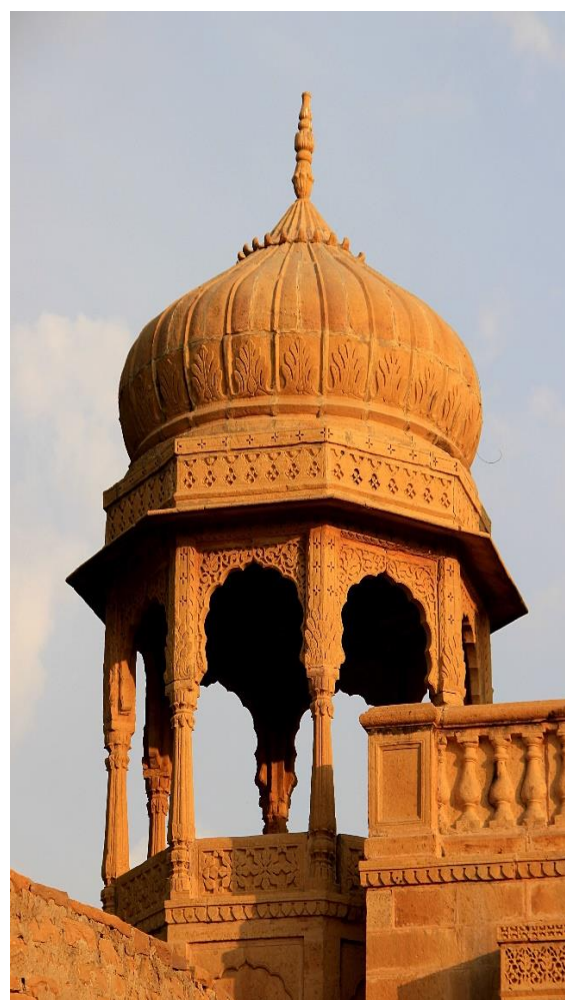


# Corporate Update

May | 2021

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## FOREWORD



Dear Reader,

The Covid 19 situation in India has shown considerable improvement as number of cases has gone down substantially. Various states of India are now taking steps to ease the lock down conditions which will pave the way for resumption of business and industrial activity.

Keeping the current economic conditions in view, the Reserve Bank of India now estimates real GDP growth during the year 2021-22 at 9.5% as compared to the previous year's negative growth.

The Ministry of Finance, Government of India, last month notified thresholds in New Rule 11UD for constitution of Significant Economic Presence (SEP) relevant for taxation of Non-Residents under the domestic law and a new Rule 11UAE for computation of 'Fair Market Value' of the consideration for the purpose of computation of capital gain on sale of Business on 'Slump Sale' basis.

In addition, further extension in dates of various compliances under Income-tax Act was also notified last month as reported by us separately.

This update also covers certain changes in GST Rules, 2017, relaxations in Company Law compliances, as well as an introductory note on newly enacted Industrial Relations and Labour Codes.

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## International Taxation

### Thresholds notified by CBDT for Significant Economic Presence

*Notification No. 41 dated May 03, 2021*

Recently, the Central Board of Direct Taxes (the CBDT) notified the thresholds for constitution of Significant Economic Presence (SEP) in India under section 9(1)(i) of the Income-tax Act.

The Finance Act, 2018 expanded the scope of 'business connection' (i.e. taxable presence in India) under the scheme of Indian domestic tax law and introduced the concept of SEP vide Explanation 2A to section 9(1)(i) of the Income-tax Act to provide that SEP of a non-resident in India shall constitute "business connection" of such non-resident in India.

Such concept, which is based on the recommendations of Action Plan 1 of the Base Erosion and Profit Shifting (BEPS) initiative of the OECD, was introduced to bring within the tax net, certain digital transactions which did not require any physical presence in India. In other words, the introduction of SEP marks the transition from a physical presence based taxation to an economic presence based taxation.

SEP has been defined in the aforesaid Explanation to mean:

- Transaction in respect of any goods, services or property carried out by a non-resident with any person in India, including the provision of download of data or software in India, if the aggregate of payments arising from such transaction(s) during the financial year exceeds the prescribed amount; or
- Systematic and continuous soliciting of business activities or engaging in interaction with such number of users in India as may be prescribed.

It has also been provided that the above transactions or activities shall constitute SEP in India, whether or not the agreement is entered in India; or the non-resident has a residence or place of business in India or the non-resident renders services in India. Further, only so much of income as is attributable to the above transactions or activities shall be deemed to accrue or arise in India.

As a global understanding was yet to be reached based on OECD initiative to specify the threshold limit for aggregate amounts of payments arising from specified transactions and number of users, the applicability of SEP under domestic law was deferred with certain modifications. As such, the provisions of SEP were made applicable from Assessment Year 2022-23 (Financial Year 2021-22) onwards.

Although the OECD hasn't reached any consensus on the issue yet, the CBDT has now introduced a new Rule 11UD in the Income Tax Rules, 1962 prescribing the threshold limits as under:

- the aggregate of payments arising from transaction or transactions during the financial year in respect of any goods, services or property carried out by a non-resident with any person in India, including the provision of download of data or software in India, shall be INR 20 million;
- the number of users with whom systematic and continuous business activities are solicited or who are engaged in interaction shall be 300,000.

This rule shall be effective from Financial Year 2021-22.

It is pertinent to note that the provisions of SEP are part of Indian domestic tax law and shall not prevail over tax treaty provisions. As such, non-resident entities may continue to avail relief under tax treaties entered by India, wherein, the concept of Permanent

Establishment stipulates a narrower scope of taxable presence in India.



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### Hon'ble Tax Tribunal's Judgment that PBDIT can be taken as the PLI instead of PBIT if there is huge difference on account of depreciation in the matter of Aerzen Machines (India) Private Limited v. ACIT [TS-168-ITAT-2021(Ahd)-TP]

In a recent judgement, the Hon'ble Tax Tribunal held that PBDIT can be taken as the most appropriate profit level indicator ('PLI') instead of PBIT while working out the arm's length price ('ALP') of the international transaction entered into by the assessee with its Associated Enterprise ('AE'), if there is huge difference in the amount of depreciation claimed by the assessee vis-à-vis the comparable companies.

On the facts of the case, the assessee is engaged in the business of manufacturing of positive displacement blowers. The assessee determined the ALP of the transactions of purchase of goods and receipt of design & development charges by using Cost Plus Method ('CPM') as the most appropriate method ('MAM') and by adopting PBDIT as the ('PLI'). Transfer pricing officer ('TPO') made adjustment to the transfer price of all the international transactions by adopting Transactional Net Margin Method ('TNMM') as the MAM and using PBIT as the PLI for determination of the ALP.

Upon appeal by the assessee, CIT(A) upheld the additions made by the TPO except directing the AO to treat the rental income as a part of operating income while computing the PBIT of the assessee.

Before the Tribunal, the assessee contended that there is a huge difference in the amount of depreciation claimed by the assessee vis-à-vis the comparable companies and accordingly, PBDIT should be considered as the PLI while computing the operating margins instead of PBIT taken by the TPO. The assessee relied upon the order of Erhardt + Leimer (India) Pvt Ltd vs. ACIT [78 Taxman.com 258]. The assessee also contended that if the filter of 100% of the turnover on the higher and lower side is applied then two companies would be excluded based on much high turnover filter as compared to the assessee and only one company be selected as comparable company.

The Tribunal observed that Income Tax Rules and OECD Guidelines provide for adjustments to be made to comparability factors. The Tribunal also observed that the depreciation expense claimed by the assessee is significantly higher than the depreciation expense of the comparable companies and referred to decision of Erhardt + Leimer (India) Pvt Ltd vs. ACIT. The Tribunal further observed that repair and maintenance expenses cannot be equated with depreciation and the reasoning of CIT(A) that claim of higher depreciation implies less repair and maintenance expenses is unconvincing. Accordingly, the Tribunal held that the TPO should have taken PBDIT as PLI instead of PBIT while computing the ALP of the international transactions.

With regard to the second contention raised by the assessee, the Tribunal did not find any reasons to adjudicate the same as the Tribunal allowed the first contention with respect to the PLI as PBDIT in favour of the assessee.



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## Domestic Taxation

### New Rule 11UAE prescribed for computation of Fair Market Value of Capital Assets to be deemed as 'consideration' in a slump sale of business undertaking

*Notification No. 68/2021 dated May 24, 2021*

Section 50B of the Income-tax Act contains special provision for computation of capital gains in the case slump sale of one or more business undertakings. This provision has been amended by the Finance Act, 2021 with effect from the financial year 2020-21 to provide that fair market value ('FMV') of the capital assets as on the date of transfer shall be deemed to be the full value of the consideration for the purpose of computation of capital gain.

The CBDT has notified Rule 11UAE vide notification no. 68/2021 dated May 24, 2021 and prescribed the method for computing FMV of capital assets, which shall be deemed as consideration for slump sale under the provisions of section 50B.

As per the Rule, the FMV of the capital assets shall be higher of the following:

- a) the fair market value of the capital assets transferred by way of slump sale, referred to as FMV 1;
- b) the fair market value of the consideration received or accruing as a result of transfer by way of slump sale, referred to as FMV 2.

Both the FMVs are required to be calculated as on the date of slump sale.

#### FMV 1 – Sub-Rule (2) of Rule 11UAE

Fair market value under this sub-rule shall be determined in accordance with the following formula:

**FMV 1 = A + B + C + D – L, where,**

A = book value of all the assets (other than jewellery, artistic work, shares, securities, and immovable property) as appearing in the books of accounts of the undertaking or the division transferred by way of slump sale, excluding income-tax paid/refund claimed, unamortised amount of deferred expenditure;

B = FMV of jewellery and artistic work as per valuation report of a registered valuer;

C = FMV of shares and securities, to be determined as per extant Rule 11UA;

D = Value of immovable property as adopted for Stamp duty valuation purposes;

L = Book value of all liabilities as appearing in the books of accounts of the undertaking or the division transferred by way of slump sale, excluding the following amounts:

- Paid-up equity share capital;
- Dividend on equity and preference shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;
- reserves and surplus, other than those set apart towards depreciation;
- Provision for taxation other than representing the income-tax paid and refunds claimed;
- Provision for meeting liabilities other than ascertained liabilities;
- Contingent liabilities other than arrears of dividends for cumulative preference shares.

#### FMV 2 – Sub-Rule (3) of Rule 11UAE

Fair market value under this sub-rule shall be determined in accordance with the

following formula:

**FMV 2 = E + F + G + H, where,**

**E** = Value of the monetary consideration received or accruing as a result of the transfer;

**F** = FMV of non-monetary consideration received or accruing as a result of the transfer of property covered by Rule 11UA(1), such as jewellery, archaeological collections, drawings, paintings, sculptures or any work of art, shares and securities;

**G** = the price which the non-monetary consideration received or accruing as a result of transfer of property, which is not referred to in rule 11UA(1), would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer;

**H** = In case the non-monetary consideration received or accruing as a result of the transfer is represented by the immovable property, the value of immovable property adopted or assessed or assessable for Stamp duty valuation purpose.

### Conclusion

Through this rule, the government has provided valuation mechanism for non-monetary consideration on account of slump sale, while at the same time ensuring that in case of value of consideration falling below the FMV of the capital assets transferred in the slump sale, such FMV of the capital assets shall be deemed as consideration. In our view, this valuation methodology would force firms to make valuation at market value and would dissuade the practice of fixing consideration equal to the net worth of the undertaking being transferred under the slump sale.



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## Goods and Services Tax

### Notification No. 15/2021 – Central Tax dated May 18, 2021

The Central Government vide Notification No. 15/2021 – Central Tax dated May 18, 2021 has made following amendments in CGST Rules, 2017:

1. As per Rule 23(1), in case of Revocation of cancellation of registration, A registered person, whose registration is cancelled by the proper officer on his own motion, may submit an application for revocation of cancellation of registration, in FORM GST REG-21, to such proper officer, within a period of thirty days from the date of the service of the order of cancellation of registration at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

Now, the words “within such time period as extended by the Additional Commissioner or the Joint Commissioner or the Commissioner, as the case may be, in exercise of the powers provided under the proviso to sub-section (1) of section 30,” have been inserted by this notification.

Since the same amendment was made in Section 30(1) of CGST Act, 2017 vide Finance Act 2020, therefore, CGST rules are hereby amended to bring consistency in CGST Rules and CGST Act.

2. A proviso under Rule 90(3) has been inserted to provide for exclusion of time period from date of filing of GST refund claim in Form GST RFD-01 till the date of Deficiency Memo in Form GST RFD-03 from the period of 2 years as specified under Section 54(1) of CGST Act, 2017 in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies.

3. Sub-rule (5) has been inserted under Rule 90, to allow the applicant to withdraw GST refund application filed in Form GST RFD-01 by filing Form GST RFD-01W, at any time before the issuance of provisional refund sanction order in FORM GST RFD-04 or final refund sanction order in FORM GST RFD-06 or payment order in FORM GST RFD-05 or refund withhold order in FORM GST RFD-07 or notice in FORM GST RFD-08.
4. Sub-rule (6) has been inserted under Rule 90, to provide that, on submission of application for withdrawal of refund in FORM GST RFD-01W, any amount debited by the applicant from electronic credit ledger or electronic cash ledger, as the case may be, while filing application for refund in FORM GST RFD-01, shall be credited back to the ledger from which such debit was made.
5. Proviso to Rule 92(1) has been omitted, which provided for in cases where the amount of refund is completely adjusted against any outstanding demand under the Act or under any existing law, an order giving details of the adjustment shall be issued in Part A of FORM GST RFD-07.
6. In Rule 92(2), the words and letter "Part B" have been substituted with "Part A" and a proviso has been inserted under this sub rule to provide that where the proper officer or the Commissioner is satisfied that the refund is no longer liable to be withheld, he may pass an order for release of withheld refund in Part B of FORM GST RFD- 07.
7. In Rule 96(6), the words and letter "Part B" have been substituted with "Part A".
8. In Rule 96(7), the words, letters and figures, "after passing an order in FORM GST RFD-06", have been substituted with the words, letters and figures, "by passing an order in FORM GST RFD-06 after passing an order for release of withheld refund in Part B of FORM GST RFD-07".
9. In FORM GST REG-21, under the sub-heading "Instructions for submission of application for revocation of cancellation of registration", in the first bullet point "after the words "date of service of the order of cancellation of registration", the words and figures "or within such time period as extended by the Additional Commissioner or the Joint Commissioner or Commissioner, as the case may be, in exercise of the powers provided under proviso to sub-section (1) of section 30," have been inserted.
10. In Rule 138E, the words "in respect of a registered person, whether as a supplier or a recipient, who, —" have been substituted with the words „in respect of any outward movement of goods of a registered person, who, —"
11. New FORM GST RFD-07 and FORM GST RFD-01 W have been prescribed by this notification.

### Summary of key decisions in 43rd GST Council Meeting - Changes in GST Law, Procedure and Tax rates

The 43<sup>rd</sup> GST Council meeting was held on May 28, 2021. In this meeting, GST Council has provided various relaxations to taxpayers to promote ease of doing business. The key highlights of meeting are as under:

1. Vide Notification No. 19/2021 dated 01.06.2021, Government has introduced amnesty Scheme to provide relief to taxpayers regarding late fee for pending returns:

To provide relief to the taxpayers, late fee for non-furnishing FORM GSTR-3B for the tax periods from July, 2017 to April, 2021 has been reduced/waived as under:–

- i) late fee capped to a maximum of INR 500/- (INR 250/- each for CGST & SGST) per return for taxpayers, who did not have any tax liability for the said tax periods;
- ii) late fee capped to a maximum of INR 1000/- (INR 500/- each for CGST & SGST) per return for other taxpayers;

Condition: Filing of returns to be done between June 01, 2021 to August 31, 2021.

2. Vide Notification No. 19/2021, N.N. 20/2021, N.N. 21/2021 & N.N. 22/2021 dated 01.06.2021, Government has rationalized late fee imposed under section 47 of the CGST Act:

To reduce burden of late fee on smaller taxpayers, the upper cap of late fee is being rationalized to align late fee with tax liability/ turnover of the taxpayers, as mentioned in **Annexure A**.

3. COVID-19 related relief measures for taxpayers

In addition to the relief measures already provided to the taxpayers vide the notifications issued on 01.05.2021, the following further relaxations are being provided to the taxpayers:

1. Vide Notification No. No. 18/2021 and N.N. 19/2021 dated 01.06.2021, Government has provided relief in rate of interest & Waiver of Late Fee for filing of GSTR-3B has been provided, as mentioned in **Annexure B**.
2. Vide Notification No. 17/2021, N.N. 25/2021, N.N. 26/2021 and N.N. 27/2021 dated 01.06.2021 Certain other COVID-19 related relaxations have been provided, as mentioned in **Annexure C**

3. Vide Notification No. 24/2021 dated 01.06.2021, various relaxations under section 168A of the CGST Act:

Time limit for completion of various actions, by any authority or by any person, under the GST Act, which falls during the period from April 15, 2021 to June 29, 2021, to be extended upto June 30, 2021, subject to some exceptions.

*[Wherever the timelines for actions have been extended by the Hon'ble Supreme Court, the same would apply]*

4. Simplification of Annual Return for Financial Year 2020-21:

- With effect from FY 2020-21, it is proposed to have self-certification of Form GSTR-9C by taxpayers, instead of getting it certified by Chartered Accountant. Amendments in section 35 and 44 of CGST Act made through Finance Act, 2021 to be notified.

- The filing of annual return in FORM GSTR-9 / 9A for FY 2020-21 to be optional for taxpayers having aggregate annual turnover upto INR 2 Crore.

- The reconciliation statement in FORM GSTR-9C for the FY 2020-21 is mandatorily required to be filed by taxpayers with annual aggregate turnover above INR 5 Crore.

5. Vide Notification No. 16/2021 dated 01.06.2021, Retrospective amendment in section 50 of the CGST Act with effect from 01.07.2017, providing for payment of interest on net cash basis.

6. Covid relief items:

- Full Exemption from IGST has been recommended upto August 31, 2021 for the following goods, (if imported on payment basis for donating to the



government or on recommendation of state authority to any relief agency or free of cost for free distribution)

i) medical oxygen, ii) oxygen concentrators iii) other oxygen storage and transportation equipment, iv) certain diagnostic markers test kits v) COVID-19 vaccines.

Hitherto, IGST exemption was applicable only when these goods were imported "free of cost" for free distribution. The same will also be extended till August 31, 2021.

Further in view of rising Black Fungus cases, the above exemption from IGST has been extended to Amphotericin B.

- The GST rate on Diethylcarbamazine (DEC) tablets has been recommended to be reduced to 5% from 12%.
7. Clarifications/clarificatory amendments have been recommended in relation to GST rates on goods: *(Change in GST rate on goods is yet to be Notified)*
- GST rate of 12% to apply on parts of sprinklers/ drip irrigation systems falling under tariff heading 8424 (nozzle/laterals) to apply even if these goods are sold separately.
  - Leviability of IGST on repair value of goods re-imported after repairs.
8. Clarifications/clarificatory amendments have been recommended in relation to GST rates on services: *(Change in GST rate on Services is yet to be Notified)*
- Services supplied to an **educational institution** including anganwadi (which provide pre-school education also), by way of serving of food including mid-day meals under any midday meals scheme, sponsored by Government is **exempt** from levy of GST irrespective of funding of such supplies from government grants or corporate donations.
  - Services provided by way of **examination including entrance examination**, where fee is charged for such examinations, by National Board of Examination (NBE), or similar Boards, and input services relating thereto are **exempt** from GST.
  - GST on **maintenance, repair, and operations (MRO)** services in relation to **ships/vessels** proposed to be reduced from **18% to 5%**.
  - **Place of supply** of B2B MRO services proposed to be of **recipient of such services**.
  - Clarification that GST would be payable on **annuity payments received as deferred payment for construction of road**. Benefit of **exemption** would be for such annuities which are paid for the service by way of access to a road or a bridge.
  - Clarification that services supplied to a Government Entity by way of **construction of a rope-way** attract GST at the rate of **18%**.
  - To clarify that services supplied by Govt. to its undertaking/PSU by way of **guaranteeing loans** taken by such entity from banks and financial institutions is **exempt** from GST.
  - Changes proposed to insert a clear provision that **landowner promoters could utilise input tax credit (ITC)** of GST charged by developer promoters in respect of such apartments that are subsequently sold by the land promotor and on which GST is paid. The developer promotor shall be allowed to pay GST relating to such apartments any time before or at the time of issuance of completion certificate.

- To clarify that supply of service by way of milling of wheat/paddy into flour/rice to *Government/ local authority etc.* for **distribution under PDS** is **exempt** from GST if the value of goods in such composite supply **does not exceed 25%**. Otherwise, such services would attract GST at the **rate of 5%** if supplied to any person registered in GST, including a person registered for payment of TDS.



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## Corporate Law

### Relaxation on levy of additional fees in filing of certain Forms under the Companies Act, 2013 and LLP Act, 2008.

*General Circular No. 06/2021, 07/2021 and 08/2021 dated May 03, 2021*

Taking into account the difficulties which have arisen due to resurgence of COVID-19 pandemic, the Ministry of Corporate Affairs [MCA] vide General Circular No. 06/2021 dated 03.05.2021 has granted an additional time upto July 31, 2021 to companies / LLPs to file various forms like Form CHG-1, CHG-9, ADT-1, INC-22, FC-4, etc., which were / would be due for filing from 01<sup>st</sup> April 2021 to 31<sup>st</sup> May 2021, without levy of any additional fees.

Accordingly, for the above forms, which were/would be due for filing during April 01, 2021 to May 31, 2021, no additional fees shall be levied upto July 31, 2021 and only normal fees shall be payable by the company.

A similar type of relaxation has also been granted to Limited Liability Partnerships (LLPs).

### Relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013.

The MCA vide General Circular No. 07/2021 dated 03.05.2021, has allowed relaxation of time and condone the delay in filing forms related to creation / modification of charges under the Companies Act, 2013, in the manner explained below.

#### Relaxation of time:

*A. If the date of creation or modification of charge is before April 01, 2021 but the timeline for filing such form had not expired under Section 77 of the Companies Act, 2013 as on April 01, 2021:*

The period beginning from April 01, 2021 and ending on May 31, 2021 shall not be reckoned for the purpose of counting the period of 30 days, as prescribed under the Act for a company, to file form for creation / modification of charge..

In case, the form is not filed within such period, the first day after March 31, 2021 shall be reckoned as June 01, 2021 for the purpose of counting the prescribed number of thirty days, as mentioned above.

*B. If the date of creation or modification of charge falls on any date between April 01, 2021 to May 31, 2021(both days inclusive):*

The period beginning from the date of creation/modification of charge to May 31, 2021, shall not be reckoned for the purpose of counting of period of 30 days, as prescribed under the Act for a company, to file form for creation / modification of charge.

In case, the form is not filed within such period, the first day after the date of creation/modification of charge shall be reckoned as June 01, 2021 for the purpose of counting prescribed number of thirty days, as mentioned above.

It may be noted that the above referred relaxation has only been provided for filing of forms with respect to creation / modification of charge, and no such relaxation has been provided for filing of form for satisfaction of charge, and they will continue to be filed within the period prescribed under the Act.

### **Gap between two board meetings under Section 173 of the Companies Act, 2013-**

Last year, the Ministry of Corporate Affairs [MCA] vide General Circular No. 11/2020 dated 24.03.2020, had provided a one-time relaxation for two quarters i.e. April – June 2020 and July – September 2020, by way of extending the maximum time gap between any two consecutive board meetings from the existing period of 120 days to 180 days.

Due to resurgence of Covid-19, the MCA, vide General Circular No. 08/2021 dated 03.05.2021, has now provided a similar type of relaxation for two quarters i.e. April to June 2021 and July to September, 2021.

Accordingly, the gap between two consecutive board meetings during these two quarters may extend to 180 days instead of 120 days.

### **Clarification on spending of CSR funds for 'creating health infrastructure for COVID care**

In continuation with General Circular No. 10/2020 dated March 23, 2020, the MCA has further clarified that spending of CSR funds for creating health infrastructure for COVID care, establishment of medical oxygen generation and storage plants, manufacturing and supply of Oxygen concentrators, ventilators, cylinders and

other medical equipment for countering COVID-19' or such similar activities are eligible CSR activities under item nos. (i) and (xii) of Schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care, and, disaster management respectively.



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## **Regulatory**

### **Introduction to salient features of the newly enacted Industrial Relations and Labour Codes**

In order to reduce the complexity in compliance due to multiplicity of labour laws and to facilitate setting up of new enterprises and create proper environment conducive to development of business and industry in the country and for generating employment opportunities without diluting the basic aspect of safety, security and health of workers, the Government of India had codified various industrial relations and labour laws in the following enactments:

However, before these newly enacted Codes are notified for implementation, the Central Government as well the State Governments, as appropriate Governments, have to come out with the notification and also make Rules on various subjects for implementation. While the Central Government had formulated and published the draft Rules, the State Governments have not so far formulated their own Rules. As a result, the newly enacted Codes have not been notified for implementation so far.

The following are the new Codes:

## 1. The Code on Wages, 2019

This was passed by the Indian Parliament in 2019 and received the assent of the President of India on August 08, 2019.

This Code is to replace the following laws:

- The Payment of Wages Act, 1936;
- The Minimum Wages Act, 1948;
- The Payment of Bonus Act, 1965; and
- The Equal Remuneration Act, 1976

### a. Applicability of the Code

On applicability of the Code, no specific mention is made. The “applicability” refers to coverage and extent of application of various provisions of the Code etc. These will have to be derived from various provisions in the Code, in the absence of any provision on applicability, in the Code.

### b. Definition of “Employee” “Employer”

It is more or less the same as in earlier enactments. However, it is seen that the definitions in this Code which is the earliest in the recent enactments on Industrial and Labour Laws has strictly not been followed in subsequent Codes.

### c. Wage Ceiling

Wage ceiling is to be notified in respect of payment of Bonus. Neither the Code nor the draft Rules formulated by the Central Govt. prescribe the eligibility for Bonus in terms of ceiling of wages of employees as to who will be statutorily eligible for Bonus. Section 26(1) simply states that such ceiling will be as determined by the appropriate Governments by notification. These notifications have not been issued so far.

However, the Code lays down that minimum Bonus would continue to be paid at 8 and 1/3% and maximum bonus would be paid at 20% of wages as at present.

## 2. The Industrial Relations Code, 2020

This Code was passed by the Indian Parliament in the year 2020 and received the assent of the President of India on September 29, 2020.

This Code is to replace the following existing enactments:

- The Trade Unions Act, 1926;
- The Industrial Employment (Standing Orders) Act, 1946; and
- The Industrial Disputes Act, 1947.

### a. Applicability of the Code

No specific mention is made. The “applicability” refers to coverage and extent of application of various provisions of the Code etc. These will have to be derived from various provisions in the Code.

### b. Definition of “Employee” “Employer”

Comments on the Code on Wages, 2019 would more or less apply to the terms as used in this Code as well.

### c. New Definitions

Because of rationalization and clubbing of various enactments of this Code, some new definitions such as “Fixed Term Employment” have been incorporated. Even here, the definition of “Fixed Term Employment” differs from the same term used in The Social Security Code, 2020. For example, the definition of “Fixed Term Employment” as incorporated in this Code, specifically provides that in the “Fixed Term Employment”, “the

employee shall be eligible for gratuity if he renders service under the contract for a period of one year". This expression does not find a place in The Code on Social Security, 2020, as a result, some conflicts and confusion may arise in respect of determination of gratuity to an employee on "Fixed Term Employment" basis.

### 3. The Occupational Safety, Health, Working Conditions Code, 2020

This Code was passed by the Indian Parliament in the year 2020 and received the assent of the President of India on September 29, 2020.

This Code is to replace a number of related laws lying scattered across the board and having been enacted over a significant period of time, ranging from 1946 to 1996.

This Code, accordingly, is to replace the following enactments:

- The Factories Act, 1948;
- The Plantation Labour Act, 1951;
- The Mines Act, 1952;
- The Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955;
- The Working Journalists (Fixation of Rates of Wages) Act, 1958;
- The Motor Transport Workers Act, 1961;
- The Beedi & Cigar Workers (Conditions of Employment) Act, 1966;
- The Contract Labour (Regulation and Abolition) Act, 1970;
- The Sales Promotion Employees (Conditions of Service) Act, 1976;
- The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979;
- The Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981;

- The Dock Workers (Safety, Health and Welfare) Act, 1986; and
- The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

However, considering the role and responsibility of the State Governments, this Code and Rules thereunder are yet to be notified for implementation.

#### Applicability

There is a peculiar definition on applicability of this Code. In sub-section 3 of Section 1, it is stated as under:

*"It shall not apply to the offices of the Central Government, offices of the State Government and any ship of war of any nationality: Provided that the Code shall apply in case of contract labour employed through contractor in the offices of the Central Government or in the offices of the State Government, where, the Central Government or, as the case may be, the State Government is the principal employer"*

### 4. The Code on Social Security, 2020

This Code was passed by the Indian Parliament in 2020 and received the assent of the President of India on 29<sup>th</sup> September, 2020.

This Code purports to achieve amalgamation, simplification and rationalization of various provisions as presently contained in various relevant labour legislations.

This Code is to replace the following enactments:

- The Employees Compensation Act, 1923;
- The Employees' State Insurance Act, 1948;
- The Employees' Provident Funds and Miscellaneous Provisions Act, 1952;

- The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959;
- The Maternity Benefit Act, 1972;
- The Payment of Gratuity Act, 1972;
- The Cine-Workers Welfare Fund Act, 1981;
- The Building and Other Construction Workers' Welfare Cess Act, 1996;
- The Unorganised Workers' Social Security Act, 2008;

#### a. Applicability of the Code

The applicability of the Code is prescribed in Schedule to the Code. In terms of this Schedule, the following are the general provisions as are applicable to the Code.

The applicability is more or less the same as in the existing enactments, particularly, the following provisions are relevant:

##### A. The Employees Provident Fund (Covered in Chapter III of the Code)

Every establishment in which 20- or more employees are employed.

##### B. Gratuity: (Covered in Chapter V of the Code)

Every establishment in which 10 or more employees are employed and in addition it is also applicable to every Factory, Mine, Oil Fields etc, irrespective of the number of employees employed therein. It may be noted that the Contract Labour i.e., workers employed by or through a Contractor will also be covered for gratuity purpose. This inclusion is new in the new Code.

#### b. Employees State Insurance

Every establishment in which 10 or more persons are employed.

#### c. Definition of “Employee” “Employer”

The broad terms in which these terms are defined in the Code require careful consideration on a case-to-case basis. The definition of “Employee” differs from Chapter to Chapter i.e., as may be applicable to Provident Fund, Gratuity etc.

#### d. Wage Ceiling

Wage ceiling will be applicable for compulsory membership of P.F and ESI as may be notified by the Central Government from time to time. Wage Ceiling is yet to be notified by the Central Government.

*The salient features of these Codes and the Rules there under would be dealt with in subsequent issue of the Corporate Update.*



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#### Amendment to Indian Insurance Companies (Foreign Investment) Rules, 2015

*Notification G.S.R.337(E) dated May 19, 2021 issued by Department of Financial Services, Ministry of Finance*

The Indian government had made an announcement proposing an increase in the foreign investment cap in Indian insurance companies from 49% to 74% in the 2021 Budget Speech.

In order to effect the above proposal, the Ministry of Finance has notified Indian Insurance Companies (Foreign Investment) (Amendment) Rules, 2021 (“Amendment

Rules, 2021”) on May 19, 2021. The key changes made vide the Amendment Rules 2021 are as follows:

1. Foreign Investment Limit: The foreign investment (including portfolio investment) limit in an Indian insurance company has been increased from 49% under automatic route to 74%.
2. Residency requirement for directors and KMPs: Indian insurance companies with foreign investment shall be required to ensure that (a) a majority of their directors, (b) a majority of their Key Management Persons (**‘KMPs’**) and (c) at least one among the board chairperson, the managing director and the Chief Executive Officer, shall be Resident Indian Citizens.

Further, a transition period of one year has been provided to every Indian insurance company having foreign investment and existing on or before the date of commencement of the Amendment Rules, 2021, to comply with the abovementioned requirements.

3. Additional conditions for Indian Insurance Companies with foreign investment exceeding 49%:
  - a. Such companies shall retain at least 50% of their net profits for the financial year as part of their general reserves, if in the relevant financial year any dividend is paid on equity shares and for which at any time the solvency margin is less than 1.2 times the control level of solvency.
  - b. Not less than 50% of such company’s directors shall be independent directors, unless the chairperson of the Board is an independent director, in which case at least one-third of the Board shall comprise of independent directors.

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**Annexure A**

TAXPAYER	FORM	Aggregate Turnover in Previous Year	Maximum Late fees Per Return (CGST & SGST)
<b>Taxpayer with NIL Tax liability</b>	GSTR-3B/ GSTR-1/GSTR-4	Any Other	₹ 500.00
<b>Regular Taxpayer</b>	GSTR-3B/ GSTR-1	Upto INR 1.5 Crore	₹ 2,000.00
<b>Regular Taxpayer</b>	GSTR-3B/ GSTR-1	1.5 Crore TO 5 Crore	₹ 5,000.00
<b>Regular Taxpayer</b>	GSTR-3B/ GSTR-1	Above 5 Crore	₹ 10,000.00
<b>Composition Taxpayer</b>	GSTR-4	Any Other	₹ 2,000.00
<b>TDS</b>	GSTR-7	Any Other	₹ 2,000.00

All the above proposals to be made applicable from June 2021 onwards & F.Y 21-22 onwards for GSTR-4.

NOTE: In the above table, INR 1.5 crore is equivalent to INR 15 million and INR 5 crore is equivalent to INR 50 million.



**Annexure B**

Aggregate Turnover	Tax Period	Reduced rate of Interest					Late Fees Relaxation
		First 15 Days from due date	Next 15 days	Next 15 days	Next 15 days	From 61st Day Onwards	
Up to INR 5 Crore	Mar-21/ Quarter Ended Mar-21	Nil	9%	9%	9%	18%	60 days
Up to INR 5 Crore	Apr-21	Nil	9%	9%	18%	18%	45 days
Up to INR 5 Crore	May-21	Nil	9%	18%	18%	18%	30 days
More than INR 5 Crore	Mar-21	9%	18%	18%	18%	18%	15 days
More than INR 5 Crore	Apr-21	9%	18%	18%	18%	18%	15 days
More than INR 5 Crore	May-21	9%	18%	18%	18%	18%	15 days
Return Under Composition Scheme	Quarter Ending Mar-21	Nil	9%	9%	9%	18%	30 days

NOTE: In the above table, INR 5 crore is equivalent to INR 50 million

**Annexure C**

Particulars	Period	Relaxation
GSTR-1/IFF	May 2021	Due date extended by 15 days
GSTR-4	F.Y. 2020-21	Due date extended to 31st July 21
ITC-04	QE March 2021	Due date extended to 30th June 21
Application of Rule 36(4) for availing ITC	April, May and June 2021	To be applied Cumulatively in June 21 GSTR 3B
Filing of returns through EVC in case of Companies/LLP	Till 31st August 2021	Returns to be filed using EVC along with DSC

## Important dates to remember

Particulars	Date
<b><u>Direct Taxes</u></b>	
Issuance of TDS certificate for tax deducted under section 194-IA, 194-IB and 194M for April, 2021	14.06.2021
Payment of First Instalment of Advance Tax for FY 2021-22	15.06.2021
Issuance of Quarterly TDS Certificate (other than salary) for quarter ending March, 2021	15.06.2021
Furnishing challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB and 194M for the month of May, 2021	30.06.2021
Payment of tax under the Direct Tax Vivad se Vishwas Act, 2020 without additional charge	30.06.2021
<u>Note:</u> For other items, important dates have already been indicated in our email of May 26, 2021 on "Extension of Compliance Timelines"	
<b><u>Indirect Taxes</u></b>	
Filing of GSTR-1 for the month of May, 2021 (For aggregate turnover upto INR 50 million)	26.06.2021
Filing of GSTR-1 for the month of May, 2021 (For aggregate turnover more than INR 50 million)	26.06.2021
Filing of GSTR-3B for the month of May, 2021 (For aggregate turnover upto INR 50 million)	05.07.2021
Filing of GSTR-3B for the month of May, 2021 (For aggregate turnover more than INR 50 million)	20.06.2021

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