



## **Tax & Regulatory Update – Key developments of April 2020**

### **A. Direct Taxes:**

#### **1. Tax audit reportings of GAAR and detailed GST related breakdown deferred further till 31 March 2021:**

You would be aware that the complex reportings were introduced in 2018 under the Tax audit related Form 3CD vide clauses 30C (with regard to applicability of General Anti Avoidance Rules) and clause 44 (break up of expenditure of entities registered or not registered under GST). The said reporting was however deferred due to a large number of representations by the industry for a year. Considering the complexity involved and in view of Covid-19 related challenges, the said reporting has now again been deferred till 31 March 2021 - ***Circular No. 10/2020 dated 24 April 2020.***

#### **2. Clarification regarding short deduction of TDS / TCS due to increase in Surcharge rates by Finance (No.2) Act, 2019:**

Finance (No.2) Bill, 2019 was presented by FM on 1 July 2019 in the Parliament and received Presidential assent on 01 August 2019 wherein surcharge rates were increased for non-corporate taxpayers (25% and 37% rates were introduced for income > INR 2 cr and > INR 5 cr respectively). The enhanced rates were to be applied from 01 April 2019 (FY 2019-20) and hence, TDS / TCS were required to be deducted / collected after factoring in the same. This has triggered a non-compliance in the cases where transactions already concluded before

such announcement of increase in the rates (i.e. before 5 July 2019), without any fault of the deductors / collectors. Accordingly, to avoid such challenges, the CBDT has clarified that provisions of section 201 (assessee in default) would not apply in any such cases if:

- a) Transaction completed and the entire payment has been made to the payee on or before 05 July 2019 and there is no subsequent transaction with the same party during FY 2019-20, from which the shortfall of tax could recover;
- b) TDS / TCS applied on such transactions as per the rates in force at that point of time; and
- c) Amount of such TDS / TCS duly deposited and the concerned statement duly filed on or before the respective due dates.

Also, it has been clarified that where the shortfall of TDS / TCS has been deducted / collected from the subsequent transactions with the party, then no interest will be charged for any delay in deduction / collection of the same - ***Circular No. 8/2020 dated 13 April 2020.***

### **3. Clarification on withholding of taxes by employers considering the new regime available to salaried employees:**

Finance Act 2020 has introduced a new optional concessional tax regime primarily for salaried Individual taxpayers vide section 115BAC from AY 2021-22. However, there was lack of clarity on the point if the employer needs to withhold taxes on salary related payments after considering the new regime, since the option of new regime needs to be exercised by the taxpayer at the time of filing of its return of income.

In this regard, CBDT has issued a clarification that employees intending to opt for the new regime may intimate the employer in this regard and the employer then apply the TDS after considering the provisions of the new regime. Such intimation cannot be modified during the year. Also, in case of employees having income from business or profession, the said intimations once given cannot be modified in subsequent years. In case of no such intimation, employer can continue applying the TDS as per the old regime. It has also been clarified that an employee may still opt for the old regime at the time of filing of return of income irrespective of intimation made to the employer - ***Circular C1 of 2020 dated 13 April 2020.***

### **4. CBDT clarification in respect of donation to PM Cares Fund by employees through employer:**

Recently, CBDT has issued a clarification for claiming the deduction under section 80G of Income Tax Act for the donation made by an employee to PM Cares Fund through his/her employer as in such case the fund is not able to issue a separate certificate to such employee. Thus, it has been clarified by CBDT that deduction in respect of such donations will be admissible on the basis of Form 16 / certificate issued by the employer in this regard.

Please note that a similar Circular 2/2005 was issued by CBDT in 2005 on specified contributions such as PM relief fund, CM relief funds etc as a general clarification for allowability of section 80G to the employees when the donations made through employer, however, it was unclear if the said benefit can be extended to contributions towards the PM Cares Fund. This ambiguity has been cleared now by CBDT - **Clarification dated 9 April 2020.**

#### **5. CBDT revises return forms to enable taxpayers avail benefits of timeline extension due to Covid-19 in the return forms of FY 2019-20:**

In order to facilitate taxpayer to avail full benefits with various timeline extension under the Income Tax Act for FY 2019-20 up to 30th June 2020, CBDT has clarified that it has initiated necessary changes in the return forms so that taxpayers could take benefits of their transactions / investments etc. carried out during the period, 1 April-30 June 2020 in the return forms of FY 2019-20. Therefore, the return filing utility for filing of Income Tax Returns for FY 2019-20 after incorporating necessary changes will be made available on the income tax portal by 31 May 2020 - **Press Release dated 19 April 2020.**

#### **6. No harassment of Start ups with regard to the E-mails sent for facilitating faster refunds - CBDT:**

CBDT has clarified that emails sent to taxpayers recently for facilitating faster refund cannot be misconstrued as harassment and made following observations in this regard:-

- a) These computer generated emails have been sent to almost 1.72 lakh assesseees that have all classes of taxpayers including startups therefore saying that start-ups are being singled out and harassed is total misrepresentation of facts.
- b) These emails are auto generated under section 245 of Income Tax Act and sent in those cases where alongwith refund some outstanding demand is also there, hence, the taxpayer was asked to provide the response on the outstanding demand, so that the same can be adjusted against refunds in appropriate cases. This is to protect the interest of revenue.

CBDT explaining the extant procedure said that an opportunity is provided by the department to either clear the demand or intimate the status of demand to the department and in case the demand has been paid or has been stayed, so that department would not adjust or deduct the same from the refund amount - **Press release dated 21 April 2020.**

#### **7. FAQ's re-issued on Vivad se Vishwas (VsV) Scheme post enactment of the VsV Act:**

CBDT has re-issued FAQs which were released by CBDT vide circular no 7 of 2020 dated 04 March 2020 considering that the earlier FAQ's were issued pursuant to the VsV bill, hence, this re-issuance post enactment

of VsV Act. Besides just re-issuance with procedural revisions, it has also been clarified in relation to point no. 22 that where only notice issued for initiation of prosecution without prosecution being initiated, the assessee shall be eligible to file declaration under VsV scheme - *Circular no 9 of 2020 dated 22 April 2020.*

### **8. CBDT has rejected the IRS officers' FORCE report as ill-conceived:**

Recently, Indian Revenue Service (IRS) Association in a report titled 'FORCE' (Fiscal Options & Response to the COVID-19 Epidemic) suggested some radical measures for boosting tax revenues such as raising the tax rate to 40 per cent for those having income above INR 1 crore, from 30 per cent at present / levy of wealth tax for those having net wealth above INR 5 crore, levy of a COVID Relief cess @ 4% on those with taxable income of more than INR 10 lakhs, new Amnesty scheme to recover the pending undisputed demands, levy of a anti Base erosion tax on the lines of BEAT in US, bring back inheritance tax etc.

However, the Indian Finance Ministry has immediately distanced itself from the said report and issued a clarification that neither IRS Association nor any group of officers mentioned in the said report were ever asked by the government to give any such report. The Ministry has also initiated an investigation in the matter and sought response from the concerned officers on their misconduct - *News report dated 26 April 2020.*

[https://economictimes.indiatimes.com/news/economy/policy/irs-officers-report-on-funding-covid-relief-work-via-tax-measures-ill-conceived-finmin-sources/articleshow/75393150.cms?utm\\_source=ETTopNews&utm\\_medium=HPTN&utm\\_campaign=AL1&utm\\_content=23&utm\\_source=Mailer&utm\\_medium=ET\\_batch&utm\\_campaign=etcfo\\_news\\_2020-05-03&dt=2020-05-03&em=dGVqYXNrYXJuYW5pQGhlyWRzdXAuaW4=](https://economictimes.indiatimes.com/news/economy/policy/irs-officers-report-on-funding-covid-relief-work-via-tax-measures-ill-conceived-finmin-sources/articleshow/75393150.cms?utm_source=ETTopNews&utm_medium=HPTN&utm_campaign=AL1&utm_content=23&utm_source=Mailer&utm_medium=ET_batch&utm_campaign=etcfo_news_2020-05-03&dt=2020-05-03&em=dGVqYXNrYXJuYW5pQGhlyWRzdXAuaW4=)

### **9. Government is considering tax refunds to large taxpayers:**

As per the news report, the Government is considering issuance of tax refunds to large taxpayers, to provide additional liquidity during the lockdown period - *News report dated 26 April 2020.*

<https://economictimes.indiatimes.com/news/economy/policy/liquidity-boost-government-considers-tax-refunds-to-large-firms/articleshow/75188293.cms>

### **10. Global business bodies approached Finance Minister to defer equalisation levy by at least 9 months:**

You are aware that the Finance Act 2020 provides for payment of 2% equalisation levy by the non-resident e-commerce companies from 01 April 2020. In view of the challenges posed by Covid-19, multiple international business associations including US India Business Council, Information Technology Industry Council, Japan Electronics and Information Technology Industries Association, Asia-Pacific MSME Trade coalition and Digital Europe, have requested for consultation on the said levy and also defer the same by 9 months due to the crisis triggered by Covid-19 - *News report dated 30 April 2020.*



[https://www.business-standard.com/article/companies/global-business-bodies-nudge-fm-sitharaman-to-defer-equalisation-levy-120043000060\\_1.html?utm\\_source=Mailer&utm\\_medium=ET\\_batch&utm\\_campaign=etcfo\\_news\\_2020-05-03&dt=2020-05-03](https://www.business-standard.com/article/companies/global-business-bodies-nudge-fm-sitharaman-to-defer-equalisation-levy-120043000060_1.html?utm_source=Mailer&utm_medium=ET_batch&utm_campaign=etcfo_news_2020-05-03&dt=2020-05-03)

### **11. Government may allow EMIs for payment under Vivad se Vishwas scheme due to Covid-19 crisis:**

The Central Government is discussing the possibility of allowing payment for those opting for VsV scheme in installments. The scheme was announced in the Budget of 2020-21 and allows waiver of interest, penalty and prosecution for settling the pending tax disputes. The last date for making the payment under the scheme has already been extended from 31 March 2020 to 30 June 2020 in all cases - **News report dated 30 April 2020.**

[https://www.business-standard.com/article/economy-policy/govt-may-allow-instalments-for-vivad-se-vishwas-amid-covid-19-outbreak-120042901819\\_1.html](https://www.business-standard.com/article/economy-policy/govt-may-allow-instalments-for-vivad-se-vishwas-amid-covid-19-outbreak-120042901819_1.html)

### **12. Marketing arm is not a mutual concern, hence, surplus franchisee advertising contributions are not exempt – Indian Supreme Court (Civil Appeal No. 2847 / 2010):**

The Indian Supreme Court has ruled that the assessee (a wholly owned step down subsidiary of an MNC Restaurant chain and incorporated on a non-profit making principle for economizing the advertising & promotion cost of the franchisees) would not qualify as a mutual concern as the assessee fails the critical test of common identity between the members/beneficiaries & contributors. The Court noted that apart from contributions received from various franchisees, contributions had also been received from a non-member who is not a franchisee, which tainted the operations of the assessee company with commerciality, hence, contravened the prerequisites of mutuality and non-profiteering. Therefore, rejected assessee's plea of exempting from tax the surplus of advertisement contribution i.e. excess of Income over Expenditure received from franchisees on the basis of mutuality. *This is an important decision and would have a bearing on the existing models in the Franchisee businesses.*

### **13. Provision u/s 43B allowing Leave encashment on actual payment basis is Constitutionally valid - Indian Supreme Court (Civil Appeal No. 3545 / 2009):**

In this case, the assessee contended that Sec. 43B comes into operation only w.r.t statutory liabilities like tax, duty, cess etc. and other liabilities created for the welfare of employees and therefore, the liability under the leave encashment scheme being a trading liability cannot be subjected to the exception u/s 43B. The Indian Supreme Court, however, rejected that plea. The Court stated that Sec. 43B neither placed an embargo upon the autonomy of the assessee in adopting a particular method of accounting nor did it deprive the assessee

of any lawful deduction but merely operated as an additional condition for the availment of deduction. The Court further held that sub-section (2) of the section signifies that the general principle of autonomy of the assessee in adopting a system of accounting is controlled by the regulation notified by the Central Government and must be adhered to by the class of assessee governed thereunder. Hence, the provision is valid.

**14. Indian Liaison Office's remittance related activities are 'preparatory/ auxiliary' in nature, hence, no PE - Indian Supreme Court (Civil Appeal No. 9775 / 2011):**

The Indian Supreme Court has confirmed the High Court decision and held that Indian Liaison Offices (LO) of a UAE entity engaged in remittance services, do not constitute PE under India-UAE DTAA. It noted that the crucial activities performed by Indian LO were downloading particulars of remittances through electronic media and then printing cheques /drafts drawn on the banks in India, which were, in turn, couriered or dispatched to the beneficiaries in India, which is in line with the approval given by RBI for establishment of the LO. Hence, the activities of LO are in the nature of preparatory or auxiliary character under the tax treaty and this does not trigger any PE in India. *This is an important decision and should help as a guiding factor in the pending litigation in a large number of similar cases.*

**15. Issuance of scrutiny notice is sufficient to defer processing of refund in relation to ROI's filed upto AY 2016-17 - Indian Supreme Court (Civil Appeal No. 2377 / 2020):**

The Indian Supreme Court has ruled that the issuance of scrutiny notice is enough to keep the return processing in abeyance [for AYs upto AY 2016-17 u/s 143(1D) as section 241A holds ground thereafter]. Citing distinction between the powers to be exercised in summary assessment cases u/s. 143(1) with that of scrutiny assessment cases u/s. 143(3), the Court held that considering the nature of power exercisable under these two limbs of Section 143, the clear conclusion is that the processing of return under sub-section (1) of Section 143 must await the further exercise of power of scrutiny assessment under sub-sections (2) and (3) of Section 143. The Court further observed that if the return itself is under probe and scrutiny, such return cannot be the foundation to sustain a claim of refund till such scrutiny is not complete. *Although the decision is in the context of section 143(1D) which was applicable for ROI's filed upto AY 2016-17, however, the observations of the top Court of the Country in the context of probing the return etc. would give ammunition to the tax authorities to withhold the refund under section 241A which requires the tax officer to record reasons for such an action and with approval of his senior.*

## **B. Indirect Taxation:**

### **1. Guidelines for conduct of personal hearings in virtual mode under Customs, Excise and Service Tax matters (Instruction F. No. 390/Misc/3/2019-JC dated 27.04.2020)**

The CBIC with a view to contain the spread of COVID -19, has decided that personal hearing, in respect of any proceeding under the Customs Act, given by various authorities may be conducted through video conferencing facility. The guidelines issued are as under.

(i) Prior consent shall be taken from the parties at the time of filing his appeal or immediately after the issue of this instruction, in the case of pending matters. The parties shall also indicate their email address.

(ii) The date and time of hearing along with a link for the video conference shall be informed in advance to the party through the official email providing the details of officer-in-charge for conducting the virtual hearing. This link should not be shared with any other person without the approval of the authority.

(iii) The authorised representative should file his vakalatnama or authorization letter along with a copy of his photo ID card and contact details to the authority through official e-mail address after scanning the same. All persons participating in the video conference should be appropriately dressed and maintain the decorum required for such an occasion.

(iv) The virtual hearing through video conference will be conducted through available applications like VIDYO, or other secured computer network. The appellant and respondent should download such application in their

Computer system/laptop/mobile phone beforehand for ready connectivity during virtual hearing, and join the video conference at the time allotted to them.

(v) A soft copy of such record of personal hearing in PDF format will be sent through email ID provided by the party, within one day of the hearing. If the party wants to modify the contents of the record of personal hearing, they can do so and sign the modified record, scan and send back the signed record of personal hearing to the authority. If the party does not resend the above e-mailed record of personal hearing within 3 days of receipt of such e-mail, it will be presumed that they agree with the contents thereof and the authority will proceed to decide the case accordingly. The date of receipt of the email by the party will not be counted for this purpose.

(vii) If the party prefers to submit any document including additional submissions during the virtual hearing, he may do so by self-attesting such document and a scanned copy of the same may be emailed to the authority

immediately after virtual hearing and in no case after 3 days of virtual hearing. The date of the hearing will be excluded for this purpose.

**The aforesaid guidelines will also apply to matters under Central Excise Act, 1944 and service tax matters under Finance Act, 1994.**

## **2. Clarification on various issues in processing of refunds (Circular No.135/05/2020 – GST dated 31.03.2020)**

The CBIC has issued clarifications on various issues relating to GST. The same are summarised below.

- a) In view of Delhi High Court order in Pitambra Books Pvt. Ltd., the Board has decided to remove the restriction on clubbing of tax periods across Financial Years for claiming refunds. Accordingly, circular No. 125/44/2019-GST dated 18.11.2019 stands modified.
- b) Refund of input tax credit accumulated on account of change in GST rates on the same goods would not be allowed.
- c) In view of the amended rule 86 and rule 92 of the GST Rules, any refund of tax paid on supplies, other than zero rated supplies, will be admissible proportionately in the respective original mode of payment i.e., 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.
- d) 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.
- e) Refund application has been modified to include information of HSN/SAC Code and details on category of input supplies, i.e., inputs, input services or capital goods.

## **3. Trade facilitation measure - LUT can be furnished instead on bonds under Customs (Circular No. Circular No. 17/2020-Customs dated 03.04.2020)**

The CBIC has decided to take certain measures in view of the lockdown to expedite Customs clearance of goods and for maintaining balance between Customs control and facilitation of legitimate trade. The Board has relaxed submission of bonds under section 18, 59, 143 and exemption notifications. The relaxation is available upto 30.04.2020. The relaxation will apply to Government/Public Sector Undertakings, Manufacturer/Actual User importer, AEOs, Status holder and all importers availing warehouse facility. Other importers can also avail the relaxation subject to additional safeguards. The importer is required to comply with the following conditions:



- a) The content of the Undertaking should be to the extent possible be the same as the prescribed bond.
- b) The Undertaking should be signed on the business letterhead of the IEC holder and submitted by registered email ID or through authorised CHA.
- c) Undertaking should have a commitment to furnish the bond on or before 07.05.2020.
- d) The security, where required, shall be furnished in the nature and manner as deemed fit by the proper officer.
- e) In case of warehoused goods, any movement shall be allowed only to manufacturer/actual user importer or AEO or Status holders. Change of ownership will also be considered only in case where the prospective buyer is from the specified category.

**4. Salary paid to the director to attract GST under RCM (Rajasthan AAR in Clay Craft India Pvt. Ltd. vide order no. RAJ/AAR/2019-20/33 dated 20.02.2020)**

The facts of the case are that the company employs six directors who look after various functions such as sales, procurement etc. It was informed that directors are being treated as employees for the purpose of Income Tax Act and Employee Provident Fund. The Rajasthan AAR held that consideration paid to directors against supply of service is not covered and excluded from supply as directors are not employees of the company. The Authority observed that notification no. 13/2017-Central Tax (Rate) dated 28.06.2017 has given the distinct identity to the services provided by the Director and specifically included in the category of service on which GST will be payable under RCM. The authority further held that the position will remain the same even if the Director is a part time Director in other company as well.

**5. Separate registration not required in the State of execution of works contract (Karnataka AAR in T and D Electricals in order no. KAR ADRG 18/2020):**

The Karnataka AAR has held that a works contractor registered in Rajasthan does not require a separate GST registration in the Karnataka i.e. state of execution of works contract. The rationale for the finding was that the applicant has only one principle place of business, for which registration has been obtained and does not have any other fixed establishment other than the principle place of business. The Authority further held that if the applicant purchases goods from a dealer of Rajasthan and the goods are shipped directly to the execution site at Karnataka then the dealer will charge CGST + SGST from the applicant and the applicant will charge IGST on the invoice addressed to the final customer. Similarly, if the applicant purchases goods from a dealer of Karnataka and the goods are shipped directly to the execution site at Karnataka then the dealer will charge IGST from the applicant and the applicant will charge IGST on the invoice addressed to the final customer.

## **6. Transfer of balance in electronic cash ledger - Notification no. 37/2020, Central Tax dated 28.04.2020:**

The CBIC has notified insertion of Rule 87(13) of GST Rules and Form GST PMT-09 which allows a registered person to transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger to the electronic cash ledger for IGST, CGST, SGST or UGST with effect from 21.04.2020.

### **C. REGULATORY:**

#### **1. Important changes to the FDI Policy pursuant to the challenges from Covid-19:**

On the lines of restrictions placed to their FDI regulations by some European countries few days back to save the Corporates from hostile takeovers, Indian government has also announced these important amendments on account of major dip in the valuations of Indian Corporates due to Covid:

1. An entity of a country or where the beneficial owner of an investment is situated in or is a citizen of a country, which shares land border with India, can invest in India only under the Government approval route.
2. Any direct or indirect transfer of existing or future investment in an entity in India which results in the beneficial ownership falling under the above restriction will also require Government approval. The above changes will be effective from 22 April 2020 - **FEMA notification S.O. 12789E) / Press Note 3/2020.**

#### **2. EPFO has separated ECR filing from payment of contributions:-**

The filing of monthly Electronic-Challan cum Return (ECR) is separated from payment of the statutory contributions reported in the ECR. The ECR can now onwards be filed by an employer without the need of simultaneous payment of contributions and contributions may be paid later by the employer after filing the ECR - **Press Release dated 30 April 2020.**

#### **3. Extension of due date for payment of provident fund contributions for the month of March:**

Recently, Employees Provident Fund Organisation allowed a grace period of 30 days for payment of Provident Fund contributions for the month of March 2020 on account of Covid-19 related liquidity issues. Accordingly, the Electronic Challan cum Return for March 2020 can be filed and PF contributions for March 2020 can be deposited by 15 May 2020. This should provide some relief to the organisations during this difficult lock down period - **Circular dated 15 April 2020.**

#### **4. FAQs issued by MCA on Covid-19 related spend towards CSR:**

Recently, the MCA has issued **FAQs dated 10 April 2020** on eligibility of expenditure related to Covid-19 under CSR activities. Some of the key clarifications are as under:

1. Contribution to Chief Minister's Relief Fund or State Relief Fund for Covid-19 is not covered under Schedule VII of the Companies Act, 2013 and therefore any contribution to such funds shall not qualify as admissible CSR expenditure.
2. Contribution made to the State Disaster Management Authority to combat Covid-19 qualify as CSR expenditure under item no (xii) of Schedule VII.
3. Spending CSR funds for Covid-19 related activities shall qualify as CSR expenditure and the said fund may be spent for various activities related to Covid-19 under items nos. (i) and (xii) of Schedule VII relating to promotion of health care including preventive health care and sanitation, and disaster management etc.
4. Payment of salary / wages to employees and workers including payment to contract labour or temporary or casual or daily wage workers during lockdown cannot be covered under CSR Expenditure since these payments are in relation to contractual and statutory obligation of the company in regular course of business activities.
5. Any ex-gratia payment made to temporary / casual workers / daily wage workers over and above the disbursement of wages for the purpose of fighting Covid 19 shall be admissible as CSR expenditure as a one time exception provided there is an explicit declaration by the Board of the company which is certified by the statutory auditor.

#### **5. MCA has issued a Circular relaxing the requirements of transfer of Unpaid / Unclaimed Dividend amount to specified funds:**

On account of Covid-19, MCA has relaxed the timelines for transfer of funds and shares in relation to unpaid / unclaimed dividend amounts to the specified account vide its **Circular No 16/2020 dated 13 April 2020**.

#### **6. Extension of time period for inclusion of name of Independent Director in the data bank:**

As per **Rule 6(1)(a) of the Companies (Appointment and Qualification of Directors) Rules, 2014**, every Individual who has been appointed as an Independent Director in any Company shall within a period of 5 months from the date of commencement of Fifth amendment rules 2019, apply online to the prescribed institute for inclusion of his name in the directors data bank for a period of one year or five years or for his life-time till he continues to hold the office of an independent director in any company. Now, MCA vide Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2020 dated 29th April, has extended the said period from existing 5 months to 7 months.

## **7. Invitation of comments on Draft Valuers Bill, 2020:**

Recently, a committee formed by the Ministry of Corporate Affairs has submitted its report on the need for an institutional framework for regulation and development of the Valuation profession alongwith a recommendation for establishment of a National Institute of Valuers. Pursuant to the recommendations of the Committee, MCA has issued a Draft Valuers Bill, 2020 for public comments, which can be shared by 14th May 2020 on the email - [tharvinder-upsc@gov.in](mailto:tharvinder-upsc@gov.in)

## **8. Clarification on passing of Ordinary and Special resolutions by Companies under Companies Act during the lockdown period:**

Due to Covid-19 related challenges, MCA vide its Circulars requested all the Companies to take all decisions of urgent nature that require approval of members, other than ordinary business or business where any person has a right to be heard, through mechanism of postal ballot / e-voting in accordance with the provisions of the Act and without holding a general meeting to avoid the physical presence of members at a common place.

However, in cases where holding of Extraordinary General Meeting (EGM) by a Company is unavoidable, then for such cases, MCA has notified the procedure to be adopted for conducting the meeting on or before 30.06.2020, in addition to the other requirements under the Act. Key points with regard to the procedure are as under: *Circular No. 17/2020 dated 13April 2020*

### **A. For the Companies which are required to provide the facility of e-voting under the Act, or any other Company which has opted for such facility-**

1. EGMs may be held through Video Conferencing (VC) or Other Audio Visual Means (OAVM) and recorded transcripts of the same to be maintained in safe custody by the Company. Also, in case of public Company, the recorded transcript should also be uploaded on the website of the Company.
2. Convenience of different persons positioned in different time zones shall be kept in mind before scheduling the meeting.
3. The facility of VC or OAVM should allow two way teleconferencing or webex. Members and participants should be allowed to pose questions concurrently or given time to submit the questions in advance to the email address of the Company. Facility must have the capacity to allow at least 1000 members on a first come first served basis. However, the following restrictions of first come first served principle would not apply to large shareholders (i.e. holding 2% or more shareholding), promoters, institutional investors, directors, key managerial persons, the chairpersons of the Audit Committee, Nomination and Remuneration Committee and Stakeholders Relationship Committee, auditors etc.

4. Companies should ensure that any member can join the meeting at least 15 minutes before the time scheduled and not closed till the expiry of 15 minutes after such scheduled time.
  5. The facility of e-voting shall be provided as per the provisions of the Act before the actual date of meeting.
  6. Attendance of members through VC or OAVM shall be counted for the purpose of quorum.
  7. Members available at the meeting and not casted their vote on resolutions through e-voting shall be allowed to vote through e-voting system or by show of hands until and unless such member is not barred from voting. This point is not applicable on the Companies which are not required to provide e-voting facility under the Act.
  8. Where the Articles of the Company require specific person to be appointed as Chairperson for the meeting, chairperson shall be appointed in the manner prescribed below:-
    - a) Where there are less than 50 members present at the meeting, the Chairperson shall be appointed in accordance with section 104 of the Act.
    - b) In all the other cases chairperson shall be appointed through e-voting system during the meeting.
  9. Chairman of the meeting shall ensure that the facility of e-voting system is available for the purpose of voting during the meeting held through VC or OAVM.
    - a) Where there are less than 50 members present at the meeting, either by show of hands or e-voting system. However, in case demand for poll is made in accordance with section 109, voting shall be conducted through the e-voting system.
    - b) In all the other cases, voting shall be conducted through e-voting system.
- The above point is not applicable on the Companies which are not required to provide e-voting facility under the Act.
10. Appointment of proxies would not be available for such meetings however, any member can appoint his representative under section 112 and 113 of the Act for the purpose of voting through e-voting or participation and voting in the meeting through VC or OAVM.
  11. Attendance of at least one independent director (where the company is required to appoint) and auditor or his authorized representative is mandatory to join the meeting. Also, where institutional investors are also members of the Company, then they must be encouraged to attend and vote in the meeting.
  12. Notice of the meeting shall make the disclosures with regard to the manner explained in the circular and contain the clear instructions on how to access and participate in the meeting.



13. While publishing the public notice for the meeting as required under Rule 20(4)(v) of Companies (Management and Administration) Rules, 2014 the following matters shall also be stated:-

- a) A statement that EGM has been convened through VC or OAVM in compliance with the provisions of Companies Act read with this circular.
- b) Date and Time of EGM through VC or OAVM
- c) Availability of notice of meeting on the website of the Company and the stock exchanges.
- d) The manner in which members can cast their vote through e-voting or through e-voting system during the meeting who are holding shares in physical form or who have not registered email addresses with the Company.
- e) Manner through which the members who have not registered their email address with the Company can get registered with the Company.
- f) Any other details which the Company may consider necessary.

14. The Chairman of the meeting shall satisfy himself and record before considering the business that all the efforts feasible under the circumstances have been made by the Company to enable members participate and vote.

15. The Company shall also provide a helpline number through the registrar & transfer agent, technology provider for those shareholders who need assistance in the technology before or during the meeting. A copy of the meeting notice shall also be displayed on the website of the Company and intimation of the same must be made to the exchanges also in case of listed Company.

16. All the resolutions passed in accordance with the above meeting shall be filed with the Registrar of the Companies **within 60 days of meeting**.

**B. Additional points for the Companies which are not required to provide the facility of e-voting under the Act-**

1. In order to ensure that all members are aware that a general meeting is proposed to be conducted, the Company shall:-

a) Contact all the members whose email address is not available with the Company over telephone or any other mode of communication for registration of their email addresses before sending the notice for meeting to all the members.

b) Where contact details are not available with the Company or could not be obtained, Company shall by public notice by way of advertisement published in the principal vernacular language of the district of registered office of the Company and English newspaper having wide circulation giving following information:-

i) That the Company intends to convene a general meeting in compliance with general provisions of the Companies Act and in accordance with this circular.

ii) Email address along with telephone number on which members may contact for getting their email address registered for participation and voting in general meeting.

2. The Company shall provide a designated email address to all members at the time of sending the notice of meeting through which members shall convey their vote when a poll is required to be taken during the meeting on any resolution. The Company shall maintain the confidentiality of the password and other privacy issues associated with the designated email address.

3. Where the counting of the votes require time, the said meeting may be adjourned and called later to declare the result.

#### **9. IRDAI has allowed additional time for filing of Regulatory Returns to all insurance intermediaries:**

Insurance Regulatory and Development Authority of India has issued **Circular no 87/4/2020 dated 9<sup>th</sup> April 2020** allowing additional time over and above the time allowed in regular course, for filing of Regulatory Returns as at 31.03.2020

a) Half-Yearly and Yearly Returns: 30 days

b) Cyber Security Audit: 30 days

#### **10. Power Ministry floats Draft Electricity Act (Amendment) Bill 2020 to introduce key Reforms in the Power Sector and invites suggestions within 21 days:**

As per the **Press release dated 19 April 2020**, supply of quality power at affordable prices is essential for sustained growth of the economy of the country. For further development of the power sector, Ministry of Power has issued draft proposal for amendment of Electricity Act, 2003 in the form of draft Electricity Act (Amendment) Bill, 2020 for comments / suggestions from Stakeholders on 17 April 2020. Some of the major proposals in relation to viability of Electricity Distribution Companies, Sanctity of contracts, Strengthening the regulatory regime, development and promotion of generation of electricity from renewable sources of energy, to facilitate and develop trade in electricity with other countries, Franchisees and Distribution sub licensees etc.

#### **11. MNRE gives major push towards setting up RE Equipment Manufacturing Parks in India:**

The Ministry of New and Renewable Energy (MNRE) has initiated action in big way towards setting up new hubs for manufacturing renewable energy equipment's in the country to meet both domestic and also cater to global demand. With this objective in view, Ministry has written to various State Governments and various Port

Authorities to identify land parcels of 50-500 acres for setting up such Parks. In tune with this, MNRE has set up RE Industry Facilitation & Promotion Board to facilitate investment in RE the sector. The Ministry has also strengthened the clauses in Power Purchase Agreements (PPAs) to boost investor confidence.

The three Power and RE Sector NBFCs namely PFC, REC and IREDA have reduced their repayment charges to 2% for enhancing the fund availability for new projects in the sector. Moreover, IREDA has brought out a new Scheme for project specific funding to promote RE manufacturing in India.

Further, Ministry is making special efforts to boost export of RE Services like project designing, operations and maintenance. Today, the practices adopted by RE sector in India in project & grid development and maintenance are among the best in the world and hence a huge opportunity is available for export of RE Services.

Ministry also got in touch with Trade Commissioners / Representatives of various countries inviting them to invest in this promising opportunity in India. Secretary, MNRE also addressed the US India Strategic Partnership Forum earlier this week through Webinar and sought collaboration and investment by US Firms.

These hubs will manufacture equipments like silicon ingots & wafers, solar cells & modules, wind equipments and ancillary items like back sheet, glass, steel frames, inverters, batteries etc. To incentivise domestic manufacturing, Government of India already announced provisions to enable levying of Basic Customs Duty on import of solar cells and modules. *Press release dated 19 April 2020.*

### **12. Relaxation in the provisions of Buy-back of securities:**

SEBI vide **Circular no 69/2020 dated 23 April 2020** has relaxed the restrictions on buy-back of securities. Under the current provisions, there is a restriction on raising of further capital for a period of 1 year from the expiry of previous buy-back. Now, with the view to allow easy access to the capital, the said period has been reduced from 1 year to 6 months which is in line with the timeline prescribed under section 68 of Company law. This relaxation will be applicable upto 31 December 2020.

### **13. One time relaxation with respect to the validity of SEBI observations in case of public/ right issue:**

The SEBI has issued a **Circular no. 67/2020 dated 21 April 2020** in which they provided the following relaxations:-

- a) All public issues and right issues which have expired or are expiring between 1 March 2020 and 30 September 2020 shall now be extended for a period of 6 months from the date of expiry of observation by SEBI. The extension is subject to an undertaking from the lead manager of the issue confirming the compliance. As

per the existing guidelines the public issue/ right issue is required to be opened within 12 months from the date of issuance and observation by SEBI.

b) As per the SEBI regulations, any increase or decrease in the size of fresh issue by up to 25% of the size of the fresh issue shall require the fresh filing of the draft offer document along with the fees, now the limit for the same has now been increased to 50% of the size of the estimated fresh issue. The increase in limit is subject to following conditions:-

- i) there has been no change in the objects of the issue
- ii) the lead manager undertakes that the draft offer document is in compliance with provisions of regulation
- iii) the lead manager shall ensure that all appropriate changes are made to the relevant section of DRHP and an addendum, in this regard, shall be made public.

The above relaxation on change in fresh issue size will be applicable for issues (IPO/ Rights Issues/ FPO) opening before 31 December 2020.

#### **14. Relaxations by SEBI with respect to regulations related to the Right Issue:**

SEBI vide **Circular dated 21 April 2020** has made relaxations in SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 in respect of Rights Issue. Some of the key relaxations are summarised below for your kind reference:

- a) Relaxations with respect to the eligibility conditions related to Fast Track Rights Issues.
- b) The minimum subscription to be received in the issue has also been reduced to 75% from existing 90%, provided if the issue is subscribed between 75% to 90%, issue will be considered successful, if out of the funds raised at least 75% of the issue size shall be utilized for the objects of the issue other than general corporate purpose.
- c) Relaxation with respect to minimum threshold required for not filing the draft letter of offer with SEBI from the existing INR 10 crores to INR 25 crores.

#### **15. Additional Relaxations/ Clarifications with regard to certain provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('LODR') due to Covid:**

SEBI vide its **Circular dated 19 March 2020 and 26 March 2020** has provided multiple relaxations from the compliances with regard to certain provisions of LODR. Further, SEBI vide its circular no 63/2020 dated 17 April provides some additional relaxations / clarifications as under:

- a) As per the existing regulations, stock exchanges need to be provided prior intimation about meetings of the Board atleast 5 days (excluding the date of the intimation and date of the meeting) before the meeting, if

financial results are to be considered and 2 days in other cases. Now, it has been decided to reduce the period to 2 days in both the cases for the board meetings held till 31 July 2020.

b) Under the existing regulations, listed entities are required to submit information regarding loss of share certificates and issue of the duplicate certificates, to the stock exchange within two days. Now, it has been decided that no penalty would be levied for delay in any such intimation (to be made between 01 March 2020 to 31 May 2020).

c) For any authentication / certification of any filing / submission made to stock exchanges under LODR - it can be done using the digital signatures until 30 June 2020.

## **16. New Incentive Schemes announced for the entities engaged in Manufacturing of specified products:**

Recently, the Ministry of Electronics and Information Technology (MeitY) launched two incentive schemes to promote Make In India initiative of the government. A brief of the same are as under and the quantum related details are mentioned in the Notifications:

### **A. The Production Linked Incentive Scheme (PLI) for large scale Electronics Manufacturing-**

**a) Objective:-** To provide financial incentive to boost domestic manufacturing and attract large investments in the electronics value chain including electronic components and semiconductor packaging.

**b) Quantum of Incentive:-** 4% to 6% on incremental sales (over base year FY 2019-20) for goods manufactured in India and covered under the target segments\*.

**c) Eligibility Criteria:-** The benefit under the scheme is subject to the following conditions:-

- The Company is a Domestic company - Domestic companies are defined as those owned by resident Indian citizens as defined in the Foreign Direct Investment Policy Circular of 2017.
- Companies engaged in the manufacturing of target segments in India (includes contract manufacturers as per FDI policy).
- Incentive shall be limited to only 1 of the target segments.
- Applicants must meet the threshold of incremental investment and incremental sales of manufactured goods.

### **d) Application Process:-**

- An application under the scheme needs to be made by **31 July 2020**.
- Applications which are completed in all respect will be provided an acknowledgement.
- Applications will be appraised on an ongoing basis and considered for approval.
- Incentives will be released to the applicants meeting the required thresholds and claims are in order.



**e) Other relevant points:-**

- Starting date of the scheme is 01.08.2020.
- Initially the scheme will be open for 4 months from the starting date after which it may be extended.
- The Scheme may be reopened for the applications anytime during its tenure based on the response from the industry.
- The scheme shall be provided for a period of 5 years subsequent to base year FY 2019-20.

*\*Mobile phones, SMT components, Discrete semiconductor devices including transistors, diodes, thyristors, etc, Passive components including resistors, capacitors, etc. for electronic applications, Printed Circuit Boards (PCB), PCB laminates, prepregs, photopolymer films, PCB printing inks, Sensors, transducers, actuators, crystals for electronic applications, System in Package (SIP), Micro / Nano-electronic components such as Micro Electromechanical Systems (MEMS) and Nano Electromechanical Systems (NEMS) and Assembly, Testing, Marking and Packaging (ATMP) units.*

**B. Scheme for promotion of manufacturing of Electronic Components and Semiconductors (SPECS)-**

**a) Objective:-** The scheme will help offset the disability for domestic manufacturing of components and semiconductors in order to strengthen the electronics manufacturing ecosystem in the country. Under the scheme, financial incentive of 25% of capital expenditure will be provided for the manufacturing of goods that constitute the supply chain of an electronic product under the SPECS scheme.

**b) Quantum of Incentive:-** An incentive of 25% on capital expenditure shall be provided to the units making investment for the goods (different threshold for different products refer Annexure of Circular). The incentive will be provided on a reimbursement basis. Further the incentive under the scheme will be over and above any incentives offered by the Central Government or State Government or any of its agencies or local bodies.

**c) Eligibility Criteria:-** The benefit under the scheme is subject to the following conditions:-

- Entity must be registered in India.
- Incentives under the scheme will be provided for the applicants meeting the threshold for investments in new units as well as expansion of capacity/ modernisation and diversification of existing units.
- Investments committed by the applicants under M-SIPS scheme for which incentives have been claimed will not qualify as eligible investments under SPECS scheme.

#### **d) Application Process:-**

- An application under the scheme needs to be made.
- Every application will be treated as new investment and treated as independent application
- Applications which are completed in all respect and submitted before the due date will be appraised on an ongoing basis and considered for approval.
- An acknowledgement will be issued after the initial scrutiny of the application.
- Incentives will be applicable from the date of acknowledgment of the application.
- Incentives against the capital expenditure will be released for the applicants meeting the required thresholds and claims are in order.

#### **e) Other relevant points:-**

- Starting date of the scheme is 01.08.2020.
- Initially the scheme will be open for 3 years from the date of its notification.
- Incentive will be available for investments made within 5 years from the date of acknowledgement of application.
- Capital expenditure will be the total of expenditure in plant, machinery, equipment, associated utilities and technology, including for Research & Development (R&D). Details of such eligible capital expenditure will be included in the guidelines.
- The total value of refurbished plant, machinery and equipment (including for associated utilities and R&D), whether imported or domestically procured, not exceeding 20% of the total eligible plant, machinery and equipment (including for associated utilities and R&D), shall be considered for calculation of incentive under the scheme.

#### **17. MCA has extended the timelines for the validity period of Names reserved and Re-submission of Forms:**

Recently, MCA on 22 April, has provided a number of relaxations in the timelines of reservation of names of Companies / LLPs and re-submission of forms as under:

<b>Issue description</b>	<b>Period/ Days of Extension</b>
Names reserved for 20 days for new company incorporation. SPICe+ Part B needs to be filed within 20 days of the name reservation	Names expiring any day between 15 March to 31 May would be extended by 20 days beyond 31 May 2020

Names reserved for 60 days for change of name of the company. INC-24 needs to be filed within 60 days of name reservation	Names expiring any day between 15 March to 3 May would be extended by 20 days beyond 3 May 2020
Extension of RSUB validity for companies	SRNs where the last date of Re-submission (RSUB) falls between 15 March to 3 May, an additional 15 days beyond 3 May 2020 would be allowed. However, for SRNs already marked under NTBR, the extension would be provided on a case to case basis.
Names reserved for 90 days for new LLP incorporation/change of name. FiLLiP/Form 5 needs to be filed within 90 days of name reservation.	Names expiring any day between 15 March 2020 to 3 May would be extended by 20 days beyond 3 May 2020.
RSUB validity extension for LLPs.	SRNs where the last date of resubmission (RSUB) falls between 15 March to 3 May , an additional 15 days would be allowed from 3 May 2020 for resubmission. However, for SRNs already marked under NTBR, the extension would be provided on a case to case basis.

## 18. India Inc. gets breather from Insolvency and Bankruptcy Code (IBC) for six months due to Covid-19:

Section 7 of the IBC enables financial creditors to start insolvency proceedings against a company, while section 9 gives these powers to an operational creditor. A new Section is likely to be added to the IBC which would suspend Sections 7, 9, and 10, which are used to trigger insolvency proceedings for six months or a period not exceeding one year from the date they commence. In March, Union Finance Minister Nirmala Sitharaman had indicated the government would consider suspending the IBC for a few months if the Covid situation persisted and caused stress to businesses. Already, the default threshold for stressed companies facing insolvency has been increased from Rs 1 lakh to Rs 1 crore - **News report dated 23 April 2020.**

<https://www.business-standard.com/article/economy-policy/coronavirus-impact-government-to-suspend-ibc-for-at-least-six-months->

[120042301639\\_1.html?action=profile\\_completion&utm\\_source=Mailer&utm\\_medium=ET\\_batch&utm\\_campaign=etcfo\\_news\\_2020-04-24&dt=2020-04-24](https://www.asire.com/120042301639_1.html?action=profile_completion&utm_source=Mailer&utm_medium=ET_batch&utm_campaign=etcfo_news_2020-04-24&dt=2020-04-24)

## **19. Task Force on National Infrastructure Pipeline submitted its Final Report to Finance Minister**

Recently, task force on National Infrastructure Pipeline submitted its final report to the Finance Minister that captures the status of the total expected capital infrastructure of Rs. 111 lakh crore across the Country in the next five years. Also, the report presented identifies and highlights recent infrastructure trends in India as well as global in all sectors of infrastructure. It also captures sector progress, deficits and challenges. In addition to update existing sectoral policies, the Final Report also identifies and highlights a set of reforms to scale up and propel infrastructure investments in various sectors throughout the country. The report also has suggested ways and means of financing the NIP through deepening Corporate Bond markets, including those of Municipal Bonds, setting up Development Financial Institutions for infrastructure sector, accelerating Monetisation of Infrastructure Assets, Land monetisation, etc. - **Press Release dated 29 April 2020.**

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