

Newsletter April 2021



Vishnu Daya & Co. LLP
Chartered Accountants

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Direct Tax - Circulars

A. Circulars issued by CBDT in the month of March 2021

1. **CBDT addresses the issue of residential status of individuals in India due to COVID-19**

Circular No. 02 of 2021 dated 3rd March 2021

CBDT issues Circular No. 2/2021 to address the issue of forced stay of individuals in India due to COVID-19. CBDT prescribes Form-NR, to obtain the details for examining whether any specific or general relaxation is required to understand the double taxation situation of a taxpayer. Deadline to file Form-NR is March 31, 2021, required to be filed by individuals aggrieved of double taxation due to forced stay with PCIT (International Taxation). CBDT discusses domestic law, treaty law, and international experience on question of residential status for previous year 2020-21 due to forced stay that several individuals have faced in the recent past.

[Click here](#) to read / download the circular.

2. **CBDT clarifies, AO to give effect to DA's settlement orders under Vivad se Vishwas Act, 2020**

Circular No. 03 of 2021, dated 4th March 2021

CBDT issues Circular to clarify that the Assessing Officer to give effect to the order passed by the Designated Authority under Vivad se Vishwas Act, 2020. Based on the representation received from the field authorities, recognizes the absence of provision allowing Assessing Officer to pass orders consequent to settlement of tax arrears by the Designated Authority under Vivad se Vishwas Act, 2020.

[Click here](#) to read / download the circular.

3. **CBDT clarifies on classification of 'search case' under Vivad se Vishwas Act, 2020**

Circular N. 04 of 2021, dated 23rd March 2021.

CBDT issues clarification on classification of a case as 'search case' under Vivad se Vishwas Scheme, modifies FAQ 70 (providing that assessment framed u/s 143(3)/144 in case of an assessee based on search on any other taxpayer) issued by CBDT in Circular 21 of 2020 dt. Dec 4, 2020. It acknowledges representations received from various stakeholders seeking clarity. It clarifies that 'search case' means "*an assessment or reassessment made u/s 143(3)/144/147/153A/153B/153C/158BC in case of person referred in Sec.153A/153C or Sec.158BC/158BD on the basis of search initiated u/s 132 or requisition made u/s 132A.*"

[Click here](#) to read / download the circular.

4. **CBDT notifies extension on certain reporting requirements under Form 3CD until 31.03.2022**

Circular No. 05 of 2021, dated 25th March 2021.

Due to the situation of COVID-19 across the country, CBDT extends the suspension of reporting requirement under clauses 30C and 44 of Form 3CD i.e. tax audit report u/s 44AB read with Rule 6G. The reporting requirement has been kept in abeyance until March 31, 2022.

[Click here](#) to read / download the circular.



5. **CBDT condones delay in filing of Forms 10BB for entities u/s 10(23C)**

Circular No. 06 of 2021, dated 26th March 2021

CBDT issues circular for condoning delay in filing of Form 10BB applicable to entities covered u/s 10(23C) for AYs prior 2018-19. The condonation is made pursuant to receipt of applications in this regard. CBDT Circular comes into effect on March 31, 2021

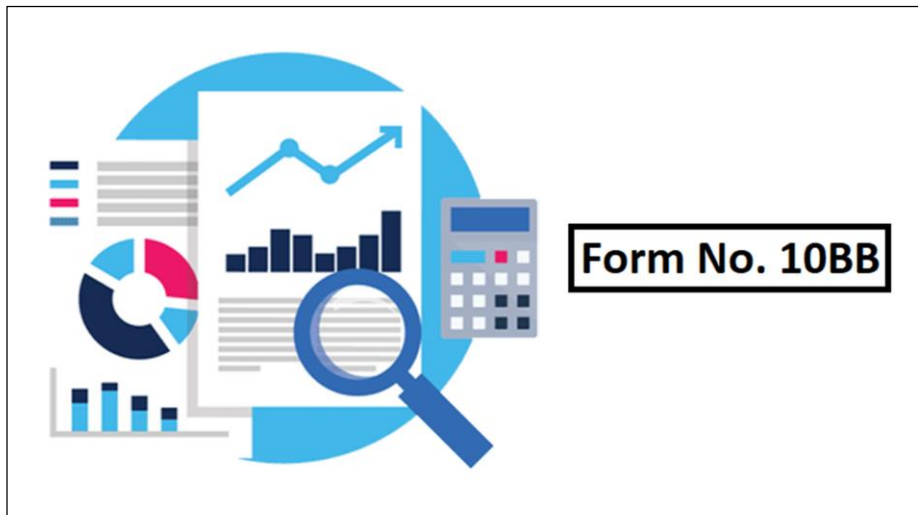
[Click here](#) to read / download the circular.

6. **CBDT condones delay in filing of Forms 10B for trusts u/s 12A**

Circular No. 07 of 2021, dated 26th March 2021

CBDT issues circular for condoning delay in filing of Form 10B applicable to entities covered u/s 12A for AYs prior 2018-19. The condonation is made pursuant to receipt of applications in this regard. CBDT Circular comes into effect on March 31, 2021.

[Click here](#) to read / download the circular.



Direct Tax - Notifications

B. Notifications issued by CBDT in the month of March 2021

1. **CBDT notifies Rule for calculation of perquisite u/s 17(2)(viia) w.e.f. April 1**

Notification no. 11/2021, dated 5th March 2021.

CBDT inserts Rule 3B in the Income-tax Rules for valuation of perquisite under Sec. 17(2)(viia), to come into effect from April 1, 2021. Prescribes formula for calculation of annual accretion by way of interest, dividend or any other amount of similar nature to the balance or to the credit of the fund or scheme on the amount contributed by the employer to: (a) in a recognised provident fund; (b) in the scheme referred to in sub-section (1) of section 80CCD; and (c) in an approved superannuation fund.

[Click here](#) to read and download the notification.

2. **CBDT notifies amendments in Form 12BA and TDS return in Form 24Q w.e.f. April 1.**

Notification no. 15/2021, dated 11th March 2021.

CBDT notifies amended Form 12BA under Rule 26A(2)(b), additionally requires employer to furnish details of (i) stock options allotted or transferred by employer being an eligible start-up referred to in section 80-IAC, (ii) Contribution by employer to fund and scheme taxable under section 17(2)(vii) and (iii) Annual accretion by way of interest, dividend etc. to the balance at the credit of fund and scheme referred to in section 17(2)(vii) and taxable under section 17(2)(viia). It Includes new field to indicate whether employee has opted for concessional tax regime u/s 115BAC in part B of Form 16. It also notifies amended Form 24Q seeking aforesaid details. The new forms shall be applicable w.e.f. April 1, 2021.

[Click here](#) to read and download the notification.

3. **CBDT notifies to enhance the scope of the transactions to be reported under Statement of Financial Transaction**

Notification no. 16/2021, dated 12th March 2021

In order to ease the filing of IT returns, details of capital gains from listed securities, dividend income, and interest from banks, post office, etc. earned by the taxpayer during the year will be pre-filled in the ITR.

[Click here](#) to read and download the notification.

4. **CBDT notifies Rule 29BA and Form 15E to apply for certificate u/s 195 w.e.f. April 1**

Notification no. 18/2021, dated 16th March 2021.

CBDT notifies insertion of Rule 29BA for making an application for grant of certificate determining appropriate proportion of sum chargeable to tax in case of payment made to non-residents under sub-section (2) and (7) of Sec. 195, w.e.f. April 1, 2021. It notifies Form 15E to be filed electronically to be examined by AO after considering various factors.

[Click here](#) to read and download the notification.

5. **CBDT notifies Rules and Forms for approvals, registration for exemptions/deductions for a fund, trust, university, medical/educational institution, hospital.**

Notification no. 19/2021 dated 26th March 2021.

CBDT notifies amendments in IT Rules and Forms for various exemption/ deduction provisions w.e.f. April 1, 2021. It inserts Rule 2C for grant of approval of a fund, trust, university, medical/educational institution, or hospital u/s 10(23C). It inserts Rule 5CA for

intimation by company, research association, university, college or other institution u/s 35(1). It substitutes Rule 11AA for seeking approval by institutions u/s 80G(5). Also substitutes Rule 17A for registration of a charitable or religious trust or institution u/s 12A. Inserts Rule 18AB on furnishing statement of particulars and certificate u/s 35(1A) and 80G(5) to the authorities and donors, respectively by concerned entities. The Rules contain requirements and conditions to be fulfilled for claiming exemptions and prescribe the procedure to be complied with along with applicable forms.

[Click here](#) to read and download the notification.

6. **CBDT notification extending due-dates for Aadhar-PAN linking, Sec.148 notice, EL statements**

Notification no. 20/2021 dated 31st March 2021

CBDT issues notification extending due date for linking of Aadhaar number with PAN to June 30, 2021 and issuance of notice u/s 148, passing order u/s 144C pursuant to directions of DRP and processing of Equalisation Levy statements to April 30, 2021.

[Click here](#) to read and download the notification.

7. **CBDT notifies ITR Forms for AY 2021-22**

Notification no. 21/2021 dated 31st March 2021

CBDT notifies ITR Forms for AY 2021-22 by IT (7th Amendment) Rules, 2021 w.e.f. April 1, 2021.

[Click here](#) to read and download the notification.



Direct Tax - Legal Rulings

C. Domestic and International Tax Rulings in the month of March 2021

1. **CSR provision without 'certainty' on end use, unascertained liability for MAT computation**

Pawan Hans Ltd [TS-205-ITAT-2021(DEL)]

Delhi ITAT holds that provision for CSR expenditure made by assessee (public sector company) for AY 2014-15 is an unascertained liability, liable to be added back for computation of book profits u/s 115JB.

[Click here](#) to read and download the copy of the ruling.

2. **Payment for software license with restricted use, not Royalty**

Reliance Corporate IT Park Ltd [TS-215-ITAT-2021(Mum)]

Mumbai ITAT holds that software license payment made by assessee (an Indian Co. providing support services) to a UK-company for AY 2014-15, doesn't constitute royalty under India-UK DTAA, rules that TDS u/s 195 was not applicable.

[Click here](#) to read and download the copy of the ruling.

3. **Holds fees paid to lawyers, CAs in Australia, USA not FTS, Business Income. Deletes disallowance u/s Sec.40(a)(i)**

Sundaram Business Ltd [TS-193-ITAT 2021(CHNY)]

Chennai ITAT deletes disallowance u/s 40(a)(i) w.r.t. legal and professional fees paid by assessee-company without withholding tax u/s 195 holding them as non-taxable as fee for technical services or business income.

[Click here](#) to read and download the copy of the ruling.

4. **Lays twin conditions for classifying payment as 'reimbursement,' for TDS liability u/s 195**

BYK Asia Pacific Pte. Limited [TS-203-ITAT-2021(PUN)]

Pune ITAT holds that sums reimbursed by Indian branch/PE of a Singapore-based company to its head office not liable to TDS u/s 195.

[Click here](#) to read and download the copy of the ruling.

5. **Monitoring fees on forex loan akin to interest under India-Germany DTAA, not liable to TDS u/s 195**

Sisecam Flat Glass India Ltd [TS-179-ITAT-2021(Kol)]

Kolkata ITAT deletes disallowance u/s 40(a)(ia) for non-deduction of tax at source on monitoring fees paid by assessee-company towards servicing of loan and other services in relation to loan taken from DEG Bank, Germany.

[Click here](#) to read and download the copy of the ruling.

6. **Holds corporate guarantee as an international transaction. Follows Redington ruling**

Ramky Enviro Engineers Ltd [TS-157-ITAT-2021(HYD)-TP]

Hyderabad ITAT holds corporate guarantee as international transaction for AY 2011-12. Relies on host of rulings wherein it was held that the corporate guarantee provided by the assessee comes within the scope and ambit of 'international transaction' by virtue of Explanation I (c) to section 92B.

[Click here](#) to read and download the copy of the ruling.

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7. **Delay in realization of AE-receivables separate international transaction, imputes interest cost**

Doosan Power Systems India Pvt Ltd [TS-117-ITAT-2021(CHNY)-TP]

Chennai ITAT holds delay in realization of receivables from AE beyond normal credit period constitutes a separate international transaction for assessee (engaged in the business of providing engineering design and related services to its overseas group companies) for AY 2011-12.

[Click here](#) to read and download the copy of the ruling.

8. **Commission paid by Puma to NR-agents for purchase orders outside India not liable to TDS u/s 195**

Puma Sports India P. Ltd [TS-221-HC-2021(KAR)]

Karnataka HC holds that no tax is deductible u/s 195 on commission paid by Puma India (assessee-company) to its overseas associated enterprise for placing orders with manufacturers outside India, upholds ITAT order deleting disallowance u/s 40(a)(i).

[Click here](#) to read and download the copy of the ruling.

9. **Allows working-capital adjustment, relevant data of comparables available. Distinguishes Mobis India ruling**

Cavium Networks India Pvt Ltd [TS-93-ITAT-2021(HYD)-TP]

Hyderabad ITAT adjudicates on TP-adjustment on account of margin on free of cost assets received from AE, working capital adjustment, comparables selection for assessee rendering software development services for AY 2015-16.

[Click here](#) to read and download the copy of the ruling.

10. **Distinguishes between after-sales exports and sourcing-service exports. rejects aggregated internal TNMM approach**

Piaggio Vehicles Pvt Ltd [TS-137-ITAT-2021(PUN)-TP]

Pune ITAT adjudicates following for AY 2013-14: Holds transaction relating to export of services spares to AEs and non-AEs (used in motor vehicles manufactured and sold by assessee), benchmarked using internal TNMM by assessee, to be at ALP. For transaction of sourcing and export of spares/components only to AEs (used by AEs for their manufacturing activities) - remits ALP determination.

[Click here](#) to read and download the copy of the ruling.

11. **Accepts assessee's internal-TNMM over TPO's external-TNMM for jeweller's import transactions. Follows earlier orders**

SB & T Designs Ltd [TS-91-ITAT-2021(Mum)-TP]

Mumbai ITAT accepts assessee's internal TNMM as MAM against TPO's external TNMM for determining ALP for international transaction of imports for an assessee (engaged in the business of importing raw materials like diamond, gold, color stones from its AE) for AY 2012-13.

[Click here](#) to read and download the copy of the ruling.

12. **Directs separate benchmarking for trading and manufacturing activities. Restricts TP-adjustment to international-transaction**

Stauff India Pvt Ltd [TS-101-ITAT-2021(PUN)-TP]

Pune ITAT directs separate and independent benchmarking by applying TNMM for separate set of activities viz., manufacturing and trading, remits treatment of provision for slow moving stock, restricts TP adjustment to international transaction for AY 2012-13.

[Click here](#) to read and download the copy of the ruling.

13. Sec. 206AA not above beneficial treaty provision. Approves 10% TDS on remittance to Czech Republic

Jyoti Limited [TS-198-ITAT-2021(Ahd)]

Ahmedabad ITAT allows assessee's appeal, holds withholding of tax as per the treaty rate as correct and that Sec. 206AA (which provides for higher TDS rate of 20% in absence of PAN) cannot override beneficial treaty rate.

[Click here](#) to read and download the copy of the ruling.

14. Fees paid by LG for advertising, marketing in ICC events, not 'Royalty'. Follows PILCOM

LG Electronics India Private Ltd [TS-111-AAR-2021]

AAR rules that LG Electronics' (Assessee-Applicant) payment for obtaining promotional, advertising, marketing and other commercial rights in connection with ICC events was not 'royalty' under India-Mauritius DTAA, however holds assessee liable for TDS u/s 194E on payments made in respect of games played in India.

[Click here](#) to read and download the copy of the ruling.

15. Loss in value of shareholding due to capital reduction by subsidiary, allowable as business loss

GHCL Ltd [TS-189-ITAT-2021(Ahd)]

Ahmedabad ITAT allows loss of Rs. 99.89 Cr. arising due to capital reduction by subsidiary company as a business loss.

[Click here](#) to read and download the copy of the ruling.

16. Opening new Cafes using borrowed funds - expansion, not 'extension' u/s 36(1)(iii). Allows interest expenditure

Coffeeday Global Ltd [TS-220-HC-2021(KAR)]

Karnataka HC deletes disallowance for AY 2010-11 on interest on capital borrowed for setting up Coffee day outlets, holds it is expansion of business, not extension under proviso to Sec. 36(1)(iii).

[Click here](#) to read and download the copy of the ruling.

17. Rejects revenue recognition based on progressive billing of incomplete contracts

UHDE India Pvt. Ltd [TS-194-ITAT-2021(Mum)]

Mumbai ITAT allows assessee's appeal for AY 2008-09, deletes addition made due to change in basis of revenue recognition from construction contracts and allows expenditure incurred for reconfiguring leased space to accommodate more employees as revenue in nature.

[Click here](#) to read and download the copy of the ruling.

18. Rejection of share-valuation on differences in projected and actual figures, unjustified

Rockland Diagnostics Services Pvt. Ltd [TS-114-ITAT-2021(DEL)]

Delhi ITAT holds that Revenue was not justified in rejecting assessee-company's share-valuation report under DCF method for AY 2015-16 merely on the ground that the projected results did not match the actual results.

[Click here](#) to read and download the copy of the ruling.

19. Refundable Security Deposit not consideration for transfer. Not liable for TDS u/s 194-IA

Prestige Estates Projects Ltd [TS-126-ITAT-2021(Bang)]

Bangalore ITAT holds that assessee-company (a real estate developer) cannot be held to be an assessee-in-default for non-deduction of tax at source u/s 194-IA (applicable to transfer of immovable property) during AY 2014-15.

[Click here](#) to read and download the copy of the ruling.

20. Sum received as security deposit and lease-rentals, not 'loan/advance' u/s 2(22)(e)

Jamuna Vernekar [TS-159-HC-2021(KAR)]

Karnataka HC rejects taxability of sum received as security deposit and lease rentals from a company (in which assessee held beneficial interest) as deemed dividend in the hands of assessee-individual for AY 2007-08, holds that amounts received by assessee was not 'loan or advance' within the meaning of Sec.2(22)(e).

[Click here](#) to read and download the copy of the ruling.

21. Advance received against sale of property rights not taxable u/s 2(22)(e)

Today Hotels Pvt. Ltd [TS-134-ITAT-2021(DEL)]

Delhi ITAT holds that advance received for sale of property rights, being in nature of trade advance cannot be taxed as deemed dividend u/s 2(22)(e) in case of assessee-individual for AY 2012-13.

[Click here](#) to read and download the copy of the ruling.

22. Year of possession of built-up area, not execution of JDA, relevant for transfer u/s 2(47)

N. A. Haris [TS-94-ITAT-2021(Bang)]

Bangalore ITAT holds that transfer u/s 2(47) for AY 2012-13 takes place in the year of handing over possession of constructed area to assessee, not in year of entering into JDA with developer.

[Click here](#) to read and download the copy of the ruling.

23. Investments in India by non-resident through remittance from abroad, non-taxable

Iqbal Ismail Virani TS-164-ITAT - 2021(PAN)]

Panaji ITAT deletes addition made u/s 68/69 in the hands of assessee-individual (non-resident) for AY 2014-15, holds that once it is established that the source of money for acquisition of property represent remittance from abroad from the assessee himself, "*it is beyond the scope of jurisdiction of the Assessing Officer to go into the source of income earned outside taxable territories of India...*".

[Click here](#) to read and download the copy of the ruling.

24. Income derived by NR for services performed outside India, not taxable u/s 5(2)

Venkata Rama Rao [TS-145-ITAT-2021(HYD)]

Hyderabad ITAT holds that foreign allowances received by assessee-individual (a non-resident) in respect of services performed in Netherlands during AY 2014-15 cannot be taxed in India. Assessee, an employee of M/s IBM India Pvt. Ltd., had received allowances in lieu of service performed outside India.

[Click here](#) to read and download the copy of the ruling.

25. Upholds re-characterisation of reimbursement as provision of intra-group services. Remits determination of mark-up.

Tata Coffee Limited [TS-138-ITAT-2021(Bang)-TP]

Bangalore ITAT upholds re-characterisation of reimbursement of expenses as provision of intra-group services but remits determination of mark-up percentage for AY 2010-11. Assessee who is engaged in the business of growing, curing of coffee and tea, intended to acquire an overseas company and thus incurred expenses on carrying out due-diligence exercises.

[Click here](#) to read and download the copy of the ruling.

26. Allows discount on ESOP to Mahindra Lifespace u/s 37(1). Follows Biocon

Mahindra Lifespace Developers Ltd [TS-112-ITAT-2021(Mum)]

Mumbai ITAT holds that discount on ESOP was allowable as deduction u/s 37(1), follows Karnataka HC ruling Biocon Ltd.

[Click here](#) to read and download the copy of the ruling.

27. Medical Council's prohibition of freebies to doctors inapplicable to pharma companies. Allowable u/s 37

ICARUS Health Care P Ltd [TS-107-ITAT-2021(CHNY)]

Chennai ITAT allows deduction u/s 37(1) to assessee (pharma company) for AY 2014-15 in respect of expenses incurred by way of gifts to doctors.

[Click here](#) to read and download the copy of the ruling.



Direct Tax/ PF / ESI Compliance due dates during the month of April 2021

Due date	Form	Period	Comments
07.04.2021	Challan - ITNS-281	March 2021	Payment of TCS collected in March 2021
14.04.2021	TDS Certificate	February 2021	Due date for issue of TDS Certificate for tax deducted under Section 194IA / 194IB / 194M in the month of February, 2021
15.04.2021	Electronic Challan cum Return (PF)	March 2021	E-payment of Provident Fund
15.04.2021	ESI Challan	March 2021	ESI payment
15.04.2021	Form No. 3BB	March 2021	Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of March, 2021
15.04.2021	Form no. 15CC	January to March 2021	Quarterly statement in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for quarter ending March, 2021.
30.04.2021	Outstanding payments to MSMEs	October 2020 to March 2021	A half-yearly return with the registrar for outstanding payments to Micro or Small Enterprises.
30.04.2021	Deposit of TDS Amount	January to March 2021	Due date for deposit of TDS when Assessing Officer has permitted quarterly deposit of TDS under section 192, 194A, 194D or 194H
30.04.2021	Form 24G	March 2021	Where TDS/TCS has been paid without the production of a challan by an office of the Government, form 24G to be furnished.
30.04.2021	TDS Challan-cum-statement	March 2021	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194 IB, 194M
30.04.2021	Deposit of TDS	March 2021	Due date for deposit of Tax deducted by an assessee other than an office of the Government
30.04.2021	Form 61	October 2020 to March 2021	Due date for e-filing of a declaration in Form No. 61 containing particulars of Form No. 60 received during the period October 1, 2020 to March 31, 2021
30.04.2021	Form 15G / 15H	January to March 2021	Due date for uploading declarations received from recipients in Form. 15G/15H during the quarter ending March, 2021

MCA Updates - April 2021

Auditors report to confirm “audit trail” use for FYs commencing on or after April 1, 2022

MCA amends Companies (Audit and Auditors) Rules, 2014 to provide that the requirement introduced vide a recent amendment making additions to “Other Matters to be included in auditor’s report” which inter alia mandates auditors to comment on whether a company has used the software with a feature of recording “audit trail” shall be applicable in respect of FYs commencing on or after April 1, 2022.

Separately under the newly introduced proviso to Rule 3(1) of Companies (Accounts) Rules, states that *“Provided for the financial year commencing on or after 1st day of April, 2022 (instead of 1st day of April, 2021), every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled.*

MCA Reduces penalty for non-compliance with unpaid dividend, valuation provisions w.e.f. March 24

MCA appoints March 24, 2021 as the date on which provisions pertaining to reduction of penalty for default in complying with requirements of Section 124 (Unpaid Dividend Account) and Section 247 (Valuation by Registered valuers) introduced vide the Companies (Amendment) Act, 2020 would come into force.

It States that if a company fails to comply with any of the requirements specified in Section 124, such company shall be liable to a penalty of Rs. 1 lakh (Rs. 5 lakh earlier) and in case of continuing failure, with a further penalty of Rs. 500 for each day after the first during which such failure

continues, subject to a maximum of Rs. 10 lakh (against Rs. 25 lakh earlier).

Further specifies that every officer of the company who is in default shall be liable to a penalty of Rs. 25,000 (Rs. 1 lakh earlier) and in case of continuing failure, with a further penalty of Rs. 100 for each day after, subject to a maximum of Rs. 2 lakh (previously, Rs. 5 lakh).

It further specifies that if a valuer contravenes the provisions of Sec. 247 or the rules made thereunder, the valuer shall be liable to a penalty of Rs. 50,000 (which was earlier extendible to Rs. 1 lakh).

MCA Substantially amends Companies Act Schedule III, Mandates several additional disclosures under financial statements

MCA makes a plethora of amendments to Schedule III of Companies Act, 2013 w.e.f. April 1, 2021;

Mandates disclosure of -

- (i) shareholding of promoters (as per promoter name, no. of shares, % of total shares etc.),
- (ii) trade payables & receivables ageing schedule respectively (requiring bifurcation on 'outstanding for' periods from the due date of payment of - less than 1 year, 1-2 years, 2-3 years & more than 3 years),
- (iii) “reconciliation of the gross and net carrying amounts of each class of assets...”,
- (iv) corporate social responsibility (divided into amount required to be spent, expenditure incurred, shortfall at the end of the year, nature of CSR activities etc.),
- (v) Loans or Advances granted to promoters, directors, KMPs and the related parties (further divided into amount of loan or advance in the nature of loan outstanding

- & % to the total loans and advances in the nature of loans),
- (vi) details of benami property held (bifurcated into details of beneficiaries, amount, year of acquisition of such property etc),
 - (vii) relationship with struck off companies (bifurcated into name, nature of transactions, balance outstanding etc.),
 - (viii) disclosure of eleven ratios (such as current ratio, debt-equity ratio, inventory turnover ratio, net profit ratio, return on investment, return on capital employed etc.),
 - (ix) undisclosed income, i.e. "details of any transaction not recorded in the books of accounts that has been surrendered or disclosed as income during the year in the tax assessments...unless there is immunity for disclosure under any scheme",
 - (x) details of crypto currency/ virtual currency (bifurcated into profit or loss on transaction involving such currency, amount of currency held as at reporting date, deposits or advances from any person for the purpose of trading such currency);

Lastly, also mandates several other disclosures such as, ageing schedule for Capital WIP, wilful defaulter, registration of charges or satisfaction with ROC, compliance with number of layers of companies, compliance with approved scheme(s) of arrangements, utilization of borrowed funds and share premium, title deeds of Immovable property not held in name of the company etc.

Straight Through Process e-forms to be scrutinised by Central Scrutiny Centre w.e.f. March 23

MCA establishes Central Scrutiny Centre ('CSC'), which shall be located at the Indian Institute of Corporate Affairs, Gurgaon.

The CSC shall function under the administrative control of the e-governance Cell of MCA.

MCA Notifies that w.e.f. March 23, 2021, the CSC shall carry out scrutiny of straight Through Process e-forms filed by companies with the RoC

and CSC to forward its findings to the concerned RoC for further necessary action.

MCA Notifies provisions regarding remuneration to Independent and Non-Executive Directors

MCA appoints March 18, 2021 as the date on which provisions pertaining to Managerial Remuneration introduced vide Companies (Amendment) Act, 2020 would come into force.

As per the amendment to Section 149 and Section 197 of Companies Act, 2013, if a public company has no profits or its profits are inadequate, an Independent Director may receive remuneration, exclusive of any fees payable u/s 197, in accordance with Schedule V.

Further, amended Schedule V provides a revised quantum of remuneration payable to a 'Managerial Person' or 'Other Directors' which includes Independent and Non-Executive Directors.

Accordingly, the limit of yearly remuneration payable to other Directors shall be Rs. 12 lakhs where a company's effective capital is negative or less than 5 Cr.

If the effective capital is Rs. 250 Cr. and above, other Directors' remuneration per year shall not exceed Rs. 24 lakh plus 0.01% of the effective capital in excess of Rs. 250 Cr.

OPCs, Small Companies to file Annual Return in Form MGT-7A from FY 2020-21

In line with the amendment to Section 92, MCA amends the Companies (Management and Administration) Rules, 2014 to inter alia state that from FY 2020-21, every OPC and Small Company, who shall file their annual return in Form No. MGT-7A (Abridged Annual Return for OPCs and Small Companies).

MCA Does away with the requirement of filing extract of Annual Return (Form MGT-9). Further, under the Rule 20 (Voting through electronic means), adds explanation for expressions like 'agency', 'cyber security', 'electronic voting system', 'remote e-voting' and 'voting by electronic means'; Specifies that for Rule 20,

'agency' means the NSDL or any other entity approved by MCA subject to certain conditions, and 'remote e-voting' means the facility of casting votes by a member using an electronic voting system from a place other than the venue of general meeting.

MCA notifies amendments to Annual Return provisions w.e.f. March 5

MCA notifies amendments to Section 92 (Annual Return) of Companies Act, 2013, introduced vide Companies (Amendment) Act, 2017, w.e.f. March 5, 2021.

Consequent to the amendment, companies would not be required to provide particulars of their indebtedness in their Annual Returns.

Further, the amendment also exempts companies from providing details pertaining to Foreign Institutional Investors' names addresses, countries of incorporation, registration and percentage of shareholding held by them.

The amendment also inserts a proviso to Sec. 92(1), which envisages that the Central

Government may prescribe abridged form of annual return for One Person Company, small company and other class or classes of companies

Due dates:

The following to be completed during April 2021:

- The Directors to complete their DIN KYC through web DIR 3 KYC or in case DIN is allotted during FY 2020-21 then e-form DIR 3 KYC to be filed.
- Outstanding dues to MSME Vendors as on March 31, 2021 to be reported in form MSME with the details of amount due, PAN of the vendors and reasons for details within 30th April 2021.
- Directors to disclose in the first board meeting of the FY their interest in other entities u/s 184 of the Companies Act in form MBP 1 to all the companies in which he/she is a director along with the declaration in Form DIR 8.



FEMA UPDATES

1. **Export Data Processing and Monitoring System (EDPMS) Module for 'Caution/De-Caution Listing of Exporters' - Review**

- In connection with Para 4 of Statement on Development and Regulatory Policies issued on October 09, 2020, RBI has decided to withdraw the existing Paras 3(1)(i) and 3(1)(ii) of A.P. DIR Circular No. 74 dated May 26, 2016 on Module for 'Caution/De-Caution Listing of Exporters' in EDPMS. The said paras are withdrawn with a intent to make system more exporter friendly and equitable.
- As per revised procedure, an exporter would be caution-listed by RBI based on recommendations of AD Bank concerned, depending upon the exporters track record with AD Bank and investigative agencies. The AD Bank would make recommendations in this regard to the Regional Office concerned of the Foreign Exchange Department of RBI in case the exporter has come to adverse notice of Enforcement Directorate (ED)/Central Bureau of Investigation (CBI)/Directorate of Revenue Intelligence (DRI)/any such other law enforcement agency and/or exporter is not traceable and/or is not making sincere efforts to realize the exports proceeds.
- AD Bank would make recommendations to the Regional office of the RBI for de-caution listing an exporter as per the laid procedure.
- The procedural aspects of handling shipping documents of caution-listed exporters by the AD Banks as outlined in para 3.2 of circular *ibid*, remain unchanged.

- Master Direction 16/2015 dated January 1, 2016 is updated to reflect the above changes.

2. **Guidelines on Regulation of Payment Aggregators and Payment Gateways**

RBI issued following new guidelines on regulation of Payment Aggregators and Payment Gateways:

1. Definition and applicability related

- 1.1. The circular is applicable to online Payment Aggregators (PAs) and Payment Gateways (PGs). The guidelines seek to regulate the activities of online PAs while providing baseline technology-related recommendations to PGs.
- 1.2. In the case of bank PAs, there is no requirement of authorisation; they shall ensure compliance with the guidelines by September 30, 2020 (as extended vide circular DPSS.CO.PD.No.1897/02.14.003/2019-20 dated June 04, 2020). For non-bank PAs, the instructions will come into force from the date of their authorisation, subject to the submission of application for authorisation before the end date of June 30, 2021.
- 1.3. The circular is also applicable to e-commerce marketplaces that are undertaking direct payment aggregation; e-commerce marketplaces availing the services of a PA shall be considered as merchants.
- 1.4. The circular is not applicable on 'Delivery vs. Payment' transactions but addresses the transactions where the payment is made in advance

while the goods are delivered in a deferred manner.

2. Authorisation, capital and net-worth related

- 2.1. Banks maintaining the escrow account/s need not monitor the net-worth of the PA.
- 2.2. For existing non-bank PAs, the CA certificate of net-worth evidencing that the requirement of net-worth is ensured (as on March 31, 2021) will be required to be submitted to RBI at the time of application for authorisation (in case of an existing entity desirous of applying before March 31, 2021 a similar certificate shall be submitted as on the nearest half-year ending date). Newly incorporated non-bank entities which may not have an audited statement of financial accounts shall submit a certificate from their CA regarding the current net-worth along with provisional balance sheet.

3. Governance related

- 3.1. The Promoters / Promoter Groups, shall conform to the Reserve Bank's 'fit and proper' criteria. Director of the PA company shall be deemed to be a "fit and proper" person if:
 - 3.1.1. Such person has a record of fairness and integrity, including but not limited to:
 - a. financial integrity;
 - b. good reputation and character; and
 - c. honesty;
 - 3.1.2. Such person has not incurred any of the following disqualifications:
 - a. Convicted by a court for any offence involving moral turpitude or any economic offence or any offence under the laws administered by the RBI;
 - b. Declared insolvent and not discharged;

- c. An order, restraining, prohibiting or debarring the person from accessing / dealing in any financial system, passed by any regulatory authority, and the period specified in the order has not elapsed;
 - d. Found to be of unsound mind by a court of competent jurisdiction and the finding is in force; and
 - e. Is financially not sound.
- 3.1.3. If any question arises as to whether a person is a fit and proper person, the RBI's decision on such question shall be final.
 - 3.2. Para 5.4 related to disclosure of comprehensive information regarding merchant policies, customer grievances, privacy policy and other terms and conditions on the website and / or their mobile application, refers to policies of the PA and not of individual merchants on-boarded by it.

4. KYC and merchant on-boarding related

- 4.1. In case a PA is maintaining an account-based relationship with the merchant, the KYC guidelines of Department of Regulation (DoR), RBI is applicable. Thus, to this extent, para 6 on 'Safeguards against Money Laundering (KYC / AML / CFT) Provisions' shall also be applicable.
- 4.2. For merchant on-boarding, the PA can have a Board approved policy (Para 7.1). There would not be a requirement to carry-out entire process of KYC (in accordance with the KYC guidelines of DoR), in cases where the merchant already has a bank account which is being used for transaction settlement purpose.

5. OPGSP related

- 5.1. Entities functioning as OPGSP and undertaking cross-border transactions in terms of OPGSP guidelines shall ensure compliance with the instructions issued vide A.P. (DIR Series) Circular No.16 dated September 24, 2015.
- 5.2. If OPGSP is also an entity which is functioning as PG or PA under the guidelines stipulated by DPSS, for undertaking any domestic leg of import / export transaction, it has to be ensured that the timelines and other guidelines, including those relating to authorised modes of collection, i.e. debit card, credit card and internet banking, indicated for the purpose of cross-border transactions in A.P. (DIR Series) Circular No.16 dated September 24, 2015, are also adhered to.

6. Security, fraud prevention and risk management framework related

- 6.1. The PA needs to ensure compliance of the infrastructure of the merchants to security standards like PCI-DSS and PA-DSS, as applicable.
- 6.2. Merchants are not allowed to store payment data irrespective of their being PCI-DSS compliant or otherwise. They shall, however, be allowed to store limited data for the purpose of transaction tracking; for which, the required limited information may be stored in compliance with the applicable standards.
- 6.3. The PA cannot also store customer card credentials within its database or the server (irrespective of it being accessed by merchant or not) except for the limited purpose of

transaction tracking; for which, required credentials may be stored in compliance with the applicable standards.

- 6.4. Para 10.5: A standard system audit, including cyber security audit, conducted by CERT-In empanelled auditors may be carried out.

7. Settlement and escrow account related

- 7.1. For the purpose of maintenance of the escrow account, the operations of PAs are deemed to be 'designated payment systems' under the Payment and Settlement Systems Act (PSS Act) after the entity obtains authorisation from RBI.
- 7.2. The applicability of circular DPSS.CO.PD.No.1102/02.14.08/2009-10 dated November 24, 2009 on "Directions for opening and operation of Accounts and settlement of payments for electronic payment transactions involving intermediaries" shall be as follows:
 - 7.2.1. The circular shall be considered repealed for authorised PAs from the date of authorisation;
 - 7.2.2. The circular shall be considered repealed with effect from June 30, 2021 except for such PAs who have applied for authorisation and a decision on it is pending with RBI.
- 7.3. The existing entities can continue to maintain nodal accounts till they have been authorised by RBI. Since the PA needs to move towards an escrow account, the bank and the PA may take a call about maintaining

- the same from an earlier date as well. However, this alone shall not make them eligible for a “designated payment system” status under Section 23A of the PSS Act.
- 7.4. If the bank can satisfactorily establish that the nodal account of an entity has been migrated to escrow account in compliance with the new instructions, it can allow the balances under existing nodal accounts of PAs to be considered for calculation of ‘Core portion’.
- 7.5. Those entities who have not attained the requisite net-worth as of March 31, 2021 shall wind up their PA business. Banks shall be required to close such nodal accounts after June 30, 2021 unless the PA produces evidence to the bank regarding application for authorisation being made to RBI.
- 7.6. The pre-funding has been allowed to tide over temporary mis-matches. Taking back of surplus pre-funding is not allowed.
- 7.7. There can be different “t” for different merchants as per the agreement between PA and merchants.
- 7.8. Para 8.6: The amount due to the merchant will be reckoned only after the settlement and credit to the escrow account. There is no need to prefund the account for this purpose. However, the proceeds shall be credited to escrow on the settlement day itself.
- 7.9. Where PAs have no control over incoming funds and its delay thereof, the PAs need to follow the instructions and transfer the funds to the merchant within T+0 / T+1 basis, post receiving of funds into its account.
- 7.10. The settlement accounts opened under Bharat Bill Payment System (BBPS) would be governed by BBPS instructions.
- 8. Consolidated FDI Policy Circular of 2020**
- DPIIT File Number 5(2)/2020-FDI Policy dated October 15, 2020
 - DPIIT has issued Consolidated FDI Policy Circular 2020 which amends the Consolidated FDI Policy Circular of 2017.
 - The present consolidation subsumes and supersedes all Press Notes/Press Releases/Clarifications/ Circulars issued by the DPIIT, which were in force as on October 15, 2020 and reflects the FDI Policy as on October 15, 2020. This Circular accordingly will take effect from October 15, 2020 and will remain in force until superseded in totality or in part thereof. Reference to any statute or legislation made in this Circular shall include modifications, amendments or re-enactments thereof.
 - Notwithstanding the rescission of earlier Press Notes/ Press Releases/Clarifications/Circulars, anything done or any action taken or purported to have been done or taken under the rescinded Press Notes/Press Releases/Clarifications/Circulars prior to October 15, 2020, shall, in so far as it is not inconsistent with those Press Notes/Press Releases/Clarifications/Circulars, and applicable provisions under the FEMA and Rules/Regulations thereunder, be deemed to have been done or taken under the corresponding provisions of this circular and shall be valid and effective.
- Detailed FDI Policy Circular of 2020 can be accessed at following link
https://dipp.gov.in/sites/default/files/FDI-PolicyCircular-2020-29October2020_1.pdf

About Us:

Vishnu Daya & Co LLP is a Professional Services Firm under which dedicated professionals have developed core competence in the field of audit, financial consulting services, financial advisory, risk management, direct and indirect taxation services to the clients. Each Partner is specialized in different service area. The services are structured differently in accordance with national laws, regulations, customary practice, and other factors. We continuously strive to improve these services to meet the growing expectations of our esteemed customers.

Started in the year 1994 as audit firm in Bangalore with an ambition to provide services in the area of accountancy and audit our legacy of vast experience and exposures to different types of industries made us rapidly adaptable to the changing needs of the time and technology by not only increasing our ranges of services but also by increasing quality of service. With diversification, our professional practice is not only limited to Bangalore but has crossed over to the other parts of India with a motto to provide “One Stop Solutions” to all our clients.

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