IBA INTERNATIONAL BUSINESS ADVISORS

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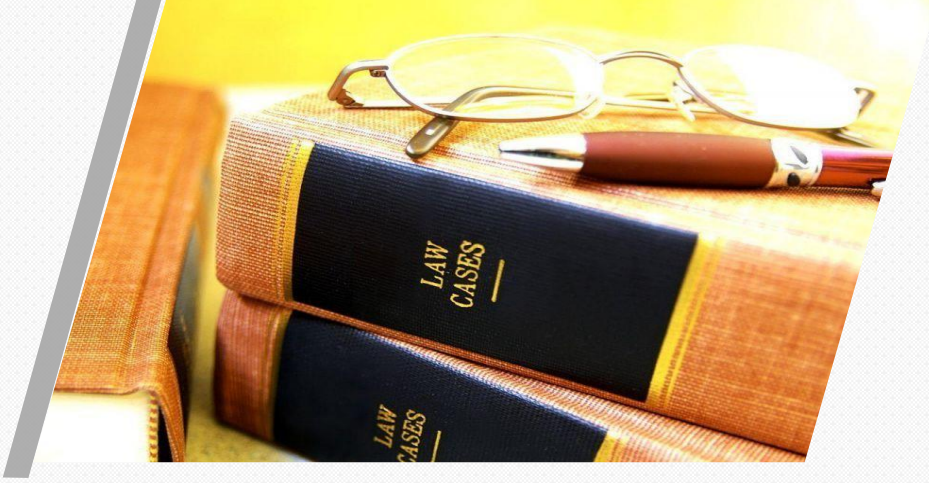
Direct Tax Case Laws



Case Law 1:

Compensation received by a partner from other existing partners for reduction in profit sharing ratio would not tantamount to Capital Gains chargeable to tax under section 45(1)

Assessee was a partner of 30% in a partnership firm. Assessee' share was reduced to 25% which was distributed amongst other existing partners. Existing partners whose share was increased, paid compensation of Rs. 400 Lacs to assessee. Said amount was not shown as assessee's income. It was held that Partnership firm under Indian Partnership Act, 1932, is not a distinct legal entity apart from partners constituting it and equally in law firm as such has no separate rights of its own in Partnership Assets and when one talks of firm's property or firm's assets all that is meant is property or assets in which all partners have a joint or common interest. In instant case, there was no dissolution and firm continued business. There was an adjustment of profit-sharing ratio inter-se between existing partners which was routed through partners' current account held with firm. Hence, Compensation received by a partner from other existing partners for reduction in profit sharing ratio would not tantamount to Capital Gains chargeable to tax under section 45(1)

Anik Industries Ltd v DCIT

Case Law 2:

Where assessee was incorporated with approval of Secretariat for Industrial Assistance for purpose of economisation of cost of advertising and promotion of member companies, to be operated on a non-profit basis on principles of mutuality but it accepted contributions both from members and non-members and one member was vested with powers to control functioning and interests of other members, such an assimilation could not be termed as a social intercourse devoid of commerciality; assessee, being not a mutual concern, could not be entitled to tax exemption

Assessee-company was incorporated by YRIPL as its fully owned subsidiary after having obtained approval from the Secretariat for Industrial Assistance for purpose of economisation of the cost of advertising and promotion of YRIPL franchisees as per their needs. The approval was granted subject to certain conditions as regards functioning of assessee, whereby it was obligated to operate on a non-profit basis on principles of mutuality. However, assessee-company undertook a commercial venture wherein contributions were accepted both from members as well as non-members. Moreover, one member YRIPL was vested with a myriad set of powers to control functioning and interests of other members (franchisees), even to their detriment. It was held that such an assimilation could not be termed as a case of

Direct Tax : Case Laws

ordinary social intercourse devoid of commerciality. Therefore, Revenue Authorities were justified in refusing to acknowledge assessee as a mutual concern and denying it any exemption from taxability.

Yum Restaurants (Marketing) Pvt Ltd v CIT

Case Law 3:

Where proof of identity of loan depositors, capacity of creditors to advance loans and genuineness of transaction was in serious dispute, assessee's writ challenging recovery and collection of tax was to be set aside.

Assessing Officer had made unexplained cash credit addition under section 68 and raised demand on assessee. Stay was granted to assessee, subject to payment of 20 per cent of demand in view of CBDT's 2016 Office Memorandum (OM).

Assessee by way of instant petition challenged the above order of recovery and collection of tax on ground that the assessment was made on a 'high pitched basis' and therefore, the recovery and collection of tax had to be held in abeyance till the disposal of appeal against the assessment order. Further, assessee had argued that revenue erroneously assumed the 20 per cent condition in CBDT's OM to be mandatory, ignoring financial stringency faced by assessees and balance of convenience being in favour of assessees.

The present matter is not a case of mechanical reliance on circulars/office memorandums. It is a case where proof of identity of the loan depositors, capacity of the creditors to advance loans and genuineness of transaction is in serious dispute. Though it is open to the statutory authorities to grant relief to deposit an amount lesser than 20 per cent if the facts of the case so warrant, however, on facts of instant case, as determined by the Assessing Officer, a prima facie case is not made out and such a relief is not warranted. Consequently, the instant writ petition and application being bereft of merits are dismissed.

Jindal ITF Ltd v Union of India

Direct Tax Notifications

1. **Amendment of Mutual Agreement Procedure (MAP) procedure laid down in the Income-tax Rules, 1962**

In exercise of the powers conferred by section 295 of the Income-tax Act, 1961, the Central Board of Direct Taxes makes the rules further to amend the Income-tax Rules, 1962.

https://www.incometaxindia.gov.in/communications/notification/notification23_2020.pdf

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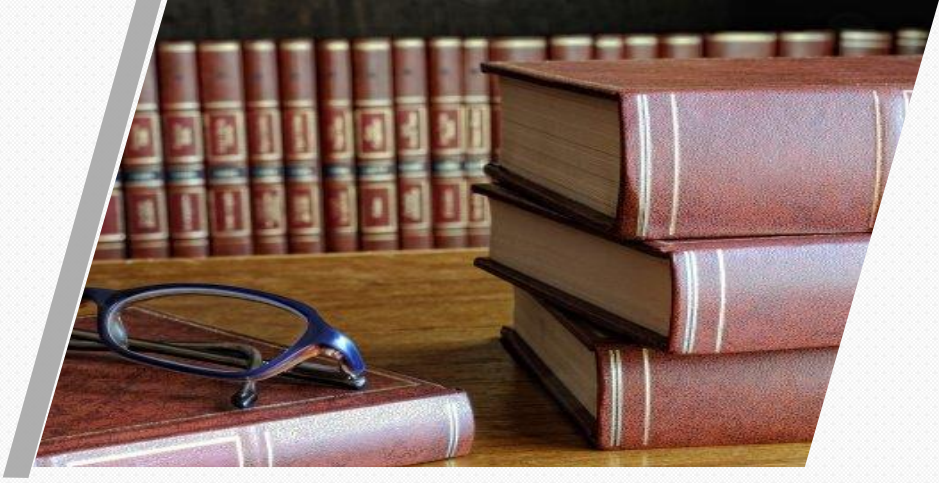

Case Law 1:

No separate GST registration required in other states for execution of works contract

The applicant is a partnership firm registered under the GST Act as works contractor and wholesale supplier in the state of Rajasthan. The applicant had been awarded a works contract by M/s Shree Cement Limited in the state of Karnataka. The applicant has sought an advance ruling on whether a separate GST registration is required in Karnataka and if not, then GST should be charged under which head in case it procures goods either from Rajasthan and ships to Karnataka or directly purchases goods from Karnataka. The applicant submitted that it would arrange all the required tools and material along with the manpower and the invoices would be raised to Karnataka unit of Shree Cement Limited. Further, since the applicant does not have any premises in Karnataka, thus Shree Cement will provide a temporary small space for the applicant to store the material. The authority referring to the provisions of Section 22 of the CGST Act observed that the applicant intends to supply goods or services from its only principal place of business which is located in Rajasthan and since it does not have any fixed establishment in Karnataka, thus the authority ruled that the applicant need not obtain separate registration in Karnataka for execution of the said contract. As for the second question of the applicant, the authority ruled that it is covered under Bill to - Ship to transaction as per Section 10(1)(b) of the IGST Act , therefore if the goods are procured from Rajasthan it becomes an intra state supply and if the goods are procured from any other state, it becomes an interstate supply, however in any of the case, IGST should be charged on the invoice to be raised by the applicant to Shree Cement as the place of supply in case of works contract services shall be the location of the construction site (in the said case, Karnataka) and since applicant is registered in Rajasthan it becomes an inter-state supply

AUTHORITY FOR ADVANCE RULINGS – KARNTAKA IN M/s T & D ELECTRICALS [ADVANCE RULING NO. KAR ADRG 18/2020 DATED 31ST MARCH 2020]

Case Law 2:

Supply of pre-purchased/designed software constitutes supply of computer software, taxable as goods

The Applicant is a private limited company engaged in the business of supplying software. The applicant has sought an advance ruling w.r.t. whether the software supplied by the applicant qualifies to be supply of goods and whether the benefits of Notification no. 45/ 2017 –Central Tax and 47/2017 –Integrated Tax dated November 14, 2017 shall be applicable. He states that he is engaged in the purchase of software

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from their principal partner and supply the same to customers. The applicant is not permitted to modify/alter/adapt/disassemble or otherwise the software so purchased and sold as per the agreement between the principal partner, customers, and himself. In the said notifications, "Computer Software" is termed as Goods, but the term "Computer Software" was not defined in the said notifications, or in any of the Acts and Rules prevailing. AAR holds that supply of software which is not designed and developed specific to any customer and sold without customization qualifies as "supply of goods", covered under HSN 8523. AAR notes that applicant purchases software not developed for any particular client and sells the same to all clients, which is made available through use of encryption keys and hence, satisfies all conditions under the definition of "goods". Also, since goods supplied cannot be used without the aid of the computer, hence, goods are computer software. AAR Highlights that benefits of the said notifications is applicable on supplies made by the Applicant to the listed institutions

THE AUTHORITY FOR ADVANCE RULING KARANATAKA Vs. M/s SOLIZE INDIA YECHNOLOGIES PRIVATE LIMITED [AAR No. KAR ADRG 25/2020 dated 23-04-2020]

Case Law 3:

Cannot withhold refund for an 'indefinite-period' for "want of cross-verification" details, imposes

The Assessee is engaged in the manufacture of cement and cement products. He was assessed for Sales tax during the years 1979-80 and 1980-81 on turnover relating to packing material. A Demand was raised on the grounds that packing material had been wrongly charged @ 3% instead of 8%. Thus, on interim order by the SC, the Assessee paid through Demand Draft INR 28.1 lakhs with the Department. The Department again levied additional charge of INR 28.1 lakhs by another order on account of payment not received. Aggrieved, the Assessee preferred an appeal before the Sales Tax Appellate Tribunal which allowed the appeal, but even then, the Assessee's amount was not refunded. On 5th May 2009, the Department directed to withhold the refund for want of getting cross verification on payment details from the Officer concerned. The Assessee contended that such withholding of refund by the Department is without jurisdiction. The Department countered that such amount was withheld due to absence of realization particulars relating to the amount. HC held that as per the Negotiable Instruments Act, 1881 presentation of a Demand draft to the drawee is equivalent of payment and discharges Assessee of its obligations, however, the encashment of the same is the responsibility of the authorities. HC held that once the Department admitted receipt of Demand drafts from the Assessee, payment is complete, and the petitioner is absolved of its obligations. Thereby, the withholding of the refund by the Department on the grounds that challans are not traceable in the Sub Treasury of deposit of the Demand Drafts by the Commercial Tax Department, after receipt of the Demand Drafts, cannot be a valid reason. HC mentioned that a refund withholding order must specify the period of time and the refund cannot be withheld indefinitely. HC gave 6 months' time to the respondents to complete the verification and the Department cannot withhold the refund beyond the said period. HC directed

the Department to pay the withheld amount with interest @12% from 02-08-1993 - 22-01-2004 and from 05-11-2009.

M/S ACC LIMITED VS. ASSISTANT COMMISSIONER CT LTU BEGUMPET DIVISION, HYDERABAD & ORS (DATED 30-04-2020)

Indirect Tax Notifications & Circulars

S. No	Notifications

1. Seeks to provide relief by conditional lowering of interest rate for tax periods of February 2020 to April 2020

CBIC vide Notification No. 31/2020 – Central Tax provides relief by conditional lowering of interest rate for tax periods of February 2020 to April 2020 in furnishing FORM GSTR-3B

https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-31-central-tax-english-2020.pdf

2. Seeks to provide relief by conditional waiver of late fee for delay in furnishing outward statement in FORM GSTR-1 and GSTR-3B for tax periods of February 2020 to April 2020.

CBIC vide Notification No. 33/2020 – Central Tax and Notification No. 32/2020 – Central Tax provides relief by conditional waiver of late fee for delay in furnishing outward statement in FORM GSTR-1 and GSTR-3B for tax periods of February 2020 to April 202

https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-33-central-tax-english-2020.pdf

https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-32-central-tax-english-2020.pdf

3. Seeks to extend due date of furnishing FORM GST CMP-08 for the quarter ending March 2020 till 07.07.2020 and filing FORM GSTR-4 for FY 2020-21 till 15.07.2020

CBIC vide Notification No. 34/2020 – Central Tax notified that such person shall furnish FORM GST CMP-08 for the quarter ending 31st March 2020, till the 07-07-2020 and FORM GSTR-4 for the financial year ending 31st March 2020, till 15-07-2020

https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-34-central-tax-english-2020.pdf

4. Seeks to extend due date of compliance which falls during the period from "20.03.2020 to 29.06.2020" till 30.06.2020 and to extend validity of e-way bills.

CBIC vide Notification No. 35/2020 – Central Tax has notified, in view of the spread of pandemic COVID-19, due date for any compliance which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020 shall be 30-06-2020. Further, where an e-way bill expires during the period 20-03-2020 to 15-04-2020, the validity period of such e-way bill shall be extended till the 30th day of April 2020

Indirect Tax Notifications & Circulars

S. No	Notifications

https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-35-central-tax-english-2020.pdf

5. Seeks to give effect to the provisions of rule 87 (13) and FORM GST PMT-09 of the CGST Rules, 2017.

CBIC vide Notification No. 37/2020 – Central Tax gave effect to the provisions pf rule 87(13) permitting relocation of falsely or erroneously paid cash into the cash ledger to a different tax head.

https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-37-central-tax-english-2020.pdf

Corporate Legal & Regulatory Notifications

S. No	Notifications

1. CLARIFICATION ON PASSING OF ORDINARY AND SPECIAL RESOLUTIONS BY COMPANIES UNDER THE COMPNANIES ACT, 2013

(MCA Circular dated April 08, 2020)

The Ministry of Corporate Affairs (MCA) vide its circular no. 14/2020 dated April 08, 2020 has provided the relaxation to companies in respect of passing ordinary and special resolution in the meeting of members due to the outbreak of COVID-19 pandemic. The MCA has suggested that companies which need to take urgent decisions requiring members approval can take approvals through postal ballot/ e-voting and hence do not require to conduct any physical meeting.

In case, the holding of Extra Ordinary General Meeting (EGM) is unavoidable for the company, then company should comply with the measures as mentioned in this circular and the said relaxation shall remain in force up to June 30, 2020.

The key measures of the said relaxation are as follows:

A. For companies which are required to provide the facility of e-voting under the Act, or any other company which has opted for such facility-

1. EGM can be conducted through video conferencing (VC) or any other audio-visual means (OAVM), provided the transcript of the same shall be in maintained in the safe custody of the company. In case of public companies, the transcript shall be made available on the website of the company, if any
2. Company shall consider different time zones as per the convenience of members before scheduling the meeting
3. Company should ensure the facility of two-way conferencing or WebEx for the ease of participation of members. The said facility must allow at least 1000 members to participate on first cum first served basis. The large shareholders (i.e., shareholders holding 2% or more shareholding), promoters, institutional investors, directors, key managerial personnel (KMP), the chairpersons of audit committee, nomination and remuneration committee, stakeholders relationship committee, auditors, etc. may be allowed to attend the meeting without the restriction on account of first come first served basis.
4. Company shall open the facility of joining the meeting before 15 minutes from the scheduled and will not close it till the expiry of 15 minutes after such scheduled time
5. Attendance of members through video conferencing or other audio-visual means shall be counted for the purpose of quorum

6. The facility of voting through e- voting system or by show of hands in a meeting shall be allowed only to the members who are present in the meeting through VC or OAVM and did not cast their vote through remote e-voting
7. If AOA of a company specifies any specific person to be a Chairperson of meeting, then that person will be appointed as Chairperson of a meeting, otherwise the Chairperson shall be appointed in below manner:
   - If less than 50 members are present at meeting, then the members shall appoint one among themselves as Chairperson.
   - If 50 or more members are present, then Chairperson shall be appointed by a poll conducted through e-voting system during the meeting
8. The Chairperson shall ensure the availability of e-voting facility for the purpose of poll. The voting shall be conducted in the below manner:
   - If less than 50 members are present at the meeting, then voting may be conducted either through e-voting system or by show of hands, unless the poll is demanded
   - If 50 or more members are present, then voting through e-voting system only
9. The members will not be allowed to appoint proxy on their behalf for the purpose of this meeting. However, pursuance to the section 112 and 113 of Companies Act 2013, authorized representative of members is allowed to attend meeting on their behalf
10. In case institutional investor are members of the company, then they must be encouraged to attend and vote at the meeting
11. The independent director and auditor or its authorized representative shall attend the meeting
12. Every company should ensure that notice of EGM shall make disclosure regarding the framework provided through this circular and shall give instructions how to access and participate in the meeting. Also, companies shall also provide the helpline number for members who need assistance with using technology
13. In case companies have already issued any notice prior to the date of this circular and members approval is also received, in that case also, fresh notice is required to be sent
14. All resolutions passed under this mechanism shall be filed with the ROC within 60 days of passing the resolution mentioning that the company has complied with all the measures mentioned in the circular

B. For companies which are not required to provide the facility of e-voting under the Act-

1. The applicability of all the points, except point (6) and (8) mentioned above are same as in case of companies which are required to provide the facility of e-voting under the Act
2. Company shall provide a designated email id along with notice to the members for sharing their votes

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3. The confidentiality of passwords and other privacy issues relating to designated email address shall be strictly maintained by the company
4. In case poll is required, the members shall cast their votes on the resolution by sending through their registered email id on the designated email id provided by company
5. In case less than 50 members are present in the meeting, the Chairperson may decide to conduct a vote by show of hands, unless poll is demanded. In case poll is demanded and counting of votes requires time, then the said meeting can be adjourned and called later to declare results

C. The Companies should ensure all the compliances of general meeting mentioned under Companies Act, 2013 like making of disclosures, inspection of related documents by members, authorizations for voting by bodies corporate are made through electronic mode

D. The provisions of this circular shall not apply for passing the following resolutions:

- The consideration of financial statements and the reports of the Board of Directors and auditors.
- The declaration of any dividend
- He appointment of directors in place of those retiring
- He appointment of, and the fixing of the remuneration of, the auditors
- Any other matter where any person has a right to be heard

Link: http://www.mca.gov.in/Ministry/pdf/Circular14_08042020.pdf

2. COVID-19 RELATED FREQUENTLY ASKED QUESTIONS (FAQS) ON CORPORATE SOCIAL RESPONSIBILITY (CSR)

(MCA circular dated April 10, 2020)

Ministry of Corporate Affairs (MCA) has issued General Circular on April 10, 2020 pursuant to several references and representations from various stakeholders seeking clarifications on eligibility of Corporate Social Responsibility (CSR) expenditure related to COVID19 activities

MCA clarifies on eligibility of CSR expenditure related to COVID-19 activities by a way of Frequently Asked Questions (FAQs), for the better understanding of the various stakeholders

Link of FAQ's: http://www.mca.gov.in/Ministry/pdf/Notification_10042020.pdf

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3. CLARIFICATION ON PASSING OF ORDINARY AND SPECIAL RESOLUTIONS BY COMPANIES UNDER THE COMPANIES ACT, 2013.

(MCA circular dated April 13, 2020)

The Ministry of Corporate Affairs (MCA) vide its circular no. 17/2020 dated April 13, 2020 has provided further clarification in continuation to the earlier circular dated April 08, 2020 in respect of manner and mode of issue of notices to the members before conveying of Extra-ordinary general meeting through video conferencing (VC) or any other audio-visual means (OAVM).

4. MANNER AND MODE OF ISSUE OF NOTICES TO THE MEMBERS BEFORE CONVENING THE EXTRA-ORDINARY GENERAL MEETING:

A. For companies which are required to provide the facility of e-voting under the Act, or any other company which has opted for such facility :

1. Notice of the meeting can be send by the company to all members only through the emails registered with the company or with the depository participant/ depository.
2. Every company which require publishing the public notice as per the rule 20(4)(v) of Companies (Management and Administration) Rules, 2014 shall also state the following matters in the public notice:
   - A statement that the EGM has been convened through VC or OAVM as per the circular issued by MCA dated April 08, 2020.
   - Date and time of EGM.
   - Availability of notice of meeting on the website of company and stock exchange.
   - The manner of voting for the members who are holding shares in physical form and who have not registered their email id with the company can vote through remote e-voting or e-voting system.
   - The matter of registration of email id with the company for those who have not registered their email id.
   - Any other detail considered necessary by the company.
3. The Chairperson of the meeting shall ensure and record that all the efforts feasible under the circumstances have been made by the company to enable members to participate and vote in the meeting.

B. For companies which are not required to provide the facility of e-voting under the Act :

1. Notice of the meeting can be send by the company to all members only through the emails registered with the company or with the depository participant/ depository.

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2. A copy of notice shall also be displayed on the website of company, if any.
3. The company shall ensure that all the members are aware regarding the convening of EGM as per the MCA circular dated April 08, 2020. In order to ensure the same, the company shall:
   - contact all the members over telephone whose email addresses are not registered with the company before the sending the notice.
   - In case contact details of members are not available, then company shall publish the same in at least one vernacular newspaper and one English newspaper having vide circulation in the district where registered office of the company is situated. The company should ensure that the newspapers having electronic edition and advertise the following information:
     - The intention of company to conveying the EGM as per the MCA circular dated April 08, 2020.
     - The details of email address along with a telephone number on which members may contact for getting their email addresses registered.
4. The Chairperson of the meeting shall ensure and record that all the efforts feasible under the circumstances have been made by the company to enable members to participate and vote in the meeting.

C. MCA considered the dissimilarities involved in e-voting and voting by show of hands. Hence, the MCA has substituted the clause of voting by show of hands as mentioned in circular no. 14/2020 dated April 08, 2020 with the below mentioned clause:

"The Chairperson present at the meeting shall ensure that the facility of e-voting system is available for the purpose of voting during the meeting held through VC or OAVM."

In other words, the requirement of voting by show of hands are done away with and only e-voting system is available for the purpose of voting during the meeting held through VC or OAVM.

Link: http://www.mca.gov.in/Ministry/pdf/Circular17_13042020.pdf

5. HOLDING OF ANNUAL GENERAL MEETING BY COMPANIES WHOSE FINANCIAL YEAR HAS ENDED ON DECEMBER 2019

(MCA circular dated April 21, 2020)

The Ministry of Corporate Affairs (MCA) vide its circular dated April 21, 2020 examined various representations from stakeholders with regard to difficulty in holding annual general meeting (AGM) for companies whose financial year ended on 31st December 2019 due to COVID-19 related social distancing norms and consequential restrictions linked thereto.

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MCA has clarified that the companies whose financial year (other than first financial year) has ended on 31st December, 2019, can hold their AGM for such financial year within a period of nine months from the closure of the financial year (i.e. by 30th September, 2020), the same shall not be viewed as a violation.

Link: http://www.mca.gov.in/Ministry/pdf/Circular18_21042020.pdf

6. EXTENSION OF TIME PERIOD FOR NAMES RESERVED AND RESUBMISSION OF FORMS

The Ministry of Corporate Affairs (MCA) has provided the extension to the companies and LLPs in relation to the names reserved and resubmission of forms.

The extension has been provided on case to case basis beyond May 03, 2020 for the below mentioned cases, if the due date is expiring between March 15, 2020 to May 03, 2020:

1. In case of incorporation /change of name by the company, name which is already approved by the authority would get extension of 20 days if the name is expiring any day between 15th March 2020 to 3rd May
2. In case of incorporation/ change of name of LLP, name which is already approved by the authority would get extension of 20 days if the name is expiring any day between 15th March 2020 to 3rd May
3. In case of any SRNs where last date of Resubmission (RSUB) is expiring between 15th March 2020 to 3rd May 2020, an extension of 15 days beyond 3rd May 2020 would be allowed. However, for SRNs already marked under not to be taken on record (NTBR), an extension would be provided on case to case basis

Link: http://www.mca.gov.in/Ministry/pdf/Extension_22042020.pdf

7. COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) SECOND AMENDMENT RULES, 2020

(MCA Notification dated April 29, 2020)

The Ministry of Corporate Affairs (MCA) has further amended the Companies (Appointment and Qualification of Directors) Amendment Rules, 2014 through Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2020. The provisions of said rule shall be effective from April 29, 2020.

As pe the said amendment, MCA has further extended the last date for registration of details of Independent Directors in the ID Data Bank for a further period of two months, i.e. seven months from December 1, 2019.

Link: http://www.mca.gov.in/Ministry/pdf/Rules_29042020.pdf

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8. EXTENSION OF FILING OF FORM NFRA-2

(MCA circular dated April 30, 2020)

The Ministry of Corporate Affairs (MCA) has further extended the filing date of form NFRA-2. The due date for filing form NFRA-2 for the FY 2018-19 shall be 210 days from the date of deployment of the said form.

Link: http://www.mca.gov.in/Ministry/pdf/Circular19_30042020.pdf

9. CLARIFICATION ON HOLDING OF ANNUAL GENERAL MEETING (AGM) THROUGH VIDEO CONFERENCING (VC) OR OTHER AUDIO-VISUAL MEANS (OAVM)

(MCA Circular dated May 5, 2020)

Ministry of Corporate Affairs (MCA) vide its general circular No. 20/2020 has allowed the companies to conduct their Annual General Meeting (AGM) through video conferencing (VC) or other audio-visual means (OAVM) during the calendar year 2020, in similar way as it was allowed to conduct EGMs subject to the fulfilment of the following requirements:

A. For companies which are required to provide the facility of e-voting under the Act, or any other company which has opted for such facility:

1. The framework provided in para 3-B of EGM Circular - I and the manner and mode of issuing notices provided in sub-para (i)-B of EGM Circular - ll shall be applicable mutatis mutandis for conducting the AGM.
2. In such meetings, other than ordinary business, only those items of special business, which are considered to be unavoidable by the Board, may be transacted.
3. Copies of the financial statements (including Board's report, Auditor's report or other documents required to be attached therewith), shall be sent only by email to the members, trustees for the debenture-holder of any debentures issued by the company, and to all other persons so entitled.
4. Before sending the notices and copies of the financial statements, etc., a public notice by way of advertisement be published at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated and having a wide circulation in that district, and at least once in English language having a wide circulation in that district, preferably both newspapers having electronic editions, and specifying in the advertisement the following information:
   a. statement that the AGM will be convened through VC or OAVM
   b. the date and time of the AGM through VC or OAVM
   c. availability of notice of the meeting on the website of the company and the stock exchange, in case of a listed company
   d. the manner in which the members who are holding shares in physical form or who have

registered their email addresses with the company can cast their vote through remote e-voting or through the e-voting system during the meeting

e. the manner in which the persons who have not registered their email addresses with the company can get the same registered with the company

f. the manner in which the members can give their mandate receiving dividends directly in their bank accounts through Electronic Clearing Service (ECS) or any other means

g. any other detail considered necessary by the company

5. In case, the company is unable to pay the dividend to any shareholder by the electronic mode, due to non-availability of the details of the bank account, the company shall upon normalization of the postal services, dispatch the dividend warrant/cheque to such shareholder by post.

6. In case, the company has received the permission from the relevant authorities to conduct its AGM at its registered office, or at any other place as provided under section 96 of the Act the companies are allowed to conduct AGM at Registered Office or any other place, as decided, in presence of some members and also with providing facility of VC/OAVM. Members physically present in the meeting and through electronic means, should be counted for quorum under Section 103 of the Act.

B. For companies which are not required to provide the facility of e-voting under the Act:

1. AGM may be conducted through the facility of VC or OAVM only by a company which has in its records, the email addresses of at least half of its total number of members, who:

   a. in case of a Nidhi, hold shares of more than one thousand rupees in face value or more than one per cent. of the total paid-up share capital, whichever is less;

   b. in case of other companies having share capital, who represent not less than seventy-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting;

   c. in case of companies not having share capital, who have the right to exercise not less than seventy-five per cent. of the total voting power exercisable at the meeting.

2. The company shall take all necessary steps to register the email addresses of all persons who have not registered their email addresses with the company.

3. The framework provided in para 3-B of EGM Circular - I and the manner and mode of issuing notices provided in sub-para (i)-B of EGM Circular - ll shall be applicable mutatis mutandis for conducting the AGM

4. In such meetings, other than ordinary business, only those items of special business, which are considered to be unavoidable by the Board, may be transacted.

5. Copies of the financial statements (including Board's report, Auditor's report or other documents required to be attached therewith), shall be sent only by email to the members,

trustees for the debenture-holder of any debentures issued by the company, and to all other persons so entitled.

6. The companies shall make adequate provisions for allowing the members to give their mandate for receiving dividends directly in their bank accounts through the Electronic Clearing Service (ECS) or any other means. For shareholders, whose bank accounts are not available, company shall upon normalization of the postal services, dispatch the dividend warrant/cheque to such shareholder by post.

Note:

1. The companies referred to in paragraphs (A) and (B) above, shall ensure that all other compliances associated with the provisions relating to general meetings viz taking of disclosures, inspection of related documents/registers by members, or authorizations for voting by bodies corporate, etc as provided in the Act and the articles of association of the company are made through electronic mode.
2. The companies which are not covered by the General Circular No. 18/2020, dated April 21, 2020 and are unable to conduct their AGM in accordance with the framework provided in this Circular are advised to prefer applications for extension of AGM at a suitable point of time before the concerned Registrar of Companies under Section 96 the Act.

Link: http://www.mca.gov.in/Ministry/pdf/Circular20_05052020.pdf

10. FDIs FROM COUNTRIES SHARING LAND BORDERS WITH INDIA NOW UNDER APPROVAL ROUTE

(Notification dated April 22, 2020)

The Ministry of Finance has further amended the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 through Foreign Exchange Management (Non-debt Instruments) Amendment Rules, 2020. The provisions of said rule shall be effective from April 22, 2020.

As per the said amendment, the Ministry has mandated the approval of government in case of foreign direct investments (FDI) from the following:

1. An entity of the country that shares land borders with India including China; or
2. the beneficial owner of an investment into India who is situated in or is a citizen of any such country

Previously, such approval from government before making any FDI was restricted to Bangladesh and Pakistan only

Link: http://egazette.nic.in/WriteReadData/2020/219107.pdf

Legal & Regulatory

11. FOREIGN EXCHANGE MANAGEMENT (NON-DEBT INSTRUMENTS) SECOND AMENDMENT RULES, 2020

(Notification dated April 27, 2020)

I. The Ministry of Finance has further amended the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 through Foreign Exchange Management (Non-debt Instruments) Second Amendment Rules, 2020. The provisions of said rule shall be effective from April 27, 2020.

Key highlights:

1. In the principle rules, after the rule 7, a new clause is inserted stating that a person resident outside India who has acquired a right from a person resident in India who has renounced it may acquire equity instruments (other than share warrants) against the said rights as per pricing guidelines specified under rule 21 of principle rules.
2. The Ministry has substituted "Insurance Company" against the existing sector/ activity in entry no. F.8.1 in the table provided in schedule 1.
3. **The Ministry has substituted the entry no. F.8.2 as given below:**

(1)	(2)	(3)	(4)
F.8.2	Intermediaries or Insurance Intermediaries including insurance brokers, re-insurance brokers, insurance consultants, corporate agents, third party administrator, Surveyors and Loss Assessors and such other entities, as may be notified by the Insurance Regulatory and Development Authority of India from time to time.	100%	Automatic

4. after serial number F.8.2 as substituted above, new other conditions have been inserted.

II. Sourcing norms shall not be applicable up to three years from commencement of the business i.e. opening of the first store or start of online retail, whichever is earlier for entities undertaking single brand retail trading of products

III. In the principal rules, in Schedule II, for the entries in clause (iii) of sub-paragraph (a) of paragraph 1, the following entries shall be substituted, namely:

"The FPIs investing in breach of the prescribed limit shall have the option of divesting their holdings within five trading days from the date of settlement of the trades causing the breach. Incase the FPI chooses not to divest, then the entire investment in the company by such FPI and its investor group shall be considered as investment under Foreign Direct Investment (FDI) and the FPI and its investor group shall not make further portfolio

Investment (FDI) and the FPI and its investor group shall not make further portfolio investment in the company concerned. The FPI, through its designated custodian, shall bring the same to the notice of the depositories as well as the concerned company for effecting necessary changes in their records, within -seven trading days from the date of settlement of the trades causing the breach. The divestment of holdings by the FPI and the reclassification of FPI investment as FDI shall be subject to further conditions, if any, specified by Securities and Exchange Board of India and the Reserve Bank in this regard. The breach of the said aggregate or sectoral limit on account of such acquisition for the period between the acquisition and sale or conversion to FDI within the prescribed time, shall not be reckoned as a contravention under these rules."

Link: http://egazette.nic.in/WriteReadData/2020/219200.pdf

12. EXCLUSION OF COVID-19 LOCKDOWN PERIOD FOR THE PURPOSE OF TIMELINES PRECRIBED FOR AFFFECTED LIQUIDATION PROCESSES TASKS

Insolvency and Bankruptcy Board of India (IBBI) vide Notification No. IBBI/2020-21/GN/REG060 dated April 17, 2020 has amended Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, to exclude the period of lockdown imposed by the Central Government in the wake of COVID-19 outbreak from the time-line for any task related to the liquidation Process, that could not be completed due to such lockdown.

Link: https://www.ibbi.gov.in/uploads/whatsnew/4697af9d01b6c12c0816f4be28ea6835.pdf

13. PENALTY FOR FILING OF OVER-DUE FORMS AFTER OCTOBER 01, 2020 UNDER THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATIONS, 2016

Insolvency and Bankruptcy Board of India (IBBI) vide Notification No. IBBI/2020-21/GN/REG056 dated April 20, 2020, has amended the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, with effect from March 25, 2020. The said amendment stated that after October 01, 2020, every form under the Regulations, which is submitted after its due date (including form filing by correction, updation or otherwise), shall be subject to a penalty of INR 500 (Rupees five hundred) for every calendar month of delay. For the purpose of clarification IBBI has mentioned the following illustration:

Example: A Form is required to be filed by October 30, 2020. It shall be filed along with a fee as under:

If filed on	Fee (in rupees)
October 29, 2020	0
October 30, 2020	0
October 31, 2020	500
Any day in November, 2020	1000
Any day in December, 2020	1500

Legal & Regulatory

Link: https://www.ibbi.gov.in/uploads/legalframwork/ba2702f58a4ed1841e0e7a9a71ba40ec.pdf

14. PROVISIONS FOR APPLICATIONS RECEIVED AND ORDER OF REJECTION UNDER INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (MODEL BYE-LAWS AND GOVERNING BOARD OF INSOLVENCY PROFESSIONAL AGENCIES) REGULATIONS, 2016

Insolvency and Bankruptcy Board of India (IBBI) vide Notification No. IBBI/2020-2021/GN/REG058 dated April 20, 2020, has amended the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016, with effect from March 28, 2020. The amendment has included the following provisions:

i. Amendment in clause 12A (5)-Application received from March 28, 2020 to September 30, 2020 shall be deemed to have been issued or renewed by the Agency, if the authorization for assignment is not issued, renewed or rejected by the Agency within thirty days of the date of receipt of application.

ii. Amendment in clause 12A (7)- In case an application for issue of authorization for assignment has been rejected by an insolvency professional agency from March 28, 2020 to 30th September, 2020, the applicant aggrieved of an order of rejection may appeal to the Membership Committee within thirty days from the date of receipt of order.

Link: https://www.ibbi.gov.in/uploads/legalframwork/685f38c7444a9a6b8ddad11ac23c90cf.pdf

15. EXTENSION FOR PAYMENT OF FEES AND REPORTING OF CHANGES IN COMPOSITION UNDER THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY PROFESSIONALS) REGULATIONS, 2016

Insolvency and Bankruptcy Board of India (IBBI) vide Notification No. IBBI/2020-21/GN/REG057 dated April 20, 2020, has amended the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, with effect from March 28, 2020. The amendment has included the following provisions:

i. Extension for payment of fees under Regulation 7: an extension till June 30, 2020 has been given to insolvency professionals for payment of fees payable along with Annual statement of professional fee of insolvency professional.

ii. Reporting regarding change in composition of Insolvency Professional entity: the Insolvency Professional entity shall be liable to inform the IBBI when an individual joins or ceases to be its director or partner, as the case may be, from March 28, 2020 to December 31, 2020, within thirty days of such joining or cessation.

Link: https://www.ibbi.gov.in/uploads/legalframwork/ac467ecac3ad7a0f66433d3cbedfa03d.pdf

Column

Procurement Frauds-Occurrence And Mitigation

By –Ayush Bhatia

IBA

With an increasing number of organisation using suppliers based in emerging economies, potential opportunities for fraud and corruption especially within the procurement function are likely to escalate. Since procurement is a complex process, involving several stages, detection of frauds in the procurement process can be an arduous task too.

Procurement fraud is one of the oldest type of frauds that organisation have been witnessing for ages. Of late, this fraud is flourishing in emerging markets like ours. It is typically characterised by an element of 'quid pro quo', where a favour is given in exchange for something of value, commonly perpetrated by managers on their organisations and the big losers of this fraud are businesses and their stakeholders. In a typical scenario, the vendor is awarded a contract, well above market prices and the procurement manager receives 'benefits' for preferring the said vendor.

Developing nations like India boast of a mixed economy, with a vibrant fast-moving private sector, where a lot of fraud instances happen, but only a few are reported. Any fraud instance leads to a negative impact on an organisation's reputation and continuity and hence early identification and mitigation becomes extremely crucial. As per a study conducted by The Association of Certified Fraud Examiners (ACFE), a typical organization loses 5% of revenues each year due to fraud. On a global scale, this translates to losses of approximately US Dollar 3.7 trillion. The study also revealed that the median loss caused by the frauds was approximately US Dollar 145,000 and 22% of the cases involved losses of at least US Dollar 1 million.

Listed below are the broad areas that 'Procurement' as a process, covers:

- ✓ Identification and selection of vendors and service providers
- ✓ Conducting diligence on the selected vendor, including finalising the contract and integrating the vendor into the procurement system

- ✓ Initiation of purchase orders against the vendor
- ✓ Measuring the performance of the vendor on an ongoing basis
- ✓ Ensuring that delivery of products/services is as per the purchase order
- ✓ Termination, including establishing exit procedures for a vendor

Despite best of the processes, fraud instance can occur at any of these stages.

In the case of procurement frauds, behaviour of an individual, team or supplier is intentionally deceptive, whereby the participants would take concious steps to conceal their behaviour, making it even harder for such frauds to come to light. There could be multiple reasons behind this act, but the consequences cost the Company in a huge way both ethically and monetarily.

Prevention is better than cure, which is why it is critical to document policies in detail and outline specific expectations including the list of suppliers from whom sourcing of specific goods and services has to be made, pricing mechanism and payment terms, channels approved for making these purchases and so on.

Why do Procurement Frauds occur?

As per the Fraud Triangle framework, there are three components that contribute to any occurrence of fraud- (1) opportunity, (2) incentive, and (3) rationalization. Procurement fraud is no different.

Fraud and corruption are difficult to identify in the procurement function. They are often dealt with internally, and those involved are allowed to resign, keeping the organisation's reputation intact. Especially when the economy is slow, or not performing as well, fraudulent activity can rise.

Let's take a look at some vulnerabilities that may lead to more frauds:

- ✓ Failure to follow organisation's procurement policy and guidelines in awarding contracts
- ✓ Inappropriate/poor contracting, including ambiguous terms and conditions.
- ✓ Having a ghost supplier or a suspicious Company to defraud through contracts, invoices and other payments.
- ✓ Changes in contract value after contract commencement
- ✓ Inappropriate charges mentioned in the contract, that include cost/labour mischarging, defective parts and product substitution.
- ✓ False documents, including fraudulent invoices.
- ✓ Procurement of goods or services from single source vendors.

Possible ways of combating procurement fraud:

1. Due diligence in the vendor setup process :

Since procurement as a process mainly involves vendors, vendor data is a good starting point for this exercise. For starters, a Company must set up a due diligence procedure for onboarding a new vendor. Some inidcative tasks may be:

- ✓ comparing mailing address for vendors against the current mailing addresses for employees or their previous organisation mailing address
- ✓ thoroughly checking a vendor who has only a post office box for a mailing address to verify their legitimacy
- ✓ checking if a vendor has a proper tax ID and telephone number, and establishing its correctness
- ✓ Confirming ownership of the vendor through state business registration databases, and looking for any potential employee, board member or other key party conflicts.
- ✓ ensuring an external party to review the vendor setup process, and approving a list of new vendors on a monthly basis.

2. Segregation of Duties (SoD) :

Again a basic practice, but SoD is equally important to prevent procurement fraud. There should be clear divisions, be it in the area of receiving goods or authorizing services, those processing invoices and even those making payments. In addition, there should also be proper segregations between those who process payments, those who receive the bank statements and any such similar tasks. All these functions must be reviewed from time to time as well.

Having a proper SoD policy is one thing and making sure that they are being appropriately followed is another. To address this issue, the Company could get an independent review for operating effectiveness on a periodic basis.

3. Leveraging Data-Mining Techniques :

Data mining is a good way to detect and prevent fraud. Internal and external audits have always relied on examination of company data to identify fraud; audits only examine a fraction of the company's data. With data mining, targeted analysis of the entire population of data to identify trends, establish a baseline and identify anomalies, which enables a company to identify both fraud and internal control breakdowns.

To illustrate, this can be done for by analysing vendor payments, and establishing benchmarks. These can be used as guidelines to identify and investigate payment patterns that look suspicious and indicate towards presence of a fraud, such as:

- ✓ Payments below approval limit
- ✓ Payments that deviate from normal payment procedures
- ✓ Payments where vendor invoice numbers are not in a sequence
- ✓ Payments where there is an alpha character at the end of the invoice numbers

- ✓ Payments where delivery addresses are different than payment addresses
- ✓ Payments for a duplicate amount on the same date

4. Recognising bid rigging issues :

Bid Rigging is an illegal practice in which parties that compete can collude to choose the winner of a bidding process. This leads to several issues, as the rigged price will be higher than what has been resulted from a competitive bidding process. In the case of bid-rigging, most of the frauds are detected at later stages, when the company must have almost lost its market share.

To tackle this, the Company may:

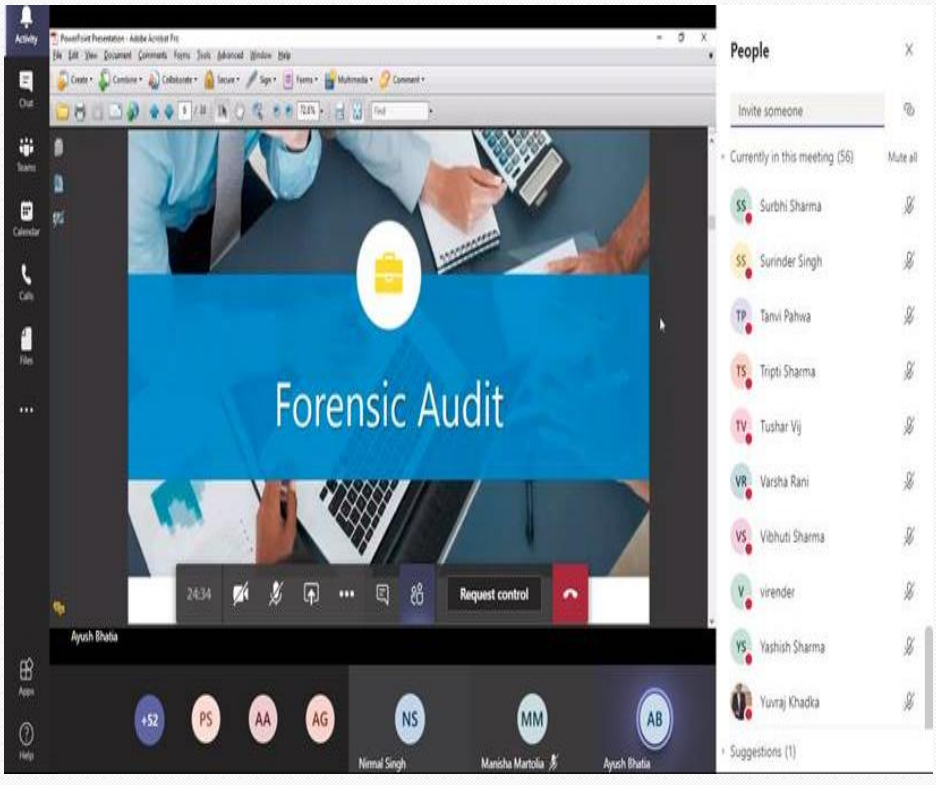
- ✓ establish a Bidding Pool
- ✓ draft Tender Specifications
- ✓ award Contracts
- ✓ conduct training and auditing for those who handle procurement processes

The bottom line :

Procurement fraud can happen to any Company irrespective of the country of operation, size and nature of business etc. The key to prevention is to understand data, the change in market prices and the trend in purchasing patterns. This should be supplemented with laying down robust processes, continuous audit of transactions, comparison of data from different applications and comprehensive tracking of processes. Another thing to remember is this fraud is not just limited to financial loss, but also puts the reputation of a company at stake. It may be impossible to completely insulate an oragnisation from the risk of a procurement fraud, but ensuring all the preventive measures are in place will substantially reduce the probability of occurrence.

IBA NEWS

Learning never stops; pleased to continue our monthly trainings



Ayush Bhatia, Deputy Manager delivered a very insightful session on forensic audit; also covering cyber forensics

Earth Day 2020 – Team Commitment

The silver lining to COVID 19 is that our mother earth is rejuvenating itself. Our team will continue to uphold our commitment to contribute to the health of our planet

Upcoming Compliances

Date	Compliance
May 13, 2020	Due date for furnishing of Form GSTR-6 for Input Service Distributor for the month of April 2020
May 20, 2020	Due date for filing consolidated return in the Form GSTR-3B for the taxpayers having aggregate turnover of more than 5 Crore the month of April 2020
May 22, 2020	Due Date for filing consolidated return in the Form GSTR-3B for the taxpayers having aggregate turnover up to 5 crore and principal place of business in the state of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep
May 24, 2020	Due Date for filing consolidated return in the Form GSTR-3B for the taxpayers having aggregate turnover up to 5 crore and principal place of business in the state of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi
May 31, 2020	Application for allotment of PAN in case of person being managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer of the person referred to in Rule 114(3)(v) or any person competent to act on behalf of the person referred to in Rule 114(3)(v) and who hasn't allotted any PAN
	Application for allotment of PAN in case of non-individual resident person, which enters into a financial transaction of Rs. 2,50,000 or more during FY 2019-20 and hasn't been allotted any PAN
	Quarterly statement of TDS deposited for the quarter ending March 31, 2020

Upcoming Compliances

NOTES :

1. **The CBDT vide the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 dated 31-03-2020 has extended all respective due dates, falling during the period from 20-03-2020 to 29-06-2020, till June 30, 2020.**

2. **The due dates listed above are the dates as prescribed in the GST Acts. However,**

   - **For taxpayers having aggregate turnover of upto INR 5 crores in the preceding FY:** All late fees, interests, and penalties for late filing of GST returns have been dismissed till 30th June 2020.

   - **For taxpayers having aggregate turnover of more than INR 5 crores in the preceding FY:** All late fees and penalties for late filing of GST returns have been dismissed if the returns are filed by 24th June 2020, however Interest on late filing of GSTR-3B would still be applicable @ 9% p.a. instead of 18% p.a. if the return is filed by 24th June 2020 (which shall be applicable only 15 days after the original due date for GSTR-3B)

Editorial Team

About us:

IBA is a leading financial and legal advisory company with specialization in Assurance, Risk Consulting, Legal, Direct Tax, Indirect Tax(GST) and Corporate Advisory for midsize, SMEs and start-up firms. IBA constitute a young team of path breaking professionals, who believe in creating value through innovation and creativity to provide ultimate client satisfaction. Clients benefit from our fresh thinking, constructive challenge and practical understanding of the issues they face. We aim to alloy a perfect blend of professionalism with high standards of service, in our pursuit of excellence.

Founded in the Year 2003, the company witnessed immense growth from 2 members to currently a 100 members team, with its offices in Delhi, Mumbai and Bengaluru and its clients from across states. IBA continues to offer wholesome service experience to boost highly valued client relationships by combining the technical and industry expertise at par with well-placed firms together with a personal commitment to optimize client service.

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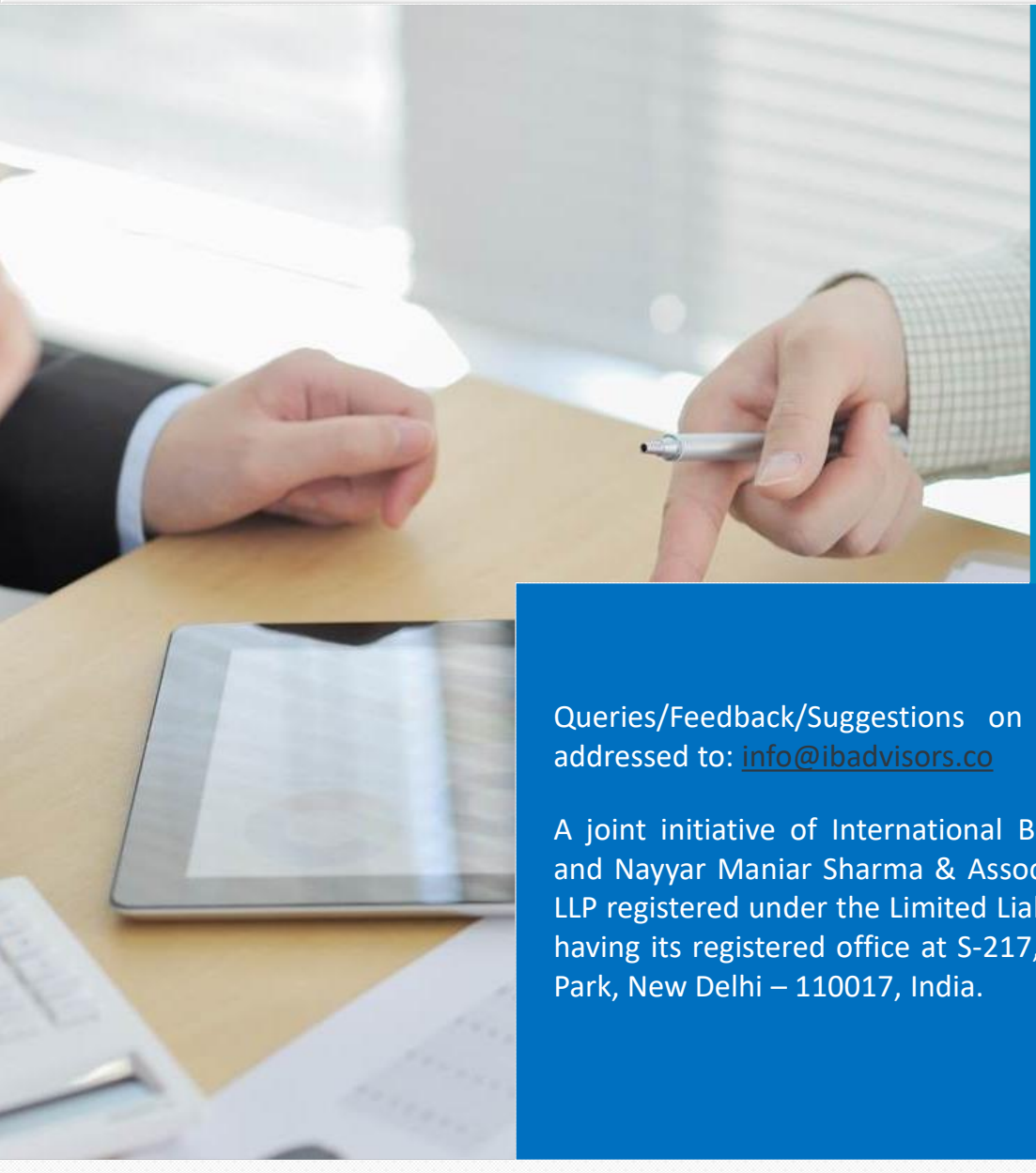

Queries/Feedback/Suggestions on this newsletter may be addressed to: info@ibadvisors.co

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