

**Proxcel Advisory Services Private Limited***Delivering Professional Excellence***Edition: January'2020****Volume 1, Issue 12**

**Team Proxcel wishes you & your family a very Happy and prosperous New Year 2020.**

**2020****HAPPY NEW YEAR**

## Proxcel Advisory Services Private Limited

*Delivering Professional Excellence*

**Edition: January'2020**

**Volume 1, Issue 12**

# TAX NEWSLETTER

Summary of Regulatory Updates for December' 2019



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## 1. Direct Tax



### Notifications and Circulars:-

#### 1.1 Notification No 102/2019

As per section 280A of Income Tax Act 1961, the Central Government in consultation with chief justice of High Court of Himachal Pradesh, Shimla designates the civil judge-cum-JMIC(3), Shimla and civil Judge-cum-JMIC(2), Hamirpur as Special Court.

#### 1.2 Notification No 103/2019

As per Section 187(1) of finance act 2016 i.e. the tax, surcharge and penalty, in respect of the undisclosed income, shall be paid on or before the notified date. The Central Government are hereby specify that person who have made declaration about undisclosed income under Section 183(1) of finance act 2016 but have not paid tax and surcharge and penalty payable in respect of undisclosed income on or before the due date may make payment on or before 31<sup>st</sup> January 2020 along with interest @ 1% for every month or part of month comprised in the period commencing on the date immediately following the said due date as comprised in the period of due date as notified

#### 1.3 Circular No. 31/2019

Due date of payment of tax & furnishing of return for tax deducted at source under section 194M during the month of September 2019 & October 2019 has been extended to 31<sup>st</sup> December 2019. Consequently the due date of furnishing of the certificate of deduction of tax in Form 16D has also been extended to 15<sup>th</sup> January 2020

#### 1.4 Notification No 107/2019

As per section 139AA(2) of Income Tax Act 1961, CBDT has extended the due of linking of PAN with Aadhaar from 31<sup>st</sup> December to 31<sup>st</sup> March 2020.

#### 1.5 Notification No. 105/2019

As per Section 269SU, every person **carrying on business**, if his sales, turnover or Gross Receipts exceeds 50 Crore **during the immediately preceding previous year** shall **mandatorily** provide facility for accepting any payment through **following electronics Modes**

(As prescribed in Rule 119AA of income Tax Rules, 1962 as newly inserted), in addition to the facility used for accepting other electronic modes of payment, if any provided by such person, are as follows:-

- Debit Card powered by RuPay,
- UPI (BHIM-UPI), and
- BHIM-UPI QR CODE

#### 1.6 Circular No. 32/2019

CBDT has clarified that Rule 119AA shall be applicable from 1<sup>st</sup> January 2020:-

Further CBDT as per section 10A of Payment and Settlement Act 2007, clarifies that **no Bank or System Provider** shall impose any **charge** (including Merchant Discount Rate) on **payer** making payment or **beneficiary** receiving payment vide electronics modes as specified under section 269SU read with Rule 119AA. Hence any charge including Merchant Discount Rate shall not be charged on or after 1<sup>st</sup> January 2020.

In furtherance to the declared policy objective of Government to encourage digital economy & implementation of Section 269SU read with Rule 119AA, CBDT further clarifies that as per Section 271DB penalty of Rs. 5000/- per day shall be imposed from the **date of such failure** on specified person who are in default/failure to comply with provision of section 269SU read with Rule 119AA.

In Respect of Section 271DB, CBDT has also clarified that Specified persons shall be allowed sufficient time in order to install & operationalise the facility for accepting payment through prescribed electronic modes. Hence **date of failure** shall be considered from 1<sup>st</sup> February and not from 1<sup>st</sup> January.

#### 1.7 CBDT Order Dated 24.12.2019

With a view to provide relief to the taxpayers and tax professionals and to facilitate the compliance with respect to e-Assessment proceedings under E-assessment Scheme, 2019, the time limit for filing of response to notices under section 142(1) of the Income-tax Act issued up to 24.12.2019 by the National e-Assessment Centre is extended up to 10.01.2020 or time given in such notices, whichever is later.

#### 1.8 Press Release Dated 22.11.2019

India is committed to exchange financial account information automatically from 2017 under the Common Reporting Standard (CRS) on Automatic Exchange of Information (AEOI). Information is reported annually by financial institutions which are then exchanged by India under the standard.

To implement the AEOI standard, necessary domestic legal framework was put in place in 2015. A comprehensive Guidance Note was released on 31<sup>st</sup> August 2015 to provide guidance to the financial institutions, sectoral regulators and officers of the Income Tax



department for ensuring compliance with the reporting requirements under the Income-tax Act and Rules. The sectoral regulators have also issued necessary notifications and circulars for compliance by the financial institutions. Stakeholder consultations are also carried out by CBDT to educate financial institutions about their reporting obligations. In its persistent endeavour to reach out to the financial institutions and account holders, CBDT has created an Exchange of Information portal on the Income-tax Department website for dissemination of information to all stakeholders. The Chairman, CBDT today, inaugurated the portal which consolidates all the relevant AEOI related information at one place for convenient access by financial institutions, Departmental officers as well as public at large.

This portal would be a repository of policy and technical circulars/guidance/notifications issued by the CBDT, and provide links to relevant circulars/guidance issued by the regulatory authorities in India and other international bodies. The portal would not only be useful for the domestic financial institutions but will also help the foreign tax authorities and financial institutions to get information about the Indian laws, rules and procedures related to AEOI under CRS.

## Income Tax Case laws

**Vaibhav Global Ltd. v. DCIT Circle-5, Jaipur\*[2019] 112 taxmann.com 206 (Jaipur - Trib.)**

As per retrospective amendment of section 92B, bank guarantee provided by assessee to its Associated Enterprise (AE) would fall within ambit of international transaction

**FCI Oen Connectors Ltd. v. DCIT Cochin\*[2019] 112 taxmann.com 160 (Kerala) HIGH COURT OF KERALA**

Where assessee had not opted for e-proceeding facility, but had chosen to have its assessment proceedings continued in manual mode, receipt of draft assessment order in manual mode had to be seen as date of service of draft assessment order.

**National Petroleum Construction Co. v. DCIT International Taxation, Delhi [2019] 112 taxmann.com 364 (Delhi) DELHI ( HC)**

The question of existence of permanent establishment (PE) of a non-resident assessee, which requires a detailed enquiry is not envisaged at the stage of deciding the application for issuance of certificate under section 197. However, the full fledged investigation in said regard can be done by the Assessing Officer during the course of assessment proceedings.

**Dalmia Power Ltd. v. ACIT [2019] 112 taxmann.com 252 (SC)**

It is incumbent upon Department to assess total income of successor in respect of previous assessment year after date of succession. Thus, where predecessor companies/transferor companies had been succeeded by appellants/transferee companies who had taken over their business along with all assets, liabilities, profits and losses etc., in view of provisions of section 170(1), Department was required to assess income of appellants after taking into account revised Returns filed after amalgamation of companies.

**JSW Steel Ltd. Vs ACIT 2019] 112 taxmann.com 55 (Mumbai - Trib.)**

When a particular receipt is exempt from tax under Income tax law, then same cannot be considered for purpose of computation of book profit under section 115JB of the Income-tax Act 1961

**Young Indian Vs. CIT (Exemption), New Delhi 2019] 111 taxmann.com 235 (Delhi - Trib.)**

Charitable or religious trust - Registration procedure - Assessment year 2011-12 - Registration granted under section 12A can be cancelled from date when registration had been granted if assessee has not carried out any activity in line with its objects or activities carried out are not genuine

**Honda Cars India Ltd. Vs. DCIT (LTU), Delhi 2019] 112 taxmann.com 164 (Delhi - Trib.)**

Where assessee, engaged in manufacturing of cars and spare parts, entered into an agreement with a company and made royalty payment to secure technical know-how as regards manufacture of products listed in said agreement, since said payment was not towards setting up of manufacturing facility, same was revenue in nature.



## 2. Indirect Tax

### Notifications & Circulars:-

#### 2.1 Extension of last date for filing of appeals under Goods and Service Tax Act

Central Government on the recommendation of council makes the following order to remove the difficulties in filing the appeals.

The period of three months for the purpose of section 112(2) shall be considered to be the later of following dates:

- Date of communication of order
- Date on which the President or state president of the Appellate Tribunal after its constitution under section 109, enters office.

The period of six months for the purpose of section 112(3) shall be considered to be the later of following dates:

- Date of communication of order.
- Date on which the President or state president of the Appellate tribunal after its constitution under section 109, enters office.

*\_Order No 09/2019 dated 03-12-2019*

#### 2.2 Withdrawal of circular related to Supply of Information Technology enabled services under GST

As the Government has created confusion by issuing a Circular no. 107/26/2019-GST dated July 18, 2019 leaving an onus on ITeS service providers self-assessing on whether they qualified as an intermediary. This entailed a spate of notices being issued on ITeS firms

- Now the Government has withdrawn circular in view of numerous representations received expressing apprehensions on its implications and recommendation of GST Council in order to resolve the issue.

*\_Circular No 107/26/2019-GST dated 4th December' 2019*

#### 2.3 Blocking and unblocking of EWB generation facility at E-Way Bill Portal

1. Blocking of EWB generation facility: Blocking/unblocking of EWB generation facility has been implemented on EWB Portal from 2nd December, 2019.

- Meaning of blocking: The blocking of E Way Bill generation facility means disabling taxpayer from generating

**E-Way Bill (EWB)**, in case of non-filing of 2 or more consecutive GSTR 3B Return on GST Portal. Example: Taxpayers who have not filed their GSTR-3B return for the months of September 2019 and October 2019, their EWB generation facility is blocked from 2nd December, 2019.

- For GSTINs whose EWB generation facility is blocked, EWB can't be generated either by the taxpayer or by their counterparty (whether as supplier or recipient) or the transporter.
2. Effect on already generated EWB: In case of blocked GSTINs, EWBs already generated and facilities in respect of these EWBs such as updating the vehicle or transporter details or extending the validity of EWB will not be impacted.
  3. Unblocking of EWB generation facility: The EWB generation facility would be automatically unblocked in the event of filing of their GSTR 3B return for the default period(s), reducing the default period to less than 2 consecutive tax periods. The blocking will be automatically lifted on the EWB system next day.
  4. Immediate updation of Status at EWB Portal: For immediate updation of the status the taxpayer can go to the EWB portal and select the option "Search Update Block Status", enter their GSTIN and use Update Option to get themselves unblocked on GST portal, provided GSTR-3B return has already been filed for the default period(s).
  5. **Unblocking by Tax Official:** EWB generation facility can also be restored by the jurisdictional tax official on basis of manual representation by a taxpayer. The tax officials will issue a speaking order on GST Portal, for accepting or rejecting such requests of the taxpayers. In case he accepts the request, the facility will get restored.
  6. Effect on Transporter registered on EWB Portal: Transporters enrolled in EWB Portal, but not registered on GST portal will not be impacted.

However, the transporters registered on GST Portal, if blocked on non-filing of two or more GSTR 3B returns, cannot use their GSTIN as Consignor, Consignee or transporter to generate EWB and update transporter details.

## 2.4 Extension of Due date of GST Returns for registered persons whose principal place of business is in the State of Jammu and Kashmir:-

Returns	Turnover (in the preceding financial year or the current financial year)	Period	Extended due date
<b>GSTR-1 (Outward Supplies)</b>	More than 1.5 crore rupees	For the month of July, August, September, October	Till 20 <sup>th</sup> December, 2019
<b>GSTR-3B (Summary of Outward/ Inward supplies)</b>	—	For the month of July'19 to October'19	On or before 20 <sup>th</sup> December, 2019
<b>GSTR-7 (Filed by Tax deductor under GST)</b>	—	For the month of July'19 to October'19	On or before 20 <sup>th</sup> December, 2019

*\_Notification No 63, 64, 65, 66, 67/2019-Central Tax dated 12<sup>th</sup> December, 2019*

## 2.5 Amendment in manner of issuing Tax invoice under GST

1. Central Government on the recommendation of GST Council has amended the manner of issuing tax invoice by inserting sub rule (4) in Rule 48 of CGST Rules, 2017.
2. The tax invoice to be prepared after including details mentioned in Form GST INV-01 after obtaining an Invoice Reference Number by uploading information contained on electronic portal.
3. Every invoice issued by a person other than the manner specified in above mentioned sub rule shall not to be treated as an invoice.

*\_Notification No 68/2019-Central Tax dated 13<sup>th</sup> December, 2019*

## 2.6 Issuance of E-Invoice Under GST Act

- This notification shall come into force from April 1, 2020.
1. Central Government on the recommendation of GST council

notified the GST electronic portal for the purpose of preparation of the invoice in terms of sub rule (4) of Rule 48 of CGST rules, 2017.

2. It notifies registered persons whose aggregate turnover in a financial year exceeds one hundred crore rupees, as a class of registered persons who shall prepare invoice in terms of sub rule (4) of Rule 48 of CGST Rules, 2017 in respect of supply of goods or services or both to a registered person.
3. An invoice issued by a registered person, whose aggregate turnover financial year exceeds five hundred crore rupees, to an unregistered person (B2C invoice), shall have Quick Response (QR) code.
4. If the registered person makes a Dynamic Quick Response (QR) code available to the recipient through a digital display, such B2C invoice issued by such registered person containing cross reference of the payment using a Dynamic Quick Response (QR) code, shall be deemed to be having Quick Response (QR) code.

*\_Notification No 69/70/71/72/2019-Central Tax dated 13<sup>th</sup> December, 2019*

## 2.7 Quoting of DIN on the communications issued by officers of CBIC:-

1.The Central Government on the recommendation of GST Council, issued the circular regarding the generating and quoting of Document Identification Number (DIN) on each and every communications issued by the officers of CBIC to the taxpayers and other concerned persons.

2.The board has specified that the DIN monitoring system would be used for incorporating a DIN on search authorizations, summons, arrest memos, inspection notices to begin with.

3.It has been also decided that electronic generation and quoting of DIN shall be done in respect of all communications (including e-mails) sent to tax payers and other concerned persons by the officers of CBIC across the country.

4.Electronic generation of DIN would create a digital directory for maintaining a proper audit trail of communications sent to tax payers and other concerned persons and it would provide the recipient of such communication a digital facility to ascertain the genuineness of the communication.

*\_Circular No 128/47/2019-GST dated 23<sup>th</sup> December, 2019*

## 2.8 Standard Operating procedure for Non-Filers of GST return

1. A system generated message will be sent to all the registered persons before 3 days of due date of filing the return as a reminder to file the return.
2. Once the due date for furnishing the return under section 39 is over, a system generated mail/message would be sent to all the defaulters immediately after the due date to the effect that the said registered person has not furnished his return for the said tax period.
3. Five days after the due date of furnishing the return, a notice in FORM GSTR-3A (under section 46 of the CGST Act read with rule 68 of the CGST Rules) shall be issued electronically to such registered person who fails to furnish return under section 39, requiring him to furnish such return within fifteen days.
4. In case the said return is not filed by the defaulter within 15 days of the said notice (i.e. FORM GSTR-3A) the proper officer may proceed to assess the tax liability of the said person under Section 62 (i.e. Best Judgment Assessment).
5. In Case the defaulter has furnished the valid return within the period of 30 days of the service of order in FORM GST ASMT-13, the said Assessment order shall be deemed to have been withdrawn.
6. If the said return is unfurnished after 30 of service of order then Proper officer may initiate proceedings under Section 78 (Initiation of recovery proceedings) and recover under Section 79 (ways of recovery) of CGST Act.

*—Circular No 129/48/2019-GST dated 24<sup>th</sup> December, 2019*

## 2.9 Late fees waived of non-filing of returns

- On the recommendation of GST Council, Government has waived late fees for non-filing of GSTR-1 for the period from July, 2017 to November, 2019 but furnishes the details in Form GSTR-1 between the periods from December 19, 2019 to January 10, 2020.
- The notification shall be deemed to come into force from December 19, 2019.

*—Notification No 74/2019-Central Tax dated 26<sup>th</sup> December, 2019*

## 2.10 Amendment in CGST Rules, 2017

1. Maximum ITC can be availed up to 10% of eligible ITC for invoices which are not reflecting in GSTR-2A w.e.f. January 1, 2020, earlier it was 20%.
2. Insertion of new rule 86A under CGST Rules, 2017, conditions to be complied for use of amount available in Electronic credit ledger w.e.f. December 26, 2019. Where the proper officer has reason

to believe that ITC available in electronic credit ledger has been fraudulently availed or is ineligible may, for reason to be recorded in writing, not allow utilization of such ITC or refund of unutilized amount to the extent of:

- ITC availed for the invoices issued by the supplier who has been found non-existent or not to be conducting any business from any place for which registration has been obtained.
- ITC availed without the receipt of goods or services or both.
- ITC availed in respect of the supply, the tax charged in respect of which has not been paid to Govt.
- The recipient has been found non-existent or not to be conducting any business from any place for which registration has been obtained.
- ITC availed for which Tax invoice or other valid document is not in the possession of the registered person.

*—Notification No 75/2019-Central Tax dated 26<sup>th</sup> December, 2019*

## 2.11 Extension of due date for filing returns in state of Assam, Manipur, Meghalaya, Tripura

Returns	Turnover (in the preceding financial year or the current financial year)	States	Period	Extended due date
GSTR-1 (Outward Supplies)	More than 1.5 crore rupees	Assam, Manipur, Tripura	November, 2019	December 31, 2019
GSTR-3B (Summary of Outward/ Inward supplies)	—	Assam, Manipur, Meghalaya, Tripura	November, 2019	December 31, 2019
GSTR-7 (Filed by Tax deductor under GST)	—	Assam, Manipur, Tripura	November 2019	December 25, 2019

*—Notification No 76/77/78/2019 Central Tax dated 26<sup>th</sup> December, 2019*



## **2.12 Extension of due date for filing of Annual Return**

Government, on the recommendation of council extended the last date for furnishing of annual return/reconciliation statement in FORM GSTR-9/FORM GSTR-9C for FY 2017-18 till 31.01.2020 (earlier it was 31.12.2019) due to technical issues faced by taxpayers.

*\_Order No. 10/2019- Central Tax dated 26<sup>th</sup> December, 2019*

## **2.13 Clarification by GSTN on updated version of Annual Return utility**

Updated version of the Offline tool of GSTR-9C (Version 1.5) was made available on the portal on 24-12-2019. A minor issue has come to notice in auditor's certificate issued in Part-B (ii). The issue will be fixed shortly. In the meantime, where Part-B (ii) of the certificate is not applicable i.e. auditor preparing GSTR-9 has also conducted audit of the business and same number is applicable, they may continue with statement preparation and filing.

## **2.14 Extension of last date for availing SV(LDR) Scheme**

The Central Board of Indirect Taxes and Customs (CBIC) has extended the Sabka Vishwas (Legacy Dispute Resolution) Scheme it for a period of fifteen days, till 15th January, 2020.

*\_Notification No 07/2019-Central Excise-NT dated 31st December, 2019*

## **38<sup>TH</sup> GST Council Meeting Highlights**

### **Decisions made on rate changes**

1. Single rate of GST @28% on both state run and state authorized Lottery. This change shall become effective from March 1, 2020.
2. Exemption to upfront amount payable for long term lease of industrial /financial infrastructure plots by an entity having 20% or more ownership of Central or State Government. This change shall become effective from January 1, 2020.
3. Rate of GST on Woven and Non-Woven Bags and sacks of polyethylene or polypropylene strips or the like, whether or not laminated, of a kind used for packing of goods (HS code 3923/6305), recommended to raise the GST to a uniform rate of 18% (from 12%) on all such bags falling under HS 3923/6305 including Flexible Intermediate Bulk Containers (FIBC). This change shall become effective from January 1, 2020.

### **Decisions regarding law and procedure related changes**

1. Grievance Redressal Committees (GRC) will be constituted at Zonal/State level with both CGST and SGST officers and including representatives of trade and industry and other

GST stakeholders (GST practitioners and GSTN etc.).

2. These committees will address grievances of specific/ general nature of taxpayers at the Zonal/ State level.
3. Measures to improve filing of FORM GSTR-1:
  - Waiver of late fee to be given to all taxpayers in respect of all pending FORM GSTR-1 from July 2017 to November 2019, if the same are filed by January 10, 2020.
  - E-way Bill for taxpayers who have not filed their FORM GSTR-1 for two tax periods shall be blocked.
4. Input tax credit to the recipient in respect of invoices or debit notes that are not reflected in his FORM GSTR-2A shall be restricted to 10 per cent of the eligible credit available in respect of invoices or debit notes reflected in his FORM GSTR-2A. To check the menace of fake invoices, suitable action to be taken for blocking of fraudulently availed input tax credit in certain situations.

### **New Functionalities available on GST Portal**

1. Returns: Taxpayers can now make amendments in Form GSTR-1, of advance tax and adjustment of various tax periods, in the same month in Form GSTR-1.
2. Form ITC-04: Taxpayers can now delete challan in Table 4 of Form ITC-04.
3. Payment: Now preferred bank will be shown in the list of banks while creating challan.

### **Free Accounting and billing software to MSME'S**

1. GST Network has started offering free accounting and billing software to MSMEs with annual turnover of up to Rs.1.5 Crore which would benefit about 80 Lakh small businesses.
2. This software would help businesses to create invoices and account statements, manage inventory and prepare GST returns. The said software is available under 'Download' tab on the official GST portal [www.gst.gov.in](http://www.gst.gov.in).
3. The software providers offers basic features like sale/purchases /cash ledger, inventory management, supplier/customer masters, generation of invoices, preparation of GST returns for free, while for services like additional feature like bank reconciliation, account receivable would be chargeable.

### **Clarification issued on Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019**

1. In view to facilitate taxpayer, as well as to recognize and appropriate these deposits, it is clarified that such deposits are to be deducted/adjusted when issuing the statement indicating the amount payable by the declarant.
2. The deposits made during enquiry, investigation or audit etc. made 'under protest' needs to be adjusted by the designated committee in order to determine the final amount payable by the declarant.
3. As per Section 130(2) of the Scheme there is no question of refund of any excess deposit in any case.



4. As per Section 10(1) of the General Clauses Act, 1897, any act or proceeding allowed to be done in any office on a certain day or within a prescribed period, then, if the office is closed on that day of the prescribed period, the act or proceeding shall be considered as if it is done on the next day afterwards on which the office is open. Therefore, **relevant date shall be considered as July 1, 2019 instead of June 30, 2019.**
5. The term 'matter' under Section 129 of the Scheme means a case for which the taxpayer intends to file a declaration under the Scheme. In the instant case, a 'return filed but duty not paid' is separate matter and the SCN issued for 'differential amount' is a separate matter.

### 3. SEBI Updates

#### Guidelines for Filing of Placement Memorandum

SEBI vide its Circular dated December 24, 2019 has issued the following clarification to the Infrastructure Investment Trusts (InvITs) which are issuing units on private placement basis that are proposed to be listed:

- a) InvITs shall file a draft placement memorandum with the Board and stock exchange(s) through a merchant banker registered with the Board not less than 30 days prior to the opening of the issue.
- b) The draft placement memorandum shall contain disclosures as specified in Schedule III of InvIT Regulations and the merchant banker shall submit a due diligence certificate as per Form A (to the extent applicable) of Annexure I of SEBI Circular no. CIR/IMD/DF/55/2016 along with the draft placement memorandum.
- c) The Board may issue the observations, if any, on the draft placement memorandum within 15 working days from the later of following dates:
  - i. Date of receipt of draft placement memorandum by board.
  - ii. Date of receipt of date of receipt of satisfactory reply from the issuer and/or merchant banker to the issue, where the Board has sought any clarification or additional information from them
  - iii. date of receipt of clarification or information from any regulator or agency, where the Board has sought any clarification or information from such regulator or agency
  - iv. the date of receipt of a copy of in-principle approval letter issued by the stock exchange(s)
- d) Merchant banker to the issue shall ensure that the all comments are suitably incorporated in the draft placement memorandum prior to filing of placement memorandum in terms of Regulation 14(2)(e) of InvIT Regulations and shall provide the due diligence certificate as per Form B

of Annexure I of SEBI Circular No. CIR/IMD/DF/55/2016.

This circular shall come into effect from January 15, 2020 for all InvITs issuing units on private placement basis and are proposed to be listed under SEBI (Infrastructure Investment Trusts) Regulation, 2014.

*SEBI circular No. SEBI/HO/DDHS/CIR/P/2019/161*

#### Format on Statement of Deviation or Variation for proceeds of public issue, rights issue, preferential issue, Qualified Institutions Placement (QIP) etc.

As per Regulations 32(1), 32(2) and 32(3) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, a listed entity is, *inter alia*, required to submit to the stock exchange, a statement of deviation or variation, pursuant to review by the audit committee, on a quarterly basis for public issue, rights issue, preferential issue etc. indicating,

- Deviations, if any, in the use of proceeds of public issue, rights issue, preferential issue etc. and
- The category wise variation between projected utilisation of funds and the actual utilisation of funds.
- Such statement of deviation or variation is to be submitted till the issue proceeds have been fully utilised or the purpose for which these proceeds were raised has been achieved.

Hence, for the purpose of compliance with 32(1), 32(2) and 32(3) of the SEBI LODR Regulations, listed entities shall follow the format placed at **Annex A** to this Circular. The salient features of the format are as under:

**Applicability:** The format shall be applicable for funds raised by listed entities through public issue, rights issue, preferential issue, QIPs etc.

**Frequency of Disclosure:** The disclosure to the Stock Exchange(s) shall be made by listed entities on quarterly basis along with the declaration of financial results (within 45 days of end of each quarter / 60 days from the end of the last quarter of the financial year) until such funds are fully utilised or the purpose for which these proceeds were raised has been achieved.

**Role of the Audit Committee:** The statement of deviation report shall be placed before audit committee of the listed entity for review on quarterly basis and after such review, the comments of audit committee along with the report shall be disclosed/submitted to the stock exchange, as part of the format. In cases where the listed entity is not required to have an audit committee under the provisions of SEBI LODR Regulations or Companies Act, 2013, the word 'Audit Committee' shall be replaced with 'Board of Directors'.

The first such submission shall be made by the listed entities for the quarter ending December 31, 2019.

*SEBI circular No. CIR/CFD/CMD1/162/2019*

## 4. RBI Updates

### Review of Master Directions - Non-Banking Financial Company – Peer to Peer Lending Platform (Reserve Bank) Directions, 2017

RBI vide its Notification dated December 23, 2019 has provided that on review of Master Directions - Non-Banking Financial Company – Peer to Peer Lending Platform (Reserve Bank) Directions, 2017, it has been decided that:

- i. The aggregate exposure of a lender to all borrowers at any point of time, across all P2P platforms, shall be subject to a cap of ₹ 50,00,000 provided that such investments of the lenders on P2P platforms are consistent with their net-worth.
- ii. The lender investing more than ₹ 10,00,000 across P2P platforms shall produce a certificate to P2P platforms from a practicing Chartered Accountant certifying minimum net-worth of ₹ 50,00,000. Further, all the lenders shall submit declaration to P2P platforms that they have understood all the risks associated with lending transactions and that P2P platform does not assure return of principal/payment of interest.
- iii. Escrow accounts to be operated by bank promoted trustee for transfer of funds need not be mandatorily maintained with the bank which has promoted the trustee.

*Notification No. RBI/2019-20/121*



### Furthering Digital Payments–Waiver of Charges–National Electronic Funds Transfer (NEFT) System

RBI vide its Notification dated December 16, 2019 has provided that in order to give further impetus to digital retail payments, the banks shall not levy any charges from their savings bank account holders for funds transfers done through NEFT system which are initiated online (viz. internet banking and/or mobile apps of the banks).

*Notification No. RBI/2019-20/116*

### Availability of National Electronic Funds Transfer (NEFT) System on 24x7 basis

It has been decided by RBI vide its Notification dated December 6, 2019 that the NEFT facility shall be made available on 24x7 basis from December 16, 2019 with the first settlement taking place after 00:30 hours on December 16, 2019 (i.e. night of December 15, 2019).

*Notification No. RBI/2019-20/111*

## 5. Place of Effective Management (POEM)

By CA Ajay jain & Nikita Aggarwal (Direct Tax)

### Residential Status of Companies as per Sec. 6 of Income Tax

The determination of residency for taxation has evolved from "place of incorporation" to concepts such as "central control and management", etc., and finally to "Place of Effective Management (POEM)". The memorandum for the Finance Act 2015 explains that the rationale for the introduction of POEM in India is to align the provisions of the Income Tax Act, 1961 with the DTAA's entered into by India and also to base the corporate residency test in line with international standards.

### Guiding Principles for determining Place of Effective Management (POEM)

Place of Effective management is a place where key management and commercial decisions that are necessary for the conduct of the business of the entity as a whole are in substance made. Place of Effective management of a Company is not considered in India, if it is engaged in active business outside India.

Active business outside India is determined by the following factors:

- i. Its **passive income** should not be more than 50% of its total income
- ii. Less than 50% of its **total assets** situated in India
- iii. Less than 50% of its **total number of employees** are situated in India.
- iv. Less than 50% of its **total payroll expense** is incurred in India.

**Passive income** shall be aggregate of:

- i. Income from the transactions where both the purchase and sale of goods is from/to its associated enterprises.
- ii. Income by way of royalty, dividend, capital gain, interest or rental income.

However, interest income would not be considered as passive income if the Company is engaged in the business of banking or is a public financial institution and its activities are regulated as such under the applicable laws of the country of incorporation.

**Total Assets** shall be the aggregate of:

- i. In case of an individually depreciable assets, shall be the average of its value for tax purposes in the country of incorporation of the company at the beginning and end of the year
- ii. In case of pool of a fixed assets being treated as a block for depreciation, shall be the average of its value for tax purposes in the country of incorporation of the Company at the beginning and at end of the year
- iii. In case of any other assets, shall be its value as per books of accounts.

**Total number of employees** shall be the average of the number of employees as at the beginning and at the end of the year.

the Company, perform tasks similar to those performed by the employee and shall include persons, who though not employed directly by

**Total Payroll Expenses** shall be the cost of salaries, wages, bonus and all other employee compensation including related pension and social costs borne by the employer.

### **Other Considerations:**

Any determination of POEM will depend upon the facts & circumstances of a given case. The POEM concept is one of substance over form. Residence is determined on yearly basis, POEM will also be determined on year to year basis. The process of determination of POEM would be primarily based on the facts as to whether or not the company is engaged in active business outside India.

### Majority meetings of the BoD held outside India:

The place of effective management in case of a Company engaged in active business outside India will be outside India if the majority of the meetings of the board of directors of the Company are held outside India. However if on the basis of facts and circumstances it is established that the board of directors are standing aside and not exercising their powers of management and such powers are being exercised by either the holding company or any other person resident in India, then the POEM shall be considered to be in India. If the Board of directors follows the general and objective principals of global policy of group laid by the parent entity and not being specific to any entity of group of entities would not constitute a case of BoD of Companies standing aside.

For the purpose of determining whether the Company is engaged in active business outside India, the average of the data of the previous year and two years prior to that shall be taken into consideration. In case, Company having a short period of existence the data for such shorter period shall be considered. Where the accounting year for tax purposes, in accordance with laws of country of incorporation of the company is different from previous year, then data of the accounting year that ends during the relevant previous year and two preceding accounting years shall be considered.

### Majority meetings of BoD not held outside India:

It would be a two stage process:

Identification/ascertaining the person/persons who actually make the key management and commercial decisions for conduct of Company's business.

Determination of place where these decisions are being made.

### The following pointers should be taken into consideration:

- The place where these management decisions are taken would be more important than the place where these decisions are being implemented.



- The place of meeting of BoD may be the guiding principle of POEM. It is also to be noted that mere holding of board meetings at a place would by itself would not be conclusive for determination of POEM.
- In case the board delegates some or all of its authority to any committee consisting of key members of senior management, POEM will be the location where members of the committee are based.
- The location of a Company's head office will be a very important factor in the determination of Company's place of effective management because it often represents the place where key company decisions are made. The following pointers need to be considered for determining the location of head office of the Company:

⇒ Company's senior management and their support staff are in a single location and that location is held out to the public as the Company's principal place of business or headquarters then that location is the place where head office is located

⇒ If the company is more decentralized (for example where various members of senior management may operate, from time to time, at offices located in the various countries) then the company's head office would be the location where these senior managers,

- i) are primarily or predominantly based; or
- ii) normally return to following travel to other locations; or
- iii) meet when formulating or deciding key strategies and policies for the company as a whole.

⇒ Members of the senior management may operate from different locations on a more or less permanent basis and the members may participate in various meetings via telephone or video conferencing rather than by being physically present at meetings in a particular location. In such situation the head office would normally be the location, if any, where the highest level of management (for example, the Managing Director and Financial Director) and their direct support staff are located.

⇒ In situations where the senior management is so decentralized that it is not possible to determine the company's head office with a reasonable degree of certainty, the location of a company's head office would not be of much relevance in determining that company's place of effective management

- Due to use of modern technologies it is not necessary for the person taking decision to physically present at the place where decisions are being taken, hence for determining the POEM, the place where the persons/directors taking the decisions usually reside will be a relevant factor.
- Proposer of decision alone would be relevant based on past practices and general conduct, it would be required to

determine the person who has the authority and who exercises the authority to take decisions. The place of location of such person would be more important.

- The decisions made by shareholder on matters which are reserved for shareholder decision under the Company laws are not relevant for determination of place of effective management.

However the shareholder's involvement can in certain situations turn into that of effective management. This may happen through a formal arrangement by way of shareholder agreement etc or may also happen by way of actual conduct. Therefore, whether the shareholder involvement is crossing the line into that of effective management is one of fact and has to be determined on case-to-case basis only.

- It is also clarified that day to day operational decisions undertaken by junior & middle management shall not be relevant for the purpose of determination of POEM.

#### **Secondary factors for determination of POEM:-**

- Place where main and substantial activity of the company is carried out
- Place where the accounting records of the company are kept.

It is reiterated that the above principles for determining the POEM are for guidance only. Further, based on the facts and circumstances if it is determined that during the previous year the POEM is in India and also outside India then POEM shall be presumed to be in India if it has been mainly/predominantly in India.

The Assessing Officer (AO) shall, before initiating any proceedings for holding a company incorporated outside India, on the basis of its POEM, as being resident in India, seek prior approval of the Principal Commissioner or the Commissioner, as the case may be. Further, in case the AO proposes to hold a company incorporated outside India, on the basis of its POEM, as being resident in India then any such finding shall be given by the AO after seeking prior approval of the collegium of three members consisting of the Principal Commissioners or the Commissioners, as the case may be, to be constituted by the Principal Chief Commissioner of the region concerned, in this regard. The collegium so constituted shall provide an opportunity of being heard to the company before issuing any directions in the matter.

Where a foreign Company is said to be resident in India in any previous year and such foreign Company has not been resident in India in any of the previous years preceding the said previous year, then notwithstanding anything contained in this act and subject to the conditions as may be notified by the Central Government in this behalf, the provisions of Section 115JH of Income Tax Act, 1961 shall be applicable for computation of total income, treatment of unabsorbed depreciation, set off or carry forward and set off of losses, collection and recovery.



## 5. Understanding & Valuing Preference Shares

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

**Preference Shares** are issued by corporations or companies with the primary aim of generating funds. In general, in case of any exit event, preference shareholders have preferential rights for payment of dividend and the liquidation preference over common shareholders.

### Characteristics of Preference Shares

There are three main characteristics which define and drive a preference share Valuation – nature of coupon/dividend, redemption terms and conversion terms.

**1. Coupon/Dividend:** Coupon can be zero, cumulative or non-cumulative. Additionally, one might see instances involving moratorium in accrual/payment of coupon for a part of the preference share tenure.

**2. Redemption:** Redemption is the settlement in cash, either at maturity or in an amortizing fashion over multiple redemption dates. Redemption may be defined in terms of a fixed redemption premium, but far more popular option is to define it by an effective IRR requirement, with redemption premium quantum getting adjusted for coupon payments already made prior to redemption.

**3. Conversion:** Conversion indicates settlement in equity shares of the Issuer. Conversion may be defined in terms of a fixed or formula driven conversion ratio/ price.

Combinations of the above characteristics lead to various types of preference shares. Some of them are discussed below:

- **Cumulative:** All dividends are carried forward until specified, and paid out only at the end of the specified period.
- **Non-cumulative:** Dividends are paid out of profits for every year as per terms of the agreement. There are no arrears carried over a time period to be paid at the end of the term.
- **Redeemable:** A company issues them to shareholders and later redeems them. This means the company can buy back the shares at a later date.
- **Non-Redeemable:** Such shares cannot be redeemed during the lifetime of the company, but can only be obtained at the time of winding up (liquidation) of assets.
- **Convertible:** The shares can be converted into equity shares

after a time period as per the conditions laid down in the terms.

- **Non-convertible:** Non-convertible preference shares as per name explains cannot be, at any time, converted into equity shares.
- **Participating:** Such shares have the right to participate in any additional profits to the extent as per conditions laid down in the terms, after paying the equity shareholders.
- **Non-Participating:** Non-participating preference shares do not possess any right to participate in any surplus profits at the time of liquidation of the company.

The following **Indian Accounting Standards or Ind AS** standards apply to them:

**Ind AS 32:** Presentation and classification of financial instruments

**Ind AS 109:** Recognition, de-recognition, classification and measurement of financial instruments

**Ind AS 113:** Principles of fair value measurement that would be applicable to financial instruments

**Ind AS 107:** Disclosures required with respect to financial instruments.

For **Fair Value Measurement (FMV)** of preference shares, we rely primarily on the principles discussed in Ind AS 113 and terms of its measurement as indicated in Ind AS 109.

Let's have a quick look at three classical Valuation Approaches which are typically applied in business valuation and can be extended to financial instruments as well.

**Income Approach:** The discounted cash flow (DCF) analysis is the primary methodology used for Valuation of compulsorily convertible preference shares and the redeemable preferred shares. Two inputs to the DCF model are cash-flows and the discount factor. Cash can flows take any form i.e. dividends, coupon, redemption, or maturity amount, underlying equity shares upon conversion at triggering event or at the end of the term.

A Valuer must assess the availability of cash-flows, triggering condition and the likelihood of each event which can impact the cash flows available during and/or at the end of the period as indicated in the term sheet of preference shares.

**2. Market Approach:** Our quick assessment of the listed preference shares market in India indicates that the market lacks the depth. Most of the preference shares are privately placed and full feature disclosure is not available in the public domain. Further, trade information/ frequency in case of listed preference shares is low. This poses a challenge to carrying out any meaningful analysis based on comparable transaction method. Therefore, market approach is seldom applicable in case of preferred shares valuation.

**3. Cost Approach:** Ind AS 109 allows recognizing financial asset/liabilities through the amortized cost method, under specific circumstances, when the concept of SPPI (Solely held to collect principal and interest) is fully satisfied, particularly in case of RPS, which is non-convertible but redeemable at maturity.

Importantly, in most of the cases where preferred shares are deriving its value from the conversion into its underlying equity shares, as first step, it would require business/ equity valuations using the combination of above mentioned three approaches depending on the nature, size and requirement of valuation.

Once the value of the company is determined, next step is to allocate the value among different class of securities like convertible debt, common equity and preferred equity. Each class of shares/instruments have different rights and preferences like liquidation

preference, participation rights, conversion rights, redemption rights, anti-dilution rights, voting rights and many other features attached with the securities. Some are qualitative in nature and difficult to quantify like voting rights differential, however most of them are quantifiable as economic gain or loss can be ascertained in favorable and/or unfavorable events.

The **Option Pricing Method (OPM)** is most commonly used for allocation of enterprise value among different security classes. OPM treats securities, including debt, common and preferred stock, as a series of call options on the enterprise's value, with exercise prices based on the securities' respective liquidation preferences, redemption premium and/or conversion terms. Thus, the common stock is a call option with a claim on the enterprise at an exercise price equal to the remaining value immediately after the liquidation preferences are fulfilled and considering the relevant rights of the preferred stock (e.g., participation) as well as the potential dilution from other outstanding securities such as options and warrants.

**Binomial lattice method** and **Monte Carlo simulation method** are the other two methods to value the complex instruments depending on whether the payoffs are linear or non-linear, path dependent or not, and/or risk neutral assumption in OPM method holds true or not.

## Monthly Compliance Calendar January '2020

<b>07 Jan</b> <b>TDS/TCS LIABILITY DEPOSIT</b>  Due date of depositing TDS/ TCS liabilities for previous month.	<b>07 Jan</b> <b>EQUALISATION LEVY DEPOSIT</b>  Equalization Levy is a direct tax, which is withheld at the time of payment by the service recipient where the annual payment made to one service provider (Non Residents only) exceeds Rs. 1,00,000 in one financial year for the specified and notified services.	<b>10 Jan</b> <b>GSTR-7 RETURN FILING DUE DATE</b>  Due Date for filing GSTR-7 by person liable to deduct TDS under GST for previous every quarter	<b>10 Jan</b> <b>GSTR-8 RETURN FILLING DUE DATE</b>  GSTR-8 is a return to be filed by the e-commerce operators who are required to deduct TCS (Tax collected at source) under GST.
<b>11 Jan</b> <b>GSTR-1 RETURN FILLING DUE DATE</b>  GST Filing of returns by registered person with aggregate turnover more than 1.50 crores	<b>13 Jan</b> <b>GSTR-6 RETURN FILLING DUE DATE</b>  Due Date for filing return by Input Service Distributors for previous month.	<b>15 Jan</b> <b>PROVIDEND FUND / ESI DUE DATES</b>  Due date for payment of Provident fund and ESI contribution for the previous month	<b>18 Jan</b> <b>CMP-08 RETURN AND PAYMENT</b>  Return by person who has opted for Composition scheme under GST
<b>20 Jan</b> <b>GSTR-3B RETURN FILLING DUE DATE</b>  Due date for filing GSTR – 3B return for Previous month	<b>20 Jan</b> <b>GSTR-5A RETURN FILLING DUE DATE</b>  Return by person providing online information and database access or retrieval services by a person located outside India made to Non-Taxable persons in India for the previous month	<b>20 Jan</b> <b>GSTR-5 RETURN FILLING DUE DATE</b>  Due date of GSTR-5 (for Non-resident Taxable person) for the Previous month.	<b>31 Jan</b> <b>TDS RETURN DUE DATE</b>  TDS Return for TDS deducted under Section 194 for the quarter ended December 2019
<b>31 Jan</b> <b>GSTR-9 RETURN FILLING DUE DATE</b>  Annual Return to be filed by Regular Taxpayers filing GSTR 1 and GSTR 3B	<b>31 Jan</b> <b>GSTR-9A RETURN FILLING DUE DATE</b>  Taxable Persons paying tax under Section 10 of CGST Act, the composition scheme, are required to submit their annual returns in Form GSTR 9A.	<b>31 Jan</b> <b>GSTR-9B RETURN FILLING DUE DATE</b>  Annual Return to be filed by e-commerce operators who have filed GSTR 8 during the financial year.	<b>31 Jan</b> <b>GSTR-9C RETURN FILLING DUE DATE</b>  Taxpayers whose annual turnover exceeds INR 2 crores during a Financial Year are required to get their accounts audited by a practicing Chartered Accountant or Cost Accountant before filing returns in Form GSTR 9C.

## 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 reporting, 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.

**Editorial Board:** CA Ajay Jain, CA Naveen Goyal, Manuj Singhal CFA, CA Chandan Rajgadha, CS Sakshi Goyal, Apoorv Singhal, CS Rupali Kulshrestha, Nikita Aggarwal, Vipul Kumar Gupta

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