



Tax & Regulatory Updates – Key developments of September 2020

A. DIRECT TAXATION

1. CBDT issued forms for opting of taxation under section 115BAC and 115BAD:- Notification No. 82/2020 dated 01 October 2020

You are aware that the Finance act 2020 has introduced a new section 115BAC, which provides a new optional regime of taxation for individuals and HUF. Further, sub section 5 of the section 115BAC provides that the taxpayer is required to exercise such option as per the manner prescribed.

In this regard, the government vide Notification dated 01 October 2020 prescribed a new rule 21AG which requires such individual and HUF to file an online **Form 10-IE** to avail the said optional tax regime.

Further, Finance act 2020 also introduced a new section 115BAD, which provides a new concessional tax rate for a resident co-operative society at the rate of 22% (excluding surcharge and cess) subject to certain conditions. In this regard also the government prescribed a new rule 21AH which requires such resident cooperative societies to file an online **Form 10-IF** to avail the said concessional rates.

2. Amendment to the Rule 5 of the Income Tax Rules, 1962 to claim depreciation:- Notification No. 82/2020 dated 01 October 2020

The 1st proviso to rule 5 of the Income Tax Rules 1962 provides that the allowance under section 32(1)(ii) in respect of any block of assets entitled to more than 40% of the written down value of assets shall be restricted to the 40% of written down value of the block of assets for the domestic companies opted for taxation under section 115BA.

CBDT vide its notification dated 01 October 2020, extended the applicability of the above proviso to the taxpayers opting for taxation under the concessional tax regimes as per section 115BAA or 115BAB or 115BAC or 115BAD.

Further, following additional conditions have been added under the proviso for the domestic companies opting for concessional tax rate of 22% (excluding cess and surcharge):-

- 1) Option has been exercised under section 115BAA(5) and
- 2) That the depreciation allowance or unabsorbed depreciation under section 72A attributable to the provisions of section 32(1)(iia) i.e. additional depreciation will not be allowed to setoff and the written down value of the block of assets as on 01 April 2019 has been increased by such amount.

Similar conditions have been prescribed for the individuals and HUF opting for the optional tax regime under 115BAC as well.

3. Amendment in the Form 3CD of Tax Audit :- Notification No. 82/2020 dated 01 October 2020

In the form 3CD, following amendments have been made:-

- 1) A new clause 8a has been added to report whether the assessee has opted for the taxation under section 115BA/115BAA/115BAB;

2) In the clause 18 of the form 3CD relating to the depreciation, following clause has been added:-

- Adjustment made to the written down value under section 115BAA (for assessment year 2020-21 only)
- Adjusted written down value

3) In the clause 32 of the form 3CD relating to the details of the brought forward loss or depreciation allowance additional columns has been added:-

- All losses/ allowances not allowed under section 115BAA
 - Amount as adjusted by withdrawal of additional depreciation on account of opting for taxation under section 115BAA
- additional depreciation following clause has been added:-

4. Amendment in Form 3CEB on Transfer Pricing audit report:- Notification No. 82/2020 dated 01 October 2020

The key changes have been incorporated below:-

- 1) Clause 22 relating to the reporting of the details of the transactions where assessee has entered into any specified domestic transaction (s) being any expenditure in respect of which payment has been made or is to be made to any person referred to in section 40A(2)(b) has been deleted and simultaneously 23 and 24 shall be renumbered as serial numbers 22 and 23 respectively.
- 2) After clause 23 so renumbered, the clause shall be incorporated with respect to the transactions entered by the assessee into any specified domestic transaction(s) with any persons referred to in sub-section (6) of section 115BAB which has resulted in more than ordinary profits expected to arise in such business.

5. Extension of the time limit for compulsory selection of returns for scrutiny during FY 2020-21:- Order No. F.No. 225/126/2020/ITA-II dated 30 September 2020

CBDT vide its letter dated 17 September 2020 has prescribed the parameters on the basis of which cases will be selected for compulsory scrutiny and such selection was to be completed by 30 September 2020. CBDT vide its order dated 30 September 2020 has extended the said timeline to 31 October 2020.

It has been clarified in the above order that although the new statutory time limit as per the Taxation and other laws (Relaxations and amendment of certain provisions) Act, 2020 for selection of such cases is 31st March 2021, however, for the purpose of timely allocation of cases to NeAC the timeline of 31st October should strictly be adhered to.

6. Further extension of due date for filing belated and revised income tax return for Assessment Year 2019-20: Order No. F.No. 225/150/2020-ITA-II dated 30th September 2020

CBDT vide its order dated 30th September 2020 again extended the due date for filing of belated and revised returns for AY 2019-20 to 30th November 2020 from 30th September 2020. As per the section 139 of the Income Tax Act the last date for filing of the ITR for AY 2019-20 was 31 March 2020, which was extended later due to Covid-19 pandemic to 30 September 2020.

7. CBDT Order on upload of GST Return Information in Form 26AS:- F.No.225/155/2020/ITA.II dated 29th September, 2020

Finance Act 2020 had introduced a new Section 285BB under the income tax act to replace the existing format of the form 26AS to make it more comprehensive. CBDT vide its notification dated 28 May 2020 has notified a new Rule 114-I laying down a format with the following info:

- i) Additional Basic info - Mobile No., Email, Date of Birth / Inc.
- ii) Taxes deducted / collected at source
- iii) Specified Financial Transactions that would cover under sec. 285BA
- iv) Payment of taxes such as advance tax etc.
- v) Demand and refunds
- vi) Pending proceedings
- vii) Proceedings already completed
- viii) Any other information such as information received from other countries under Exchange of Information article in DTAA or any other matter, in the interest of revenue.

Taking the above forward, CBDT vide its order dated 29 September 2020 authorizes the Principal Director General of Income-tax or the Director-General of Income-tax to upload information relating to GST return in Form 26AS, within three months from the end of the month in which the information is received by their offices.

8. No requirement of scrip wise reporting for day trading and short-term sale of listed shares:- Press Release dated 26 September 2020

CBDT vide its press release dated 26 September 2020 has clarified that there is no requirement in the return of income of AY 2020-21 for scrip wise reporting in case of capital gains /business income arising from share transactions in case of stock traders / day traders and the reports running in the certain section of media that stock traders/day traders are required to furnish scrip wise details in the return of income for AY 2020-21 are misleading. Finance Act, 2018 allowed exemption to the gains made on the listed shares/specified units up to 31

January 2018 by introducing grandfathering mechanism for computation of long-term capital gains for these shares. The scrip wise details in the return of income for AY 2020-21 is required to be filled up only for the reporting of the said long-term capital gains for these shares/units which are eligible for the benefit of grandfathering.

9. Amendments coming into effect from 01 October 2020:-

1) TCS on sale of Goods

- TCS shall be required to be collected by the enterprises whose turnover for the previous financial year(2019-20) exceeds 10 crores.
- If the enterprise is covered in such limit then the TCS shall be required to be collected on the consideration received in excess of INR 50 lakhs.
- The rate of TCS shall be 0.075% from 1 October 2020 to 31 March 2021 (as specified by press release dated 13 May 2020) and 0.1% thereafter.
- If the buyer of the goods does not have a valid PAN then the rate of TCS shall be 1%.

2) TCS on Foreign Remittances

- As per the RBI guidelines (under Liberalised Remittances Scheme (LRS)) an individual is allowed to remit upto USD 2.5 Lakh in a Financial Year outside India.
- The Union Budget 2020 has introduced new TCS provisions on such remittances, by which an Authorised Dealer to collect TCS @ 5% from the remitter on the amount of more than INR 7 lakhs in a FY under Liberalised Remittance Scheme of Reserve bank of India.
- In case of a seller of an overseas tour package, the TCS rate shall be 5% irrespective of any threshold limit.

3) TDS on payments by e-commerce operators:

- In order to widen the tax base, the Finance Act 2020 introduced the TDS @ 1% u/s 194-O to be applied by an e-commerce operator on gross payments made to a resident e-commerce participant (including the payments directly made by the end consumers to such participant)
- If PAN or Aadhaar not provided, TDS @ 5% will be applicable u/s 206AA
- However, no TDS required if the participant is an Individual or HUF and the gross amount of goods or services does not exceed INR 5 lakhs in a financial year and PAN or Aadhaar is submitted to the e-commerce operator
- Ecommerce operator means a person who owns, operates or manages the digital facility / platform for electronic commerce.

- Definition of 'Person Responsible for Paying' has also been widened in case of a Non-Resident and would include the NR itself, person authorized by the NR or agent of the NR (including representative assessee)
- Option of getting a Lower withholding certificate available to the ecommerce participant u/s 197
- The said section was proposed to be implemented by 1 April 2020 but due to the Covid-19 challenges, the said section was deferred by the government and shall now be applicable from 1 October 2020.

In continuation to our email below, CBDT has issued the attached important guidelines last evening on applicability of TDS on E-commerce operators u/s. 194-O and TCS on sale of goods u/s. 206C(1H): Effective from 1st October 2020

Some key takeaways for your quick reference as industry is struggling to implement these changes (particularly the modifications in the IT systems):

1. Payment gateways not required to deduct TDS, if the e-commerce operator had deducted the same and the gateway MAY take an undertaking of the said compliance from the operator.
2. TCS applies on all consideration (including advances) received on or after 1 October 2020 on the sales made even before 1st October.
3. No adjustment allowed on account of sale return or discounts or taxes including GST for collection of TCS as the collection is towards "sale consideration".
4. TCS not to apply on the consideration for fuel supplied to non-resident airlines at airports in India.
5. Threshold of INR 5 / 50 lakh in above sections to be computed from 1st April 2020.

The clarifications are helpful, however, there are multiple administration related issues which are still unaddressed.

10. Faceless appeals introduced by CBDT:-

A. Scope:-

The appeal under this Scheme shall be disposed of in respect of such territorial area or persons or class of persons or incomes or class of incomes or cases or class of cases, as may be specified by the Board.

B. Faceless Appeal Centres

For the purpose of this scheme, the Board may set-up National Faceless Appeal Centre, Regional Appeal Centres and Appeal Units and specify their respective jurisdiction. National Faceless Appeal Centre shall be common point of contact for all the appeal units, Regional Faceless Appeal Centre and Appellant or any other person or the National e-Assessment Centre or the Assessing Officer with respect to the information or documents or evidence or any other details.

C. Procedure for Faceless Appeals

1. National Faceless Appeal Centre shall assign the appeal to a specific appeal unit in any one Regional Faceless Appeal Centre through an automated allocation system. Where the appeal is filed belatedly u/s.249(2) or where appellant has applied for exemption u/s.249(4)(b), Appeal Unit [AU] may admit the appeal or reject the same under intimation to the National Faceless Appeal Centre, who in turn shall intimate it to the appellant.

2. Where appeal is admitted, AU may request National Faceless Appeal Centre:

a. To obtain such further information, document or evidence from the appellant or any other person as it may specify.

b. To obtain a report of the NeAC or the AO, as the case may be, on grounds of appeal or information, document or evidence filed by the appellant

c. To direct the NeAC or the AO, as the case may be, for making further inquiry u/s.250(4) and submit a report thereof. The National Faceless Appeal Centre shall serve notice upon the appellant or any other person as the case may be requiring submission of such information, document or evidence or report as may be sought by the Appeal Unit.

d. Appellant or such other person shall furnish his response within the specified date & time as referred in the notice or as extended by the National Faceless Appeal Centre upon an application being made. Upon receipt of such response, the National Faceless Appeal Centre shall send the same to the Appeal Unit or in absence thereof intimate the same.

e. Appellant may file additional ground with the National Faceless Appeal Centre specifying the reason for omission of such ground, which shall in turn send it to Appeal unit for its acceptance or rejection. Such an admission or rejection by Appeal Unit shall be intimated to the appellate through the National Faceless Appeal Centre.

- f. Likewise, additional evidence may be furnished by the appellant in such form, as may be specified by the National Faceless Appeal Centre. Where additional evidence is filed,
- i. The National Faceless Appeal Centre shall send the additional evidence to NeAC or AO for furnishing a report within the specified date and time on the admissibility of additional evidence under rule 46A.
 - ii. Upon receipt of such report from NeAC or AO, the National Faceless Appeal Centre shall forward the report to the Appeal Unit.
 - iii. The Appeal Unit after considering the additional evidence and the report, may admit or reject the additional evidence, for reasons to be recorded in writing, and intimate the National Faceless Appeal Centre, which would be intimated to the appellate.
- g. Before taking such additional evidence into account, Appeal Unit may provide an opportunity to the NeAC or AO to examine/cross-examine the evidence. For this purpose, the National Faceless Appeal Centre shall serve notice to NeAC or AO.
- h. Where the NeAC or AO requests the National Faceless Appeal Centre to direct the production of any document or evidence by the appellant, or the examination of any witness:
- i. The National Faceless Appeal Centre shall send such request to the appeal unit, who shall consider the same and prepare a notice as it may deem if directing submission of such further information/document or for examination of a witness
 - ii. The Notice prepared by the Appeal centre shall be forwarded by the National Faceless Appeal Centre to the appellant or any such other person.
 - iii. Appellant shall file his response to the notice within the specified date & time with the National Faceless Appeal Centre, for the perusal of the Appeal Unit.
- iv. Where the Appeal Unit intends to enhance an assessment or a penalty or reduce the amount of refund,:
- v. Appeal Unit shall prepare a show cause notice containing the reasons for such enhancement or reduction, as the case may be, and send such notice to the National Faceless Appeal Centre, for serving it upon the Appellant.
- vi. The Appellant shall within the specified date and time file his response to the National Faceless Appeal Centre;
- vii. The National Faceless Appeal Centre shall send such response to the appeal unit, or where no such response is filed, inform the appeal unit.

viii. The Appeal Unit shall prepare in writing a 'draft Appeal order' after considering all the relevant material available on record and responses of the appellant & NeAC/AO and send such order to the National Faceless Appeal Centre along with the details of the penalty proceedings, if any, to be initiated therein.

ix. Upon receipt of the draft Appeal Order, the National Faceless Appeal Centre shall:

x. send the draft order to an appeal unit, other than the appeal unit which prepared such order, in any one Regional Faceless Appeal Centre through an automated allocation system, for conducting review of such order, if the aggregate amount of tax, penalty, interest or fee, including surcharge and cess, payable in respect of issues disputed in appeal, is more than a specified amount.

xi. In any other case, examine the draft order in accordance with the risk management strategy specified by the Board, including by way of an automated examination tool and finalise the appeal or send it to an appeal unit for review.

xii. Where the Appeal unit upon review, suggests any variance in the draft order, the National Faceless Appeal Centre shall, assign the appeal to an appeal unit, other than the appeal unit which prepared or reviewed the draft order, in any one Regional Faceless Appeal Centre through an automated allocation system. Such Appeal Unit shall prepare a revised draft order [by following procedure 8 & 9 above] and send it to National Faceless Appeal Centre

xiii. The National Faceless Appeal Centre shall finalise the draft order or revised draft order as the case may be and communicate it to:

- a. Appellant
- b. Pr.CCIT/ CCIT/Pr.CIT or CIT as per Sec.250(7)
- c. NeAC or AO

Where initiation of penalty has been recommended in the order, serve a show cause notice to the appellant.

D. Penalty Proceedings:

a. Appeal unit may, for non-compliance of any notice, direction or order issued on the part of the appellant or any other person, as the case may be, send recommendation for initiation of any penalty proceedings to the National Faceless Appeal Centre.

b. The National Faceless Appeal Centre shall, upon receipt of recommendation, serve a show cause notice to the Appellant. Response so filed by the Appellant shall be assigned to a specific Appeal Unit by the National Faceless Appeal Centre through an automated allocation system.

c. The appeal unit shall, after taking into account all the relevant material available on the record, including the response filed by the appellant shall either make a draft order of penalty and send a copy to the National Faceless Appeal Centre; or drop the penalty after recording reasons, under intimation to the said Centre.

An appeal against an order passed by the National Faceless Appeal Centre shall lie before the Income Tax Appellate Tribunal having jurisdiction over the jurisdictional Assessing Officer.

11. The Taxation & Other Laws (Relaxation & Amendment of Certain Provisions) Bill, 2020 passed by Lok Sabha:-

Further to our emails in March 2020 and June 2020 on the key relaxations and updates introduced by the Government time to time providing relief and relaxations during the Covid-19 pandemic, the Central Government introduced The Taxation & Other Laws (Relaxation & Amendment of Certain Provisions) Bill, 2020 replacing the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 introduced in March 2020 to provide relaxation in timelines amid Covid-19 pandemic and amended on 24 June 2020 granting further reliefs.

The said bill also proposes to legislate the Faceless Assessment Scheme by bringing in new Sections and proposing amendments in various sections whereby it is proposed that all functions including assessments, rectification, appeal effect, collection & recovery, transfer pricing, DRP, approvals / registrations will become faceless. Other than the above, the bill also proposes certain amendments to the Income Tax Act. The bill was introduced and passed in the lok sabha.

Some of the Key amendments and changes proposed in the above bill are as under:-

a) There is no change or any further relaxation related to the due dates of the compliances under the Income Tax. Thus, the due dates as extended by the ordinance in March 2020 and later by notification in June 2020 stands on as is basis.

b) Faceless Scheme for the sanction of the prosecution under section 279:-

Section 279 of the Act provides for the launching of Prosecution proceedings under the Income Tax Act. Currently, the proceedings are being done through a completely manual process, however the above bill provides that the central government may launch a scheme for the purpose of granting the sanction eliminating the interface between the income tax authority and the assessee. This would be a big breather for the taxpayers, however, implementation holds the key.

c) Amendment to Section 115AD:-

Section 115AD provides tax on the Income of Foreign Institutional Investors (FIIs), earlier under section only FIIs were covered, now Specified Funds as provided in the explanation (c) to the section 10(4D) will also be covered.

Further, the tax rate on the income from income from the securities to the specified fund will be 10%.

Also, the income of the specified fund under section 115AD will be taxable only to the extent that the income that is attributable to the units held by non-residents not being a permanent establishment in India.

d) The above bill provides the legislative support to the Faceless Assessment Scheme which was introduced by Hon'ble Prime Minister Narendra Modi in August 2020. Also the bill introduced various enabling sections under the Income Tax Act to give the powers to various income tax authorities for implementing the faceless assessment scheme.

e) Finance Act 2020 made an amendment to the section 35(1)(iii) of the Act to provide that deduction shall be allowed for the payment made to the companies even where the approval granted to them is subsequently withdrawn. The subject amendment was earlier proposed to be applicable from 01 June 2020. However, the above amendment will now be effective from 01 April 2021.

f) Finance Act 2020 makes it compulsory for the research associations, university colleges, scientific research companies and other institutions as specified in section 35 to make an intimation in the prescribed manner within 3 months of the provision coming into effect and that the notification issued by the specified income tax authority will remain valid for a period of 5 assessment years. Further, a statement is also required to be filed to the income-tax authorities in the prescribed form and manner & furnish a certificate to the donor for the donation made. Both the amendments were earlier proposed to be applicable from 01 June 2020. However, the above amendment will be effective from 01 April 2021.

g) Finance Act, 2020 has unleashed certain new compliance burdens on Charitable Trusts and Exempt Institutions to provide that all the existing charitable and religious institutions (including NGOs) which are registered or approved under the following section 12A, section 12AA, Section 10(23C) and Section 80G are compulsorily required to switch to section 12AB for fresh registration. The subject amendment was earlier proposed to be applicable from 01 June 2020. However, the above amendment will be effective from 01 April 2021. Further, the subsequent amendment in section Sec 56(2) for providing the exemption for any sum of money/ property received from any trust or institution registered u/s 12AB and in the section 80G for filing of the quarterly statement also will be effective from 01 April 2021 as against the 01 June 2020 earlier.

12. Central Board of Direct Taxes issues guidelines for compulsory selection of the returns for complete scrutiny during the FY 2020-21:- F.No. 225/126/2020/ITA-II dated 17 September 2020

CBDT vide its notification dated 17 September 2020 has issued the parameters for compulsory selection of returns for Complete Scrutiny during Financial Year 2020-21 and conduct of assessment proceedings in such cases are prescribed as under

S.No	The Parameter	Assessment Proceedings to be conducted by
1	Cases pertaining to survey u/s 133A of the Income-tax Act, 1961 ('Act')	
	Cases pertaining to survey u/s 133A of the Act, excluding those cases where books of accounts, documents, etc. were not impounded and returned income (excluding any disclosure made during the Survey) is not less than returned income of preceding assessment year. However, where assessee has retracted from disclosure made during the Survey, such cases will be considered for scrutiny.	

	<p>(i) In respect of such cases selected for compulsory scrutiny and where there is impounded material</p> <p>(ii) In respect of such cases selected for compulsory scrutiny and where there is no impounded material</p>	<p>(i) After the issue of notice u/s 143(2) of the Act by the Jurisdictional Assessing Officer for compulsory selection, such cases shall be transferred to Central Charges u/s 127 of the Act within 15 days of issue of notice u/s 143(2) of the Act.</p> <p>(ii) After the issue of notice u/s 143(2) of the Act by the Jurisdictional Assessing Officer for compulsory selection, assessment proceedings in such cases will be conducted by NeAC. The Assessing Officer shall upload the Survey Report in the ITBA at the time of issue of notice u/s 143(2) of the Act.</p>
2	Cases pertaining to Search and Seizure	
	<p>Assessments in Search and Seizure cases to be made under section(s) 153A, 153C read with section 143(3) of the Act and also for return filed for assessment year relevant to previous year in which authorization for Search and Seizure was executed under section 132 or 132A of the Act.</p>	<p>The cases falling u/s 153C, if lying outside Central Charges, shall be transferred to Central Charges u/s 127 of the Act within 15 days of issue of notice u/s 143(2) for compulsory selection.</p>
3	Cases in which notices u/s 142(1) of the Act, calling for return, have been issued	
	<p>(i) Cases where no return has been furnished in response to a notice u/s 142(1) of the Act.</p>	<p>These cases will be taken up for compulsory scrutiny by NeAC.</p>
	<p>(ii) Cases where return has been furnished in response to notice u/s 142(1) of the Act and where notice u/s 142(1) of the Act was issued due to the information contained in NMS Cycle/AIR information/information received from Directorate of IC&I.</p>	<p>These cases will not be taken up for compulsory scrutiny and the selection of such cases for scrutiny will be through CASS cycle.</p>

	(iii) Cases where return has been furnished in response to notice u/s 142(1) of the Act and where notice u/s 142(1) of the Act was issued due to the specific information received from Law Enforcement Agencies, including the Investigation Wing; Intelligence/ Regulatory Authority/Agency; Audit Objection; etc.	After the issue of notice u/s 143(2) of the Act by the Jurisdictional Assessing Officer for compulsory selection, assessment proceedings in such cases will be conducted by NeAC.
4	Cases in which notices u/s 148 of the Act have been issued	
	(i) Cases where no return has been furnished in response to notice u/s 148 of the Act.	In such cases, Jurisdictional Assessing shall issue notice u/s 142(1) of the Act, calling for information regarding the issues on the basis of which notice u/s 148 was issued, subsequent to which, assessment proceedings in such cases will be conducted by NeAC.
	(ii) Cases where return has been furnished in response to notice u/s 148 of the Act and where notice u/s 148 of the Act was issued due to the information contained in NMS Cycle/ AIR information/ information received from Directorate of IC&I.	These cases will not be taken up for compulsory scrutiny and the selection of such cases for scrutiny will be through CASS cycle.
	(iii) Cases where return has been furnished in response to notice u/s 148 of the Act and where notice u/s 148 of the Act was issued due to the specific information received from Law Enforcement Agencies, including the Investigation Wing; Intelligence / Regulatory Authority / Agency; Audit Objection; etc.	After the issue of notice u/s 143(2) of the Act by the Jurisdictional Assessing Officer for compulsory selection, assessment proceedings in such cases will be conducted by NeAC.
5	Cases related to registration/approval under various sections of the Act, such as 12A, 35(1)(ii)/(ia)/(iii), 10(23C), etc.	

<p>Cases where registration/approval under various sections of the Act, such as section 12A, 35(1)(ii)/(iia)/(iii), 10(23C), etc. have not been granted or have been cancelled /withdrawn by the Competent Authority, yet the assessee has been found to be claiming tax-exemption/deduction in the return. However, where such orders of withdrawal of registration/approval have been reversed/set-aside in appellate proceedings, those cases will not be selected under this clause.</p>	<p>After the issue of notice u/s 143(2) of the Act by the Jurisdictional Assessing Officer for compulsory selection, assessment proceedings in such cases will be conducted by NeAC.</p>
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However, the cases which are selected for compulsory scrutiny by the International Taxation and Central Circle charges following the above guidelines shall continue to be handled by these charges as earlier.

The exercise of selection of cases by compulsory scrutiny basis the above guidelines shall be completed by 30 September 2020.

13. Transfer Orders issued by Central Board of Direct Taxes on PAN India basis in order to cope up with changes required to implement Faceless Assessment Scheme:- Office Order No.169, 170 and 171 of 2020

CBDT vide its office orders no. 169, 170,171 of 2020 diverted the posts of the various officers of different levels for the implementation of the faceless assessment scheme.

14. Clarification issued by CBDT on the role of Pr.CCIT (Jurisdictional) vis-à-vis Pr.CCIT (NeAC) under 'Faceless assessment Scheme': Order dated 10 September 2020

CBDT vide its order dated 10 September 2020 under section 119 of Income Tax Act has clarified the role of Pr.CCIT (Jurisdictional) vis-à-vis Pr.CCIT (NeAC) as under:-

- 1) Overall implementation of Board's policy with respect to Faceless assessment Scheme in the NeAC and ReAC;
- 2) Formulating the guidelines, SOPs and roles of income tax authorities in ReAC;
- 3) Ensuring that the Technical Units provide a considered view on legal matters;

4) Ensuring that the computer systems with the ReACs function properly.

**15. CBDT specified Scheduled Commercial Banks for sharing of information of taxpayers:-
Notification 71/2020**

Section 138 of the Income Tax Act provides that CBDT or any other income tax authority may disclose the information which is in their possession and which in opinion of the CBDT or other income tax authority is necessary for the purpose of other officer, authority or body to perform its functions under that law. CBDT vide the above notification specifies Scheduled Commercial Banks listed in the Second Schedule of the Reserve Bank of India Act, 1934 for such purpose and sharing of information related to status of filing of return of income by the taxpayers.

**16. CBDT provides ITR filing compliance check functionality for Scheduled Commercial Banks:-
Press Release dated 2 September 2020**

CBDT vide its notification dated 31 August 2020 has notified Scheduled Commercial Banks for furnishing information about IT Return Filing Status. The Department has now released a new functionality “ITR Filing Compliance Check” which will be available to Scheduled Commercial Banks (SCBs) to check the IT Return filing status of PANs in bulk mode. The Principal Director General of Income-tax (Systems) will notify the procedure and format for providing the said information to the Scheduled Commercial Banks.

**17. Supreme Court releases new SOP for physical hearings set to begin on experimental basis
from 1st September 2020:**

The SOP notes that despite the consent of the advocates or parties-in-person, only such number of parties or counsel would be allowed to enter so that the total number does not exceed the working capacity of the Court(s) as determined considering the physical distancing norms.

However, for matters involving a large number of parties, one Advocate-on-Record along with an arguing counsel and a registered clerk per party would be allowed to enter the Court premises.

The SOP states that entry into the High Security Zones with proximity cards will remain suspended as for now. The following will be the protocol to be observed at the Supreme Court premises:

- 1) Advocates/parties-in-person/clerks or other stakeholders who have been issued Special Hearing Passes, upon completion of necessary formalities, shall enter the High Security Zone through the designated gate, after subjecting themselves to the thermal and such other scanning devices.
- 2) On entering the High Security Zone, advocates/parties-in-person would proceed to the staging areas/vacant courtrooms and wait for their turn to enter the respective courtrooms where physical hearing of their cases may be scheduled. They will proceed only through the movement corridors created and demarcated for the purpose.
- 3) The entry into and exit from each courtroom shall be by separate doors; entrants into the courtrooms are advised to sanitize their hands and also the papers and other items/articles that they may seek to carry into the courtrooms with them.
- 4) Wearing of mask, frequent use of hand sanitizer and maintaining physical distancing norms is mandatory for all entrants into the Supreme Court premises, including courtrooms.
- 5) On completion of hearing of their respective cases, the advocates/parties-in-person/clerks, etc. shall move out of the High Security Zone through the movement corridor and exit from the designated gates.
- 6) Advocates/parties-in-person having more than one case for physical hearing in the courtrooms shall be issued separate Special Hearing Pass for each case and after hearing of one case is complete, they may wait in the designated staging/waiting area(s) for the purpose for appearing for the next hearing(s).
- 7) In order to facilitate video/tele-conferencing for advocates/parties-in-person, a dedicated VC Facilitation Centre is located in Block 'C', Ground Floor of the Supreme Court's Additional Building Complex, which can be accessed through Gate No.1 of that complex.

18. MNCs approaching Indian IRS to revise the APA's due to Covid-19: News report

The Covid-19-led economic disruption may lead to reopening of several specific APAs that MNC's have entered with Indian tax authorities. These companies are reaching out to the CBDT to seek clarity on revising the APAs with critical assumptions and preset margins having become irrelevant on account of factors like relocation of persons, supply-chain disruption, abnormal expenses, change in asset deployment, risk assumed, etc.

https://www.business-standard.com/article/companies/mncs-approach-tax-dept-seek-revision-of-agreements-due-to-covid-19-120090700030_1.html

19. Income tax dept framing rules to enable physical hearing under faceless assessment scheme - News report

The Income Tax department is framing rules to enable physical hearing in case there is addition, either in tax or income, for taxpayers under the faceless assessment scheme, a senior official said.

“Wherever there is addition proposed - either to income or tax - a showcause notice will be issued and final opportunity will be given to taxpayers and reply will be taken into consideration,” SK Gupta, member of the Central Board of Direct Taxes (CBDT), said during a webinar on Wednesday.

“If physical hearing through video conferencing is required, we can allow that; the rules are being made,” he said, referring to the government’s recent reforms related to faceless tax assessment.

Guidelines for physical verification are also being framed within faceless assessment since there have been cases where the taxpayer’s premises have not been traceable or where the taxpayer was not replying to communication from the department, he said.

The jurisdiction of the assessee’s location will be used instead of the tax authority’s location in cases where the authorities need to refer to a position of law, Gupta clarified when asked about the rule that the assessing officer will follow in faceless assessments since assessee and taxpayers are not in the same geographical location.

<https://economictimes.indiatimes.com/news/economy/policy/income-tax-dept-framing-rules-to-enable-physical-hearing-under-faceless-assessment-scheme/articleshow/78163633.cms>

20. Long Term Capital Gains on startups may be abolished - News Report

Considering the startups as a source for jobs and demand creation, a parliamentary panel suggested some tax incentives for the startups that including abolition of the LTCG tax for at least the next two years to encourage investments during the pandemic period including the investments made through collective investment vehicles such as angel funds, alternate investment funds and investment LLPs. The outbreak of the virus has caused significant contraction in the demand and hence the panel firmly believes that a strong support system to finance the startup ecosystem should be put in place to drive a sharp post-pandemic revival and sustainably high economic growth thereafter.

<https://www.livemint.com/companies/start-ups/parliamentary-panel-suggests-abolishing-ltcg-tax-on-startups-11600175437894.html>

21. Over 35000 direct tax disputes resolved under Vivad se Vishwas Scheme:- News Report

Budget 2020, introduced the Vivad se Vishwas Scheme 2020 for the settlement of the pending disputes with the Income Tax Department at different levels. Earlier, the last date to apply under the scheme was 31 March 2020 which was later extended to 31 December 2020 due to Covid-19 pandemic. As per the news report as on 08 September 2020 35,074 direct tax related disputes have been resolved under Vivad se Vishwas scheme. Nearly 6

lakh cases are pending in in different forums, including commissioner of appeals, tribunals, high courts and the Supreme court.

Last date to apply under the VsV Scheme is 31 December 2020.

<https://www.financialexpress.com/money/income-tax/over-35000-direct-tax-disputes-resolved-under-vivad-se-vishwas/2083107/>

22.KCCI opposes shifting of I-T office from Mangaluru to Goa on account of reshuffling due to e-assessments: News report

The Mangaluru-based Kanara Chamber of Commerce and Industry (KCCI) has urged the CBDT to retain the office of Principal Commissioner of Income Tax (Administration) in Mangaluru. In a letter to the CBDT Chairman, the copies of which were released to the media, Isaac Vas, President of KCCI, said that KCCI has been informed that the office of Principal Commissioner of Income Tax, Mangaluru, is abolished and merged with the office of Principal Commissioner of Income Tax, Panaji.

He said this would create much hassle in accessibility for the taxpayers as well as authorised representatives which might cause a hurdle in the smooth flow of the federal system of taxation and it might be time-consuming too for personal representations.

23.Big Data to track tax frauds as the Indian tax department lens on big deals, stock purchases: News report

Union Finance Secretary Ajay Bhushan Pandey on Friday hinted at the use of Big Data to track major financial transactions, under-reporting of income and tax frauds in the country, even as he assured that the government would make the taxation process fearless and pain-free for honest taxpayers.

"We are collecting many information about taxpayers without putting pressure on the assesses; be it about major cash withdrawals, property transactions, large purchases, stock transactions or for or foreign travel. We are getting data not only domestically, but also from 98 other countries with whom we have tax treaties. These will help streamline the tax assessment process," he said in a webinar on 'Faceless Taxation' jointly organised by ETMarkets and Ficci on Friday.

<https://economictimes.indiatimes.com/markets/stocks/news/big-data-to-track-tax-frauds-govt-lens-on-big-deals-stock-purchases/articleshow/77935151.cms>

24. Income tax department seeking Attorney General's views on Vodafone ruling under BIPA:- News Report

With respect to the judgement announced by the Permanent Court of Arbitration (PCA) instituted at Hague, Netherland under the India-Netherlands Bilateral Investment Protection Treaty, Income Tax Department seeks Attorney General's advice on what course of action should be taken by them after having lost to the retrospective tax arbitration case against Vodafone Group Plc. PCA in its ruling held that the Indian tax department was in breach of “guarantee of fair and equitable treatment” granted under the India-Netherlands bilateral investment treaty and that the company was entitled to protection under the accord. India has the option to challenge the decision at the Singapore-based appellate tribunal.

<https://economictimes.indiatimes.com/industry/telecom/telecom-news/i-t-dept-to-see-ags-views-on-vodafone-ruling/articleshow/78371802.cms>

25. New Bilateral treaties to keep tax disputes out of arbitration:- News Report

Vodafone's win in Permanent Court of Arbitration of international arbitration award involving a retrospective tax dispute has been a pinching point for the Indian government and the Tax authorities. Following the said order, India is now trying to keep its taxation laws out of the ambit of all Bilateral Investment Treaties (BITs) and comprehensive economic pacts that it negotiates. According to which, the tax decisions of the country won't be allowed to be challenged on the International platforms, however, some of India's investment and trading partners, including the European Union are not agreeing to such clauses.

<https://www.newindianexpress.com/business/2020/sep/30/new-bilateral-treaties-to-keep-tax-disputes-out-of-arbitration-2203749.html>

26. Tech Giants need clarity on e-commerce transactions tax: News Report

The big digital companies needs clarity on how the government has levied the 1% tax on ecommerce transactions in order to comply with the provisions of the same as the first installment of the such tax is due in October. The section quotes as follows " Where sale of goods or provision of services of an ecommerce participant is facilitated by an ecommerce operator through its digital or electronic facility or platform (by whatever name called), such ecommerce operator shall, at time of credit of amount of sale or services or both to the account of an ecommerce participant or at the time of payment thereof to such ecommerce participant by any mode, whichever is earlier, deduct income tax at the rate of 1% of the gross amount of such sales or services or both"

Main ambiguity here is what should be treated as 'service' here and what should be the definition of the 'gross amount'. It would be helpful for such companies if the government comes up with the FAQ's that defines the scope of services and should address the other queries of the industry as well. Apart from the compliance difficulties, the experts have a point of view that such tax would also hurt the micro, small and medium enterprises that sell their products on ecommerce sites by blocking their cash flows.

<https://economictimes.indiatimes.com/news/economy/finance/digital-cos-seek-clarity-on-ecomm-transactions-tax/articleshow/77985534.cms>

27. Digital Tax Plan unlikely by December - Kamlesh Varshney, a senior Indian IRS: News report

The OECD is unlikely to agree on a plan for taxing digital companies by December, an Indian tax official said. Until a global consensus is in place, “every country has a right to make sure there is equity between non-resident and resident,” said Kamlesh Varshney, joint secretary Central Board of Direct Taxes, during a Friday conference sponsored by the Associated Chambers of Commerce and Industry of India.

“All countries need revenues from economic activities that are taking place in their jurisdiction,” Varshney said. He acknowledged that new rules are needed for taxing digital companies.

<https://news.bloombergtax.com/daily-tax-report-international/digital-tax-plan-unlikely-by-december-indian-tax-official-says>

28.OECD publishes tax-transparency ratings for 9 jurisdictions:- Press Release dated 01/09/2020

The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) published nine new peer review reports assessing compliance with the international standard on transparency and exchange of information on request (EOIR). Despite the significant disruption caused by the COVID-19 pandemic over the past few months and the necessity to hold all meetings virtually, the Global Forum Secretariat and the Peer Review Group still managed to complete work in a timely manner for this latest set of reports. In all, 80 second round peer review reports have now been published since 2017.

The new reports relate to jurisdictions with very diverse EOIR practice and their findings are equally contrasted. Papua New Guinea, undergoing its first full peer review, was rated Largely Compliant, as were Chile, China, Gibraltar, Greece, Korea and Uruguay. Malta was issued a Partially Compliant rating and Anguilla was deemed Non-Compliant.

29. Jordan deposits its ratification instrument for the implementation of MLI:- News Report

On 29 September 2020, Jordan deposited its ratification instrument with the OECD's Secretary-General, Angel Gurríaton thus underlining its strong commitment to prevent the abuse of tax treaties and base erosion and profit shifting (BEPS) by multinational enterprises. For Jordan, the MLI will enter into force on 1 January 2021.

<http://www.oecd.org/tax/beps/jordan-deposits-its-instrument-of-ratification-for-the-multilateral-beps-convention.htm>

30. Albania, Bosnia & Herzegovina and Costa Rica deposits MLI ratification document- News Report

Albania, Bosnia & Herzegovina and Costa Rica deposit their instrument of ratification that takes the total tally to 52 countries who have actually deposited their MLI instrument. Out of these 4 countries only Albania has mentioned India in its covered list and the remaining 3 countries i.e Bosnia, Herzegovina and Costa Rica have kept India out of its list which means the MLI won't be applicable/wont be affecting India's tax treaty with these 3 countries. The ratification documents can be accessed from the OECD's online portal.

<https://www.taxsutra.com/news/26486/Albania%2C Bosnia %26 Herzegovina and Costa Rica deposit MLI ratification document>

31. OECD Chief Says Recovery needs new thinking on Taxes to boost revenues:- News Report

In the post Covid recovery, countries should look to other types of revenue rather than income and consumption taxes, including carbon taxes and taxes aimed at valuable assets or investments, the OECD's top tax official Pascal Saint-Amans said. He said on the OECD's website that international tax transparency could allow countries to tax capital income to a degree not possible in prior global recessions as they look to recover revenue lost during the pandemic.

Saint-Amans also issued a warning about trade wars, which Europe and the U.S. could face next year if the OECD doesn't resolve disagreements on the taxation of the digital economy.

<https://www.law360.com/tax-authority/articles/1307169/oecd-tax-chief-says-recovery-needs-new-thinking-on-taxes>

32. OECD is of the view that Government should not cut the spending and Increase the tax rates:- News Report

OECD in its quarterly health check of the global economy said that the countries need to borrow extra funds for next year to support households and businesses. It also emphasized that the governments should not cut the spending amidst Covid 19 pandemic and should also not increase the rate of taxes until the economy gets stable. OECD Chief Economist, Laurence Boone said the government needs to revise their projections for the support as it should focus on welfare of the society. She predicted that the global economy would shrink by 4.5% this year, which was 1.5 percentage points less than was predicted in June, before rebounding by 5% next year.

<https://www.theguardian.com/business/2020/sep/16/governments-must-resist-covid-spending-cuts-and-tax-rises-says-oecd>

33. European Union to go ahead with the digital tax proposal, if no global consequences reached by the OECD:- News Report

Digital taxation has been one of the hottest topics this year without any doubts and the debate over the same is far away from over. It has been a very challenging task for the OECD to bring the countries on the same page regarding digital taxation and hence the European Union has clearly expressed its desire to move forward and implement digital taxation by itself starting from the first half of the next year. Bringing tax fairness in the system was one of the main objectives that the EU is taking up as the Large digital companies emerge more profitable from the crisis and with a larger market share, while traditional businesses are bearing the brunt of the recession. In addition to this, the Union proposed to bring global minimum taxation as well in order to secure much needed tax revenues and to ensure that everyone contributes their fair share.

<https://www.taxsutra.com/news/26497/EU-to-go-ahead-with-digital-tax-proposal-if-no-global-consensus-reached-by-OECD>

34. Indonesia announces digital tax on major players: News report

Under the new rules, non-resident foreign firms which sell digital products and services in Indonesia worth at least 600 million rupiah (about \$41,667) a year – or which generate yearly traffic from at least 12,000 users – will be required to pay the new VAT rates.

A government spokesperson suggested that the number of companies selling digital products that will be required to pay the VAT is likely to increase.

<https://www.developingtelecoms.com/telecom-business/telecom-regulation/9972-indonesia-announces-digital-tax-on-major-players.html>

35. UN model treaty proposed to impose withholding tax on software payments: News Report

The UN committee of Experts on International Cooperation in tax matters has released a discussion draft to include software payments in definition of royalties. This will lead to withholding tax on software payments. This change would amend Article 12 of the UN model Convention between developed and developing countries. This will help the developing countries to preserve their taxing rights as a result of digitization of the economy and will also help to stimulate investments in developing countries.

UN member nations are in support as the amended definition remove the existing confusion with respect to the use of copyright in software (covered by royalty definition) and the use of copyrighted software (not covered by royalty definition). Some UN members that oppose the proposal to include software payments in the definition of royalties take the position that there are no grounds to justify the allocation of taxing rights to a source jurisdiction. Hence, there is no consensus among UN states on this proposed inclusion.

<https://mnetax.com/un-model-treaty-proposal-would-impose-withholding-tax-on-software-payments-40124>

36. UAE amends Economic Substance Regulations, clarifies on 'branch operations':

UAE amends Economic Substance Regulations (ESR) 2019, publishes updated guidance on the application of the Regulations.

The Economic Substance Test requires a Licensee to demonstrate that: the Licensee and Relevant Activity are being directed and managed in the UAE, the relevant Core Income Generating Activities ('CIGAs') are being conducted in the UAE and the Licensee has adequate employees, premises and expenditure in the UAE. Amends definition of 'Licensee', excludes 'natural persons' and sole proprietors from its ambit; Further, introduces 'exempted licensees' definition whereby exempts the following from applicability of the regulations: (1) Investment Fund, (2) an entity that is tax resident in a jurisdiction other than the UAE, (3) an entity wholly owned by UAE residents meeting certain conditions (4) UAE branch of a foreign entity - the Relevant Income of which is subject to tax in a jurisdiction other than the State [i.e reported in the tax return of the foreign parent].

It also provides clarity on treatment of branches in UAE, states that branches registered in UAE shall be regarded as an extension of their 'parent or 'head office' and thus, shall not be considered to have a separate legal status, similarly, in case of outbound branch, amended regulations provide that the UAE entity is not required to consolidate the activities and income of the branch for purposes of the ESR Regulations, provided that the Relevant Income of the branch is subject to tax in the foreign jurisdiction where the branch is located.

For a licensee to qualify for the relevant activity of 'Distribution and Service Centre Business', the amended guidelines exclude the requirement of 'importing and storing the goods in the State' and 'reselling outside the state'; Likewise, in case of services removes the requirement of providing services 'in connection with a business outside the State' for undertaking the aforesaid relevant activity; Further, simplifies the definition of 'connected person' [relevant in context of definition of relevant activity such as distribution & service centre, High Risk IP licensee, etc.] to mean an entity that is a part of the same Group as the Licensee [as against earlier definition in reference to direct/indirect ownership or control, or common control]; Appoints Federal Tax Authority (FTA) as the 'National Assessing Authority' to undertake assessments to determine compliance with economic substance tests by the entities; Also enhances the penalty on failure to meet economic substance test from AED 10,000 to AED 20,000.

37. France Extends COVID-19 Tax Deals for Cross-Border Workers:

The French Ministry of Finance announced that several tax agreements applying to cross-border workers during the COVID-19 crisis have been extended. According to the ministry, the special tax agreements with Belgium, Germany, Luxembourg, and Switzerland, which clarify the tax situation of cross-border workers unable to travel to their normal place of work, have been extended until December 31, 2020.

In summary, the agreements provide that remunerated days spent working from home as a direct result of the health crisis, which would otherwise have been spent at a place of work in the other jurisdiction, will be considered to have been exercised in that other state. The suspension of the 29-day rule will also apply until December 31, 2020

https://www.taxnews.com/news/France_Extends_COVID19_Tax_Deals_For_CrossBorder_Workers_97807.html

B. INDIRECT TAXATION

1. One-time relaxation in implementation of E-invoicing by extending time limit for obtaining IRN relaxed by 30 days:- Notification no. 73/2020 – Central Tax dated 01 October 2020 read with CBIC Press Release dated 30 September 2020

The Board has issued a notification providing that notified taxpayers who have generated tax invoices without Invoice Reference Number (IRN) during the period from the 01 October 2020 to 31 October 2020, shall follow the special procedure such that the said persons shall obtain an IRN for such invoice by uploading specified particulars in FORM GST INV-01 on the Common Goods and Services Tax Electronic Portal, within 30 days from the date of such invoice, failing which the same shall not be treated as an invoice.

The CBIC also issued a Press Release which stated that it has been decided that in the initial phase of implementation of e-invoice, the invoices issued by such taxpayers during October 2020 without following the manner prescribed under rule 48(4), shall be deemed to be valid and the penalty leviable under section 122 of the CGST Act, 2017, for such non-adherence to provisions, shall stand waived if the Invoice Reference Number (IRN) for such invoices is obtained from the Invoice Reference Portal (IRP) within 30 days of date of invoice.

It further stated that no such relaxation would be available for the invoices issued from 01 November 2020 and such invoices issued in violation of rule 48(4) of the CGST Rules 2017 would not be valid and all the applicable provisions of CGST Act and Rules would apply for the said violation.

2. Dynamic QR code for B2C invoices deferred to 31.12.2020:- Notification no. 71/2020-Central Tax dated 30 September 2020

The Board has deferred the implementation of dynamic QR code for B2C transactions from 01 October 2020 to 31 December 2020.

3. Instructions issued to not recover interest on gross:- Instructions F. No. CBEC-20/01/08/2019-GST dated 18 September 2020

The GST Council, in its 39th meeting, held on 14 March 2020 recommended interest to be charged on the net cash tax liability w.e.f. 01 July 2017 and accordingly, recommended the amendment of section 50 of the CGST Act retrospectively w.e.f. 01 July 2017. It may be recalled that notification 63/2020 - Central Tax dated the

25 August 2020 was issued that amended section 50 w.e.f. 01 September 2020. There were apprehensions raised by taxpayers that the said notification is issued contrary to the Council's recommendation to charge interest on net cash liability w.e.f. 01 July 2017. Consequently, a press release, dated 26 August 2020 was issued to clarify the position. In order to implement the decision of the Council in its true spirit, and at the same time working within the present legal framework, the Board has issued the following instructions, as under:

- a. For the period 01 July 2017 to 31 August 2020, field formations may be instructed to recover interest only on the net cash tax liability (i.e. that portion of the tax that has been paid by debiting the electronic cash ledger or is payable through cash ledger); and
- b. Wherever show cause notices have been issued on gross tax payable, the same may be kept in Call Book till the retrospective amendment in section 50 of the CGST Act is carried out.

4. Auto Let Export Order under Express Cargo Clearance System allowed: Circular No. 41/2020-Customs

In order to facilitate exports by courier and to enhance the global competitiveness of India's exporters, CBIC has decided to allow the facility of Auto Let Export Order (LEO) under the Express Cargo Clearance System. The facility of Auto LEO has been developed by Directorate General of Systems & Data Management and is ready for launch. The Courier Shipping Bills (CSBs) filed for clearance of export goods under ECCS are subjected to Risk Management System (RMS), after the registration of the goods by the Custodian (arrival scan and weight record). The RMS either facilitates or interdicts a Courier Shipping Bill (CSB) as per risk parameters. It has been decided that export goods which are covered under CSBs, and are fully facilitated by RMS (no assessment, no examination) and cleared by customs x-ray scanning shall be automatically given LEO by the ECCS. This is expected to considerably reduce the dwell time of clearance of export shipments through courier.

5. Phone, electronics makers seek exemption from 'faceless assessment' for shipments:

Mobile phone and electronics manufacturers have sought exemption from the new "faceless assessment" system for clearing import/export shipments, which they say have increased the processing time upto 8-12 days as against 2-3 days previously.

<https://economictimes.indiatimes.com/news/economy/policy/cabinet-approves-amendments-to-3-labour-codes/articleshow/78004523.cms?from=mdr>

6. Gujarat High Court allows refund of credit distributed by ISD to SEZ unit:

In a recent important ruling of the Gujarat High Court (HC), the HC has decided favourably on the issue involved in the writ petition whether refund can be claimed by Special Economic Zone (SEZ) unit with respect to input tax credit (ITC) distributed by the input service distributor (ISD). The petitioner, an SEZ unit, had filed an application claiming refund of IGST credit distributed by an ISD for the services pertaining to the unit. The refund claim was rejected by the Revenue.

The key observations of the HC are as under:

- It is not possible for the supplier of goods or services to file a refund application as credit is distributed to the SEZ unit by the ISD.
- There is no specific supplier who can claim the refund under the provisions of the CGST Act and the rules thereunder.
- Under the erstwhile tax regime, credit of service tax was distributed pro-rata by ISD to all the units basis their turnover. Similarly, under the GST regime, credit of tax is distributed to all the units by the ISD and therefore, the claim of refund made by the SEZ unit is required to be granted.

Thus, the HC held that the SEZ unit is eligible to claim refund of unutilized ITC lying in the electronic credit ledger.

7. Refund of input tax credit on input services not permissible in case of inverted duty structure:- Madras High Court in TVL. Transtonnelstroy Afcons Joint Venture & Ors. vs. Union of India & Ors. in Writ Petition Nos.8596, 8597, 8602, 8603, 8605, 8608, 14799, 21432 32308, 32311, 32314, 32316, 32317, 32327, 34219 and 34221 of 2019

The Madras High Court dismissed Writ Petition challenging the vires of rule 89(5) wherein the Petitioner had prayed that refund input tax credit in case of inverted duty structure should include input tax credit on input services. The conclusions reached by the High Court are listed below.

(1) Section 54(3)(ii) does not infringe Article 14 of the Constitution

(2) Refund is a statutory right and the extension of the benefit of refund only to the unutilised credit that accumulates on account of the rate of tax on input goods being higher than the rate of tax on output supplies by excluding unutilised input tax credit that accumulated on account of input services is a valid classification and a valid exercise of legislative power.

(3) Section 54(3)(ii) curtails a refund claim to the unutilised credit that accumulates only on account of the rate of tax on input goods being higher than the rate of tax on output supplies. In other words, it qualifies and curtails not only the class of registered persons who are entitled to refund but also the imposes a source-based restriction on refund entitlement and, consequently, the quantum thereof.

(4) Consequently, it is not necessary to interpret rule 89(5) and, in particular, the definition of Net ITC therein so as to include the words input services.

The Court dismissed the challenge to constitutionality of section 54(3)(ii) and challenge to validity of rule 89(5) of the CGST Rules on the ground that it is ultra vires section 54(3)(ii) of the CGST Act and/or the Constitution.

It may be recalled that in a recent ruling of Gujarat High Court in VKC Footsteps India Pvt. Ltd. held that restriction on refund of input tax credit on input services in case of inverted duty structure as ultravires section 54 of CGST Act. With two contradictory Judgements on the same issue by different High Courts the taxpayers will have to wait a final resolution of the issue.

8. GST not applicable on recovery of transportation cost from the employees:- Maharashtra AAR in Tata Motors Limited in GST-ARA-23/2019-20/B-46

The Applicant engaged service providers to provide transportation facility to its employees, in non-air conditioned buses having seating capacity of more than 13 persons. To ensure use of transportation facility only by authorized persons/employees, the Applicant issued a pass to employees and a nominal amount is recovered on a monthly basis. In other words, the difference between the amount paid to service provider and the amount recovered from employees is cost to the company as salary cost. The Applicant raised the following questions (a) Whether input tax credit (ITC) available to Applicant on GST charged by service provider on hiring of bus/motor vehicle having seating capacity of more than thirteen person for transportation of employees to & from workplace? (b) Whether GST is applicable on nominal amount recovered by Applicants from employees for usage of employee bus transportation facility in non-air conditioned bus? (c) If ITC is available as per question no. (1) Above, whether it will be restricted to the extent of cost borne by the Applicant (employer)?.

The Authority held that ITC is available to the applicant but only after 01 February 2019 and on vehicles having sitting capacity of more than 13 persons. It further held that GST is not applicable on the amount recovered from the employees as transaction between the applicant & their employees, due to “Employer-Employee” relation, is not a supply under GST Act. It rejected the applicant’s contentions that they are eligible for exemption from GST under SI. No. 15 (b) of Notification No. 12/2017-Central Tax (Rate) dated 28 June 2017 on

the basis that the exemption under the said notification is available only when the supply is taxable in the first place. It further held ITC is not admissible to Applicant on part of cost borne by employee and thus ITC will be restricted to the extent of cost borne by the Applicant.

9. Directions issued to expedite refund claims:- Gujarat High Court in Uni Well Exim vs. State of Gujarat in R/Special Civil Application No. 9955 of 2020

The Petitioner had filed a refund application dated 24.12.2019 against which a Show Cause Notice dated 11.01.2020 for rejection of the application for refund was issued. The reply to the Show Cause Notice dated 25.01.2020 was filed however, the department had not passed any order in the matter. The Court directed that the concerned respondent authorities shall hear the Petitioner on the issue of show cause notice and after hearing the petitioner, pass necessary orders and that such exercise may be preferably undertaken by the concerned authority as expeditiously as possible latest by 09.10.2020.

The GST Act under section 54(7) provides a time limit of 60 days to process a refund application failing which the department is liable to pay interest to the applicant. It has become a common practice where the department does not decide on the refund application and keeps them pending for a very long period. Taxpayers whose applications are pending for inordinate long duration may consider approaching the Courts for a relief on similar grounds.

10. Seizure of cash under section 67(2) of GST Act held valid:- Madhya Pradesh High Court in Smt. Kanishka Matta vs. Union of India and Others in Writ Petition No. 8204/2020

The Petitioner had filed a Writ for release of cash amounting to Rs. 66,43,130/- seized from the Petitioner vide Panchnama dated 30.05.2020 from the residential premises of the Petitioner and her husband. The petitioner's contention was that the word “money” is not included in Section 67(2) of the GST Act and therefore, once the “money” is not included under Section 67(2) of the GST Act, the Investigating Agency / Department is not competent to seize the same.

The Court observed that the GST Act has to be seen as a whole and the definition clauses are the keys to unlock the intent and purpose of the various sections and expressions used therein, where the said provisions are put to implementation. Section 2(17) defines “business” and Section 2(31) defines “consideration”. In the considered opinion of the Court a conjoint reading of Section 2(17), 2(31), 2(75) and 67(2) makes it clear that money can also be seized by an authorized officer.

The Court ordered that keeping in view the aforesaid interpretation of the word “thing” in section 67(2), money has to be included and it cannot be excluded as prayed by the Petitioner from Section 67(2).

11. Period of limitation for filing of appeal to start from date of uploading the order on common portal:- Gujarat High Court in Gujarat State Petronet Limited vs. Union of India through Secretary in R/Special Civil Application No. 15607 of 2019

The Petitioner had filed a refund claim which was partly rejected. The order of rejection was not made available on the common portal. The Petitioner therefore, was unable to file an appeal electronically. Thereafter, the Petitioner belatedly filed an appeal which was rejected by the Appellate Authority as the delay was beyond four months. The Petitioner approached the High Court to quash the order of the Appellate Authority. The Petitioner case was that the delay that has resulted in filing of the appeal against the impugned order was solely due to the bona fide belief of the petitioner that appeal can only be filed electronically in terms of provisions of the GST laws.

The Court observed that a perusal of provisions of GST Act, it is apparent that the appeal is required to be filed in electronic mode only and if any other mode is to be prescribed then the same is required to be notified by way of a notification. There is nothing on record to show that any notification has been issued for manual filing of an appeal. In such circumstances, though the physical copy of the adjudication order was handed over to the Petitioner, the time period to file appeal would start only when the order is uploaded on the GST portal. Without the order being uploaded, the Petitioner could not file the appeal and. The contention raised on behalf of the Respondents that the uploading of the order and filing of the appeal are two different processes was rejected. The Court held that in such circumstances, there was no failure on part of the Petitioner to file the appeal within the prescribed period of limitation as the period of limitation did not start till the order passed by the adjudicating authority was uploaded on the GST portal. Merely because the petitioner has filed the appeal manually after exhausting all the efforts to ensure filing of the appeal in proper and legal manner, the impugned order rejecting such appeal on the ground of limitation is not sustainable as the petitioner cannot be penalised for lack of clarity of the provision when the new law is enacted. The Court held that the Appellate Authority was not justified in rejecting the appeal on the ground of limitation and thereby depriving the petitioner to submit its case on merits.

The Court remanded the appeal back to the Appellate Authority to decide the same afresh de novo on merits after giving adequate opportunity of hearing to the Petitioner.

12. Sub-contractor providing transport services to GTA service operator amounts to hiring of vehicles:- Maharashtra Appellate AAT in Liberty Translines in MAH/AAAR/RS-SK/26/2020-21

The Appellate AAR rejected appeal filed against order of Maharashtra AAR which held that the Appellant who issues consignment note to a GTA service provider amounts to hiring of vehicles and not GTA services.

The Authority observed that it is conspicuous that the goods are received by the goods transport agency from either the consignor or the consignee of the goods, the details of which are mentioned in the consignment note along with the description of the goods being transported. In the subject case, the Appellant is not receiving goods directly from the consignor or consignee of the goods, but from the main contractor, who themselves are acting as GTA, where they are receiving the goods from the consignor/consignee, and issuing the consignment notes in respect thereof. The Appellant is merely a Goods Transport operator here and not a GTA. The Appellant may be issuing a lorry receipt but as already discussed it does not conform to the description of a consignment note.

The Appellant's contention wherein it has been argued that when the whole work is sub-contracted, the classification of the service cannot change, it is opined that the Appellant's contention is fallacious as it has been established above that the actual transporter in the subject case is the main contractor, and not the Appellant, therefore, it would not be proper to say that the whole work in the subject case, which is transportation of the goods by road, acquired by the main contractor from their clients, have been sub-contracted to the Appellant. The Authority observed that the Appellant is merely supporting the main contractor in their activity as the GTA by way of renting out their transport vehicle.

Accordingly, the Authority upheld the order passed by the Maharashtra AAR.

13. Constitutional validity of Rule 90(3) of CGST Rules challenged – Notice issued:- Delhi High Court in Insitel Services Pvt. Ltd. vs Union of India & Ors. W.P. (C) 6486/2020 & CM APPL. 22791/2020 dated 16 September 2020

As per rule 90(3) of GST Rules, where any deficiencies in filing of application for refund are noticed, the proper officer communicates the same through RFD-03 through GST Portal electronically, requiring a taxpayer to file a fresh refund application after rectification of deficiencies.

The Petitioner had filed writ petition challenging vires of rule 90(3) of GST Rules as illegal and ultra vires as the issuance of a deficiency memo through RFD-03 does not give any opportunity of hearing to the applicant.

The Petitioner prayed that rule 90(3) should be read down to the effect that the rectification of deficiencies shall not be treated as submission of fresh application for the purpose of computing limitation of applying for refund and grant of interest on delayed refund.

The Court has issued notice. The next date of hearing is 09th December 2020.

The order will have a large impact on trade as there are many instances where refund application are rejected without valid reason or deficiencies are issued belatedly or beyond limitation leaving the taxpayer with no recourse other than approaching the Higher Courts.

14. Jurisdiction to invoke best judgment assessment not available as due date for filing of GSTR-3 not yet notified:- Appellate Authority in Omsai Professional Detective and Security Services in Appeal No. APL1900230 vide Order No. 5132/2020

The Appellant had not filed the GSTR-3B return for the month of January 2019 and February 2019, however, he had filed the GSTR-1 for the above stated months and declared the output supplies. The department issued notices on different dates to assessee for non-filing of GSTR-3B and to attend personal hearings but the assessee neither filed the GSTR-3B return nor attended and failed to reply the notices on date of hearings.

The Assessing Authority in terms of power vested under section 62 of GST Act made “Best Judgement Assessment” and made additions in outward supplies declared in GSTR-1 by 50% towards probable turnover. The assessment was made at 150% of values declared in GSTR-1 along with interest and imposition of penalty under section 122 on grounds of wilful suppression of facts.

One of the issues raised was whether the orders section 62 can be invoked considering that GSTR-3B is not a prescribed return under section 39 of the Act?

The Authority relied upon judgement of Gujarat High Court in AAP and Co., Chartered Accountants and observed that for the purpose of section 39, return means the return in Form GSTR-3 only. The Authority held that jurisdictional factor to exercise the power of the best judgment assessment under Section 62 is conspicuously absent.

**15. Notional interest on security deposit to be included in turnover if it influences the rentals:-
Karnataka Authority for Advance Ruling in Midcon Polymers Pvt. Ltd. in KAR ADRG
48/2020**

The Applicant intended to enter into a contractual agreement of renting of immovable property with an Educational Institution in Bangalore. The Contract is on the basis of the reserved monthly rent of INR 1.50 lakhs or Annual Rent of INR 18 Lakhs and also refundable caution deposit of INR 500 Lakhs, which shall be returned without interest on the termination of the tenancy. The Applicant submitted that the deposit does not in anyway determines the quantum of rent.

The Applicant had filed for Advance Ruling inter alia in respect of following question i.e., whether notional interest on security deposit should be included in rental income?

The Authority followed the Supreme Court judgement in the case of Commissioner vs. I.S.P.L. Industries Ltd. which held that notional interest on advances taken by the assessee from the buyers cannot be added to the assessable value of the goods cleared, unless there is evidence to show that the interest free deposit taken has influenced the price.

The Authority observed that the security deposit is collected normally equivalent to 6 months' or 12 months' rent and that it is a known fact that the higher the security deposit lower the monthly rent amount. The AAR observed that Applicant had not furnished adequate data / information so as to decide whether actually the notional interest influences the monthly rental amount or not.

The Authority held the notional interest on the security deposit shall be taken into consideration, for the purposes of arriving at total income from rental, only if it influences the value supply of renting of immovable property service i.e. monthly rent.

**16. Property cannot be attached while exercising the power to access the premises u/s 71(1):-
Gujarat High Court in M/S Kanal Enterprises vs. State of Gujarat in R/Special Civil
Application No. 17673 of 2019**

The petitioner had filed a Writ Petition against provisional attachment of the bank account as well as the stock of the Petitioner. The point falling for the Court's consideration was whether the impugned order of attachment of property under Section 83 of the Act could have been passed on the ground of proceedings instituted under Section 71(1) of the Act.

The Court held that the plain reading of Section 83 of the Act would indicate that the powers can be invoked during the pendency of proceedings under Sections 62, 63, 64, 67, 73 and 74 of the Act. It further held that there is no power vested in the authorities to invoke the provisions of Section 83 during the pendency of the proceedings instituted under Section 71(1) of the Act and there cannot be any proceedings, which could be instituted under Section 71 of the Act. The impugned order of attachment under Section 83 of the Act was quashed and set aside

**17. Works Contract for construction of tunnel & its allied work covered under Earth works:-
Maharashtra Authority for Advance Ruling in Soma Mohite Joint Venture in
MAH/AAAR/SS-R1/21/2019-20**

The Applicant accepted a contract for construction of tunnel and its allied works under Krishna Bhima Stabilisation Project awarded by Godavari Marathwada Irrigation Development Corporation, Aurangabad.

The Applicant had filed for Advance Ruling inter alia in respect of following question i.e., whether the said contract is covered under Sr. No. 3A of Notification No. 12/2018 and whether the said contract is covered under the term “Earth Work” and covered under Sr. No. 3 as per notification no. 11/2017?

The Authority examined whether the function is that which is entrusted to Panchayat under 243G. The Authority observed that as per the Central Water Commission guidelines, a Major Project is a project having CCA (Culturable Command Area) more than 10,000 hectares and the present project - Nira Bhima tunnel is a basic component of the Krishna Marathwada project whose CCA is 33945 hectares. Therefore, the present project being a part of a Major Project and not a Minor project does not fulfill the condition of being the type of work entrusted to a Panchayat. Accordingly, benefit under sr. no. 3A of notification was rejected.

On sr. no. 3 of notification no. 11/2017, the Authority observed that the entry covers composite supply of works contract where earthwork forms more than 75% of the contract by value. The Authority held that it is very much clear from the wording that the Contract may be for something else- be it construction of building, tunnel, canal, road and in these contracts if the earthwork constitutes more than 75% then it qualifies for the above entry. If the intention of the Legislature had been to cover only pure contract of earthworks in it then a qualifying condition of more than 75% by value wouldn't have been provided. Accordingly, benefit under sr. no. 3 of the notification was allowed.

18. Request for transfer of case to the location of the taxpayer rejected:- Kerala High Court in Rajive & Co., Rajive & Co. vs. Asst. Commissioner, State GST Department, Ors. in Writ Appeal Nos. 1185, 1196 and 1224 of 2020

An investigation was ordered and commenced into the affairs of a group concern going under the Family name of "Chungath" all engaged in jewellery business. The State Tax Officer at Ernakulam was entrusted with the continuation of proceedings after raids were conducted in various business premises of the group by State Tax Officers of the Investigation Wing stationed at the respective locations.

The entire accounts are handled by the Head Office which is within Kollam District. The Petitioners prayed that the investigation with respect to them may be carried out by an officer at Kollam especially due to the COVID situation as also due to the voluminous documents which would have to be transported to Ernakulam. It is also submitted that two officers stationed at Thrissur are handling another set of cases, again of businesses going under the family name "Chungath". It was also submitted that the lawyer who deals with the affairs of the petitioner's also is located at Kollam.

The department had stated that at the time of inspection huge variation of stock of gold jewellery were noticed at the branch in Ernakulam and hence the books of accounts were called for. It is also specifically stated that the major volume of business was found in the branch at Ernakulam. Further, section 35 of the CGST and KGST Act, 2017 provides for maintenance of books of accounts in the business premises itself. It also stated that a total of 16 places of business falling under eight registrations were inspected. Of which, 11 businesses were located at Ernakulam and Thrissur District coming under the Ernakulam zone of SGST Department.

The High Court rejected the request and held that it is for the Department to decide, which of its officers should continue the proceedings. The assessee cannot have a choice in the matter. The Court also rejected the request that the very same officer at Ernakulam could hold sitting at Kollam and the assessee would bear the expenses. The Court held that officer cannot be independently asked to concentrate on the investigation against the petitioners since he would have other work at his office in Ernakulam.

19. GST applicable on naturopathy provided under residency programs:- Gujarat AAR in Oswal Industries Ltd. in Advance Ruling/SGST&CGST/2018/AR/38

The applicant runs a naturopathy center and offers physical, psychological and spiritual health overhaul with the help of power of nature. It provides different types of wellness facilities at Nimba such as Naturopathy, Ayurveda, Yoga and meditation, Physiotherapy and Special therapy. Such wellness facilities are provided with

the help of highly qualified professionals' doctors in the field of naturopathy, researchers, and support staff. In pre-GST regime, the applicant had received letter from the department dated 10 March 2015 for clarification regarding registration under Service Tax and on the basis of that letter the applicant has been enjoying exemption vide Notification No.25/2012-ST dated 20 June 2012 (Sl.No.2(i)) under the Finance Act, 1994. The applicant raised a query whether it is entitled to exemption under sr. no. 74 of notification no. 12/2017.

The Authority observed that the packages offered by the applicant, as evident from their website www.nimba.in, indicates that the therapy offered by them is strictly on a residence basis. The total consideration mainly revolves around two factors viz. 1) the type of room and 2) whether single or double occupancy. This fact creates an impression that stay is mandatory and the charges of stay depend on the above factors. The Authority further observed that the entire package consists of three components viz., accommodation, food and therapy; and the packages would not be possible without any one of the three components. In other words, the packages offered by the Applicant are naturally bundled and would be aptly covered under the definition of Composite Supply. The principal supply would be the accommodation services since the therapy can in no way be administered without accommodation.

Accordingly, the Authority held that the Applicant is providing composite supply of services would be treated as a supply of accommodation service falling under Heading 9963 (accommodation services being the principal supply) and specific heading 996311. The exemption was not allowed to the Applicant.

20. Value of land to deducted as 33% of the total amount charged even if actual value of land available:- Gujarat AAR in Karma Builders in Advance Ruling/SGST&CGST/2019/AR/10

The Applicant raised a question that cost of land that is being transferred to the buyers on inclusive of land or undivided share of land basis should be allowed to be deducted as a whole and not as provided in Not No. 11/2017-CT (Rate) and 08/2017-I.T (Rate) both dated 28 June 2017 as one third (33.33%) of the value, because in Applicant's case the cost of Land is distinctly determinable and is more than one third (33.33%) of the consideration value of sale of property. The Applicant in their support has referred Rule 18(A)(A) of the erstwhile Gujarat Value Added Tax Rules, 2006, wherein it is provided that if at the time of the transfer of property in the goods (whether as goods or in some other form) involved in the execution of a works contract shall be determined by deducting the amounts paid by way of price for sub-contract made with a registered dealer, if any, pertaining to the said work contract. It further submitted that the deemed deduction is not the intention of law and that actual deduction will promote more transparency.

The Authority held that there are deemed provisions that the value of transfer of land or undivided share of land, as the case may be, and the value of such transfer of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply. In view of the same it was held that the value of land should be 33.33% of the total amount charged.

C. REGULATORY

1. Extension of time for holding of EGM through VC or OAVM and passing of certain items through postal ballot - Circular No. 33/2020 dated 28 September 2020:

MCA vide circular no. 14/2000 dated 8 April 2000 and 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 which was further extended by MCA till 30 September 2020 vide circular no. 22/2020 dated 15 June 2020.

Now, MCA vide its circular no. 33/2020 dated 28 September 2020 has further extended the timeline of holding relevant EGM's through VC or OAVM or transact relevant business through Postal Ballot upto 31 December 2020 while the other requirements in the above circulars remain unchanged.

2. Extension of due date for Companies Fresh Start Scheme 2020 and LLP Settlement Scheme, 2020: Circular No. 30/2020 and 31/2020 dated 28th September, 2020

Ministry of Corporate Affairs in march 2020 introduced the above two schemes to provide the one time relaxation to file any document, forms, returns etc. with the MCA without any additional fees or penalty to the companies and LLPs defaulted in the filings of such documents, statement, return, etc. Earlier the above schemes are valid till 30 September 2020. However, MCA has decided to further extend the above schemes till 31 December 2020 due to the large scale disruption caused by Covid-19 pandemic.

3. Extension of relaxation in the requirement of holding Board meetings with physical presence of directors under Company law: Notification No. G.S.R. 395 dated 28 September 2020

Due to Covid related challenges, MCA on 19 March 2020 issued Companies (Meetings of Board and its Powers) Amendment Rules, 2020 to allow the holding of board meetings via video conferencing or other audio visual facility in accordance with Rule 3 of Companies (Meetings of Board and its Powers) Rules 2014 and for the matters covered under Rule 4(1). Rule 4 covers matters such as approval of annual financial statements, Board's report approval etc. cannot be held through video conferencing or other audio visual means which was relaxed till 30 June 2020. Earlier, MCA vide its notification dated 23 June 2020 extended the above relaxation till 30 June 2020, which is now further extended till 31 December 2020 vide notification dated 28 September 2020.

4. Companies (Amendment) Bill 2020 passed in both the houses of the parliament:-

Central Government (CG) on 17th March, 2020 presented before the Lok Sabha the Companies (Amendment) Bill, 2020 (“CAB, 2020”). The same was later passed by the Lok Sabha on 19th September, 2020 and by Rajya Sabha on 22nd September, 2020. The assent of the President of India is awaited to know the date of the Companies (Amendment) Act, 2020 coming into life. The Lok Sabha on 19th September 2020 passed a bill to make amendment in the Companies Act 2013. Some of the key amendments taken place in the above bill have been presented below:-

a) Decriminalising the minor or technical lapse:- Finance Minister Smt. Nirmala Sitharaman has specifically mentioned that all those offences that do not involve any element of fraud or do not involve larger public interest have been decriminalised, whereas there will be no relaxation for serious offences, including fraud and those that cause "injury to public interest or deceit"

b) Section 2(52) (Definition of “listed company”)- All those companies that were intending to get listed but have not been listed yet, have been removed from the definition of the listed companies

c) Section 135 (Corporate Social Responsibility):-The excess amount spent in the Corporate Social Responsibility (CSR) activity shall be allowed to be set-off in the subsequent years and all those companies whose CSR amount (required to be spent) is less than 50 lakhs, they shall no longer be required to set up the CSR committee to discharge their CSR responsibility and accordingly the board shall discharge all such responsibilities.

d) Section 117 (Resolutions and agreements to be filed)- This section requires filing of resolutions with the ROC. It currently exempts banking companies which are providing loan, guarantee, security in connection with loan in its ordinary course of business from filing the resolution in e-Form MGT-14. It has now been proposed to extend such exemption to registered NBFCs and HFCs

e) Section 129A (Periodical financial results (newly inserted))- This section has been newly inserted in the Companies Act that requires the certain class of company and companies to prepare periodical financial results and perform a limited review of such periodical financial results and file a copy with the ROC within 30 days of completion of the relevant period

f) Section 149 (Company to have Board of Directors (Independent Directors))- As per the said provision, the Independent Directors are not subject to stock options and are entitled to sitting fees, profit related commission and reimbursement of expenses incurred in attending meetings as per Section 197(5), but the amendment has

been made in the aforementioned section to provide that the Independent Directors as well as Non-Executive Directors may receive any other sort of remuneration in terms of Schedule V where there is no profit or inadequate profits in the company.

g) Section 62 (Right Issue)- As per the existing provisions, the company is required to provide an offer letter to the existing shareholders under the right issue process i.e 15 to 30 days beyond which the offer is deemed to be declined. It is proposed to lay down such other time period which may be less than the timelines prescribed currently.

h) Section 16 (Rectification of Name)- If a company was registered inadvertently with a registered trade mark of a proprietor, and the name is too identical or resembles an existing trade mark, such company has to change its name within 3 months from the issue of Central Government's direction instead of the existing timeline of 6 months. In case of a default by the company under this section, the CG shall allot a new name to the company subsequent to which the ROC will issue a new Certificate of Incorporation to the company.

5. Government struck off 3,82,581 shell companies during last three years:- Press release dated 20 September 2020

The Government has undertaken a Special Drive for identification and strike off Shell Companies. Based on non-filing of Financial Statements (FS) consecutively for two years or more, companies were identified and after following due process of law as provided under Section 248 of the Companies Act, 2013 read with the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, there are 3,82,581 number of Companies were struck off during the last three years.

6. Ministry of Corporate Affairs issued Insolvency and Bankruptcy Board of India (Annual Report) Amendment Rules, 2020:- Notification No. G.S.R. 563(E) dated 10 September 2020

As per the rule 4 of the Insolvency and Bankruptcy Board of India (Annual Report) Rules, 2018, the Board is required to submit a copy of the annual report referred to in rule 3 to the Central Government within 90 days of the end of the financial year. Now, as per the amended rules, a new time schedule is prescribed as mentioned below for the submission of the board report:-

a) Approved and authenticated annual accounts are to be made available by Insolvency and Bankruptcy Board of India (IBBI) to the concerned audit office and commencement of audit of annual accounts by 30 June every year.

b) Issue to Separate Audit Report (SAR) along with Audit Certificate to IBBI by 31 October every year.

c) Submission of the annual report to the Ministry of Corporate Affairs to be laid down to parliament by 31 December.

7. Extension of due date for holding Annual General Meeting: Notification dated 09 September 2020

The Ministry of Corporate Affairs has extended the due date for holding AGM by 3 months for all the companies. ROC of various states have issued the order in this regard.

8. MCA notifies Companies (Acceptance of Deposits) Amendment Rules, 2020: Notification No. G.S.R. 548(E) dated 07 September 2020

The Amendments in companies (Acceptance of Deposits) Rules are as follows:-

- a) Earlier deposit definition does not include an amount of twenty five lakh rupees or more received by a startup company by way of convertible note (Convertible into equity shares or repayable within a period of 5 years) and now this 5 years period has been changed to 10 years period.
- b) Similarly in rule 3, the period of 5 years has been replaced by a 10 years period.

9. MCA to release norms allowing direct overseas listing of Indian companies: News Report

The Ministry of Corporate Affairs (MCA) will release norms that will allow Indian companies to list themselves on overseas stock markets without having to list them in India first, Livemint reported. Unnamed officials told the publication that the ministry is close to releasing a draft report on proposed changes to the Foreign Exchange Management Act (FEMA), Income Tax Act and Companies Act.

The move could help India companies, especially start-ups, raise money in international markets. Currently, companies incorporated in India cannot get listed on foreign stock exchanges if they haven't done so first in India. The report took the example of MakeMyTrip which had to incorporate itself in Mauritius so that it could list itself on US-based Nasdaq in 2010 without first going public in India.

Earlier in May, as part of the a COVID-19 pandemic economic relief package, Finance Minister Nirmala Sitharaman had announced various reforms to improve "ease of doing" business for corporates in the country. This included the decision to allow public companies in India to list securities directly in certain permissible foreign jurisdictions. However, this particular reform had already been incorporated into the Companies Act (Amendment) Bill, 2020 that was introduced in the Lok Sabha on March 17, 2020. It is yet to be enacted.

https://www.medianama.com/2020/09/223-mca-direct-overseas-listing/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+medianama+%28Medianama%3A+Digital+Media+In+India%29

10. Extension of Due Date of filing Cost Audit Report: Circular No.29/2020 dated 10 September 2020

The cost auditor can now submit the cost audit report to the Company till 30th November 2020.

11. 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. 34/2020 dated 29 September 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 and later due to the continuance struggle in this pandemic situation and also keeping in mind the interest of the various stakeholders MCA has further extended the timelines to 30 September 2020.

Now due to continuous disruption caused by Covid-19 pandemic, MCA has further extended the above due date from 30 September 2020 to 31 December 2020.

12. Extension of the Scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013 - General Circular No. 32/2020 dated 28 September 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 had introduced a scheme namely "Scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013" to provide relief from filing of the form No. CHG-1 and Form No. CHG-9 till 30 September 2020.

Now, MCA has decided to extend the above scheme till 31 December 2020 and the dates appearing in the original scheme as 30 September 2020 and 01 October 2020 will be read as 31 December 2020 and 01 January 2021 respectively.

13. Ceiling on MEIS benefits available to exporters on exports made from 01 September 2020 to 31 December 2020 and discontinuance of MEIS from 01 January 2021:- DGFT Notification no. 30/2015-20 dated 01 September 2020

The DGFT has issued a notification to insert para 3.04A and para 3.04B in FTP to bring the following changes:-

- (i) A limit on total reward under MEIS has been imposed so that for exports made in the period 01.09.2020 to 31.12.2020 the total reward which can be claimed by an IEC holder does not exceed the ceiling of Rs. 2 Crore.
- (ii) The aforesaid ceiling will be subject to further downward revision to ensure that the total claim under MEIS for the period (01.09.2020 to 31.12.2020) does not exceed the prescribed allocation by the Government, which is ₹ 5,000 Crore.
- (iii) It has also been notified that any IEC holder who has not made any exports for a period of one year preceding 01.09.2020 or any new IECs obtained on or after the date of publication of this Notification would not be eligible for submitting any claim under MEIS.

In addition, it has been notified that MEIS Scheme is withdrawn with effect from 01.01.2021.

14. Mistake while opting MEIS benefit in shipping bills allowed to be rectified to EDI System:- Madras High Court in ATC Tyres Pvt. Ltd. vs. Zonal Additional DGFT, Director General of Foreign Trade, Commissioner of Customs, Union of India, The Development Commissioner in W.P. (MD) No. 3489 of 2020 and WMP (MD) No.2950 of 2020

The Petitioner is an exporter intended to claim the benefit under MEIS Scheme. While submitting shipping bills online on EDI System, the Petitioner opted “YES” only in one/first line item and did not opt “YES” for rest of the items and as a result the system automatically generated “NO” on rest of the line items. The Petitioner approached the PRC for relaxation however, the Petitioner’s request was rejected. The Petitioner challenged the order of the PRC.

The Court held that it was an inadvertent mistake committed by the Petitioner and that the Petitioner intended to claim the benefit.

The Court directed that the Petitioner will file a formal request with the Commissioner of Customs who will issue “No Objection Certificate” and also give directions to NSDL to transmit all the relevant material.

15. Commerce Minister says country’s Exports and Imports are showing positive trends; Trade deficit is narrowing and Capping of Rs 2 Crore for MEIS will not affect 98% of the exporters:- Press Release dated 04 September 2020

Union Minister of Commerce and Industry, Piyush Goyal conducted a meeting with the Export Promotion Council on 4 September 2020 in which he said the country’s exports as well as imports are showing positive trends. The trade deficit is reducing too and the country's share has also been improving in the global trade due to our resilient supply chains, and perseverance and hardwork of our exporters.

The Minister said that 24 manufacturing sectors have been identified that have the potential of substituting the imports and increasing our exports by expanding and scaling up the operations including making improvement in the quality that would ultimately result in enhancement of Indian share in global trade and value chain.

Speaking on the Merchandise Export from India Scheme (MEIS), the Minister said that the capping of INR 2 Crore will not affect 98% of the exporters who claim benefit under the scheme. The Government has already announced a Remission of Duties or Taxes on Export Products (RoDTEP) scheme for exporters to take the place of MEIS, and a Committee has also been set up to determine the ceiling rates under the RoDTEP scheme. This new scheme would reimburse the embedded taxes and duties already incurred by exporters.

16. Finance Minister holds meeting with lenders for expediting resolution of loan accounts and reviewing progress of Emergency Credit Line Guarantee Scheme (ECLGS), Partial Credit Guarantee Scheme (PCGS) 2.0 and Sub-ordinate Debt Scheme:- Press Release dated 03 September 2020

India Finance Minister, Nirmala Sitharaman held a review meeting with the heads of Scheduled Commercial Banks and NBFCs through Video Conferencing to review their state of preparedness for implementation of the loans resolution framework for COVID-19 related stress. She emphasised upon the lenders that as and when moratorium on loan repayments is lifted, borrowers must be given support and COVID-19 related distress must not impact the lenders’ assessment of their creditworthiness.

She also discussed the performance of the schemes announced as part of the ‘Aatmnirbhar Bharat Abhiyaan’, and advised lenders to try and extend the maximum possible relief to borrowers before the festive season. The Finance Minister exhorted the lenders to proactively respond to needs of companies and businesses, as well as

those of individual borrowers, and to spearhead the efforts \or rebuilding businesses desperate for help owing to COVID-19 related distress.

17. Accounts not declared NPAs as on August 31 should not be declared NPAs till further orders: Interim order passed by Supreme Court

The Indian Supreme Court granted interim relief for borrowers, directing banks not to declare any loan accounts that were not under default till August 31 as Non-Performing Assets (NPAs), until further orders.

The Court's order came during the hearing of a batch of petitions that challenged the interest component of the Reserve Bank of India's (RBI) circular that provided for loan moratorium amid the COVID-19 pandemic.

While the question for consideration before the Court was limited to interest on interest being charged, the Court was also considering the aspect of role of the National Disaster Management Authority under the Disaster Management Act to provide relief as regards loan repayment in disaster situations.

18. Cabinet approves 3 Labour Codes: News Report

The union Cabinet on Tuesday has approved 3 Labour codes on social security, industrial relations and occupational safety and health (OSH) which could also include pension and medical benefits to the gig workers. These codes will eventually help the states to introduce significant changes to their labour laws framework. The codes are likely to clearly define areas and conditions in which fixed-term employment will be allowed.

The Proposed code has special provisions for strengthening the health facilities for the workers at the factory premises and also for the layoffs of in the establishments having 100 or more employees. States like Gujarat, Madhya Pradesh and Uttar Pradesh are expected to be benefited from these reforms who are pushing the allow the businesses to extend the shift from 8 hours to 12 hours.

The code on industrial relations aims to consolidate three laws — Trade Unions Act, 1926, Industrial Employment (Standing Orders) Act, 1946, and Industrial Disputes Act, 1947. The code on social security pertains to the social security net for migrant workers.

This would pave the way for the crucial legislations to be taken up for discussion and passage in the monsoon session Parliament.

19. Lok Sabha passes 3 Historic and path breaking Labour Codes:-

The Minister of State (I/C) for Labour & Employment, Shri Santosh Gangwar introduced in the Lok Sabha 3 Important bills relating to Labour code namely,

1. Industrial Relations Code, 2020
2. Code on Occupational Safety, Health & Working Conditions Code, 2020
3. Social Security Code, 2020

29 labour laws are being subsumed in the simplified, easy to understand transparent 4 labour codes. Out of the 4 labour codes, Code on Wages has already been passed by Parliament.

Some of the Key Highlights of the Industrial Relations Code, 2020 are:-

- To define “workers” which includes the persons in supervisory capacity getting wages up to Rs 18,000 a month or an amount as may be notified by the Central Government from time to time
- To provide for fixed term employment with the objective that the employee gets all the benefits like that of a permanent worker (including gratuity), except for notice period after conclusion of a fixed period, and retrenchment compensation. The employer has been provided with the flexibility to employ workers on fixed term basis on the basis of requirement and without restriction on any sector
- To provide that the commencement of conciliation proceedings shall be deemed to have commenced on the date of the first meeting held by the conciliation officer in an industrial dispute after the receipt of the notice of strike or lock-out by the conciliation officer
- To prohibit strikes and lock-outs in all industrial establishments without giving notice of fourteen days
- To set up a re-skilling fund for training of retrenched workers with contribution of the employer of an amount equal to 15 days last drawn by the worker.

Some of the key highlights of Code on Occupational Safety, Health & Working Conditions Code, 2020 are:-

- To employ women in all establishments for all types of work. They can also work at night, that is, beyond 7 PM and before 6 AM subject to the conditions relating to safety, holiday, working hours and their consent
- To provide for issuing of appointment letter mandatorily by the employer of an establishment to promote formalisation in employment
- To make the provisions relating to Inter-State Migrant Workers applicable on the establishment in which ten or more migrant workers are employed or were employed on any day of the preceding twelve months

and also provide that an Inter State Migrant may register himself as an Inter-State Migrant Worker on the portal on the basis of self-declaration and Aadhaar

- An Inter-State Migrant Worker has been provided with the portability to avail benefits in the destination State in respect of ration and availing benefits of building and other construction worker cess
- To make provision of "common license" for factory, contract labour and beedi and cigar establishments and to introduce the concept of a single all India license for a period of five years to engage the contract labour

Some of the key highlights of Social Security Code, 2020 are:-

- To extend social security to all employees and workers either in the organised or unorganised or an other sectors
- To provide for an establishment to be covered Employees' Provident Fund (EPF) and Employees State Insurance Corporation (ESIC) on voluntary basis even if the number of employees in that establishment is less than the threshold i.e. 20 and 10 respectively.
- To define various expressions used in the Bill such as, "career centre", "aggregator", "gig worker", "platform worker", "wage ceiling", etc.
- To empower the Central Government to frame schemes for unorganised workers, gig workers and platform workers and the members of their families for providing benefits relating to Employees' State Insurance Corporation
- To provide that in the case of an employee employed on fixed term employment or a deceased employee, the employer shall pay gratuity on pro rata basis and not on the basis of continuous service of five years

20. ESIC issues instructions for submission of claims for Unemployment benefit under Atal Bimit Kalyan Yojana- Press Release dated 17 September 2020

- In order to provide support to those who lost their jobs in this Covid-19 pandemic, ESIC is all set to provide the claims to the affected workers under the Atal Beemit Kalyan Yojna in which relief is to be paid to those ESI members who lost their job. The said scheme has been extended for another one year i.e. from 1 July, 2020 to 30 June, 2021. It has also been decided to enhance the rate of unemployment relief under the scheme to 50% of wages from earlier rate of 25% along with relaxation of eligibility conditions for insured workers who have lost their employment due to COVID-19 pandemic and related lockdown.
- The benefit shall be applicable during the period starting from 24th March 2020 to 31st December 2020 and shall be paid directly to the bank account of the workers. As per the stats, ESIC is providing benefits /services to about 3.49 Crore of family units of workers and providing matchless cash benefits and reasonable medical care to its 13.56 crore beneficiaries.

21. Launch of virtual hearing in quasi-judicial cases under EPF & MP Act, 1952 has now heralded an era of providing expeditious and affordable adjudication.- Press Release dated 14 September 2020

- With the outbreak of Covid-19 pandemic and the need of the hour to maintain social distancing, virtual hearings are becoming a new normal. Thus, Sh. Santosh Kumar Gangwar, Minister of State (I/C), Labour and Employment in 227th meeting of Central Board of Trustees, Employees' Provident Fund, conducted virtually on 9th September 2020 launched a new facility for conducting virtual hearing in quasi-judicial cases by use of secure IT applications.
- The hearings will be conducted as per the guidelines of Hon'ble Supreme Court of India and the concerned High Courts to ensure timely disposal of the cases during a pandemic. To facilitate this, virtual hearing utilities have been integrated with EPFO's e-Court process on Compliance e-Proceedings Portal. In addition, there are several benefits for conducting the meetings by the virtual meets as it eliminates the travelling time and cost and the unnecessary adjournments due to the non-appearance of the party will be avoided and nevertheless hearing in online mode is a move towards the ultimate objective of faceless assessment.

22. Direction by Employee Provident Fund Authority on the attachment of bank accounts:- File No:- LC 4(42) 2020/ E-26035 dated 14 September 2020

- As per the Section 7A in of The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 provide the power to the officers to conduct inquiry in case dispute arises regarding the applicability of this Act to an establishment or to determine the amount that is due from employer under the provisions of the act and the officer conducting the inquiry have the powers as are vested in the court under the Code of Civil Procedure 1908. However, instances have been noticed where officers conducting the above inquiries issued orders to attach/ freeze bank accounts of the establishments/ personal accounts of the employers for alleged non appearance in such inquiries.
- EPFO vide its Circular No. LC 4(42) 2020/ E- 26035/794 dated 14 September, 2020 clarified that power to impose fine for non-appearance is restricted to the INR. 5,000 as provided under section 32 of the CPC. Further, power to attach and sell property for non-appearance is subject to the limitations prescribed in the rule 10 of order XVI of the CPC which prescribes the power so available to the limit of fine imposable under Rule 12. Thus, notices by the officers have been issued in a number of cases without specifying any amount to the extent of which attachment is made . Power to make attachments of unlimited value or to freeze operation of bank accounts is evidently illegal and amount of the blatant misuse of authority causing unwarranted harassment to the employees concerned.

- Thus, all the adjudicating officers are advised to the note of the legal provisions.

23. Government extends suspension of insolvency proceedings under Insolvency and Bankruptcy Code Act, 2020:- Notification No. F.No. 30/33/2020 dated 24 September 2020

Section 10A was inserted by the Government which overrides section 7, 9, and 10 to provide that 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 for a period of six months. However, the Central Government vide its notification dated 24 September 2020 further extends the above period to further 3 months from 25 September 2020

These provisions shall not apply to any default committed before 25 March 2020.

24. Insurance Regulatory and Development Authority of India (IRDAI) permits insurers to use Video Based Identification process:- Circular No. IRDAI/SDD/CIR/MISC/ 245 /09/2020 dated 18 September 2020

In order to simplify the process of Know Your Customer (KYC), IRDAI vide its notification dated 18 September 2020 has proposed to leverage the various electronic platforms to make it customer friendly, hence, a detailed Video Based Identification Process (VBIP) released by the authority vide above notification. The said process is proposed to be introduced as it is considered to be seamless, secure, real-time, consent based audio-visual interaction with the customer/beneficiary to obtain identification information including the necessary KYC documents.

25. Write-off of shares held by Foreign Portfolio Investors (FPI's)- Notification no SEBI/HO/IMD/FPI&C/CIR/P/2020/177 dated 21 September 2020

SEBI had proposed Operational guidelines for Foreign Portfolio Investors and Designated Depository Participants on 5 November, 2019, wherein write-off of securities held by FPIs who wish to surrender their registration was permitted only in respect of shares of companies which are unlisted/illiquid/suspended/delisted, but keeping in mind the request from various stakeholders, it has been decided by SEBI vide its notification dated 21 September 2020 to permit said FPIs to write off shares of all companies which they are unable to sell. In this regard, the process detailed at para 17 of Part C of the Operational Guidelines issued on 05 November 2020 shall be complied with

26. Gujarat Industrial Policy 2020 introduced:

The Gujarat Industrial Policy 2015 comes to an end and has supported overall industrial development across the state. The new Gujarat Industrial Policy 2020 has been introduced to further consolidate this momentum and enhance the current growth rate. Considering similar growth patterns, it is expected that the average annual outlay for the New Gujarat Industrial Policy 2020 will be upto INR 8,000 crore

The key focus of the policy is towards inclusive & balanced regional development, employment generation, Next generation Industry 4.0 led manufacturing so as to contribute significantly to the vision of “Aatmanirbhar Bharat” as laid out by the Hon’ble Prime Minister of India.

Some of the key factors of the policy are as follows-

I. 15 Thrust Sectors have been conceptualized that have been categorized in two major groups i.e Core sectors & Sunrise Sectors. Thrust sectors will be given incremental incentives as part of the policy.

- Core Sectors:-

1. Electrical machinery & equipment
2. Industrial Machinery & equipment
3. Auto & Auto Components
4. Ceramics
5. Technical Textiles
6. Agro & Food Processing
7. Pharmaceuticals & Medical devices
8. Gems & Jewelry
9. Chemicals (in designated area)

- Sunrise Sectors:-

1. Industry 4.0 manufacturing
2. Electric Vehicle and its components
3. Waste management projects
4. Green Energy (Solar & Wind Equipment)
5. Eco-friendly compostable material (substitutes to traditional plastics)
6. 100% export oriented units, irrespective of sector

Thrust sectors will be offered incremental incentives as part of the Policy.

II. Gujarat is the first state to undertake a bold decision to de-link incentives from SGST. Upto 12% of fixed Capital investment will be given to large industries for setting up manufacturing operations in the state in the form of capital subsidy. This benefit will be given over a period of 10 years subject to an annual ceiling of INR 40 Crore.

III. The policy focuses on promoting MSMEs with an aim to make domestic MSMEs globally competitive. Government will support MSMEs in upgradation of technologies, adopting globally accepted certifications and in marketing their products internationally

IV. In order to further give a thrust to a balanced regional development in the state, the government will facilitate industries in getting “Government Land” on long term lease upto 50 years (further extendible as per prevailing policy) to industrial enterprises @6% of the market rate. The industries will be able to mortgage the land.

V. In light of CoVID-19, several industries are planning to relocate their operations and/or diversify supply chains. Gujarat will offer Special Incentives to such companies planning to relocate from other countries.

VI. The policy also provides ample support to the start-ups and hence Seed support of upto INR 30 lakh product development, marketing and professional assistance. Additional grant of upto INR 10 lakhs may be availed by startups with significant social impact. Further, for mid-level Pre-Series funding of startups, a separate fund shall be created under Gujarat Venture Finance Limited (GVFL). Besides this, the startups will get an additional 1% Interest subsidy (i.e. upto 9% on term loans)

VII. Research & Innovation plays an important role in development of a robust industrial ecosystem. The policy will provide support upto INR 5 crore to private companies/institutions for setting up R&D and product development centres

27. Liberalisation of foreign investment limit in defence sector:- Press Note No. 4 (2020 Series) dated 17 September 2020

The Department for Promotion of Industry and Internal Trade vide its press release dated 17 September 2020 liberalising foreign investment norms for the defence industry subject to industrial license under the Industries (Development & Regulation) Act, 1951 and manufacturing of small arms and ammunition under the Arms Act,

1959. Earlier the limit for foreign investment under automatic route was upto 49% which has been now increased to 74% subject to the following below conditions:-

- i) FDI up to 74% under automatic route shall be permitted for companies seeking new industrial licenses.
- ii) Infusion of fresh foreign investment up to 49%, in a company not seeking industrial license or which already has Government approval for FDI in Defence, shall require mandatory submission of a declaration with the Ministry of Defence in case change in equity/shareholding pattern or transfer of stake by existing investor to new foreign investor for FDI up to 49%, within 30 days of such change. Proposals for raising FDI beyond 49% from such companies will require Government approval.
- iii) License applications will be considered by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce & Industry, in consultation with the Ministry of Defence and Ministry of External Affairs.
- iv) Foreign investment in the sector is subject to security clearance by the Ministry of Home Affairs and as per guidelines of the Ministry of Defence.
- v) Investee company should be structured to be self-sufficient in the areas of product design and development. The investee/ joint venture company along with the manufacturing facility, should also have maintenance and life cycle support facility of the product being manufactured in India.
- vi) Foreign Investments in the Defence Sector shall be subject to scrutiny on grounds of National Security and Government reserves the right to review any foreign investment in the Defence Sector that affects or may affect national security.

28. Re Lodging Transfer Request of Shares: Press Release no. 45/2020 dated 9 September 2020

SEBI discontinued the transfer of securities held in physical form w.e.f from 1 April 2019. After that SEBI also clarified that if someone has lodged a transfer deed before 1 April 2019 and it was rejected due to deficiencies, they can re lodge it with necessary documents. Now the date for re lodgement has been extended to 31st March 2021.

29. Key takeaways from SEBI's Board Meeting of last week: Press Release No. 52/2020 dated 29th September 2020

Recently, SEBI Board meeting were held in Mumbai and took the following important decisions:-

- (1) Amendments to SEBI (Debenture Trustee) Regulations, 1993, SEBI (Issue and Listing of Debt Securities) Regulations, 2008 and SEBI (Listing Obligations and Disclosure Requirements), 2015-** Role of Debenture Trustees has been strengthened so as to protect their interest of Debenture Holders by way of letting them exercise the independent due diligence of the assets on which charge is being created and shall also carry out continuous monitoring of the asset cover including obtaining

mandatory certificate from the statutory auditor on half yearly basis. Further, the issuer company shall create a recovery expense fund at the time of issuance of debt securities that may be utilised by DT(s) in the event of default, for taking appropriate legal action to enforce the security.

(2) Amendments to Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009- Amendment has been made to grant exemption from the Reverse Book Building process (“RBB”) for delisting of listed subsidiary, where it becomes the wholly owned subsidiary of the listed parent pursuant to a scheme of arrangement. To be eligible to take this route:-

- a) The listed holding company and the listed subsidiary should be in the same line of business.
- b) Both the companies should be compliant with the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, specifically, the regulations (no. 11, 37 and 94) pertaining to processing of the schemes of arrangement.
- c) The votes cast by public shareholders of the listed subsidiary in favour of the proposal will be atleast 2 times the number of votes cast against it in terms of the present delisting regulations.
- d) The shares of the parent listed company and the listed subsidiary entity should be listed for atleast 3 years, should not be suspended at the time of taking this route.
- e) The subsidiary should have been a listed subsidiary of the listed holding entity for atleast three preceding years.

(3) Setting up of a Limited Purpose Repo Clearing Corporation-The Board approved the proposal to facilitate setting up of a Limited Purpose Repo Clearing Corporation.

(4) Amendments to SEBI (Mutual Funds) Regulations, 1996- The board approved the amendment to the SEBI (Mutual Funds) Regulations, 1996 introducing a Code of Conduct for Fund Managers including Chief Investment Officers and Dealers of AMCs. Further, the Chief Executive Officer will be responsible to ensure that the Code of Conduct is followed by all such officers. Also, the above regulations are amended to enable Asset Management Companies to become a self-clearing member of the recognised Clearing Corporations to clear and settle trades in the debt segment of recognised stock exchanges, on behalf of its mutual fund schemes.

(5) Amendment to SEBI (Alternative Investment Funds) Regulations, 2012- The Board approved amendment to regulations which includes definition of ‘relevant professional qualification’ and provides that the qualification and experience criteria of the investment team, may be fulfilled individually or collectively by personnel of the key investment team of the Manager.

(6) Disclosure of information related to forensic audit of listed entities- The Listed entities shall make the following disclosures without any application of materiality:-

- (a) The fact of initiation of forensic audit (by whatever name called) along-with name of entity initiating the forensic audit and reasons for the same, if available;
- (b) Final forensic audit report (other than for forensic audit initiated by regulatory / enforcement agencies), on receipt by the listed entity, along with comments of the management, if any.

(7) Amendments to the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015- The amendment includes the following:-

- (a) A time period of up to 3 years has been prescribed for reporting violations under the insider trading laws through the informant mechanism and;
- (b) Changes in Schedule D to the above regulations have been made to require informants to include specific information (such as details of securities, trades by suspect and unpublished price sensitive information based on which insider trading is alleged) with respect to the alleged violations.

30. SEBI amends guidelines for Preferential issue & Institutional placement of units by a listed Infrastructure Investment Trusts: Circular

No. SEBI/HO/DDHS/DDHS/CIR/P/2020/183 dated 28 September 2020

SEBI vide its circular dated 27 November 2019 issued guidelines for preferential issue and institutional placement of units by listed InvITs. The guidelines were subsequently revised vide circular dated 13 March 2020. Due to Covid-19 outbreak, SEBI has granted certain relaxations for raising of equity capital, on similar line SEBI vide its circular dated 28 September 2020 has issued the modified guidelines for Preferential issue & Institutional placement of units held by listed InvITs.

31. SEBI granted relaxation related to validity of its observation and revision in issue size:- Circular No. SEBI/HO/CFD/DIL1/CIR/P/2020/188 dated 29 September 2020

SEBI in its earlier circular dated 21st April 2020 gave relaxations in respect to validity of SEBI observations and filing of fresh offer documents in case change of issue size beyond a threshold limit.

But with the continuous representations received regarding prevailing conditions, it has extended the relaxations for revision upto 50% of issue size till 31st March 2021. It has also extended the validity of observations expiring between 1 October 2020 and 31st March 2021 to 31st March 2021 subject to an

undertaking from lead manager to the issue confirming compliance with Schedule XVI of the ICDR Regulations, 2018 while submitting the updated offer document to the Board.

32. SEBI automates disclosures under Prohibition of Insider Trading Regulations for members of promoter group: SEBI Circular No.168/2020 dated 9 September 2020

SEBI, vide circular no. CIR/CFD/DCR/17/2015 dated December 01, 2015, CFD/DCR/CIR/2016/139 dated December 21, 2016 and SEBI/HO/CFD/DCR1/CIR/ P/2018/85 dated May 28, 2018, implemented the system driven disclosures in phases which were further amended by SEBI vide its notification dated 17 July 2020.

Pursuant to the above notifications, the SEBI has decided to implement the system driven disclosures under Regulations 7(2) of Prohibition of Insider Trading Regulations. These system driven disclosures shall pertain to trading in equity shares and equity derivative instruments i.e. Futures and Options of the listed company (wherever applicable) by the entities. The detailed procedure for the implementation of such system driven disclosures is provided in the **Annexure A** mentioned in the circular.

The depositors and Stock Exchanges shall display all the disclosures pertaining to PIT Regulations on their websites. In addition, the system would continue to run parallel with the existing system i.e. entities shall continue to independently comply with the disclosure obligations under PIT Regulations as applicable to them till March 31, 2021.

33. DGCA issues draft rules to allow in-flight Wi-Fi connectivity over 3,000 metres:

India's civil aviation regulator DGCA has proposed in new draft rules for the use of mobile phones, laptops etc., during flight. Flights can offer internet services over Wi-Fi, and only flights approved by the DGCA will be allowed to offer this service as per the draft rules. The service should be made available only when portable electronic devices (PED), such as phones, laptops, and smartwatches, are used in airplane mode.

The draft rules are applicable to all persons on board all Indian civil registered aircraft and to all Indian operators engaged in scheduled, non-scheduled and private operations. The draft rules allow pilots to control the status of the internet connectivity in-flight, and directs the cabin crew to keep a close watch over passengers to ensure that they aren't violating any of its requirements. DGCA said:

- The aircraft will need to have approval from the DGCA for for use of internet facilities through Wi-Fi on-board the aircraft.
- The aircraft operator will have to ensure that the internet service provider is approved by the DoT.

- Internet service will be available at a minimum height of 3000 meters above departure/arrival airfield elevation.
- The Pilot, “for any reason” and “during any phase of flight”, can decide to deactivate the connectivity.
- All electronic devices which transmit radio frequencies, such as phones and laptops, will have to be in airplane mode at all times.
- All airline operators will have to address passengers on-board their aircraft about the restrictions on using mobile phones, and other electronic devices, “prior to commencement of the flight highlighting safety aspect including handling and stowage of PEDs by the passengers”.
- Any violation of these requirements during the flight will be brought to the notice of the commander by the cabin crew and recorded in the flight report book for further action.

The Centre had allowed flights to allow internet connectivity to passengers over Wi-Fi in March this year. Comments to the draft rules can be emailed to axjoseph.dgca@gov.in.

34. India now ranked in top 50 nations in Global Innovation Index:- Press Release dated 02 September 2020

India is now ranked 48th by the World Intellectual Property Organisation in the Global Innovation Index in 2020. India was at the 52nd position in 2019 and was ranked 81st in the year 2015. The WIPO had also accepted India as one of the leading innovation achievers of 2019 in the central and southern Asian region, as it has shown a consistent improvement in its innovation ranking for the last 5 years.

The consistent improvement in the global innovation index rankings is owing to the immense knowledge capital, the vibrant startup ecosystem, and the amazing work done by the public & private research organizations. The NITI Aayog has been working tirelessly to ensure optimization of national efforts in this direction by bringing policy led innovation in different areas such as EVs, biotechnology, Nano technology, Space, alternative energy sources, etc.

35. Govt extends deadline for submissions to draft Health Data Management Policy to September 21:

The deadline for sending comments to the Draft Health Data Management Policy has been extended to September 21, from September 10, National Health Authority (NHA) CEO Indu Bhushan tweeted. This is the second deadline extension for the policy’s public consultation. When the draft policy was released on August 25, the deadline was September 3, but it was extended to September 10 on September 1.

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