MOHINDER PURI & CO.
CHARTERED ACCOUNTANTS

# Corporate Update

September | 2020

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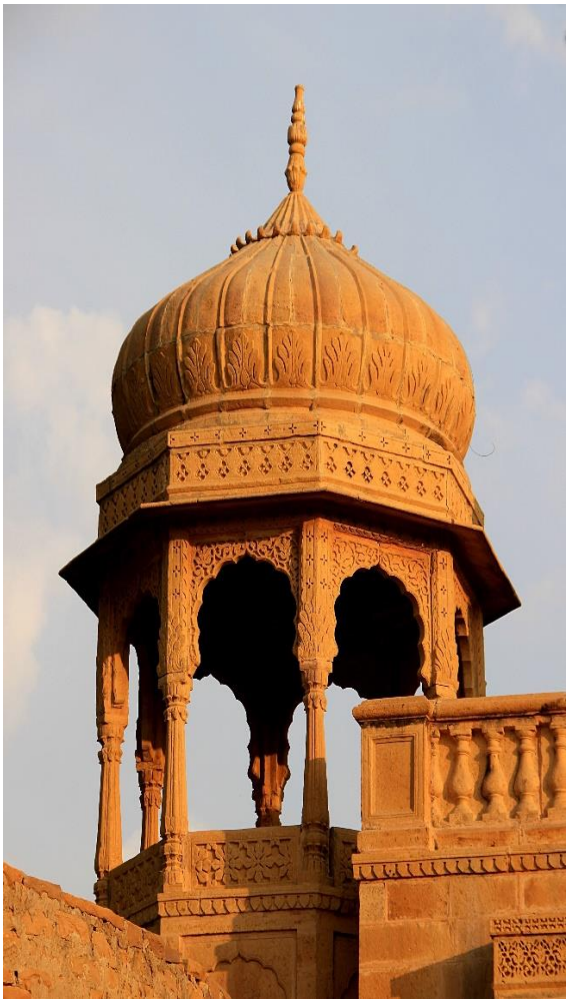

# FOREWORD

Dear Reader,

The Indian economy is slowly improving due to gradual removal of restrictions which were imposed during the lockdown in March 2020. As per the recent report of the Reserve Bank of India, GDP is likely to contract by 9.5% during the Financial Year 2020-21. While there are good signs of recovery in certain industrial sectors, it is generally estimated that recovery to pre-covid levels will only be achieved by 2022.

The Parliament conducted its much-awaited monsoon session, wherein, certain important legislations covering reforms relating to Agricultural Sector and Labour laws were tabled and passed.

In this monsoon session, the Taxation and Other Laws (Relaxations and Amendments of certain Provisions) Act, 2020 has also been enacted, to give statutory effect to the COVID related relaxations, which were announced from time to time. Additionally, this Act also amends certain provisions of the Income tax law. A detailed note on such Amendment Act is included in this edition of the corporate update.

Two important compliance requirements have been made applicable from 1st October, namely, E-invoicing system and amended Tax Collected at Source ('TCS') rules.

The TCS provisions under the Income tax law were significantly amended by the Finance Act, 2020, wherein, its applicability was extended to transactions of sale of goods, sale of overseas tour packages and remittances through Liberalized Remittance Scheme (subject to certain exceptions and monetary limits). The new TCS rules, intended to widen the tax base, are likely to impact medium to large business and hence, such businesses need to gear up to manage additional compliances under these rules.

The 'E-invoicing' system under the Goods and Service Tax Law ('GST') has been made mandatory for B2B transactions for businesses having an annual turnover of more than INR 5 Billion. The monetary threshold shall be reduced in a phased manner and thereafter, the e-invoicing system shall be made applicable to all businesses.

C.S. Mathur
Partner

# International Taxation

## Testing and certification charges paid to foreign entities constitute fees for technical services

*Havells India Ltd [TS-436-ITAT-2020(DEL)]*

Recently, the Tax Tribunal, Delhi Bench held that testing fees and certification charges paid to Chinese and German testing agencies by an Indian company constituted fees for technical services and upheld disallowance in the hands of the assessee on account of non-deduction of tax at source.

On facts, the assessee, Havells India Ltd., is engaged in the manufacturing of switchgears, energy meters, etc. and trading of luminaries, lighting fixtures and exhaust fans. The assessee made payments, *inter-alia*, to certain German and Chinese entities towards testing and certification of its products without deduction of tax at source. Payment to the Chinese entity was made for photometric testing of lighting fixtures which involved testing the amount, colour, quality and spatial distribution of light emitted from lamps, LEDs and luminaires. Payment to German Company was made for certification based on a CB-Test Certificate. These non-resident entities had specialized knowledge and facility for doing the type of testing and necessary certification. These certifications belonged to the market where the products were exported. These accredited laboratories were conducting testing and providing the assessee with the certification body test reports so that the product could obtain necessary marks of the certifying organization.

The Assessing Officer held the above payments as taxable in India as 'fees for technical services' as per Section 9(1)(vii) of the Income-tax Act and relevant Double Taxation Avoidance Agreements and accordingly disallowed the said payments.

The High Court had in assessee's own case for an earlier assessment year held that such services were technical services and as such, the High Court had in the said decision, already concluded that such payments were chargeable to tax in India.

However, the assessee contended that according to its understanding, the services were provided by the machines and did not involve human intervention and as such, failed the test of being technical services. On this issue, the Tax Tribunal observed that the argument of the assessee that the services did not require human intervention remained merely an assertion and even otherwise the Hon'ble Supreme Court in case of CIT versus Kotak Securities (2016) 383 ITR 1 (SC) had clearly expressed a caveat on the view that for the purpose of taxation of 'fees for technical services', human intervention was necessary. The Hon'ble Supreme Court had stated that one could not lose sight of those modern-day scientific and technological developments which are maintained to blur the specific human element in an otherwise fully automated process by which such services might be provided. The Tax Tribunal held that according to the said observation of the Hon'ble Supreme court, even if a process was fully automated process without human intervention, still the particular activity or technical analysis may fall into the definition of 'technical services'. As such, the assessee's argument was rejected.

Further, the assessee contended that such technical services were standard facilities. The Tax Tribunal rejected this contention observing that the services availed by the assessee from various testing agencies were with respect to the specific country, specific standards, specific product, specific manufactured lot of the assessee, which was exported in that particular country and as such, could not be said to be a standard facility.

The assessee further contended that in terms of the peculiar language of Article 12

(4) of the Double Taxation Avoidance Agreement between India and China, the services were not rendered or performed in India and as such, the payments were not "fees for technical services" and not taxable in India. In this regard, the Tribunal relied on coordinate bench decision in the case of Ashapura Minichem Ltd. v. ADIT [2010] 40 SOT 220 (Mumbai) wherein it was held that the expression 'provision for services' as used in India-China tax treaty is quite wide in scope and would cover the services even when those were not rendered in the other Contracting State, as long as those services were used in the other Contracting State. Accordingly, the Tax Tribunal rejected this argument of the assessee and held that Article 12(4) of India-China DTAA does not provide that services should be rendered in India to qualify as "Fees for Technical Services".

The assessee further submitted that the disallowance should be restricted to 30% in respect of payment made to a non-resident while applying the provisions of Section 40(a)(i) of the Act, as is restricted in case of payment made to a resident as per Section 40(a)(ia), else it would amount to discrimination. The Tribunal rejected this submission of the assessee and held that it could not add or insert a condition that was not envisaged in a provision of the law by the lawmakers as the same would amount to rewriting the provisions of the law itself that the Tribunal was not authorized to do. The Tribunal stated that there are two different conditions, one for 'payment made by a resident to a non-resident' [under section 40(a)(i)] and another by 'a resident to a resident' [under section 40(a)(ia)] and as such, there was no discriminatory treatment given to a non-resident entity.

Accordingly, the Tribunal confirmed the disallowance of payments made to Chinese and German entities.

## Vodafone wins over INR 200 billion international tax arbitration case against the Government of India

Vodafone International Holdings B.V., Netherlands (Vodafone) has won an international arbitration case relating to taxation of 'indirect transfer' against the Government of India under India-Netherlands Bilateral Investment Promotion and Protection Agreement ('BIPA').

In 2007, capital gains tax liability was imposed by the Indian tax authorities on Vodafone in respect of indirect acquisition of controlling stake in Hutchison Essar Limited in 2007 for its failure to deduct tax at source on capital gains resulting from the transaction. While relief was granted to Vodafone on the impugned issue by the Hon'ble Supreme Court, retrospective amendments to the Act were brought vide Finance Act, 2012 to bring the transaction under tax net and thereby, neutralizing the decision of the Hon'ble Supreme Court. Consequent to the retrospective amendments, tax liability (including penalty) of over INR 200 billion was fastened on Vodafone.

Aggrieved, Vodafone had invoked the arbitration clause under the India-Netherlands bilateral investment treaty. The Permanent Court of Arbitration in the Hague has ruled that India's conduct in respect of the imposition on Vodafone of an asserted liability to tax, notwithstanding the Supreme Court judgement, is in breach of the guarantee of fair and equitable treatment laid down in Article 4(1) of the Agreement. It has also directed the Government of India to reimburse legal representation and assistance cost of around INR 400 million to Vodafone.

On this development, the Finance Ministry has issued a press release stating that the Government will consider all options and take a decision on further course of action including legal remedies before appropriate fora.

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# Domestic Taxation

## Key amendments in Taxation Amendment Act, 2020

The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 ('Ordinance') was promulgated on March 31, 2020, in order to ease compliance burden on taxpayers due to outbreak of COVID-19.

The Taxation and Other Laws (Relaxations and Amendments of certain Provisions) Bill, 2020 passed by Lok Sabha and Rajya Sabha seeks to replace the Ordinance and to further amend the Income-tax Act, 1961, Central Goods and Services Tax Act, 2017, Finance Act, 2019, the Direct Tax Vivad se Vishwas Act, 2020 and the Finance Act, 2020. The Bill had received the assent of the President on September 29, 2020.

Key amendments proposed in the Taxation and Other Laws (Relaxations and Amendments of certain Provisions) Act, 2020 ('Amendment Act') are summarized below:

### A. Faceless Assessment Scheme

On August 13, 2020, Prime Minister launched the 'Transparent Taxation' platform encompassing faceless assessments, faceless appeals, etc. CBDT also issued notifications to amend the E-Assessment Scheme and to implement the Faceless Assessment Scheme under Section 143(3A). The Amendment Act proposes that faceless assessment scheme will be incorporated under the Income tax Act from April 01, 2021. The new section 144B describes in detail how the faceless assessments shall be conducted and is akin to the notifications 60 and 61 (of 2020) issued in this regard.

Reference to Dispute Resolution Panel (DRP) has been included in section 144B and applies to eligible assesses. Enabling provisions have been inserted to make the DRP proceedings faceless.

Section 135A gives the power to collect information, call for information and inspect registers of companies (i.e. in accordance with section 133, 133B, 133C, 134 and 135), in a faceless manner. Section 142B prescribes that Special Audit under Section 142(2A) and Valuation by Valuation Officers under 142A could be made in a faceless manner.

The Principal Chief Commissioner/ Principal Director General is empowered to lay down the standards, procedures and processes (with prior approval of CBDT), in respect of circumstances in which personal hearing is permitted.

Enabling provisions have also been inserted to carry out the following functions in a faceless manner, to the extent that it is technologically feasible:

- Reassessments and revisions
- Transfer Pricing proceedings
- Approvals and registrations
- Appeal proceedings before the Tax Tribunal
- Appeal Effects
- Initiation of prosecution proceedings
- Rectification proceedings
- Stay and recovery proceedings

- Lower/ Nil withholding tax and TDS proceedings

For the aforesaid provisions, the Central Government shall make a scheme, so as to impart greater efficiency, transparency, and accountability by:

(a) Eliminating the interface between the income tax authority and the assessee;

(b) Optimizing utilization of resources through economies of scale and functional specialisation; and

(c) Introducing a mechanism with dynamic jurisdiction for issuance of directions by income tax authority.

Schemes defining procedure and conduct are yet to be notified in this regard.

**B. Due date of various compliances:**

On March 31, 2020, the President had promulgated the Ordinance, to provide relaxation in certain provisions and extension of various due dates. On June 24, 2020, the Central Board of Direct Taxes ('CBDT') had issued a Notification and a Press Release to further extend various due dates.

Originally, extension was provided for due dates falling between March 20, 2020 and June 29, 2020. This was further extended to December 31, 2020. Similarly, the time limit for completion or compliance of various actions falling under March 20 to December 31, 2020 was extended to March 31, 2021.

The Amendment Act ratified such extensions and reliefs provided through the Ordinance and Notifications. The Amendment Act does not provide any further relief or extension to taxpayers in relation to timelines for various compliances.

The Amendment Act has provided necessary legislative effect by extending the time limit for filing application in Form 1 and making payment of disputed tax (without any additional amount of 10%) under Direct Tax Vivad se Vishwas Act, 2020, till December 31, 2020.

**C. Amendments to residency rules for Indian citizen or Person of Indian Origin**

- One of the conditions to trigger residency in India was that an individual should be present in India for at least 60 days in the relevant financial year and 365 days in past four years. In case of an individual being a citizen of India or Person of Indian Origin ('PIO') who, being outside India, comes on a visit to India, the threshold is 182 days.

  The Finance Act, 2020 reduced this period of stay in India from 182 days to 120 days for an Indian citizen or a PIO having India sourced income exceeding INR 15 lacs. However, it was not clear whether such an individual needs to be based outside India and come on a visit to India to trigger this rule.

  The Amendment Act has clarified that the new rule will apply to an Indian citizen or PIO who, being outside India, comes on a visit to India and has India source income exceeding INR 15 lacs.

- The Finance Act, 2020 had inserted a new rule whereby an individual, being Indian citizen, shall be deemed to be a resident but not ordinarily resident in India, if his total income (other than income from foreign sources) exceeds INR 15 Lakh in the relevant FY and he is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature.

  A doubt arose that whether an individual who otherwise qualifies as a resident under the normal rule (i.e. ordinary resident) can claim to be not ordinarily resident under the deemed residency rule. Therefore, an explanation has been inserted in section 6(1A) clarifying

that clause 1(A) shall not apply in case of an individual who is said to be resident in India in the Previous Year under the general clause (1).

- As per the Finance Act, 2020, 'Income from foreign sources' was defined to mean income, which accrues/ arises outside India (except income derived from a business controlled in or a profession set up in India). The law was not clear as to whether or not incomes which actually accrue or arise outside India but are deemed to accrue or arise in India, will be included in the definition of 'income from foreign sources'. It has been clarified that income, which is not deemed to accrue or arise in India, will be considered as income from foreign sources.

**D. Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM-CARES Fund)**

The Amendment Act seeks to provide tax exemption for contributions made to PM-CARES Fund, which was set up in March in the wake of the coronavirus pandemic. Further, 100% deduction is available of the sum contributed to PM CARES Fund under section 80G of the Act.

**E. New registration process applicable to charitable entities and research institutions**

The Finance Act, 2020 had prescribed a new registration process wherein existing registered charitable entities and research institutions registered under various provisions of the Income-tax Act are required to make an application under new registration regime for continuing their registration.

The Amendment Act provides that provisions governing new registration regime for charitable entities and research institutions registered under various provisions of the Income tax Act shall be effective from April 01, 2021 (instead of October 01, 2020) and the old regime of registration will continue till March 31, 2021.

The Amendment Act also provides exemption for application of section 56(2) for any sum of money/ property received from any trust or institution registered under section 12AB (i.e. procedure for fresh registration) by making it effective from April 01, 2021 (as against June 01, 2020) keeping it consistent with the applicability of section 12AB.

**F. Deduction of Scientific Research Expenditure**

The fifth and sixth proviso to section 35 shall now be effective from April 01, 2021 as against June 01, 2020. The provisos require research associations, university colleges, scientific research companies and other institutions to make an intimation in the prescribed manner within 3 months of this provision coming into effect and that the notification will remain valid for a period of 5 AYs commencing on/after April 01, 2022 as against earlier date of April 01, 2021.

Requirement of filing a statement and providing a certificate to the donor by research association, company, etc. has been deferred to April 01, 2021 from June 01, 2020.

**F. Capping of surcharge on dividend income of Foreign Portfolio Investors (FPIs)**

The rate of surcharge levied on dividend income derived by FPIs (structured as Trusts, Association of Persons ('AOP'), Body of Individuals ('BOI'), individuals) has been capped at 15% as against highest rate of 37%, thereby reducing the dividend tax rate to 23.92% as against erstwhile highest tax rate of 28.5%.

**G. Deduction in respect of donations to certain funds, charitable institutions, etc.**

The Amendment Act also inserted new clause (viii) to Section 80G, which stipulates the framework for the donee to prepare and file such statement setting forth particulars of donations received within specified timelines and furnishing certificates to the donors in such manner as prescribed. The amendment shall be effective from April 01, 2021 as against the earlier date of June 01, 2020.

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## Faceless Appeal Scheme - Digital Transformation of First Level Appellate Procedure

### Background

In its drive for digital transformation, the Government has now launched the scheme of faceless tax appeals before the first level appellate authority, i.e. Commissioner of Income-tax (Appeals) vide notification number 76/2020 and 77/2020 dated September 25, 2020. The faceless appeal scheme was notified shortly after the full-fledged launch of faceless assessment scheme (which is already in operation as on date) under the 'Transparent Taxation – Honouring the Honest' Platform. It may be mentioned that the legislative framework for the faceless appeal scheme was already laid down by the Finance Act, 2020.

The faceless appeal scheme came into force on September 25, 2020 and is, by and large, similar to the faceless assessment procedure. For this purpose, the CBDT has already undertaken the necessary restructuring within the Income tax department and constituted 301 appeal units throughout the country. It is expected that 88% of the pending cases before the Commissioner (Appeals) shall now be taken up under the new scheme.

However, cases of serious frauds, major tax evasion, sensitive & search matters, International tax and Black Money Act have been kept outside the purview of the faceless appeal scheme.

The overall objective of the scheme is to imbibe fairness, transparency as well as accountability in the appellate procedure. Furthermore, the scheme aims for increased utilization of digital technology to save time, effort, resources and thus, ease the compliance burden of taxpayers.

### Key Features

The procedural machinery of faceless appeals is largely built on the framework of the faceless assessment scheme and as such, shares various features with the latter. The key features of the faceless appeal scheme, are highlighted as under:

- Faceless appeals shall be conducted exclusively through a digital platform, which will relieve the taxpayers or their representatives from physically visiting the tax office. Thus, there shall be no requirement of personal hearings, filing voluminous submissions and paperwork.

- The identity of the appellate officer shall remain unknown to the taxpayer, which shall result in objectivity and fairness in the appeal system.

- The faceless appeal shall also involve dynamic jurisdiction, i.e. the existing system of territorial jurisdiction of Commissioner (Appeals) shall be done away with. This shall ensure optimum utilization of resources and functional specialization, which is a key cornerstone of the faceless assessment and appeal system.

- Furthermore, the allocation of cases to different Appeal Center's shall be done through Data Analytics and Artificial Intelligence.

- The CBDT shall constitute a National Faceless Appeal Centre ('NFAC'), which shall have the centralized jurisdiction to interact with taxpayers and dispose off appeals. Regional Faceless Appeal Centre ('RFAC') shall be set up as per requirement, to support the NFAC in conduct of the appellate proceedings. Furthermore, Appeal Units shall be set up to undertake the functions of disposing of appeals.

- The NFAC shall be the point of contact with the taxpayer. As such, communication such as notices, orders, submissions etc. between the taxpayer and the Appeal Units shall be routed electronically through the NFAC.

- The NFAC, upon the recommendation of the Appeal Units, shall also be empowered to initiate penal proceedings against the taxpayer for non-compliance of notices, directions and orders.

- The NFAC may also carry out rectification of its appellate orders, upon an application by the taxpayer, Appeal Unit or the National E-assessment Centre or the Assessing Officer.

- Various other ingredients of appellate procedure under the existing law, such as condonation of delay in filing of the appeal, admission of additional ground or additional evidence, have also been incorporated in the present scheme.

- Appeal against the order of the NFAC shall lie to the Income-tax Appellate Tribunal having jurisdiction over the jurisdictional assessing officer.

**Other Aspects**

A promising feature of the faceless appeal system is the inclusion of a multiple review system, which shall ensure quality and thoroughness in the appellate orders. Under such system, draft orders of an Appeal Unit may be assigned by the NFAC for review by another Appeal Unit. The NFAC may do so either if the tax, interest, penalty in respect of a disputed issue exceeds the specified limit or based upon the risk management strategy specified by the CBDT.

Moreover, where the Appeal Unit assigned for reviewing the draft order suggests variations to the draft order, the NFAC shall mandatorily assign the case to a third Appeal Unit (other than those which had prepared and reviewed the order) for further review of such variations. Thereafter, such third appeal unit shall prepare a 'revised draft order' and send the same to the NFAC. It is imperative to mention here that where the revised draft order entails enhancement of assessment or penalty or reduction of refund, an opportunity shall be granted to the taxpayer to file its response.

Much alike the faceless assessment scheme, the option of personal appearance before the appellate authorities is not available as a matter of right for taxpayers, but available only under specified circumstances and subject to the approval of the Chief Commissioner or the Director General in charge of the RFAC.

**Way Forward**

Income tax is a major contributor to litigation in the country and is responsible for an overwhelming amount of backlog of cases in various Courts and Tribunals. The lack of quality of assessment orders and first level appellate orders is often regarded as the reason behind the huge pendency of tax matters, which, often are reversed upon higher judicial scrutiny. It is usually found that such orders are deficient in terms of legal understanding, ignore settled judicial

pronouncements and also disregard principles of natural justice.

In this backdrop, the quality and timeliness of disposal of appeals under this Scheme assumes greater significance. The system of functional specialization, dynamic jurisdiction and multiple review is certainly a welcome step and one would hope that it creates an efficient, fair and just appellate environment.

That being said, taxpayers have to tread cautiously as the conduct of appeals in a digital manner may have its own perils. Without an absolute right of personal hearings, it is imperative that the submissions/documentation furnished by taxpayers/authorized representatives meet the highest standards of quality and thoroughness.

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# Goods and Services Tax

## General Updates

### E-Invoice

As a facilitation measure, the government has enabled all the taxpayers who were having aggregate turnover of INR 500 Cr. (from 2017-18 onwards) on e-invoice portal https://einvoice1.gst.gov.in/. The listing is based on GSTR-3B data, as available in GST System.

One can search the status of enablement of a GSTIN on e-invoice portal: https://einvoice1.gst.gov.in/> Search > *e-invoice status of taxpayer*

In case any registered person, is required to prepare invoice in terms of Rule 48(4) but not enabled on the portal, they may request for enablement on portal: 'Registration -> e-Invoice Enablement'.

In case any registered person, who doesn't have the requirement to prepare invoice in terms of Rule 48(4) but still enabled on the e-invoice portal, the same may be brought to the notice at support.einv.api@gov.in so that necessary action can be taken.

### System computed values of GSTR-1 Statement (Monthly filers), made available in Form GSTR-3B, as PDF statement on GST Portal

A pdf statement has been made available to taxpayers, filing monthly GSTR-1 statement, with system computed values of Table 3 of Form GSTR-3B. This PDF will be prepared on the basis of the values reported by them, in their GSTR-1 statement, for the said tax period.

This PDF is available on their GSTR-3B dashboard, from tax period of August 2020 onwards, containing the information of GSTR-1 filed by them on or after September 04, 2020. This will make the filing of Form GSTR-3B easier for the taxpayers.

This facility is provided to all taxpayers registered as a Normal taxpayer, SEZ Developer, SEZ unit and casual taxpayer.

This PDF is only for assistance of taxpayers to get the auto drafted values of Table 3 of their Form GSTR-3B (as per their filed GSTR-1 statement). Taxpayers, however, are required to verify and file their Form GSTR-3B, with correct values.

### New functionalities made available for TCS and Composition taxpayers

- Based on requests received from stakeholders, the restriction of amending the transaction details only once, in the table 4 (i.e. amendment table) of Form

GSTR-8, has now been removed and various functionalities have been enabled on GST portal for TCS and Composition taxpayers to make multiple time amendments, in Table 4 of Form GSTR-8.

- The taxpayers under composition scheme, who are permitted to make supplies through E-Commerce Operators, e.g. Restaurant Services, will now be able to view and take necessary actions in their TDS/TCS credit received form.

- E-commerce operators would now be able to add GSTIN of such composition suppliers, in their Form GSTR-8 and file the Form.

- The amount of tax collected at source, reported by E Commerce Operators in their Form GSTR-8, will now be populated to 'TDS /TCS credit received' form of respective composition taxpayers.

- The amount so reported by e-commerce operators will now be available to respective composition taxpayers, for accepting or rejecting the same, in their 'TDS and TCS credit received' form.

    - For accepted transactions, the amount would be credited to cash ledger of composition taxpayers, after successful filing of 'TDS/ TCS Credit received' form.

    - For rejected transactions, the amount would be shown to e-commerce operators for correction.

**ITC Statement Form GSTR-2B, made available on GST Portal for taxpayers**

GSTR-2B is an auto-drafted Input Tax Credit (ITC) statement generated for every recipient, on the basis of the information furnished by their suppliers, in their respective Form GSTR-1 & 5 and Form GSTR-6 filed by ISD.

Taxpayers can now reconcile data generated in Form GSTR-2B, with their own records and books of accounts. Using this reconciliation, they can now file their Form GSTR-3B and they can ensure that:

- No credit is taken twice;
- Credit is reversed as per law; and
- Tax on reverse charge basis is paid.

Generated Form GSTR-2B consists of:

- A summary of ITC available as on the date of its generation and is divided into credit that can be availed and credit that is to be reversed (Table 3)

- A summary of ITC not available and is divided into ITC not available and ITC reversal (Table 4)

Taxpayers can view or download Summary Statement or Section wise details in excel or PDF format and can also view supplier wise summary or document wise details.

**Downloading document-wise details of Table 8A of Form GSTR-9**

A facility has been provided to the taxpayers to download document wise details of Table 8A of Form GSTR-9, from the portal in excel format. This can be done by using a new option of 'Document wise Details of Table 8A' given on the GSTR-9 dashboard, from Financial Year 2018-19 onwards. This will help the taxpayer in reconciling the values appearing in Table 8A of Form GSTR-9, thus facilitate filling the Form GSTR-9.

Table 8A of Form GSTR-9 is populated on basis of documents in filed Form GSTR-1. This excel download will address issues like:

- Figures of Input Tax Credit (ITC), as pre-populated in table 8A of GSTR-9, not matching with the figures, as appearing in their Form GSTR-2A;

- To view details of documents that are auto-populated from GSTR-2A, to table 8A of Form GSTR-9;

Steps to Download: To download, navigate to Services > Returns > Annual Return > Form GSTR-9 (PREPARE ONLINE) > DOWNLOAD TABLE 8A DOCUMENT DETAILS option.

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# Corporate Law

## Clarification of Annual General Meeting Extension

*General Circular No.28/2020 dated August 17, 2020*

Keeping in view the corona pandemic, the Ministry of Corporate Affairs ('MCA'), vide its General Circular No.20/2020 dated May 05, 2020, had already provided relaxation to companies to hold their Annual General Meeting ('AGM') through video conferencing or other audio-visual means.

Now, the MCA, vide its General Circular No.28/2020 dated August 17, 2020, has clarified that despite the above referred relaxation, if any company is still unable to hold its AGM within the time prescribed under Section 96, i.e. within 6 months of closure of its financial year, in that event, it is advisable for such company to file an application with the concerned Registrar of Companies ('ROC'), for seeking extension of time for holding AGM, as provided under Section 96.

Further, through this Circular, the MCA has also advised all the ROCs to take a liberal view on AGM extension applications, as filed by the companies, and to grant extension of time for the period as applied [maximum upto 3 months, i.e. till December 31, 2020] for holding AGM.

It may be noted that MCA has not provided any general extension of time to all companies for holding their AGM for Financial Year 2019-20. However, different ROCs are passing Orders separately for granting general extension to all companies falling within their respective jurisdictions for holding AGM [other than the first AGM], for Financial Year 2019-20, by a period of three months from the last due date of holding AGM.

## Extension of Certain Deadlines till December 31, 2020

The highlights of the key changes as made by the Ministry of Corporate Affairs [MCA] recently, through issue of various circulars/ notifications, have been summarized as under:

- The Companies Fresh Start Scheme 2020 [CFSS – 2020], wherein a one-time opportunity was provided to defaulting companies to enable them to complete their pending compliances by filing belated forms/ documents with the ROC, including annual filings, without being subject to payment of higher additional fees, was to remain in force till September 30, 2020. Now, this Scheme has been extended till December 31, 2020 vide MCA's General Circular No. 30/2020 dated September 28, 2020. All other requirements of the Scheme have remained unchanged. A similar scheme which was introduced for Limited Liability Partnerships has also been extended till December 31, 2020.

- The MCA, vide notification dated March 19, 2020, had earlier notified the Companies (Meetings of Board and its Powers) Amendment Rules, 2020. As per those amendment rules, a board

meeting in relation to those matters, for which physical presence of directors was required earlier, were allowed to be dealt with/ approved by the directors who are participating in the board meeting through video conferencing or other audio-visual means. This relaxation was provided till June 30, 2020 and was subsequently extended till September 30, 2020. Now the MCA, vide its Notification No. G.S.R. 590(E) dated September 28, 2020, has extended this relaxation of holding board meetings through video conferencing or other audio-visual means for all the matters till December 31, 2020.

- The MCA, vide General Circular no. 11/2020 dated March 24, 2020, had earlier extended the time limit with respect to the requirement to create the deposit repayment reserve of 20% of deposits maturing during the financial year 2020-21 from April 30, 2020 till June 30, 2020. Subsequently, this time limit was extended till September 30, 2020. Now the MCA, vide its General Circular no. 34/2020 dated September 29, 2020, has further extended the time limit till December 31, 2020.

- The MCA, vide General Circular no. 11/2020 dated March 24, 2020, had earlier extended the time limit with respect to the requirement to invest or deposit at least 15% of the amount of debentures maturing in specified methods of investments or deposits from April 30, 2020 till June 30, 2020. Subsequently this time limit was extended till September 30, 2020. Now the MCA, vide its General Circular no. 34/2020 dated September 29, 2020, has further extended the time limit till December 31, 2020.

- Furthermore, the MCA had earlier issued circulars dated April 08, 2020 and April 13, 2020 for allowing the companies to hold Extraordinary General Meetings for the period up to June 30, 2020, through video conferencing or other audio-visual means (OAVM) complemented with e-voting facility/simplified voting through registered emails, without requiring the shareholders to physically assemble at a common venue. Subsequently this time limit was extended till September 30, 2020. Now the MCA, vide its General Circular no. 33/2020 dated September 28, 2020, has further extended the time limit till December 31, 2020.

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# Regulatory

## Review of Foreign Direct Investment (FDI) Policy in Defence Sector

*Press Note 4 (2020 Series)*

On May 16, 2020, the government had announced raising the Foreign Direct Investment ("FDI") limit in defence manufacturing, under the automatic route, from 49% to 74%.

Subsequently, on September 17, 2020, the Department for Promotion of Industry and Internal Trade has issued Press Note 4 (2020 Series) ('Press Note') to give effect to the Government's decision to raise FDI in the defence sector to 74% under automatic route.

Accordingly, changes have been introduced in Para 5.2.6 of the Consolidated FDI Policy vide the Press Note and the position before and after the introduction of the Press Note

has been given in *Annexure A*:

Also, it has been laid down in the Press Note that with respect to companies not requiring industrial license or which already have government approval, infusion of fresh investment up to 49%, shall require mandatory submission of a declaration with the defence ministry in case of change in equity/shareholding pattern or transfer of stake by existing investor to new foreign investor for FDI up to 49%, within 30 days of such change. Further, proposals for raising FDI beyond 49% from such companies shall require Government approval.

Prior to the introduction of the Press Note, infusion of fresh foreign investment up to 49% in a company not seeking industrial license, resulting in change in the ownership pattern or transfer of stake by existing investor to new foreign investor, required Government approval.

The Press Note has also stipulated that foreign investments in the defence sector shall be subject to scrutiny on the grounds of national security and Government reserves the right to review any foreign investment in the sector that affects or may affect national security.

Other conditions related to licensing, security clearance requirement and the requirement for the Investee Company to be self-sufficient in product design and development shall continue.

While the policy changes have now been announced by issuance of the Press Note, these changes shall become effective after amendments are made to the provisions of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019.

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## Important dates to remember

| Particulars | Date |
|---|---|
| Deposit of TDS/TCS for the month of October, 2020 | 07.11.2020 |
| Filing of GSTR 3B for the month of September, 2020 | 20.10.2020 |
| Filing of GSTR I for the month of October, 2020 | 11.11.2020 |
| Filing of GSTR 3B for the month of October, 2020 | 20.11.2020 |

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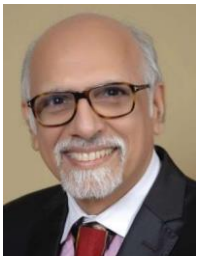

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***Annexure A***

| Sector/Activity | % of Equity/ FDI Cap | Entry Route | |
|---|---|---|---|
| | | **Before introduction of the Press Note** | **After introduction of the Press Note** |
| **5.2.6.1 Defence Industry subject to Industrial license under the Industries (Development & Regulation) Act, 1951 and Manufacturing of small arms and ammunition under the Arms Act, 1959** | 100% | Automatic up to 49%<br><br>Government route beyond 49% wherever it is likely to result in access to modern technology or for other reasons to be recorded | Automatic up to 74%<br><br>Government route beyond 74% wherever it is likely to result in access to modern technology or for other reasons to be recorded |