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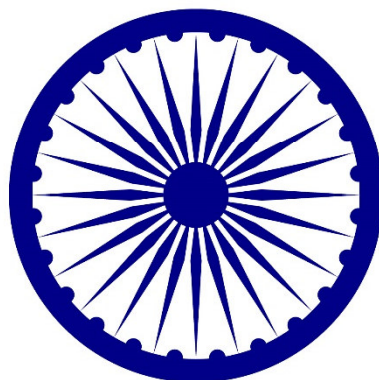
NEWSLETTER INDIA

ADDING VALUE

Issue:  
April 2020

Latest news on compliance, tax and business  
in India

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# Rödl & Partner

NEWSLETTER INDIA

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## → Compliance News

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Santhosh Tantzsch  
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### COMPANY LAW UPDATES

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1. During these exceptional pandemic situation prevalent across the Globe, Ministry of Corporate Affairs (MCA) has taken certain initiatives in the wake of Covid-19 such as -
  - MCA has launched Companies Fresh Start Scheme, 2020 (CFSS) in order to give onetime opportunity so as to enable the companies and LLPs to complete their pending compliances by making statutory annual and other filings required to be made under the various provisions of the Companies Act, 2013 ("the Act") from 01 April 2020 to 30 September 2020, without and additional fees. Immunity shall also be granted, subject to fulfilment of certain conditions, from the prosecutions due to delay filings. [Read more](#)
  - The mandatory requirement of holding meetings of the Board of the companies within prescribed interval provided in the Act (120 days), 2013, has been extended by a period of 60 days till next two quarters i.e., till September 30, 2020;
  - As per Schedule 4 to the Act, Independent Directors are required to hold at least one meeting without the attendance of Non-independent directors and members of management. For the year 2019-20, if the Independent Directors of a company have not been able to hold even one meeting, the same shall not be viewed as a violation.
  - Newly incorporated companies are required to file a declaration for commencement of business from 180 days from the date of incorporation. An additional period of 180 days has been allowed for this compliance.
  - Non-compliance of minimum residency in India for a period of at least 182 days by at least one director of every company (Resident Director), under Section 149 of the Act, shall not be treated as a violation.
  - Companies can hold board meetings dealing with matters like approval of financial statements as well as books of accounts, approval of the board's report, decisions on mergers, amalgamation and takeovers, through video conferencing up to 30 June 2020. Earlier, meetings dealing with the said subject matters were required to be held with directors physically attending the meeting.
- Requirement to create a Deposit reserve of 20% of deposits maturing during the financial year 2020-21 before 30 April 2020 shall be allowed to be complied with till 30 June 2020.
- You may [read more](#) on this topic at our website.
2. New Compliance of Web Form CAR for all Companies/ Limited Liability Partnerships (LLPs)

The MCA released an advisory on 20 March 2020 with an objective to ensure and generate awareness and confidence on readiness to deal with the situation in India. The Web Form is named as CAR (Company Affirmation of Readiness towards COVID-19) and was deployed on 23 March 2020 on the MCA portal. All Companies/ LLPs were requested to comply and file the Form CAR. The MCA has clarified that filing of the said Form is purely voluntary. Around 194,500 companies have filed Form CAR so far and counting is still on.
3. Another move proposed to amend the Companies Act, 2013 ("the Act"): Companies (Amendment) Bill, 2020

The Companies (Amendment) Bill, 2020 ("the Bill") proposes to insert/ amend certain sections of the Act. The Bill was introduced in the Lok Sabha (House of Parliament in India) on 17 March 2020. Once this Bill receives the assent of the President of India, it would become an Act and come into force. The overall objective of the Bill is to further decriminalise certain offences under the CA 2013, to provide ease of doing business to law abiding corporates and to foster improved corporate compliance. The key highlights of the Bill are as follows:

  - It is proposed to insert a new section 129A in the Act. Under this section, certain class or classes of unlisted Companies would be required to prepare their financial results on a

periodical basis, obtain the Board of Director's approval and complete the audit or limited review of such periodical financial results and file a copy with the Registrar within 30 days of completion of the relevant period as would be prescribed.

- The Bill has inserted a proviso to section 135 (5) of the Act (Corporate Social Responsibility) which states that an amount spent in excess of the requirement under section 135 (5) may be set off against the requirement to spend for such prescribed number of succeeding financial years. Further, there would be no requirement to constitute a CSR committee where the amount to be spent towards CSR activities by the Company does not exceed INR 5 million.
- The Bill has introduced decriminalisation of offences under certain sections by either replacing penalty and imprisonment by only penalty provisions or by reducing or omitting penal provisions.

## COMPANY SECRETARIAL (CS) COMPLIANCES FOR PRIVATE LIMITED COMPANY

Below is the summary of the compliances which needs to be adhered to in the next quarter (April-June 2020)

Sr. No	Particulars	Due Date (2020)
1.	Hold at least one Board Meeting in quarter April-June 2020  (As per the relaxation provided by MCA in view of COVID outbreak, gap between previous board meeting and this meeting can go upto 180 for next two quarters i.e till Sep, 2020 )	30 <sup>th</sup> June
2.	Disclosure of interest in Form MBP-1 and DIR-8	To be placed in the first board meeting of the financial year 2020-21.

3.	Form MSME (For the period 1 October 2019 to 31 March 2020)	30 <sup>th</sup> April
4.	Form FC - 4	30 <sup>th</sup> May
5.	Form DPT-3	30 <sup>th</sup> June

**NOTE:** In view of COVID Outbreak, **no additional fees** shall be charged for late filing during a moratorium period from 01 April 2020 to 30 September 2020.

## FOREIGN EXCHANGE MANAGEMENT LAWS UPDATES

1. Reserve Bank of India (RBI) for implementation of Legal Entity Identifier (LEI) Code for implementation (Phase III) has extended the due date from 31 March 2020 to 30 September, 2020. [Read more](#)
2. The RBI has extended the time period for realization and repatriation of export proceeds for exports made up to or on 31 July 2020, to 15 months (originally 9 months) from the date of export.
3. RBI vide notification dated 27 March 2020, introduced several measures to address the issue of liquidity crunch in India. Key measures include:
  - (i) Permission to commercial banks, other financial institutions to allow a moratorium of 3 months on payment of instalments for outstanding term loans falling due between 01 March 2020 to 31 May 2020. Interest shall however continue to accrue during the moratorium period.
  - (ii) For working capital facilities in form of cash credit or overdraft, banks permitted to defer recovery of interest applied in all such facilities during period of 01 March 2020 to 31 May 2020. Accumulated accrued interest shall be recovered immediately after the completion of this period.
  - (iii) In respect of working capital facilities sanctioned, banks may recalculate the 'drawing power' by reducing the margins and/or by reassessing the working capital cycle.

The above measures, are targeted to support amongst other businesses, MSMEs in their business continuity and financial planning.

## EMPLOYMENT LAW UPDATES

1. As of 25 March, 2020, the whole Republic of India has been put in a lockdown for 21 days. Failure to comply with this order will invoke criminal proceedings including imprisonment and fine or both.

The essence of such orders across various states stipulates that all shops, commercial establishments, offices, factories to close their operations. As on date, the operations are to be remain suspended up to 14 April 2020. The orders have also suspended movement of inter-state transport, domestic/international flights, suspension of construction activities. Such restrictions would not be applicable to certain essential services (*including but not limited to health, law and order offices, fair price shops, electricity, water, sanitation, food items, groceries*).

2. Ministry of Labour and Employment issued a direction on 20 March 2020, stating that on account of COVID-19 there may be incidences that employees/workers are forced to go on leave. In such situations, all employers of public and private establishments are advised to not terminate employees especially casual or contract workers/ reduce their wages. If any worker takes leave, he should be deemed to be on duty without any consequent deduction in wages for this period. If the place of employment is made non-operational due to COVID-19, the employees of such a unit will be deemed to be on duty.
3. Employees State Insurance Corporation vide notification dated 16.03.2020, has extended the time limit for payment of employees contribution to forty five days instead of fifteen days for the month of February and March 2020. The revised timelines are 15 March 2020 and 15 April 2020, respectively.
4. Ministry of Labour and Employment has vide advisory dated 20 March 2020, extended the last date for filing of Unified Annual Return under eight Labour Laws from the date of 01 February 2020 to 30 April 2020, on account of the ongoing COVID-19 issues.

5. EPFO issues tightened norms in relation to inquiries under section 7 A of Employees' Provident Fund Act with a view to bring out uniformity in the procedure and to curb down the practice of initiating inquiries for insufficient grounds by EPF authorities.

## FORCE MAJEURE NOTIFICATION BY GOVERNMENT OF INDIA

On 19 February 2020, the Indian Government issued Office Memorandum, stating that coronavirus shall be considered as natural calamity and Force majeure clause may be invoked wherever necessary, for example in the case of supply chain disruptions.

It is a common practice in India to add force majeure clause in commercial contracts. Therefore, businesses should evaluate all commercial contracts with force majeure clause and initiate appropriate action under the said clause if it is evident that COVID 19 situation will hamper the capacity of either of the parties to contract, to fulfil their legal obligations on time.

## EXTENSION OF LIMITATION PERIOD UNDER ALL LAWS

The Hon'ble Supreme Court of India by an order dated 23 March 2020 extended the limitation period for all proceedings before all courts with effect from 15 March 2020 until further orders, irrespective of the limitation period prescribed under law.

This relaxation provides much needed relief to litigants who are struggling in making the requisite filings/applications on account of COVID-19. This would also allow them to strategize on dispute management strategies.

## CONTACT FOR FURTHER INFORMATION



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## → Tax News

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### Transfer Pricing

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#### FINANCE ACT 2020 – SIGNIFICANT CHANGES

##### **Due date for transfer pricing compliance preponed**

In a significant move, government has amended all the relevant provisions mandating filing of audit reports along with the income tax return or by the due date of filing income tax return. Now the said audit reports would be required to be furnished at least one month prior to the due date of filing of such return of income. This amendment is also applicable to the transfer pricing audit report. This amendment is made applicable retroactively from financial year 19-20. Thus, now the due date for filing transfer pricing audit report for the financial year 19-20 is 31 October 2020 instead of erstwhile due date of 30 November 2020.

##### **APA and Safe Harbour for attribution of profit to permanent establishment**

Finance Act, 2020 as assented by the President of India has brought some significant changes in the transfer pricing regime pertaining to attribution of profit to the permanent establishment( 'PE' ). Notably, section 92CB has been amended to include determination of profit to PE under the ambit of Safe Harbour regime. This amendment will be applicable from assessment year 2020-21 and onwards. However, the detailed modalities are

yet to be notified by the Central Board of Direct Taxes ( 'CBDT' ), a premier income tax body in India.

Similarly, section 92CC has been amended to expand its scope and to remove uncertainty stating that attribution of profit to PE will also be within the scope of Advance Pricing Agreements( 'APA' s). This will be applicable to the APA entered on or after 01 April 2020.

Further, Section 94B has been amended to provide that interest limitation would not apply to interest paid in respect of a debt issued by a lender which is a PE of a non-resident, being a person engaged in the business of banking in India. This amendment will be effective from assessment year 2021-22.

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## → Tax News

### Indirect Tax

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#### GST DEVELOPMENTS AND ASSOCIATED PROCEDURES

##### 1. The decision taken in the 39<sup>th</sup> GST Council Meeting

- The following decisions, *inter alia*, were taken by GST Council in the 39<sup>th</sup> meeting chaired by the Finance Minister of India:
  - Enhance GST rate on mobiles to 18% from 12% due to inverted duty structure
  - Reduce GST on maintenance, repair and overhaul (MRO) services in respect of aircrafts to 5 per cent from 18 per cent with full input tax credit
  - Interest on delayed payment of GST to be applicable only on the cash component and not on the credit component (this change would require change in the GST Act and is proposed to be carried out retrospectively)
  - Increase in the turnover threshold for the purposes of carrying out audit under GST laws by a Chartered Accountant and furnishing of reconciliation statement in Form GSTR 9C to INR 50 Million from the existing INR 20 Million for FY 2018-2019.
  - Waiver of late fee for delayed submission of GSTR 9 and GSTR 9C for FY 2017-2018 and FY 2018-2019 for taxpayers with aggregate turnover less than INR 20 Million.
  - New facility 'Know your supplier' to be introduced to enable every registered person to have some basic information about the suppliers with whom they undertake business.
  - The present system to file Form GSTR 1 and GSTR 3B to be continued until September 2020 and until the new system of returns is effective and operational from October 2020.
- Suitable Notification/ Circulars/Amendments have been made/ will be made by the Government to effectuate the decisions of the GST Council.

##### 2. Special Procedure for Corporate Debtors under the Insolvency and Bankruptcy Code 2016 ('IBC')

- Vide Notification No. 11/2020 – Central Tax dated 21 March 2020, the Government has notified registered persons, who are Corporate Debtors under the IBC undergoing the corporate insolvency resolution process and the management of whose affairs are being undertaken by interim resolution professionals ('IRP'), as the class of persons who shall follow a special procedure for GST law purposes.
- The procedure broadly includes the manner of seeking a new registration, filing of returns during the period, availing input tax credits, etc.

##### 3. AADHAR based verification for GST registration

- The provisions relating to registration under the GST law have been amended so as to provide authentication using AADHAR for grant of registration. The provisions will, however, be effective 1 April 2020. In case of failure of authentication of registration using AADHAR, provisions have been made for grant of registration, subject to physical verification of the business premises.

##### 4. IGST on Ocean Freight – ultra vires the Law

- The GST law vide Notification 8 and 10/2017 – Integrated Tax (Rate) dated 28 June 2017 provides for levy of IGST under Reverse Charge Mechanism. The said levy was challenged as ultra vires the IGST law and on other grounds before multiple State High Courts in India.
- The Hon'ble High Court of Gujarat in the matter of **Mohit Minerals v UOI** declared the said notifications to be ultra vires the IGST law. The High Court proceeded to strike down the said notifications and as a corollary declared the levy of IGST on ocean freight under Reverse Charge Mechanism as ultra vires and not per law.



- A similar ruling was also given in the matter of **Sal Steel v. UOI** in relation to the Service tax law, by the same High Court.
- Similar matters are pending before other State High Courts and are pending judicial scrutiny.

## IMPORTANT NOTIFICATIONS ISSUED DURING THE QUARTER

### 1. E-Invoicing

- E-invoicing was proposed to be made mandatory from 1 April 2020 for businesses having turnover of INR 1 billion or more. On account of the challenges in the implementation, the Government has issued Notification No. 13/2020 – Central Tax dated 21 March 2020 to defer the implementation to 1 October 2020.
- Vide Notification No. 14/2020 – Central Tax dated 21 March 2020, effective 1 October 2020, the invoices issued to an unregistered person by registered persons with aggregate turnover over INR 5 billion shall contain the Dynamic Quick Response (QR) code.

### 2. Date Extension - Annual Return and Reconciliation Statement

- Vide Notification No. 15/2020 dated 23 March 2020, the Government has extended the due date for conducting GST audit and for submission of Form GSTR 9 and Form GSTR 9C (Annual Return and Reconciliation Statement) for FY 2018-2019 till 30 June 2020.

### 3. Exemption from GSTR 9C to foreign airlines

- Vide Notification No. 09/2020 – Central Tax dated 16 March 2020, the Government has exempted a foreign company being an airline company [under Rule 4(2) of the Companies (Registration of Foreign Companies) Rules, 2014] from submission of a reconciliation statement in Form GSTR 9C. This is subject to the condition that the airline company furnishes for each GSTN, a statement of receipts and payments for the financial year in respect of its Indian business operations duly certified by a Chartered Accountant by September 30 of the following Financial Year.

### 4. Timelines to furnish Form GSTR-3B and Form GSTR 1

#### GSTR 3B -

- In view of the difficulties faced on the common GST portal, the Government issued Notification No. 07/2020 – Central Tax dated 3 February 2020 and Notification No. 29/2020 – Central Tax dated 23 March 2020 proposing a staggered manner for submission of Form GSTR 3B for the months of January 2020 to September 2020.

- Where the turnover of the registered supplier is over INR 50 Million, the due date continues to be the 20<sup>th</sup> day of the following month.

- Where the turnover is up to INR 50 Million, the due date is 22<sup>nd</sup> or the 24<sup>th</sup> day of the following month, depending on the State in which GST registration has been obtained.

#### GSTR 1 (Notification 27 and 28/2020 – Central Tax dated 23 March 2020) -

Period	Aggregate turnover < INR 1.50 Crores	Aggregate turnover > INR 1.50 Crores
April 2020	Return for the quarter by 31 July 2020	11 May 2020
May 2020		11 June 2020
June 2020		11 July 2020
July 2020	Return for the quarter by 31 October 2020	11 August 2020
August 2020		11 September 2020
September 2020		11 October 2020

## IMPORTANT CIRCULAR ISSUED DURING THE QUARTER

- Vide Order No. 01/2020 – GST dated 7 February 2020, the Government extended the timelines for submission of Form GST TRAN 1 for transition of erstwhile credits. The extension has been provided until 31 March 2020 only to registered persons who could not submit the declaration on account of technical glitches on the common portal and whose case have been recommended by the GST Council



- Vide Circular No. 131/1/2020 – GST, the Government issued a Standard Operating Procedure ('SOP') to be followed by exporters. The SOP was issued to curb fraudulent claim of IGST refunds on exports. The SOP, *inter alia*, includes submissions of certain information to the jurisdictional authorities in order to verify and expedite the refund sanction process.
- Vide Circular No. 132/2/2020 - GST dated 18 March 2020, the Government has issued clarification in respect of the appellate process to be followed, pending constitution of the GST Appellate Tribunal ('GSTAT'). The Circular provides that the period of limitation to file an appeal to the GSTAT will be counted from the date on which the President or State President of the concerned GSTAT enters office.
- Further, the application for issuance of RoSCTL scrip for exports made from 07 March 2019 to 31 December 2019 is prescribed as 30 June 2020.
- Further, corresponding exemption from payment of Customs Duty is notified for import against the scrip issued under RoSCTL scheme vide Notification No. 13/2020-Cus dated 14 February 2020.
- The Notification No. 13/2020-Cus dated 14 February 2020 has also notified the list of exports which are ineligible for availing the incentive under RoSCTL scheme.
- Exemption from payment of IGST and Compensation Cess on imports for EOU unit is extended till 31 March 2021 vide Notification No. 16/2020-Cus dated 24 March 2020

## CUSTOMS & FOREIGN TRADE POLICY RELATED DEVELOPMENTS

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- Additional Export incentive of 2 per cent is notified for the export of mobiles under HS Code 85171211 and 85171219 made by exporters within the period from 01 January 2020 to 31 March 2020. This additional incentive is additional reward available along with rewards under MEIS.
- Further, no separate application is required to be filed for such additional incentives. The application for claim of MEIS under the said code would also be considered as application for additional incentives.
- Corresponding customs Notification No. 14/2020-Cus dated 14 February 2020 is issued to grant exemption from payment of custom duties by using these additional incentive scrip.
- The Rebate of State and Central Levies and Taxes (RoSCTL) is notified for export of products under Chapter 61, 62 and 63. The detailed process for claiming the benefit is notified vide Public Notice No. 58/2015-2020 dated 29 January 2020 w.e.f. 07 March 2019.

- Circular No. 2/2020-Cus dated 10 January 2020 is issued to clarify that SWS cannot be debited in the MEIS or SEIS scrip presented at the time of import in view of the decision of Larger Bench of Hon'ble Supreme Court in case of Unicorn Industries. It is further clarified that for the past cases where SWS is debited in the scrip, it is clarified that such debit shall be accepted as revenue duly collected.

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## → Tax News

### Direct and International Taxation

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#### FINANCE ACT 2020

The Finance Bill, 2020 has been passed with amendments and has received assent of President on March 27, 2020.

Some of the key variations in the Finance Act, 2020 vis-à-vis the original Finance Bill as introduced by the Finance Minister, *include inter-alia*, rationalisation of provisions relating to criteria for deemed residency of individuals, provisions governing Tax Deduction at Source ('TDS') for E-commerce operators, applicability of Tax Collected at Source ('TCS') on sale of goods and services and on amounts remitted under the Liberalised Remittance Scheme, exclusion of capital gains income from mutual funds for TDS.

TDS on cash withdrawal is made more stringent in case of non-income tax return filers by reducing the cash withdrawals threshold from INR 10 million to 2 million for 2 per cent TDS and by introducing a higher rate of TDS of 5 per cent in case cash withdrawals exceed INR 10 million.

Further, scope of Equalisation levy is extended to include e-commerce transactions by non-resident e-commerce operators, not having a PE in India. Equalisation levy of 2 per cent shall be charged in case of such company. Charge of equalisation levy was not included in the Finance Bill presented in Parliament initially.

For detailed analysis, please refer to the following link: [Read here](#)

#### STATUTORY TIMELINES RELAXED DUE TO COVID-19

Amidst the continuing efforts of the Indian Government to combat the spread of COVID-19, the Finance Minister has released a Press Note on 24 March 2020 announcing various relaxation norms in order to ease the tensions of missing deadlines under various statutory laws. The Finance Minister has announced several relaxations across regulations including Income

Tax, GST/Indirect Tax, Customs, Corporate Affairs etc.

For detailed information regarding the relaxations, please refer to the following link: [Read here](#)

#### DIRECT TAX - VIVAD SE VISHWAS ACT, 2020

Continuing with the slew of measures to reduce tax litigation, the Finance Minister announced a scheme for settlement of tax disputes between the tax payer and the tax department called the Direct Tax - Vivad se Vishwas Scheme or DT-VsVS to achieve a fast track closure of pending appeals concerning direct taxes. The objective is to reduce the time, energy and resources both on the part of the Government as well as taxpayers.

DT-VsVS is *inter-alia* applicable in respect of certain appeals which are pending or time limit for filing an appeal has not expired as on 31 January, 2020 before Commissioner (Appeal), Income tax Appellate Tribunals, High Courts or Supreme Court.

On 18 March 2020, the Finance Ministry vide Notification no. 18/2020 issued rules for implementing the DT-VsVS. The rules *inter-alia* provided for the various forms / procedure for making a declaration under the DT-VsVS along with the timelines in which such forms are to be filed / declaration is to be made by both the tax payer and the tax authority.

As per DT-VsVS, if a tax payer has opted for this scheme and has paid the prescribed disputed tax (100 per cent) / interest or penalty (25 per cent) on or before 30 June 2020, the tax authority shall give the tax payer immunity from any proceeding for an offence, penalty or interest in respect of the dispute for which DT-VsVS is opted.

Further, the Government of India vide Circular no. 7/2020 dated 4 March 2020 has issued 55 FAQs to provide clarity to the tax payers on several open issues emanating from this scheme.

FORMS NOTIFIED FOR AVAILING  
CONCESSIONAL TAX RATE

In terms of the Taxation Laws (Amendment) Act, 2019 (“TLA”), the Government has offered reduced base corporate tax rate of 22 per cent [under newly inserted section 115BAA of Income-tax Act, 1961 (‘ITA’)] and 15 per cent for new domestic manufacturing companies [under newly inserted section 115BAB ITA], subject to fulfilment of certain specified conditions. A tax payer who wishes to avail the concessional tax rate needs to exercise their option in prescribed manner before due date for filing return u/s 139(1) ITA, for any Assessment Year (‘AY’) commencing from AY 2020-21 onwards.

Accordingly, new Rules 21AE & 21AF, for exercising option to avail the concessional tax rate, have been notified vide Notification no. 10/2020 dated 12 February 2020, effective 1 April 2020. As per the aforesaid rules, Form 10-IC or Form 10-ID, as applicable, is to be furnished electronically for exercising the option. The forms seek general details of the company along with a declaration that - the option once exercised for a Financial Year, cannot be withdrawn for the same or subsequent Financial Year. Further, there is no sunset Financial Year provided by when this concessional rate is to be opted and it has been left up to the tax payer to decide the Financial Year in which the Assessee wishes to exercise this option.

For detailed analysis, please refer to the following link: [Read more](#)

## BOMBAY HIGH COURT ALLOWS DEDUCTION OF EDUCATION CESS

As per provisions of ITA, Income-tax paid or payable by a taxpayer is not an allowable expenditure. Section 40(a)(ii) ITA specifically provides for disallowance of any rate or tax levied on the profit or gains of any business or profession, or assessed at a proportion of or otherwise on the basis of any such profits or gains. However, there is no explicit mention of “cess” paid on the Income-tax. This has led to uncertainty regarding deductibility of “cess” and has resulted in litigation between the tax payer and the tax authorities before various courts.

There have been divergent rulings on this issue, where various tax tribunal / courts have ruled against the tax payer and held that education cess is a part of tax and hence, not an allowable deduction in accordance with section 40(a)(ii) ITA.

In a recent ruling in the case of Sesa Goa Limited vs. The Joint Commissioner of Income-tax, Goa (Tax Appeal No. 17 of 2013 and Tax Appeal No. 18

of 2013) dated 28 February 2020, the Hon’ble Bombay High Court held that Secondary and Higher Education Cess is not ‘tax’ and hence, should not be disallowed under section 40(a)(ii) ITA. The Hon’ble Bombay High Court relied on a circular issued by the Central Board of Direct Taxes (CBDT) (F. No. 91/58/66-ITJ(19) dated 18 May 1967). In the said circular it was clarified that the legislators had consciously omitted the word ‘cess’ from section 40(a)(ii) ITA so that only taxes paid are disallowed and not cess.

The Hon’ble Bombay High Court has followed the ruling delivered by Hon’ble Rajasthan High Court in the case of Pr. CIT v. Chambal Fertilizers and Chemicals Limited [D.B. IT Appeal No. 52 of 2018, Dated 31-07-2018], wherein it was similarly held that Education cess is not tax and hence, should not be disallowed under section 40(a)(ii) ITA.

However, it needs to be noted that the Hon’ble Supreme Court has, in past, held that surcharge levied by Finance Act every year is to be treated as income-tax. Education cess (now health and education cess) is described as an additional surcharge in the Finance Act. Thus, there could be a risk of education cess being considered akin to income-tax for the purpose of section 40(a)(ii) ITA. This ruling of the Hon’ble Supreme Court has not been considered in the decisions pronounced by the Hon’ble High Courts discussed above.

However, it is also pertinent to note that while education cess does go into national corpus of India like income-tax, it is utilised only for specific purpose, for which it is collected. Since the Supreme Court decision was delivered in context of surcharge and nature of education cess was not discussed, it would be interesting to see the interpretation by the Supreme Court in future.

## CABINET APPROVES PROTOCOL AMENDING THE AGREEMENT BETWEEN INDIA AND SRILANKA

The Government of India on 12 February 2020 approved the signing and ratification of the Protocol amending the Agreement between India and Sri Lanka for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. The move entails updating the preamble text and inclusion of Principal Purpose Test (‘PPT’), a general anti-abuse provision in the Double Taxation Avoidance Agreement (‘DTAA’) between India and Sri Lanka, which will result in

curbing of tax planning strategies which exploit gaps and mismatches in tax rules.

The amendment to the DTAA could have been made via the Multilateral Instrument (“MLI”) as India is a signatory to the MLI; but Sri Lanka is not a signatory to the MLI. Therefore, the aforesaid amendment of the India-Sri Lanka DTAA bilaterally was required to meet the minimum standards on treaty abuse under Action 6 of G-20 OECD BEPS Project.

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## → Accounting/Audit News

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### Business Process Outsourcing

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#### STRONG INTERNAL CONTROLS WITH RISK MANAGEMENT FRAMEWORK- PIVOT OF GOOD GOVERNANCE

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Trust is the essence of Corporate Governance. Corporate Governance is not just a box-ticking exercise and not just about compliances. It is a continued commitment that helps the organisations to gain trust of their key stakeholders, Real meaning of good governance perhaps can be better understood, especially in view of the financial scams and crisis that keep occurring intermittently. The recent corporate scams have highlighted the importance of the presence or rather the absence of a good Corporate Governance! Needless to mention the investors and stakeholders trust is dependent on the way the Corporate Governance is exercised because good corporate governance is the hallmark of any organisational success and sustainability over a long period of time.

#### 1. Trust but Verify

The Financial scam and crisis point out that trust alone is not enough. Trust alone is not an internal control. Along with trust there must be verification. Research reveals that, given a change in personal circumstances, such as need or opportunity, or a change in beliefs and perceptions, there are increased instances of pilferage, fraud, etc. Therefore, studies indicate that there is no end to greed and there is a gradual erosion in ethical values. In general, in these cases, sincerity has become more of a virtue rather than an inherent quality trait. Therefore, one cannot judge intentions but can have the actions reviewed with proper oversight. Therefore, its essential to have trust and verify.

#### 2. Internal Controls through Oversight

Oversight is one of the most important internal controls. But as you grow your business, the focus shift towards growth and expansion, not on internal financial processes. Establishing internal processes and procedures to establish a good corporate governance is of paramount importance. Therefore, an effective internal control is a process

effected by and through employees that supports the organisation goals, enabling them by

- Segregating their duties.
- Having proper organisational structure with complete delegation of authority.
- Engaging them in periodic performance reviews.
- Seeking accountability in safeguarding the assets.
- Providing restricted access.
- Timely reporting.

Fundamental to any internal control system is that it integrates to the activities of the organisation and is not something that is practiced in isolation.

#### 3. Risk Management

In recent years, increased regulatory requirements have forced organisations to contribute significant resources to address risk. Stakeholders in turn have begun to scrutinize whether businesses have the right risk-mitigation controls in place.

Risk is that which impedes the achievement of the organisation's goals and objective. Risk if not mitigated, should be minimized with proper controls. The above listed control activities enables management to deal with controllable risks by reducing their likelihood or down-sizing the impact of the risk. Illustrative risks that corporates are exposed to while navigating the business environment.

Corporate Function	Illustrative Risk Area
Revenue to Receivables	Excessive discounts and rebates provided
Purchase to Payables	Excess Purchase Orders over Material indents
Payroll	Incorrect Payroll Calculations
Production & Inventory	Physical Inventory Control, Costing Valuation
Property, Plant & Equipments	Physical existence
Treasury	Wrong Disbursements

The above illustrative risk areas are to be mapped with that of the controls. Thus, this risk control matrix is to ensure risk is mitigated by the established controls through a framework.

Current, Regulatory requirements in India insist on obtaining an audit opinion from the Statutory Auditors with respect to the adequacy of the internal financial controls over financial reporting of the company and the operating effectiveness of such controls vide notification dated June 13, 2017.

It is applicable for company's having turnover as per last audited financial statements is more than INR 50 Crores and its borrowings from banks and financial institutions at any time during the year is more than INR 25 Crores.

### **Conclusion**

To conclude, in this VUCA world, where Volatility, Uncertainty, Complexity and Ambiguity dominates, solutions from the twin domains of Internal Controls and Risk Management can become the pivot for Corporate Governance. It provides organisations some helpful relief and the warning signals before the disaster strikes!

### **CONTACT FOR FURTHER INFORMATION**



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