

# M&R NewsBites

May 10, 2021



**RBI**

**SEBI**

**COMPANY LAW**

**DIRECT TAX**

**INDIRECT TAX**

## SYNOPSIS

### RBI UPDATES

1. Declaration of Dividend by the Banks
2. Corporate Governance in Banks-Appointment of Directors and Constitution of Committees of the Board
3. Interest Equalization Scheme on Pre and Post Shipment Rupee Export Credit
4. Priority Sector Lending – On Lending by Small Finance Banks (SFBs) to NBFC-MFIs
5. Utilization of Floating provisions/ Counter Cyclical Provisioning Buffer
6. Periodic Updation of KYC – Restrictions on Account operations for non-compliance
7. Credit to MSME Entrepreneurs
8. Resolution Framework 2.0- resolution of Covid 19 related stress of MSMEs, Individuals and Small Businesses

### SEBI UPDATES

1. Relaxations relating to procedural matters – Issues and Listing
2. Standardizing and Strengthening Policies on Provisional Rating by Credit Rating Agencies (CRAs) for Debt Instruments
3. Guidelines for Warehousing norms for Agricultural/Agri-processed goods and Non-Agricultural goods (only base/industrial metals) underlying a commodity derivatives contract having the feature of physical delivery
4. Disclosure of the following only w.r.t schemes which are subscribed by the investor: (a) risk-o-meter of the scheme and the benchmark along with the performance disclosure of the scheme vis-à-vis benchmark and (b) Details of the portfolio
5. Relaxation from compliance with certain provisions of the SEBI (Listing Obligations Disclosure Requirements) Regulations, 2015 due to the CoVID-19 pandemic
6. Relaxation from compliance with certain provisions of the SEBI (Listing Obligations Disclosure Requirements) Regulations, 2015 / other applicable circulars due to the CoVID-19 pandemic
7. Addendum to SEBI Circular on “Relaxation in adherence to prescribed timelines issued by SEBI due to Covid 19” dated April 13, 2020
8. Relaxation in timelines for compliance with regulatory requirements
9. Timelines for updation of Scheme Information Document (SID) and Key Information Memorandum (KIM)
10. Relaxation in timelines for compliance with regulatory requirements by Debenture Trustees due to the COVID-19 pandemic

### COMPANY LAW UPDATES

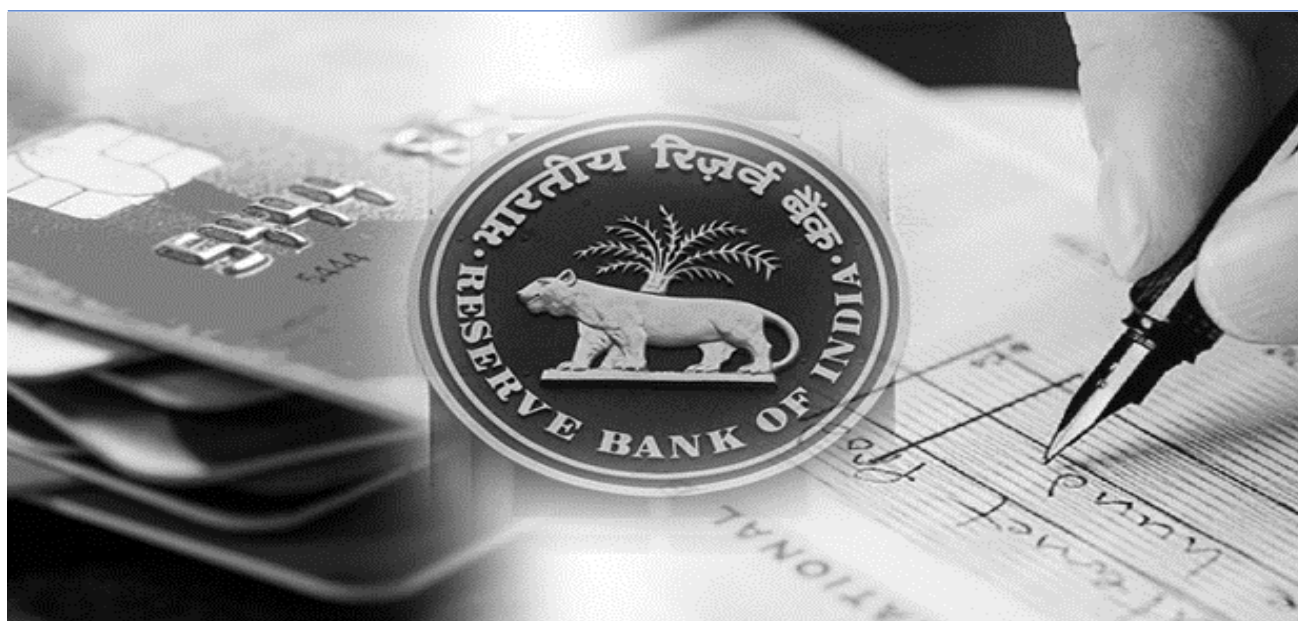
1. Clarification on spending of CSR funds for setting up makeshift hospitals and temporary COVID Care facilities
2. Relaxation on levy of additional fees in filing of certain Forms under Companies Act, 2013 and LLP Act 2008
3. Clarification on gap between two board meetings under section 173 of the Companies Act, 2013
4. Relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013

## DIRECT TAX UPDATES

1. Administrative Changes in Finance Act 2021
2. Extended Time Limits for Assessments, Tax Dispute Payments, and Others Due to COVID-19
3. Country-by-Country Reporting and Master File Rules Updated
4. Format, Procedure and Guidelines for submission of Statement of Financial Transactions (SFT) for Depository Transactions
5. CBDT specifies rules setting thresholds for determining Significant Economic Presence
6. Option to withdraw pending application under Section 245M (1)
7. Mumbai Tribunal grants relief to deductor from withholding tax obligation on account of impossibility of performance, on transaction involving indirect transfer of shares

## INDIRECT TAX UPDATES

1. Notification No. 06/2021-Central Tax dt. March 30, 2021
2. Notification No. 07/2021-Central Tax dt. April 27, 2021:
3. Commissioner of CGST Appels Chennai Ruling
4. DGFT – IEC related provisions under Chapter I and 2 of Foreign Trade Policy 2015-20
5. Customs and Health Cess Exemption for Certain Imports for COVID-19



## RBI UPDATES

### 1. Declaration of Dividend by the Banks

In view of the ongoing second wave of covid -19 in the country, it is crucial for the banks to remain resilient and conserve capital against unexpected losses. Hence it has been decided to review the dividend declaration norms for the year ended March 31, 2021 as follows:

- Commercial Banks may pay dividend on equity shares from the profits for the FY 2020-21 subject to the quantum of dividend being not more than fifty percent of the amount determined as per dividend payout ratio.
- Cooperative Banks shall be permitted to pay dividend on equity shares from the profits of the financial year ended March 31,2021 as per the extant instructions.
- All banks should continue to meet the minimum regulatory capital requirement after dividend payment.

### 2. Corporate Governance in Banks-Appointment of Directors and Constitution of Committees of the Board

**Applicability:** The instructions would be applicable to all Private sector banks, including Small Finance Banks, and wholly owned subsidiaries of Foreign banks. In case of State Bank of India and Nationalized Banks, these instructions would be applicable only to the extent these stipulations are not inconsistent with the provisions of the Statutes governing these bodies. The circular shall not be applicable to Foreign Banks operating as branches in India.

**Chair and Meetings of the Board:** The Chair of the Board shall be an Independent Director. The quorum for the meetings shall be one-third of the total strength of the Board or 3 Directors, whichever is higher, at least half of the Directors attending the meeting shall be Independent directors.

#### Committees of the Board

##### a) Audit Committee of the Board

The ACB should comprise only non-executive directors. The Chair of the Board shall not be a member of ACB, he should be an Independent director who shall not chair any other Board. The Quorum shall comprise 3 members and atleast two-thirds of the members attending the meeting shall be independent directors. The ACB shall meet atleast once in a quarter.

**b) Risk Management Committee of the Board**

The Board shall constitute a RMCB with majority of non-executive directors. The Chair of the Board should have requisite knowledge of risk management if he has to be a member of RMCB. The Quorum for the meetings shall be three members and at least half the members attending the meeting shall be independent directors of which atleast one should have professional knowledge/experience in risk management.

**c) Nomination and Remuneration Committee**

The NRC should constitute only non-executive directors. The quorum for the meeting shall be 3 and atleast half of the members attending the meeting shall be independent directors of which atleast one shall be a member of RMCB. The meetings of the Board shall be chaired by an Independent director who shall not Chair the Board. The meetings can be held as and when required.

These instructions shall come into effect from the date of this circular i.e., 26<sup>th</sup> April 2021. However, the banks have to comply with these latest by 1<sup>st</sup> October 2021.

**3. Interest Equalization Scheme on Pre and Post Shipment Rupee Export Credit**

RBI has notified all Scheduled Commercial Banks (Except Regional Rural Banks), Small Finance Banks, Primary (Urban) Cooperative Banks and EXIM Bank that the Government of India has approved the extension of Interest Equalization Scheme for pre and post shipment Rupee export credit up to June 30,2021 which was earlier up to March 31,2021.

**4. Priority Sector Lending – On Lending by Small Finance Banks (SFBs) to NBFC-MFIs**

In view of the fresh challenges brought about by the Covid-19 pandemic, and to address the emergent liquidity position of the Micro Financial Institutions, Reserve Bank of India (RBI) Governor Shaktikanta Das on May 5 announced that small finance banks were being permitted to extend fresh loans to microfinance institutions (MFIs), with asset size up to Rs 500 crore, for on-lending to individual borrowers as priority sector lending. This shall be valid upto March 31, 2022. However, the loans thus disbursed will continue to be classified under Priority Sector till the date of repayment/ maturity, whichever is earlier.

**5. Utilization of Floating provisions/ Counter Cyclical Provisioning Buffer**

In order to mitigate the adverse impact of COVID 19 related stress on banks, as a measure to enable capital conservation, it has been decided to allow banks to utilize 100 per cent of floating provisions/ countercyclical provisioning buffer held by them as on December 31, 2020 for making specific provisions for non-performing assets with prior approval of their Boards. Such utilization is permitted with immediate effect and upto March 31, 2022.

**6. Periodic Updation of KYC – Restrictions on Account operations for non-compliance**

Keeping in view the current COVID-19 related restrictions in various parts of the country, Regulated Entities (REs) are advised that in respect of the customer accounts where periodic updation of KYC is due and pending as on date, no restrictions on operations of such account shall be imposed till December 31, 2021, for this reason alone, unless warranted under instructions of any regulator/ enforcement agency/court of law, etc.

Regulated entities are also advised to continue engaging with their customers for having their KYC updated in such cases.

## **7. Credit to MSME Entrepreneurs**

As mentioned in the circular, <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12022&Mode=0>, Scheduled Commercial Banks were allowed to deduct the amount equivalent to credit disbursed to new MSME borrowers from their Net Demand and Time Liabilities (NDTL) for calculation of the Cash Reserve Ratio (CRR). This exemption was available up to ₹ 25 lakh per borrower for the credit disbursed up to the fortnight ending October 1, 2021. This exemption has been extended till December 31, 2021.

## **8. Resolution Framework 2.0- resolution of Covid 19 related stress of MSMEs, Individuals and Small Businesses**

Individual borrowers and small businesses having aggregate exposure of upto Rs 25 crore shall be eligible for having their loans restructured under the new resolution framework, as part of the measures announced by RBI Governor Shaktikanta Das to provide relief to borrowers affected by the COVID-19 pandemic.

This will be applicable to borrowers who have not availed of restructuring under any of the earlier restructuring frameworks, and who were classified as 'standard' (loans) as of March 31, 2021.

For individual borrowers and small businesses who had availed restructuring of their loans under Resolution Framework 1.0, and in which the resolution plan permitted a moratorium of less than two years, banks and NBFCs have been permitted to use this window to modify such plans to the extent of increasing the period of the moratorium and/or extending the residual tenor up to a total of two years. Other conditions will remain the same.



## SEBI UPDATES

### **1. Relaxations relating to procedural matters – Issues and Listing**

- SEBI had issued a circular on May 6, 2020 granted one time relaxations from strict enforcement of certain regulations of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, pertaining to Rights Issue opening [https://www.sebi.gov.in/legal/circulars/may-2020/relaxations-relating-to-procedural-matters-issues-and-listing\\_46652.html](https://www.sebi.gov.in/legal/circulars/may-2020/relaxations-relating-to-procedural-matters-issues-and-listing_46652.html)
- Based on the representations received from the market participants, the validity of these relaxations and shall be applicable for Rights Issues opening up to September 30, 2021, provided that the issuer along with the Lead Manager(s) shall continue to comply with point (v) of the SEBI Circular dated May 06, 2020.
- In respect to mechanism and compliance requirements, at point (iv) and (v) of the SEBI Circular dated May 6, 2020, the issuer along with Lead Manager(s), Registrar, and other recognized intermediaries (as incorporated in the mechanism) shall also ensure the following:
  - i. Refund for un-allotted / partial allotted application shall be completed on or before T+1 day (T: Basis of allotment day).
  - ii. Registrar to the issue, shall ensure that all data with respect to refund instructions is error free to avoid any technical rejections. Further, in case of any technical rejection of refund instruction, same shall be addressed promptly.

### **2. Standardizing and Strengthening Policies on Provisional Rating by Credit Rating Agencies (CRAs) for Debt Instruments**

- SEBI came out with a new framework to strengthen policies on provisional rating by Credit Rating Agencies (CRAs) for debt instruments.
- Under the framework, all provisional ratings ('long term' or 'short term') for debt instruments need to be prefixed as 'provisional' before the rating symbol in all communications — rating letter, press release and rating rationale.

- Further, a rating will be considered provisional in cases where certain compliances that are crucial to the assignment of credit rating are yet to be complied with or certain documentations remain to be executed at the time of rating.
- In no case shall a rating, including provisional rating, be assigned by a credit rating agency for an issuer or client evaluating strategic decisions such as funding mix for a project, acquisition, debt restructuring, scenario-analysis in loan refinancing.
- On validity period, SEBI said provisional rating will be converted into a final rating within 90 days from the date of issuance of the instrument. No CRA shall assign any provisional rating to a debt instrument upon the expiry of 180 days from the date of its issuance.

### **3. Guidelines for Warehousing norms for Agricultural/Agri-processed goods and Non-Agricultural goods (only base/industrial metals) underlying a commodity derivatives contract having the feature of physical delivery**

- These guidelines would come into effect from June 1, 2021

#### **Guidelines by SEBI to Clearing Corporates (CC)**

- The norms set by Clearing Corporates will be minimum requirements/standards that its Warehouse Service Providers (WSP) should comply with.
- In additions to the norms of CCs, the WSPs should comply with norms laid down by Warehousing Development and Regulatory Authority (WDRA)
- In the event of Bankruptcy or Insolvency of the WSP, the CCs should remove the WSP from the accredited warehouse list and should not place any restriction for possession of its commodities.
- A CC cannot stop its WSP from providing services to other CCs as it can be accredited with more than on CC.

#### **Warehousing Norms**

- An accredited WSP should have a minimum subscribed and paid-up capital of 10 crore.
- The promoter or promoter groups of a WSP are required to be in the public warehousing business for at least 3 years and a CC can relax the requirements, based on certain conditions.
- The net worth required of a WSP varies for agriculture/Agri-processed, bases/industrial metals and composite goods and they will get six months to augment the net worth in case there is a reduction of net worth below the stipulated amount.
- The value of the goods stored in the accredited storage facilities of WSP should not exceed 33 times the net worth of the WSP (irrespective of the number of CCs it serves)
- Every year CCs have to review each WSP and it should have a grievance cell to handle the investor complaints.

### **4. Disclosure of the following only w.r.t schemes which are subscribed by the investor: (a) risk-o-meter of the scheme and the benchmark along with the performance disclosure of the scheme vis-à-vis benchmark and (b) Details of the portfolio**

- Based on recommendations from Mutual Fund Advisory Committee, following disclosures shall be made to investor only for the schemes in which unitholders are invested as on the date on which disclosures are stipulated. The circular is applicable from June 01, 2021.
  - Mutual Fund/AMCs shall also disclose risk-o-meter of the scheme and benchmark while disclosing the performance of scheme vis-à-vis benchmark



- Mutual Funds/ AMCs shall send the details of the scheme portfolio while communicating the fortnightly, monthly and half-yearly statement of scheme portfolio via email.

#### 5. Relaxation from compliance with certain provisions of the SEBI (Listing Obligations Disclosure Requirements) Regulations, 2015 due to the CoVID-19 pandemic

- Due to ongoing second wave of the pandemic and restrictions imposed by various state governments, SEBI has granted the following relaxations

Sl. No.	Regulation	Requirements	Due date	Extended deadline
1	Regulation 2A relating to Annual Secretarial Compliance report	60 days from the end of FY	May 30, 2021	June 30, 2021
2	Regulation 33(3)- Quarterly financial results/ Annual audited financial results	45 days from the end of Quarter/ 60 days from the end of FY	May 15/May 30, 2021	June 30, 2021
3	Regulation 32(1) on Statement of deviation or variation in use of funds	Along with the financial results (mentioned above)	May 15/May 30, 2021	June 30, 2021

- Listed entities are permitted to use digital signature certifications for authentication/certification of filings/submissions made to the stock exchanges.

#### 6. Relaxation from compliance with certain provisions of the SEBI (Listing Obligations Disclosure Requirements) Regulations, 2015 / other applicable circulars due to the CoVID-19 pandemic

- Due to ongoing second wave of the pandemic and restrictions imposed by various state governments, SEBI has granted the following relaxations

Sl. No.	Regulation	Requirements	Due date	Extended deadline
	<u>For entities that have listed their debt securities under the SEBI (Issue and Listing of Debt Securities) Regulations, 2008, SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares Regulations, 2013, and SEBI (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008</u>			
1	Regulation 52(1) - Half yearly financial results Regulation 52(2) -Annual audited financial results	45 days from the end of Quarter/ 60 days from the end of FY	May 15/May 30, 2021	June 30, 2021
2	Regulation 52(7) on Statement of deviation or variation in use of funds	Along with the financial results (mentioned above)	May 15/May 30, 2021	June 30, 2021
	<u>For entities that have listed their bonds under the SEBI (Issue and Listing of Municipal Bonds) Regulations, 2015</u>			
3	Annual audited financial results	60 days from the end of FY	May 30, 2021	June 30, 2021

For entities that have listed Commercial Paper				
4	Half Yearly financial results	45 days from the end of half year	May 15, 2021	June 30, 2021
	Annual audited financial results	60 days from the end of FY	May 30, 2021	

- Listed entities are permitted to use digital signature certifications for authentication/certification of filings/submissions made to the stock exchanges
- Entities that have listed their municipal bonds may also opt to use digitally signed documents for making filings with Stock Exchanges
- Entities that have listed Commercial Paper may also opt to use digitally signed documents for making filings with Stock Exchanges.

## **7. Addendum to SEBI Circular on “Relaxation in adherence to prescribed timelines issued by SEBI due to Covid 19” dated April 13, 2020**

- SEBI had issued dated April 13, 2020 wherein “Relaxations in adherence to prescribed timelines” for carrying out various shareholder requests and for other regulatory filings were granted to RTAs (Registrar and Share Transfer Agents) in view of the Covid -19 pandemic.  
[https://www.sebi.gov.in/legal/circulars/apr-2020/relaxation-in-adherence-to-prescribed-timelines-issued-by-sebi-due-to-covid-19\\_46511.html](https://www.sebi.gov.in/legal/circulars/apr-2020/relaxation-in-adherence-to-prescribed-timelines-issued-by-sebi-due-to-covid-19_46511.html)
- Now, SEBI has added ‘Processing of Demat Requests’ to the annexure of the mentioned circular making the total number of items 13.
- All 13 items in the annexure would be eligible for relaxation given to intermediaries/market participants w.r.t. compliance with the prescribed timelines which has been extended to July 31, 2021
- Also, the timeline of May 15, 2021 for submission of IAR by RTAs for half year ended March 31, 2021 has been extended to July 31, 2021 in view of the Covid -19 situation.

## **8. Relaxation in timelines for compliance with regulatory requirements**

- SEBI through multiple circulars had issued relaxations in timelines for compliance with regulatory requirements in the wake of pandemic. In view of the current situation and representations received, following timelines have been extended for Trading Members / Clearing Members / Depository Participants / KYC Registration Agencies.
- Relaxations are as follows:

S. No	Compliance	Extended Timeline/ Exclusion
1	Maintaining call recordings of orders / instructions received from clients.	Till June 30, 2021
2	KYC application form and supporting documents of the clients to be uploaded on system of KRA within 10 working days.	Till June 30, 2021, documents may be uploaded on to the system of KRA within 15 working days. *A 30-day time period is provided to SEBI Registered Intermediary after June 30, 2021 to clear the backlog
3	Issue of Annual Global Statement to clients	Till June 30, 2021. *Relaxation is provided only if the client has requested for a physical statement.

4	Submission of Internal Audit Report for HYE March-2021	Till July 31, 2021
5	Net worth certificate in Margin Trading for CM Segment for HYE March 31, 2021	Till July 31, 2021
6	Net worth certificate for all members for HYE March 2021	Till July 31, 2021
7	Reporting of Risk based supervision	Till July 31, 2021
8	Risk Assessment Template	Till July 31, 2021
9	Reporting for Artificial Intelligence (AI) and Machine Learning (ML) applications	Till July 31, 2021
10	Client Funding Reporting	Till June 30, 2021
11	Submission of System Audit Report for the period ended March 2021	Till July 31, 2021
12	Submission of Cyber Security & Cyber Resilience Audit Report for the period ended March 2021	Till July 31, 2021
13	To operate the trading terminals from designated alternate locations.	Till June 30, 2021
14	Compliance certificate for Margin Trading for CM Segment for HY ended March 31, 2021	Till July 31, 2021
15	System Audit /Cyber Audit Report – Algo / Type III Members for the period ended March 31, 2021	Till July 31, 2021
16	Action taken/follow-on audit report for System Audit /Cyber Audit Report for 2019-20	Till July 31, 2021

- Relaxation in time period for certain activities carried out by Depository Participant is as follows:

S. No	Compliance	Extended Timeline/ Exclusion
1	BO Grievances Report	Till May 31, 2021 for the month of April 2021 and till June 30, 2021, for the month of May 2021.
2	Redressal of investor grievances	During period from April 01, 2021 to June 30, 2021 timeline permitted for redressal of grievances extended to 30 days.
3	Closure of Demat account	During period from April 01, 2021 to June 30, 2021 may be excluded in timelines of 30 days provided no charges shall be levied for the period after receipt of closure request.
4	Processing of the Demat requests	During period from April 01, 2021 to July 31, 2021 timeline of 15 days

## 9. Timelines for updation of Scheme Information Document (SID) and Key Information Memorandum (KIM)

SEBI has prescribed the procedure for updating of SID and KIM of Mutual Fund schemes.

- SID shall be updated within one month from the end of the half-year, based on the relevant data and information as at the end of September and March respectively

- KIM shall be updated at least once in half-year, within one month from the end of the respective half-year, based on the relevant data and information as at the end of September and March and shall be filed with SEBI forthwith electronic mode only.
- Taking into account the difficulties expressed by the industry in light of continuing the COVID 19 scenario, it has been decided that the updating of SID and KIM for the half-year ended March 2021 shall be completed by **May 31, 2021**.

**10. Relaxation in timelines for compliance with regulatory requirements by Debenture Trustees due to the COVID-19 pandemic**

- As per SEBI (Debenture Trustees) Regulations, 1993, debenture trustees are required to perform periodical monitoring and disclose various reports/ documents/ certificates on Stock Exchanges and on their websites within prescribed timelines.
- Timelines have been extended for the below mentioned regulatory requirements of SEBI circular dated November 12, 2020 for the quarter/ half year/ year ending March 31, 2021:

SI No	Regulatory requirements of SEBI circular dated November 12,2020	Extended timeline
1	Submission of reports/certifications to Stock Exchanges	July 15 <sup>th</sup> , 2021
2	Following disclosures on website as per clause 4 of circular: Monitoring of asset cover certificate and quarterly compliance report of the listed entity. Monitoring of utilization certificate Status of information regarding breach of covenants/terms of the issue, if any action taken by debenture trustee Status regarding maintenance of accounts maintained under supervision of debenture trustee	July 15 <sup>th</sup> , 2021
3	Reporting of regulatory compliance as per clause 5 of circular	May 31st, 2021



## COMPANY LAW UPDATES

### **1. Clarification on spending of CSR funds for setting up makeshift hospitals and temporary COVID Care facilities**

Ministry of corporate affairs ('MCA') has clarified that spending of CSR funds towards setting up makeshift hospitals and temporary COVID care facilities is an eligible CSR activity under item no. (i) and (xii) of Schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care, and disaster management responsibility.

### **2. Relaxation on levy of additional fees in filing of certain Forms under Companies Act, 2013 and LLP Act 2008**

Ministry of corporate affairs has granted additional time to file forms under Companies Act 2013/LLP Act, 2008 or rules made there under which were due from 1<sup>st</sup> April 2021 to 31<sup>st</sup> May 2021 due to COVID-19 related restrictions and disruption. Such forms (Other than a CHG-1 Form, CHG-4 Form and CHG-9 Form) can be filed without any additional fees upto 31<sup>st</sup> July 2021.

### **3. Clarification on gap between two board meetings under section 173 of the Companies Act, 2013**

In the view of the difficulties arising due to resurgence of COVID-19 and requests received from stakeholders, MCA has decided to extend the gap between two board meetings under section 173 of the Companies Act, 2013 by a period of 60 days for first two quarters of FY 2021-22.

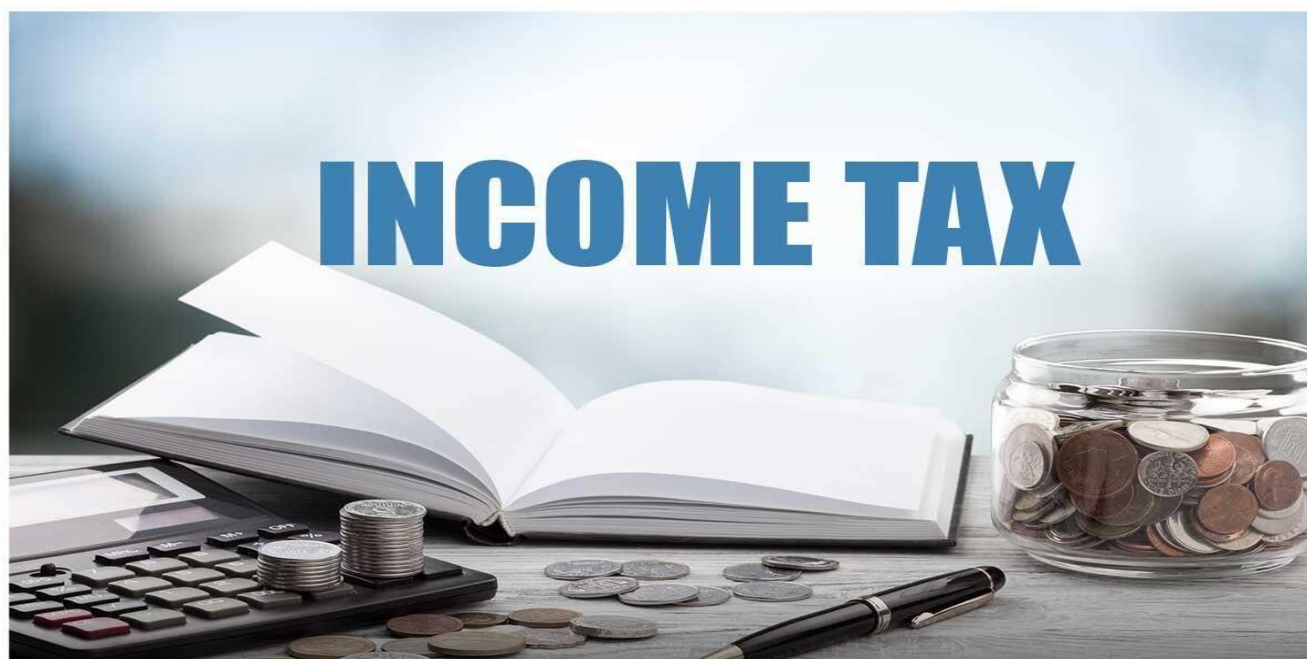
Accordingly, the gap between two consecutive meetings of the Board may extend to 180 days during the Quarter – April to June 2021 and Quarter – July to September 2021, instead of 120 days as required in the Companies Act, 2013.

#### **4. Relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013**

The Central Government in exercise of its powers under section 460 read with section 403 of the Companies Act, 2013 and Companies Rules, 2014, decided to allow relaxation of time and condone the delay in filing forms related to creation/modification of charges due to COVID-19 pandemic situation.

This Circular (General Circular No. 07/2021 dated 3rd May 2021) is applicable for filing Form CHG-1 and Form CHG-9 by a company or a charge holder, where the date of creation/ modification of charge:

- Is before 01.04.2021, but the timeline for filing such form had not expired under section 77 of the Act as on 01.04.2021, then
  - the period beginning from 01.04.2021 and ending on 31.05.2021 shall not be reckoned for the purpose of counting the number of days under section 77 or section 78 of the Act. The first day after 31.03.2021 shall be reckoned as 01.06.2021 for the purpose of counting the number of days under section 77 or section 78 of the Act and
  - if the form is filed on or before 31.05.2021, the fees payable as on 31.03.2021 shall be charged. If form is filed thereafter, applicable fees shall be charged after adding the number of days beginning from 01.06.2021 and ending on the date of filing plus the time period lapsed from the date of creation of charge till 31.03.2021.
- Falls on any date between 01.04.2021 to 31.05.2021 (Both dates are inclusive), then
  - the period beginning from the date of creation/modification of charge till 31.05.2021 shall not be considered for the purpose of counting of days under section 77 or section 78 of the Act. In case the form is not filed in such period, the first day after creation/modification of charge shall be considered as 01.06.2021.
  - With respect to fees payable, normal fees shall be payable if the form is filed before 31.05.2021. If the form is filed thereafter, the days from 01.06.2021 till the date of filing of form shall be counted for the purpose of payment of fees.



## DIRECT TAX UPDATES

### 1. Administrative Changes in Finance Act 2021

The Finance Act received the assent of the president on 28 March 2021. Some important administrative changes have been made by the Act since then, including:

- A reduction in the time limit for the issuance of a notification of regular assessment to 9 months from the end of the financial year in which a return was furnished, down from one year;
- A reduction in the time limit for the issuance of a notice requesting additional information from a taxpayer to 3 months from the end of the financial year in which a return is furnished, down from six months;
- A reduction in the time limit for the issuance of a notification of best judgment assessment (when requested information not provided) to 9 months from the end of the financial year in which a return is furnished, down from 12 months;
- A reduction in the general statute of limitations to 3 years from the end of the relevant assessment year, down from 4 years;
- An increase in the statute of limitations to 10 years in cases of tax evasion where income that escaped assessment amounts to or is likely to amount to INR 50 Lakhs or more, down from 6 years where income is likely to amount to INR 100,000 or more;
- The removal of the 16-year statute of limitations for income that escaped assessment in relation to assets outside India; and
- Changes in the penalty for the late filing of an income tax return. Penalty of INR 5,000 if submitted by 31<sup>st</sup> December of the assessment year, otherwise INR 10,000. Penalty of INR 1,000 if total income does not exceed INR 5,00,000.

The changes generally apply for assessment years commencing on or after 1 April 2021.

## **2. Extended Time Limits for Assessments, Tax Dispute Payments, and Others Due to COVID-19**

Due to the ongoing impacts of the COVID-19 pandemic, Central Board of Direct Taxes announced time limit extensions to 30 June 2021 in relation to passing orders for assessment or reassessment, passing orders directed by the dispute resolution panel (DRP), issuing notices where income has escaped assessment, and sending intimation of processing for the Equalization Levy under Finance Act 2016.

In addition, the deadline for making payment under the "Vivad Se Vishwas" scheme for tax disputes without paying an additional amount is also extended to 30 June 2021.

## **3. Country-by-Country Reporting and Master File Rules Updated**

The Central Board of Direct Taxes has issued a notification containing the Income-tax (9th Amendment) Rules, 2021. One of the key changes is an increase in the reporting threshold for Country-by-Country (CbC) reporting from INR 5,500 crore to INR 6,400 crore consolidated group revenue in the preceding year.

Form 3CEAA clarifies that where an international group has more than one constituent entities, only one entity is required to file the Master File. These changes are considered to have entered into force on 1 April 2021.

## **4. Format, Procedure and Guidelines for submission of Statement of Financial Transactions (SFT) for Depository Transactions**

The statement of financial transactions relating to Financial Year 2020-21 shall be furnished on or before the 31st May 2021. Thereafter, the statement of financial transactions relating to the quarter ending 30th June, 31st September, 31st December and 31st March shall be furnished on or before 25th of July, October, January and April respectively. These shall come into effect from 30 April, 2021.

Further, the format, procedures and guidelines for submission of SFT for depository transactions can be found in the notification:

[https://incometaxindia.gov.in/communications/notification/notification-3\\_2021\\_depository\\_transaction.pdf](https://incometaxindia.gov.in/communications/notification/notification-3_2021_depository_transaction.pdf)

## **5. CBDT specifies rules setting thresholds for determining Significant Economic Presence**

Section 9(1) of the Income Tax Act, 1961 talks about incomes that shall be deemed to accrue or arise in India. Income accruing or arising from any business connection in India is said to accrue or arise in India subject to explanations. The act had clarified that significant economic presence of a non-resident in India shall constitute "business connection" in India.

Through the latest notification, the Central Board of Direct Taxes (CBDT) has defined thresholds for the purpose of significant economic presence. The payment threshold shall be **2 crores** for aggregate of payments arising from transactions in respect of goods, services or property carried out by a non-resident with any person in India, including provision of download of data or software in India during the previous year. CBDT has also specified user threshold applicable in cases where there is a systematic and continuous soliciting of business activities or engaging or interacting with Indian users. The user threshold shall be **3 lakh users**.

These shall come into force with effect from 1 April, 2022.



## **6. Option to withdraw pending application under Section 245M (1)**

Under Section 245M (1), Certain persons who have filed appeals to the Appellate Tribunal are entitled to make applications to the Settlement Commission.

Through a new rule 44DA, assessee can now exercise an option to withdraw his pending application through form number 34BB. This form shall be verified by the person who is authorised to verify the return of income of the assessee under section 140. Format of Form 34BB can be found in the notification: [https://incometaxindia.gov.in/communications/notification/notification %2040 2021.pdf](https://incometaxindia.gov.in/communications/notification/notification_%2040_2021.pdf)

## **7. Mumbai Tribunal grants relief to deductor from withholding tax obligation on account of impossibility of performance, on transaction involving indirect transfer of shares**

The Mumbai Bench of the Income-tax Appellate Tribunal held that withholding tax obligation (and consequential interest liability) shall not be applicable, in the hands of a non-resident buyer, on a transaction involving indirect transfer of shares, in a case where the obligation arose only due to retrospective amendment introduced in the Income-tax Act.

The case involved a transaction that took place on July 11,2008 where shares of a Singapore company were acquired by a non-resident Mauritius Company from a non-resident UK seller. This transaction had taken place prior to the retrospective amendment introduced in section 9(1)(i) of the Income Tax Act. The Tribunal held that as on the date of performing the withholding tax obligation (i.e. July 2008) no such law was in force which makes it wholly impossible for any person to perform the obligation. The Tribunal relied upon the doctrine of impossibility of performance as upheld in various decisions including the latest judgement of the Supreme Court in the case of *Engineering Analysis Centre of Excellence v. CIT [2021]*.



## INDIRECT TAX UPDATES

### 1. Notification No. 06/2021-Central Tax dt. March 30, 2021

Penalty shall be waived off for non-compliance of Dynamic QR code for B2C invoices for the period December 01, 2020 to June 30, 2021 provided the taxpayer complies with the said provisions from July 01, 2021

### 2. Notification No. 07/2021-Central Tax dt. April 27, 2021:

Taxpayers registered under the provisions of Companies Act, 2013, shall be allowed to file GSTR 1 or IFF details & GSTR 3B during the period from April 27, 2021 to May 31, 2021 using Electronic Verification Code (EVC).

### 3. Commissioner of CGST Appels Chennai Ruling

#### Case Law

In the Case of	Date of ruling	Matter Related to	GIST of the case
Zumen Technologies Pvt Ltd Vs Commissioner CGST appeals, Chennai	March 22, 2021	Foreign Co. and Indian Co. having one common director would not be distinct person in GST & treated as separate legal entities	The Applicant had exported services to Z Inc, a US company and had availed input tax credit and subsequently claimed GST refund under the category export of goods and service without payment of tax. The commissioner rejected the refund claim on the ground that the founder and CEO of Indian and foreign company were same person and therefore both supplier and receiver were in the establishments of distinct person. It was held that as per section 2(84), it was different person- Foreign company and Indian company were incorporated under different statue, since both were separate legal entities, they would not be governed by provisions of distinct person and therefore, benefits of export of services could not be denied to Indian Company.

**Advance Ruling:**

<b>Ruling No</b>	<b>In the Case of</b>	<b>Ruling</b>
KAR/ADRG/16 OF 2021 (KARNATAKA)	Bishops Weed Food Crafts Pvt Ltd	<p>Applicant is engaged in the business of leasing/renting individual bed rooms along with basic amenities to occupants.</p> <p>It was held that the applicant is not leasing/renting a residential dwelling on whole, but is leasing/renting individual bed rooms to occupants and hence, applicant's service does not qualify to be a 'renting of immovable property' service as property leased or rented is not a residential dwelling, but amounts to provision of accommodation as 'rooming house. It will be covered under accommodation services and falls under SAC 996311 and hence would qualify as composite supply under section 2(30).</p>
Order no 18/WBAAR/2020-21 (West Bengal)	MANOJ MITTAL	<ul style="list-style-type: none"> <li>• Supply of food and beverages from the sweetmeats counter by the applicant, where the customers have not been provided with any services in relation to consume the same in the premises, shall be categorized as supply of goods and the applicant is eligible to avail input tax credit in respect of such supply of goods.</li> <li>• Supply of food items and beverages by the applicant which offers the facility of eating in the same premises along with takeaway of the same shall be treated as restaurant services and shall attract tax @ 5% provided that credit of input tax charged on goods and services used in supplying the service has not been taken.</li> <li>• Supply of catering services to the educational institution, based on the agreement, is found to be covered under entry serial number 66 (b)(ii) of the Exemption Notification No. 12/2017- Central Tax (Rate) dated 28-6-2017, as amended from time to time (corresponding West Bengal State Notification No. 1136 F.T. dated 28-6-2017) and shall, therefore, be exempted from payment of tax.</li> <li>• Supply of food and beverages to the auditor, guests/ parents on programme days, as it appears from the agreement shall be treated as 'outdoor catering' and shall attract tax @ 5% vide entry serial number 7(iv) of the Notification No. 11/2017- Central Tax (Rate) dated the 28th June, 2017, as amended from time to time (corresponding West Bengal State Notification No. 1135 F.T. dated 28-6-2017) provided that credit of input tax charged on goods and services used in supplying the service has not been taken.</li> </ul>
Order no TN/AAAR/11/2021 (Tamil Nadu)	Kalyan Jewellers India Ltd	Time of supply of gift vouchers/ gift cards by applicant to customers shall be date of issue of such vouchers and applicable rate of tax is that applicable to that of goods.

Order no KAR/ADRG/22 OF 2021 (Karnataka)	Kou-Chan Technologies Pvt Ltd.	<p>Applicant proposes to operate a mobile based taxi aggregation service, on a pan-India basis and applicant has a unique business model comprising of three entities:</p> <ul style="list-style-type: none"> <li>• First, applicant as 'Taxi Aggregator',</li> <li>• Second as 'Associate Partner' and</li> <li>• Third as 'Taxi Driver'/'Owner'.</li> </ul> <p>Applicant is providing two taxable services, i.e., providing an online platform and insurance coverage to passenger, since insurance coverage to passenger is optional and also online platform service is neither related to nor ancillary to insurance service, these two supplies are not naturally bundled and said supplies are not in conjunction with each other, in ordinary course of business and, therefore, activities performed by applicant do not amount to a composite supply.</p>
--	--------------------------------------	---

#### **4. DGFT – IEC related provisions under Chapter 1 and 2 of Foreign Trade Policy 2015-20**

IEC holders are required to update their IEC details in DGFT portal electronically every year during April to June period. Even if there are no changes, it has to be confirmed online. IEC shall be deactivated in case on non-compliance.

Detailed Notification: <https://content.dgft.gov.in/Website/dgftprod/74893b60-2434-4b7c-b90d-ee9fe0eb7320/Notification%2058%20Date%2012-02-2021%20English.pdf>

#### **5. Customs and Health Cess Exemption for Certain Imports for COVID-19**

Central Board of Indirect Taxes and Customs (CBIC) has provided exemptions from customs duty and health cess on the import of specified goods for COVID-19. This includes a customs duty exemption for pharmaceutical ingredients for Remdesivir and related goods until 31 October 2021, and a customs duty and health cess exemption for oxygen and oxygen-related equipment, ventilators, and COVID-19 vaccines until 31 July 2021.

[www.manian-rao.com](http://www.manian-rao.com)

**Address:**

**Bangalore**

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

**Chennai**

# 4, Easwaran Koil Street  
Old Pallavaram,  
Chennai – 60017  
Phone: +91 44 22641404

**Madurai**

# 110, First Floor  
Old No 85, 4<sup>th</sup> 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

*This Publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgement. Manian and Rao Chartered Accountants will not accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor from Manian and Rao Chartered Accountants.*