

Proxcel Advisory Services Private Limited

Delivering Professional Excellence

TAX NEWSLETTER

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Summary of Regulatory updates for March'2020



PROFICIENTLY ADVISING
GLOBAL BUSINESSES
FOR TRADE IN INDIA

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Proxcel request everyone to “Stay at home” for own Safety and for the safety of other’s life. In this pandemic situation we all should come forward and follow the guidelines issued by Government agencies to defeat this unseen virus. We are sure that we will come out from this situation very soon.

1. Direct Tax Updates

Notification & Circulars:-

1.1 Forms or modes of investment or deposits by a charitable or religious trust or institution

CBDT has made an amendment in Income Tax Rules via inserting clause (va) under Rule 17C of Income Tax Rules for the purpose of forms or modes of investment or deposits by a charitable or religious trust or institution:

(va) Investment made by a person, authorized under section 4 of the Payment and settlement Systems Act, 2007, in the equity share capital or bonds or debentures of a Company which is engaged in operations of retail payments system or digital payments settlement or similar activities in India and abroad and is approved by the Reserve Bank of India for this purpose; and in which at least fifty-one per cent of equity shares are held by National Payments Corporation of India.

__Notification No. 15/2020 dated 5th Mar'2020

1.2 CBDT notifies Transactions not regarded as transfer under section 47(viiab)(d)

As per sub clause (d) of clause (viiab) of section 47 of the Income-tax Act, 1961 the central government notified the following securities, the transfer of which will not be considered transfer as per section 47 of Income Tax Act :

- (i) foreign currency denominated bond;
- (ii) unit of a Mutual Fund;
- (iii) unit of a business trust;
- (iv) foreign currency denominated equity share of a company;
- (v) unit of Alternative Investment Fund,

The above securities must be listed on a recognized stock exchange which is located in any International Financial Services Centre (IFSC) under the Securities and Exchange Board of India Act 1992 (15 of 1992) or the International Financial Services Centers Authority under the International Financial Services Centers Authority Act 2019 (50 of 2019), as the case may be.

__Notification No. 16/2020 dated 5th Mar'2020

1.3 Who is Foreign Institutional Investor under Section 115AD:

As per explanation to section 115AD, Central government has the authority to notify in Official Gazette the expression "Foreign Institutional Investor" for the purpose of Section 115AD.

In exercise of its power, the Central Govt. has specified that "such investor should be a non-resident, who is being an Eligible Foreign Investor, & Operates in accordance with the Securities and Exchange Board of India (circular no. IMD/HO/FPIC/CIR/P/2017/003 dated 04th January, 2017 issued by SEBI) is considered as deemed Foreign Institutional Investor for the purposes of transactions in securities made on a recognized stock exchange located in any International Financial Services Centre (IFSC)

__Notification No. 17/2020, dated 13th March 2020

1.4 The Direct Tax Vivad se Vishwas Rules, 2020

i) Rule 3: Forms of Declaration and undertaking:

- The declaration under sub section (1) of section 4 shall be made in Form – I to the designated authority
- The undertaking referred to in sub-section (5) of section 4 shall be furnished in Form-2 along with the declaration.
- The above declaration and undertaking shall be signed and verified by the declarant or any person competent to verify the return of income on his behalf in accordance with section 140 of the Income Tax Act, 1961
- The designated authority on receipt of declaration shall issue a receipt electronically in acknowledgement thereof.

ii) Rule 4: Form of certificate by designated authority : The designated authority shall grant a certificate electronically referred to in sub section (1) of section 5 of Form 3

iii) Rule 5: Intimation of Payment: The detail of payments made pursuant to the certificate issued by the designated authority shall be furnished along with proof of withdrawal of appeal, objection, application, writ petition, special leave petition, arbitration, conciliation, mediation or claim filed by the declarant to the designated authority in Form-4.

iv) Rule 6: Manner of furnishing: The Form-1 and Form-2 referred to in rule 3 and Form-4 referred to in rule 5 shall be furnished electronically under digital signature, if the return of income is required to be furnished under digital signature or, in other cases through electronic verification code.

v) Rule 7: Order by designated authority: The order by the designated authority under sub-section (2) of section 5, in respect of payment of amount payable by the declarant as per certificate granted under sub-section (1) of section 5, shall be in Form-5.

vi) Rule 8: Laying down of procedure, formats and standards: The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall lay down procedures, formats and standards for furnishing and verifying the declaration in Form-1 under sub-rule (1) of rule 3, furnishing and verifying the undertaking in Form-2 under sub-rule (2) of rule 3, granting of certificate in Form-3 under rule 4, intimation of payment and proof of withdrawal in Form-4 under rule 5 and issuance of order in Form-5 under rule 7 and the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the said declaration, undertaking, certificate, intimation and order.

vii) Rule 9: Manner of computing disputed tax in cases where loss or unabsorbed depreciation is reduced –

1. Where the dispute in relation to an assessment year relates to reduction in loss or unabsorbed depreciation to be carried forward under the Income-tax Act, the declarant shall have an option to –
 - i) include the tax, including surcharge and cess, payable on the amount by which loss or unabsorbed depreciation is reduced in the disputed tax and carry forward the loss or unabsorbed depreciation by ignoring such amount of reduction in loss or unabsorbed depreciation; or
 - ii) carry forward the reduced amount of loss or unabsorbed depreciation.

2. Where the declarant exercises the option as per clause (ii) of sub-rule (1), he shall be liable to pay tax, including surcharge and cess, along with interest, if any, as a consequence of carrying forward the reduced amount of loss or unabsorbed depreciation in subsequent years:

Provided that the written down value of the block of asset on the last day of the year, in respect of which unabsorbed depreciation has been reduced, shall not be increased by the amount of reduction in unabsorbed depreciation.

Provided further that in cases other than the eligible search cases, in computing the reduced amount of loss or unabsorbed depreciation to be carried forward in clause (ii) of sub-rule (1), one-half of the amount by which loss or unabsorbed depreciation is reduced shall be considered for reduction, if such reduction is related to issues covered in favor of declarant.

Provided also that in case of eligible search cases, in computing the reduced amount of loss or unabsorbed depreciation to be carried forward in clause (ii) of sub-rule (1), one and one-fourth times of the amount by which loss or unabsorbed depreciation is reduced shall be considered for reduction and where the one and one-fourth times of the amount by which loss or unabsorbed depreciation is reduced exceeds the amount of loss to be carried forward before its reduction, such excess shall be ignored.

Provided also that in case of eligible search cases in computing the reduced amount of loss or unabsorbed depreciation to be carried forward in clause (ii) of sub-rule (1), five-eighth of the amount by which loss or unabsorbed depreciation is reduced shall be considered for reduction, if such reduction is related to issues covered in favor of declarant.

viii) Rule 10: Manner of computing disputed tax in cases where Minimum Alternate Tax (MAT) credit is reduced.-

1. Where the dispute in relation to an assessment year relates to reduction in Minimum Alternate Tax (MAT) credit to be carried forward, the declarant shall have an option to
 - i) include the amount by which MAT credit to be carried forward is reduced in disputed tax and carry forward the MAT credit by ignoring such amount of reduction, or
 - ii) carry forward the reduced MAT credit.
2. Where the declarant exercises the option as per clause (ii) of sub-rule (1), he shall be liable to pay tax, including surcharge and cess, along with interest, if any, as a consequence of carrying forward reduced MAT credit in subsequent years.

Provided that in cases other than the eligible search cases, in computing the reduced amount of MAT credit to be carried forward in clause (ii) of sub-rule (1), one-half of the amount by which MAT credit is reduced shall be considered for reduction, if such reduction is related to issues covered in favor of declarant.

Provided further that in case of eligible search cases, in computing the reduced amount of MAT credit to be carried forward in clause (ii) of sub-rule (1), one and one-fourth times of the amount by which MAT credit is reduced shall be considered for reduction and where the one and one-fourth times the amount by which MAT credit is reduced exceeds the amount of MAT credit to be carried forward before its reduction, such excess shall be ignored.

Provided also that in case of eligible search cases in computing the reduced amount of MAT credit to be carried forward in clause (ii) of sub-rule (1), five-eighth of the amount by which MAT credit is reduced shall be considered for reduction, if such reduction is related to issues covered in favor of declarant.

- ix) **Rule 11: Manner of computing disputed tax in certain cases** – Where the dispute includes issues covered in favor of declarant, the disputed tax in respect of such issues shall be the amount, which bears to tax, including surcharge and cess, payable on all the issues in dispute, the same proportion as the disputed income in relation to issues covered in favor of declarant bear to the disputed income in relation to all the issues in dispute.

__Notification No. 18/2020 dated 18th March'2020

1.5 Assessing Officer working in Principal Chief (CIT) (International Taxation) region is jurisdictional Assessing Officer for the purpose of equalisation levy

The CBDT hereby authorizes the Assessing Officer working in the Principal Chief Commissioner of Income-tax (international Taxation) Region having its Jurisdiction in respect of the Assessee for the purpose of the Income-tax Act, 1961, to exercise or perform all or any of the powers and functions conferred on, or, assigned to an Assessing Officer for the purpose of Chapter VIII of Finance Act, 2016

__Notification No. 20/2020, dated 20th March 2020

1.6 Clarifications on provisions of Direct Tax Vivad se Vishwas Bill, 2020

During the union Budget, 2020 presentations, the “Vivad se Vishwas” scheme was announced to provide the dispute resolution in respect of pending income tax litigations. Pursuant to Budget announcement, the Direct Tax Vivad se Vishwas Bill was introduced in Lok sabha. After introduction of Vivad se Vishwas in Lok Sabha, several queries have been received from the stakeholders seeking clarifications in respect of various provisions contained therein. Government has considered these queries and decided to clarify the same in form of answers to frequently asked questions (FAQs). These clarifications are, however, subject to approval and passing of Vivad se Vishwas by the Parliament and receiving assent of the honorable president of India.

Source: https://www.incometaxindia.gov.in/communications/circular/circular_no_7_2020.pdf

1.7 Order u/s 119 dated March-31-2020 issued by CBDT extending the Validity of Lower Deduction Tax Certificates/Orders issued u/s 195, 197 and 206C(9) till June-30-2020:

If an Assessee has been issued a "Lower Tax Deduction Certificate" for the FY 2019-2020, then such certificate would be applicable till June-30-2020 of the FY 2020-2021 in respect of same set of transaction(s) and the deductor.

Income Tax Case Laws

SECTION 12AA OF THE INCOME-TAX ACT, 1961 - CHARITABLE OR RELIGIOUS TRUST - REGISTRATION PROCEDURE

Deemed registration : Where Commissioner (Exemption) did not decide application under section 12AA within six months from date on which matter was remitted by Tribunal, registration under section 12AA(2) would be deemed to be granted to assessee-society - Commissioner of Income-tax.(Exemptions) v. Gettwell Health and Education Samiti, Sikar (Raj.) - [2020] 115 taxmann.com 66 (Rajasthan)

SECTION 92C OF THE INCOME-TAX ACT, 1961 - TRANSFER PRICING - COMPUTATION OF ARM'S LENGTH PRICE - COMPARABILITY FACTORS

Adjustments - Risk adjustment: Where DRP directed TPO to provide 1 per cent risk adjustment to average margin towards risk differential, same being provided on ad-hoc basis without any scientific manner, TPO was to be directed to recompute such adjustment in accordance with law - NXP India (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle 5(1)(1), Bang - [2020] 114 taxmann.com 698 (Bangalore - Trib.)

Benefit from transaction/allowability of expenditure:

Where assessee paid an amount towards reimbursement of expenses incurred by its AE for providing certain services to assessee, determination of ALP of administrative expenses reimbursed to AE at Nil by TPO for reason that assessee had failed to establish benefit derived to it from such expenses incurred by AE, could not be sustained - U.T. Worldwide India (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle-11(1)(2), Mumbai - [2020] 114 taxmann.com 689 (Mumbai - Trib.)

AMP expenses

Where AMP expenses incurred by assessee towards brand promotion of its AE were just 0.91 per cent of its sale which was nearly equivalent to average AMP expenses of comparables at 0.9 per cent, same met ALP standard under Act and, hence, no adjustment was required - Assistant Commissioner of Income Tax, 15(1)(2) v. Brother International (India) (P.) Ltd. - [2020] 114 taxmann.com 695 (Mumbai - Trib.)

SECTION 144C OF THE INCOME-TAX ACT, 1961 - TRANSFER PRICING - DISPUTE RESOLUTION PANEL

Others: Where DRP granted partial relief to assessee by holding transaction of payment towards reimbursement of expenses to its AE to be at arm's length, however, while implementing directions of DRP in final assessment order, Assessing Officer determined ALP of said transaction at nil ignoring directions of DRP, addition made by Assessing Officer could not be upheld - U.T. Worldwide India (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle-11(1)(2), Mumbai - [2020] 114 taxmann.com 689 (Mumbai - Trib.)

2. Indirect Tax Updates

Notifications, Circulars and Orders:-

2.1 Providing definition of Value of Lottery

The Central Government, on recommendations of the Council, amends sub-rule (2) of rule 31A so as to provide a definition of value of lottery. The notification states that value of lottery shall be deemed to be 100/128 of the face value of ticket or of the price as notified as notified by the organizing State, whichever is higher.

_Notification No. 08/2020 – Central Tax dated 2nd March'20

2.2 Providing Exemptions to Foreign Airlines Companies from providing Reconciliation Statements in GSTR-9C

The Central Government, on recommendations of the Council, has decided to exempt registered foreign airlines companies from furnishing Reconciliation statements in form GSTR-9C, provided that a statement of receipt and payments for Indian business operations **duly authenticated** by a practicing CA is filed by 30th September of the succeeding financial year.

_Notification No. 09/2020 – Central Tax dated 16th March'20

2.3 Providing special procedure for taxpayers of Dadra and Nagar Haveli and Daman and Diu

The Government, on recommendations of the Council, provides special procedure for taxpayers whose principal place of business lies in the erstwhile union territories of Dadra and Nagar Haveli and Daman and Diu consequent to merger of the same. The notification specifies tax period for filing returns for the month of January'20 and February'20 as follows:

Month	Tax Period
January'20	1 st January 2020 to 25 th January 2020
February'20	26 th January 2020 to 29 th February 2020

The notification also provides that, the option to transfer ITC from old registration to the new registration shall be available after filing the returns for the month of January.

_Notification No. 10/2020 – Central Tax date 23rd March'20

2.4 Proving special procedure to be followed by the Corporate Debtors undergoing Corporate Insolvency Resolution process

The Central Government, on recommendations of the Council, has notified a special procedure for interim resolution professionals (IRP) or resolution professionals (RP) who have undertaken the corporate insolvency resolution process and management of corporate debtors under the provisions of the Insolvency and Bankruptcy Code, 2016. The procedure states that the IRP/RP shall undergo registration within 30 days from the date of the notification.

_Notification no. 11/2020 – Central Tax dated 21st March'20

2.5 Providing exemption to the taxpayers who could not opt for the Composition Scheme

The Central Government, on recommendations of the Council, has decided to further add a proviso to the existing notification no. 21/2019 – Central Tax dated 23rd April'19 applicable on the Taxpayers opting for the Composition Scheme under Section 10 of the Central Goods & Services Act, 2017. The notification seeks to provide exemption to the taxpayers (who could not opt for the Composition scheme) from filing GSTR-1 if they have files GSTR-3B instead of filing FORM GST CMP-08.

_Notification no. 12/2020 – Central Tax dated 21st March'20

2.6 Delaying the applicability of e-invoicing provisions and exempting certain class of persons

The Central Government, on recommendations of the Council, has decided to delay the applicability of the newly inserted sub-rule (4) to Rule 4 of CGST Rules, 2017 requiring taxpayers having aggregate annual turnover one hundred crores or more to compulsorily issue e-invoice to the recipients. The same shall be applicable from 1st October'20. The notification also seeks to provide exemption to the following class of persons from the provisions of e-invoicing:

- (i) an insurance company or a banking company or a financial institution, including a non-banking financial company;
- (ii) goods transport agency supplying services in relation to transportation of goods by road in a goods carriage;
- (iii) passenger transportation service
- (iv) services by way of admission to exhibition of cinematograph films in multiplex screens

_Notification No. 13/2020 – Central Tax dated 21st March'20

2.7 Delaying the applicability of dynamic QR Code provisions and exempting certain class of persons

The Central Government, on recommendations of the Council, has decided to delay the applicability notification no. 72/2020 – Central Tax requiring taxpayers to provide Quick Response (QR) Code whose turnover exceeds five hundred crores rupees. The same shall be applicable from 1st October'20. The notification also seeks to provide exemption to the following class of persons from the provisions of e-invoicing:

- (i) an insurance company or a banking company or a financial institution, including a non-banking financial company;
- (ii) goods transport agency supplying services in relation to transportation of goods by road in a goods carriage;
- (iii) passenger transportation service
- (iv) services by way of admission to exhibition of cinematograph films in multiplex screens
- (v) online information and database access or retrieval services

_Notification No. 14/2020 – Central Tax dated 21st March'20

2.8 Extending the time limit for furnishing Annual Returns under Section 44 for the F.Y. 2018-19

The Commissioner, on recommendations of the Council, has decided to extend the last date for furnishing Annual Returns, as required under Section 44, for the financial year 2018-2019 to 30th June, 2020.

_Notification No. 15/2020 – Central Tax dated 23rd March'20

2.9 Notifies Rate for Services in respect of Aircrafts, Aircraft engines and other components

The Central Government, on recommendations of the Council, has decided to include Maintenance, repair or overhaul services in respect of aircrafts, aircraft engines and other aircraft components or parts in 5% rate category under the provisions of the GST law.

_Notification No. 02/2020 – Central Tax (Rate) dated 25th March'20

2.10 Providing clarifications w.r.t. transfer of ITC under events of merger, demerger, transfer, lease, etc. under Section 18(3):

The CBIC, has addressed doubts faced by taxpayers with regard to apportionment and transfer of ITC in the event of merger, demerger, amalgamation, lease or transfer of business. The CBIC has also quoted sub-rule (1) of rule 41, stating that to availed Input credit under **Section 18(3) i.e. Capital Goods**. A registered person shall furnish the details for claiming the input credits on Capital goods by Form GST ITC-02 electronically on the common portal along with a request to transfer the unutilized input tax credit lying in the ECL.

_Circular No. 133 03/2020-GST dated 23rd March'20

2.11 Third Amendment to CGST Rules, 2017

The Central Government, on recommendations of the Council, has decided to notify Central Goods and Services Tax (Third Amendment) Rules, 2020. The key highlights of the same are as follows:

- Insertion of sub-rule 4A so as to make it compulsory for a person to undergo Aadhar authentication for the purpose of grant of registration w.e.f. 1st April, 2020.
- Insertion of sub-rule 1 to rule 9 so as to notify that if an applicant fails to undergo Aadhar authentication, shall undergo physical verification of principal place of business in the presence of the applicant within 60 days from the days of application.
- After the physical verification of principal place of business, the verification documents along with photographs shall be uploaded in FORM GST REG-30 on the portal within fifteen working days from the date of such verification.
- Every registered person whose aggregate turnover for the financial year 2018-19 exceeds five crores rupees shall get his accounts audited and furnish a copy of audited financial statements and reconciliation statements, duly certified, in FORM 9C.
- In FORM GST RFD-01, following declaration was added:

“I hereby undertake to deposit to the Government the amount of refund sanctioned along with interest in case of non-receipt of foreign exchange remittances as per the proviso to section 16 of the IGST Act, 2017 read with rule 96B of the CGST Rules 2017.”

—Notification No. 16/2020 – Central Tax dated 23rd March’20

2.12 Providing Exemptions from Aadhar based authentication

The Central Government, on recommendations of the Council, has specified that the provisions relating to Aadhar authentication shall not apply to a person who is not a citizen of India or to a class of persons other than the following class of persons, namely:

- a) Individuals;
- b) Authorized signatory of all types;
- c) Managing and Authorized Partner; and
- d) Karta of Hindu Undivided Family.

The above provision shall be applicable from 1st April’20.

—Notification No. 17/2020 – Central Tax dated 23rd March’20

2.13 Providing the date from which Aadhar based authentication shall be mandatory

The Central Government, on recommendations of the Council, has made Aadhar number authentication must for GST registration w.e.f. 1st April’20. It has also been provided that if Aadhar number is not assigned to the said individual, he shall be offered alternate and viable means of identification in the manner specified in Rule 9 of the said rules.

—Notification No. 18/2020 – Central Tax dated 23rd March’20

2.14 Extending due date for furnishing GSTR-7 for taxpayers located in erstwhile state of J&K

The Commissioner has further decided to extend the last date of filing GSTR – 7 to 24th March, 20 for those taxpayers whose principal place of business lies in:

- the erstwhile state of Jammu & Kashmir for the months of July, 2019 to October, 2019.
- the union territory of Jammu & Kashmir and the union territory of Ladakh for the months of November, 2019 to February, 2020
- This notification have come into force with effect from the 20th Day of December, 2019.

—Notification No. 20/2020 – Central Tax dated 23rd March’20

2.15 Extending several due dates for GSTR-1 & GSTR-3B for taxpayers whose principal place of business lies in the erstwhile state of Jammu & Kashmir

FORM	Month	Aggregate Turnover	Due Date	Notification Reference
GSTR-1	Oct'19-Dec'19 Quarter	Not Applicable	24th March'20	21/2020-Central Tax
GSTR-1	Oct'19-Feb'20	More than Rs. 1.5 crores	24th March'20	22/2020-Central Tax
GSTR-1	July'19-Sep'19	More than Rs. 1.5 crores	24th March'20	23/2020-Central Tax
GSTR-1	July'19-Sep'19 Quarter	More than Rs. 1.5 crores	24th March'20	24/2020-Central Tax
GSTR-3B	Oct'19-Feb'20	Not Applicable	24th March'20	25/2020-Central Tax
GSTR-3B	July'19-Sep'19	Not Applicable	24th March'20	26/2020-Central Tax

2.16 Providing due date for furnishing GSTR-1 for specified taxpayers for Apr'20-Jun'20 and Jul'20-Sep'20 quarters

The Central Government, on recommendations of the Council, has notified due dates for furnishing FORM GSTR-1 for registered taxpayers having turnover Up to 1.5 crore rupees for the first two quarters of F.Y. 2020-21 (i.e., April-June quarter and July-September quarter) to be 31st day of succeeding month from the end of the quarter.

_Notification No. 27/2020 – Central Tax dated 23rd March'20

2.17 Providing due date for furnishing GSTR-1 for specified taxpayers for each month from Apr'20-Sep'20

The Commissioner, on recommendations of the Council, has notified due dates for furnishing FORM GSTR-1 for registered taxpayers having turnover more than 1.5 crores rupees for each of the months starting from April'20 to September'20 to be 11th day of the succeeding month.

_Notification No. 28/2020 – Central Tax dated 23rd March'20

2.18 Providing due date for furnishing GSTR-3B for each month from Apr'20-Sep'20

The Commissioner, on recommendations of the Council, has notified due dates form furnishing FORM GSTR-3B for registered taxpayers having aggregate turnover upto five crores rupees for the period starting from April'20 to September'20 in the following manner:

Name of State and UT	Due Date
Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep	on or before the twenty-second day of the month succeeding such month:
Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi	on or before the twenty-fourth day of the month succeeding such month.

The CBIC has not issued any notification with regard to taxpayers having aggregate turnover more than five crores rupees meaning thereby they have to file the return as per existing rules & timeline.

_Notification No. 29/2020 – Central Tax dated 23rd March'20

3 Updates under Companies Act

3.1 Exemptions to Government Companies

MCA vide its Notification dated June 5, 2015 had provided certain exemptions to the Government Companies. On March 2, 2020, MCA has issued another Notification making following amendments in its earlier Notification:

1. Explanation to the definition of Government Companies as provided under Section 2(45) of the Companies Act, 2013 has been inserted to provide that the meaning of "paid up share capital" shall be construed as "total voting power", where shares with differential voting rights have been issued;
2. It is not mandatory for the Government Company to end its name with the word 'Limited'/ 'Private Limited' as provided in Section 4(1)(a) of the Companies Act, 2013;
3. First and second proviso to Section 188(1) shall not apply to:
 - i. a Government company in respect of contracts or arrangements entered into by it with any other Government company, or with Central Government or any State Government or any combination thereof;
 - ii. a Government company, other than a listed company, in respect of contracts or arrangements other than those referred to in clause (a), in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before entering into such contract or arrangement

Source: http://www.mca.gov.in/Ministry/pdf/Notification_02032020.pdf

3.2 Extension of the last date of filing of Form NFRA-2

MCA vide its notification dated March 5, 2020 has provided that the time limit for filing of **Form NFRA 2** for the financial year 2018-19 will be 150 days from the date of deployment of this form on the website. Form NFRA-2 is to be used for the purpose filing Annual Return by Auditor with National Financial Reporting Authority for certain class of companies and bodies corporate as provided in Rule 3 of the National Financial Reporting Authority Rules, 2018.

Source: http://www.mca.gov.in/Ministry/pdf/Circular_06032020.pdf

3.3 Filing of forms by the Insolvency Professional under Insolvency Bankruptcy Code, 2016

Ministry of Corporate Affairs (MCA) has issued a General Circular dated March 6, 2020 superseding the earlier Circular dated February 17, 2020 regarding filing of forms by the Insolvency professional (Interim Resolution Professional (IRP) or Resolution Professional (RP) or Liquidator appointed under Insolvency Bankruptcy Code (IBC), 2016.

As per the said Circular, the procedure to be followed by the Insolvency Professional shall be as prescribed below:

- a. The IRP/ RP/ Liquidator would have to first file the NCLT order approving him as the IRP/RP/Liquidator in form INC-28 on the MCA21 portal by selecting the drop down box in field 5(a)(iii) by selecting appropriate section of IBC, 2016. After filling in the form, the IRP/RP/Liquidator while affixing his DSC, shall choose his designation as "CEO" in the declaration box for the purpose of filing only and choose "others" from the drop down menu.
- b. The master data for change in the status of the company from "Active"/ "Inactive" to CIRP/ Liquidation or CIRP/ Liquidation to "Active" shall be effected on the basis of Formal Change Request Form submitted by IBBI to e-governance cell, MCA(HQ).

- c. The IRP/RP/Liquidator shall be responsible for filing all the e-forms in the MCA portal and sign the form in the capacity of CEO in order to meet filing protocol in the existing forms architecture. However, this shall in no way affect his legal status as IRP/RP/Liquidator. All filings of e-forms including AOC-4 and MGT-7 shall be filed through e-form GNL-2 by way of attachments till the company is under CIRP. In the existing field no. 3 of form no. GNL-2, IRP/ RP/ Liquidator will choose radio button “Filings under IBC”.
- d. Against date of event and Board Resolution in INC-28 and GNL-2, date of order of NCLT/NCLAT/Court may be mentioned.
- e. It has further been clarified that in respect of companies which are marked under CIRP in the Registry, Annual Return (e-form No.MGT-7) and Financial Statement (e-form AOC-4) and other documents under the provisions of the Companies Act, 2013, in accordance with directions issued by the NCLT/ NCLAT/Courts, shall be filed as attachments with e-form GNL-2 against the payment of one time normal fee only, till such time the company remains under CIRP. Separate GNL-2 forms shall be filed for each such document, by the IRP/RP.
- f. It has also been clarified that the concerned IRP/RP of every company which was under CIRP prior to the issue of this Circular, shall also file e-form INC-28 for such companies and thereafter proceed to file other documents/fact/ information as required under the Act and Rules thereunder through e-form GNL-2 and will be able to file all necessary documents/ disclosures/ returns for the purposes of compliances under the Companies Act, 2013.

Source: http://www.mca.gov.in/Ministry/pdf/Circular8_06032020.pdf

3.4 Extension of last date in filing of Forms MGT-7 (Annual Return) and AOC-4 (Financial Statements) under the Companies Act, 2013 – UT of J&K and UT of Ladakh

Ministry of Corporate Affairs vide its Circular dated March 12, 2020 has further extended the due date for filing of e-Forms AOC-4, AOC-4 (CFS), AOC-4 XBRL and MGT-7 up to June 30, 2020 for companies having jurisdiction in the UT of J&K and UT of Ladakh without levy of additional fees.

Source: http://www.mca.gov.in/Ministry/pdf/Circular_12032020.pdf

3.5 Companies (Meetings of Board and its Powers) Amendment Rules, 2020

MCA vide its notification dated March 19, 2020 has clarified that for the period beginning from the March 19, 2020 and ending on the 30th June, 2020, the meetings on matters referred to in Rule 4(1) may be held through video conferencing or other audio visual means in accordance with Rule 3.

- a. the approval of the annual financial statements;
- b. the approval of the Board's report;
- c. the approval of the prospectus;
- d. the Audit Committee Meetings for consideration of financial statement including consolidated financial statement if any, to be approved by the board under sub-section (1) of section 134 of the Act; and
- e. the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Source: http://www.mca.gov.in/Ministry/pdf/Rules_19032020.pdf

3.6 Company Affirmation of Readiness towards COVID-19

Ministry of Corporate Affairs on March 23, 2020 deployed Form COVID-19 with the following key features:

- Simple web based form available as a post login service
- No payment of fee
- No DSC

- Any one of the Authorized Signatory of the Company can submit the Form online
- OTP based verification
- In case DIN of a Director is entered, mobile number available in database shall be Pre-filled (*which shall be non-editable*)
- No SRN is generated
- System based acknowledgment shall be sent to:
 - Email ID of the respective Company/Foreign Company/ LLP or Foreign LLP;
 - Email ID of the Authorized Signatory who is providing the affirmation;
 - Email ID of the FO user who is submitting the affirmation

However, Filing of Form COVID-19 is purely voluntary in nature.

Source: http://www.mca.gov.in/Ministry/pdf/Car_22032020.pdf

3.7 Amount spent on activities related to COVID-19 shall be treated as CSR Activity

Amid so many relaxation(s) being provided to the Corporates, due to outbreak of novel Corona Virus in India, Ministry of Corporate Affairs vide its notification dated March 23, 2020 has clarified that the funds spent for various activities related to COVID-19 shall be considered an eligible CSR activity under Item Nos. (i) and (xii) of Schedule VII relating to promotion of health care, including preventive health care and sanitation, and disaster management.

Item Nos. (i) and (xii) of Schedule VII deals with:

- (i) Eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation] and making available safe drinking water
- (xii) disaster management, including relief, rehabilitation and reconstruction activities

Source: http://www.mca.gov.in/Ministry/pdf/Covid_23032020.pdf

3.8 Special relaxations for Corporates and LLPs in view of COVID outbreak

In the last few days, we have observed that due to outbreak of COVID-19, Ministry of Corporate Affairs has been issuing various Notifications relaxing the regulatory compliance requirements as applicable on a company under the Companies Act, 2013.

To provide another support and enable Companies and Limited Liability Partnerships (LLPs) in India to focus on taking necessary measures to address the outbreak, nationwide lockdown, the following steps have been implemented by the Ministry of Corporate Affairs vide its Notification dated March 24, 2020 to reduce their compliance burden and other risks: -

- a) **Late e-filing fees:** During the moratorium period from 01st April, 2020 to 30th September, 2020, no additional fees shall be charged for late filing, in respect of any document, return, statement etc., required to be filed in the MCA-21 Registry, irrespective of its due date. The Circulars specifying detailed requirements in this regard shall be issued separately.
- b) **Board meetings for 1st & 2nd quarter of FY 2020-21:** The mandatory requirement of holding meetings of the Board of the companies within the intervals provided in Section 173 of the Companies Act, 2013 (CA13) (i.e. 120 days) stands extended by a period of 60 days till next two quarters i.e. till 30th September. Accordingly, as a one-time relaxation the gap between two consecutive meetings of the Board may extend to 180 days till the next two quarters, instead of 120 days as required in the CA13.
- c) **Applicability of CARO'20:** The Companies (Auditor's Report) Order, 2020 shall be made applicable from the financial year 2020-2021 instead of being applicable from the financial year 2019-2020 as notified earlier. A

separate Notification dated March 24, 2020 has been issued by the Ministry of Corporate Affairs for this purpose.

- d) **Meeting of Independent Directors:** As per Para VII (1) of Schedule IV to the CA13, Independent Directors (IDs) are required to hold at least one meeting without the attendance of Non- Independent Directors and members of management. For the financial year 2019-20, if the IDs of a company may have not been able to hold such a meeting, the same shall not be viewed as a violation. The IDs, however, may share their views amongst themselves through telephone or e-mail or any other mode of communication, if they deem it to be necessary.
- e) **Creation of Deposit Repayment Reserve for deposits maturing in FY 20-21:** Requirement under Section 73(2)(c) of CA13 to create the deposit repayment reserve of 20% of deposits maturing during the financial year 2020-21 before 30th April 2020 shall be allowed to be complied with till 30th June 2020.
- f) **Compliance towards Investment or Deposit of Debentures maturing:** Requirement under Rule 18 of the Companies (Share Capital & Debentures) Rules, 2014 to invest or deposit at least 15% of amount of debentures maturing in specified methods of investments or deposits before 30th April 2020, may be complied with till 30th June 2020.
- g) **Declaration for Commencement of Business:** Newly incorporated companies are required to file a declaration for Commencement of Business within 180 days of incorporation under Section 10A of the CA13. An additional period of 180 more days is allowed for this compliance.
- h) **Resident Director compliance for FY 2019-20:** Non-compliance of minimum residency in India for a period of at least 182 days by at least one director of every company under Section 149 of the CA13 shall not be treated as a non-compliance for the financial year 2019-20.

Source: http://www.mca.gov.in/Ministry/pdf/Circular_25032020.pdf

3.9 Clarification on contribution to PM CARES as eligible CSR activity under item no. (viii) of Schedule VII of the Companies Act, 2013

Ministry of Corporate Affairs vide its Office Memorandum dated March 28, 2020 has clarified that the contribution made to Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) shall be qualified as a CSR expenditure under Item No. (viii) of Schedule VII of the Companies Act, 2013. PM CARES Fund has been set up with the primary objective of dealing with any kind of emergency or distress situation such as that posed by COVID 19 pandemic.

Item No. (viii) of Schedule VII deals with contribution to the prime minister's national relief fund or any other fund set up by the central government for socio economic development and relief and welfare of the schedule caste, tribes, other backward classes, minorities and women.

MCA has also posted an appeal on its website requesting the companies, who have already contributed the prescribed amount towards CSR, to contribute over and above the minimum prescribed amount, which can later be offset against the CSR obligation arising in subsequent years (if the company so desires). In addition, it has been clarified by the Ministry in its appeal that any contribution made to PM CARES Fund on or before March 31, 2020 would also qualify for 80G exemption as applicable under Income Tax Act, 1961 and from April 1, 2020, only those companies which have chosen to remain in the old tax structure will be eligible to get the said benefit.

Source: http://www.mca.gov.in/Ministry/pdf/Circular_29032020.pdf and <http://www.mca.gov.in/>

3.10 Companies Fresh Start Scheme, 2020

MCA vide its Notification dated March 30, 2020 has notified Companies Fresh Start Scheme, 2020 to facilitate the companies registered in India to make a fresh start on a clean slate which shall remain in force from April 1, 2020 to September 30, 2020.

Key features of Companies Fresh Start Scheme, 2020 are as follows:

1. **Filing of belated documents and manner of making payment-** Under this Scheme, any company which has made a default in filing of any of the documents, statement, returns, etc. including annual statutory documents on MCA 21 portal can complete their pending compliances by filing necessary documents including annual filings without being subject to a higher additional fees on account of any delay. In addition, the Scheme also allows inactive companies to get themselves declared as ‘dormant company’ under Section 455 of the Companies Act, 2013 by filing a simple application at a normal fee.
2. **Manner of seeking immunity under the Scheme-** Immunity from the launch of prosecution or proceedings for imposing penalty shall be provided only to the extent such prosecution or the proceedings for imposing penalty under the Act pertain to any delay associated with the filings of belated documents. Any other consequential proceedings, including any proceedings involving interests of any shareholder or any other person qua the company or its directors or key managerial personnel would not be covered by such immunity.
3. **Withdrawal of appeal against any prosecution launched or the proceedings for imposing penalties initiated-** If the defaulting company, with respect to any statutory filing under the Act, or its officers in default, as the case may be, has filed any appeal against any notice issued or complaint filed or an order passed by a court or by an adjudicating authority under the Act, before a competent court or authority for violation of the provisions under the Companies Act, 1956 and/or Companies Act, 2013, in respect of which the application is made under this Scheme, the applicant shall before filing an application for issue of immunity certificate, withdraw the appeal and furnish proof of such withdrawal along with the application.
4. **Special measure for cases where the order of the adjudicating authority was passed but the appeal could not be filed-** In all cases where due to delay associated in filing of any document, statement or return, etc. in the MCA-21 registry, penalties were imposed by an adjudicating officer under the Act, and no appeal has been preferred by the concerned company or its officer before the Regional Director under section 454(6) as on the date of commencement of the Scheme, the following would apply:
 - (i) Where the last date for filing the appeal against the order of the adjudicating authority under Section 454(6) falls between the 1st March, 2020 to 31st May, 2020 (both days included), a period of 120 additional days shall be allowed with effect from such last date to all companies and their officers for filing the appeal before the concerned Regional Directors;
 - (ii) During such additional period as stated in (i) above, prosecution under Section 454(8) for non-compliance of the order of the adjudicating authority, in so far as it relates to delay associated in filing of any document, statement or return, etc. in the MCA-21 registry shall not be initiated against such companies or their officers
5. **Application for issue of immunity in respect of document(s) filed under the Scheme -** The application for seeking immunity in respect of belated documents filed under the Scheme may be made electronically in the Form CFSS-2020, after closure of the Scheme and after the document(s) are taken on file, or on record or approved by the Designated authority (i.e. the Registrar of Companies having jurisdiction over the registered office of the company) as the case may be but not after the expiry of six months from the date of closure of the Scheme. There shall not be any fee payable on this Form.

However, this immunity shall not be applicable in the matter of any appeal pending before the court of law and in case of management disputes of the company pending before any court of law or tribunal

Further, no immunity shall be provided in case any court has ordered conviction in any matter, or an order imposing penalty has been passed by an adjudicating authority under the Act, and no appeal has been preferred against such orders of the court or of the adjudicating authority, as the case may be, before this Scheme has come into force.

6. **Order by designated authority granting immunity from penalty and prosecution** – Based on the declaration made in the Form CFSS-2020, an immunity certificate in respect of documents filed under this Scheme shall be issued by the designated authority.
7. **Scheme not to apply in certain cases-** This Scheme shall not apply:
 - (i) To companies against which action for final notice for striking off the name u/s 248 of the Act (previously Section 560 of Companies Act, 1956) has already been initiated by the Designated authority;
 - (ii) where any application has already been filed by the companies for action of striking off the name of the company from the registrar of companies;
 - (iii) to companies which have amalgamated under a scheme of arrangement or compromise under the Act;
 - (iv) where applications have already been filed for obtaining Dormant status under Section 455 of the Act before this Scheme;
 - (v) to vanishing companies;
 - (vi) where any increase in authorized capital (Form SH-7) and also charge related documents (CHG-1, CHG-4, CHG-8 and CHG-9) is involved;
8. **Effect of immunity-** After granting the immunity, the Designated authority concerned shall withdraw the prosecution(s) pending, if any, before the concerned court(s) and the proceedings of adjudication of penalties under Section 454 of the Act, other than those referred in paragraph 5 above, in respect of defaults against which immunity has been so granted shall be deemed to have been completed without any further action on the part of the Designated Authority.
9. **Scheme for inactive companies-** The defaulting inactive companies, while filing due documents under CFSS-2020 can, simultaneously, either:
 - (i) apply to get themselves declared as Dormant Company under Section 455 of the Companies Act, 2013 by filing e-form MSC-1 at a normal fee on said form; or
 - (ii) apply for striking off the name of the company by filing e-Form STK-2 by paying the fee payable on form STK-2
10. At the conclusion of the Scheme, the designated authority shall take necessary action under the Act against the companies who have not availed this Scheme and are in default in filing these documents in a timely manner.

Source: http://www.mca.gov.in/Ministry/pdf/Circular12_30032020.pdf

4. Updates under LLP Act, 2008

4.1 LLP Settlement Scheme

MCA vide its notification dated March 4, 2020 has introduced a one-time Scheme for condonation of delay in filing statutory required documents with the Registrar for Limited Liability Partnership (LLPs). The said Scheme has been modified vide MCA notification dated March 30, 2020 and shall remain in force up to September 30, 2020.

Government has observed that a large number of LLPs had defaulted in filing of requisite forms with the Registrar and has received a large number of representations from various quarters for waiver of fee or condonation of delay and relaxation in additional fee on the ground of excessive financial burden.

As a part of Government's constant effort to promote ease of doing business, it has been decided to give a one-time relaxation in additional fees to the defaulting LLPs to make good their default by filing pending forms and to serve as a compliant LLP in future.

The Scheme shall be applicable to filing of following belated forms, which were due to be filed till August 31, 2020:

- Form 3- Information with regard to Limited Liability partnership agreement and changes, if any, made therein;
- Form 4- Notice of appointment, cessation, change in name/ address /designation of a designated partner or partner and consent to become a partner/ designated partner;
- Form 8- Statement of Account & Solvency (Annual or interim);
- Form 11- Annual Return of Limited Liability Partnership (LLP)

The Scheme provides a window to the defaulting LLPs (other than LLPs who have made an application to the Registrar in Form 24 for strike-off) for one- time filing of all listed forms which have not been filed or registered in time and make good the default. The defaulting LLPs can apply for filing of forms under the Scheme on payment of fees as payable for filing of such document or return and no additional fees shall be payable for filing any belated documents under this Scheme.

On conclusion of the Scheme, the Registrar shall take action under the LLP Act, 2008 against the LLPs who fail to make good their default by availing the Scheme. The defaulting LLPs which have filed their pending documents till 30th September, 2020 and made good the default shall not be subject to prosecution by Registrar for such default.

Source: http://www.mca.gov.in/Ministry/pdf/GeneralCircular06_04032020.pdf and http://www.mca.gov.in/Ministry/pdf/GeneralCircular06_04032020.pdf

5. SEBI Updates

5.1 Relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 due to the COVID -19 virus pandemic

SEBI vide circular no. **SEBI/HO/CFD/CMD1/CIR/P/2020/38** dated March 19, 2020 has provided the following relaxations under SEBI Listing Regulations:

a) Extension of timeline for filings with stock exchange under SEBI Listing Regulations

S.No.	Regulation and associated filing	Filing		Relaxation w.r.t. the quarter / financial year ending March 31, 2020		
		Frequency	Due within	Due date	Extended date	Period of relaxation
1.	Regulation 7(3) relating to compliance certificate on share transfer facility	Half yearly	One month of the end of each half of the financial year	April 30, 2020	May 31, 2020	1 month
2.	Regulation 13(3) relating to Statement of Investor complaints	Quarterly	21 days from the end of each quarter	April 21, 2020	May 15, 2020	3 weeks (approx.)
3.	Regulation 24A read with circular No CIR/CFD/CMD1/27/2019 dated February 8, 2019 relating to Secretarial Compliance Report	Yearly	60 days from the end of the financial year	May 30, 2020	June 30, 2020	1 month
4.	Regulation 27(2) relating to Corporate Governance report	Quarterly	15 days from the end of the quarter	April 15, 2020	May 15, 2020	1 month
5.	Regulation 31 relating to Shareholding Pattern	Quarterly	21 days from the end of the quarter	April 21, 2020	May 15, 2020	3 weeks (approx.)
6.	Regulation 33 relating to Financial Results	Quarterly / Annual	45 days from the end of the quarter for quarterly results 60 days	May 15, 2020	June 30, 2020	45 days

			from the end of Financial Year for Annual Financial Results	May 30, 2020	June 30, 2020	1 month
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b) Relaxation of time gap between two board/ audit committee meetings under SEBI Listing Regulations

Regulatory provision	Relaxation
Regulation 17(2): The board of directors shall meet at least four times a year, with a maximum time gap of one hundred and twenty days between any two meetings	The board of directors and Audit Committee of the listed entity are exempted from observing the maximum stipulated time gap between two meetings for the meetings held or proposed to be held between the period December 1, 2019 and June 30, 2020.
Regulation 18(2)(a): The audit committee shall meet at least four times in a year and not more than one hundred and twenty days shall elapse between two meetings	However the board of directors / Audit Committee shall ensure that they meet atleast four times a year, as stipulated under regulations 17(2) and 18(2)(a) of the LODR

Source: https://www.sebi.gov.in/legal/circulars/mar-2020/relaxation-from-compliance-with-certain-provisions-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-due-to-the-covid-19-virus-pandemic_46360.html

5.2 Relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and certain SEBI Circulars due to the COVID -19 virus pandemic – continuation

In continuation of the Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/38 dated March 19, 2020, SEBI vide its Circular Number SEBI/HO/DDHS/ON/P/2020/41 dated March 23, 2020 has granted the following relaxation(s) to companies:

A. Extension of timeline for issuance and filings for issuers who have listed/ propose to list their Non-Convertible Debentures/ Non-Convertible Redeemable Preference Shares (NCRPS)/ Commercial Papers (CPs)

Particulars	Available Audited Financial Accounts	Date of issuance	Extended date for the issuance	Period of Relaxation
Cut- off date for issuance of NCDs/NCRPS/CPs	As on September 30, 2019	On or before March 31, 2020	On or before May 31, 2020	60 Days

B. Extension of timeline for filings under SEBI (LODR) Regulations, 2015

S.No.	Regulation and associated filing	Filing		Relaxation w.r.t the quarter/ financial year ending March 31,2020		
		Frequency	Due within	Due Date	Extended	Relaxation period
1.	Large corporate initial disclosure and Annual Disclosure (SEBI Circular HO/DDHS/ CIR/ P/ 2018/ 144 dated November 26, 2018)	Yearly	Initial Disclosure - within 30 days from the beginning of Financial year Annual Disclosure - within 45 days from the end of Financial year	April 30, 2020 May 15, 2020	June 20, 2020 June 30, 2020	60 Days 45 days
Non-Convertible Debentures (NCDs) / Non-Convertible Redeemable Preference Shares (NCRPS)						
2.	Regulation 52 (1) and (2) relating to Financial Results	Half yearly/ yearly	45 days from the end of the half year 60 days from the end of Financial year for Annual results	May 15, 2020 May 30, 2020	June 30, 2020 June 30, 2020	45 days 30 days
3.	Common obligations prescribed under Chapter-III of SEBI (LODR) Regulations 2015	Timelines as prescribed in SEBI Circular no. SEBI/HO/CD/CMD1/ CIR/P/2020/38 dated March 19, 2020				
Commercial Papers (CPs)						
4.	Financial Results	Half yearly/ Yearly	45 days from the end of the Half Year 60 days from the end of Financial Year for Annual Financial results	May 15, 2020 May 30, 2020	June 30, 2020 June 30, 2020	45 Days 30 Days

C. Extension of timeline for filings prescribed for Issuers of Municipal Debt Securities

S.No.	Regulation and Associated Filing	Filing		Relaxation w.r.t. the Half Year/ Financial Year ending March 31, 2020		
		Frequency	Due within	Due date	Extended Date	Period of Relaxation
1.	Investor Grievance Report as per Municipal Bond	Half Yearly	Due within 30 working days from end of Half Year	June 30, 2020	June 30, 2020	45 Days
2.	Financial Results	Half yearly	60 days from the end of Financial Year for Annual Financial Results	May 30, 2020	June 30, 2020	30 days
3.	Accounts maintained by Issuers under ILDM Regulations	Quarterly	45 days from end of quarter	May 15, 2020	June 30, 2020	45 days

Source: <https://www.sebi.gov.in/legal/circulars/mar-2020/relaxation-from-compliance-with-certain-provisions-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-and-certain-sebi-circulars-due-to-the-covid-19-virus-pandemic-cont-46395.html>

5.3 Relaxation from compliance with certain provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 due to the COVID-19 pandemic

SEBI vide its Circular dated March 27, 2020 has extended the due date of filing(s) of disclosure under Regulation 30(1), 30(2) and 31(4) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 for the financial year ended March 31, 2020 to June 1, 2020.

Source: <https://www.sebi.gov.in/legal/circulars/mar-2020/relaxation-from-compliance-with-certain-provisions-of-the-sast-regulations-2011-due-to-the-covid-19-pandemic-46442.html>

6. RBI Updates

6.1 Priority Sector Lending- Lending by Banks to NBFCs for on-lending

RBI vide its Notification dated March 23, 2020 has provided that bank loans to registered NBFCs (other than MFIs) for on-lending will be eligible for classification as priority sector under respective categories up to March 31, 2020. It has been decided by RBI to extend the priority sector classification for bank loans to NBFCs for on-lending for FY 2020-21.

RBI, in its Circular, has further provided that Bank credit to registered NBFCs (other than MFIs) and HFCs for on-lending will be allowed up to an overall limit of five percent of individual bank's total priority sector lending. Further, banks have been directed to compute the eligible portfolio under on-lending mechanism by averaging across four quarters, to determine adherence to the prescribed cap.

Source: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11828&Mode=0>

7. Highlights of FM Press Meet

Income Tax:

- a. Last date to file revised/delated Income Tax Returns for FY 18-19 has been extended to 30th June'2020 from the existing 31st March'2020.
- b. Aadhaar-PAN linking date to be extended from 31st March, 2020 to 30th June, 2020
- c. Vivad se Vishwas scheme – no additional 10% amount, if payment made by June 30, 2020.
- d. Due dates for issue of notice, intimation, notification, approval order, sanction order, filing of appeal, furnishing of return, statements, applications, reports, any other documents and time limit for completion of proceedings by the authority and any compliance by the taxpayer including investment in saving instruments or investments for roll over benefit of capital gains under Income Tax Act, Wealth Tax Act, Prohibition of Benami Property Transaction Act, Black Money Act, STT law, CTT Law, Equalization Levy law, Vivad Se Vishwas law where the time limit is expiring between 20th March 2020 to 29th June 2020 shall be extended to 30th June 2020.
- e. For delayed payments of advanced tax, self-assessment tax, regular tax, TDS, TCS, equalization levy, STT, CTT made between 20th March 2020 and 30th June 2020, reduced interest rate at 9% instead of 12 %/18 % per annum (i.e. 0.75% per month instead of 1/1.5 percent per month) will be charged for this period. No late fee/penalty shall be charged for delay relating to this period.⁵
- f. Necessary legal circulars and legislative amendments for giving effect to the aforesaid relief shall be issued in due course.

GST/Indirect Tax:

- a. Those having aggregate annual turnover less than Rs. 5 Crore Last date can file GSTR-3B due in March, April and May 2020 by the last week of June, 2020. No interest, late fee, and penalty to be charged.
- b. Others can file returns due in March, April and May 2020 by last week of June 2020 but the same would attract reduced rate of interest @9 % per annum from 15 days after due date (current interest rate is 18 % per annum). No late fee and penalty to be charged, if complied before till 30th June 2020.
- c. Date for opting for composition scheme is extended till the last week of June, 2020. Further, the last date for making payments for the quarter ending 31st March, 2020 and filing of return for 2019-20 by the composition dealers will be extended till the last week of June, 2020.
- d. Date for filing GST annual returns of FY 18-19, which is due on 31st March, 2020 is extended till the last week of June 2020.
- e. Due date for issue of notice, notification, approval order, sanction order, filing of appeal, furnishing of return, statements, applications, reports, any other documents, time limit for any compliance under the GST laws where the time limit is expiring between 20th March 2020 to 29th June 2020 shall be extended to 30th June 2020.
- f. Necessary legal circulars and legislative amendments to give effect to the aforesaid GST relief shall follow with the approval of GST Council.
- g. Payment date under Sabka Vishwas Scheme shall be extended to 30th June, 2020. No interest for this period shall be charged if paid by 30th June, 2020.

Customs:

- h. 24X7 Custom clearance till end of 30th June, 2020
- i. Due date for issue of notice, notification, approval order, sanction order, filing of appeal, furnishing applications, reports, any other documents etc., time limit for any compliance under the Customs Act and other allied Laws where the time limit is expiring between 20th March 2020 to 29th June 2020 shall be extended to 30th June 2020.

Financial Services:

- a. No additional fees shall be charged for late filing during a moratorium period from 01st April to 30th September 2020, in respect of any document, return, statement etc., required to be filed in the MCA-21 Registry, irrespective of its due date, which will not only reduce the compliance burden, including financial burden of companies/ LLPs at large, but also enable long-standing non-compliant companies/LLPs to make a 'fresh start';
- b. The mandatory requirement of holding meetings of the Board of the companies within prescribed interval provided in the Companies Act (120 days), 2013, shall be extended by a period of 60 days till next two quarters i.e., till 30th September;
- c. Applicability of Companies (Auditor's Report) Order, 2020 shall be made applicable from the financial year 2020-2021 instead of from 2019-2020 notified earlier. This will significantly ease the burden on companies & their auditors for the year 2019-20.
- d. As per Schedule 4 to the Companies Act, 2013, Independent Directors are required to hold at least one meeting without the attendance of Non-independent directors and members of management. For the year 2019-20, if the IDs of a company have not been able to hold even one meeting, the same shall not be viewed as a violation.
- e. Requirement to create a Deposit reserve of 20% of deposits maturing during the financial year 2020-21 before 30th April 2020 shall be allowed to be complied with till 30th June 2020.
- f. Requirement to invest 15% of debentures maturing during a particular year in specified instruments before 30th April 2020, may be done so before 30th June 2020.
- g. Newly incorporated companies are required to file a declaration for Commencement of Business within 6 months of incorporation. An additional time of 6 more months shall be allowed.
- h. Non-compliance of minimum residency in India for a period of at least 182 days by at least one director of every company, under Section 149 of the Companies Act, shall not be treated as a violation.
- i. Due to the emerging financial distress faced by most companies on account of the large-scale economic distress caused by COVID 19, it has been decided to raise the threshold of default under section 4 of the IBC 2016 to Rs 1 crore (from the existing threshold of Rs 1 lakh). This will by and large prevent triggering of insolvency proceedings against MSMEs. If the current situation continues beyond 30th of April 2020, we may consider suspending section 7, 9 and 10 of the IBC 2016 for a period of 6 months so as to stop companies at large from being forced into insolvency proceedings in such force majeure causes of default.
- j. Detailed notifications/circulars in this regard shall be issued by the Ministry of Corporate Affairs separately.

8. Article on “Adjustments for Pandemic COVID-19 in Valuation”

by Manuj Singhal (Director-Transaction Advisory Services)
& Apoorv Singhal (Manager-Transaction Advisory Services)

Current COVID-19 situation is having a pandemic impact on global equity markets, with publicly listed equity values worldwide in a downward spiral similar to the declines last seen at the time of the Global Financial Crisis in 2008-2009. Indian and other Governments around the world trying to break this decline by a combination of Monetary and Fiscal policy.

The decline in publicly traded equity values is largely due to the decrease in the future cash flow expectations. The management and investors both made downward adjustments to their forecasts in affected industries to reflect the expected reduced demand of products and services. Yields on Government bonds have also declined significantly due to which the nominal yields implying negative real yields on 10-year Government bonds in developed geographies like US and Australia. This demonstrates the potential value impacts of pandemic COVID-19 due to travel bans, quarantining, lockdowns, consumer uncertainty, supply chain disruption.

Implications on Valuations

The implications on business valuations centers around current impact faced and the uncertainty of the likely future impact of COVID-19 on the business earnings and cash flow generation capabilities and also the timing of the recovery from the impact of COVID-19 on businesses. These difficulties have already reflected in the market such as – (a) the public equity markets is highly volatile; (b) a number of announced transactions has been put on hold and (c) a number of fund raisings activities and IPOs have either been deferred.

The traditional approaches which Valuers generally use to value businesses will need to make certain adjustments for COVID-19 and hence need to be carefully reconsidered in the current environment. Some levers that needs to adjust when re-pricing valuations of businesses:

1. an adjustment on the timing and growth on projected future cash flows or earnings of the business
2. an adjustment in cost of equity or discount rate used to discount the projected future cash flows
3. an adjustment to the multiple selected to capitalize the earnings
4. access adjustments based on volatility observed in the market, earnings yield
5. an adjustment over liquidity or marketability discounts
6. combinations of all of the above

Adjustments to future cash flows – As the future cash flows of any business will be affected by the current pandemic COVID-19 crisis, the future cash flows will therefore require some adjustments. To factor-in the impact of pandemic COVID-19, Valuer needs to access following points: (a) how deep will the impact be (Hit); (b) how long will the hit survive (Duration) and (c) how frequently do hits occur (Frequency)

- (a) **Hit** – the hit or dent on cash flows for any business will depend on a business’ dependency on international trade, products and services provided in terms of essential or discretionary, effectiveness and nature of supply chain etc.
- (b) **Duration** – At this stage, it is not possible to predict but considering current market commentary, COVID-19 may have an impact of 3 and 18 months. However, afterwards the duration to revive or come back in normal situation may vary based on business model, stage of the Company and several other internal/external controls.

- (c) **Frequency** – events with this level of impact on the market are relatively rare. Looking back over the last two decades for an approximation, there have been two or three other significant market events. The occurrence rate needs to be factor-in while valuing event impacted business.

In situations where business is heavily impacted and where the cash flow outcomes are uncertain, the possible scenarios of cash flow outcomes should be modelled and probability weightings needs to be applied to those expected cash flow outcomes. This will also ensure that valuation outcomes are not dependent on general assumptions which underpin any particular fixed forecast set of cash flows upon occurrence of possible hits.

Adjustment to Discount Rates – The use of the currently impacted and declining yields on long-dated Government bonds as a proxy for the risk-free rate to determine the cost of equity under the CAPM framework would conclude a reduction in the cost of capital and hence the discount rate. Valuers needs to carefully examine this assumption in the current market.

The current volatility in global equity markets indicates that the risk of investing has increased, not decreased due to the emergence of the impact of pandemic COVID-19. To capture this, a generic '**COVID-19 risk premium**' (**CVRP**) could be applied to the cost of equity for temporary adjustment of discount rates to factor in the uncertainty inherent in unadjusted cash flows.

Adjustment over Liquidity or Marketability Discounts –

Discounts over Liquidity or Marketability can be applied while valuing unlisted equities on such events where it is deemed that the investment would take a period of time to sell, or would otherwise require a discount to be applied to its fundamental value, in order to attract a willing buyer.

At the current levels of uncertainty and volatility in the global market, it is reasonable to assume that a potential buyer would be hesitant to pay a full fair price. The size of a liquidity discount is impacted by the time over which the asset becomes illiquid, payment of dividends over that period and the level of volatility of the underlying equity

Conclusion – The COVID-19 will continue to pose significant impacts on the valuation of businesses in the short to medium term. Valuers are advised to carefully re-consider the traditional approaches to valuation in the current environment. Valuers will need to determine whether the financials available to them are fit for purpose and what adjustments, if any, should be made to earnings and cash flow forecasts, earnings multiples or discount rates.

When performing valuations, make sure to document the basis for your conclusions and assumptions. Having adequate supporting documentation for assumptions, estimates, and judgments is critical.

This article is solely prepared to consider implications on valuations due to impact of pandemic COVID-19. Valuers are often asked to value businesses at historic dates based on requirement arises for taxation and other regulatory purposes. It is worth re-emphasizing that the impact of COVID-19 should not be factored into valuations conducted at dates prior to the impact of COVID-19 becoming known

About Us

Proxcel is in specialized corporate advisory with a vision to deliver professional excellence in the field of corporate financial and management consultancy. We offer range of integrated professional services to help entrepreneurs set up businesses and constantly grow by leveraging all opportunities smoothly through advising them on the right financial and legal strategies for expansion.

Our Services include business set up services in India and outside India, business valuations for merger & acquisitions and in line with global regulatory compliance, financial re- porting, corporate law advisory, international taxation, direct and indirect tax advisory, internal and external audit etc.

Our Expert Team while sharing a common vision, belong to diverse technical, business and legal backgrounds and comprise of Chartered accountants, Chartered financial Analysts (US), Company Secretaries, Cost Accountants, Lawyers and Engineers. We deploy specialized and multidisciplinary teams to serve assignments requiring specific skills. This enables us to work proactively and closely with clients and respond effectively to their needs in a highly focused manner, which in today's fast changing business environment is quite crucial to a client's success.

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