Newsletter

August 2020 Edition

Bhatia & Bhatia

Chartered Accountants

Key Dates for August:

- Due date for deposit of Tax deducted/collected for July month is 7th August
- Extended date for GSTR-1 for taxpayers (turnover more than INR 1.5 crore) for July month is 11th August
- Extended date for submission of FLA is 14th August
- Extended date for issuance of TDS certificate for FY 2019-20 is 15th August
- Extended date for GSTR-3B for taxpayers (turnover more than INR 5 crore) for July month is 20th August
- GSTR-4 due date for FY 2019-20 is 31st August

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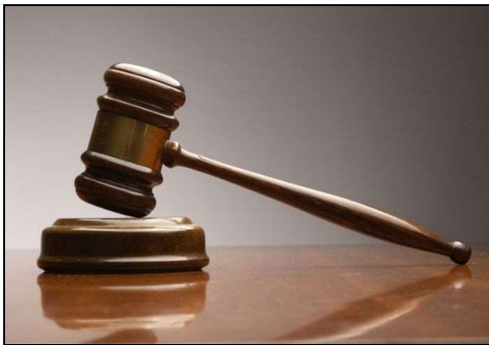


Judgments

Onus to prove and right of addition u/s 69C

Bombay High Court in case of Vaman International Pvt. Ltd. vs PCIT[Appeal No. 1940 of 2017]

(i) The onus is on the revenue to prove that the income really belongs to the assessee (ii) The assessee has filed copies of purchase/ sale invoices, challan cum tax invoices, stock ledger showing entry/exit of materials purchased, bank statements to show payment for purchases were made through banking channels, etc., to establish genuineness of purchases (iii) The AO has not brought on record any material evidence to show that the purchases were bogus (iv) Mere reliance by the AO on information obtained from Sales Tax Department or statements of persons made before the Sales Tax Department is not sufficient to treat the purchases as bogus (v) If the AO doubts the genuineness of the purchases, he has to do further enquiries and give an opportunity to the assessee to examine/cross-examine the parties vis-a-vis the statements made by them before the Sales Tax Department. Without causing such further enquiries in respect of the purchases, it is not open to the AO to make addition u/s 69C.

Deduction for the income applied outside India under section 11(1)(c) of the Income Tax Act, 1961

Mumbai ITAT in case of Tata Education and Development Trust vs. ACIT [ITA No. 1423 & 1424/Mum/2018]

The Income Tax Appellate Tribunal (ITAT), Mumbai bench on Friday ruled in favor of the Tata Education and Development Trust in their appeal against commissioner income tax (CIT) appeal order wherein demand of more than INR 220 crore was levied by the tax department.

The assessee, Tata Education and Development Trust is a public charitable trust registered under the Bombay Public Trust Act 1950, as also as a charitable institution under Section 12A of the Income Tax Act, 1961. The assessee Trust makes donations to the Harvard Business School and Cornell University.

In both of the assessment years, the assessee had returned NIL income but had also claimed amounts remitted to the educational universities outside India as the application of income under section 11(1)(c). This amount, for the assessment year 2011-12, was INR1,977,927,500, and, for the assessment year 2012-13, was INR 253,700,000. Section 11 (1) (c) of the Income Tax Act 1961 provides that in the case of trusts created after April 1, 1952, the application of income outside India should be with reference to international welfare in which India is interested.

The CIT(A) denied the deduction for the income applied outside India under section 11(1)(c) of the Income Tax Act, 1961, even though the appellant has an order from the Central Board of Direct Taxes [“CBDT”] as required by the proviso to Section 11(1)(c) of the Act”. The Appellate Tribunal bench gave the order stating that the very adjudication on denial of exemption, in respect of monies spent on the application

of charitable objectives of the appellant trust outside India, by the learned CIT(A) was incorrect in law, and is, accordingly, liable to be set aside for that short reason alone.

Whether loan waived off, be taxed under section 28 of Income Tax Act, 1961?

Bombay High Court in case of Essar Shipping Limited vs. CIT [ITA (IT) No .201 of 2002]

The issue under consideration is whether the loan given by the Government which was subsequently waived off can be taxed under Section 28(iv) of Income Tax Act as Subsidy?

In the present case, assessee is a resident company assessed under the Act. Assessee filed a revised return of income wherein an amount was claimed as a deduction being the amount of loan given by the Government of Karnataka which was subsequently waived. The Assessing Officer did not accept the claim of the appellant. Assessing Officer observed that waiver of loan benefited the appellant in carrying on its business and in terms of the provisions contained in Section 28, the said benefit enjoyed by the appellant should constitute income in its hand. Accordingly, the aforesaid amount was added to the total income of the assessee.

High Court after relying on the case of Mahindra & Mahindra (supra) state that loan given by the Government to the assessee which was subsequently waived off. Therefore, this amount would be construed to be cash receipt in the hands of the assessee and cannot be taxed under Section 28(iv). Further, from a careful analysis, it is evident that there is a fundamental difference between "loan" and "subsidy" and the two concepts cannot be equated. While "loan" is a borrowing of money required to the repaid back with interest; "subsidy" is not required to be repaid back being a grant. Such grant is given as part of a public policy by the state in furtherance of public interest. Therefore, even if a "loan" is written of or waived, which can be for various reasons, it cannot partake the character of a "subsidy".

Hence, the waiver of loan cannot be brought to tax under Section 28(iv) of the Act.

Circulars & Notifications

One-time window for online verification of ITR

Circular no. 13/2020 dated 13th July 2020 is issued to give one time opportunity to taxpayers whose Income Tax Return's was filed online but verification was not done due to any reason. The online verification window is open and verification can be done on or before 30th September, 2020. ITR for FY 2014-15 to FY 2018-19 can be verified through this one time relaxation scheme. All such verified ITRs shall be processed on or before 31st December 2020. ITRs can be verified digitally through EVC or by sending duly signed a copy to CPC Bangalore. CBDT has clarified that "this relaxation shall not apply in those cases, where during the intervening period, Income Tax Department has already taken recourse to any other measure as specified in the Act for ensuring filing of tax return by the taxpayer concerned after declaring the return as non-est."

Amendment to Section 56(2)(x) and Section 50CA

Section 56(2)(x) of the IT Act provides that where any person receives any property (including shares of a company) for a consideration less than its fair market value (as per the prescribed method), the difference between fair market value and the consideration would be taxed in the hands of the person receiving such property. Rule 11UAC of the Income Rules, 1962 (IT Rules) prescribes class of person to whom section 56(2)(x) of the IT Act will not be applicable. In order to expand the class of persons, the CBDT has replaced existing Rule 11UAC with new Rule 11UAC with effect from FY 2019 20.

As per the revised Rule 11UAC, effective from fiscal year 2019-20, the provisions of Section 56(2)(x) of the IT Act would not apply to:

- Any immovable property, being land or building or both, received by a resident of an unauthorised colony in the National Capital Territory of Delhi, where the Central Government has regularised the transactions of such immovable property based on the prescribed documents in favour of such resident
- Any movable property, being unquoted shares, of a company and its subsidiary and the subsidiary of such subsidiary received by a shareholder, where:
  - The National Company Law Tribunal ('NCLT'), on an application moved by the Central Government under Section 2412 of the Companies Act, 2013 has suspended the Board of Directors of such company and has appointed new directors nominated by the Central Government; and
  - Share of company and its subsidiary and the subsidiary of such subsidiary has been received pursuant to a resolution plan approved by the NCLT under Section 242 of the Companies Act, 2013

- Any movable property, being equity shares of Yes Bank Limited, received by the State Bank of India ('SBI') or other investor banks, allotted under the Yes Bank Reconstruction Scheme (at a price specified in the said Scheme (i.e. at face value of INR 2 and premium of INR 8 per share)

CBDT notifies class of persons to whom provisions of Section 50CA of the IT Act will not apply

Section 50CA of the IT Act provides that where the consideration received on transfer of unquoted shares is less than its fair market value (as per the prescribed method), such fair value shall be deemed to be the full value of consideration received for the purpose of computing capital gains. In this regard, CBDT has inserted new Rule 11UAD to the IT Rules to provide exemption from applicability of Section 50CA of the IT Act in certain prescribed cases.

Form 26AS will now include more details

Central Board of Direct Taxes (CBDT) issued Notification No. 30/2020 dated 28 May 2020 on revised Form 26AS. Prior to the amendment by the Finance Act, 2020 (FA 2020), the Indian Tax Laws (ITL) required the Tax Authority to issue Form 26AS to a taxpayer, capturing information relating to taxes deducted at source and other tax payments.

Revised details shall include following

(i) Information about outstanding demand: The new form will now provide details of pending income tax proceedings or that have completed during the year. This detail is especially added to keep you aware of the pending income tax.

(ii) Financial transactions: Details of transactions above 10 Lakhs for savings account and 50 Lakhs from current account, other investment and foreign currency transactions above specified amount.

E-campaign of Income Tax

The Income Tax department ("the IT department") has started a new initiative of e-campaign on voluntary compliance of income tax for the convenience of taxpayers from July 20, 2020. It has identified certain taxpayers with high value transactions who have not filed income tax return ("ITR") for Assessment Year ("AY") 2019-20 (i.e. FY 2018-19). In addition to the non-filers, another set of return filers have also been identified wherein the high-value transactions do not appear to be in line with their Income Tax Return.

The objective of the e-campaign is to facilitate taxpayers to validate their financial transaction information against information available with the IT department and promote voluntary compliance, especially for the taxpayers for the FY 2018-19 so that they do not need to get into notice and scrutiny process.

Under this e-campaign, the IT department will send email/sms to identified taxpayers to verify their financial transactions related information received by the IT department from various sources such as Statement of Financial Transactions (SFT), Tax Deduction at Source (TDS), Tax Collection at Source (TCS), Foreign Remittances (Form 15CC) etc. Further, the IT department has also collected information related to GST, exports, imports and transactions in securities, derivatives, commodities, mutual funds, etc. under

information triangulation set up. The campaign was scheduled for 11 days starting from July 20, 2020 and ending on July 31, 2020. Now, the same has been extended to September 30, 2020. In the e-campaign, the taxpayers access details of their high value transactions on the designated portal. Also, they could submit online response and there would be no need to visit any Income Tax office.

Our remarks

This is a welcome step taken by the Government wherein they have collected the high risk information from various sources such as SFT, TDS, TCS, Form 15CC, GST, etc. and reconciling on a single platform by encouraging taxpayers to provide the relevant information by filing their returns. While there is no doubt that the Government is intending to bring more taxpayers under the tax net, this would also help the taxpayers in avoiding unnecessary scrutiny notices.

Extension in time limits under Direct Tax

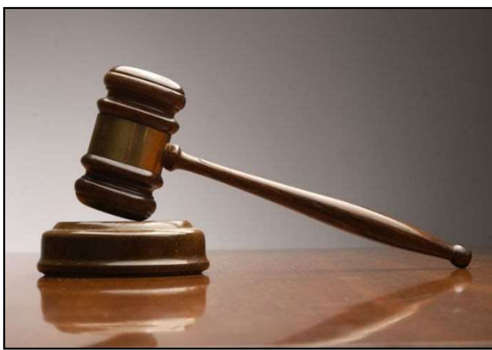
The Central Board of Direct Taxes (CBDT) has further extended time limits under direct tax and Benami laws in view of major compliance relief for taxpayers impacted by the disruption due to COVID-19. The extension of various time limits was issued vide Notification no. 35/2020 [S.O. 2033(E)] dated 24th June 2020. The said notification shall come into form w.e.f. 30 June, 2020.The deadlines falling between 20 March 2020 and 31 December 2020 under the Specified Acts (i.e. the Wealth Tax Act, 1957; the Income-tax Act, 1961 (IT Act); The Prohibition of Benami Property Transactions Act, 1988; Chapter VII of the Finance (No. 2) Act, 2004; Chapter VII of the Finance Act, 2013; The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015; Chapter VIII of the Finance Act, 2016 and the Direct Tax Vivad se Vishwas Act, 2020) has been extended to 31 March 2021, except for following:

S. No.	Particulars	Original Due Date	Due Date as per the aforesaid Notification
1	Matters other than specifically provided: a. Completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called, under the provisions of the specified Act; or b. Filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other record, by whatever name called, under the provisions of the specified Act	Deadline falling between 20 March 2020 and 31 December 2020	31 March 2021(*Refer Note 1 below the table*)
2	Tax return for Financial Year 2018-19 (Belated/ Revised tax return)	31 March 2020	30September 2020
3	Tax Return for Financial Year 2019-20	31 July 2020/ 31 October 2020/ 30 November 2020	30 November 2020

S. No.	Particulars	Original Due Date	Due Date as per the aforesaid Notification
4	Date of Furnishing of Tax audit report for FY 2019-20	30 September 2020/ 31 October 2020 (where TP is involved)	31 October 2020
5	TDS / TCS returns for 4th Quarter of FY 2019-20	31 May 2020	31 July 2020
6	Issuance of Salary Certificate (i.e. Form 16) and TDS Certificate (Form 16A) for FY 2019-20	15 June 2020	15 August 2020
7	Making investment, deposit, payment, acquisition, purchase, construction or such other action, by whatever name called, to claim deduction, exemption or allowance under following provisions - Section 54 or 54 GB or - Under any provisions of Chapter VI-A under heading B-Deductions in respect of certain payments	31 March 2020	30 September 2020
8	Commencement of Operation for Special Economic Zone units under section 10AA of the IT Act	31 March 2020	30 September 2020
9	Time Limit for completion of payment under "Vivad se Vishwas Scheme'	30 June 2020	31 December 2020
10	Date of payment of Self-assessment tax in case where the taxpayer whose self-assessment income is upto INR 1 Lakh	-	30 November 2020

Note 1: Consequently, the time barring date for transfer pricing assessments falling due this year would also be completed 60 days prior to 31 March 2021.

International Taxation & Transfer Pricing



Judgments

Taxability of income attributable to a "permanent establishment" set up in a fixed place in India

Honorable Supreme Court in case of Samsung Heavy Industries Co Ltd vs Director of Income Tax-II Appeal No. 12183 of 2016

The Supreme Court while quashing the order of the ITAT, held that the office of Samsung Heavy Industries at Mumbai, India which is established merely for the sake of communication is not covered under the character of Permanent Establishment (PE) under India-Korea Double Taxation Avoidance Agreement (DTAA).

ONGC awarded a "turnkey" contract to a consortium comprising of the Assessee, i.e. Samsung Heavy Industries Co. Ltd. (a Company incorporated in South Korea), and Larsen & Toubro Limited, being a contract for carrying out the "Work", inter alia, of surveys, design, engineering, procurement, fabrication, installation and modification at existing facilities, and start-up and commissioning of entire facilities covered under the 'Vasai East Development Project' ("Project"). The Assessee set up a Project Office in Mumbai, India, which, as per the Assessee, was to act as "a communication channel" between the Assessee and ONGC in respect of the Project. Pre- engineering, survey, engineering, procurement and fabrication activities which took place abroad, all took place in the year 2006.

The issue raised in this case was whether the Project Office in Mumbai, India set up as a communication channel between the Assessee and ONGC was a mere liaison office, or was involved in the core activity of execution of the project itself as a Permanent Establishment (PE). The AO held that the work relating to fabrication and procurement of material was very much a part of the contract for execution of work assigned by ONGC. The work was wholly executed by PE in India and it would be absurd to suggest that PE in India was not associated with the designing or fabrication of materials. The ITAT confirmed the decisions of the AO and the Dispute Resolution Panel that the contract was indivisible. It then went on to deal with the argument on behalf of the Assessee that the Project Office was only an auxiliary office, and did not involve itself in any core activity of the business, as accounts that were produced would show that there was no expenditure which related to the execution of the project. It clear that when it comes to "fixed place" permanent establishments under double taxation avoidance treaties, the condition precedent for applicability of Article 5(1) of the double taxation treaty and the ascertainment of a "permanent establishment" is that it should be an establishment "through which the business of an enterprise" is wholly or partly carried on. It was contended by the assessee that there were only two persons working in the Mumbai office, neither of whom was qualified to perform any core activity of the Assessee.

The bench comprising Justice RF Nariman, Navin Sinha and BR Gavai, referred to various earlier judgments on the issue of taxability under DTAA such as M/s DIT

(International Taxation), Mumbai vs Morgan Stanley & Co. Inc. (2007) SCC 1, and Asst. Director of Income Tax, New Delhi v. E-Funds IT Solution Inc. (2018) 13 SCC 294.Further, it was pointed out that the accounts of the Mumbai office showed that no expenditure relating to the execution of the contract was incurred, the ITAT rejected the argument, stating that as accounts are in the hands of the Assessee, the mere mode of maintaining accounts alone cannot determine the character of a permanent establishment. The court observed that the ITAT ignored the contention of the Assessee that there were only two persons working in the Mumbai office, neither of whom was qualified to perform any core activity of the Assessee, the ITAT. Upholding the High Court judgment, the Court said:

"This being the case, it is clear, therefore, that no permanent establishment has been set up within the meaning of Article 5(1) of the DTAA, as the Mumbai Project Office cannot be said to be a fixed place of business through which the core business of the Assessee was wholly or partly carried on. Also, as correctly argued by Shri Ganesh, the Mumbai Project Office, on the facts of the present case, would fall within Article 5(4)(e) of the DTAA, in as much as the office is solely an auxiliary office, meant to act as a liaison office between the Assessee and ONGC. This being the case, it is not necessary to go into any of the other questions that have been argued before us."

Overdue outstanding receivable from associated enterprise considered as a separate international transaction

Delhi ITAT in case of Tec books International Pvt. Ltd [ITA No. 6102/Del/2016]

In this case, the Delhi ITAT upheld the Ld. TPO/DRP's decision of treating outstanding receivables from assessee's associate enterprise (AE) as a separate international transaction and TP adjustment thereon.

The assessee was engaged in rendering IT enabled data conversion services. During the year under consideration, the assessee had entered into the international transactions with its AEs. During the assessment, it was noted that the total profit earned by the assessee was being enjoyed fully by its AE out of India as the outstanding receivable from the AE was more than the shareholder funds available with the assessee and further, they observed that the AE was only paying assessee the amount which was enough for defraying to keep it afloat and retaining all other sums in the form of interest-free outstanding trade receivable. ITAT noted that the assessee did not show any working capital being employed in the TP-study nor did it demonstrate the difference in working capital of the assessee compared with the comparables.

Finally, the Tribunal relied on co-ordinate bench ruling in assessee's own case for earlier year **wherein it was held that non-charging or undercharging of interest on the excess period of credit allowed to the AE for the realization of invoices amounts to an international transaction and the Arm's Length Price ("ALP") of such an international transaction** is required to be determined and also observed that co-ordinate bench's direction of granting normal credit period of 150 days has been granted by the DRP and incorporated by the TPO.

Adoption of internal CUP for benchmarking interest free AE-Loan

Mumbai ITAT in case of Mercator Ltd (formerly known as Mercator Line Ltd) [ITA No.2190/Mum/2012 and ITA No.2286/Mum/2012]

In this case, the Mumbai ITAT ruled on TP-adjustment on account of interest on intra-

group loan given by Mercator Ltd.(hereinafter referred as "assessee") .

In the present case, the assessee was engaged in the business of providing shipping and cargo handling services. During the assessment proceedings, the Ld. TPO/AO adopted SBI PLR and CIT(A) adopted the rate prescribed by the RBI for benchmarking interest free AE-loan transaction.

ITAT rejected the TPO's adoption of SBI PLR and also rejected CIT(A)'s view and directed the Ld. TPO to adopt internal CUP of 6.22% viz., the rate charged on loan taken by the AE from DBS bank (third party) for AY 2007-08 by accepting the assessee's claim that RBI Circular relied by CIT(A) was inapplicable since ECB rate as per RBI Circular was applicable to the ECB and trade credit availed by residents, whereas assessee had provided loan to its non-resident AE.

ITAT held RPM over TNMM as MAM for ALP determination of import of finished goods

Delhi ITAT in case of Topcon Sokkia India Pvt Ltd [ITA No.8110/Del/2018]

In this case, the Delhi ITAT accepted the assessee's Resale Pricing Method ("RPM") over TPO/DRP's Transactional Net Margin Method ("TNMM") as Most Appropriate Method ("MAM") for Arm's Length Price ("ALP") determination of import of finished goods.

The assessee company was engaged in the business of distribution of surveying instruments. During the year under consideration, the assessee imported some of finished goods from its AEs and sold it to unrelated parties without any value addition. During the assessment proceedings, the Ld. TPO/AO has contended to apply TNMM as MAM and the same viewed was upheld by DRP.

During the appeal proceedings, ITAT noted that in various judgments including jurisdictional **HC ruling in Matrix Cellular International Services P Ltd, coordinate bench ruling in Swarovski India Pvt. Ltd, Nokia (India) Pvt. Ltd, Pune ITAT ruling in MSS India Pvt Ltd** etc. where it was held that when the assessee purchased the products from its AEs and sold the same without any further value addition or further processing, then RPM is the most appropriate method for determination of ALP of international transactions.

Further, ITAT considered the assessee's submission that application of RPM has been accepted by revenue in preceding and succeeding AYs (2012-13,2013-14 and AY 2015-16) and observed that no distinguishing feature in the facts for given AY and that of earlier and subsequent AYs been brought by the Revenue. ITAT explained that "We are aware of the fact that Res Judicata principles are not applicable to the income tax proceedings", however relied **on Hon'ble SC ruling in Radhasoami Satsang** wherein it is held that where a fundamental aspect permeating through the different assessment years is accepted one way or the other, a different value in the matter is not warranted unless there are any material change of facts. Accordingly, **ITAT held that the DRP was not justified in rejecting the RPM method followed by assessee and thereby, set aside the order and directed AO to compute the ALP by following RPM**.

Emphasize principle of "Opportunity of being heard"

Delhi ITAT in case of Marubeni India Pvt Ltd [ITA No. 978/Del/2015]

The assessee was engaged in business of brokering international trading deals in

machinery, textiles etc. During the assessment proceedings, the Ld. TPO made the TP adjustment on account of sale of goods without providing a hearing opportunity to the assessee for AY 2005-06.

In the present case, Delhi ITAT granted the relief to Marubeni by rejecting TPO's action of determining TP-adjustment. ITAT noted that TPO made a TP-adjustment by re-computing the operating margins of the related and unrelated party segments without considering assessee arguments that allocation of expenses between the segments was made on the basis of gross sales instead of gross profit while calculating the operating margins. Further, ITAT noted that there was a discrepancy in the operating costs and operating margins as considered by the TPO in the show cause notice (SCN) and in the final TP-order, thereby leading to an addition without affording opportunity of being heard to the assessee.

ITAT disapproved the TPO's action and stressed on importance of "hearing rule". Further ITAT explained that the concept of natural justice is deep rooted in the legal systems and relied on SC ruling in Mohinder Singh Gill.

Finally, the ITAT concluded that "**this is an unambiguous case of violation of principles of natural justice and hence the action of the revenue which was concluded without affording an opportunity to the assessee is liable to be obliterated"** and deleted the TP addition made by Ld. TPO. However, it clarified that "The issue of apportionment of expenses whether on the basis of gross profit or on the basis of gross turnover is kept open."

Benefit of section 10AA allowed on incremental revenue pursuant to APA

Bangalore ITAT in the case IBM India Pvt Ltd [IT(TP)A No.725/Bang/2018]

The assessee was engaged in the business of trading, leasing and financing of computer hardware, maintenance of computer equipments and export of software services to associated enterprises and claimed deduction under section 10AA of the Act.

During the assessment proceedings, the Ld. AO denied the relief claimed by the assessee under section 10AA of the Act denying the relief claimed by the Appellant under section 10AA of the Act on the incremental revenue pursuant to the Advance Pricing Arrangement ("APA") entered by the assessee.

The assessee submitted that it has already modified its return of income to show incremental revenue after entering into an APA.

The Tribunal noted that the scheme of assessment under section 92CD of the Act pursuant to the APA, under which the assessee is mandated to file modified returns inconsonance with the APA. Thereafter, the assessment is made by the AO under section 92CD(3)/(4) in accordance with the APA. As the incremental income is offered by the assessee itself in the modified return in accordance with the APA, it cannot be equated with the computation of income under section 92C/92CAof the Act, as the later provisions talks of making some transfer pricing addition by the AO. The suo motu offering of additional income by the assessee pursuant to the APA is of the same nature as the assessee itself offering some transfer pricing adjustment in the original return of income.

Therefore, deduction under section 10A, if otherwise permissible, would be allowed and not curtailed as it will not be a case of transfer pricing addition made by the AO. Thus, the Tribunal allowed the assessee to claim deduction under section 10AA on incremental revenue pursuant to APA.

Benefit of section 10A/10B will be allowed on voluntary TP adjustment

Mumbai ITAT in case of Shell India Markets Private Limited [ITA No. 2299/MUM/2018 & ITA No.3817/MUM/2017]

The assessee was engaged in marketing motor spirit (petrol) and high speed diesel through retail outlets, providing shared services to its group companies worldwide, manufacturing and trading of modified bitumen, emulsion, lubricants and coolants and providing ITeS in relation to scientific and technical consultancy to its group companies. At the time of filing of return, the assessee had claimed deduction under section 10A and 10B. Further, the assessee had made voluntary TP adjustment in order to be compliant with ALP principles.

During the assessment proceedings, it was alleged by the Ld. AO that voluntary TP addition made by the assessee would not qualify for deduction u/s.10A. Aggrieved with the order, the assessee filed an appeal before ITAT.

ITAT relied on Karnataka HC ruling in I-Gate Global Solutions Ltd and other precedents, wherein deduction u/s.10A was allowed on assessee's suo-moto TP adjustment by clarifying that as per the first proviso to section 92C(4), deduction under section 10A can be denied only on the income enhanced by the TPO that is based on the ALP computed as per the methods specified in the Act, but the same cannot be extended to determination of the same by the assessee. Hence, the assessee would be eligible to claim deduction under section 10A/10B on the voluntary addition made by the assessee himself.

Deletion of royalty in the absence of AE's exploiting the product registration/ license obtained by the assessee

Bangalore ITAT in case of The Himalaya Drug Company [IT(TP) A No. 1385/Bang/2017]

In this case, the Himalaya Drug Company ("the assessee") was a partnership firm engaged in manufacturing and sale of ayurvedic medicament and preparations, consumer/personal care products and animal healthcare products. The partners of the assessee were Himalaya Global Holdings Pvt Ltd (HGH) (a foreign company registered in Cayman Islands) and Himalaya Drug Co. Pvt. Ltd. During the year under consideration, the assessee exported products to its Associate Enterprises ("AEs") located in respective countries which in turn marketed the products.

During the assessment proceedings, the Ld. Assessing Officer ("AO") held that since assessee allowed AEs to use the product registration/ license, it should have collected royalty from AEs for exploiting the benefit of product licenses. Accordingly, the TPO determined transfer pricing adjustment towards royalty on usage of product registration/licenses.

Before ITAT, assessee submitted that the price charged by it on exports would include all the costs incurred by it for sale of its products in foreign countries. Assessee also submitted that the view taken by TPO was against trade practice i.e. no manufacturer would charge separate amount as royalty over and above the selling price. Assessee also contended that the product registration/licenses could be obtained only by the manufacturer of the drugs since the manufacturer would alone hold the details of clinical trials, technical details of products etc. Assessee also submitted that it is a primary condition prescribed by any country to obtain product registration/license before marketing drugs/beauty products only by manufacturer and hence it is a matter of compliance with Government regulations. Assessee submitted that AEs are only marketing the products as

mere traders and are not concerned with registration formalities.

ITAT distinguished Delhi ITAT ruling in case Dabur India and affirmed the assessee's contentions and directed the Ld. AO to delete the TP adjustment.

Transactions with domestic entities not covered in deeming provisions of Sec 92B(2) of the Income Tax Act (prior to amendment)

Mumbai ITAT in case of Regus Business Centre Pvt. Ltd [ITA NO.1110/MUM/2017]

The assessee had entered into transactions for extending loans and providing services to the group entities based in India. The Ld. AO treated the domestic transactions as deemed international transaction only for the reason that the holding company of assessee and the domestic AEs is based in Mauritius. The Mumbai Tribunal explains that as per the position pre Finance Act 2014 amendment, for invoking deeming provisions, subsection (2) has to be read in conjunction with subsection (1) of Section 92B of the Act. Thus, for subsection (2) to get attracted, the primary condition would be that at least one of the entity with which the assessee has entered into transaction should be non-resident. In the present case, the authorities below have failed to take note of the fact that the transactions in question are within domestic entities only. No overseas entity is involved in the transaction. Unless the conditions set out in subsection (1) are satisfied, the provisions of subsection (2) cannot be invoked.

Taxability of Interest income of foreign banks

Mumbai ITAT in case of HSBC Bank (Mauritius) Ltd. [ITA No. 1320/Mum/2019]

The Mumbai bench of ITAT ruled in favour of Mauritius based HSBC bank (hereinafter referred as "assessee") over interest income of Rs. 1498 crore it earned from foreign currency and debt securities during the assessment year 2015-16 stating that the same would not be eligible to be taxed in India.

In the present case, the assessee which is a limited liability company incorporated, registered and a tax resident in Mauritius is a Foreign Institutional Investor (FII) duly registered as such by the Securities and Exchange Board of India (SEBI). The assessee filed is return of income for AY 2015-16, declaring Nil income. During the course of assessment proceedings, the assessing officer (hereinafter referred as "AO") called upon assessee's explanations on why interest income has not been offered to tax in India. Thereafter, AO rebutted assessee's claim of beneficial ownership of interest income stating that the assessee bank was established for "treaty shopping" purpose. Further, the AO contended that the assessee, though holding a valid tax residency certificate, was not a beneficial owner of interest, and also the certificate was not a conclusive proof of beneficial ownership. CIT(A) placing reliance on assessee's own case for AYs 2009-10 & 2010-11 concluded that the said income is not taxable in India and allowed assessee's appeal.

On further appeal by the revenue, ITAT held that the issue involved in the present appeal is whether Article 11(3)(c) would be applicable in the assessee's case. The tribunal also contended that issue is squarely covered by the orders passed by the Tribunal in the assessee's own case for the preceding years and consistently concluded that pursuant to Article 11(3)(c) of the India-Mauritius Tax treaty the interest receipt would not be taxable in India. Further, since the taxpayer held a valid banking license and tax residency certificate issued by the Mauritius Government, it was eligible for exemption from taxability of interest income in India.

Taxability of revenue/fees under the referral agreement

Mumbai ITAT in case of Edenred Pte Ltd. [ITA Nos. 1718/M/2014, 254/M/2015, 507/M/2016]

The Mumbai bench of the ITAT held that the receipts for Infrastructure & Data Centre Hosting Services by Singaporean co. are not royalty under Double Taxation Avoidance Agreement (DTAA).

Edenred Pte Ltd. ("assessee") is a company incorporated in and tax resident of Singapore. It is engaged in the business of provision of services relating to developing, marketing and implementing incentive based strategies and technologies to build loyalty and to reward long-term relationships through the utilization of internet, wireless technology and offline solutions to its clients. The assessee's key offerings range from pure consulting to all aspects of communication development and implementation including sourcing of loyalty rewards and their fulfillment for its clients. In addition to the above, the appellant is also engaged in providing services to its Indian group companies.

During the course of assessment proceedings, the assessee submitted before the AO that during the year under consideration, it had entered into Infrastructure Data Center ("IDC") agreement with its Indian group companies. In the return of income, the assessee claimed non-taxability of revenues from IDC, Management Services and Referral Services by claiming benefit under Article 12 of the India-Singapore DTAA.

The AO, after incorporating the direction of the Dispute Resolution Panel (DRP) passed a final assessment order taxing (i) IDC charges as royalty as per provisions of the Act and the India-Singapore DTAA, (ii) management charges as Fees for Technical Services ('FTS') as per provisions of the Act and the India-Singapore DTAA and (iii) referral fees as royalty as per provisions of the Act and the India-Singapore DTAA and as FTS as per provisions of the India-Singapore DTAA.

On assessee's appeal before the ITAT, the tribunal observed that examples of websites/applications/softwares hosted by Indian group companies on the data centre in Singapore are web ordering application, corporate website, websites created for customers of Edenred India entities while making a loyalty program for them. The tribunal held that from the enunciation of law in Bharati Axa General Insurance Co. Ltd; ExxonMobil Company India (P.) Ltd; Standard Chartered Bank v. DDIT; DCIT v. M/s Reliance Jio Infocomm Ltd narrated hereinbefore, it is quite luculent that revenues under the IDC agreement ought not to be taxed in the hands of the appellant as royalty under the Act and/or India-Singapore DTAA.

As for the management charges, the Tribunal observed that in the instant case, the management services are provided only to support SurfGold in carrying on its business efficiently and running the business in line with the business model, policies and best practices followed by the Edenred group. These services do not make available any technical knowledge, skill, knowhow or processes to SurfGold. Also, the services provided under the management agreement broadly include (i) consultancy services to support the sales activities of Surf Gold, (ii) legal services, (iii) financial advisory services and (iv) human resource assistance. There is no dispute here that under the provisions of section 9(1)(vii) of the Act, rendering of management services will be taxable as FTS. However, Edenred, by virtue of section 90(2) of the Act, is eligible to rely on the provisions of the India-Singapore DTAA, should the same beneficial than the provisions of the Act. In this regard, we fruitfully rely on the judgment of the

Hon'ble Delhi High Court in the case of New Skies Satellite BV &Ors (ITA No. 473/2012) wherein it is held that provisions of DTAA shall prevail over the provisions of the Act, if they more beneficial.

The Tribunal for the referral services in the instant case concluded that it is relevant to mention here that as per the India-Singapore DTAA, the services in the nature of managerial, technical or consultancy nature are taxable as FTS, if such services are 'made available' to the service recipient. In the instant case, referral services/other services are provided to support Surf Gold in carrying on its business. These services do not make available any technical knowledge, skill, knowhow or processes to SurfGold because there is no transmission of the technical knowledge, experience, skill etc. from the assessee to SurfGold or its clients. Thereby concluding that the revenues under the referral agreement is not taxable in the hands of the assessee as royalty under the Act and/or India-Singapore DTAA or FTS under the India-Singapore DTAA.

Indirect Tax

Circulars & Notifications

Latest Amendments in GST

There have been certain relaxations/ amendments keeping in view the difficulties faced by the taxpayers due to Covid-19 lockdown. Brief summary of the same is given here as under:

1. Reduction/Waive off in late fees for past returns

Late fees for non-furnishing **form GSTR-3B** for the tax period from **July 2017-January 2020** has been reduced /waived as under:-

- **'Nil'** late fees if there is no tax liability;
- Maximum late fees capped **at INR 500/- per return** if there is any tax liability.

Note:- The reduced rate of late fees would apply for all the GSTR-3B returns furnished between ***1st July 2020 and 30th September 2020.***

2. GST Due dates

GSTR-3B Extended due dates

<table>
<tr><th>Month</th><th>→</th><th>May</th><th>June</th><th>July</th></tr>
<tr><td rowspan="3">Turnover Upto INR 5 Crore</td><td colspan="4">(Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep)</td></tr>
<tr><td>GSTR-3B extended due date*</td><td>12.09.20</td><td>23.09.20</td><td>27.09.20</td></tr>
<tr><td>Interest</td><td colspan="3">• Nil-Till extended due date (as mentioned above)
• 9%-After extended due date to 30.09.20
• 18%-Thereafter</td></tr>
<tr><td colspan="5"></td></tr>
</table>

Turnover Upto INR 5 Crore	**(Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi)**			
	GSTR-3B extended due date*	15.09.20	25.09.20	29.09.20
	Interest	• Nil-Till extended due date (as mentioned above) • 9%-After extended due date to 30.09.20 • 18%-Thereafter		

Month	July
Turnover more than INR 5 Crore	20.08.20
	Interest - No Special scheme is available. Interest 18% p.a.

**These extended dates are only for the purpose of relaxation of late fees. If returns are not filed up to extended due dates but filed on or before 30th September, 2020 then the late fees will be levied as under:*

Tax Period	Tax payer	Tax liability for the month	Late fees for the month
February 2020 to August 2020	Turnover upto 5 crore	Nil	Nil
February 2020 to August 2020	Turnover upto 5 crore	Other than Nil	INR 500 per return
May 2020 to July 2020	Turnover more than 5 crore	Nil	Nil
May 2020 to July 2020	Turnover more than 5 crore	Other than Nil	INR 500 per return

GSTR-1: Extended due dates

Taxpayers	Month/Period	Due date
Monthly Taxpayers (Turnover more than INR 1.5 crore)	July 2020	11.08.20
Quarterly Taxpayers (Turnover upto INR 1.5 crore)	July-September 2020	31.10.20

GST CMP 08 (Composition Scheme Taxpayers)

Period (Quarterly)	Due dates
2nd Quarter – July to September 2020	18.10.20
3rd Quarter – October to December 2020	18.01.21
4th Quarter – January to March 2021	18.04.21

Other Due dates

Return	Period	Due date
GSTR-4	FY 2019-20	31.08.20
GSTR-9 (Annual return)	FY 2018-19	30.09.20
GSTR-9A (Composition annual return)	FY 2018-19	30.09.20
GSTR-9C	FY 2018-19	30.09.20

3. Nil GSTR-1 and GSTR 3B file through SMS

New way of filing GSTR 1 and GSTR 3B, in case of NIL return, it can file with SMS from **1st week of July 2020**. The taxpayer who wish to file NIL statement in their FORM GSTR 1 and GSTR 3B are to send SMS using the registered mobile number which shall be further verified based on one time password.

Audit/ Financial Services

Latest Amendment in IND AS notified by MCA

The Ministry of Corporate Affairs on 25.07.2020, notified the Companies (Indian Accounting Standards) Amendment Rules, 2020. The Rules seek to amend the Companies (Indian Accounting Standards) Rules, 2015.

1. Amendment in IND AS 1 Definition of Material (Para 7)

- **Material**

  "Information is material if omitting, misstating or obscuring it could reasonably be expected to influence decisions that the primary users of general purpose financial statements make on the basis of those financial statements, which provide financial information about a specific reporting entity."
- Materiality depends on the nature or magnitude of information, or both. An entity assesses whether information, either individually or in combination with other information, is material in the context of its financial statements taken as a whole.
- Information is obscured if it is communicated in a way that would have a similar effect for primary users of financial statements to omitting or misstating that information. The following are examples of circumstances that may result in material information being obscured:-
  a) information regarding a material item, transaction or other event is disclosed
  b) in the financial statements but the language used is vague or unclear;
  c) information regarding a material item, transaction or other event is scattered throughout the financial statements;
  d) dissimilar items, transactions or other events are inappropriately aggregated;
  e) similar items, transactions or other events are inappropriately disaggregated; and
  f) the understandability of the financial statements is reduced as a result of material information being hidden by immaterial information to the extent that a primary user is unable to determine what information is material.
- Assessing whether information could reasonably be expected to influence decisions made by the primary users of a specific reporting entity‘s general purpose financial statements requires an entity to consider the characteristics of those users while also considering the entity‘s own circumstances.
- Many existing and potential investors, lenders and other creditors cannot require reporting entities to provide information directly to them and must rely on general purpose financial statements for much of the financial information they need. Consequently, they are the primary users to whom general purpose financial statements are directed. Financial statements are prepared for users who have a reasonable knowledge of business and economic activities and who review and analyse the information diligently. At times, even well informed and diligent users may need to seek the aid of an adviser to understand information about complex economic phenomena."

2. Amendment in IND AS 103 Change in the Definition of Business:

- For paragraph 3, the following shall be substituted, namely:

  "3 An entity shall determine whether a transaction or other event is a business combination by applying the definition in this IND AS, which requires that the assets acquired and liabilities assumed constitute a business. If the assets acquired are not a business, the reporting entity shall account for the transaction or other event as an acquisition. Paragraphs B5-B12D provides guidance on identifying a business combination and the definition of business.
- For definition for the term business "An integrated set of activities and assets that is capable of being conducted and managed for the purpose of providing goods or services to customers, generating investment income (such as dividends or interest) or generating other income from ordinary activities."

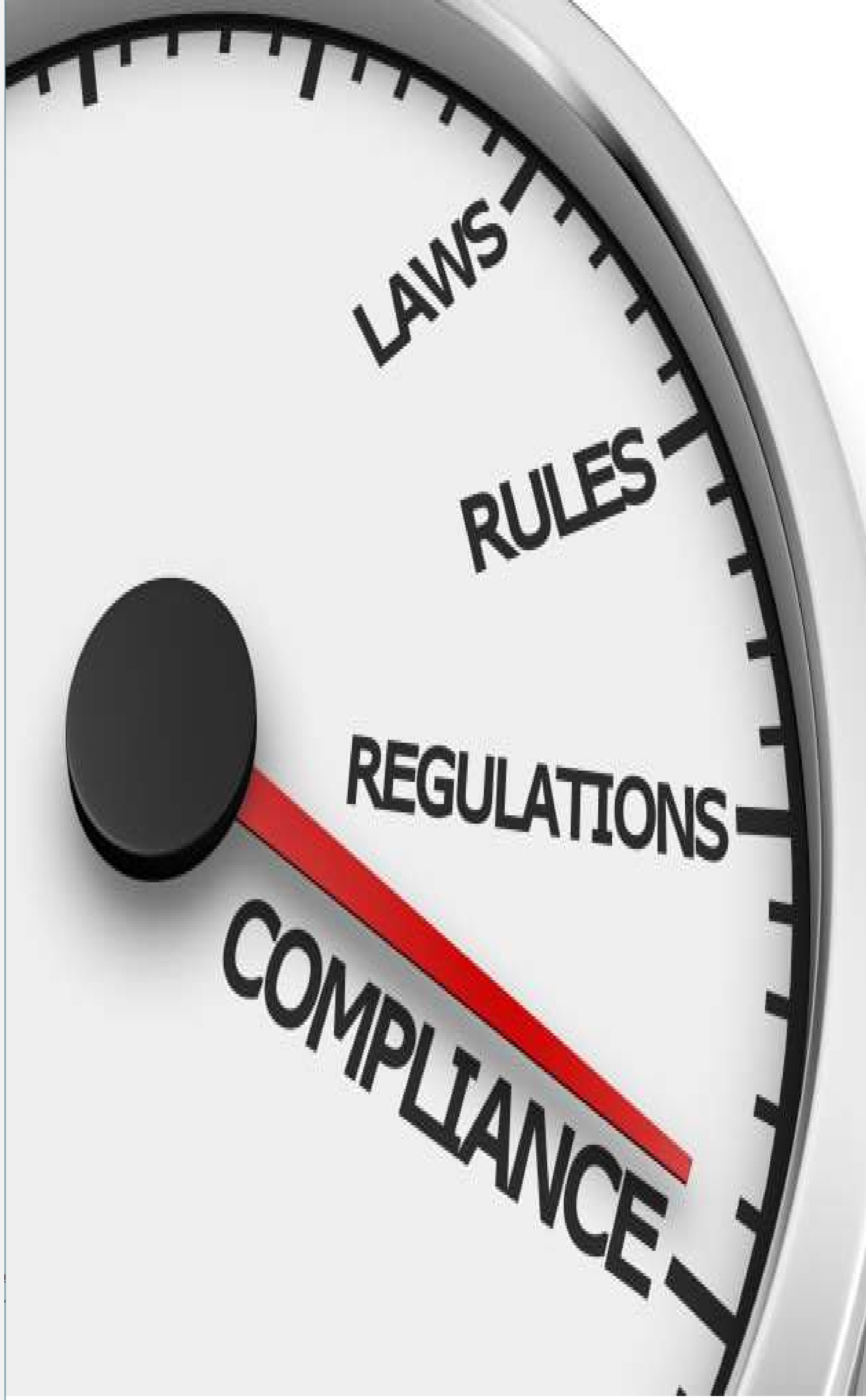
3. Amendment in IND AS 116 Useful for lessees with large number of leases:

- Due to COVID-19 Pandemic, the Ministry of Corporate Affairs through an amendment in IND AS 116 that pertains to 'Leases' provide an option to lessees for relief as a practical expedient while accounting for COVID-19 related rent concessions such as rent waiver and temporary rent reductions.
- This amendment shall apply to lessee for annual reporting period beginning on or after the 1st April, 2020.
- In case a lessee has not yet approved the financial statements for issue before the issuance of this amendment, then the same may be applied for annual reporting periods beginning on or after the April 1st, 2019.
- Rent concessions occurring as a direct consequence of the covid-19 pandemic and only if all of the following conditions are met:-

  a) the change in lease payments results in revised consideration for the lease that is substantially the same as, or less than, the consideration for the lease immediately preceding the change;
  b) any reduction in lease payments affects only payments originally due on or before the 30th June, 2021 (for example, a rent concession would meet this condition if it results in reduced lease payments on or before the 30th June, 2021 and increased lease payments that extend beyond the 30th June, 2021); and
  c) there is no substantive change to other terms and conditions of the lease.

Impact of using practical expedient: Is the lessor decreased or forgave the lease payments, and then the lessee has to simply treat them as a variable lease payments not included in the measurement of the lease liability. In other words, it should be charged directly to Profit and Loss A/c, with the corresponding decrease in the lease liability.

Regulatory & Secretarial Services



Updates on key policy and regulatory measures

1. Banking regulation amendment (Ordinance) 2020 ('the ordinance')

- The Ordinance was promulgated on 26 June 2020 and seeks to amend Banking Regulation Act 1949 in order to extend the powers of RBI to cover co-operative banks to ensure better management & sound regulation of co-operative banks.
- The Ordinance also amends Section 45 of the Banking Regulation Act 1949 to enable making of a scheme by Reserve Bank of India ('RBI') for restructuring or amalgamation of banking company even without imposing moratorium in the interest of public, depositors and banking system.

2. Insolvency and Bankruptcy Code (Amendment) Ordinance 2020

- The Government has notified the Ordinance to suspend operation of certain sections of the Insolvency and Bankruptcy Code, 2016 ('Code').
- The operations of Section 7, 9 and 10 of the Code, that deal with applications filed against Corporate Debtors by Financial Creditors, Operational Creditors and the Corporate Debtors themselves, respectively, are suspended with immediate effect, for a minimum period of six (6) months, with respect to the defaults committed by the Corporate Debtors during the period i.e., between 25 March, 2020 to 24 September, 2020, or any other extended period. However, the said suspension of Sections 7, 9 and 10 is not applicable to the defaults committed by the corporate persons under the said Sections before 25 March, 2020.

3. RBI's steps to reform Housing Finance Companies ('HFCs')

- In August 2019, RBI took over the regulations of HFCs from National Housing Finance. RBI has proposed modifications in existing regulations pertaining to these HFCs:
- Housing finance have now been defined under the regulations to include loans to builders for construction of residential dwelling units, schools and hospitals while excluding loans against properties from it.
- The HFCs are also proposed to be categorised as systemically significant and non-systemically important. Non-deposit taking HFCs with asset size of INR 500 crore and above and all deposit taking HFCs irrespective of asset size will be treated as systemically important HFCs. HFCs with asset size below INR 500 crores will be treated as non-systemically important HFCs.
- HFCs are proposed to be modelled similar to Non-banking Financial Companies ('NBFCs') and hence guidelines of RBI on liquidity risk framework, liquidity coverage ratio, securitization etc. for NBFCs would now be applicable to these HFCs.
- HFCs exposure (both lending and investment) cannot be more than 15% of owned funds in a single entity in a group and 25% of owned funds for all such group entities.
- RBI has also proposed that minimum of 50% of net assets of HFCs should be housing finance and of this atleast 75% should be towards housing loans in individual category. A timeline of 4 years has been proposed to adhere to these ratios failing which the HFCs would be treated as a NBFC.

4. Incentive schemes to boost manufacturing for Self-reliant India (Atmanirbhar Bharat)

To enable the resurgence of the Indian economy and boost domestic manufacturing so that India could play a bigger role in the global supply chain, Prime Minister, Mr. Narendra Modi, had launched the "Atmanirbhar Bharat" campaign in May 2020. A slew of incentive measures was rolled out under this campaign.

The Government is bringing in an incentive system based on the level of local content for the manufacturing sector as the country looks at increasing its self-reliance. The incentives would help boost local manufacturing, reduce dependence on imports and create employment in the country.

Incentive schemes for electronics manufacturing

In order to position India as a global hub for Electronics System Design and Manufacturing (ESDM) and push further the vision of the National Policy on Electronics (NPE) 2019, three schemes have been notified, namely:

(1) *Production Linked Incentive ("PLI") scheme for large scale electronics manufacturing*

Under this scheme, financial incentive would be given to manufacturer of mobile phones and specific electronic components ("SEC") such as discrete semiconductor devices, passive components (resistors, capacitators etc.), Printed circuit boards, assembly, testing, marketing & packaging ("ATMP") units etc. at rates between 4%-6% on the incremental sales for a period of 5 years. The financial incentive is available only if the threshold on incremental sales and investment are met.

(2) *Scheme for Promotion of Manufacturing of Electronic Components and Semiconductors and*

Financial incentive under the scheme is available to electronic goods that comprise downstream value chain of electronic products such as electronic components, semiconductor/ display fabrication units, ATMP units, specialized sub-assemblies and capital goods for manufacture of aforesaid goods at the rate of 25% on capital expenditure on reimbursement basis.

(3) *Modified Electronics Manufacturing Clusters scheme.*

The scheme provides financial assistance for setting up of both Electronic Manufacturing Clusters ("EMCs") projects and Common Facility Centres ("CFCs") across the country.

Incentive schemes for pharma sector

With the view to boost domestic manufacturing by attracting large investments in the sector and thereby, reduce dependence on imports for critical APIs and medical devices, the following three PLI schemes have been notified by the government for the Pharmaceutical industry:

(1) *PLI scheme for promotion of domestic manufacturing of critical Key Starting Materials ("KSM")/ Drug Intermediaries ("DIs") and APIs in India*

Under this scheme financial incentive would be given to manufacturer of 41 products falling within 4 broad target segments namely – (a) Fermentation based KSM/DI, (b) Fermentation based niche KSM/DI/API, (c) Key chemical synthesis based KSM/DI and (d) Other chemical based KSM/DI/API at rates between 5%-30% over period of 6 years. The financial incentive is available only if threshold investment limits are met.

(2) *PLI scheme for promoting domestic manufacturing of medical devices*

Under this scheme, financial incentive would be given to select companies based

on threshold investment and incremental sales over base year of medical devices covered under 4 broad target segments – (a) cancer care/ Radiotherapy medical devices, (b) radiology & Imaging and nuclear imaging medical devices, (c) Anaesthetics& cardio-respiratory medical devices and (d) All implants at the rate of 5% of incremental sales for a period of 5 years.

(3) *Promotion of Medical Device Parks*

Financial incentive will be given for creation of common infrastructure facilities in 4 Medical Device Parks proposed by state governments and selected under the scheme where 70% of project cost of common infrastructure facilities and in case of North Eastern states and Hilly states (Himachal Pradesh, Uttarakhand, Union Territory of Jammu & Kashmir and Union Territory of Ladakh) would be 90% of project cost. Maximum assistance under the scheme for one Medical Device Park would be limited to INR 100 crores.

5. Government imposes import restrictions on televisions ('TVs')

In order to encourage 'make in India', the Government has now imposed restrictions whereby import of certain categories of TVs would require licence from the Government. Directorate General of Foreign Trade ('DGFT') would separately issue procedure for grant of licence.

6. Housing ministry releases guidelines for affordable rental housing complexes ('ARHCs')

The housing ministry has launched ARHCs under the Pradhan Mantri Awas Yojana – Urban as part of the Atmanirbhar Bharat to provide affordable living spaces to urban migrants. The scheme concessionaire to have single and double room in the complex but double room cannot be more than 33% of the project. The public or private partner for the project will be asked to have a revenue share agreement with the urban local bodies.

7. Securities and Exchange Board of India ('SEBI') notifies changes to investment adviser rules

- The eligibility criteria for requirement to register as investment adviser has been enhanced from current net worth requirement of INR 1 lakh to INR 5 lakhs for individual investment advisors and for non-individuals it has been retained at INR 50 lakhs.
- Also, individuals registered as investment advisers whose number of clients are more than 150 have to apply for registration as non-individual investment advisers.
- Individual investment advisors and principal officers of corporate investment advisers are now required to have related post-graduation and five years of advisory work experience.
- Individual investment advisers have option to register as either investment adviser or provide distribution services as distributor. In case of non-individuals, the investment adviser should maintain client-level segregation at group level between investment advisory services and product distribution. Also, the non-individuals must maintain arm's length relationship between its advisory and distribution activities by providing advisory services through a separately identifiable department/ division.
- Further, investment advisors can provide market execution services but should not receive any consideration directly or indirectly either at group or family level for these services.
- SEBI has also prohibited the use of terms such as 'wealth adviser' or 'independent financial adviser' by non-registered investment advisers.
- The client fees charged by investment advisers should be in the manner specified by SEBI (This is yet to be prescribed).

8. SEBI puts in place exit option framework for Real Estate Investment Trusts ('REITs') and Infrastructure Investment Trusts ('InvITs')

SEBI has come out with a mechanism to provide exit option to dissenting unitholders of emerging investment vehicles REITs and InvITs.

An acquirer providing exit option to dissenting unitholders of REITs and InvITs needs to appoint one or more merchant bankers as lead manager(s) for the exit offer.
The acquirer through the lead manager will give a public notice to stock exchange(s) and investment manager regarding his intention of providing exit option to dissenting unit holders.
Upon receipt of public notice, investment manager will immediately but not later than 24 hours provide the list of dissenting unit holders to the lead manager.

The acquirer, through the lead manager, will send the Letter of Offer (LoF) to all dissenting unit holders within three days of public notice and file a copy of the same with the stock exchanges.

Further, the lead manager will exercise due diligence with regard to all information and disclosures contained in the LoF. Thereafter, the stock exchanges will disseminate the LoF on its website as soon as it receives the same.

The letter of offer will comprise details of the acquirer (including persons acting in concert (PAC), if any), its background, experience, areas of operation, relationship between acquirers, pre and post-exit offer unit holding, financial position, details of the exit option as well as the exit price.

The lead manager will submit a report to the investment manager that the payment has been duly made to all the dissenting unit holders whose units have been accepted in the exit option.
Based on the information received from lead manager, the investment manager will update the aggregate number of units tendered, accepted, payment of the consideration and the post-exit option unit holding pattern of the InvIT or REIT with stock exchanges.

Upon completion of the exit option process, the due diligence certificate needs to be filed by the lead manager with the board within two working days of payment of consideration by the acquirer.

Also, SEBI has provided a methodology to calculate the exit price. The manager will be entitled to receive from the acquirer all expenses incurred and payable to external agencies related to the exit offer process.

The regulator said units tendered in exit option will be in multiples of the trading lot as applicable to the units of the same class of the REIT or InvIT.

Dissenting unitholders who are unitholders on the cut-off date for the purpose of voting will be eligible to avail the exit option only in respect of such number of units held by such unitholders on the cut-off date.

9. Govt gives go ahead to electricity derivatives, forward contracts

Electricity is now permitted to be traded as other commodities with forward contracts and derivatives on exchanges as the government issued an order permitting the same, a move that can transform power contracting in India.

10. Amfi appointed agency to carry out valuation of market linked debentures

SEBI had amended rating agencies regulations to specify that credit rating agencies cannot carry out any activity other than rating of securities. Hence, the issuer of market linked debentures ('MLD') needs to appoint a third-party valuation agency. SEBI has not specified that it would be mandatory for the issuer of MLD to appoint a third-party valuation agency which shall

be an Amfi, a mutual fund industry body, appointed valuation agency.

11. SEBI eases compliance norms for Foreign Portfolio Investor ('FPI')

Under SEBI guidelines, a Foreign Portfolio Investor ('FPI') applicant needs to submit duly signed application form including KYC details, supporting documents and applicable fees. Further, copies of all the documents submitted by the applicant should be accompanied by originals for verification. In case the original of any KYC document is not produced for verification, then the copies should be properly attested by entities authorized for attesting the documents. Due to the current Covid 19 situation, SEBI has now temporarily extended the relaxation of allowing scanned copies of the documents for renewing registration till August 31.

12. SEBI relaxes pricing rules for preferential issues, makes fund raising easier amid Covid-19

In order to ease fund raising for companies, SEBI has provided an additional option to the existing pricing methodology for preferential issuance. As per the new pricing formula, the price for allotment of shared under preferential issue will be volume weighted average weekly highs and lows for 12 weeks or 2 weeks, whichever is higher. However, securities issued under this pricing carried a 3 year lock in period. The new pricing rule applies to issues between 1 July to 31 December.

13. Measures to contain high volatility in stock market to continue

SEBI came out with various measures in March 2020 to ensure orderly trading and settlement to contain high market volatility. In view of the existing Covid 19 pandemic situation, these measures have been extended till 27 August 2020.

14. SEBI has relaxed upfront margin framework

SEBI has stated that penalty for short collection will not be applicable if trading members collect atleast 20% upfront margin from client till 1 September.

Updates on key policy and regulatory measures expected in future

1. Non-personal data regulation

An expert committee appointed by the government has recommended in a report that a new data regulator be set up to oversee the sharing, monetising and privacy of information collected online. The report states that the regulator would have to ensure that all stakeholders follow rules, provide data when legitimate requests are made, evaluate risks of re-identification of anonymized personal data and also help level the playing field for businesses. As per the report, the role of the regulator would be to spur innovation, economic growth, social well-being and facilitate equalised data sharing to reduce effect of giant companies such as Facebook, Amazon, Uber and Google.

2. Trade and procurement curbs on companies from countries illegally holding Indian land

The government is considering a plan to impose trade and procurement restrictions on firms from countries "illegally occupying Indian territory". High level talks are underway to deliberate implementation and business implications of such curbs.

3. Government may allow 100% FDI in completed housing projects

The government is presently reviewing its FDI policy for the real estate to see if 100% overseas investment can be allowed in completed projects. This would allow real estate companies to monetise completed projects amid the ongoing liquidity crises thus helping the sector to revive.

4. Draft Ecommerce Policy

Companies who share Indian users data offshore will be subject to periodic audits, according to one of the provisions in the draft ecommerce policy, soon to be made public. Companies will be required to provide any data that the government seeks, failing which, they will be fined. Further, medical data and information regarding defense and other sensitive matters cannot be stored offshore without approvals. It is added that local storage of data will be made mandatory in these fields.

Also, mentioning the 'country of origin' for products being retailed online would be made mandatory in the new ecommerce policy. The government is also considering plans to incentivize Kirana stores if they choose to integrate their operations with ecommerce companies.

5. Government may expand small business loan coverage

In May, the Finance Minister had announced emergency credit line guarantee scheme to provide top up loans of 20% to borrowers with outstanding credit up to INR 25 crores on 29 February 2020. Further, the scheme also prescribed turnover limit. Considering various representations of businesses being ineligible for the loan as they had availed higher credit facility at end of February and later on repaid the dues, the Government is considering increasing the sanctioned limit to INR 50 crore and annual turnover eligibility to INR 200 crore.

Companies Act updates

6. Extension of time limit for Extraordinary General Meetings ('EGM')

The Ministry of Corporate Affairs ('MCA') had earlier issued circulars permitting meetings of the board of directors to be conducted through video conferencing or other audio visual means up to 30 June 2020. Presently this time period has been extended till 30th September 2020.

7. Relaxation of time for filing charge creation/modification forms

The MCA through its Circular issued Scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013.
Effective Date: This scheme is effective from 17 June, 2020.
Applicability, relaxation of time/fees:
As per provisions of Section 77 of Companies Act, 2013 form CHG-1 and CHG-9 relating to Creation and Modification of Charge need to be file in maximum 120 days from date of creation or modification.

Applicability of scheme	Relaxation of time	Fees applicable
Date of creation or modification of charge is before March 01, 2020, but the timeline for filing of such form had not expired under Section 77 (i.e. 120 days) as on March 01, 2020	If form is filed: Period from 01.03.2020 to 30.09.2020 shall be excluded while counting number of days under Section 77 & 78	If form filed before 30.09.2020: fees payable on form as on 29.02.2020 would be chargeable
	If form is not filed: First day after 29.02.2020 shall be considered as 01.10.2020 for counting number of days within which form is required to be filed under Section 77 & 78	If form filed after 30.09.2020: fees payable on form after considering number of days beginning from 01.10.2020 till date of filing + time period lapsed from date of creation of charge till 29.02.2020.
Date of creation or modification of charge is between March 01, 2020 and September 30, 2020	If form is filed: Period from date of creation/ modification of charge to 30.09.2020 shall be excluded while counting number of days under Section 77 & 78	If form filed before 30.09.2020: Normal fees payable for the form
	If form is not filed: First day after date of creation/ modification of charge shall be considered as 01.10.2020 for counting number of days within which form is required to be filed under Section 77 & 78	If form filed after 30.09.2020: First day after creation / modification of charge is considered as 01.10.2020 and number of days till date of filing of form shall be counted for purposes of payment of fees.

Scheme is not applicable if:

- Form CHG-1 and CHG-9 have already been filed before 17 June 2020
- 120 days' timeline has already expired on 1 March 2020
- In case of filing of Form CHG-4
- Timeline for filing the form expires at a future date despite exclusion of the time discussed above.

8. Extension of timeline for registration of details of independent directors

MCA has issued Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2020 whereby the timeline for registration of details of those appointed as independent directors on 1st December 2019 in the Independent Directors Data Bank has been extended to 10 months (in place of 7 months) i.e. till 30 September 2020.

9. Extension for filing Form NFRA 2

The Ministry of Corporate Affairs (MCA) through its General Circular No. 26/2020 dated 3rd July, 2020 has been decided that the time limit for filing Form NFRA-2 for the reporting period 2018-19, will be 270 days from the deployment of this form on the Website of National Financial Reporting Authority (NFRA).

10. Extension of timelines for name approval, incorporation, resubmission etc.

S No.	Issue description	Period/Days of Extension
1.	Names reserved for 20 days for new company incorporation. SPICe+ Part B needs to be filed within 20 days of name reservation	Names expiring any day between 15th March 2020 to 31st July would be extended by 20 days beyond 31st July 2020.
2.	Names reserved for 60 days for change of name of company. INC-24 needs to be filed within 60 days of name reservation.	Names expiring any day between 15th March 2020 to 31st July would be extended by 60 days beyond 31st July 2020.
3.	Extension of RSUB validity for companies.	SRNs where last date of Resubmission (RSUB) falls between 15th March 2020 to 31st July 2020, additional 15 days beyond 31st July 2020 would be allowed. However, for SRNs already marked under NTBR, extension would be provided on case to case basis.
4.	Names reserved for 90 days for new LLP incorporation/change of name. FiLLiP/Form 5 needs to be filed within 90 days of name reservation.	Names expiring any day between 15th March 2020 to 31st July would be extended by 20 days beyond 31st July 2020.
5.	RSUB validity extension for LLPs.	SRNs where last date of resubmission (RSUB) falls between 15th March 2020 to 31st July 2020, additional 15 days would be allowed from 31st July for resubmission.
6.	Extension for marking IEPF-5 SRNs to 'Pending for Rejection u/r 7(3)' and 'Pending for Rejection u/r 7(7)'	SRNs where last date of filing eVerification Report (for both Normal as well as Resubmission filing) falls between 15th March 2020 to 31st July 2020, would be allowed to file the form till 30th Sep 2020. However, for SRNs already marked under 'Pending for Rejection u/r 7(3)' and 'Pending for Rejection u/r 7(7)', extension would be provided on case to case basis. Note:

S No.	Issue description	Period/Days of Extension
		Status of IEPF-5 SRN will not change to 'Pending for Rejection u/r 7(3)' and 'Pending for rejection u/r 7(7)' till 30th Sep'20.

11. Extension of due date for filing FLA return

Annual return on Foreign Liabilities and Assets ('FLA') is required to be submitted by all the companies which have received foreign direct investments and/or made overseas investment in any of the previous year(s), including the current year by 15 July. This due date for submission of FLA for this year 2019-20 is extended to 14 August 2020.

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