



Tax & Regulatory Updates – Key developments of June 2020

A. DIRECT TAXATION

1) CBDT prescribes certain exempt allowances for the employees opting the new concessional tax regime under section 115BAC of Income Tax Act:- Notification No. 38/2020

Finance Act 2020 introduced the optional new concessional tax regime for the Individuals and HUF under section 115BAC from AY 2021-22. Under the new tax regime an employee is not allowed to avail most of the allowances which are exempt from tax [unless the same are specified with respect to the allowances listed under section 10(14) of the Act]. CBDT has now specified the said allowances vide the above notification that can be availed under the new tax regime and the same are as under:

1. Allowance to meet the cost of travel on tour or transfer - upto actual spend for official purposes.
2. Allowance to meet the cost of ordinary daily charges on tour or on transfer - upto actual spend for official purposes.
3. Conveyance allowance - upto actual spend for official purposes.
4. Transport allowance (this has a limit of INR 3,200 per month) to the employee with disabilities for commuting between residence to the place of duty.

Further, the notification also withdraws the exemption provided under Rule 3(7)(iii) in respect of benefit of free food and non-alcoholic beverages provided by employer through paid vouchers of upto INR 50 per meal.

The above notification shall come into force from 1 April 2021 and apply in relation to the AY 2021-22. Accordingly, the employers will have to adjust the salary structure of the employees opted for the new regime as per the above and adjust the TDS of the last few months also accordingly.

2) Mauritius entities not eligible for the benefit under the Tax Treaty with India as the overall control and management of the entities was located outside Mauritius and the ultimate owner and beneficiary of the transaction was a US resident - Authority for Advance Rulings (AAR) in the case of Tiger Global International II Holdings:

Briefly, the taxpayers, Mauritian Companies, transferred the shares of a Singapore Company that derived substantial value from assets located in India. The taxpayers applied for Nil withholding of taxes before the tax officer, which was rejected by the tax authority. Taxpayers then approached AAR to determine whether such transfer of shares is taxable in India considering the indirect transfer provisions that exist under the Indian domestic law and Article 13(4) of the Tax Treaty. Firstly, the AAR decided that an order passed in respect of nil tax withholding certificate does not fetter the jurisdiction of the AAR to proceed with application as the said order does not decide the final tax liability of a taxpayer.

On merits, the AAR held that the Mauritian entities are only pass through entities as their overall control and management / head and brain was located outside Mauritius and the ultimate owner and beneficiary was a US resident. Accordingly, the AAR rejected the admission of application of the Taxpayers on the grounds that the entire arrangement was designed prima facie to avail only the benefits of India-Mauritius Tax Treaty and, hence, for avoidance of tax. Surprisingly, the AAR has also held in para 41 and 48 that the exemption from capital gains tax on sale of shares of companies not resident in India was never intended under the original or the amended DTAA between India and Mauritius.

The AAR held further that it is not required to conclusively establish that there was tax avoidance at the stage of admission of application and the application can be rejected if the transaction is prime facie designed for avoidance of tax.

This decision would impact a large number of such cases considering the unique observations of AAR at few places which appear to be in conflict with the previous precedents and the plain language of the India-Mauritius DTAA where taxation in the Resident state is clearly covered in the Residuary Article 13(4) of the old as well as the amended treaty.

3) Indian Supreme Court to examine maintainability of the revision petition filed by a Spanish company seeking refund by invoking MFN clause:

SC has issued notice to a Spanish Company pursuant to SLP filed by revenue challenging the Delhi High Court order holding that assessee-company's petition filed under section 264 seeking revision of 'intimation' u/s 143(1) was maintainable.

For AY 2014-15, the Company had offered FTS income earned from its Indian counterpart in its return of income on which tax @20% was paid as per Article 13 of India-Spain DTAA, such return was processed u/s. 143(1) by AO, however, in view of the Most Favoured Nation (MFN) clause [which provided for further concessional rate of 10%] coming into light of assessee subsequently, assessee filed a petition u/s.264 seeking revision of intimation and consequential grant of refund of excess tax paid. High Court had directed Revenue to permit assessee to revise its return and further refund the excess tax paid by assessee with interest.

Once settled at Apex Court, this would help such taxpayers who missed invoking MFN clause to claim the benefit by way of lower taxes or scope etc.

4) Mumbai Tribunal referred for Larger Bench, whether the condition for pre-deposit of 20% demand (inserted by Finance Act 2020) for granting / extension of stay by the Tribunal is Mandatory or Directory - Tata Education and Development Trust vs ACIT:

Finance Act 2020 made an amendment to the provisions of section 254 of the Income Tax Act wherein ITAT can grant / extend the stay of demand provided that the taxpayer deposits atleast 20% of the demand or furnishes appropriate security for the said amount.

This provision has recently been tested in the matter of Tata Education and Development Trust (assessee) wherein the assessee's Counsel argued that the above amendment is directory in nature and not mandatory. Also

the above amendment could not be applied on the appeals that were filed before the amendment came into force. The Counsel has also cited multiple situations where this amendment will create genuine hardship to the taxpayers including covered matters. ITAT has observed that the matter is of vital importance to all the stakeholders all over the country, hence, it is desirable to have the benefit of arguments from stakeholders in different parts of the country. Accordingly, they referred the Stay Applications (SA Nos. 147 and 148/Mum/2020) to the ITAT President for consideration of constitution of a larger bench and to frame the questions for the consideration by such a larger bench.

The Division Bench has identified the following issues in this regard:

1. whether the amendment is directory or mandatory in nature;
2. whether the amendment affects the appeals which were filed prior to the date on which amendment came into force;
3. whether, with respect to the manner in which, and nature of which, security is to be offered by the assessee.

The matter is tentatively posted for hearing on 6th July 2020 or on such other date as may be directed by the President and to be heard by the Division or such a larger bench as constituted. Once decided, this would bring the much needed clarity for the taxpayers on this contentious issue.

5) Extension of interim orders by Delhi High Court till 15 July (W.P.(C) 3037/2020) - 15 June 2020:

Delhi High Court has extended all interim orders referred in the order till 15 July on account of Covid-19. This covers the matters pending before the High Court and the subordinate Courts including Tribunal.

This should give relief to the taxpayers as well whose stay orders would be expiring during this time frame.

6) Extension of interim orders by Bombay High Court till 15 July (WRIT PETITION URGENT 2 OF 2020) - 15 June 2020:

The Bombay High Court further extended the life of interim orders by another month, considering that the COVID-19 lockdown was still on. The Court had first extended the life of interim orders on March 26, days after the first national COVID-19 lockdown was announced on March 24. It was later extended for a second time until June 15 on April 14.

Given the continuing lockdown situation in Maharashtra, the Court has now directed that the orders extending the life of interim orders will continue to be in operation until July 15, if not directed otherwise in the

meanwhile. This should give relief to the taxpayers as well whose stay orders would be expiring during this time frame.

7) Extension of interim orders by Allahabad High Court till 10 July ((PIL) No. - 564 of 2020) - 19 June 2020:

Allahabad High Court has extended all interim orders referred in the order till 10 July on account of Covid-19. This covers the matters pending before the High Court and the subordinate Courts including Tribunal.

This should give relief to the taxpayers (including a lot of Companies based in Noida) as well whose stay orders would be expiring during this time frame.

8) ICAI has invited comments on the detailed Exposure Draft of Guidance Note on Transfer Pricing Audit Report under Section 92E of the Income-Tax Act, 1961:

The Committee on International Taxation of ICAI has invited comments from the stakeholders on the Guidance Note on Report under Section 92E of the Income-Tax Act, 1961 (Transfer Pricing). The guidance note have been updated to incorporate the amendments made by the Finance Act, 2020. The exposure draft is available at https://www.icaai.org/post.html?post_id=16082 and comments may be sent to citax@icai.in. It is suggested that comments should clearly indicate the specific paragraph or group of paragraphs to which they relate, contain a clear rationale and, where applicable, provide a suggestion for alternative wording. The last date for sharing comments is 30 June 2020.

9) CBDT notified Cost Inflation Index (CII) for Financial Year 2020-21 - Notification No. 32/2020 dated 12 June 2020:

CBDT vide its notification dated 12 June 2020 notified the CII for FY 2020-21 at 301 for computation of Capital gains.

10) CBDT prescribed additional transactions under the exclusion of section 56(2)(x) and consequently replaced the concerned Rule 11UAC under the Income Tax Rules:- CBDT Notification No. 40/2020

Section 56(2)(x) provides for taxation in the hands of any person on the “receipt” of money or specified property, without consideration or for an inadequate consideration vis-a-vis the stamp duty / market value of such property. There are however some specific exclusions to this section alongwith a general exclusion (as

prescribed under Rule 11UAC). As of now, only one transaction of receipt of immovable property by the resident of Delhi on account of regularisation of unauthorised colonies is prescribed under this Rule.

Recently, CBDT vide notification no. 40/2020 dated 30 June 2020 added two more transactions in this said Rule 11UAC:

1. Cases such as IL&FS where the unquoted shares of a company and its subsidiary and the subsidiary of such subsidiary have been received by a person pursuant to a resolution plan approved by the National Company Law Tribunal under section 242 of the Companies Act 2013 after the application by the Central Government post suspension of Board of Directors of such Company.

A separate **Notification No. 42/2020 dated 30 June 2020** has also been issued by CBDT under section 50CA to exclude the above transaction from a seller standpoint as well. Section 50CA provides that where consideration for transfer of unquoted shares of a Company is less than the fair market value than fair market value shall be taken as consideration for the purpose of calculating the income under the head Capital Gains for the seller. Accordingly, CBDT has inserted a new Rule 11UAD under the Income Tax Rules to exclude the cases such as IL&FS from the purview of section 50CA but with similar conditions as prescribed under Rule 11UAC.

2. Where an investor / investor bank receives the equity shares allotted by the reconstructed bank under and at a price specified in the Yes Bank Limited Reconstruction Scheme, 2020.

11) Relaxation from certain conditions to be followed by eligible funds under Section 9A of the Income Tax Act:- CBDT Notification No. 41/2020

Section 9A of the Income Tax Act specifies that the eligible investment funds for which fund management activity carries out through an eligible fund manager shall not constitute business connection in India for the said fund subject to certain conditions which are prescribed under sub-section (3) of the said section.

CBDT vide notification No. 41/2020 dated 30 June 2020 provides some relaxations with respect to the above conditions mentioned for the investment fund set up by a Category-I Foreign Portfolio Investor registered under the SEBI (Foreign Portfolio Investors) Regulations, 2019. Below are the conditions which are relaxed in such cases:

1. The fund has a minimum of 25 members who are, directly or indirectly, not connected persons.
2. Any member of the fund along with connected persons shall not have any participation interest, directly or indirectly, in the fund exceeding 10%.

3. The aggregate participation interest, directly or indirectly, of 10 or less members along with their connected persons in the fund, shall be less than 50%.

12) CBDT has issued Order for inter state transfers of Officers in the level of Assistant / Deputy Commissioners - Order No. 98 of 2020:

On the lines of each year, CBDT has issued an Order dated 12 June for large scale inter state transfer of AC / DC's with immediate effect of more than 200 officers.

13) CBDT has issued a detailed Press Release on the growth trajectory of Direct Tax Collection in FY 2019-20 and recent Direct Tax Reforms - Press Release dated 07 June 2020:

CBDT has issued a detailed Press Release to disregard the reports that are floating in a certain section of media that the growth of direct taxes collection for FY 2019-20 has fallen drastically and buoyancy of the direct tax collection as compared to the GDP growth has reached negative. The Board has said that these reports do not portray the correct picture regarding the growth of direct taxes. It is a fact that the net direct tax collection for FY 2019-20 was less than the net direct tax collection for the FY 2018-19, but this fall in the collection of direct taxes is on expected lines and is temporary in nature due to the historic tax reforms undertaken and much higher (14% higher) refunds issued during the FY 2019-20.

Therefore, after removing the effect of the extraordinary and historic tax reform measures and higher issuance of refunds during the FY 2019-20, the buoyancy of total gross direct tax collection comes to 1.12 and almost 1 for Corporate Tax and 1.32 for Personal Income Tax. These buoyancies indicate that the growth trajectories of both Corporate and Personal income taxes are intact and rising steadily. Further, the Board has clarified that the higher growth rate in direct taxes as compared to growth rate in the GDP even in these challenging times proves that recent efforts for the widening of the tax base undertaken by the Government are yielding results. Also, the Government has listed down all the key tax friendly measures taken by the Government on the direct tax front in the recent past such as new lower tax regimes, abolishment of DDT, faceless appeals, raising of threshold for Revenue's appeal etc.

14) Income Tax department has opened ITR filing window for those using ITR 1 and ITR 4 forms:

Further to the release of the new return forms for FY 2019-20, Income Tax Department on 02 June 2020 opened the window for the filing for those who wish to file ITR 1 and ITR 4. ITR 1 popularly known as Sahaj is for the individuals being a resident (other than not ordinarily resident) having total income upto INR 50 lakhs, having Income from Salaries, one house property, other sources (Interest etc), and agricultural income upto

INR 5000. ITR 4 is for Individuals, HUFs and Firms (other than LLP) being resident having total income upto INR 50 Lakhs and having total income from business and profession computed under presumptive taxation sections 44AD, 44ADA or 44AE.

15) CBDT releases synthesised texts for MLI modified India's DTAA's with Canada, Belgium and Slovenia:

Further to the previous release of such revised text of DTAA's in case of other treaty partners, CBDT has released synthesised texts for MLI modified India's DTAA's with Canada, Belgium and Slovenia.

16) Announcement of E-Filing Portal by the Income Tax Appellate Tribunal (ITAT) - Public Notice dated 01 June 2020:

In the public announcement, ITAT president has announced that the E-Filing portal developed for filing of appeals and applications in ITAT is ready for launch post compliance of mandatory security audit in accordance with the guidelines issued by the Government of India. The facility of E-filing portal shall enable an economical and seamless filing by the parties before the Tribunal without being affected by challenges triggered by Covid-19 and maintaining social distancing. Further, he informed that the Standard Operating Procedures (SOPs) and detailed guidelines for the use of facility of E-Filing portal are under consideration and shall be announced once the portal is launched.

17) Bangalore ITAT announced the roadmap for Virtual hearings of all the matters:- Office Order dated 29 June 2020

Due to growing cases of Covid-19 in Karnataka, Bangalore ITAT vide its office order dated 29 June 2020 has issued guidelines for virtual hearing of all appeals w.e.f 06 July 2020 and this needs to be read with Circular dated 19 May 2020 issued on the procedural aspects for conducting such hearings but with following modifications:-

1. All the matters listed for physical hearing before the respective bench as per the cause list will be heard through virtual hearing only instead of any physical heading. Therefore categories of urgent matters / specified cases as mentioned in circular dated 19 May 2020 will not be of any significance.
2. Procedure for listing of urgent matters would be the same as per the circular dated 19 May 2020.
3. Authorised Representative/ Departmental Representative are requested to file the paperbook, if any, 1 week in advance, either physically or electronically, with service to other party.
4. Authorised Representative/ Departmental Representative intending to file synopsis may file atleast 3 days prior to the date of hearing, with service to other party.

5. In all other respects, circular dated 19 May 2020 for conducting virtual hearing will apply.

18) Public Notice issued by Mumbai Tribunal to resume the partial functioning of Tribunal in view of Unlock 1: Notice dated 5 June 2020

1. Further to the new Unlock 1 Guidelines issued by Central Government, the Mumbai Tribunal has issued a public notice to resume hearings wef 8 June 2020 wherein Single Member cases will be taken up, though web based video conferencing, by three SMC benches.
2. Due to paucity of time and limited functional staff strength and as a one time measure, it is not possible to issue postal notices for the hearing of SMC cases scheduled from 8th June 2020, cases listed from 8th June 2020 are the cases which were scheduled for hearing from 23rd March 2020 when the judicial functioning came to a halt.
3. Where formal notices have not been issued by post and the taxpayer misses the hearing in any event, no matters will be decided ex parte against the assessee during the hearing of these cases through virtual courts.
4. With effect from 15th June 2020, certain Division Bench cases will also be taken up at the request of the assessee. In these cases, the appeal related documents can be sent to vps.mumbai@itat.nic.in. with a copy to the **cit.dr12.itatmumbai@incometax.gov.in**.
5. With effect from 12th June 2020, the stay applications, early hearing applications and consolidation applications will be taken up for hearing, in batches, through web based video conferencing, on all working Wednesdays and Fridays.
6. Any other documents which are required to be filed in the ITAT may be sent by email on **mumbai.bench@itat.nic.in**, any communications addressed to the Vice President, Mumbai may be sent on **vps.mumbai@itat.nic.in**, and any communications addressed to Hon'ble President may be sent on **presdtsec.itat@nic.in** Any documents required to be filed with the ITAT may also be sent by registered post or be dropped in the mailbox outside room no 352, in ITAT Office at 3rd floor, Pratishtha Bhawan.
7. The functioning of physical benches is under examination and all the stakeholders will be notified accordingly

19) Tax Relief likely on the creation of permanent establishment - News Report:

As per the Income Tax Act, a foreign company is considered as a resident in India if its place of effective management lies in India during the relevant previous year and thereby making the global income of the Company liable to tax in India. CBDT vide its circular no. 11 dated 08 May 2020 has provided the relaxations for the individuals by excluding their lockdown stay from residency calculation. Further, OECD also in its guidelines have encouraged the tax administrations of the respective countries to issue Guidance on the

application of domestic law threshold requirements in such cases, to minimise the unnecessary burden on the taxpayers due to the exceptional situation created by Covid-19. OCED has also cited the examples of guidance already issued by multiple Countries in this regard such as UK, Australia, Ireland wherein majority of the countries has announced the relaxation of residency rules to disregard the Covid related period.

Now, it is expected that CBDT may provide similar relaxations to the Companies whose key management personnel got stuck in India due to lockdown. As per the CBDT officials, each case would however be assessed separately for granting such relaxation.

<https://economictimes.indiatimes.com/news/economy/policy/tax-relief-likely-on-creation-of-permanent-establishment/articleshow/76163441.cms>

20) Tax authorities refused 100% tax rebate on donations made to Haryana Corona Relief Fund:- News Report

The Income tax department is offering only 50 per cent tax rebate on donations made to the Haryana Corona Relief Fund. As per the news report, the department has pointed out that 100 per cent tax rebate is available for only one fund in case of Haryana i.e. The Chief Minister Relief Fund. As per the senior government official, the Haryana Corona Relief Fund may qualify for 100 per cent tax deduction, if the government would have sought the relief under sub clause (iiib) of the Income Tax Act's section 80G(2) while treating the fund as a public account or a part of the state consolidated fund.

<https://indianexpress.com/article/cities/chandigarh/i-t-refuses-100-tax-rebate-on-donations-to-haryana-corona-relief-fund-6472221/>

21) OECD issues questionnaire to BIAC on TP-implications of COVID-19 and invited comments by June 17:

OECD has issued a questionnaire on TP implications of COVID-19 to members of Business at the OECD (BIAC) and invites comments by June 17. The purpose of the questionnaire is to gather input from business on the TP issues being faced in light of COVID-19 and that need to be prioritized by OECD to issue guidance.

22) USA has initiated investigation into the Digital Tax levies by multiple countries including India under section 301 of the Trade Act - Docket No. USTR-2020-0022 issued by the office of United States Trade Representative (USTR):

USTR has initiated an investigation against the digital taxes that have been either adopted or are under consideration in countries such as Austria, Brazil, the Czech Republic, the EU, India, Indonesia, Italy, Spain, Turkey, and the UK under the US Trade Act of 1974. The probe seeks to determine whether such levies on electronic commerce discriminate against American Tech companies and the policies of a foreign country are unreasonable or discriminatory and burden or restrict U.S. commerce.

As per the below news report however, the Government of India is not considering changing its stance on the Equalisation levy and the Indian government would also negotiate with the US administration to seek to prevent the imposition of tariffs in case the USTR concludes that the policy is unfair.

<https://www.bloombergquint.com/global-economics/india-is-said-to-defend-digital-tax-as-u-s-starts-probe>

23) US still committed to the Digital Tax Talks, OECD Tax Chief says: News Report

The OECD has been working to overhaul the global tax rules on digital taxation. There are two alternatives that OECD has come up with which are actually referred as pillars by OECD i.e. Pillar One and Pillar two. Pillar One of the plan would reallocate multinationals' profits to the jurisdictions where they have users or consumers, while Pillar Two would establish a global minimum tax to address the tax competition.

On the participation of US in the above discussions, Pascal Saint-Amans, Director of OECD's Center for Tax Policy and Administration has confirmed that US has not walked away from the negotiations and neither has pulled out from the Group of 20 Finance Ministers meet which is scheduled to be held in the month of July this year.

<https://news.bloombergtax.com/daily-tax-report-international/u-s-still-committed-to-digital-tax-talks-oecd-tax-chief-says-1>

24) Poland to introduce “Netflix tax” to support local filmmakers: News report

Starting from 1 July, video-on-demand (VOD) platforms operating in Poland will be obliged to pay 1.5% of their local revenue to the Polish Film Institute (PISF), an institution supporting the Polish film industry. The levy, quickly dubbed “Netflix tax”, was introduced as part of a government stimulus package bill prepared in response to the financial crisis caused by the COVID-19 pandemic.

In this situation, filmmakers applauded the idea for a new levy. It was pointed out that the same contribution is already currently being collected from other entities, such as TV stations, cinemas, and film distributors, and VOD platforms benefit from broadcasting films in a similar way, so not requiring them to pay would be unfair. On the other hand, consumers expressed fears that VOD platforms would raise prices to cover the increased costs, and media companies protested against the new obligations.

25) Indonesia introduces new requirements for E-Commerce Companies: News Report

The Indonesian Minister of Trade (“MOT”) has issued a new regulation MOT Regulation No. 50 of 2020 regarding provisions on Business Licensing, Advertising, Guidance and Supervision of Businesses Trading Trade through Electronic Systems (“MOT Reg. 50/2020”). The new regulation seeks to clarify many of the issues associated with doing business in the country’s booming e-commerce sector while at the same time imposing new requirements on both foreign and domestic e-commerce companies selling goods and services in Indonesia through online platforms. The new regulation is an implementing regulation for Government Regulation No. 80 of 2019 regarding Trading through Electronic Systems (“GR 80/2019”).

MOT Reg. 50/2020 provides some much-needed clarity regarding the provisions of GR 80/2019. It also materially affects how the domestic e-commerce sector operates, especially for individual merchants who will soon be required to obtain a business license to sell their goods and services through online platforms. And foreign e-commerce players will soon have to abide by a relatively lenient set of requirements before being able to carry out business in Indonesia.

<https://www.ssek.com/id/blog/indonesia-introduces-new-requirements-for-e-commerce-companies>

26) Chile to levy 19% tax on Digital service providers - News Report:

From 1 June 2020, South American nation Chile has introduced a new 19% value added tax (VAT) for OTTs and other providers of digital services. The move unveiled as part of the Tax Modernisation bill in January and applicable to digital services businesses that have operations in the country among OTTs. Chile hopes that reforms in the bill will generate as much as US\$ 2.2 billion in funds equating to around 0.6% of Chile’s GDP.

<https://www.capacitymedia.com/articles/3825635/digital-service-providers-face-19-tax-in-chile>

27) OECD to stick to digital tax negotiation timetable despite US opposition - News report:

The OECD has confirmed that it will continue its work developing a multilateral approach to the taxation of the digital economy before the end of 2020 despite US calls to delay the process. According to press reports, the US has quit negotiating with European leaders on a digital tax update and may impose retaliatory tariffs on countries that impose digital taxes. The US also said that governments should not attempt to “rush such difficult negotiations” given countries’ need to deal with the COVID-19 crisis.

In a statement this week, the OECD said that it is mandated by the G20 to deliver a consensus-based solution by the end of 2020 on the taxation of the digital economy based on a two-pillar approach. Hence, the OECD will maintain its schedule of meetings, offering the 130+ country coalition known as the “Inclusive Framework on BEPS,” an opportunity to design a multilateral approach to the digital taxation, the OECD said.

<https://mnetax.com/oecd-to-stick-to-digital-tax-negotiation-timetable-despite-us-opposition-39092>

28) No deal on digital tax would trigger trade war, OECD Head - News Report:

The Organisation for Economic Cooperation and Development (OECD) head, Angel Gurría has said during an interaction with BBC that 'we have to' reach an agreement on digital taxes as a part of BEPS/G20 project, otherwise, it would trigger a trade war between various dozens of countries which is the last thing needed at this time of Covid.

<https://www.bbc.com/news/business-53001251>

29) Czech Republic may delay digital tax - News Report:

In a recent television interview, Czech FM, Alena Schillerová said that there may be a delay in the introduction of digital tax until January 2021 and also with the lower rate of 5% than the proposed rate of 7% in view of the possible solution from OECD in the meantime. The US embassy in Prague said in January that Czech Republic could face counter-measures if it presses ahead with the tax on big tech companies local revenues.

<https://www.reuters.com/article/europe-digitaltax-czech/update-1-czech-finance-minister-may-delay-digital-tax-plans-5-rate-idUSL8N2CW5XL>

30) Thailand proposes to tax foreign internet companies - News report:

Thailand has approved a draft bill requiring foreign digital service providers to pay a value-added tax (VAT), to boost tax revenues from international tech companies. The Thai bill, which still has to be voted on by Thailand's

parliament, requires non-resident companies or platforms that earn more than 1.8 million baht (\$57,434.59) per year from providing digital services in the country to pay a 7 percent VAT on sales.

https://www.moneycontrol.com/news/world/thailand-proposes-to-tax-foreign-internet-companies-5382151.html?action=profile_completion&

31) Thailand signs the Multilateral Convention on Mutual Administrative Assistance in Tax Matters:

Thailand has recently signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, becoming the 137th Jurisdiction to join the convention. The convention enables jurisdictions to engage in a wide range of mutual assistance in tax matters like exchange of information on request, tax examinations abroad, simultaneous tax examinations and assistance in tax collection etc.. It guarantees extensive safeguards for protection of taxpayers rights.

<https://www.oecd.org/tax/exchange-of-tax-information/thailand-joins-international-efforts-against-tax-evasion-and-avoidance.htm>

32) Netherlands announces plans for new dividend withholding tax - News Report:

In a recent press release, the Netherlands government announced its intention to propose an additional withholding tax on dividends to step up its fight against tax avoidance. The withholding tax, if adopted by the Netherlands parliament, would take effect in 2024.

<https://mnetax.com/netherlands-announces-plans-for-new-dividend-withholding-tax-38906>

33) Global Body suggested higher tax Rates on Monopolies during Pandemic - News Report:

As per the report by the Independent Commission for Reform of International Corporate Taxation, a fair tax advocacy, the governments across the world should consider imposing high taxes on large firms having monopoly or limited competition and lower rates for smaller companies in highly competitive sectors to raise revenue during the Covid pandemic. The report listed five steps to increase the tax revenues:

1. Higher Corporate tax rate for large corporations in oligopolised sectors with high rates of return.
2. Set a minimum effective corporate tax rate of 25% worldwide to stop base erosion and profit shifting.
3. Introduce progressive digital services taxes.
4. Publicise country by country reporting for all corporations benefiting from state support.

5. Publish data on offshore wealth for adopting effective progressive wealth taxes on residents, and income tax rates on highest income taxpayers.

<https://www.bloomberquint.com/business/global-body-suggests-google-tax-higher-rate-on-monopolies-during-pandemic>

34) Fresh tax concerns for certain Foreign Portfolio Investors - News Report:

The amendment made in Budget 2020 has changed the dividend tax structure making the dividend taxable in the hands of the receiver. The move has led to the problems for certain Foreign Portfolio Investor's (FPI's) that have been structured as trust and AOPs. Such FPI's including sovereign wealth funds would end up paying upto 43% tax on dividend received from listed companies since they're not eligible for benefits under the Double Tax Avoidance Agreements (DTAAs). FPI's structured as trusts and AOP's are not considered taxable entities in their home countries including the US, Singapore, Mauritius and Ireland. According to industry estimates, about 40% of the FPI's in India have been set up as trusts while 10% are AOPs. In view of this, some of the funds have already sent representations to the government seeking a special exemption from the new provisions.

This is not the first time that FPIs structured as trusts are at the receiving end of higher taxation. In 2019, the government levied an additional surcharge on capital gains made by trusts which was later exempted for FPIs following a stiff opposition from foreign investors. Foreign funds now pursuing a similar exemption from the government.

<https://economictimes.indiatimes.com/markets/stocks/news/fresh-tax-concerns-for-many-fpis/articleshow/76312505.cms>

35) Saudi Arabia published TP-guidelines 2nd edition where GAZT stresses on DEMPE test for intangibles:

Saudi Arabia's General Authority for Zakat and Tax (GAZT) has published second edition of TP guidelines in May 2020 providing for guidance and background on the TP-requirements for taxpayers. The guidelines clarifies that there is no materiality threshold for applicability of arm's length principles and all the transactions entered into with related parties are expected to be at arm's length. Further states that while control via governance, funding and business creates a rebuttable presumption of 'effective control', there could be other factors leading to effective control and the onus is on the assessee to demonstrate otherwise.

With reference to analysis of intangibles from a TP-perspective, the guidelines explains that a De Facto Owner would be the person in control of the DEMPE functions, making the significant decisions and able to manage and bear the respective risks and thus, can be regarded as the ‘economic owner’ of the intangibles. It grants exemption from CbC reporting requirements in Saudi Arabia even if the threshold of SAR 3.2 billion is met, if the ultimate parent entity (or surrogate parent entity) is not required to file a CbC report owing to not meeting the threshold limits of its own jurisdiction.

36) Finland issued Tax Treaty guidance - News report:

On 02 June 2020, the Tax Administration department of Finland issued guidance on some of the common tax treaty provisions. The guidance is comprised of an article-by-article review of the provisions contained in a tax treaty. It also highlighted the relationship between tax treaty law and domestic law, the role of the OECD Model Tax Convention and the effect of the OECD’s Multilateral Instrument on BEPS etc.

The guidance specifies an approach that should be used to interpret the tax treaties and their interplay with the domestic tax laws. As a starting point, it suggested that the provisions of a tax treaty should generally be interpreted in accordance with the commentaries to the OECD Model Tax Convention. This is the case regardless of whether the other party to the tax treaty is a OECD member or not.

<https://transferpricingnews.com/finland-issues-tax-treaty-guidance/>

B. INDIRECT TAXATION

1) Clarification on applicability of GST on Director's remuneration - Circular No: 140/10/2020 – GST dated 10.06.2020:

The Board has issued a clarification on applicability of GST on director's remuneration which has been summarised below:

1. Remuneration paid to directors who are not employees of the company, is taxable in hands of the company, on reverse charge basis.
2. Remuneration paid to directors which is declared as 'Salaries' in the books of the company and subjected to TDS under Section 192 of the Income Tax Act, is not taxable under GST (as per SCHEDULE III of the GST Act) being consideration for services by an employee to the employer in the course of or in relation to his employment.
3. Remuneration paid to directors which is declared separately other than 'Salaries' in the Company's accounts and subjected to TDS under Section 194J of the Income Tax Act as Fees for professional or Technical Services shall be treated as consideration for providing services and will be taxable and GST will be paid on reverse charge basis.

It may be recalled that conflicting orders were passed by Rajasthan AAR in Clay Craft India Private Limited and Karnataka AAR in Anil Kumar Agrawal on this issue. The Rajasthan AAR held that director remuneration is covered under RCM for GST, while the AAR Karnataka ruled that GST it was not applicable. The clarification is expected to bring relief and certainty for the taxpayers.

2) Cross empowerment of officer:- F. No. CBEC-20/10/07/2019-GST dated 22.06.2020

The CBIC has issued a letter addressing the Principal Director regarding reference form DGCI on cross empowerment of Central and State officers under Goods and Service Tax (GST) regime. The letter states that intelligence-based enforcement actions initiated by the Central Tax officers against those taxpayers which are assigned to the State Tax administration gets covered under section 6(1) of the CGST Act. On similar lines, officers under State Tax administration may also initiate action against taxpayers who fall under jurisdiction of Central Government. The letter states that section 6(1) of the GST Act allows such cross empowerment without any need to issue a notification. The letter states that a notification under section 6(1) can only be used to impose conditions on the powers given to the officers by the section and in absence thereof, the Cross empowerment under section (1) of the CGST Act is absolute and not conditional.

3) CBIC extended validity of all AEO certificates expired/expiring between 01.03.2020 and 30.09.2020 to 30.09.2020:- Circular No. 31/2020-Customs F.No. D-20/DIC/AEO/16/2017

The Board has decided to extend the validity of all the Authorised Economic Operator ('AEO') certificates expired/expiring between 01.03.2020 and 30.09.2020 to 30.09.2020 except for those entities against which a negative report is received during this period. Accordingly, Circular No. 27/2020 dated 02.06.2020 stands modified as above.

4) Payment of GST by real estate promoter/developer on the shortfall value of inward supplies from registered supplier at the end of the FY:- Instruction No. 3/2/2020- GST, dated 24.06.2020

The CBIC has clarified that the amount of GST payable by the promoter/developer in case of shortfall in procurement of input and input services from the registered supplier for FY 2019-20 should be paid by 30.06.2020. The Board has clarified that the registered person shall use the form DRC-03 to pay the tax electronically on the common portal.

5) Facility for GST filing using EVC extended upto 30.09.2020 (Notification no. 48/2020-Central Tax dated 19.06.2020):

The CBIC has amended second proviso to rule 26 of GST Rules to allow companies to file GSTR-3B during the period 21.04.2020 to 30.09.2020 and GSTR-1 during the period from the 27.05.2020 to the 30.09.2020 using electronic verification code (EVC).

6) Clarification on refunds - Circular No. 139/09/2020-GST dated 10.06.2020:

The Board has clarified that Guidelines on refund issued vide Circular No.135/05/2020 – GST dated the 31.03.2020 regarding matching on input tax credit does not apply to refund of input tax credit availed on the invoices / documents relating to imports, ISD invoices and the inward supplies liable to Reverse Charge (RCM supplies) etc. The clarification has been issued in the wake of refund sanctioning authorities have rejected the refund of accumulated ITC in respect of ITC availed on Imports, ISD invoices, RCM etc.

The clarification is a welcome step as invoices in the above stated cases are not uploaded by the supplier in GSTR-1 and therefore, it was impossible that such invoices would appear in GSTR-2A.

7) Filing of NIL GST returns through SMS rolled out - Ministry of Finance Press Release dated 08.06.2020:

With view for facilitating taxpayers, the Government has enabled filing of NIL GST returns by SMS. The step by step guide to the same is as below.

Step 1: Initiate Nil Filing:

NIL<space>3B<space>GSTIN<space>Tax period

Ex. NIL 3B 09XXXXXXXXXXXXZC 052020

123456 is the CODE for Nil filing of GSTR3B for 09XXXXXXXXXXXXZC for period 052020. Code validity 30 min.

Step 2: Confirming Nil Filing:

CNF <space>3B<space>Code

Ex. CNF 3B 123456

Your, 09XXXXXXXXXXXXZC, GSTR3B for 052020 is filed successfully and acknowledged vide ARN is AA070219000384. Please use this ARN to track the status of your return.

Step 3: For Help, anytime:

HELP<Space>3B

Ex. Help 3B

To file NIL return of GSTIN for Mar 2020: NIL 3B 07CQZCD1111I4Z7 032020 To confirm Nil filing: CNF 3B CODE More details www.gst.gov.in

The rolling out of SMS filing of GST returns was in discussion for a long time. The move will facilitate compliances for small business and taxpayers.

8) Electronic Communication of PDF Based Copies of Shipping Bill & e-Gatepass to Custom Brokers/Exporters:- Circular No. 30/2020-Customs, dated 22.06.2020

1. The CBIC has decided to rely upon digital copies of the Shipping Bill and do away with the requirement of taking printouts from the Service Centre or maintenance of voluminous physical dockets in the Custom Houses. Directorate General of Systems has enabled a functionality of communicating by email, the PDF version of the Final LEO copy of the Shipping Bill to the Customs Broker and exporter, if registered. This Final LEO copy of the Shipping Bill will have the following features-

2. The PDF version will bear a digitally signed and encrypted QR code which can be scanned to verify the authenticity of the document using Mobile App ICETRAK. The QR code is tamper proof, which is digitally signed by CBIC to ensure the authenticity. Key details like SB No., SB Date, FOB value, Package Details are available in the secured QR Code.
3. A version number is also embedded in the QR code which can be used to ascertain whether the document is indeed the latest version (in case of cancellation of LEO etc.). The same would be verifiable at ICEGATE Enquiry.
4. The Board has also decided to do away with the printing of Transference copies of Shipping Bill. The Directorate General of Systems would henceforth also communicate through email, the eGatepass PDF copy of the Shipping Bill to the Customs Broker and the Exporter, if registered. The following are the features of eGatepass copy of the Shipping Bill :
5. The electronic document provides key summary details like Container/Packages related to logistics movement and facilitates authentic, easy and quick verification by the Custodian, at the point of Entry/Exit.
6. There will be two types of QR codes (i) for entire eGatepass document, and (ii) for each container/package covered under the eGatepass. This will ensure that only those containers/package move out which are covered under the Gatepass document.
7. In case of packaged and other bulk cargos, the eGatepass copy of the Shipping Bill will be generated during LEO.
8. In case of containerised cargo, the eGatepass copy of the Shipping Bill will be generated after the receipt of the container stuffing information for the SB.

9) E-way bill validity extended to 30.06.2020 - Notification no. 47/2020-Central Tax, dated 09.06.2020:

The Board has amended notification no. 35/2020-Central Tax, dated 03.04.2020 and substituted proviso to clause (ii) to state that e-way bill that has been generated on or before the 24.03.2020 and whose validity has expired on or after the 20.03.2020, the validity period of such e-way bill shall be deemed to have been extended till 30.06.2020.

10) Phased roll out of faceless e-assessment in customs:

As a next step under the initiative, "Turant Customs", CBIC has now rolled out the concept of faceless assessment / e-assessment in customs. Since mid-2019, the pilot programme of e-assessment, covering specific goods falling under chapters 39, 50 to 71, 72 to 83, 84, 85, 86 to 92 of the Customs Tariff Act, 1975, has been undertaken in Chennai, Delhi, Bengaluru, Gujarat and Visakhapatnam.

Basis the evaluation of the pilot programme, in February 2020, the CBIC released a concept paper on e-assessment for comments/ responses from trade/ stakeholders. The CBIC considered the comments/ inputs in revisiting the modalities and processes of faceless e-assessment for pan-India roll out by December 2020. A phased implementation of faceless assessment will be undertaken, starting with the ports that were part of the earlier pilot programme as faceless assessment is a complete departure from the present assessment practices, trade and other stakeholders need time to adapt to the new system without impacting operations.

Guidelines, including amendments in regulations for the phased roll out of faceless e-assessment, are outlined in Notification Nos. 50/ 2020-Customs (NT) and 51/2020-Cus (NT) read with Circular No. 28/2020-Cus and Instruction No. 9/2020-Cus dated 5 June 2020.

11) Special drive on fixation of brand rate of duty drawback:- Instruction no. 07/2020-Customs dated 28 May 2020

The Board has issued instructions to expedite disposal of applications for fixation of brand rate of duty drawback. The Customs Zone are instructed to dispose off pendency so that no application received upto 31 May 2020 is pending at the end of the drive on 30 June 2020. The following guidelines have been provided.

- (a) All applications that are complete in all respects for fixation of final Brand Rate, for which verification has been completed or not required, should be disposed off.
- (b) Exporter's request for provisional Brand Rate should also be considered and disposed of which should also invariably include processing any claim pending for provisional AIR under Rule 7 of Drawback Rules, 2017.
- (c) An option may be offered to the applicant to apply for provisional Brand Rate Cases where no application for provisional Brand Rate has been filed.
- (d) For exporters who have filed application under the Normal scheme but who fall under the select five categories of exporters eligible for Revised Simplified scheme may be offered an option to change their application from the Normal scheme to the Revised Simplified scheme so as to make them eligible for the simplified procedure and allow quick release of provisional Brand Rate.
- (e) All cases where provisional Brand Rate is allowed should be finalised within another two months i.e. by 31.08.2020.

(f) Applications where the verification was completed or Brand Rate letter issued by Central Excise authorities even after 01.07.2017 (when the Brand Rate work was transferred to Customs formations) but the drawback disbursement is pending, such verification report or Brand Rate fixed may be accepted by the Customs authorities and also be considered for disbursement of Brand Rate unless there are specific reasons necessitating further verification, etc.;

(g) In order to expedite the fixation of Brand Rate with minimal contact with the trade, in case of applications that are pending verification, the Principal Commissioner/ Commissioner may assess the need to conduct the inquiry keeping in mind factors such as exporter's antecedents, past export performance, nature of product, the rate claimed vis-à-vis rate for similar product allowed in past claims, the degree of variation in these rates, AIR applicable to similar export goods, etc. However, all aspects relating to the claim must be examined fully while giving the final Brand Rate.

12) Amendment in Export Policy of Alcohol based Hand Sanitizer :- Notification no. 08/2015-20 dated 01 June 2020

The DGFT has amended export policy for alcohol based hand sanitizer to only prohibit Alcohol Based Hand Sanitizers in containers with dispenser pumps. Accordingly, Alcohol based hand sanitizers exported in any other form / packaging are free for exports.

13) Lease of flat for 99 years amounts to supply under GST:- Maharashtra AAAR in Nagpur Integrated Township Pvt. Ltd. in MAH/AAAR/SS-RJ/11/2019-20

The Maharashtra AAAR upheld the order of Maharashtra AAR and held that an agreement to lease a flat under construction for 99 years amounts to supply under GST and will attract GST. The Authority held that the identified apartment unit in the residential complex is proposed to be given on long term lease for 99 years, expiring on 2105, against payment of lease consideration by the lessee to the Appellant and that the lease consideration is also payable in various installments at various stages of construction.

The Authority relied upon a ruling of Bombay High Court in Lavasa Corporation Limited wherein it was held that a lease agreement for 99 years would be covered under RERA. Basis the same, the Authority held that the agreement is akin to construction and hence liable to GST.

14) Online testing falls under OIDAR services (Karnataka in NCS Pearson Inc. in KAR ADRG 37/2020):

The Karnataka AAR held that online testing where the person taking the test goes to the examination centre and an invigilator is appointed and the test is monitored by security cameras does not make the same cross the

threshold of ‘minimum human intervention’ so as to exclude it from OIDAR service. The Authority while referring to Guidelines agreed by the VAT Committee of the European Commission held that the human activity on the side of the supplier is focused on the whole environment, i.e. the whole test centre and not on specific need of individual test takers and therefore, the same cannot be said to be of such degree so as to exclude it from the preview of ‘minimum human intervention’. Accordingly, it was held that the services are OIDAR services.

The Authority while referring to CBEC Circular No. 202/ 12/2016-Service Tax dated 09.11.2016 and Flyer prepared by NACEN for reference on OIDAR under GST held that in case the online test require a human evaluator for assessment and final scoring such type of test would not fall under OIDAR services.

15) Input tax credit available for cash carry vans:- Maharashtra Appellate AAAR in CMS Info Systems Limited in MAH/AAAR/SS-RJ/04A/2018-19

The Maharashtra AAAR held the Appellant will be entitled to avail input tax credit of GST paid on the purchase and fabrication of the motor vehicles, used for carrying cash and bullions. The AAAR accepted the Appellant’s contention that the money being transported by the cash carry vans under question was nothing but ‘goods’ for them as they could not use such money for any purpose whatsoever, as they were simply acting as bailee for their clients. The AAAR further held that the notion is also strengthened by the presence of the clause “In this Act, unless the context otherwise requires, -” in the definitions section provided under section 2 of the GST Act, which implies that meanings assigned to the various terms under this section of the act is dependent upon the context of the case at hand.

The AAAR further held that the proposition is also supported by the rule 138 (14) and its Annexures prescribed under GST Rules, relied upon by the Appellant to establish that the money has been included in the Annexure alongside the other goods specified therein.

16) Taxpayer allowed to claim transitional credits (Punjab & Haryana High Court in Amba Industrial Corporation vs. Union of India in CWP no. 8213 of 2020):

The High Court of Punjab & Haryana allowed the Petitioner who failed to upload TRAN-1 to avail input tax credit by requiring the department to allow electronic filing of TRAN-1 by 30.06.2020 and in case the same is not made available by taking input tax credit in GSTR-3B. The Court following the ruling of Delhi High Court in SKH Sheet Metals Components vs. Union of India and Brand Equity Treaties Ltd. and others vs. Union of India (now stayed by the Supreme Court vide Special Leave To Appeal (C) No(S). 7425-7428/2020 vide order dated 19 June 2020) held that expression ‘technical glitches’ as used in rule 117(1A) should not be interpreted narrowly.

The issue relating to transitional credits has been a matter of debate. The above rulings definitely bring relief to taxpayers. However the question whether a taxpayer can claim transitional credit even beyond a period of limitation and whether the limitation extended by the Supreme Court will apply in such cases, still needs to be decided.

17) Cash refund of balance in PLA allowed (CESTAT in Sun Ultra Tech (P.) Ltd. vs. Commissioner, CGST & Customs in E/52046/2019):

The Tribunal allowed an appeal against rejection of refund and held that the appellant is entitled to claim refund of outstanding balance in PLA account. The Tribunal held that apart from the fact that limitation provisions are not applicable, it is also seen that such refund becomes admissible only with effect from 01.07.2017 and not before that. Accordingly, refund application having been filed on 26.06.2018 is required to be considered as having been filed before the period of one year as the cause of action arose only on 01.07.2017.

18) Supply of goods to the customers located outside India under 'Bill to Ship to' Model from vendor located outside India to attract GST (Gujarat AAR in Sterlite Technologies Ltd. vide order no. GUJ/GAAR/R/04/2020):

The Gujarat AAR has held that the goods which are shipped from a vendor outside India directly to a customer outside India under 'a bill to ship to' model will attract outward GST. The applicant located in India had approached the AAR for clarifying GST applicability on the inward and outward side of the transaction. The AAR held that no GST is applicable on the inward side however, held that GST is payable on the outward side. The Authority held that the transaction is that of supply and that the supplier is located in India and the place of supply is outside India hence, the transaction is an inter-state transaction.

It appears that the ruling fails to take into account the insertion of sr. no. 7 in schedule III of GST Act which states that 'Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India' is neither supply of goods nor supply of services. There are apprehensions that the ruling will adversely impact merchant trading as the department may initiate recovery basis the ruling.

19) Sale of a developed plot of land with basic amenities liable to GST (Gujarat AAR in Shree DipeshAnilkumar in Ruling no. GUJ/GAAR/R/2020/11):

The Gujarat AAR has held that the sale of plot of land with basic amenities will be liable to GST. The Authority held that the exclusion under sr. no. 5 of schedule II of the GST Act is applicable only if the activity is exclusively dealing with transfer of title or transfer of ownership of land, which is immovable property or earth. The

Authority further held that the owner develops the land with basic infrastructure, getting permissions and constructing boundary wall. It further held that sellers charge the rates on a super built-up basis and not the actual measure of the plot. Accordingly, the Authority held that the transaction attracts GST.

It appears that the ruling fails to take into account the concept of composite supply. The argument that sale of plot is the principal supply and accordingly, exclusion under schedule II should have been applied but not dealt with in the ruling.

20) IGST chargeable on ex-factory supplies (Telangana AAR in Penna Cement Industries Limited in order no. 03/2020):

The Telangana AAR has held that in case of ex-factory / ex-works supplies where the supply involves movement of goods by the recipient the same will attract IGST. The Authority held that section 10 uses the words ‘whether by the supplier or by recipient’ after the words ‘where the supply involves movement of goods’ under the said section indicates that the movement can be effected by the supplier or by the recipient or by any other person authorized by the recipient. Basis the same, the Authority held that the ex-factory supplies were transported by the buyer are inter-state supplies and attract IGST.

C. REGULATORY

1) Increase in the duration of validity of MEIS/SEIS scrips and relaxation in last dates for filling applications under MEIS/SEIS:- Public Notice No. 08/2015-2020 dated 01 June 2020

Considering the challenges posed by Covid-19, Ministry of Commerce and Industry has issued a Public Notice granting further relaxations to the entities eligible for MEIS / SEIS incentive:

- a) Duty Credit scrips issued under Merchandise Exports from India Scheme (MEIS) or Service Exports from India Scheme (SEIS) are valid for a period of 24 months from date of issue. As per the public notice, the validity of scrips issued between 1 March 2018 and 30 June 2018 (which expires during 1 March 2020 to 30 June 2020) has been extended till 30 September 2020.
- b) For MEIS applications, which attracted a late cut as on 01.03.2020, the period between 01.03.2020 and 30.06.2020 shall not be counted
- c) For SEIS applications:
 - a) For the services rendered in FY 2016-17, the last date of application with 10% late cut has been extended to 30.06.2020 from 31.03.2020 and after that date it would become time barred.
 - b) For the services rendered in FY 2017-18, 5% late cut as was applicable on 31.03.2020, shall continue to be applicable for applications submitted till 30.06.2020 and thereafter 10% late cut would be applicable for applications submitted till 31.03.2021

This should give some relaxations to the industry by way of utilisation of scrips within additional time, lesser late cut in FY 2017-18 and new lease of life to the cases of FY 2016-17 that got time barred due to certain reasons

2) Launch of new DGFT platform and Digital delivery of IEC related services: Trade Notice no. 16/2020-21, dated 25.06.2020

As part of Digital India programme and for Ease of Doing Business, DGFT has undertaken an initiative to revamp its services delivery mechanisms to promote and facilitate foreign trade. The first phase of new digital platform of DGFT is scheduled to go live on 13.07.2020. The first phase will be catering to IEC services and other online modules will be rolled out in the next phase. The following important points may be noted with regard to the new platform design:

- i. Access to the services would be through a username and password based system. The first time logins/user ID may be created through a registration process on the new platform.

- ii. For user ID creation, registered mobile number/email ids of the IEC holders will be a mandatorily required. The same will be authenticated by the process of OTP/email based authentication process.
- iii. Users would have to link their login IDs to their specific IECs. The process of linking would be available post login through Digital Signature/Aadhaar based e-Sign.
- iv. Digital Signature (DSC)/Aadhaar based e-Sign will be required for applying and modifying IEC or adding or updating the IEC-linked users. Users may take necessary actions for procuring/updating their information etc. on the DSC/Aadhaar.

3) Government approves setting up of an “Empowered Group of Secretaries (EGoS) and Project Development Cells (PDCs)” in Ministries/ Departments to increase investments in India:- Press Release dated 03 June 2020

As an important development, the Union Cabinet approved setting up of an EGoS and PDCs in Ministries/ Departments for increased investments in India.

i) EGoS:- To provide support and facilitation to investors for investing in India and to boost growth in key sectors of the economy. The objective and composition of the EGOs are as follows:-

Objectives:-

- a) To bring synergies and ensure timely clearances from different departments and Ministries.
- b) To attract increased investments into India and provide investment support and facilitation to global investors.
- c) To facilitate investments of top investors in a targeted manner and to usher policy stability & consistency in the overall investment environment.
- d) To evaluate investments put forward by the departments on the basis of their (i) project creation (ii) actual investments that come. Further, these departments would be given targets for completion of various stages by the Empowered Group.

Composition:-

Cabinet Secretary (Chairperson) CEO, NitiAayog (Member) Secretary, Department for Promotion of Industry and Internal Trade (Member Convenor) Secretary, Department of Commerce (Member) Secretary, Department of Revenue (Member) Secretary, Department of Economic Affairs (Member), Secretary of Department concerned.

ii) PDCs:- For the development of investible projects in coordination between the Central Government and State Governments and thereby grow the pipeline of investible projects in India and in turn increase FDI inflows. PDCs has the following objectives:-

- a) To create projects with all approvals, land available for allocation and with the complete Detailed Project Reports for adoption/investment by investors.
- b) To identify issues that need to be resolved in order to attract and finalise the investments and put forth these before the Empowered Group.

The proposal aims to take advantage of the opportunities from the global economic situation to make India among the largest players in the global value chain through synergies between Ministries/Departments and among the Central and State Governments in their policies.

4) The Central Government constitutes an Empowered Group of Secretaries (EGoS) - Order dated 10 June issued by Ministry of Commerce and Industry

Further to our last update on the Press release issued on this matter and as a quick implementation, the Central Government has constituted an Empowered Group of Secretaries (EGoS) with seven members to provide support and facilitation to investors for investing in India and to boost growth in key sectors of the economy. The 16 Terms of references of EGoS are detailed in the Order.

It is also clarified that the concerned Ministries/Departments shall take immediate action to implement the decisions/recommendations of the Empowered Group. Implementation of investment proposals and other actions emanating from the mechanism will be the responsibility of the relevant Ministry/Department. Any policy of a Ministry/Department likely to impact investment environment may be brought to the Empowered Group for consultation. Department for Promotion of Industry and Internal Trade, Ministry of Commerce & Industry, Government of India shall make provision for secretarial assistance to the EGoS.

5) Insolvency and Bankruptcy Code amended for suspension of IBC for certain period:

The Insolvency and Bankruptcy Code, 2016 (IBC), has been amended pursuant to the promulgation of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 (Ordinance).

The Ordinance has made the following changes to the IBC:

- a. Sections 7.9 and 10 suspended.

b. A new section 10A is inserted in the IBC, which provides that –

1. No application for initiation of corporate insolvency resolution process (CIRP) of a corporate debtor (CD) shall be filed, for any default arising on or after 25 March 2020. This suspension is applicable for a period of six months or such further period as may be notified, not exceeding one year from such date. No application shall ever be filed for initiation of CIRP of a CD for the said default occurring during the said period.
2. These provisions shall not apply to any default committed before 25 March 2020.

c. A new sub-section (3) added under section 66 of the IBC to provide that the resolution professional shall not file an application under section 66(2) of the IBC in respect of wrongful trading, against which the initiation of CIRP is suspended under section 10A.

6) Foreign entity can also file plea for initiation of Corporate insolvency resolution process under Section 9 of IBC: NCLT

The National Company Law Tribunal, Mumbai Bench has held in the case of *Forever Glory Trading Limited vs Global Powersource (India) Limited* that in view of Section 3(23) of Insolvency & Bankruptcy Code, 2016, even a foreign entity can file a petition for initiation of corporate insolvency resolution process under Section 9 of IBC.

7) TRAI removes regulation requiring telcos to charge for more than 100 SMS per user:

The Telecom Regulatory Authority of India has passed the Telecom Tariff (65th Amendment) Order, 2020 removing a regulation that required telcos to charge customers for sending more than 100 SMS messages per day. Earlier, telecom operators opposed this change arguing that low SMS pricing could result in an increase in spam messages from unregistered telemarketers. Railways pushed for this change at an online open house discussion on this subject held by TRAI in May. When Railways employees were using Airtel, the telco wouldn't charge them per SMS when they were sending bulk SMS messages between employees. But after Jio got the Railways contract, it charged them 50 paise per SMS beyond the first hundred texts as required by the TRAI regulation

8) New schemes to build and promote domestic manufacturing of Medical devices / equipments - Notification No. 31026/08/2020-MD issued by Ministry of Chemicals and Fertilizers:

Further to the previous announcements by the Indian Government, the Department of Pharmaceuticals, Ministry of Chemicals and Fertilizers, notified two schemes – Production Linked Incentive Scheme (PLI Scheme) for promoting domestic manufacturing of medical devices and Scheme for Promotion of Medical Devices Parks (PMDP Scheme).

The PLI scheme offers a Financial incentive of 5% on incremental sales (over base year - 2019-2020) of goods manufactured in India for a period of five years.

The PMDP Scheme offers a grant-in-aid to four medical device parks with a maximum limit of INR 1 bn per park or 70% of the project cost of common infrastructure facilities, whichever is less. In case of hilly states and the Northeast region, the grant-in-aid would be INR 100 Crore per park or 90% of the project cost of common infrastructure facilities, whichever is less. The tenure will be from Financial Year 2020-21 to 2024-25

9) Operative guidelines released for schemes in electronics manufacturing sector:

The Ministry of Electronics and Information Technology released guidelines for the Production Linked Incentives Scheme (PLI), Scheme for Promotion of Manufacturing of Electronic Components and Semiconductors (SPECS) and Electronics Manufacturing Cluster (EMC 2.0) on 1 June 2020.

10) IT Minister launches National Artificial Intelligence (AI) Portal of India (www.ai.gov.in) - Press Release dated 30 May 2020:

Union Minister for Electronics and IT, Law and Justice and Communications, Ravi Shankar Prasad launched India's national Artificial Intelligence Portal called www.ai.gov.in. This portal will work as a one stop digital platform for AI related developments in India, sharing of resources such as articles, startups, investment funds in AI, resources, companies and educational institutions related to AI in India. The portal will also share documents, case studies, research reports etc. It has a section about learning and new job roles related to AI.

11) Ministry of Civil Aviation issued the draft Unmanned Aircraft System Rules, 2020:

Recently the Ministry of Civil Aviation published the draft Unmanned Aircraft System Rules, 2020 and the rules set to allow beyond visual line of sight (BVLOS) operations and bring drone traders under its ambit. The draft rules propose establishing dedicated drone ports and corridors in “permitted areas if warranted by the nature and requirements” of drone operations, although separate licenses will have to be obtained from the regulator for those, yet unspecified, permitted areas. Some of the key points are as follows:-

- i) No drone can be owned or operated in India unless it has been allotted a Unique Identification Number (UIN), which will be issued by the DGCA.
- ii) It is mandatory for every manufacturer and importer of drones to supply a “maintenance manual” containing the maintenance requirements and procedures, and to provide necessary training for the maintenance personnel authorised to undertake such maintenance.
- iii) No drone can be operated in India without having a valid third party insurance policy to cover the liability that may arise during mishaps, causing death or bodily injury to any person or damage to property.
- iv) The central government has the authority to exempt any drone or class of drones, or any person from adhering to these rules. Such exemptions can be given “in general” or through a “special written order”.

12) ISRO to move satellites, rockets to its commercial arm NSIL for private sector participation in space sector: News Report

The Indian National Space Promotion and Authorisation Centre (In-Space), a new body set up by the government will regulate the country’s space industry and Isro will continue to build up better technologies and undertake deep space missions and human space flights to take India to achieve new heights in the Aerospace field. In addition to this, an open and inclusive space sector will result in accelerated growth, job creation as well as innovations and will enable the Indian space industry to be a significant player in the global space economy. In-Space, to be operational in 3-6 months, will have members from academia, government as well as industry representatives on its board and will be under the Space Commission.

https://economictimes.indiatimes.com/news/science/private-sector-to-be-allowed-to-build-rockets-provide-launch-services-isro-chief-sivan/articleshow/76619366.cms?utm_source=newsletter&utm_medium=email&utm_campaign=Dailynewsletter&utm_content=Story4&ncode=8a8b1ff714216bd8e7bceb489958a8fa

13) DPIIT is meeting e-commerce companies to discuss adding 'country of origin' on products: News report

The Department for Promotion of Investment and Internal Trade (DPIIT) has called for consultations on 24th June with e-commerce companies on the issues of mentioning 'country of origin' on each product sold through their platforms,

The issue was first discussed in detail between officials of DPIIT and representatives of ecommerce companies, including Amazon, Flipkart, Snapdeal, Tata Cliq, Paytm, Udaan, and Pepperfry as per sources. The DPIIT is likely to hold its second meeting on July 8 on this matter with ecommerce companies.

14) Amendment in the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016:- MCA notification dated 29th June 2020

Rule 4 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 prescribes the procedure of application for removal of name by the company. MCA vide its notification dated 29 June 2020 has made the following amendment in the said rule:

As per the above notification, where the application is made by a Company wherein entire paid up capital is held by Central Government or / and State Government or both or by any company which is a subsidiary of a government company then a duly notarised indemnity bond in Form STK-3A shall be given by an authorised representative, not below the rank of Under Secretary or its equivalent, in the administrative Ministry or Department of the Government of India or the State Government, as the case may be, on behalf of the company;

15) Clarification with regard to creation of deposit repayment reserve of 20% u/s. 73(2)(C) of the Companies Act 2013 and to invest or deposit 15% of amount of debentures under rule 18 of Companies (Share capital and Debentures) Rules 2014:- General Circular No. 24/2020 dated 19 June 2020

The Ministry of Corporate Affairs (MCA) vide its General Circular No. 11/2020 dated 24 March 2020 had decided to extend the timelines for creation of the deposit repayment reserve of 20% of deposits maturing during the financial year 2020-21 before 30 April 2020 and to invest or deposit at least 15% of amount of debentures maturing in specified methods of investments or deposits before 30 April 2020. Both the due dates were initially extended till 30 June 2020. Due to the continuance struggle in this pandemic situation and also keeping in mind the interest of the various stakeholders, the Ministry of Corporate Affairs has further extended the timelines from 30 June 2020 to 30 September 2020.

16) Extension of the timeline for Board Meeting through Video Conferencing (VC) or Other Audio Visual Means (OAVM):- Notification dated 23 June 2020

MCA vide its notification dated 19 March 2020 has allowed Companies to conduct the the board meetings in respect of certain matters through VC or OAVM till 30 June 2020. Now, MCA has extended that time for conducting the said meetings through VC or OAVM till 30 September 2020

17) Extension of timeline for the compliances required to be made by the Independent Director:- Notification dated 23 June 2020

Rule 6 of the Companies (Appointment and Qualification of Directors) Rules, 2014 specifies the compliances required by a person eligible and willing to be appointed as an Independent Director in any company. As per sub-rule (1) of the said rule, every individual who has been appointed as an Independent Director in a Company or intends to be appointed as an independent director in a company shall within a period of seven months (from the commencement of new Rules of 2019 or appointment, if not already appointed) apply online to the institute for inclusion of his name in the data bank for a period of one year or five years or for his life-time. MCA has now extended this timeline from the existing seven month to ten months.

18) Scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013 - General Circular No. 23/2020 dated 17 June 2020:

As per section 77 of the Companies Act 2013, companies are required to file forms related to creation or modification of charges within 120 days of the creation or modification of that charge. Due to the pandemic and the current situation of lockdown, the industry is facing issues in complying with such regulations and thus the Ministry of Corporate Affairs has introduced a scheme namely "**Scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013**".

The details of the Scheme are as under:-

Applicability:-

The scheme shall be applicable in respect of the Form No. CHG-1 and Form No. CHG-9 by a charge holder, where the date of creation/modification of charge:

- (a) is before 01 March 2020, but the timeline for filing form has not expired under section 77 as on 01 March 2020, or
- (b) falls on any date between 01 March 2020 to 30 September 2020 (both dates inclusive).

Relaxation of Fees:-

a) For the cases covered under (a) above and the form is filed on or before 30 September 2020, the fees payable as on 29 February 2020 for the form shall be charged. In case the form is filed thereafter, the applicable fees shall be charged after adding the number of days beginning from 01 October 2020 and ending on the date of filing plus the time period lapsed from the date of the creation of charge till 29 February 2020.

(b) For the cases covered under (b) and the form is filed before 30 September 2020 normal fees shall be payable. In case the form is filed after 30 September 2020, the first day after the date of creation/modification of charge shall be reckoned as 01 October 2020 and the number of days till the date of filing of the form shall be counted for the purposes of payment of fees.

Note- The scheme shall not be applicable for those whose timeline for filing the form has already expired before 01.03.2020.

19) Extension of time for holding of EGM through VC or OAVM and passing of certain items through postal ballot - Circular No. 22/2020 dated 15 June 2020

Earlier, MCA vide General Circular No. 14/2000 dated 8 April 2000 and General Circular No. 17/2000 on 13 April 2020 has provided the framework for holding extraordinary general meetings (EGM's) through Video Conferencing (VC) or other audio visual means (OAVM) or passing of certain items only through postal ballot without convening general meeting. The above circulars provide for business to be transacted till 30 June 2020.

Now, MCA vide General Circular No. 22/2020 has extended the timeline of holding relevant EGM's through VC or OAVM or transact relevant business through Postal Ballot upto 30 September 2020 while the other requirements in the above circulars remain unchanged.

20) Ministry of Corporate Affairs (MCA) published Companies (Share Capital and Debentures) Amendment Rules, 2020:

MCA has notified Companies (Share Capital and Debentures) Amendment Rules, 2020 to further amend the Companies (Share Capital and Debentures) Rules, 2014. Following amendments are made in the rules:-

i) Restriction under rule 8(4) of the rules related to "Issue of sweat equity shares" has been relaxed for the start ups to provide that start ups may issue sweat equity shares upto 50% of the existing paid up equity share capital and upto 10 years from the date of its incorporation or registration.

ii) Now listed NBFCs registered with Reserve Bank of India (RBI) under section 45- IA of the RBI Act, 1934 and for Housing Finance Companies registered with National Housing Bank are exempted from maintaining debenture redemption fund

21) Ministry of Corporate Affairs proposes to decriminalize compoundable offences under Limited Liability Partnership Act (LLP Act) - seeks comments by 4 July 2020 on twenty items:

In order to provide greater ease of doing business in India to law abiding LLPs, MCA has decided to review the penal provisions of the LLP Act to decriminalize compoundable offences involving minor, procedural or technical violations of the LLP Act, or offences which may not involve any harm to public interest. Given the importance of this exercise as also its large-scale impact across society, the Government of India is conducting a stakeholder consultation exercise. The comments/ suggestions may be submitted to the Ministry at the email address LLP.suggestions@mca.gov.in within 15 days i.e. by 04 July 2020 in the prescribed format in the document released by MCA.

The link to the document release by MCA is given below:-

http://www.mca.gov.in/Ministry/pdf/Comments_19062020.pdf

22) Amendments to the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019:

Through this notification, RBI amended the Regulation 3.1 which deals with the Mode of Payment and Remittance of sale proceeds. Following amendments made to the schedule II and schedule VIII:

- a) Under Schedule II (in relation to FPIs) - Now, the foreign currency account and SNRR account used by the foreign portfolio investors shall be used only and exclusively for transactions under this Schedule.
- b) Under Schedule VII (Investment by a person resident outside India in an Investment Vehicle) - In respect of the investment by a person resident outside India in an Investment Vehicle, it has been added that for an FPI or FVCI, amount of consideration may be paid out of their SNRR account for trading in units of Investment Vehicle listed or to be listed (primary issuance) on the stock exchanges in India.

23) Obtaining Legal Entity Identifier (LEI) Code mandatory for all the insurers - Circular No. IRDAI/F&A/CIR/MISC/134/06/2020 dated 05 June 2020

LEI code is a 20-character unique code introduced by RBI as a key measure to improve the quality and accuracy of financial data systems for better risk management post Global Financial Crises. LEI code was introduced in India in a phased manner for entities OTC derivatives markets, banking sector and government sector market. Now, pursuant to advice of the Financial Stability Development Council, IRDAI has decided that all Insurers on or before 31 July 2020 mandatory to get LEI. Further the following has also been decided:-

- a) Insurers to advise their existing corporate borrowers who have not obtained LEI till now and have total exposures of INR 50 Crores and above to obtain the LEI and provide the LEI information on or before 30 June 2020.
- b) Borrowers who do not obtain LEI would not be granted renewal/ enhancement of credit facilities by insurers.
- c) No new loan proposals will be sanctioned by the insurers without LEI information.
- d) Insurers to mention the LEI code of corporate borrowers in their records and specify the same in the reporting of transactions with such corporate borrowers.

24) Extension of time limit applicable to Public disclosures on websites - Circular No. IRDAI/F&A/CIR/MISC/132/06/2020 dated 03 June 2020:

IRDAI vide its circular No. IRDAI/F&I/CIR/F&A/012/01/2010 dated 28 January 2010 requires the insurer for hosting of the financial and other information in specified formats on the respective website by insurers. Also, IRDAI also mandated insurers to furnish various online returns and financial information through the BAP portal. While the time limit for furnishing of quarterly, half yearly and annual returns for the period ending on 31 March 2020 has been extended by 30 days. Now, it has also been clarified that the time limit for ensuring compliance with directions regarding public disclosures on the websites by insurers for the period ending 31 March 2020 is also extended by 30 days.

25) RBI has issued an Advisory to all Payment system operators and participants to control Payment Frauds through enhanced Public Awareness Campaigns Through Multiple Channels:- RBI/2019-20/256 DPSS.CO.OD.No.1934/ 06.08.005 / 2019-20 dated 22 June 2020

With the advancement of technology and the ease in making a transaction through the online means has helped the businesses and individuals. The advantages of such facilities have been tremendous but there are challenges as well. Reserve Bank has been taking measures to improve awareness through its e-BAAT programmes and organising campaigns on safe use of digital payment modes to avoid sharing critical personal information like

PIN, OTP, passwords, etc, however, inspite of these initiatives, incidence of frauds continue to bedevil digital users, often using the same modus operandi users were cautioned about, such as luring them to disclose vital payment information, swapping sim cards, opening links received in messages and mails, etc.

In view of the above, RBI has issued an advisory to all payment systems operators and participants banks and non-banks to undertake targeted multi-lingual campaigns by way of SMSs, advertisements in print and visual media etc. to educate their users on safe and secure use of digital payments.

26) RBI releases proposed changes in regulations applicable to Housing Finance Companies (HFCs) for public comments:

RBI vide its press release dated 13 August 2019 stated that it will carry out a review of the regulations applicable to HFCs and will release the revised regulations. In this regard, RBI has undertaken its review and identified the following key changes:-

- Defining principal business and qualifying assets for HFCs;
- Defining the phrase ‘providing finance for housing’ or ‘housing finance’;
- Classifying HFCs as systemically important (asset size of ₹500 crore & above) and non-systemically important (asset size less than ₹500 crore); and
- Reserve Bank’s directions on Liquidity Risk framework &, LCR, securitisation, etc., for NBFCs, to be made applicable to HFCs.

The above draft regulations are available on the link below:-

<https://www.rbi.org.in/Scripts/PublicationReportDetails.aspx?UrlPage=&ID=959>

RBI seeks public comments on the draft framework for consideration before issuing the final guidelines. Responses of HFCs, market participants and other stakeholders may be sent latest by 15 July 2020 over email with subject line ‘Feedback – proposed changes to regulations applicable to HFCs’.

27) Further extension of time for submission of Annual Secretarial Compliance Report by listed entities due to the continuing impact of the CoVID-19 pandemic:- Circular no. SEBI/HO/CFD/CMD1/CIR/P/2020/109 dated 25 June 2020

SEBI, vide circular no. SEBI/HO/CFD/CMD1/CIR/P/2020/38 dated 19 March 2020 had extended the timeline for submission of the Annual Secretarial Compliance (ASC) Report for the year 2019-2020 for listed entities by one month i.e. from 31 May 2020 to 30 June 2020.

After receiving various representations from the concerned industry including the industrial bodies and ICSI (Institute of Company Secretaries of India), SEBI vide its circular dated 25 June 2020 has further extended timelines for submission of the ASC Report by one more month i.e. till 31 July 2020.

28) Further extension of time for submission of financial results for the quarter/half year/financial year ending 31 March 2020 due to the continuing impact of the CoVID-19 pandemic:- Circular no. SEBI/HO/CFD/CMD1/CIR/P/2020/106 dated 24 June 2020

SEBI vide circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/38 dated 19 March 2020 and circular No. SEBI/HO/DDHS/ON/P/2020/41 dated 23 March 2020, had extended the timeline for submission of financial results (Quarterly and Half Yearly) under regulations 33 and 52 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('LODR Regulations') to 30 June 2020 due to the impact of the CoVID-19 pandemic. SEBI vide its circular dated 24 June 2020 has now further extended the said timeline by one more month i.e. till 31 July 2020.

29) Relaxation of time gap between two board / Audit Committee meetings of listed entities:- Circular no. SEBI/HO/CFD/CMD1/CIR/P/2020/110 dated 26 June 26 2020

Regulations 17(2) and 18(2)(a) of the LODR Regulations requires a listed entity to conduct at least 4 board meetings and meetings of the audit committee in a financial year and can be a maximum gap of 120 days between the two consecutive meetings. SEBI vide circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/38 dated 19 March 2020 had relaxed the requirement of the maximum stipulated time gap of 120 days between two meetings of the board meeting and meeting of audit committees of listed entities till 30 June 2020.

After consideration of various representations, the relaxation of the maximum time gap between two board meetings and the meeting of Audit Committee is further extended till 31 July 2020. However it should be ensured that they meet atleast 4 times a year as stipulated under Regulations 17(2) and 18(2)(a) of the LODR Regulations.

30) Conducting meeting of unitholders of InvITs and REITs through Video Conferencing (VC) or through Other Audio-Visual Means (OAVM):- Circular no. SEBI/HO/DDHS/DDHS/CIR/P/2020/102 dated June 22 2020

SEBI (Infrastructure Investment Trusts) Regulations, 2014 (“InvIT Regulations”) and SEBI (Real Estate Investment Trusts) Regulations, 2014 (“REIT Regulations”) inter alia provides for holding of an annual meeting of all unitholders of not less than once a year. Further, the above regulations also provide that meetings of unitholders are also required for matters which require approval of unitholders.

Representations have been received to grant permission for conducting such annual meetings of all unitholders of InvIT through VC or through OAVM. Thus, vide its circular dated 22 June 2020, SEBI has granted permission for conducting such annual meetings of all unitholders through VC or OAVM to be conducted during the calendar year 2020 i.e. till 31st December 2020 and all the other meetings through such facilities should be conducted till 30 September 2020. The Board has specified the entire procedure for conducting the meeting in Annexure A in the circular.

31) Temporary relaxation in processing of documents pertaining to FPIs due to COVID-19:- Circular no SEBI/HO/FPI&C/CIR/P/2020/104 dated June 23, 2020

SEBI vide Circular No. SEBI/HO/FPI&C/CIR/P/2020/056 dated 30 March 2020 had prescribed temporary relaxation in processing of documents pertaining to FPIs due to COVID-19. On account of the prevailing situation of the pandemic, the SEBI vide its circular dated 23 June 2020 has further extended the relaxations till 31 August 2020.

32) Operational framework for transactions in defaulted debt securities post maturity date/ redemption date under provisions of SEBI (Issue and Listing of Debt Securities) Regulations, 2008:- Circular no. SEBI/HO/DDHS/CIR/P/103/2020 dated June 23, 2020

SEBI vide its circular dated 23 June 2020 has introduced an Operational framework for transactions in defaulted debt securities post maturity date/ redemption after receiving various representations from the market participants and the investors. The operational framework along with the timelines as annexed in annexure A and B respectively of the circular. The provisions in this regard shall be applicable from 1 July 2020.

33) Amendment in Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 - Notification dated 16 June 2020

SEBI vide notification dated 16 June 2020 has made an amendment in regulation 172 of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 which provides that issuer shall not make any subsequent qualified institutions placements until the expiry of 6 months from the date of last qualified institutions placement. Now the time has been decreased to 2 weeks from the date of last placement.

34) Amendment in Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 - Notification dated 16 June 2020:

SEBI vide notification dated 16 June 2020 has made an amendment to regulation 3 of The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 which provided that no acquirer together with persons acting in concert with him acquired and hold shares or voting rights in a target company entitling them to exercise 25 % or more of the voting rights in the target company but less than the maximum permissible non-public shareholding shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than 5% of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company.

Now, the limit for acquisition of 5% without the public announcement has been increased upto 10% for financial year 2020-21 in respect of the of acquisition by a promoter pursuant to preferential issue of equity shares by the target company.

35) Relaxations from certain provisions of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 in respect of Further Public Offer - Circular No:- SEBI/HO/CFD/CIR/CFD/DIL/85/2020 dated 09 June 2020

SEBI vide Circular no. SEBI/HO/CFD/CIR/CFD/DIL/67/2020 dated 21 April 2020 introduced temporary relaxation in eligibility conditions related to Fast Track Rights Issue. In continuation to this circular SEBI vide notification dated 09 June 2020 has been decided to provide similar relaxations in the eligibility conditions related to Fast Track Further Public Offer (FPO) as contained in the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("ICDR Regulations) as follows:-

- The average market capitalization of public shareholding of the issuer should be read as INR 500 Crore instead of INR 1,000 Crore.

- There should be no show-cause notices excluding under adjudication that have been issued by SEBI and pending against the issue or its promoters. In case, where any show-cause notice is issued in an adjudication proceeding or the prosecution has been initiated the board then the necessary disclosure in respect of such actions and the potential adverse impact on the issuer shall be made in the offer documents. Earlier, if any such proceeding was pending against the issuer or its promoters then the issuer was not allowed to make such further public offer.
- If the issuer or promoter or promoter group or director of the issuer has allegedly violated the securities laws then the same should have been settled by fulfilling the settlement terms or adhering to directions of the settlement order(s) given by the settlement mechanism with the Board.
- The issuer shall also disclose the impact of audit qualifications if any and where quantifiable on the audited accounts of the issuer in respect of those financial years for which such accounts are disclosed in the offer documents. In case, where the impact on the financials cannot be ascertained the same shall be disclosed. Earlier, no FPO was allowed if the audit qualifications were not quantifiable or the impact of the qualifications exceeds 5% of the net profits.

These temporary relaxations are applicable for FPOs that open on or before March 31, 2021, and such relaxations are not applicable to the issuance of warrants.

36) Relaxation in compliance with requirements pertaining to AIFs and VCFs - Circular No. SEBI/HO/IMD/DF6/CIR/P/2020/92 dated 04 June 2020

SEBI vide its circular no. SEBI/HO/IMD/DF1/CIR/P/2020/58 dated 30 March 2020, extended the due date for regulatory filings for AIFs and VCFs for the periods ending 31 March 2020 and 30 April 2020. However, it has been felt to further extend the regulatory filings. Accordingly, SEBI has further extended the due date of regulatory filings for the month of March, April, May and June 2020 to **07 August 2020**.

37) Relaxation from compliance with certain provisions of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008, SEBI (Non-Convertible Redeemable Preference Shares) Regulations, 2013 and other circulars due to Covid-19 pandemic - Circular No:- SEBI/HO/DDHS/CIR/P/2020/098 dated 08 June 2020

SEBI vide its circular no. SEBI/HO/DDHS/ON/P/2020/41 dated 23 March 2020 specified guidelines for relaxation from compliance with certain provisions of the SEBI LODR Regulations and other SEBI Circulars due to the COVID -19 pandemic. Now, SEBI vide its circular dated 08 June 2020 provided partial amendment to the aforesaid circular and has provided the relaxation in timelines

for issuers who intend/ propose to list their Non- Convertible Debentures (NCDs) /Non-Convertible Redeemable Preference Share (NCRPS) /Commercial Papers (CPs) for disclosure of financial results for another one month. Accordingly, the revised timelines are as under:

Particulars	Available Financials	Date for issuance	Extended date for issuance	Period of relaxation
The cut-off date for issuance of NCD/NCRPS/CPs	As on 30 September 2019	On or before 31 March 2020	On or before 30 June 2020	91 days

38) Clarifications with respect to Circular dated February 05, 2020 on ‘Disclosure Standards for Alternative Investment Funds (AIFs) - Circular No:- SEBI/HO/IMD/DF6/CIR/P/2020/99 dated 12 June 2020:

SEBI has issued a Circular No. SEBI/HO/IMD/DF6/CIR/P/2020/24 dated 05 February 2020 on 'Disclosure Standards for Alternative Investment Funds (AIFs)'. In this regard, SEBI has now clarified as under:

- i) Audit of compliance with terms of Private Placement Management (PPM) as provided in Paragraph 5 of the Circular dated 05 February shall be conducted at the end of each financial year and the findings of audit along with corrective steps if any, shall be communicated to the Trustee or Board or Designated Partners of the AIF, Board of the Manager and SEBI, within 6 months from the end of the financial year.
- ii) The requirement of audit of compliance with terms of PPM shall not apply to AIFs which have not raised any funds from their investors. However, such AIFs shall submit a Certificate from a Chartered Accountant to the effect that no funds have been raised within 6 months from the end of the financial year.

For the financial year 2019-20, the above requirements shall be fulfilled on or before 31 December 2020.

iii) Now, any association of AIFs (“Association”) which in terms of membership represents at least 33% of the number of AIFs may notify one or more Benchmarking Agencies, with whom each AIF shall enter into an agreement for carrying out the benchmarking process. Earlier there was a requirement of atleast 51%.

iv) The timeline for making available the first industry benchmark and AIF level performance versus Benchmark Reports is extended till 01 October 2020.

39) Covid-19 Emergency Credit Facility covers all companies and not just MSMEs - Finance Minister (Press Release dated 8 June 2020)

Finance Minister, Nirmala Sitharaman while addressing the FICCI National Executive Committee members on 8th June assured the industry of all possible Government support with the intent of supporting Indian business and reviving the economy. Further, she clarified that the COVID Emergency Credit Facility covers all companies and not just MSMEs.

In addition to the above, some of the key points discussed in the meeting are as follows:-

- The government has fairly addressed the liquidity issues and will look into it if there are still some issues.
- The Government will consider the extension of the 15% corporate tax rate on the new investments till 31st March 2023 as the government wants industry to avail such benefit under the Income Tax Act.
- Industry has been invited to submit their recommendations related to the ministry of corporate affairs or SEBI deadlines so that necessary steps could be taken.

40) PM Modi Launches CHAMPIONS - Technology Platform to empower MSMEs: Press Release dated 01 June 2020

Further to our update for the 2nd week of May 2020, wherein we have covered the update that the Union Ministry of MSME has launched CHAMPIONS portal www.Champions.gov.in, a Technology driven Control Room-Cum-Management Information System, Indian PM on 01 June launched this portal. The portal is basically for making the smaller units big by solving their grievances, encouraging, supporting, helping and handholding. A one-stop-shop solution of MSME Ministry.

41) India and Denmark signed MOU for developing cooperation between two countries in the power sector:

The MoU provides for collaboration in areas like offshore wind, long term energy planning, forecasting, flexibility in the grid, consolidation of grid codes to integrate and operate efficiently variable generation options, flexibility in the power purchase agreements, incentivize power plant flexibility, variability in renewable energy production etc. The Indian electricity market would benefit from cooperation with Denmark in these areas. For implementation of the identified areas, a Joint Working Group (JWG) will be established under the MoU. The JWG will be co-chaired by Joint Secretary level officials and will report to a Steering Committee, jointly chaired by the Secretary level officer from both the sides.

42) FDI can be explored in NBFCs to strengthen them for extending support to MSMEs - Press Release dated 04 June 2020:

Recently, NitinGadkari, Union Minister for MSME and Road Transport and Highways during his interaction with the representatives of Council of Leather Export, FICCI-‘NBFC Program’ and IMC Chamber of Commerce and Industry on impact of COVID-19 on MSMEs opined that option of the FDI can be explored in NBFCs to strengthen them. The minister commented that strengthening of NBFCs, state cooperative banks, district cooperative banks, credit societies etc. is required to extend support to MSMEs during this challenging time.

43) Supreme Court has issued Interim directions in the Writ petitions filed by Private players against the MHA order of 29 March 2020 mandating payment of wages during the lockdown period:

The SC on 12 June passed an order directing certain interim measures which can be availed by all the private establishment, industries, factories and workers Trade Unions/ Employees Associations etc. which may be facilitated by the State Authorities. While the SC has directed the listing of matter in the last week of July 2020 to decide the validity of the MHA order, the Court has given an option to the employees and employers to negotiate on the wages for the period of the lockdown.

44) Ministry of Health & Family Welfare released SOP on preventive measures to contain spread of COVID-19 in offices - Dated 04 June 2020

Ministry of Health & Family Welfare has issued the detailed revised Guidelines to contain Covid-19 pandemic by Offices / Workplaces. This guidelines outlines the preventive and response measures to be observed to contain the spread of COVID-19 in office settings. The document provides the Generic preventive measures to be followed at all times, measures specific to offices, measures to be taken on occurrence of case(s), disinfection procedures to be implemented in case of occurrence of suspect/confirmed case.

While it has prescribed in the public notice that Offices in containment zones shall remain closed except for medical & essential services. We have summarised below key general preventive measures and Specific preventive measures for offices while there are other guidelines as well prescribed for handling of cases, closure of offices etc.:-

A) Key General Preventive Measures:-

- i) Offices to facilitate persons above 65 years of age, with comorbidities and pregnant women stay at home, except for essential and health purposes.
- ii) Individuals must maintain a minimum distance of 6 feet in public places as far as feasible.
- iii) Use of face covers/masks to be mandatory.
- iv) Practice frequent hand washing with soap (for at least 40-60 seconds) even when hands are not visibly dirty.
- v) Use of alcohol-based hand sanitizers (for at least 20 seconds) can be made wherever feasible.
- vi) Respiratory etiquettes to be strictly followed. This involves strict practice of covering one's mouth and nose while coughing/sneezing with a tissue/handkerchief/flexed elbow and disposing off used tissues properly.
- vii) Self-monitoring of health by all and reporting any illness at the earliest to the immediate supervisory officer.
- viii) Spitting shall be strictly prohibited.
- viii) Installation & use of AarogyaSetu App by employees

B) Key Specific Preventive Measures for offices:-

- i) Entrance to have mandatory hand hygiene (sanitizer dispenser) and thermal screening provisions. Also only asymptomatic staff/visitors shall be allowed.
- ii) It shall be ensured by the service providers/ officers/ staff that drivers residing in containment zones shall not be allowed to drive vehicles.
- iii) Provision for disinfection of the interior of the vehicle using 1% sodium hypochlorite solution/ spray. A proper disinfection of steering, door handles, keys, etc. should be taken up.
- iv) Meetings, as far as feasible, should be done through video conferencing.
- v) Staggering of office hours, lunch hours/coffee breaks to be done, as far as feasible.
- vi) Proper crowd management in the parking lots and outside the premises – duly following social distancing norms be ensured.
- vii) Proper cleaning and frequent sanitization of the workplace, particularly of the frequently touched surfaces must be ensured.
- viii) For air-conditioning/ventilation, the guidelines of CPWD to be followed which inter alia emphasises that the temperature setting of all air conditioning devices should be in the range of 24-30 degree Celsius, relative humidity should be in the range of 40- 70%, intake of fresh air should be as much as possible and cross ventilation should be adequate.
- ix) Seating arrangement to be made in such a way that adequate social distancing is maintained.

45) MHA has relaxed the Visa and Travel restrictions to permit certain categories of Foreign Nationals to come to India:- Press Release dated 03 June 2020

The Ministry of Home Affairs (MHA) has extended the lockdown in India till 30 June 2020 and provided guidelines for the phased re-opening of activities in non-containment zones. Further, the Immigration authority has released an updated travel and visa guidelines related to COVID-19 for foreign nationals. Following categories of foreign nationals to come to India:-

- i) Businessmen coming to India on a Business visa (other than on B-3 visa for sports) in non-scheduled commercial/ chartered flights.
- ii) Healthcare professionals, health researchers, engineers and technicians for technical work at Indian health sector facilities, including laboratories and factories.
- iii) Engineering, Managerial, Design or other Specialists travelling to India on behalf of foreign business entities located in India.
- iv) Technical specialists and engineers travelling for installation, repair and maintenance of foreign-origin machinery and equipment facilities in India.

They would have to obtain a fresh Business or Employment visa, as applicable, from the Indian Missions/ Posts abroad. Foreign nationals holding a valid long term multiple entry Business visa [other than B-3 visa for sports] would have to get the Business visa re-validated from the Indian Mission/ Post concerned. Such foreign nationals would not be permitted to travel to India on the strength of any electronic visa obtained earlier.

46) Labour ministry to fast-track National Employment Policy - News report:

The policy will lay out a sectoral roadmap with incentives for employment generation, based on the recommendations of the Thawar Chand Gehlot-led group of ministers in the wake of the Covid-19-induced economic crisis. The government has fast-tracked the proposed National Employment Policy (NEP), which aims at formalisation of the country's 500 million workforce including migrants to ensure job and social security.

https://economictimes.indiatimes.com/news/economy/policy/labour-ministry-to-fast-track-national-employment-policy/articleshow/76422702.cms?utm_source=newsletter&utm_medium=email&utm_campaign=Dailynewsletter&utm_content=Story5&ncode=8a8b1ff714216bd8e7bceb489958a8fa

47) Arbitral Award can be set aside on the ground of erroneous contractual interpretation - Supreme Court:

A three-judge Bench of the Supreme Court in its recent judgment in South East Asia Marine Engineering and Constructions Limited v. Oil India Limited upheld an order passed by the Gauhati High Court under Section 37 of the Arbitration and Conciliation Act, 1996 setting aside an arbitral award. The judgment is an example where the Court, as a matter of exception, intervenes when the error of interpretation of the contract by the Arbitral Tribunal is not a possible interpretation of the contract

48) Government is considering cutting AGR fee for the home broadband to INR 1: News Report

As per the new report, the Indian government is considering cutting the fees paid by fixed line home broadband providers from 8% of adjusted gross revenue to INR 1/- per year. The government proposal reportedly cited a 2019 ITU report which said that raising broadband penetration by 10% can lead to a GDP growth of 1.9%. Further, a policy brief by the World Wide Web Foundation and the Alliance for Affordable Internet earlier this year urged governments to cut luxury-like taxes on internet services.

https://www.medianama.com/2020/06/223-govt-considers-broadband-fee-cut/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+medianama+%28Medianama%3A+Digital+Media+In+India%29

49) SEBI panel bats for tax sops for social stock exchanges to take off - News Reports

This is further to the announcement by the Hon'ble FM during her budget speech for FY 2019-20 for setting up of Social Stock Exchanges. SSEs are used globally for making impact-investments with an objective to achieve certain social goals. Following the above announcement, a 15-member expert panel was constituted by Sebi in September last year. The expert panel has given the following suggestions in this regard:

- a) Exemption from Securities Transaction Tax and Capital Gains Tax.
- b) 100% tax exemption for the philanthropic donors.
- c) 100% tax exemption to retail investors subject to the overall limit of INR 1,00,000.
- d) Setting up of INR 100 Core "Capacity Building Fund" to create a capacity building unit that will foster overall sector development.

e) Non-profit organisations (NPOs) on SSEs to be considered as corporate social responsibility (CSR) spends and allowing trading of CSR spends between companies with excess CSR spends and those with deficient CSR spends on SSEs.

https://www.business-standard.com/article/economy-policy/sebi-panel-bats-for-tax-sops-for-social-stock-exchanges-to-take-off-120060101112_1.html

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