

## ProXcel Advisory Services Private Limited

*Delivering Professional Excellence*

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# TAX NEWSLETTER

Summary of Regulatory Updates for October 2019



PROFICIENTLY ADVISING  
GLOBAL BUSINESSES  
FOR TRADE IN INDIA

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## 1. Direct Tax



### 1.1 Clarifications in respect of option exercised under section 115BAA of the Income Tax Act, 1961 inserted through the taxation laws (Amendment) Ordinance, 2019

- **Insertion of Section 115BAA with effect from April 1, 2020 which provides that:**

- ⇒ A domestic company shall, at its option, pay tax at a lower rate of 22% for any previous year beginning on or after 1<sup>st</sup> April 2019, subject to certain conditions, including that the total income should be computed without claiming any deduction or exemption.
- ⇒ The option is required to be exercised by the company before the due date of furnishing return of income.
- ⇒ Option once exercised cannot be subsequently withdrawn.
- ⇒ Also provisions related to MAT under section 115JB shall not apply to a person who has exercised option under section 115BAA.

- **Clarification on following issues relating to exercise of option under section 115BAA:**

- ◇ **Allowability of brought forward loss on account of additional depreciation:**
  - ⇒ Total income under section 115BAA shall be computed without claiming any deduction under clause (ia) of section 32(1) (additional depreciation) and without claiming set off of any loss carried forward from any earlier assessment year if the same is attributable to additional depreciation.
  - ⇒ Therefore, domestic company availing benefit of lower tax rate under Section 115BAA shall not be allowed to claim set off of brought forward loss on account of additional depreciation.
  - ⇒ As there is no time line to exercise option under section 115BAA, domestic company having brought forward loss-

es on account of additional depreciation may exercise the option after set off of the losses so accumulated.

- ◇ **Allowability of brought forward MAT credit:**

- ⇒ The ordinance has also amended section 115JB of the Act relating to MAT, providing that provisions of section 115JB is not applicable to domestic company exercising option under 115BAA, it is hereby clarified that the tax credit of MAT shall not be available to the company opting 115BAA consequent to exercising of such option.
- ⇒ As there is no time line to exercise option under section 115BAA, domestic company having credit of MAT may exercise the option after utilizing the said credit against the regular tax payable.

*—Circular No 29/2019 dated 2<sup>nd</sup> October, 2019*

### 1.2 Jurisdiction of income-tax authorities

CBDT hereby directs the Income tax authority for Regional e-Assessment Centres to exercise the powers and functions of the Assessing Officer concurrently to facilitate the conduct of e-assessment proceedings in respect of returns furnished under section 139 or 142(1) of Income Tax Act, 1961 during any financial year commencing on or after the 1st day of April, 2018

*—Notification No. 77/2019 dated 3<sup>rd</sup> October, 2019*

### 1.3 Incomes not forming Part of Total Income:

In exercise of the powers conferred by Section 10(47) of the Income Tax Act, 1961, the Central Government hereby notifies that any income arising to the infrastructure debt fund namely, the '**IDFC Infrastructure Finance Limited**' will not be included in computing total income, for the assessment year 2020-2021 and subsequent assessment years

- ◇ **Conditions:**

- ⇒ The Infrastructure debt fund shall conform to and comply with the provisions of the Income tax Act, 1961, rule 2F of the Income-tax Rules, 1962 and the conditions provided by the Reserve Bank of India in this regard.
- ⇒ It shall file its return of income as required by Section 139 (4C) of the Income-tax Act, 1961 on or before the due date.

*—Notification No. 83/2019 dated 21<sup>st</sup> October, 2019*

- CBDT vide powers conferred by Section 10(23EE) of the Income-tax Act, 1961 hereby notifies that specified income of Core Settlement Guarantee Funds set up by the Multi Commodity Exchange Clearing Corporation Limited, Mumbai shall not be considered in computing the total income.

*\_Notification No 82/2019 dated 21st October, 2019  
(Shall come into force from A.Y. 19-20 and onwards)*

#### 1.4 Exemption from TDS u/s 194N:

- **CBDT hereby specifies that banks are not required to deduct TDS under section 194N while making payment exceeding Rs.1 crore for specified category of persons mentioned below:-**

- ⇒ The authorized dealer and its franchise agent and sub-agent; or
- ⇒ Full-Fledged Money Changer (FFMC) licensed by the Reserve Bank of India and its franchise agent;

- **Conditions:**

- ◇ Those persons are maintaining separate bank account and withdrawal is made for the purposes of -
- ⇒ Purchase of foreign currency from foreign tourists or non-residents visiting India or from resident Indians on their return to India, in cash as per RBI directions or guidelines.
- ⇒ Disbursement of inward remittances to the recipient beneficiaries in India in cash under Money Transfer Service Scheme (MTSS) of the Reserve Bank of India.

- Certificate is required to be furnished to the bank that withdrawal is only for the purposes specified above and the directions or guidelines issued by the Reserve Bank of India have been adhered to.

#### Notes:

- ◇ ***“Authorized dealer” means a person authorized as an authorized dealer under section 10(1) of the Foreign Exchange Management Act, 1999 (42 of 1999).***
- ◇ ***It is certified that no person is being adversely affected by giving retrospective effect to this notification.***
- ◇ ***The notification shall be deemed to have come into force with effect from the 1st September, 2019.***

*\_Notification No. 80/2019 dated 15th October, 2019*

#### 1.5 Protocol amending the convention between the Government of Republic of India and Kingdom of Morocco for avoidance of Double taxation and prevention of

#### Fiscal Evasion:

- The date of entry into force of the said Protocol is 15th July, 2019. Now in exercise of the powers conferred by Section 90(1) of the Income-tax Act, 1961, the Central Government hereby notifies that all the provisions of the below mentioned Protocol shall be given effect to in the Union of India.

- **Article 26 relating to Exchange of Information has been replaced as under:**

⇒ The competent authorities of the Contracting States shall exchange information relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, in so far as the taxation thereunder is not contrary to the Convention.

⇒ Any information received by a Contracting State as above shall be treated as secret and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other authority or enforcement agency of the requesting Contracting State without the express written consent of the competent authority of the requested contracting state.

⇒ Provisions of Para 1 is not construed to impose following obligations on Contracting State:

- ◇ To carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State.
- ◇ To supply information or documents which are not obtainable under the laws or in normal course of the administration of that or of the other Contracting State.
- ◇ To supply information or documents which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

⇒ If information is requested by a Contracting State in accordance with this Article, the other Contracting State

shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained here is subject to the limitations of paragraph 3.

⇒ 5. Further Contracting state does not decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

*\_Notification No. 84/2019 dated 22nd October, 2019*

## 2. Indirect Tax

### 2.1 Due date of furnishing the return in form GSTR-3B prescribed:

The Central Government, has prescribed the due date of filing the return GSTR-3B for the purpose of discharging liabilities, for the period October, 2019 to March, 2020, as on or before the twentieth day of the month succeeding such month.

*\_Notification No. 44/2019-Central Tax, dated Oct 9, 2019*

### 2.2 Due date of furnishing the return GSTR-1 for taxpayers having turnover up to 1.5 Crores rupees:

The Central Government has prescribed the due dates of furnishing the return of outward supply of goods or services or both in GSTR-1 for the taxpayers having aggregate turnover of up to 1.5 Crores rupees for the quarters from October, 2019 to March, 2020 as below:

S. No.	Quarter for which return is to be furnished	Time period for furnishing the Return
1	Oct'19-Dec'19	Jan 31, 2020
2	Jan'20-Mar'20	Apr 30, 2020

*-Notification No. 45/2019-Central Tax, dated Oct 9, 2019*

### 2.3 Due date of furnishing the return GSTR-1 for taxpayers having turnover of more than 1.5 Crore rupees :

The Central Government has prescribed the due dates of furnishing the return of outward supply of goods or services or both in GSTR-1 for the taxpayers having aggregate turnover of up to 1.5 Crores rupees for the quarters from October, 2019 to March, 2020 till the Eleventh day of the succeeding month.

*-Notification No. 46/2019-Central Tax, dated Oct 9, 2019*

### 2.4 Filing of Annual Return for FY 2017-18 and 2018-19 made optional for taxpayers having turnover less than 2 Crores:

- The Central Government, has decided to make the filing of annual return optional for the taxpayers whose aggregate turnover in a financial year does not exceed 2 Crores rupees for the financial year 2017-18 and 2018-19.
- Further, the annual return shall be deemed to be furnished on the due date if it has not been furnished before the due date.

*-Notification No. 47/2019-Central Tax, dated Oct 9, 2019*

### 2.5 Amendment in the date of Late fee waived for states-Bihar, Gujarat, Karnataka, Kerala, Maharashtra, Odisha, Uttarakhand, Jammu and Kashmir :

- The Central Government has extended the date for waiving of late fees by amending the notification no. 41/2019-Central Tax from September 20, 2019 to October 11, 2019.
- Below mentioned clauses are also eligible for extension of date who have failed to file their returns by due date , having the principal place of business in the state of Jammu and Kashmir:

- ⇒ Registered person having the aggregate turnover of more than 1.5 Crore rupees who are required to furnish the return GSTR-1
- ⇒ Registered persons who are required to deduct tax at source as per the provisions of section 51, furnishing the return in GSTR-7.
- ⇒ Registered persons who are requiring to furnish the return GSTR-3B for the month of August, 2019, on or before October 20, 2019.

*\_Notification No. 48/2019-Central Tax, dated Oct 9, 2019*

### 2.6 Changes made in CGST Rules, 2017

- Rule 21A: Where registration under GST has been suspended under this rule shall not be required to issue tax invoices and also not required to file any return under section 39. Further if the application for suspension has been revoked the provisions related to issue of tax invoice shall also apply for supplies made during the period of suspension.
- Input tax credit availed by registered persons in respect of invoices or debit, details of which are not uploaded by the suppliers in their GSTR-1, shall not exceed 20% of the eligible credit uploaded by the supplier in their GSTR-1. As, a result of this amendment, regular matching of ITC with the details available in GSTR-2A will become necessary. Follow-up with non-compliant suppliers to be done on a regular basis now.



- Central Government has amended rule 61(5) to provide that in cases where the due dates for filing GSTR-1 and GSTR-2 have been extended, the return in place of GSTR-3 required to be filed under section 39(1), shall be filed in form GSTR-3B and GSTR-3 shall not be required to be filed. The amendment shall apply with effect from 1st July 2017.
- For the registered persons who could not submit the said declaration by the due date on account of technical difficulties in the common portal, date of filing for the form GST TRAN-1 has been extended from March 31, 2019 to December 31, 2019.
- Registered persons filing the declaration in Form GST TRAN-1, may submit the statement in Form GST TRAN-2 by January 31, 2020.
- The officer shall communicate to the taxpayer, the details of any tax, interest and penalty as ascertained by the said officer under section 73(1) or 74(1), in Part A of FORM GST DRC-01A.

*\_Notification No. 49/2019-Central Tax, dated Oct 9, 2019*

### **2.7 Clarification on the eligibility to file a refund application in Form GST-RFD-01**

Registered person who has filed a NIL refund claim in Form GST RFD-01A/RFD-01 for a certain period under a particular category may again apply for the refund for the same period and under same category if the below conditions are satisfied:

- Registered person must have filed the NIL refund claim.
- No refund claims must have been filed by the registered person under the same category for any subsequent period. This condition will apply only for the refund claims falling under the following categories:
  - ⇒ Refund of unutilized input tax credit (ITC) on account of exports without payment of tax.
  - ⇒ Refund of unutilized ITC on account of supplies made to SEZ Unit/SEZ Developer without payment of tax
  - ⇒ Refund of unutilized ITC on account of accumulation due to inverted tax structure.
- Registered persons satisfying the above conditions may file the refund claim under “Any Other” category accompanied by all the supporting documents instead of the category under which the NIL refund claim has already been filed.
- The refund claim should pertain to the same period for which NIL application was filed.

*\_Circular No. 110/2019-CGST, dated October 3, 2019*

### **2.8 Clarification on Procedure to claim refund in FORM GST RFD-01 subsequent to favorable order in appeal or any**

#### **other forum**

- Appeals against rejection of refund claims are being disposed offline as the electronic module for the same is yet to be made operational.
- In case a favorable order is received by a registered person in appeal or in any other forum in respect of a refund claim rejected through issuance of an order in FORM GST RFD-06, the registered person would file a fresh refund application under the category “Refund on account of assessment/provisional assessment/appeal/any other order” claiming refund of the amount allowed in appeal or any other forum.
- Upon receipt of the application for refund under the category “Refund on account of assessment/provisional assessment/appeal/any other order” the proper officer would sanction the amount of refund as allowed in appeal or in subsequent forum which was originally rejected and shall make an order in FORM GST RFD 06 and issue payment order in FORM GST RFD 05 accordingly.

*\_Circular No. 111/2019-CGST dated October 3, 2019*

### **2.9 Clarification on issue of GST on Airport Levies**

- The airport operators shall pay GST on the Passenger service fee and user development fees collected by them from the passengers through the airlines. Since, the airport operators are collecting PSF and UDF inclusive of ST/GST, there is no question of their not paying ST/GST collected by them to the Government.
- The collection charges paid by airport operator to airlines are a consideration for the services provided by the airlines to the airport operator and airlines shall be liable to pay GST on the same under forward charge. ITC of the same will be available with the airport operator.

*\_Circular No. 115/2019-CGST dated October 11, 2019*

### **2.10 Clarification on displaying of name plates of donor in premises of charitable institutions**

Where the condition are satisfied that the gift or donation is made to a charitable organization, the payment has the character of gift or donation and the purpose is philanthropic (i.e. it leads to no commercial gain) and not advertisement, GST is not leviable.

*\_Circular No. 116/2019-CGST dated October 11, 2019*

### **2.11 Clarification on applicability of GST exemption to the DG shipping approved maritime courses conducted by Maritime training institutes:**

- The Maritime Training Institutes and their training courses are approved by the Director General of shipping which are duly recognised under the provisions of the Merchant Shipping Act, 1958 read with the Merchant Shipping (standards of training, certification and watch-keeping for Seafarers) Rules, 2014. Therefore, the Maritime Institutes are educational institutions under GST Law and the courses conducted by them are exempt from levy of GST.
- This clarification applies, mutatis mutandis, to corresponding entries of respective IGST, UTGST, SGST exemption notifications.

*\_Circular No. 117/2019-CGST dated October 11, 2019*

### **2.12 Clarification regarding place of supply in case of software/design services**

It is clarified that the place of supply of software/design by supplier located in taxable territory to service recipient located in non-taxable territory by using sample prototype hardware / test kits in a composite supply, where such testing is an ancillary supply, is the location of the service recipient as per Section 13(2) of the IGST Act.

*\_Circular No. 118/2019-CGST dated October 11, 2019*

### **2.13 Clarification regarding taxability of supply of securities under Securities lending scheme, 1997**

For the past period i.e. from 01.07.2017 to 30.09.2019, GST is payable under forward charge by the lender and request may be made by the lender (supplier) to SEBI to disclose the information about borrower for discharging GST under forward charge. The nature of tax payable shall be IGST. However, if the service provider has already paid CGST / SGST / UTGST treating the supply as an intra-state supply, such lenders shall not be required to pay IGST again in lieu of such GST payments already made.

With effect from 1st October, 2019, the borrower of securities shall be liable to discharge GST as per Sl. No 16 of Notification No. 22/2019-Central Tax (Rate) dated 30.09.2019 under reverse charge mechanism (RCM). The nature of GST to be paid shall be IGST under RCM.

*-Circular No. 119/2019-CGST dated October 11, 2019*

### **2.14 Manufacture and other operations in warehouse:**

- CBIC has launched a revamped and streamlined program to attract investments into India and strengthen Make in India through manufacture and other

operations under bond scheme, under Customs Act, 1962. Section 65 of the Customs Act, 1962 enables conduct of manufacture and other operations in a customs bonded warehouse.

- No geographical limitation on where such units can be set up.
- The unit can import goods (both inputs and capital goods) under a customs duty deferment program.
- There will be no interest liability and units will benefit through improved liquidity.
- GST compliant goods can be procured from the domestic market for use in manufacture and other operations in a section 65 unit.

- The scheme is expected to play a critical role in promoting investments in India and in enhancing ease of doing business. It can enable the 'Make in India' program, encourage exports, create hubs for electronics assembly, repair & refurbishment operations, inward and outward processing, facilitate global e-commerce hubs etc.

- To the extent that the resultant product manufactured or worked upon in a bonded warehouse is exported, the licensee shall have to file a shipping bill and pay any amounts due. A GST invoice shall also be issued for such removal.

- To the extent that the resultant product (whether emerging out of manufacturing or other operations in the warehouse) is cleared for domestic consumption, such a transaction squarely falls within the ambit of "supply" under Section 7 of the CGST Act, 2017. The resultant product will thus be supplied from the warehouse to the domestic tariff area under the cover of GST invoice on payment of appropriate GST and compensation cess, if any.

- The waste generated during the course of manufacture of the resultant product may be cleared for home consumption as per section 65(2) (b) of the Customs Act on payment of applicable duties of customs and GST.

*\_Press Release dated October 15, 2019*

### **2.15 Stake Sale by ICICI Bank in GSTN:**

- One of the Private sector banks, and a stake holder in GSTN, ICICI Bank has exited the GSTN, the not to profit Non-Government Company facilitating collection of the indirect tax, by selling its entire 10 per cent stake to as many as 13 state governments.

- The Stake transfer to various State Governments is scheduled to be completed by the end of March 2020. The bank will transfer 0.14 per cent stake to the Assam government and 0.81 per cent stake to the Telangana government. Besides, it will transfer Goa, Kerala, Manipur, Tripura, West Bengal, Delhi, Jharkhand, Uttar Pradesh, Chhattisgarh, Madhya Pradesh and Arunachal Pradesh governments 0.82 per cent stake each. ICICI Bank has exited the company following the government of India's decision to make GSTN into a public sector entity last year.

## 3. Companies Act, 2013

### 3.1 Companies (Meetings of Board and its Powers) Amendment Rules, 2019

Ministry of Corporate Affairs vide its Notification dated October 11, 2019 has introduced the Companies (Meetings of Board and its Powers) Amendment Rules, 2019.

In terms of the amended Rules, the words "business of financing of companies" as included in Rule 11(2) of the Companies (Meetings of Board and its Powers) Rules, 2014 has been substituted with the words "business of financing industrial enterprises".

As per Rule 11(2) of the Companies (Meetings of Board and its Powers) Rules, 2014 (as amended from time to time), "business of financing industrial enterprises" with regard to a Non-Banking Financial Company registered with Reserve Bank of India include business of giving of any loan to a person or providing any guaranty or security for due repayment of any loan availed by any person in the ordinary course of its business.

### 3.2 De-activation of DIN due to non-filing of DIR-3 KYC

It has been clarified by the Ministry of Corporate Affairs that DINs which have not complied with the requirement of filing DIR-3 KYC have been marked as 'Deactivated due to non-filing of DIR-3 KYC'. Such DINs cannot be used for filing any e-forms on MCA21 portal.

In case the present status of a DIN is 'Deactivated due to non-filing of DIR-3 KYC' then the DIN holder is required to file 'KYC' using e-form DIR-3 KYC or DIR-3-KYC-WEB service (as applicable) with the prescribed fee of Rs. 5,000 to re-activate his/ her de-activated DIN.

### 3.3 Companies (Incorporation) Eighth Amendment Rules, 2019

The Ministry of Corporate Affairs (MCA) vide its notification dated October 16, 2019 has introduced the Companies (Incorporation) Eighth Amendment Rules, 2019 which shall come into force from the date of its publication in official gazette.

#### Key highlights of the Amendment are as follows:

- Where an application for reservation of name includes a trade mark registered under the Trade Marks Act, 1999, such an application for reservation of name shall not be approved unless the consent of the owner or applicant for registration, of the trade mark, as the case may be, has been obtained and produced by the promoters;
- An "ACTIVE non-compliant" company is restricted to file certain e-forms like SH-7 (change in Authorized Capital), PAS-3 (Change in paid-up Capital), DIR-12 (Changes in Director except cessation), INC-22 (Change in Registered Office) and INC-28 (Amalgamation, de-merger).

Earlier E-form DIR-12 was allowed to be filed by an ACTIVE non-compliant company in case of cessation of Directorship only but now MCA has provided relaxation to such companies to file Form DIR-12 for some additional cases which includes:

- ⇒ appointment of directors in such company where the total number of directors are less than the minimum number provided in clause (a) of sub-section (1) of section 149 on account of disqualification of all or any of the director under section 164.
- ⇒ appointment of any director in such company where DINs of all or any of its director(s) have been deactivated.
- ⇒ appointment of director(s) for implementation of the order passed by the Court or Tribunal or Appellate Tribunal under the provisions of the Companies Act, 2013 or under the Insolvency and Bankruptcy Code, 2016.

- An application seeking confirmation of Regional Director for shifting the registered office within the same state from jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies may be put up for orders without hearing and order either approving or rejecting the application shall be passed within 15 days of the receipt of application complete in all respects.

Further, a certified true copy of the order of the Regional Director, shall be filed in Form No. INC-28 with the Registrar of State within 30 days from the date of receipt of certified copy of the order.

### **3.4 The Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019:**

The Ministry of Corporate Affairs (MCA) vide its notification dated October 22, 2019 has introduced Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019. These rules shall come into effective from December 1, 2019.

**Persons who are eligible and willing to be appointed as Independent Directors are required to comply with certain compliances which are as follows:**

- Every individual who is already acting as an Independent Director shall within a period of 3 months from commencement of amendment rules, or every individual who is willing to get appointed as an Independent Director after commencement of amendment rules shall before such appointment, apply online to the Indian Institute of Corporate Affairs at Manesar, Haryana for inclusion of his name in the data bank for a period of one year or five years or his life-time.
- Any individual (including an individual not having DIN), may voluntarily apply to the institute for inclusion of his name in the data bank.
- Every individual whose name has been so included in the data bank shall file an application for renewal for a further period of one year or five year or life-time, within a period of thirty days from the date of expiry of the period up to which the name of the individual was applied for inclusion in the data bank, failing which, the name of such individual shall stand removed from the data bank of the institute. Application for renewal is not required to be filed by an individual who has already paid life-time fees for inclusion of his name in data bank.
- Every Independent Director is required to give declaration of compliances of sub-rule (1) and (2) of the Amendment Rules to the Board along with the declaration required to be submitted under Section 149(7) of the Companies Act, 2013.
- Every Individual whose name is included in the data bank is required to pass an online proficiency self- assessment test conducted by the Institute within a period of one year from the date of inclusion of his name in the data bank. Individual who has served for a period of not less than 10 years as on the date as director or Key Managerial Person (KMP) in a listed public company or in an unlisted public company having a paid up share capital of rupees 10 crore or more is not required to pass the online proficiency self-assessment test. An individual who has obtained a score of not less than sixty percent in aggregate in the online proficiency self-assessment test shall be deemed to have passed such test.
- There is no limit on the number of attempts an individual may take for passing the online proficiency self-assessment test.



**Alert Directors!**  
MCA is Watching!!



### **3.5 Companies (Accounts) Amendment Rules, 2019**

The Ministry of Corporate Affairs (MCA) vide its notification dated October 22, 2019 has introduced the Companies (Accounts) Amendment Rules, 2019 which shall come into force with effect from December 1, 2019.

In terms of the amended Rules, companies are inter-alia required to include a statement in its Boards' Report regarding opinion of the Board with regard to integrity, expertise and experience (including the proficiency) of the independent directors appointed during the year.

### **3.6 Extension of due date for filing of Form CRA-4 (Cost Audit Report)**

- Ministry of Corporate Affairs vide its Circular dated October 24, 2019 has extended the last date for filing of Form CRA-4 (cost audit report) for financial year 2018-19 without payment of additional fees till December 31, 2019 as the costing taxonomy 2019 to cater to the annual filing of CRA-4 for FY 2018-19 is under development.
- Those companies which have already filed CRA-4 using the existing Costing Taxonomy 2015 for FY 2018-19 are not required to file Form CRA-4 afresh.

### **3.7 Extension of due date for filing of Forms IEPFA-1A and IEPF-2**

Ministry of Corporate Affairs vide its Circular dated October 25, 2019 has extended the last date for filing of Form IEPFA-1A till December 31, 2019 and of Form IEPF-2 till November 30, 2019 without payment of additional fees.

### **3.8 Extension of due date for filing of Forms MGT-7 Annual Return) and AOC-4 (Financial Statements)**

Ministry of Corporate Affairs vide its Circular dated October 29, 2019 has extended the last date for filing of Form MGT-7 (Annual Return) till December 31, 2019 and AOC-4 (Financial Statements)/ AOC (CFS)/ AOC-4 XBRL till November 30, 2019 without payment of additional fees.



## **4. Securities and Exchange Board of India**

### **4.1 Framework for issue of Depository Receipts**

SEBI vide its Circular dated October 10, 2019 has provided a framework for issue of Permissible Securities or transfer of Permissible Securities for the purpose of issue of Depository Receipts (DRs) by a company incorporated in India and listed on a recognized stock exchange in India.

SEBI in its Circular has provided that a listed company shall be eligible to issue Permissible Securities for the purpose of issue of DRs, if:

- the Listed Company, any of its promoters, promoter group or directors or selling shareholders are not debarred from accessing the capital market by SEBI;
- any of the promoters or directors of the Listed Company is a promoter or director of any other company which is not debarred from accessing the capital market by SEBI;
- the listed company or any of its promoters or directors is not a wilful defaulter;
- any of its promoters or directors is not a fugitive economic offender.

The Circular inter-alia contains guidelines related to eligibility, permissible jurisdictions and international exchanges, obligations of listed company, permissible holder, voting rights, pricing, obligations of Indian Depository, Foreign Depository and Domestic Custodian.

### **4.2 Resignation of Statutory Auditors from listed entities and their material subsidiaries**

SEBI vide its Circular CIR/CFD/CMD1/114/2019 dated October 18, 2019 has specified the conditions to be complied with upon resignation of the statutory auditor of a listed entity/ material subsidiary with respect to limited review/ audit report as per SEBI (Listing Obligations and Disclosure requirements) Regulations, 2015. This Circular shall come into force with immediate effect.

- **All listed entities/material subsidiaries shall ensure compliance with the following conditions while appointing/re-appointing an auditor:**

⇒ If the auditor resigns within 45 days from the end of a quarter of a financial year, then the auditor shall, before such resignation, issue the limited review/ audit report for such quarter.

⇒ If the auditor resigns after 45 days from the end of a quarter of a financial year, then the auditor shall, before such resignation, issue the limited review/ audit report for such quarter as well as the next quarter.

⇒ Notwithstanding the above, if the auditor has signed the limited review/ audit report for the first three quarters of a financial year, then the auditor shall, before such resignation, issue the limited review/ audit report for the last quarter of such financial year as well as the audit report for such financial year.

- **Other conditions relating to resignation shall include:**

- **Reporting of concerns with respect to the listed entity/its material subsidiary to the Audit Committee:**

⇒ In case of any concern with the management of the listed entity/ material subsidiary, the auditor shall approach the Chairman of the Audit Committee of the listed company and the Audit Committee shall receive such concern directly and immediately without specifically waiting for the quarterly Audit Committee meetings.

⇒ In case the auditor proposes to resign, all concerns with respect to the proposed resignation, along with relevant documents shall be brought to the notice of the Audit Committee. In cases where the proposed resignation is due to non-receipt of information / explanation from the company, the auditor shall inform the Audit Committee of the details of information / explanation sought and not provided by the management, as applicable.

⇒ On receipt of such information from the auditor relating to the proposal to resign as mentioned above, the Audit Committee / board of directors, as the case may be, shall deliberate on the matter and communicate its views to the management and the auditor.

- **Disclaimer in case of non-receipt of information:**

⇒ In case the listed entity/its material subsidiary does not provide information required by the auditor, to that extent, the auditor shall provide an appropriate disclaimer in the audit report, which may be in accordance with the Standards of Auditing as specified by ICAI/NFRA.

⇒ The listed entity/ material subsidiary shall ensure that the conditions as specified above are included in the terms of appointment of the statutory auditor at the time of appointing/re-appointing the auditor.

⇒ The Practicing Company Secretary shall certify compliance with these conditions in the annual secretarial compliance report issued in terms of SEBI Circular no. CIR/CFD/CMD1/27/2019 dated February 08, 2019.

- **Obligations of the listed entity and its material subsidiary:**

- **Format of information to be obtained from the statutory auditor upon resignation:**

⇒ Upon resignation, the listed entity / its material subsidiary shall obtain information from the Auditor in the specified format and the same shall be disclosed to the stock exchange in accordance with the provisions of Sub-clause (7A) of Clause A in Part A of Schedule III under Regulation 30(2) of SEBI LODR Regulations.

- **Co-operation by listed entity and its material subsidiary:**

⇒ During the period from when the auditor proposes to resign till the auditor submits the report for such quarter / financial year as specified above, the listed entity and its material subsidiaries shall continue to provide all such documents/information as may be necessary for the audit / limited review.

- **Disclosure of Audit Committee's views to the Stock Exchanges:**

⇒ The listed entity shall ensure the disclosure of the Audit Committee's views upon all the concerns raised by the auditor with respect to its resignation to the stock exchanges as soon as possible but not later than twenty-four hours after the date of such Audit Committee meeting.

⇒ In case an entity is not mandated to have an Audit Committee, then the board of directors of the entity shall ensure compliance with this Circular.

⇒ In case the auditor is rendered disqualified due to operation of any condition mentioned in Section 141 of the Companies Act, 2013, then the provisions of this Circular shall not apply.

# Valuation under Ind AS 102 : Share-based Payment

## Objective

This standard to specify the financial reporting by an entity when it undertakes a share-based payment transaction.

## Scope

An entity shall apply this standard in accounting for all share-based payment transactions, whether or not the entity can identify specifically some or all of the goods or services received, including:

- i. Equity-settled share-based payment transactions,
- ii. Cash-settled share-based payment transactions, and
- iii. Transactions in which the entity receives or acquires goods or services or the terms of arrangements provide either the entity or the supplier with a choice of whether the entity settles the transaction in cash or by issuing equity instruments.

## Followings are the exceptions:

- i. A share-based payment transaction may be settled by another group entity (or a shareholder of any group entity) on behalf of the entity receiving or acquiring the goods or services. Share Based Payments also applies to an entity that:
  - (a) receives goods or services when another entity in the same group (or a shareholder of any group entity) has the obligation to settle the share-based payment transaction, or
  - (b) has an obligation to settle a share-based payment transaction when another entity in the same group receives the goods or services.

unless the transaction is clearly for a purpose other than payment for goods or services supplied to an entity receiving them.

- ii. A transaction with an employee (or other party) in his/her capacity as a holder of equity instruments of the entity is not a share-based payment transaction.
- iii. Entity acquires goods as part of the net assets acquired in a business combination as defined by Ind AS 103, Business Combinations, in a combination of entities or businesses under common control as described in Ind AS 103, or the contribution of a business on the formation of a joint venture as defined by Ind AS 111, Joint Arrangements.
- iv. Share-based payment transactions in which the entity receives or acquires goods or services under a contract within the scope of Ind AS 32 (Financial Instruments: Presentation), or of Ind AS 109 (Financial Instruments).

## Recognition

An entity shall recognize the goods or services received or acquired in a share-based payment transaction when it obtains the goods or services are **received**.

When the goods or services received or acquired in a share-based payment transaction **does not qualify** for recognition as assets, they shall be recognized as an **expense**.

## Equity-settled share-based payment

The entity shall measure the goods or services received and the corresponding increase in equity, directly, at **fair value**. If the entity **cannot estimate reliably** the fair value then it is to be recognized by reference to the fair value of the equity instruments granted.

## Transactions in which services are received

If the equity instruments granted **vest immediately**, the counterparty is not required to complete a specific period of service before becoming unconditionally entitled to those equity instruments. In absence of evidence, the entity presumed that services rendered by the counterparty as consideration for the equity instruments have been received. In this case, on the **grant date**, the entity shall recognize the services receives in full, with a corresponding increase in equity.

If the equity instruments granted **do not vest** until the counterparty completes a specified period of service, the entity shall presume that the services to be rendered by the counterparty as consideration for those equity instruments will be received in the future, during the vesting period. The entity shall account for those services as they are rendered by the counterparty during the vesting period, with a corresponding increase in equity.

## Transactions measured by reference to the fair value of the Equity Instruments Granted

### Determining the Fair Value of Equity Instruments Granted

An entity shall measure the fair value of the equity instruments granted at the measurement date, based on **market price**.

If market prices are **not available**, the entity shall estimate the fair value of the equity instruments granted using a **valuation technique** on measurement date in an **arm's length transaction** between knowledgeable, willing parties.

The **valuation technique** shall be consistent with **generally accepted valuation methodologies** for pricing financial instruments, and shall incorporate all the factors and assumptions that the knowledgeable, willing market participants would consider in setting the price. A corresponding increase in equity, the equity shall make **no subsequent adjustment** to total equity after the vesting date. However, this **does not include** the transfer from one component of equity to another.

**In rare cases only**, if the fair value of the equity instruments cannot be estimated reliably the equity shall instead:

- a) Measure the equity instruments at their **intrinsic value**.
- b) Recognize the goods or services received based on the number of equity instruments that ultimately vest or are ultimately exercised.

### **Treatment of Vesting conditions**

A grant of equity instruments might be conditional upon satisfying specified vesting conditions. For example, a grant of shares or share options to an employee is typically conditional on the employee remaining in the entity's employment for a specified period of time. There might be performance conditions that must be satisfied, such as the entity achieving a specified growth in profit or a specified increase in the entity's share price.

**Vesting conditions, other than market conditions, shall not be taken into account when estimating the fair value of the shares or share options at the measurement date. Instead, vesting conditions shall be taken into account by adjusting the number of equity instruments included in the measurement of the transaction amount so that, ultimately, the amount recognised for goods or services received as consideration for the equity instruments granted shall be based on the number of equity instruments that eventually vest.** Hence, on a cumulative basis, no amount is recognised for goods or services received if the equity instruments granted do not vest because of failure to satisfy a vesting condition, e.g. the counterparty fails to complete a specified service period, or a performance condition is not satisfied.

Market conditions, such as a target share price upon which vesting (or exercisability) is conditioned, shall be taken into account when estimating the fair value of the equity instruments granted. Therefore, for grants of equity instruments with market conditions, the entity shall recognize the goods or services received from a counterparty who satisfies all other vesting conditions (e.g. services received from an employee who remains in service for the specified period of service), irrespective of whether that market condition is satisfied.

### **Inputs to Fair Value the ESOP's granted**

#### **Early Exercise**

a) Many employee options have long lives, are usually exercisable during the period between vesting date and the end of the options' life, and are often exercised early. Black-Scholes-Merton formula does not allow for the possibility of exercise before the end of the option's life and may not adequately reflect the effects of expected early exercise. It also does not allow for the possibility that expected volatility and other model inputs might vary over the option's life. For options having relatively shorter lives or exercise period after vesting date, the above mentioned factors may not apply. In these cases, the Black-Scholes-Merton formula may produce a value that is substantially the same as a more flexible option pricing model.

b) Separating an option grant into groups for employees with relatively narrow range of lives included in its weighted average life, reduces the overstatement.

c) A share option granted to an employee typically cannot be exercised during specified periods (during the vesting period or during periods specified by securities regulators). This factor shall be taken into account if the option pricing model applied would otherwise assume that the option could be exercised at any time during its life. However, if an entity uses an option pricing model that values options that can be exercised only at the end of the options' life, no adjustment is required for the inability to exercise them during the vesting period (or other periods during the options' life), because the model assumes that the options cannot be exercised during those periods.

#### **Volatility**

An entity should not simply base estimates of volatility, exercise behavior and dividends on historical information without considering the extent to which the past experience is expected to be reasonably predictive of future experience. Factors to consider in estimating expected volatility include:

a) Implied volatility from traded share options on the entity's shares, or other traded instruments of the entity that include option features (such as convertible debt), if any.

b) The historical volatility of the share price over the most recent period that is generally commensurate with the expected term of the option (taking into account the remaining contractual life of the option and the effects of expected early exercise).



c) The length of time an entity's shares have been publicly traded. A newly listed entity might have a high historical volatility, compared with similar entities that have been listed longer. If a newly listed entity does not have sufficient information on historical volatility, it should nevertheless compute historical volatility for the longest period for which trading activity is available. It could also consider the historical volatility of similar entities following a comparable period in their lives.

### Expected Dividends

a) If employees were granted options and are entitled to dividends on the underlying shares or dividend equivalents (which might be paid in cash or applied to reduce the exercise price) between grant date and exercise date, the options granted should be valued as if no dividends will be paid on the underlying shares, i.e. the input for expected dividends should be zero.

b) When the grant date fair value of shares granted to employees is estimated, no adjustment is required for expected dividends if the employee is entitled to receive dividends paid during the vesting period.

c) If the employees are not entitled to dividends or dividend equivalents during the vesting period (or before exercise, in the case of an option), when the fair value of an option grant is estimated, expected dividends should be included in the application of an option pricing model. In this case the valuation will be reduced by the present value of dividends expected to be paid during the vesting period.

d) An entity that does not pay dividends and has no plans to do so should assume an expected dividend yield of zero.

### Risk-free interest rate

The risk-free interest rate is the implied yield available on zero coupon government issues of the country in whose currency the exercise price is expressed, with a remaining term equal to the expected term of the option being valued (based on the option's remaining contractual life and taking into account the effects of expected early exercise).

### Capital structure effects

The entity should consider whether the possible dilutive effect of the future exercise of the share options granted might have an impact on their estimated fair value at grant date. Option pricing models can be adapted to take into account this potential dilutive effect.

### ILLUSTRATION

Let suppose company A has granted options with market based and non-market based performance vesting conditions to its eligible employees as per terms and conditions provided in ESOP scheme.

Vesting conditions:

1. Out of the total options granted, 1/3 of the options shall vest in equal proportions, on the 1<sup>st</sup> of December every year, over a period of 5 financial years. First such vesting shall happen in the 1<sup>st</sup> of December 2018 (**Category 1 Options**).
2. 1/3 of the granted options may vest by way of annual vesting of up to 20% of the granted options falling in this category (out of the said 1/3), commencing in the month of December of the financial year immediately ensuing the financial year during which the letter of offer is issued. The said vesting shall happen on the basis of employee's performance during the previous financial year ending 31<sup>st</sup> March, for a period of 5 financial years as rated in yearly performance appraisal process in employment with the company/affiliate company (**Category II Options**).
3. The balance 1/3 of the granted options (**Category III Options**) shall vest upon the company achieving the Target Share Price of INR 30 as on March 31, 2020 or Target Share Price of INR 50 as on March 31, 2022.

### Methodology Adopted

In above analysis, Monte Carlo simulation has been used to model out the probability of stock price to be more than INR 50 per share milestone date i.e. 31<sup>st</sup> March, 2016 to estimate the expected number of options related with market based performance vesting. We ran 100,000 iterations to model out the probability of scenarios where market based options get vested.

Once market based vested option count has been estimated along with other category options granted as on measurement date, we should calculate the fair value of options using Black Scholes Option pricing Method (BSOPM).

## 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, business valuations for merger & acquisitions and regulatory compliance, financial reporting, corporate law advisory, 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.

## DISCLAIMER

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