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**RESERVE BANK OF INDIA**

**SEBI**

**COMPANY LAW**

**DIRECT TAX**



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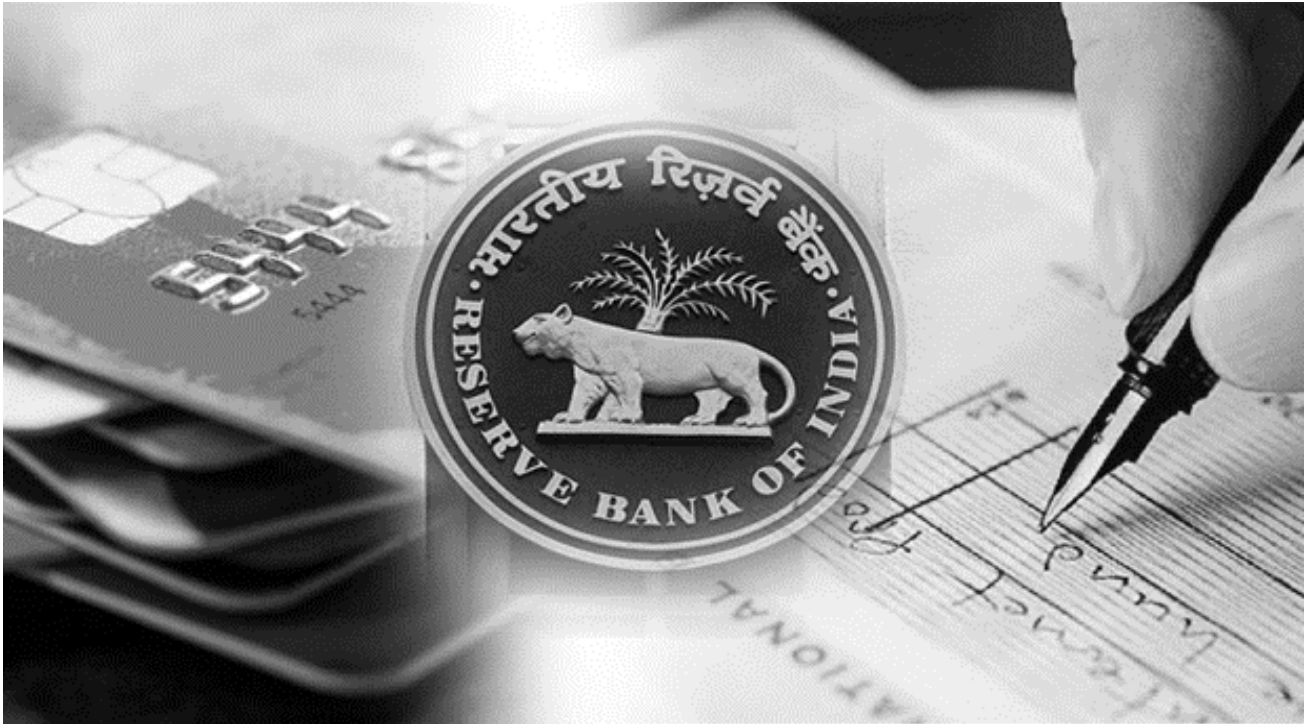
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## RBI UPDATES

### 1. Master Direction- Non-Banking Financial Company- Housing Finance Company (Reserve Bank) Directions,2021

The Reserve Bank of India, has issued Master Direction to regulate the functioning of Housing Finance Companies. The Non-Banking Financial Company – Housing Finance Company (Reserve Bank) Directions, 2021 supersedes all earlier relevant directions. Some of the salient features of the Master Direction are:

- Implementation of Internal controls by HFC's to monitor Liquidity Risk and maintenance of Liquidity Coverage Ratios.
- Each HFC must maintain Minimum capital ratio on an ongoing basis and net owned funds of minimum ₹. 20 Crore.
- HFC's to implement Ind AS apart from norms specified for asset classification, income recognition, investments and provisioning requirements.
- The directions also include regulatory limits and restrictions on loans and investments by HFC's, appointment of brokers, acceptance and repayment of public deposits. The Direction also contains corporate governance norms, auditor's report format and fair practice code.
- The detailed notification can be referred below:

[https://rbidocs.rbi.org.in/rdocs/content/pdfs/MD100017022021\\_A.pdf](https://rbidocs.rbi.org.in/rdocs/content/pdfs/MD100017022021_A.pdf)

## **2. Capital provisioning requirements for exposures to entities with Unhedged Foreign Currency Exposure**

With reference to the circular DBOD.No.BP.BC.116/21.06.200/2013-14 dated June 3, 2014 on capital and provisioning requirements for exposures to entities with Unhedged Foreign Currency Exposure (UFCE), the guidelines mandate that:

- Information on UFCE may be obtained by banks from entities on a quarterly basis,
- On self-certification basis, and
- Preferably should be internally audited by the entity concerned.

But the banks expressed their inability in obtaining UFCE certificates from listed entities for the latest quarter due to restrictions on disclosure of such information prior to finalization of accounts. In view of this, it has been decided that in such cases, banks may use data pertaining to the immediately preceding quarter for computing capital and provisioning requirements in case of Unhedged Foreign Currency Exposures.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12031&Mode=0>



## SEBI UPDATES

### 1. Minimum Public Offer (MPO) requirements for large issuers relaxed

Presently, issuers with post issue market capital of at least Rs 4,000 crores or more are required to offer to public at least 10% of its post issue market capital ('Minimum Public Offer' - MPO).

Such issuers are also required to achieve a minimum public shareholding (MPS) of at least 25% within three years from the date of listing.

The SEBI Board met in New Delhi on February 17, 2021 and has decided to recommend changes in the relevant rules, for issuers with post issue market capital exceeding Rs.1,00,000 crores.

- The requirement of MPO is proposed at Rs.10,000 crores + 5% of the incremental amount beyond Rs.1,00,000 crores.
- These issuers shall be required to achieve at least 10% public shareholding in two years and at least 25% Public Shareholding within five years from the date of listing.

### 2. SEBI (Issuing Observations on Draft Offer Documents Pending Regulatory Actions) Order, 2020

The Board has issued the following General Order regarding the issuance of observations on draft offer documents filed with the Board, where an investigation, enquiry, adjudication, prosecution, disgorgement, recovery or other regulatory action is pending against the issuer or its promoter(s)/director(s)/group companies ("the entities").

This General Order shall supersede the Securities and Exchange Board of India (Issuing Observations on Draft Offer Documents Pending Regulatory Actions) Order, 2006. This order clarifies the treatment in the following cases where:

- There is a probable cause for investigation or enquiry or when an investigation or enquiry is in progress against the entities.

- A show cause notice has been issued
- Recovery proceedings have been initiated or an order for disgorgement or monetary penalty has not been complied with or in case of non-compliance with any direction issued by the Board.
- There is a reconsideration of proceedings pursuant to remand by the Securities Appellate Tribunal or Court and
- The Issuance of observations when the issuer is restrained by a Court from making a public issue or filing of offer document

[https://www.sebi.gov.in/legal/general-orders/feb-2020/sebi-issuing-observations-on-draft-offer-documents-pending-regulatory-actions-order-2020\\_45903.html](https://www.sebi.gov.in/legal/general-orders/feb-2020/sebi-issuing-observations-on-draft-offer-documents-pending-regulatory-actions-order-2020_45903.html)

### **3. Master Circular on Surveillance of Securities Market**

- This Master Circular SEBI/HO/ISD/ISD/CIR/P/2021/22 is a compilation of the circulars issued by Integrated Surveillance Department, which are operational as on date of this circular
- It is applicable to Recognized Stock Exchanges, Depositories, Listed Companies, Market Intermediaries registered with SEBI under Section 12 of the SEBI Act, 1992 and Fiduciaries as per SEBI (Prohibition of Insider Trading) Regulations, 2015
- This Master circular deals with the following aspects:
  - Introduction of Trading rules for listed shares and shareholding in dematerialized mode for better price discovery and increase in transparency in securities market.
  - Putting in Internal Controls to prevent unauthenticated news related to various scrips circulated by SEBI registered market intermediaries through various modes of communication like blogs/chat forums/e-mail without adequate caution as mandated in the Code of Conduct
  - SEBI (Prohibition of Insider Trading) Regulations, 2015
    - (a) Disclosures may be maintained by the company in physical/electronic mode as per the prescribed format.
    - (b) A company deals with only such market intermediary / every other person, who is required to handle UPSI, who have formulated a code of conduct as per the requirements of the Regulations.
  - Reporting to Stock Exchanges regarding violations under SEBI (Prohibition of Insider Trading) Regulations, 2015 relating to Code of Conduct
  - Automation of continual disclosures (system driven disclosures) under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and PIT Regulations for member(s) of promoter group and designated person(s) in addition to the promoter(s) and director(s) of the company. To begin with the disclosures shall pertain to trading in equity shares and equity derivative instruments i.e., Futures and Options of the listed company
  - Formats for various disclosures are also shared. Refer to the link below for the detailed circular.

[https://www.sebi.gov.in/legal/master-circulars/mar-2021/master-circular-on-surveillance-of-securities-market\\_49354.html](https://www.sebi.gov.in/legal/master-circulars/mar-2021/master-circular-on-surveillance-of-securities-market_49354.html)





## COMPANY LAW UPDATES

### 1. Section 52 and Section 66 of Companies Act 2013 to come into force from February 11<sup>th</sup>, 2021

Section 52 prescribes the application of premium received on issue of shares.

- It states that the aggregate amount of premium received on those shares shall be transferred to a “securities premium account”.
- It also states that in relation to reduction of share capital such securities premium would be treated as though it is paid up share capital of company.
- The section also specifies the purposes for which the security premium amount may be applied which are as follows:
  - Towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;
  - In writing off the preliminary expenses of the company;
  - In writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
  - In providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or
  - For the purchase of its own shares or other securities under section 68.

Section 66 lays out the framework for reduction of share capital:

- The reduction will be subject to approval by the Tribunal on application by the company.
- A company limited by shares or limited by guarantee, with share capital, may by special resolution reduce its share capital:
  - By extinguishing or reducing the liability on any of its shares in respect of the share capital not paid-up; or
  - Either with or without extinguishing or reducing liability on any of its shares, —
    - a. Cancel any paid-up share capital which is lost or is unrepresented by available assets;

or

  - b. Pay off any paid-up share capital which is in excess of the wants of the Company;

- No such reduction shall be made if the company is in arrears in the repayment of any deposits accepted by it, or the interest payable thereon
- Nothing in this section shall apply to buy-back of its own securities by a company under section 68.

*Above is as per the Notification dated February 11, 2021 and is effective from date of notification.*

## **2. Period for issuing notice of further shares issue to existing shareholders**

In the Companies (Share Capital and Debentures) Rules 2014, Rule 12 A has been inserted. The new rule specifies a period which will be not less than seven days from the date of offer to issue notice under 62(1)(a)(i)- Notice to existing shareholders on offer for further issue of shares.

*Above is as per the Notification dated February 11, 2021 and is effective from April 01, 2021.*

## **3. Notification of new rules for Producer Companies under clause (I) of section 378A**

- Rules 27, 30 and 31 of the Companies (Incorporation) Rules, 2014, including the forms stated therein (Form No.INC.22, 23 and 28) shall be applied for the purpose of change of place of registered office of a Producer Company from one State to another.
- A Producer Company shall make investments from and out of its general reserves in anyone or in combination of the following, namely: --
  - In approved securities, fixed deposits, units and bonds issued by the Central Government or State Governments or co-operative societies or scheduled bank; or
  - In a co-operative bank, State co-operative bank, co-operative land development bank or Central co-operative bank; or
  - With any other scheduled bank; or
  - In any of the securities specified in section 20 of the Indian Trusts Act, 1882 (02 of 1882); or
  - In the shares or securities of any other inter-State co-operative society or any co-operative society; or
  - In the shares, securities or assets of public financial institutions specified under clause (72) of section 2 of the Act.

*Above is as per the Notification dated February 11, 2021 and is effective from date of notification.*

## **4. Exclusion from being classified as listed company in certain cases**

In the Companies (Specification of definitions details) Rules 2014, rule 2 A has been inserted. The new rule is as under:

“For the purposes of the proviso of clause (52) of section 2 of the Act, the following classes of companies shall not be considered as listed companies, namely: -

- Public companies which have not listed their equity shares on a recognized stock exchange but have listed their-
  - Non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations,2008; or



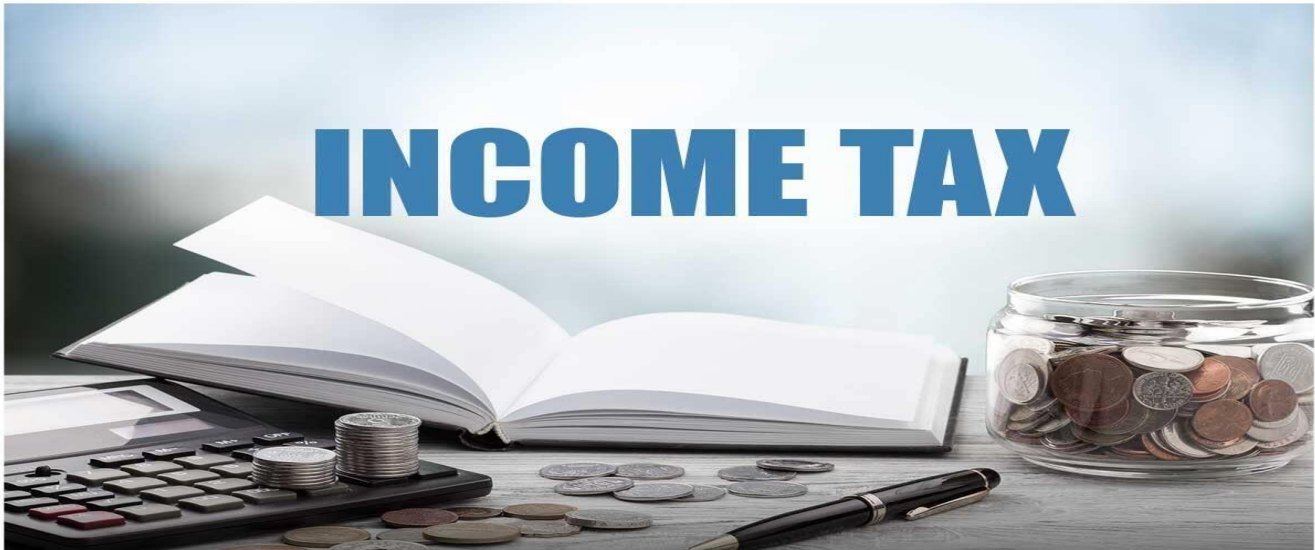
- Non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or
- Both categories of (i) and (ii) above.
- Private companies which have listed their non-convertible debt securities on private placement basis on recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008;
- Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Act. (Sub section 3 of section 23 deals with listing on permitted stock exchanges in permissible foreign jurisdictions or such other jurisdictions, as may be prescribed.)

*Above is as per the Notification dated February 19, 2021 and is effective from April 01, 2021.*

## **5. Extension of applicability of certain sections of Companies Act to LLPs (Only information given. Sections to be modified, adapted and notified on a later date)**

Information has been provided that the following sections of the Act will be shortly modified and adapted to be applicable for Limited Liability Partnerships:

- Sub- sections (1) to (11) of section 90 (Register of significant beneficial owners in company)
- Sub- sections (1) and (2) of section 164 (Disqualification of Directors)
- Sub-sections (1) and (3) to (6) of section 165 (Number of Directors)
- Sub-section (1) to (3) of section 167 (Vacation of office of Director)
- Sub-section (5) of section 206 (Power to Call for Information, Inspect Books and Conduct Inquiries)
- Sub-section (3) of section 207 (Conduct of inspection and inquiry)
- Sub-sections (1) to (3) of section 252 (Revival of Companies)
- Sub-sections (1) to (4) of Section 439 (Offences to be non-cognizable)



## DIRECT TAX UPDATES

### 1. Ruling Issued on Taxation of Offshore Supplies of Equipment and Services

- Authority for Advance Rulings (AAR) issued a ruling concerning the taxation of income received by a French company, Technip France SAS, that had entered into an agreement for an engineering, procurement, and construction project with an Indian customer.
- Technip sought a ruling on whether its offshore supply of equipment and of services was taxable in India considering the provisions of the Income-tax Act 1961 and the 1992 India-France tax treaty.
- The offshore supply was made as part of a contract for setting up a plant in India that also includes onshore supplies of equipment and inspection, as well as onshore commissioning services.
- In requesting the ruling, Technip's position was that no tax liability existed in India in relation to the offshore supply because the supply of equipment was made to its India customer outside India on a principal-to-principal basis with the sale concluding outside India and,
- Further, no operations were carried out by Technip in India in connection with that supply.
- In its ruling, the AAR agreed with Technip regarding the supply of equipment and held that because the delivery and title of the equipment was transferred outside India, the payment for the offshore supply was not taxable in India.
- However, the AAR held that the offshore services provided in relation to the project were taxable in India under Article 7 (Business Profits) of the 1992 India-France tax treaty because the actual rendering of the engineering design services was provided by Technip France's India project office and not directly from France.
- Although certain design services were rendered in France, it was found that the engineering drawings, designs, etc. resulting from the services were used by the project office for setting up the plant in India and, therefore, payments for the offshore services constitute taxable income in India.

## 2. National e-Assessment Centre

The Central Government introduced the E-Assessment Scheme, 2019 vide Notification dated 12<sup>th</sup> September, 2019.

The Central Government hereby makes amendments in the above-mentioned scheme in a notification dated 17<sup>th</sup> February, 2021.

Refer the below link for the procedures for assessment under this Scheme:

[https://incometaxindia.gov.in/communications/notification/notification\\_7\\_2021.pdf](https://incometaxindia.gov.in/communications/notification/notification_7_2021.pdf)

## 3. Supreme Court Decision on Payments to Non-Resident firms for Software not taxable as Royalty

- The Supreme Court ruled in favour of Indian Companies that the payments made by the Indian firms to the Non-residents for software purchase can't be taxed as royalty.
- Such software firms have now been exempted from deducting TDS on royalty for purchase of software from foreign software suppliers.
- In reaching its decision, the Supreme Court relied on its finding that end-user license agreements (EULAs) do not grant any right or interest, least of all a right or interest to reproduce the computer software, and the license that is granted by the EULA is not a license that transfers a copyright right, but one that merely imposes restrictions or conditions on the use of computer software.
- Consequently, it reached the conclusion that "what is "licensed" by the foreign, non-resident supplier to the distributor and resold to the resident end-user, or directly supplied to the resident end-user, is in fact a physical object which contains an embedded computer programme, and is therefore a sale of goods".
- The payments must be characterized as plain sales proceeds and, therefore, the payer is not required to withhold tax.
- It follows that the payments, even if classified as royalties and subject to TDS (tax deducted at source) under the Income Tax Act, cannot be characterized as royalties under Art. 12 of India's tax treaties and, hence, do not attract withholding tax in situations covered by a tax treaty.

## 4. Instruction regarding selection of cases for issue of notice u/s 148 of Income Tax Act, 1961

The CBDT, with the objective of streamlining the process of selection of cases u/s 148, has directed the following categories of cases to be considered as potential cases for taking action u/s 148 of the Act by 31/3/2021 for AY 2013-14 to AY 2017-18.

- Cases where there are Audit Objections (Revenue/ Internal) which require action u/s 148 of the Act.
- Cases of information from any other Government Agency/ Law Enforcement Agency which require action u/s 148 of the Act
- Potential cases as flagged by the Directorate of Income Tax (Systems) as per Risk Profiling include:
  - Reports of Directorate of Income Tax (Investigation)
  - Reports of Directorate of Intelligence and Criminal Investigation
  - Cases from Non-Filer Management System and other cases
- Cases where information arising out of field survey action, requiring action u/s 148 of the Act
- Cases of information received from any Income Tax Authority requiring action u/s 148, with the approval of the Chief Commissioner of Income Tax concerned.
- No other category of cases shall be considered for taking action u/s 148



- Also it has been clarified that the action taken by the Assessing officer must be consequent to forming a reasonable belief that the income chargeable to tax has escaped assessment. Such beliefs must be recorded and require sanction.

*Section 148 of the Income Tax Act, 1961 deals with the issuance of notice wherein any income is found to have escaped re-computation or assessment.*

## **5. CBDT prescribes rules for determination of Annual accretion for the purposes of section 17(2)(viia)**

- Section 17(2)(vii) of the Income-tax Act, 1961 deals with perquisites.
- It provides that if an employer contributes to the account of an employee in a recognized provident fund, national pension scheme and superannuation fund, any amount in excess of ₹. 750,000 in aggregate for all the three funds shall be treated as a perquisite in the hands of the employee and is chargeable to tax.
- The Act in Sec 17(2)(viia) also covers any annual accretion by way of interest, dividend or any other amount of similar nature to the balance at the credit of fund or scheme to the extent it relates to the employer's contribution in excess of ₹. 750,000 shall also be treated as a perquisite in the hands of the employee.
- Central Board of Direct Taxes ('CBDT') vide Notification No. 11 /2021/F. No. 370142/52/2020-TPL has prescribed the method of computation of annual accretion by way of interest, dividend or any other amount of similar nature during the previous year to the balance at the credit of the fund or scheme shall be the amount or aggregate of amounts computed in accordance with the given formula. Refer notification for further details:

[CBDT prescribes rules for determination of Annual accretion for the purposes of section 17\(2\)\(viia\)](#)

## **6. Circular on the determination of the tax residency of individuals**

- Central Board of Direct Taxes (CBDT) on 3 March 2021 issued Circular No. 2 of 2021 on the determination of the tax residency of individuals with regard to the disruptions caused by COVID-19.
- The new Circular is issued with respect to unintended tax residency consequences with respect to FY 2020-21 for individuals who overstayed their intended stay in India due to the suspension of international flights.
- The CBDT takes the position that the tax residency consequences for the individuals affected would in most cases find a satisfactory resolution either under Indian domestic law or in application of India's tax treaties.
- The conditions for acquiring tax residence under domestic law are such that non-residents merely overstaying their intended stay in India would likely not meet the residence tests, and, if met, ensuing double taxation would be avoided by way of a foreign tax credit.
- Moreover, where an individual becomes a dual resident as a result of the COVID-19 disruptions, the case could be solved under India's tax treaties and the individual would be considered a resident of one of the Contracting States only.
- For this reason and also in order not to create possibilities for double non-residence, the CBDT will abstain from issuing a blanket relaxation for FY 2020-21.
- Instead, individuals who suffer double taxation as a result of the disruptions may submit their case to the CBDT by filing a Form-NR (attached to the Circular) by 31 March 2021.

- Once in receipt of such claims, the CBDT will determine whether any relaxation is required to be provided, and, if required, whether the relaxation should be provided in a specific case or, instead, for a specific class of individuals.
- Note that the circular does not address the potential permanent establishment issues that might arise from employees overstaying an assignment in India.

## **7. Extension of Declaration Deadline for Vivad Se Vishwas Scheme for Tax Disputes**

- The CBDT has published Notification No. 09/2021 of 26 February 2021, which extends the deadline for making declarations under the "Vivad Se Vishwas" scheme for tax disputes.
- Previously extended to 28 February 2021, the deadline has now been further extended to 31 March 2021.
- In addition, the deadline for making payment under the scheme without paying an additional amount is extended from 31 March 2021 to 30 April 2021.

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