is not that these countries are not putting in adequate efforts or they lack resources. The Coronavirus is spreading at such a rapid pace that despite all the preparations and efforts, these countries are finding it hard to manage the crisis. The analysis of happenings in all these countries since the last 2 months, and the opinion of experts has proved that there is only one way to effectively deal with Coronavirus - Social Distancing” he said.

Cautioning of those who are careless, the Prime Minister said, “carelessness of a few, ill- conceived notions of a few can put you, your children, your parents, your family, your friends, the entire country in grave jeopardy. It will be impossible to estimate the price India will have to pay if this carelessness continues.”

He also urged the people to take the lockdown imposed by the State Governments in several parts of the country, in the last few days with utmost sincerity.

Prime Minister announced that from midnight of 24th March 2020 onwards, the entire country shall go under complete lockdown, a total ban is being imposed on people, from stepping out of their homes for a period of 21 days.

He said this decision was taken from the experiences of health sector experts and experiences of other countries and that 21 days is essential to break the chain of infection. He said this decision is vital in order to protect the country, and each of its citizens against Corona Pandemic.

# Measures to combat COVID-19

Discussing the economic impact owing to the Pandemic, the Prime Minister said, “The nation will have to certainly pay an economic cost because of this lockdown. However, to save the life of each and every Indian is our top most priority. Hence, it is my plea to you to continue staying wherever you are right now in the country.” The Prime Minister explained that if the situation is not brought under control in the next 3 weeks, the country could go back 21 years and that several families would be devastated forever. Hence, he urged the people to do just one thing in the next 21 days -stay inside their homes.

The Prime Minister said the experiences of those countries that have been able to contain Corona offer some ray of hope.

He said that those countries that observed lockdown and where people adhered to the rules are able to surmount the pandemic.

The Prime Minister said the Central and State Governments countrywide are working swiftly to ensure that citizens do not face much inconvenience in their daily life. He said that provisions have been made to ensure supplies of all essential items continue smoothly. He added that along with the Central and State Governments, individuals from civil societies and institutions are constantly striving to reduce the problems of the poor during this period of crisis.

Shri Modi announced that the Government has provided Rupees Fifteen Thousand Crore (Rs 15,000,00,00,000) for strengthening the medical infrastructure and treatment of the Corona infected patients.

He appealed to the people to beware of any kind of rumours or superstitions circulating during such times. He requested the people not to take any medication without consulting doctors if they are showing any symptoms of this infection. He expressed confidence of every Indian abiding by the instructions of the Government and local authorities during this crucial hour.

The Prime Minister concluded though 21 days of lockdown is a long time, but it is equally essential for everybody's safety. He expressed confidence that every Indian will not only successfully fight this difficult situation but also emerge victorious.

Press release dated 24th March 2020.

# Measures to combat COVID-19

Finance Minister announces several relief measures relating to Statutory and Regulatory compliance matters across sectors



The Union Finance & Corporate Affairs Minister Smt. Nirmala Sitharaman on 24th March 2020 announced several important relief measures taken by the Government of India in view of COVID-19 outbreak, especially on statutory and regulatory compliance matters related to several sectors.

While addressing the press conference through video conferencing, Smt. Sitharaman announced much-needed relief measures in areas of Income-tax, GST, Customs & Central Excise, Corporate Affairs, Insolvency & Bankruptcy Code (IBC) Fisheries, Banking Sector and Commerce.

The Minister of State for Finance & Corporate Affairs Shri Anurag Singh Thakur was also present besides Shri A.B.Pandey, Finance Secretary and Shri Atanu Chakraborty, Secretary, Department of Economic Affairs.

Following are the decisions with respect to statutory and regulatory compliance matters related to various sectors:

## Direct Tax

- Extend last date for income tax returns for Financial Year (FY) 2018-19 from 31st March 2020 to 30th June 2020
- Aadhaar-PAN linking date to be extended from 31st March 2020 to 30th June 2020
- Vivad se Vishwas scheme – no additional 10% amount, if payment made by 30th June 2020 (Scheme explained in details later)
- Due dates for issue of notice, intimation, notification, approval order, sanction order, filing of appeal, furnishing of return, statements, applications, reports, any other documents and time limit for completion of proceedings by the authority and any compliance by the taxpayer including investment in saving instruments or investments for roll over benefit of capital gains under Income-tax Act, Wealth Tax Act, Prohibition of Benami Property Transaction Act, Black Money Act, Securities Transaction Tax law (STT), Commodities Transaction Tax (CTT) Law, Equalization Levy law, Vivad Se Vishwas law where the time limit is expiring between 20th March 2020 to 29th June 2020 shall be extended to 30th June 2020
  - For delayed payments of advanced tax, self-assessment tax, regular tax, tax deducted / collected at source (TDS / TCS), equalization levy, STT, CTT made between 20th March 2020 and 30th June 2020, reduced interest rate @ 9% instead of 12% / 18% per annum (i.e. 0.75% per month instead of 1 / 1.5% per month) will be charged for this period. No late fee/ penalty shall be charged for delay relating to this period
- Necessary legal circulars and legislative amendments shall be issued in due course

[http://cajatinminocha.com/Image/Income\\_Tax\\_Ordinance.pdf](http://cajatinminocha.com/Image/Income_Tax_Ordinance.pdf)

# Measures to combat COVID-19

## Indirect Tax

- Those having aggregate annual turnover < Rs. 5 Crore - last date for filing form GSTR-3B due in March, April and May 2020 by last week of June, 2020. No interest, late fee, and penalty to be charged
- Others can file returns due in March, April and May 2020 by last week of June 2020 but the same would attract reduced rate of interest @ 9% per annum from 15 days after due date (current interest rate is 18% per annum). No late fee and penalty to be charged, if complied before till 30th June 2020
- Date for opting for composition scheme extended till the last week of June, 2020. Further, the last date for making payments for the quarter ending 31st March, 2020 and filing of return for 2019-20 by the composition dealers will be extended till the last week of June 2020
- Date for filing GST annual returns for FY 2018-19, which is due on 31st March, 2020 is extended till the last week of June 2020
- Due date for issue of notice, notification, approval order, sanction order, filing of appeal, furnishing of return, statements, applications, reports, any other documents, time limit for any compliance under the GST laws where the time limit is expiring between 20th March 2020 to 29th June 2020 shall be extended to 30th June 2020
- Necessary legal circulars and legislative amendments to give effect to the aforesaid GST relief shall follow with the approval of GST Council
- Payment date under Sabka Vishwas Scheme shall be extended to 30th June, 2020. No interest for this period shall be charged if paid by 30th June, 2020

## Customs

- 24X7 Custom clearance till end of 30th June 2020
- Due date for issue of notice, notification, approval order, sanction order, filing of appeal, furnishing applications, reports, any other documents etc., time limit for any compliance under the Customs Act and other allied Laws where the time limit is expiring between 20th March 2020 to 29th June 2020 shall be extended to 30th June 2020

## Financial Services

- Relaxations for 3 months:
  - ? Debit cardholders to withdraw cash for free from any other banks' ATM for 3 months
  - ? Waiver of minimum balance fee
  - ? Reduced bank charges for digital trade transactions for all trade finance consumers

# Measures to combat COVID-19

## Corporate Affairs

- No additional fees shall be charged for late filing during a moratorium period from 1st April to 30th September 2020. in respect of any document, return, statement etc., required to be filed in the MCA-21 Registry, irrespective of its due date which will not only reduce the compliance burden, including financial burden of companies/ LLPs at large, but also enable long-standing non-compliant companies/LLPs to make a 'fresh start'
- The mandatory requirement of holding meetings of the Board of Directors within prescribed interval of 120 days provided in the Companies Act 2013, shall be extended by 60 days till next two quarters i.e., till 30th September
- Companies (Auditor's Report) Order, 2020 shall be made applicable from FY 2020-21 instead of 2019-20 Notified earlier. This will significantly ease the burden on companies and their auditors for the year 2019-20
- As per Schedule 4 to the Companies Act, 2013, Independent Directors (IDs) are required to hold at least 1 meeting without the attendance of Non-independent directors and members of management. For the year 2019-20, if the IDs of a company have not been able to hold even 1 meeting, the same shall not be viewed as a violation
- Requirement to create a Deposit reserve of 20% of deposits maturing during the FY 2020-21 before 30th April 2020 shall be allowed to be complied with till 30th June 2020
- Requirement to invest 15% of debentures maturing during a particular year in specified instruments before 30th April 2020 may be done so before 30th June 2020
- Newly incorporated companies are required to file a declaration for Commencement of Business within 6 months of incorporation. An additional time of 6 more months shall be allowed.
- Non-compliance of minimum residency in India for a period of at least 182 days by at least 1 director of every company u/s 149 of the Companies Act, shall not be treated as a violation
- Due to the emerging financial distress faced by most companies on account of the large-scale economic distress caused by COVID 19, it has been decided to raise the threshold of default u/s 4 of the Insolvency and Bankruptcy Code (IBC) 2016 to Rs. 1 crore (from the existing threshold of Rs 1 lakh). This will by and large prevent triggering of insolvency proceedings against micro small and medium enterprises (MSMEs). If the current situation continues beyond 30th April 2020, Government may consider suspending sections 7, 9 and 10 of the IBC 2016 for a period of 6 months so as to stop companies at large from being forced into insolvency proceedings in such force majeure causes of default.
- Detailed notifications/circulars to be issued by the Ministry of Corporate Affairs separately.

## Department of Fisheries

- All Sanitary Permits (SIPs) for import of SPF Shrimp Brood stock and other Agriculture inputs expiring between 1st March 2020 to 15th April 2020 extended by 3 months
- Delay up to 1 month in arrival of consignments to be condoned
- Rebooking of quarantine cubicles for cancelled consignments in Aquatic Quarantine Facility (AQF) Chennai without additional booking charges
- The verification of documents and grant of No-Objection Certificate (NOC) for Quarantine relaxed from 7 to 3 days

## Department of Commerce

Extension of timelines for various compliance and procedures will be given. Detailed notifications will be issued by Ministry of Commerce.

Press release dated 24th March 2020

[http://cajatinminocha.com/resource/Covid19\\_FM\\_Package.aspx](http://cajatinminocha.com/resource/Covid19_FM_Package.aspx)

# Measures to combat COVID-19

Ministry of Corporate Affairs (MCA) – Relaxation in matters relating to Board Meetings, filing by companies to confirm readiness, Corporate Social Responsibility (CSR), other compliances for Companies and Limited Liability Partnerships (LLPs)

## A. Board meetings

Companies were required to conduct physical Board Meetings for the matters related to approval of financial statements, Board reports and for restructuring etc. Government has relaxed the requirement of holding Board meetings with physical presence of directors. Such meetings may till 30th June 2020 be held through video conferencing or other audio visual means.

Circular dated 19th March 2020.

## B. Web form to confirm readiness to deal with COVID-19

MCA has deployed a simple web form for Companies / LLPs to confirm their readiness to deal with the threat. The web form named CAR (Company Affirmation of Readiness towards COVID -19) should be filed by Companies and LLPs till 30th March 2020. No statutory fee is payable for filing this form. It has been deployed as purely a confidence building measure to assess readiness of companies to deal with the threat. No penalty or enforcement related action is applicable.

[http://cajatinminocha.com/resource/CAR\\_Form.aspx](http://cajatinminocha.com/resource/CAR_Form.aspx)

## C. Clarification on spending of Corporate Social Responsibility (CSR) Funds

Spending of CSR funds for COVID 19 has been termed as an eligible CSR activity. Funds may be spent for various activities relating to promotion of health-care

(including preventive health-care), sanitation and disaster management. Circular dated 23rd March 2020.





# Measures to combat COVID-19

D. Other special measures under Companies Act, 2013 and Limited Liability Partnership Act, 2008 to reduce compliance burden and other risks

- No additional fee shall be charged for late filing during a moratorium period from 1st April to 30th September 2020, in respect of any document, return, statement etc., required to be filed in the MCA-21 Registry, irrespective of its due date, which will not only reduce the compliance burden, including financial burden of companies / LLPs at large, but also enable long-standing noncompliant companies / LLPs to make a 'fresh start'.

- Mandatory requirement of holding Board meetings within 120 days' intervals stands extended by 60 days till next two quarters i.e., till 30th September. Accordingly, as a one-time relaxation the gap between 2 consecutive meetings of the Board may extend to 180 days till the next two quarters, instead of 120 days as required under Companies Act.

- Companies (Auditor's Report) Order, 2020 shall be made applicable from the financial year 2020-21 (instead of 2019-20)

- Independent Directors are required to hold at least 1 meeting without the attendance of Non-independent directors and members of management. Not holding such meeting for Financial Year 2019-20 shall not be viewed as violation. The Independent Directors, however, may share their views amongst themselves through telephone / e-mail / any other mode of communication, if they deem necessary.

- Requirement to create deposit repayment reserve of 20% of deposits maturing during Financial Year 2020-21 before 30th April 2020 shall be allowed to be complied with till 30th June 2020.

- Requirement to invest / deposit at least 15% of amount of debentures maturing in specified methods of investments or deposits before 30th April 2020, may be complied with till 30th June 2020.

- Newly incorporated companies are required to file a declaration for Commencement of Business within 180 days of incorporation. An additional period of 180 days has been allowed.

- Non-compliance of minimum residency in India for at least 182 days by at least 1 director of every company shall not be viewed as violation for Financial Year 2019-20. Circular dated 24th March 2020.

# Measures to combat COVID-19

## Securities Exchange Board of India (SEBI) -Relaxation from certain listing obligations and disclosure requirements for listed companies

SEBI has granted following relaxations for compliances under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR) to listed entities.

### A.Extension of timeline for filings

		Extended Frequency	Period of Due within	Due date	date relaxation	
7(3)	Compliance certificate on share transfer facility	Half-Yearly	1 month of end of each half of FY	30th April 2020	31st May 2020	1 month
13(3)	Statement of Investor complaints	Quarterly	21 days from end of quarter	21st April 2020	15th May 2020	3 weeks (approx.)
24A read With circular dated 8 February 2019	Secretarial Compliance report	Yearly	60 days from end of FY	30th May 2020	30th June 2020	1 month
27(2)	Corporate Governance report	Quarterly	15 days from end of quarter	15th April 2020	15th May 2020	1 month
31	Shareholding Pattern	Quarterly	21 days from end of quarter	21st April 2020	15th May 2020	3 weeks (approx.)
33	Financial Results	Quarterly / Annual	45 days from end of quarter for quarterly results	15th May 2020	30 June 2020	45 days
			60 days from end of FY for Annual Financial Result	30th May 2020	30 June 2020	1 month

# Measures to combat COVID-19

B. Relaxation of time gap between 2 board / Audit Committee meetings:

17(2) - Board of Directors shall meet at least 4 times a year, with a maximum time gap of 120 days between any 2 meetings

18(2)(a) - Audit committee shall meet at least 4 times in a year, not more than 120 days shall elapse between 2 meetings

Board of Directors and Audit Committee of the listed entity are exempt from observing the maximum stipulated time gap between 2 meetings for the meetings held / proposed to be held between 1st December 2019 and 30th June 2020.

However, the Board of Directors / Audit Committee shall ensure that they meet at least 4 times a year, as stipulated under regulations 17(2) and 18(2)(a) of the LODR

Circular dated 19th March 2020.

## Reserve Bank of India (RBI) – Regulatory measures to mitigate debt servicing and to ensure continuity of viable businesses

RBI on 27th March 2020 has set out various developmental and regulatory policies to address the stress in financial conditions caused by COVID-19, including:

- 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
- Reinforcing monetary transmission so that bank credit flows on easier terms to those who have been affected by the pandemic
- Easing financial stress caused by COVID-19 disruptions by relaxing repayment pressures and improving access to working capital
- Improving functioning of markets in view of high volatility experienced with the onset and spread of the pandemic

In respect of all term loans (including agricultural term loans, retail and crop loans), all banks and other lending institutions have been permitted to grant a moratorium (exemption / grace) period of 3 months on payment of all instalments falling due between 1st March, 2020 and 31st May, 2020. The repayment schedule for such loans as also the residual tenor, will be shifted across the board by 3 months after the moratorium period. Interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period.

For the same period mentioned above, in respect of working capital facilities sanctioned in the form of cash credit/overdraft (CC/OD), lending institutions have been permitted to defer recovery of interest. The accumulated accrued interest shall be recovered immediately after the completion of this period. Further, lending institutions may recalculate the 'drawing power' by reducing the margins and / or reassessing the working capital cycle subject to satisfying themselves that the same is necessitated on account of COVID-

19. Accounts provided relief under these instructions shall be subject to subsequent supervisory review with regard to their justifiability on account of the economic fallout from COVID-19.

Regulatory Package offered by RBI on 27th March 2020.

Statement on Development and Regulatory Policies dated 27th March 2020.

# Measures to combat COVID-19

## Manufacturing sector -Guidelines to management of factories / establishments to promote hygiene

In view of prevailing pandemic situation of COVID-19 globally, the Labour Department of Haryana has issued following guidelines to be strictly followed in all Factories/Establishments in Haryana:

- Promote frequent and thorough hand washing by providing everyone a place to wash their hands and also provide alcohol based hand rubs containing at least 60% alcohol
  - Encourage workers to stay at home if they are sick and to call state helpline no.8558893911 (for Haryana) or 108. Never travel directly or avail public transport facility to the hospital if suspected of possible exposure of COVID-19
- Encourage respiratory etiquette, including covering coughs and sneezes •Employer should promote flexible worksites and flexible work hours to increase social distancing •Avoid grouping of workers or staff at work site or for meeting as far as possible
- Prompt identification and isolation of potentially infectious individuals is a critical step in protecting everyone at a worksite
- Employer should inform and encourage employees to self-monitor for signs and symptoms of COVID-19
- Employer should develop policies and procedures for immediately isolating people who have signs and/or symptoms of COVID-19
- If any foreign delegation has recently visited the premises or the employees have visited some foreign locations or such visits are planned in future, the employer shall inform to the District Administrator/nearest Government Hospital immediately
- Employer should provide face masks and asks the person to wear the same as well. •Do not insist for a medical certificate for employees who are sick with acute respiratory illness to validate their illness as medical facilities may be extremely busy
- Maintain flexible policies that permit employees to stay at home to care for a sick family member.
- Minimizing contact among workers, clients, and customers by replacing face to face meetings with virtual communications and implementing telework if feasible.
- Establishing alternate days or extra shifts that reduce the total number of employees in a facility at a given time
- Maintain regular housekeeping practices, including routine cleaning and disinfecting of surfaces, equipment and other elements of the work environment
- Maintain proper hygiene of canteens / dining rooms / food placed at buffet counters •Factories having installed public address system may utilize the same for educating workers on the measures for preventing possible exposure of COVID-19
- Screen all the workers/visitors by Infrared (IR) thermometer before entering the premises •Avoid biometric attendance of employees

Notification dated 17th March 2020

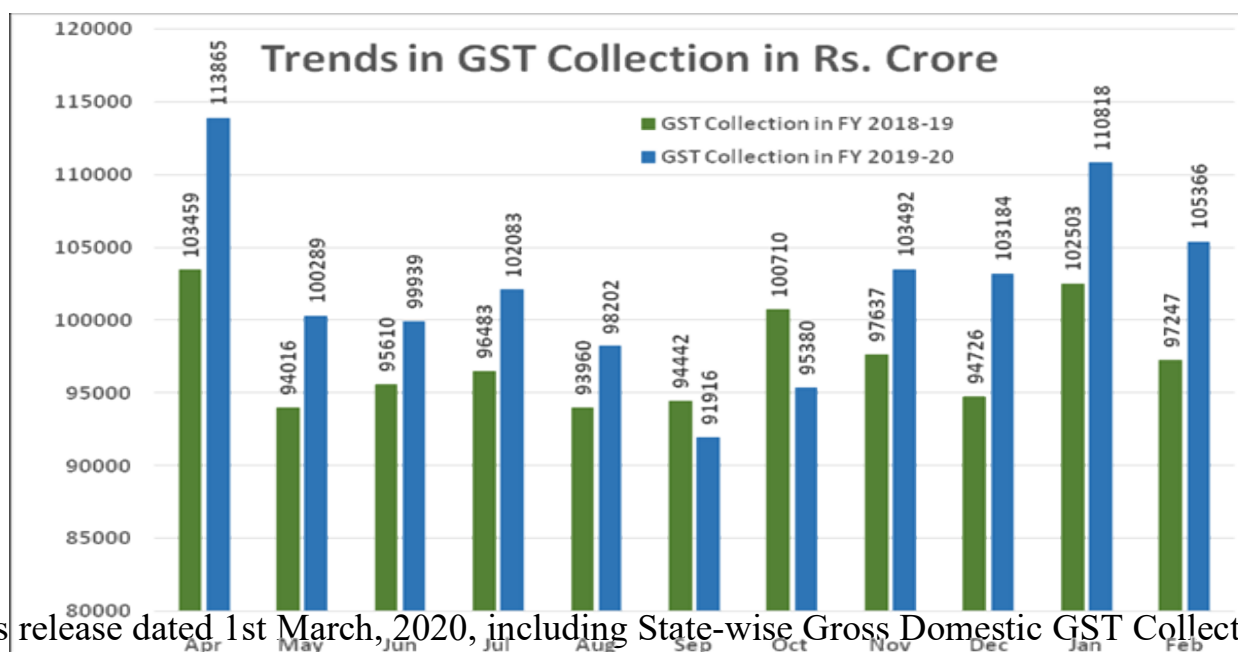
[http://cajatinminocha.com/resource/Covid19\\_FM\\_Relief\\_Package.aspx](http://cajatinminocha.com/resource/Covid19_FM_Relief_Package.aspx)

# Goods & Services Tax

## GST revenue collection for February 2020 - growth of 12% over revenue for February 2019

Gross GST revenue collection for the month of February, 2020 is Rs. 105,366 crore (details given below), a growth by 12% over revenue collection for the same month last year (i.e., February 2019). Total number of GSTR 3B Returns filed for the month of January up to 29th February, 2020 is 83.53 lakh.

IGST (Integrated Goods and Services Tax)	Rs. 48,503 crore
CGST (Central Goods and Services Tax)	Rs. 20,569 crore
SGST (State Goods and Services Tax)	Rs. 27,348 crore
Compensation cess	Rs. 8,946 crore
Total	Rs. 105,366



Press release dated 1st March, 2020, including State-wise Gross Domestic GST Collection for the month of February, 2020.

# Goods & Services Tax

## Highlights of the 39<sup>th</sup> GST Council Meeting held on 14<sup>th</sup> March 2020 at New Delhi

The 39<sup>th</sup> GST Council met under the Chairmanship of Union Finance & Corporate Affairs Minister, Smt. Nirmala Sitharaman on 14<sup>th</sup> March 2020 at New Delhi. Recommendations made by the Council are summarised below:

### A. Law & Procedure related changes

#### 1. Extension GSTR-9 (Annual Return) and GSTR-9C (Reconciliation Statement)

I. Due date for furnishing Annual Return and Reconciliation Statement for FY 2018-19 extended to 30<sup>th</sup> June 2020 (from 31<sup>st</sup> March 2020)

II. Late fees not to be levied for delayed filing of Annual Return and Reconciliation Statement for FY 2017-18 and FY 2018-19 for taxpayers with an aggregate turnover < Rs. 2 crore

### Notification

#### 2. Deferment of e-invoicing and QR code introduction:

I. The implementation of the new e-invoicing and QR code has been extended to 1<sup>st</sup> October 2020

II. Certain class of registered persons to be exempted from issuing e-invoices or capturing dynamic QR code: -

- insurance company
- banking company, financial institution, non-banking financial institution (NBFC)
- goods transport agency (GTA), passenger transportation service etc.

Notification related to deferment of QR Code introduction

Notification related to deferment of e-invoicing

#### 3. Monthly Returns:

I. Continuation of the existing system of furnishing monthly returns via GSTR-1 and GSTR-3B till September 2020

II. Accordingly, it postpones the introduction of new GST return system for 6 months

Notification related to due dates of GSTR-3B

Notification related to due dates of GSTR-1 (Quarterly Filings)

Notification related to due dates of GSTR-1 (Monthly Filings)

# Goods & Services Tax

## 4. Waiver and extension of due dates:

I. GSTR-1 for FY 2019-20 to be waived for certain taxpayers who could not opt for the special composition scheme [Notification No. 2/2019-Central Tax (Rate) dated March 7, 2019] by filing Form CMP-02

II. Due date of Form GSTR-3B, GSTR-1 & GSTR-7 for the month of July 2019 to January 2020 extended till 24th March 2020 for registered persons having principal place of business in the Union Territory of Ladakh

## 5. Deferment of e-wallet Scheme:

I. Time limit for finalization of e-Wallet scheme for consumers extended till 31st March 2021

II. Existing exemption from payment of IGST and compensation cess on the imports made under the following schemes will continue up to 31st March 2021

- Advance Authorization
- Export Promotion Capital Goods (EPCG)
- Export Oriented Units (EOUs)

6. Interest on delayed payment of GST dues to be charged on the net cash tax liability (retrospectively with effect from 1st July 2017)

7. A new scheme called 'Know your Supplier' to be introduced so that the taxpayers are informed about the basic details of the current or prospective suppliers with whom they transact or propose to conduct business

8. Taxpayers who have cancelled their GST registration till 14th March 2020 can file an application for revocation of cancellation of registration till 30th June 2020. This is a one-time facility to facilitate those who want to continue their business

9. To restraint fake invoicing and fraudulent passing of Input Tax Credit (ITC), restrictions to be imposed on passing of the ITC in case of new GST registrations, before physical verification of premises and financial 'Know Your Customer' (KYC) verification of the registered person

10. To facilitate exporters, bunching of refund claims will be allowed across financial years.

# Goods & Services Tax

## 11. Issuance of procedures in respect of:

- I. A transition plan is laid down till 31st May 2020 for the taxpayers belonging to Dadar and Nagar Haveli & Daman and Diu, due to the merger in January 2020
- II. Special procedure for taxpayers who are corporate debtors under the provisions of the Insolvency and Bankruptcy Code (IBC), 2016, undergoing the Corporate Insolvency Resolution Process, to enable them to comply with the provisions of GST laws during the period of resolution
- III. Clarification on refund related issues

## 12. Issuance of circulars in respect of:

- I. Clarification in respect of filing appeals to the Tribunal until the Appellate Tribunals are formally constituted
- II. Clarification in respect of apportionment of ITC in cases of business reorganization viz. merger, demerger, amalgamation, lease or transfer of business, etc.
- III. Clarification for taxpayers who are corporate debtors under the provisions of the Insolvency and Bankruptcy Code (IBC), 2016, undergoing the Corporate Insolvency Resolution Process, to enable them to comply with the provisions of GST laws during the period of resolution

## 13. Key Amendments to the CGST Rules:

- I. procedure for reversal of ITC in respect of capital goods partially used for taxable supplies and partially for exempt supplies
- II. the ceiling on the value of the export supply to be fixed for the purpose of calculation of refund on zero-rated supplies will be prescribed
- III. to allow for refund to be sanctioned in both cash and credit in case of excess payment of tax
- IV. to provide for recovery of refund on export of goods where export proceeds are not realized within the time prescribed under Foreign Exchange Management Act (FEMA)
- V. to operationalize Aadhaar authentication for new taxpayers
- VI. relaxation to MSMEs (Micro, Small & Medium Enterprises) from furnishing Reconciliation Statement having aggregate turnover < Rs. 5 crore

## Notification related to CGST Amendment Rules

In the meeting, Shri Nandan Nilekani, on behalf of Infosys, apprised the GST Council regarding GSTN related issues that are being faced by the taxpayers in the GST system and suggested the way forward to resolve them. Shri Nilekani assured that he would personally monitor the progress of the GSTN project and also agreed to attend the IT-Group of Ministers (GoM) meetings for next 6 months / till such time the

initiatives are implemented. The Council expects these initiatives to be implemented by 31st July 2020. Press

Release dated 14th March 2020 for Law and Procedure related changes.



# Goods & Services Tax

## B.Changes in GST Rates

The GST Council has recommended following GST rate related changes on supply of goods and services:

Mobile phones and specified parts (to remove difficulties due to the inverted duty structure)	12%	18%
Handmade Matches	5%	12%
Other Matches	18%	12%
Maintenance, Repair and Overhaul (MRO) service in respect of aircrafts	18% (with full ITC)	5% (with full ITC)
Place of supply for MRO services in case of B2B will be location of the recipient. This change is likely to assist in setting up of MRO services in India		

Note: -Amended rates shall be effective from 1st April 2020

Press Release dated 14th March 2020 for changes in GST rates.

Notification related to change in tax rates of Mobile Phones and Matches.

Notification related to change in tax rate of MRO service

Notification related to change in place of supply for MRO service

## Government exempts certain foreign airlines companies from furnishing Form GSTR-9C (Reconciliation Statement)

The Central Board of Indirect Taxes and Customs (CBIC) has announced that foreign airline companies who are not required to make balance sheet as per Companies Act, shall not be required to furnish reconciliation statement and certification in Form GSTR 9C, provided a statement of receipts and payments for the financial year in respect of its Indian business operations, authenticated by a practicing Chartered Accountant in India is submitted for each GSTIN by 30th September of the year succeeding the financial year.

Notification dated 16th March 2020.

# Goods & Services Tax

## Change in Valuation Rule 31A of CGST Rules 2017 - Value of supply in case of lottery

Currently, the value of supply of lottery run by State Government is considered to be 100/112 of the face value or the notified price by the organizing State, whichever is higher. The said valuation

has been changed to 100/128 of the face value or the notified price from 1st March 2020 onwards.

Notification dated 2nd March 2020.

## Procedure for taxpayers who are corporate debtors under Insolvency and Bankruptcy Code (IBC), 2016

The Government, on the recommendations of the GST Council has issued a notification for the registered persons who are corporate debtors under IBC, 2016 and are undergoing the corporate insolvency resolution process and the management of affairs are being undertaken by interim resolution professionals (IRP) or resolution professionals (RP), such class of persons shall follow the following special procedure, from the date of the appointment of the IRP/RP till the period they undergo the corporate insolvency resolution process, as mentioned below:

- **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 in each of the States or Union territories where the corporate debtor was registered earlier, within 30 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 obtain registration within 30 days from the commencement of the notification, with effect from date of his appointment as IRP/RP
- **Return:** - The said class of persons shall, after obtaining registration shall file the 1st return from the date on which he becomes liable to registration till the date on which registration has been granted
- **ITC:** -The said class of persons shall be eligible to avail ITC on invoices covering the supplies of goods or services or both, received since the appointment of IRP/RP in their first return

Registered persons who are receiving supplies from the said class of persons shall, 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 ITC on invoices issued using the GSTIN of the erstwhile registered person.

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 dated 21st March, 2020.

# Goods & Services Tax

## Process of Aadhaar authentication for new taxpayers

Based on recommendations made in 39th GST Council Meeting, CBIC has issued a notification specifying:

- Individual shall undergo authentication of Aadhaar number in order to be eligible for registration under GST effective from 1st April 2020
- Following class of persons are also required to undergo Aadhaar authentication in order to be eligible for registration under GST effect from 1st April 2020

- (a) authorised signatory of all types;
- (b) Managing and Authorised partner; and
- (c) Karta of a Hindu undivided family

- Following class of persons shall be exempted from Aadhaar authentication:

A Person who is not a citizen of India or to a class of persons other than the following class of persons, namely:

- (a) Individual;
- (b) authorised signatory of all types;
- (c) Managing and Authorised partner; and
- (d) Karta of a Hindu undivided family

- If Aadhaar number is not assigned to the aforesaid persons, then they shall be offered alternate and viable means of identification in the manner specified in rule 9 of the said rules

Notification dated 23rd March, 2020.

Notification dated 23rd March, 2020.

Notification dated 23rd March, 2020.

[cajatinminocha.com/resource/GST\\_Notification\\_23-03-20.aspx](http://cajatinminocha.com/resource/GST_Notification_23-03-20.aspx)

Gst Refund Circular no 135 dated 31st march 2020 settling the refund issues

1. Bunching of refund claims across financial year
2. Refund of accumulated input tax credit on account of reduction in GST Rate
3. Change in manner of refund of tax paid on supplies other than zero rated supplies
4. Guidelines for refunds of ITC u/s 54(3).
5. New Requirement to mention HSN/SAC Statement of invoices to be submitted with application for refund of unutilised ITC in manner as given in Annexure B of said Circular

[cajatinminocha.com/Image/GST\\_Refund\\_Circular.pdf](http://cajatinminocha.com/Image/GST_Refund_Circular.pdf)

# Direct Tax

## Finance Bill, 2020 receives President's assent (after 40-odd amendments vis-a. via Finance Bill initially proposed in February 2020)

The Finance Bill, 2020 has received President's assent on 27th March 2020.

The Hon'ble Finance Minister Smt Nirmala Sitharaman had presented India's Union Budget for the FY 2020-21 on 1st February 2020. The Lower House of Parliament (Lok Sabha) passed the corresponding Finance Bill 2020 on 23rd March 2020 by voice vote without discussion, amid uproar in the House with opposition parties demanding fiscal stimulus package in the wake of coronavirus outbreak. The Bill was passed with more than 40 amendments.

Some of the key amendments to Finance Bill 2020 are discussed in details below:

### Modification of Residency provisions

Effective from: AY 2021-22 onwards

Section(s) amended: 6(1), (6)

- |   |   |  |
|---|---|--|
| <p>a. Relaxation available to Indian citizen / person of Indian origin (PIO) allowing them to visit India for longer duration of upto 182 days (instead of 60 days) without becoming resident of India.</p> <p>b. Qualification criteria for individuals / HUF to be 'resident but not ordinary resident' (RNOR): <input type="checkbox"/> Non-resident in 9 out of 10 preceding years, or taxable in any other country <input type="checkbox"/> Aggregate stay in India during 7 preceding years &lt; 729 days</p> | <p>a. Relaxation for Indian citizen / PIO curtailed to 120 days' stay (from existing 182 days) to continue qualifying as non-resident in India</p> <p>b. Amended qualification criteria for individuals / HUF to be RNOR: <input type="checkbox"/> Non-resident in 7 out of 10 preceding years</p> <p>c. Clarity provided - An Indian citizen who is not taxable in any other country shall be considered as resident in India.</p> | <p>a. An Indian citizen or PIO having total income (other than income from foreign sources) &gt; INR 15 lakh, would qualify as Resident in India if he is present in India for 120 days or more. If he is in India for 120 days or more but less than 182 days, he would qualify as RNOR.</p> <p>b. Existing requirement of 9 years and 729 days for qualifying RNOR has been retained.</p> <p>c. An Indian citizen who is not taxable in any other country shall be considered as resident in India, provided his total income (other than income from foreign sources) &gt; INR 15 lakh in that year. Such person would be considered RNOR in India.</p> |
|---|---|--|

# Direct Tax

Equalization

amended: 115O

EL @ 6% is applicable on levy (EL) on e-commerce income accruing to foreign e- supply /

services

Effective

from: 1st April 2020 onwards

Section(s)

amended:

New section 165A inserted in Finance

Act 2016

distribution tax (DDT) set-off Dividend was available only with received from respect to dividend received foreign from a domestic company company entitled for inter-corporate dividend deduction

Section(s)

amended:

115-O

domestic company is Benami DDT required to pay DDT @ 15%

distributed or paid. Effective for: dividend.

Such dividend is exempt in declared hands of shareholder if it is distributed or received where it should be paid April 1, onwards

ideally lie. Section(s)

-

U/s 165 of Finance Act 2016,

commerce companies from India on account of

advertisement-related digital services

Dividend received by a domestic company from another domestic company is eligible for set-off while calculating total income, to the extent of dividends further distributed by the former company

While calculating dividend

Abolishment of DDT payable at company level.

Consequently, exemption in hands of shareholder u/s 10(34) was also removed.

In addition to corporate tax, a on dividend declared,

# Direct Tax

Other major amendments are explained below:

One-time option in new concessional tax regime for individuals and Hindu Undivided Families (HUFs)

Taxpayer earning business income can opt for concessional regime of taxation only once on irrevocable basis, such option will apply to all subsequent tax years. In a case where such option is withdrawn by the taxpayer, he shall not be eligible to avail the concessional rates in subsequent years till he ceases to have business income. Other individuals and HUFs who do not have business income can opt for concessional tax rate on a year-on- year basis. This erroneously included taxpayers carrying on profession (as against business income)

To remove the anomaly and align taxability of professionals with businessmen, the provision relating to one-time irrevocable option has been modified to cover taxpayers carrying on profession as well.

Charitable trust / institution

? Inter trust donations with a direction that it shall form part of the corpus of the donee trust is not treated as application of income in the hands of donor trust and hence, not entitled to tax-exemption.

? Similar treatment will apply to registered donor trust / section 10(23C) registered entities

? Corpus donations are not considered as 'income' in the hands of a registered charitable trust and consequently, requirement of application of 85% income or accumulation thereof for charitable purposes is not applicable in respect of such corpus donations

? This limitation has been extended to corpus donations received by entities enjoying exemption u/s 10(23C) of the ITA as well

# Direct Tax

## Exemption of income of sovereign wealth funds

New provision inserted exempting dividend, interest and long-term capital gains from debt / equity investments made on or before 31st March 2024 in eligible infrastructure or other notified business entities by a Sovereign Wealth Fund satisfying specified conditions or the Wholly Owned Subsidiary of Abu Dhabi Investment Authority, provided the investment is held for minimum 3 years.

Scope of exemption expanded as below:

□ Exemption shall now also be available to a notified foreign pension fund meeting specified conditions. □ Eligible investments will also include investments in debt, share capital or units in (i) an Infrastructure Investment Trust (Invit); and (ii) a Category I or Category II Alternate Investment Fund (AIF) having 100% investment in eligible infrastructure business entities

□ Eligible investments will cover only investments made between 1 April 2020 to 31 March 2024, not investment made prior to 1 April 2020

□ In case of breach of conditions in a subsequent year, exemption earlier availed shall be reversed in year of breach

In addition to the above, certain amendments have been made in withholding tax / tax deducted at source (TDS) provisions on transactions such as dividend distributed to non-resident, dividend paid to Mutual Fund unit holder exceeding Rs. 5000 in a year, cash withdrawal from banks in excess of Rs.1 crore a year, etc.

Finance Act 2020.

[http://cajatinminocha.com/resource/Finance\\_Bill\\_Approval.aspx](http://cajatinminocha.com/resource/Finance_Bill_Approval.aspx)





# Direct Tax

## Tax Department's initiative to resolve disputes by instilling trust–Vivad (Dispute) se Vishwas (Trust) Scheme 2020

### Background:

Inspired by the Sabka Vishwas Scheme which reduced several indirect tax disputes, the Finance Minister tabled The Direct Tax Vivad se Vishwas (DTVSV) Bill, 2020 in Parliament on 5th February 2020. Its key objective is to collect taxes and at the same time reduce litigation. It offers complete waiver on interest and penalty to taxpayers who pay their disputed tax demands on or before 30th June 2020.

To widen the scope of the scheme, certain amendments to the Bill were proposed to the Parliament on 14th February 2020. The amended Bill was passed by the Lower house of Parliament on 4th March 2020 and Upper house on 13th March 2020. On 17th March 2020, the DTVSV Act 2020 was passed by the Government and published in the Official Gazette of India.

In addition, on certain practical aspects, the Central Board of Direct Taxes (CBDT) has issued on 4th March 2020 responses to Frequently Asked Questions (FAQs) providing clarity on scope of the scheme, procedural, computational and consequential matters.

Given below are highlights of the Scheme.

### Objective:

- Reduce pending litigation / disputes between tax department and public
- Generate timely revenue for Government

### Eligibility / Coverage:

The scheme shall be applicable to all the appeals / petitions filed by taxpayers or tax department, which are pending on 31st January 2020 with any of the following appellate

forums:

- Commissioner of Income-tax (Appeals)
- Income-tax Appellate Tribunal
- High Court
- Supreme Court

Further, the scheme shall also be applicable to the following cases where, as on 31st January 2020:

- Time limit for filing an appeal has not expired or
- Cases are pending before the Dispute Resolution Panel (DRP) or where DRP directions have been passed but final assessment order is awaited or
- Revision petitions u/s 264 are pending before the Commissioner of Income-tax or
- Search cases where the disputed demand < Rs. 5 Crore

# Direct Tax

## Exclusions:

The Scheme shall not apply to following matters.

- Search cases if disputed tax in a year > Rs. 5 crore
- Matters where prosecution has been initiated by the department under Income-tax Act or Indian Penal Code
- Matters involving undisclosed foreign income and assets
- Matters completed based on information received from foreign jurisdiction
- Matters where person is notified under Special Courts (Trials of Offences relating to transactions in securities) Act, 1992 or detained under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974
- Matters covered under Prohibition of Benami Property Transactions Act, Narcotic Drugs and Psychotropic Substances Act, Unlawful Activities (Prevention) Act, Prevention of Corruption Act, Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, Prevention of Money Laundering Act.

## Amount payable under the Scheme:

Search Cases	125. of disputed tax**	62.5% of disputed tax*
Other than search cases	100% of disputed tax* 50. of disputed tax*	
Cases relating to only	25. of disputed interest, penalty or fee	12.5% of disputed interest, penalty or fee

\*Interest and penalty waived #Where amount payable exceeds the aggregate amount of disputed tax

along with interest and penalty, the excess shall be ignored for computation of amount payable.

## Procedure:

- 1 Taxpayer has to file online declaration in Form 1 to the designated authority to initiate resolution of pending direct tax disputes. Along with the declaration, the taxpayer has to also furnish an undertaking in Form 2 waiving his right to pursue any other remedy/ claim
- 2 Within 15 days of receiving the declaration, the designated authority will determine the amount payable by the Taxpayer and grant a certificate in Form 3, containing details of the amount payable. The applicant will not be able to file any appeal in case it does not agree to the amount determined by designated authority
- 3 Taxpayer has to pay the said amount within the next 15 days and submit the proof of withdrawal Of appeal in Form-4
- 4 The designated tax authority will then pass an order in Form 5 conclusive of them after

# Direct Tax

## Benefits:

- Waiver of interest, penalty and immunity from prosecution in respect of matters covered in the declaration
- Such cases cannot be reopened in any other proceeding by any tax authority. Once the dispute has been resolved, an appellate forum cannot issue an order in relation to the matter
- Opting for the scheme shall not amount to conceding the tax position and tax authority cannot claim that taxpayer has agreed to the decision on the disputed issue
- If excess payment is made before filing declaration, refund shall be granted (without interest though) Factors to

## be considered by Taxpayer before opting for the Scheme:

A taxpayer should analyse various aspects before opting to settle in the scheme such as how strong are merits of the case, expected cost of litigating the matter, implications of carried forward losses, cash flow considerations, fate of disputed matter in past litigation, etc. To litigate a tax matter always involves cost and energy. Therefore, if the merits of the case are weak and there is lack of adequate documentary evidences to substantiate one's claim, it may be preferable to settle by paying taxes rather than unforeseen fate of litigation. If however, on merits the taxpayer is confident of victory in appeal, it should not forego its right and stick to its position.

DTVS Act 2020.

DTVS Rules 2020.

FAQs dated 4th March 2020 issued by CBDT.

## Central Board of Direct Taxes (CBDT) adds new mode of investment for deposit of accumulated monies by charitable or religious trusts for entitlement of tax exemption

### Background:

Charitable or religious trusts are required to invest / deposit their monies in specified investments / deposits prescribed u/s 11(5) read with Rule 17C of the Income-tax Rules, in case 85% of their income is not applied to charitable or religious purpose in India during the relevant year but is accumulated or set apart for further application.

### Notification dated 5th March 2020:

CBDT has added the following mode of investment / deposit to the above list:

Investment made by a person, authorised u/s 4 of the Payment and Settlement Systems Act, 2007, in the equity share capital or bonds or debentures of a company:

- which is engaged in operations of retail payments system or digital payments settlement or similar activities in India and abroad and approved by Reserve Bank of India (RBI)
- in which at least 51% of equity shares are held by National Payments Corporation of India

Notification dated 5th March 2020.

CBDT lower deduction of TDS/TCS in case of orders already released and expiring on 31<sup>st</sup> march 2020; in case of pending applications expiring on 31<sup>st</sup> march 2020 being extended to 30<sup>th</sup> June 2020

[http://cajatinminocha.com/Image/CBDT\\_Extn\\_LowerTDS.pdf](http://cajatinminocha.com/Image/CBDT_Extn_LowerTDS.pdf)

# International Tax

## Government notifies agreement between India and Brunei Darussalam for exchange of information and assistance in collection of taxes

- The Agreement between Government of India and Government of Brunei Darussalam for the exchange of information and assistance in collection of taxes was signed in New Delhi on 28th of February 2019. The Agreement has been notified in the Official Gazette of India on 9th of March 2020
- The Agreement enables exchange of information, including banking and ownership information, between the 2 countries for tax purposes. It is based on international standards of tax transparency and exchange of information and enables sharing of information on request as well as automatic exchange of information.
- The Agreement also provides for representatives of one country to undertake tax examinations in the other country. Moreover, it provides for assistance in collection of tax claims.
- The Agreement will enhance mutual co-operation between India and Brunei Darussalam by providing an effective framework for exchange of information in tax matters which will help curb tax evasion and tax avoidance.

Press release dated 17th March 2020.

Notification dated 4th March 2020.

## CBDT notifies list of securities for non-residents, transfer of which are not subject to capital gains tax

### Background:

- Section 47 of the Income-tax Act, 1961 ('Act') specifies list of transactions outside the purview of capital gain tax
- Till last year, u/s 47(viiab), transfer of a capital asset being bonds / Global Depository Receipts / rupee denominated bond of an Indian company / derivative made by a non-resident through a recognized stock exchange located in any International Financial Services Centre (IFSC) and where the consideration for such transaction is payable in foreign currency, was exempt from capital gains tax
- An amendment was made last year wherein Government was given the power to notify other securities in the above list, transfer of which would also be non-taxable

### Notification dated 5th March 2020:

Pursuant to the above, CBDT has notified following securities, transfer of the same shall not be subject to capital gains tax from 1st April 2020 onwards :

- foreign currency denominated bond
- unit of a mutual fund
- unit of a business trust
- foreign currency denominated equity share of a company
- unit of Alternative Investment Fund (AIF)

The above securities must be listed on a recognized stock exchange located in any IFSC.

Notification dated 5th March 2020.

# International Tax

**Section 115AD - CBDT specifies that a non-resident being Eligible Foreign Investor (EFI) which operates as per SEBI's circular shall be deemed as Foreign Institutional Investor (FII)**

- Section 115AD specifies tax rates on income of FIIs from securities or capital gains arising from their transfer.

- CBDT vide notification dated 13th March 2020 has specified that a non-resident being an Eligible Foreign Investor (EFI) which operates as per SEBI's circular IMD/HO/FPIC/CIR/P/2017/003 dated 4th January 2017 (Guidelines for participation/functioning of EFIs and FPIs in IFSC), shall be deemed as FII for purpose of transactions made on a recognized stock exchange in any IFSC, where the consideration for such transaction is paid or payable in foreign currency.

Notification dated 13th March 2020

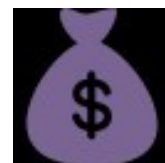
**Income Tax Department designates Authority before whom particulars of parent entity and alternate reporting entity to file Country-by-Country Report (CbCr) would be notified**

## Background:

- In order to ensure that a multinational enterprise would report its profit correctly where it is earned, the Organisation for Economic Cooperation and Development (OECD) had developed an Action Plan called 'Base Erosion and Profit Shifting (BEPS) Action Plan 13'. Under BEPS Action Plan 13, all large multinational enterprises (MNEs) are required to prepare a CbCr with aggregate data on the global allocation of income, profit, taxes paid and economic activity among tax jurisdictions in which they operate.

- In essence, CbCr is an annual return that breaks down key elements of the financial statements by jurisdiction. A CbCr provides local tax authorities visibility to revenue, income, tax paid and accrued, employment, capital, retained earnings, tangible assets and activities of the concerned MNE.

- This CbCr is used as a corroborating material by tax authorities in carrying out revenue risk assessment.



# International Tax

## Corresponding provisions under the Income-tax Act –Section 286

- Every MNE group which has a constituent entity resident in India is mandated to notify the Income-tax Department its parent entity and alternate reporting entity and the countries where such entities are resident.

- Such parent entity or alternate reporting entity is required to furnish CbCr specifying certain information including:

- ? the aggregate information in respect of the amount of revenue, profit or loss before income-tax, amount of income-tax paid, amount of income-tax accrued, stated capital, accumulated earnings, number of employees and tangible assets not being cash or cash equivalents, with regard to each country or territory in which the group operates;

- ? the details of each constituent entity of the group including the country or territory in which such constituent entity is incorporated or organized or established and the country or territory where it is resident;

- ? the nature and details of the main business activity or activities of each constituent entity.

- For the above purpose, CBDT had notified Rules 10DA, 10DB and Form Nos. 3CEAA to 3CEAE in Income-tax Rules, 1962.

- As per Rule 10DB(1), income tax authority for the purpose of section 286 shall be the Joint Commissioner as may be designated by Director General of Income tax (DGIT) (Risk Assessment).

### Press release dated 19th March 2020:

In exercise of power conferred by section 286, DGIT (Risk Assessment) has designated the Joint Director of Income tax (Risk Assessment)-1 having office at 4th Floor, C-Block, Dr. S.P. Mukherjee Civic Centre, Minto Road, New Delhi-110002 as the Income tax authority for the above purpose from 1st April 2020 onwards.

Press release dated 19th March 2020



# Company Law

## Relaxation in time limit, criteria for Independent Directors' registration in data bank and online proficiency self-assessment test

Following relaxations provided in Companies (Appointment and Qualification of Directors) Rules, 2014.

Extension of timeline by 2 months for online enrollment with data bank of Indian Institute of Corporate Affairs (IICA) by current / desirous Independent Directors	Time-limit for the enrollment with data bank was Feb 2020.	Time-limit extended till April 2020.
Criteria for passing online proficiency self-assessment test (OPSAT) exempted for director / key managerial personnel (KMP) of body corporate listed on a recognized stock exchange	An individual whose name is included in data bank is compulsorily required to pass OPSAT conducted by IICA within 1 year from the date of registration.  Exemption is available for individuals who served for 10 years or more as Director or KMP in (a) listed public company, or (b) unlisted public company having paid up capital of Rs.10 Crore or more	Exemption extended to a 3rd category –(c) body corporate listed on a recognized stock exchange

Notification dated 28th February 2020.

## Protection of Independent / Non-executive Directors, Non Key-Managerial-Persons (KMPs) from unnecessary civil / criminal proceedings – Clarification issued by MCA

### Background:

- Ordinarily, whole time directors (WTD) and KMPs are the ones in charge of day to day functioning of a company. Accordingly, these are the people who would be liable for defaults committed by a company. In absence of a KMP, such directors who have expressly consented for incurring liability as per e-form GNL-3 would be liable.
- However, in certain cases, penal provisions of the Companies Act hold a specific director, officer, or any other person accountable for the default. In such cases, action should be initiated only against such director / person (for example, disclosure of interest by director u/s 184 of the Act). Nature of default is also relevant for ascertaining which officer of the company is liable under the Act.
- As per section 149(12), Independent Directors (IDs), non-promoter and non-KMP Non-Executive Directors (NEDs) should not be arrayed in any civil or criminal proceedings under the Act, unless an act of omission / default by a company has happened with his knowledge, consent or where he has not acted diligently. Responsibility of NEDs ordinarily arise in such cases where there are no WTDs and KMPs.
- Apart from IDs, non-promoter and non-KMP, NEDs would exist in following cases:
  - ? Directors nominated by Government
  - ? Directors nominated by Public Sector Financial Institutions, Financial Institutions, Banks
  - ? Directors appointed pursuant to a statutory or regulatory requirement (for example, Director appointed by National Company Law Tribunal)

# Company Law

## Clarification provided by MCA:

- Apparently the 'decriminalization' move of MCA has encouraged it to clarify vide circular dated 2nd March 2020 regarding harsh prosecutions filed or internal adjudication proceedings initiated against IDs, NEDs. The circular is aimed to clarify the immunity available to such persons under the Act.
- MCA has clarified that prosecution proceedings against IDs, NEDs shall not be initiated unless there is strong evidence of their involvement in frauds committed by a company. At the time of serving notices to company during inquiry, inspection, investigation or adjudication, necessary documents must be sought to ascertain involvement of the concerned officers of the company. In cases lapses are attributable to the Board or its committee, civil or criminal proceedings should not be unnecessarily initiated against IDs, NEDs unless sufficient evidence exists to the contrary.
- Records available with Registrar of Companies (ROC) (including e-forms DIR-11 / DIR-12 along with copies of the annual returns or financial statements) should be examined to ascertain whether a particular director or KMP was serving in the company as on the date of default
- In case of any doubt with regard to liability of a person guidance may be sought from MCA through Director General of Corporate Affairs. Consequently any such proceedings must be initiated after receiving due sanction from the Ministry.

Circular dated 2nd March 2020.

## Extension of last date for filing Form NFRA-2 with National Financial Reporting Authority (NFRA)

Form NFRA-2 is an annual return required to be filed by an auditor providing detailed information on the assurance services performed by him during a given period. As per Circular dated 27th November 2019, the said form was required to be filed within 90 days from date of deployment on Government's website.

MCA has extended the above time limit to 150 days for the reporting period financial year 2018-19. Circular dated 05th March 2020.

## Filing of forms by Insolvency Professional (IP) / Liquidator appointed under Insolvency Bankruptcy Code, 2016 (IBC 2016)

In supersession of earlier Circular no. 04/2020 dated 17 February 2020, the following clarification has been issued for statutory compliances in respect of companies under Corporate Insolvency Resolution Process (CIRP).

- The IP / Liquidator would have to 1st file the National Company Law Tribunal (NCLT) order approving him as the IRP/ RP/ Liquidator in Form INC-28 by selecting the dropdown box in field 5(a)(iii) by selecting the appropriate section of IBC 2016. After filling the form, while affixing his digital signature (DSC), he shall choose designation as 'CEO' in the declaration box for the purpose of filing only and choose 'Others' from the Dropdown Menu.
- The Master Data for change in the status of the company from 'Active' / 'Inactive' to CIRP/ Liquidation or CIRP / Liquidation to 'Active' shall be effected on the basis of Formal Change Request Form submitted by Insolvency Board to e-governance Cell, MCA (HQ). Since this function has been centralized, ROC shall not raise and forward the form either to the e-gov cell or to service provider for this purpose.



# Company Law

- The IP / Liquidator shall be responsible for filing all the e forms on MCA portal and sign the form in the capacity of CEO in order to meet filing protocol in the existing forms architecture. However, this shall in no way affect his legal status as IP / Liquidator. All filings of e forms including AOC-4 and MGT-7 shall be filed through e-form GNL-2 by way of attachments till the company is under CIRP. In the existing field no.3 of form no.GNL-2, IP / Liquidator will choose radio button 'Filings under IBC.

- Against date of event and Board Resolution in INC-28 and GNL-2, date of order of NCLT/NCLAT/Court may be mentioned.

- In respect of companies which are marked under CIRP in the Registry, Annual Return (e-form MGT-7) and Financial Statement (e-form AOC-4) and other documents under the provisions of the Companies Act, 2013, in accordance with directions issued by the NCLT/ NCLAT/Courts, shall be filed as attachments with e-form GNL-2 against the payment of one time normal fee only, till such time the company remains under CIRP. Separate GNL-2 forms shall be filed for each such document, by the IRP/RP.

- The concerned IP of every company which was under CIRP prior to the issue of this circular, shall also file e-form INC-28 for such companies and thereafter proceed to file other

documents/fact/ information as required under the Act and Rules through e-form GNL-2. Circular

dated 6th March 2020.

## Companies Amendment Bill 2020 introduced in Lower House of Parliament

- Government introduced the Companies Amendment Bill on 17th March 2020 in Lok Sabha to amend the Companies Act proposing 72 changes to removing criminality from host of offences under the law.

- Almost 23 offences would be re-categorized out of 66 compoundable offences under the law, to be dealt with an in-house adjudication framework. Besides, 7 compoundable offences would be omitted.

- The proposed amendments also include enabling provisions for the direct listing of securities of Indian public companies in permissible foreign jurisdictions.

- The Bill also seeks to exempt companies whose corporate social responsibility (CSR) obligation < Rs.50 lakh from constituting a CSR committee.

Companies Amendment Bill 2020.



# Compliance Calendar

## Compliance calendar for the month of April 2020

March 2020		Equalization Levy deposit	
		a.GSTR-7 (TDS return under GST)	All Deductors
		b. STR-8 (TCS return under GST)	G a.Person required to deduct TDS under GST b.Person required to deduct TCS under GST
		GSTR-1 (Outward supply return)	Taxable persons having turnover > Rs. 1.5 crore Person registered as ISD
March 2020		GSTR-6 [Return by input service distributor (ISD)]	
March 2020		Deposit of PF & ESI contribution	All Deductors
January-March, 2020		CMP – 08 (Statement-cum-challan for composition dealer)	Composition dealer
March 2020		a.GSTR-5 (Return by Non-resident)	a.Non-resident taxable person
		b.GSTR-5A [Online Information Database Access and Retrieval (OIDAR) services return]	b. OIDAR services provider
		GSTR-3B (Summary return)	All taxable persons (except composition dealer) having annual turnover > Rs. 5 crore in FY 2018-19
			All taxable persons (except composition dealer) having annual turnover upto Rs. 5 crore and having principal place of business in 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
FY 2019-20			
January- March 2020		GSTR 4 (Annual Return for composition dealer)	All taxable person (except composition dealer) having annual turnover upto Rs. 5 crore and having principal place of business in any other state
March 2020		GSTR-1 (Outward supply return)	Composition dealer
		TDC/TCS deposit	Taxable persons having turnover < Rs.1.5 crores
			Non-government deductors
October 2019 – March 2020		Details of MSME Trade Payables outstanding for more than 45 days from the date of acceptance of the goods or services	All Companies having MSME trade payable outstanding for more than 45 days

# Compliance Calendar

Note:

Due dates for filing GSTR-3B (Summary Return), CMP-08 (Statement-cum-challan for composition dealer) and GSTR 4 (Annual Return for composition dealer) for the month of March 2020 have been extended due to COVID – 19 out break

March 2020	GSTR-3B	All taxable persons (except dealer) having composition aggregate turnover < Rs. 5 crore	Last week of June 2020	15th day after the actual due date
Jan-Mar 2020	CMP – 08	All taxable persons (except composition dealer) having aggregate turnover > Rs. 5 crore	Last week of June 2020	
F.Y 2019-20	GSTR 4	Composition dealer	-	



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