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October 07, 2020

Synopsis

Companies Law

SEBI

Direct Taxes

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Companies Act 2013

UPDATES IN THE COMPANIES ACT, 2013

1. Extension of time line under various schemes:

Sl. No.	Particulars	Previous due date	Extended due date
1.	Extension of LLP Settlement scheme 2020 *Circular reference*	September 30, 2020 *No. 13/2020 dated March 20, 2020*	December 31, 2020 *No. 31/2020 dated September 28, 2020*
2.	Extension of Companies Fresh start scheme 2020 *Circular reference*	September 30,2020 *No.12/2020 dated March 30, 2020*	December 31,2020 *No. 30/2020 dated September 28, 2020*
3.	Extension of time- Scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013 *Circular reference*	September 30, 2020 *No.23/2020 dated June 17, 2020*	December 31, 2020 *No.32/2020 dated September 28, 2020*
4.	Suspension of initiation of Corporation insolvency resolution process of a corporate debtor. *Reference*	September 25, 2020 The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020	December 25, 2020 *No. 30/33/2020 dated September 24,2020*
5.	Extension of time limit to allow the companies to conduct Extraordinary	September 30, 2020	December 31, 2020

	General meetings through Video conferencing (VC) or through other audiovisual means (OAVM) or to transact the items through postal ballot. *Circular reference*	 *No.22/2020 dated June 15, 2020*	 *No.33/2020 dated September 28, 2020*

2. Extension of time limit for creation of Deposit repayment reserve:

Section 73(2)(c) of Companies Act, 2013 requires a company to create deposit repayment reserve of 20% of deposit maturing during the financial year 2020-21 before April 30, 2020.

In view of the Covid pandemic, Ministry of Corporate Affairs (MCA) had earlier extended the time from April 30, 2020 to June 30, 2020 and thereafter to September 30, 2020. MCA vide its circular no. 34/2020 dated September 29, 2020 has further extended the due date from September 30, 2020 to December 31, 2020.

3. The Companies Amendment Act 2020:

i. The Ministry of Corporate affairs (MCA) introduced the Companies Amendment Act, 2020 on September 28, 2020 in order to promote ease of doing business and to decriminalize certain offences.

ii. <u>Section wise analysis of amendments</u>:

Section No./ Amendment	Amendments
2(52) – Definition of listed company	Listed companies definition has been amended to empower Central government to ***exclude*** certain companies, based on listing of certain securities on recognized stock exchanges, post consultation with SEBI.
23 - Public offer and private placement	<u>2 new sub-sections are inserted</u>: • 23(3) - Public companies will be allowed to list certain securities on stock exchanges in foreign jurisdictions. • 23(4) – Central government can by notification, exempt any class or classes of public companies referred to in subsection (3) from any provisions of Chapter III- Prospectus and Allotment of Securities, Chapter IV- Share Capital and Debentures, Section 89- Declaration in respect of beneficial interest in any share, Section 90- Register of significant beneficial owners in a

	company or Section 127- Punishment for failure to distribute dividends, of the Act.
117 - Resolutions and agreements to be filed	NBFC's and HFC's are exempted from filing resolutions passed to grant loans or give guarantees or to provide security in respect of loans in the ordinary course of their business. (Earlier the provisions applied only to Banking Companies)
135 - Corporate Social Responsibility	• Companies spending CSR in excess of 2% will be allowed to set-off such excess amount out of their obligations in future financial years. • Companies having CSR spending requirement of up to 50 Lakhs need not constitute CSR Committee. The said powers may be discharged by board.
129A – Periodical financial results	Central government has been empowered to notify applicability of periodical financial statement, audited or limited review to certain unlisted companies and filing of the said results with ROC within 30 days from end of the period.
149 and 197 – Managerial remuneration and Board	Companies having no profits or inadequate profits, can now pay remuneration to Non-Executive directors including Independent directors in accordance with Schedule V of the Act.
Sections 378A to 378ZU- Producer Companies	A new Chapter as Chapter XXIA relating to Producer Companies has been inserted on similar lines as provided in the Companies Act, 1956.
Reduction in amount of Monetary penalty	<u>The following sections having been amended to reduce the monetary penalty</u>: Section 64 – Notice for alternation of share capital, Section 92 – Annual return, Section 117 – Resolutions to be filed with ROC, Section 137 and Section 140 - filing of copy of financials with ROC, 165 – Number of directorships
Omission of Penalty with Imprisonment	<u>The following sections having been amended to omit the Imprisonment clause:</u> Section 8 – charitable companies, Section 26 – Prospectus, Section 40 – securities to be dealt with in Stock exchanges, Section 68 – Buy-back, Section 128 – books of accounts, Section 147 – punishment for contravention, Section 167 – Vacancy of office of director, Section 242 – Powers of tribunal, Section 243 – Termination or modifications of certain agreements, Section 347 – Disposal of books and powers of company, Section 392 – punishment for contravention, Section 441 – Compounding of certain offences
Penalty provisions are removed	<u>The following sections having been amended to omit the penalty clause:</u> Section 16 – Rectification of name of company, Section 48 – variation of shareholder rights, Section 59 – Rectification of register of members, Section 66 – reduction of share capital, Section 71 – debentures, Section 284 – promoters, directors to cooperate with company liquidator, Section 302 – Dissolution of company by tribunal, Section 342 – Prosecution of delinquent officers and members of company, Section 348 – Company liquidator to deposit monies into scheduled bank, Section 356 – Power of tribunal to declare dissolution of company void.

SECURITIES AND EXCHANGE BOARD OF INDIA

RELAXATIONS PROVIDED BY SEBI

1. Relaxations with respect to validity of SEBI Observations and Revision in the issue size in case of Initial Public Offer/ Rights Issue and Further Public Offer:

   SEBI vide it circular dated April 21, 2020 had provided a one-time relaxation by way of extending the validity of the SEBI Observations expired or expiring between the period March 01, 2020 to September 30, 2020 by six months. The extension of the validity of the observations was subject to an undertaking by the lead manager of the issue confirming the compliance with Schedule XVI of the SEBI (Issue of Capital and Disclosure Requirement) Regulations ("ICDR Regulations") while filing the updated offer document with SEBI.

   In the circular mentioned above, SEBI had also provided relaxation from requiring to file fresh offer document in case of change in the size of the fresh issue of up to 50%. The relaxation was subject to certain conditions.

   SEBI vide its circular dated September 29, 2020 has further extended the relaxations as follows:

   a) The relaxation from requiring to file fresh offer document in case of change in the size of the fresh issue of up to 50% has been extended up to March 31, 2021.

   b) The validity of the SEBI Observations for the observations expiring between October 01, 2020 to March 31, 2021 has been extended up to March 31, 2021 subject to undertaking from the lead manager to the issue confirming compliance with the Schedule XVI of the ICDR regulations while submitting the updated offer document with the SEBI.

DIRECT TAX UPDATES

1. Faceless Appeal Scheme, 2020:

In line with the Prime Minister's initiative for bringing transparency in the Income tax administration, The Central Board of Direct Taxes notified Faceless Appeals Scheme on the same procedure and process as framed for Faceless Assessment Scheme.

This scheme will be enforced by setting up 2 centres one at National level and other at Regional level to be called as "National Faceless Appeal Centre (NFACs)" and "Regional Faceless Appeal Centre (RFACs)"

- National Faceless Appeal Centre: Nodal agency facilitating conduct of e-appeal in a centralised manner. It will be assisted by RFAC's and Appeal Units.
- Regional Faceless Appeal Centre: RFAC's will support NFACs.
- Appeal Units: Conduct e-appeal proceedings and disposing of e-appeals.

Scope of the Scheme: This scheme will cover appeals filed under Section 246A and Section 248 of Income tax act, 1961. Majority of the appeals will now be handled under faceless scheme except:

i. International Tax;
ii. Serious frauds;
iii. Major tax evasion;
iv. Sensitive and Search matters; and
v. Black Money Act.

Refer the below link for detailed notification:

https://www.incometaxindia.gov.in/communications/notification/notification_76_2020.pdf

2. Vodafone Group v/s Union of India: Retrospective taxation case:

The Permanent Court of Arbitration at the Hague ruled in favour of telecom giant Vodafone in an Investment treaty arbitration (ITA) dispute against India, initiated under the India-Netherlands Bilateral Investment treaty (BIT). This ruling marks the culmination of almost a decade long bitter tax dispute between India and the Vodafone Group.While the arbitral award has yet not been made public, it is worthwhile to know the History of the dispute and the implications of the ruling for India.

Background of the Case:

Vodafone Group acquired 67% interest in Indian telecom company Hutchison Essar Limited (HEL) for $11 Billion through its Dutch subsidiary Vodafone International Holding B.V. (VIH) in 2007 by entering into an agreement with Hutchison Telecommunications International Limited (HTIL). Soon after the transaction was complete, Indian Income tax authorities issued a notice demanding payment of $2.2 Billion as Capital gains tax. Vodafone however contended that it was not liable as the transaction between HTIL and VIH did not involve the transfer of any capital asset situated in India.

The Matter went up to Bombay high court (BHC) which ruled in the favour of Income tax department and held the demand valid. Vodafone aggrieved by the decision of BHC filed an appeal with Supreme Court of India. In 2012, Supreme Court of India reversed the decision of Bombay High Court and quashed the demand raised by the Income tax department.

Government of India introduced the Finance Bill, 2012 seeking to amend Section 9 and Section 12 of the Income tax act among various amendments. Section 9 and Section 12 of the Income tax act were the foundation for the Supreme Court's judgement in favour of Vodafone. The Bill became law and the said sections were given effect retrospectively from 1961. Income tax department issued a revised demand on Vodafone at which VIH resorted to India – Netherlands BIT In 2012.

Vodafone enforced Article 4.1 of the India-Netherlands BIT arguing that the retrospective amendment was a violation of "Fair and Equitable treatment" as promised under the said BIT even after the Highest court of India i.e. Supreme Court of India has passed its judgement.

India continued to fight the case until 2017, when Vodafone filed a second ITA dispute under the India-UK BIT challenging the retrospective imposition of the capital gains tax. Government of India moved to Bombay high court in a bid to restrain Vodafone from initiating arbitration under India-UK BIT as the same would amount to abuse of process as 2 different arbitrations on the same issue would amount to parallel proceedings and risk of inconsistent awards. Bombay HC granted an ex-parte Interim order on August 22, 2017 restraining Vodafone from initiating the said arbitration. However, The High court on May 7, 2018 in its final judgement dismissed the plea of Government of India since Vodafone offered to consolidate the arbitrations under India-UK BIT and India-Netherlands BIT due to which the concerns raised by the Government were no longer relevant.

The Award:

The Permanent Court of Arbitration ruled in favour of the Vodafone group and found India to be at default in enforcing Article 4.1 of the India-Netherlands BIT. The Court has also asked India to pay Rs.40 Crore as a partial compensation for the legal costs and to refund the tax collected so far.

India still has an option to appeal the said Award at the High court of Singapore requesting it to set aside the award given that the seat of arbitration was in Singapore.

Important to note that the Supreme Court while deciding the case in favour of Vodafone observed and emphasized that:

'FDI flows towards the location with a strong governance infrastructure which includes enactment of laws and how well the legal system works. Certainty is integral to rule of law. Certainty and stability form the basic foundation of any fiscal system.'

India is now signing BITs either based on the 2016 Model which has a highly restrictive ITA provision, or which do not have ITA provisions at all, such as the India-Brazil BIT. However, even the BITs which India has already terminated continue to protect the foreign investors for the next 10-15 years. Hence, as India does not seem to disengage itself from international investment law altogether, it would do well to 'internalise' international investment law, and BITs as a matter of policy. The Vodafone dispute underscores this need more than ever.

3. Extension in due date of filing return of Income for AY 2019-20:

The Central Board of Direct Taxes (CBDT) has extended the due date for filing Belated and Revised returns for Assessment Year 2019-20 from September 30,2020 to November 30, 2020.

Note: The Original due date was March 31, 2020 for furnishing Revised return and Belated Return for AY 2019-20 however, owing to the difficulties faced by tax payers the date has been extended by CBDT.

4. Limit on Depreciation as per Section 32 for entities claiming concessional rate of tax:

Rule 5 of Income tax rules has been amended to provide a limit on the depreciation allowed under section 32(1)(ii) in respect of any block of asset entitled to more than 40% depreciation shall be restricted to 40% on the written down value of such block.

<u>The above amendment is applicable to:</u>

1. Domestic company exercising option under
   a) Section 115BA (4) – Manufacturing companies;
   b) Section 115BAA (5) – Concessional rate of tax for certain domestic companies; or

c) Section 115BAB (7) - Concessional rate of tax for new manufacturing domestic companies, of the Income tax act from Assessment year 2020-21.

2. Individual or Hindu Undivided Family (HUF) exercising option under 115BAC (5) – Concessional optional tax rate for Individuals and HUFs from Assessment year 2021-22

3. Co-operative society resident in India exercising option under Section 115BAD (5) - Concessional optional tax rate for Co-operative society from Assessment year 2021-22

However, the WDV of block of asset as on April 01, 2020 shall be increased by such depreciationor allowance for unabsorbed depreciation not allowed to be set off subject to satisfaction of following conditions:

i. Section 115BAA:

a. There is a depreciation allowance, in respect of a block of asset, from any earlier assessment year or allowance of unabsorbed depreciation deemed so under section 72A, which is attributable to the provisions in clause (iia) of sub-section (1) of section 32; and

b. Such depreciation or allowance for unabsorbed depreciation is not allowed to be set off under clause (ii) or clause (iii) of section 115BAA (2).

ii. Section 115BAC:

a. There is a depreciation allowance, in respect of a block of asset, from any earlier assessment year which is attributable to the provisions in clause (iia) of sub-section (1) of section 32; and

b. Such depreciation is not allowed to be set off under sub-clause (a) of clause (ii) of sub-section (2) of section 115BAC or clause (ii) of sub-section (2) of section 115BAD;

5. Exercise of option under sub-section (5) of section 115BAC and sub-section (5) of section 115BAD:

Section No.	Rule No.	Form No.	Person required to file the form	Assessment Year
115BAC(5)	21AG	10-IE	Individual or HUF	2021-22 onwards
115BAD(5)	21AH	10-IF	Co-operative society resident in India	2021-22 onwards

6. Implementation of new procedure for Approval/Registration/Notification of certain entities under Section 10(23C), 12AA, 35 and 80G:

Finance Act, 2020 rationalized the procedure relating to approval/ registration/ notification of certain entities referred to in sections 10(23C), 12AA, 35 and 80G of the Act, with effect from June 01, 2020. However, owing to Covid pandemic the implementation date was deferred to October 1, 2020.

Accordingly, the entities already approved/ registered/ notified under section 10(23C), 12AA, 35 and 80G of the Income-tax Act, 1961 would be required to file intimation *within three months* from October 01, 2020 i.e., by December 31, 2020. Further, the amended procedure for approval/ registration/ notification of *new entities* shall also apply from October 01, 2020.

INDIRECT TAX UPDATES

A. Goods and Services Tax Updates:

1. CBIC has clarified through press release dt August 26, 2020 that Notification 63/2020-Central Tax dt. August 25, 2020 effective from September 01, 2020 relating to interest on delayed payment of GST has been issued prospectively due to certain technical limitations. However, no recoveries shall be made for the past periods as well by the Central and State tax administration.

2. Notification No. 66/2020-Central Tax dt. September 21, 2020: Amendment to Section 31(7):

Sl No	Existing Provision	Amendment
1.	In case of goods which are being sent or taken out of India on approval for sale or return – Invoice has to be issued before or at the time of supply or six months from the date of removal, whichever is earlier	Due date has been extended till October 31, 2020 for compliance in cases where the due date falls during the period from March 20, 2020 to October 30, 2020

3. Notification No. 67/2020-Central Tax dt. September 21, 2020: Conditional waiver/reduction in late fee for composition tax payers for not furnishing the return in Form GSTR-4 for the quarters July 2017 to March 2019, provided the returns are being filed between the periods from September 22, 2020 to October 31, 2020.

Sl. No	Category of taxpayers	Late Fee
1.	With Liability	₹ 250 Per return
2.	Nil returns	Nil

4. Notification No. 68/2020-Central Tax dt. September 21, 2020: Late fee in excess of ₹ 250 has been waived off for the registered person who has failed to furnish the return in Form GSTR-10 Final return in case of cancellation of GST registration by the due date, provided the returns are being filed between the periods from September 22, 2020 to December 31, 2020.

B. Customs:

1. **Notification No. 34/2020-Customs dt. September 17, 2020:** The Basic Customs Duty on Lentils (Mosur) for the period from September 18, 2020 to October 31, 2020 has been reduced.

2. **Notification No. 88/2020-Cus (NT) dt. September 15, 2020:** Exchange Rates Notification

   Refer the below link for detailed notification:
   https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-nt2020/csnt88-2020.pdf;jsessionid=152BC2CD9DF333809053A494D1BEE606

3. **Notification No. 90/2020-Cus (NT) dt. September 17, 2020:** Bill of Entry (Forms) Regulations, 1976 has been amended.

   Refer the below link for detailed notification:
   https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-nt2020/csnt_caa_dri_90.pdf;jsessionid=DE913AC5795163243DF6E6507A3F93D3

4. **Notification No. 91/2020-Cus (NT) dt. September 24, 2020:** Tariff Notification in respect of Fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Silver

   Refer the below link for detailed notification:
   https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-nt2020/csnt91-2020.pdf;jsessionid=49DAD50606317E42375E25A07AF01F8A

www.manian-rao.com

Address:

Bangalore
#361, First Floor, 7th Cross, 1st Block,
Jayanagar, Bangalore – 560011
Phone: +91 80 26569500 / 9501

Chennai
4, EaswranKoil Street
Old Pallavaram,
Chennai – 60017
Phone: +91 44 22641404

Madurai
110, First Floor
Old No 85, 4th Street
Harvey Nagar, Arasaradi
Madurai – 625016
Phone: +91 452 2343630

Key Contacts

Paresh Daga
Senior Partner
paresh@manian-rao.com

R Srikanth
Senior Partner
srikanth@manian-rao.com

Ravindra C
Partner
ravindra@manian-rao.com

Pallavi V Rao
Partner
pallavi@manian-rao.com