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WHITESPAN INFORMATION AND NEWS SERVICES

NEWSLETTER

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(WHITESPAN INFORMATION AND NEWS SERVICES)

A GATEWAY TO KNOWLEDGE
MONTHLY NEWSLETTER

June 01, 2020 – June 30, 2020

Issue No. – 039/ 2020

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FROM THE CHIEF EDITOR'S PEN

“Unless you try to do something beyond what you have already mastered, you will never grow.”

— Ronald E. Osborn

It gives us an immense pleasure to share the 39th edition of “WINS – e-newsletter” for June 2020. My sincere gratitude to each one of you for sparing your valuable time in reading this newsletter and sharing your feedback. Your suggestions and ideas have been a source of inspiration for us and have motivated and guided us to scout for better contents in timely manner, month after month. Hope we not only help you to keep yourself updated but will also save your time by bringing a brief summary of the updates in the form of Editor’s Quick Take.

In this issue we have covered the following:

1. Corporate Updates from MCA, RBI, SEBI, CBDT, CBEC and other miscellaneous laws
2. Articles on:
 - i. Composition of Offence
 - ii. Highlights of 40th GST Council Meeting with FAQs
 - iii. Does NCLT has power to direct a pre-admission enquiry?

3. Compliance checklist for the month of July 2020.

We hope all these would be of your interest and use.

We take this opportunity to invite articles on topics of professional interest. Please ensure that the article is original, written in good style and adds value for the readers.

Your candid feedback are valuable: appreciation will encourage us; criticism will help us to improve!

Feedbacks can be sent at vinayshukla@whitespan.in

With warm regards

WINS (Whitespan Information and News Services)

June 30, 2020



Our Editorial Board comprises the following professionals:

1. **Mr. Vinay Shukla** - Mr. Vinay Shukla, a Fellow Member of The Institute of Company Secretaries of India (ICSI), a graduate in Law, Commerce and Management is Co-founder of WsA having more than thirty years' experience in wide spectrum of corporate functions.
2. **Mr. Mayank Rai** – LL.M, M.Phil, is a practicing advocate having more than 26 years of experience also an Asst. Professor in Dept. of Law, V.S.S.D.College, Kanpur.
3. **Ms. Jaya Yadav** - Ms. Jaya Yadav, a practicing company secretary based at Gurgaon is an associate member of The Institute of Company Secretaries of India (ICSI) and a graduate in law and Commerce from Delhi University.
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5. **Ms. Trishna Choudhary** - Ms. Trishna Choudhary is an associate member of The Institute of Company Secretaries of India (ICSI) and a graduate in commerce from Delhi University.
6. **Ms. Ankita Pandey** – Ms. Ankita Pandey is a commerce graduate from Kanpur University and an associate member of The Institute of Company Secretaries of India (ICSI).
7. **Ms. Divya Shukla**- Ms Divya Shukla is graduate in Law and Commerce from Christ University, Bengaluru.



INDEX

S.No	Section	Page No.
1	Ministry of Corporate Affairs (MCA)	5-16
2	Securities Exchange Board of India (SEBI)	17-24
3	Reserve Bank of India (RBI)	25-27
4	Central Board of Excise and Customs (CBEC)	28-31
5	Central Board of Direct Taxes (CBDT)	32-35
6	Miscellaneous Laws	36-39
7	Composition of Offence	41-44
8	Article on Highlights of 40th GST Council Meeting with FAQs	45-48
9	Article on Does NCLT has power to direct a pre-admission enquiry?	49-53
10	Compliance Checklist	54-58



WHITESPAN
A d v i s o r y

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WHITESPAN INFORMATION AND NEWS SERVICES

NEWSLETTER

MCA

**Ministry
of**

Corporate Affairs



PERIOD/DAYS OF EXTENSION FOR NAMES RESERVED AND RESUBMISSION OF FORMS

S. No	Issue description	Period/Days of Extension
1	Names reserved for 20 days for new company incorporation. SPICe+ Part B needs to be filed within 20 days of name reservation	Names expiring any day between 15th March 2020 to 31st July 2020 would be extended by 20 days beyond 31st July 2020..
2	Names reserved for 60 days for change of name of company. INC-24 needs to be filed within 60 days of name reservation.	Names expiring any day between 15th March 2020 to 31st July 2020 would be extended by 60 days beyond 31st July 2020.
3	Extension of RSUB validity for companies.	SRNs where last date of Resubmission (RSUB) falls between 15th March 2020 to 31st July 2020, additional 15 days beyond 31st July 2020 would be allowed. However, for SRNs already marked under NTBR, extension would be provided on case to case basis. Note: Forms will not get marked to (Not to be taken on Record)'NTBR' due to nonresubmission during this extended period as detailed above. It also includes IEPF Non-STP eForms (IEPF3, IEPF-5 and IEPF-7)
4	Names reserved for 90 days for new LLP incorporation/change of name. FiLLiP/Form 5 needs to be filed within 90 days of name reservation.	Names expiring any day between 15th March 2020 to 31st July 2020 would be extended by 20 days beyond 31st July 2020.



PERIOD/DAYS OF EXTENSION FOR NAMES RESERVED AND RESUBMISSION OF FORMS

S. No	Issue description	Period/Days of Extension
5	RSUB validity extension for LLPs.	SRNs where last date of resubmission (RSUB) falls between 15th March 2020 to 31st July 2020, additional 15 days would be allowed from 31st July 2020 for resubmission. However, for SRNs already marked under NTBR, extension would be provided on case to case basis. Note: Forms will not get marked to (Not to be taken on Record)'NTBR' due to non resubmission during this extended period as detailed above.
6	Extension for marking IEPF-5 SRNs to 'Pending for Rejection u/r 7(3)' and 'Pending for Rejection u/r 7(7)'	SRNs where last date of filing eVerification Report (for both Normal as well as Resubmission filing) falls between 15th March 2020 to 31st July 2020, would be allowed to file the form till 30th Sep 2020. However, for SRNs already marked under 'Pending for Rejection u/r 7(3)' and 'Pending for Rejection u/r 7(7)', extension would be provided on case to case basis. Note: Status of IEPF-5 SRN will not change to 'Pending for Rejection u/r 7(3)' and 'Pending for rejection u/r 7(7)' till 30th Sep'20



1. The (Share Capital and Debentures) Amendment Rules, 2020

Date of Notification : June 05, 2020

Effective Date: June 05, 2020

Above Notification is available at the following link:

http://www.mca.gov.in/Ministry/pdf/Rule_08062020.pdf

Editor's Quick Take:

MCA vide its notification dated June 05, 2020 has notified the Companies (Share Capital and Debentures) Amendment Rules, 2020. key point of the Amendments are as follow :

- in Rule 8(4) of the said Rules related to “Issue of sweat equity shares” has been substituted stating that the company shall not issue sweat equity shares for more than 15% of the existing paid-up equity share capital in a year or shares of the issue value of rupees five crores, whichever is higher, provided that a start-up company may issue sweat equity shares not exceeding 50% of its paid-up capital up to 10 years from the date of its incorporation or registration.
- Further, Rule 18(7)(b)(v) related to “Debentures” has been substituted, to be provided that In case a company is covered in item (A)(iii)(b) or item (B)(iv)(b), it shall on or before the 30th day of April in each year, in respect of debentures issued by such a company, invest or deposit, as the case maybe, a sum which shall not be less than 15% of the amount of its debentures maturing during the year, ending on the 31st day of March of the next year in any one or more methods of investments or deposits.

Provided that the amount remaining invested or deposited, as the case may be, shall not any time fall below 15% of the amount of the debentures maturing during the year ending on 31st day of March of that year.



2. Section 10(A) and Section 66(3) are inserted in The IBC, 2016 which resulted in suspension of Section 7, 9 and 12 of IBC Code, 2016

Date of Ordinance : June 05, 2020

Effective date: March 25, 2020

Above Ordinance is available at the following link:

<https://ibbi.gov.in/uploads/legalframework/741059f0d8777f311ec76332ced1e9cf.pdf>

Editor's Quick Take:

In view of the outbreak of COVID-19 pandemic and the national wide lock down resulting in liquidity / cash crunch in businesses and enterprises, the Hon'ble President of India exercising its power under Article 123 of Constitution of India, has promulgated the INSOVENCY AND BANKRUPTCY CODE (AMENDMENT) ORDINANCE, 2020 on June 05, 2020.

Through the IBC (Amendment) Ordinance, 2020 Section 10(A) and Section 66(3) are inserted in The Insolvency and Bankruptcy Code, 2016 which resulted in suspension of Initiation of corporate insolvency resolution process by financial creditor under Section 7, Application for initiation of corporate insolvency resolution process by operational creditor under section 9 and Time-limit for completion of insolvency resolution process under section 12 of The Insolvency and Bankruptcy Code, 2016 to safeguard corporate Debtors from insolvency Resolution for the Default arising on or after March 25, 2020 for a period of six months or such further period not exceeding one year, as may be notified in this behalf.



3. Clarification on the passing of ordinary and special resolutions by companies under the Companies Act, 2013 read with rules made thereunder on account of COVID-19

Date of General circular : June 15, 2020

Above circular is available at the following link:

http://www.mca.gov.in/Ministry/pdf/Circular22_15062020.pdf

Editor's Quick Take:

The Ministry of Corporate Affairs (MCA) had issued General circular No. 14/2020 on April 08, 2020 and General circular No. 17/ 2020 on April 13, 2020 issuing clarifications on passing of ordinary and special resolutions by companies by holding extraordinary meetings (EGMs) through video conferencing (VC) or other audio visual means (OAVM) or passing of certain items only through postal ballot without convening general meeting till June 30, 2020.

MCA vide its general circular no. 22/ 2020 dated June 15, 2020 has extended the said date till September 30, 2020. All other requirements provided in the said Circulars remain unchanged.



4. Scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013.

Date of General Circular: June 17, 2020

Effective Date : June 17, 2020

Above General Circular is available at the following link:

http://www.mca.gov.in/Ministry/pdf/Circular23_17062020.pdf

Editor's Quick Take:

MCA vide its general circular dated June 17, 2020 has announced a scheme for relaxation of time for filing forms relating to creation or modification of charges under the Companies Act, 2013 for the purpose of condoning the delay in filing certain forms related to creation/ modification of charges.

The scheme shall be applicable in respect of filing of Form No. CHG-1 and Form No. CHG-9 by a company or a charge holder, where the date of creation / modification of charge:

- a. Is before 01.03.2020, but the timeline for filing such form had not expired under section 77 of the Act as on 01.03.2020, or
- b. Falls on any date between 01. 03.2020 to 30. 09.2020 (both dates inclusive).



5. Clarification with regard to creation of deposit repayment reserve of 20% u/s. 73 (2) (C) of the Companies Act 2013 and to invest or deposit 15% of amount of debentures u/r.18 of Companies (Share Capital and Debentures) Rules 2014 - COVID-19 -Extension of time-regarding

Date of Circular: June 19, 2020

Effective Date: June 19, 2020

Above Notification is available at the following link:

http://www.mca.gov.in/Ministry/pdf/Circular24_20062020.pdf

Editor's Quick Take:

MCA vide its circular dated June 19, 2020 has clarified that the requirement under Section 73(2)(c) of Companies Act, 2013 to create the Deposit Repayment Reserve of 20% of deposits maturing during the financial year 2020-21 before April 30, 2020, shall now be allowed to be complied with till 30th September, 2020 and for the requirement under Rule 18 of the Companies (Share Capital & Debentures) Rules, 2014, to invest or deposit at least 15% of the amount of debentures maturing in specified methods of investments or deposits before April 30, 2020, may now be complied with till September 30, 2020.

Earlier these dates were extended up to June 30, 2020.



6. Ministry Of Corporate Affairs has amended schedule VII (CSR Expenditure List) of Companies Act, 2013

Date of Notification: June 23, 2020

Effective Date: June 23, 2020

Above Notification is available at the following link:

<http://egazette.nic.in/WriteReadData/2020/220133.pdf>

Editor's Quick Take:

MCA vide its notification dated June 23, 2020, authorised the amount spent on Central Armed Force (CAPE) and Central Para Military Force (CPMF) Veterans and their dependents including widows to be considered as CSR expenditure by amending Schedule VII of Companies Act, 2013.



7. The Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2020

Date of Notification: June 23, 2020

Effective Date: June 23, 2020

Above Notification is available at the following link:

<http://www.egazette.nic.in/WriteReadData/2020/220118.pdf>

Editor's Quick Take:

MCA vide its notification dated June 23, 2020 has notified the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2020, extending the last date for registration of details of Independent Directors with the ID Data Bank for a further three months, i.e. till September 30, 2020.

Prior to the notification, the due date of registration was June 30, 2020.



8. The Companies (Meetings of Board and its Powers) Second Amendment Rules, 2020

Date of Notification: June 23, 2020

Effective Date: June 23, 2020

Above Notification is available at the following link:

<http://www.egazette.nic.in/WriteReadData/2020/220117.pdf>

Editor's Quick Take:

MCA vide its notification dated June 23, 2020 notified the Companies (Meetings of Board and its Powers) Second Amendment Rules, 2020 allowing companies to conduct of Board Meeting for approving financial statements through Video Conferencing (VC) or Other Audio-Visual Means (OAVM) till September 30, 2020.



9. The Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2020

Date of Notification: June 29, 2020

Effective Date: June 29, 2020

Above Notification is available at the following link:

http://www.mca.gov.in/Ministry/pdf/Rule3_30062020.pdf

Editor's Quick Take:

MCA vide its notification dated June 29, 2020, amend the Companies (Removal of names of Companies from the Register of Companies) Rules 2016 . With this amendment in rule 4, in sub-rule (3), in clause (i), the following proviso shall be inserted, namely:-

"Provided that in case of a –

- (a) Government company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments; or
- (b) subsidiary of a Government company, referred to in clause (a), in which the entire paid up share capital is held by that Government company,

a duly notarised indemnity bond in Form STK-3A shall be given by an authorised representative, not below the rank of Under Secretary or its equivalent, in the administrative Ministry or Department of the Government of India or the State Government, as the case may be, on behalf of the company".



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NEWSLETTER

SEBI



**Securities
Exchange
Board of India**



1. Relaxation from compliance with certain provisions of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008, SEBI (Non-Convertible Redeemable Preference Shares) Regulations, 2013 and other SEBI Circulars due to the COVID - 19 virus pandemic

Date of Circular: June 08, 2020

Effective Date: June 08, 2020

Above Circular is available at the following link:

Editor's Quick Take:

Securities and Exchange Board of India (SEBI) vide its circular no. SEBI/HO/DDHS/CIR/P/2020/098 dated June 08, 2020 has been decided to extend relaxation provided in the circular no. SEBI/HO/DDHS/ON/P/2020/41 dated March 23, 2020 from compliance with certain provisions of the SEBI LODR Regulations and other SEBI Circulars.

As a partial amendment to aforesaid circular, extended relaxation is provided for issuers who intend/propose to list their Non-Convertible Debentures (NCDs)/ Non-Convertible Redeemable Preference Share (NCRPS) /Commercial Papers (CPs) for disclosure of financial results for another one month

Particulars	Available Financials	Date of Issuance	Extended date of Issuance	Period of relaxation
Cut-off date for issuance of NCDs/NCRPS/CPs	As on September 30, 2019	On or before March 31, 2020	On or before June 30, 2020	91 days



2. SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Reg, 2020

Date of Circular: June 22, 2020

Effective Date: June 22, 2020

Above Circular is available at the following link:

https://www.sebi.gov.in/legal/regulations/jun-2020/securities-and-exchange-board-of-india-substantial-acquisition-of-shares-and-takeovers-second-amendment-regulations-2020_46908.html

Editor's Quick Take:

The SEBI vide notification dated June 22, 2020 has issued the SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2020.

Head	Regulation	Amendment	SEBI (SAST) (Amendment) Regulations, 2020
Substantial Acquisition of Shares, Voting Rights or CONTROL Substantial acquisition of shares or voting rights	3(2)	New proviso added	The acquisition beyond five per cent but upto ten per cent of the voting rights in the target company shall be permitted for the financial year 2020-21 only in respect of acquisition by a promoter pursuant to preferential issue of equity shares by the target company
Voluntary Offer	6	New proviso added	The relaxation from the first proviso is granted till March 31, 2020



3. SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) (SECOND AMENDMENT) REGULATIONS, 2020

Date of Circular: June 22, 2020

Effective Date: June 22, 2020

Above Circular is available at the following link:

https://www.sebi.gov.in/legal/regulations/jun-2020/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-second-amendment-regulations-2020_46907.html

Editor's Quick Take:

The SEBI vide notification dated June 22, 2020 has issued the SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2020.

Head	Regulation No.	Prior to the Amendment	The SEBI (ICDR) (Amendment) Regulations, 2020)
Chapter VI – Qualified Institutions Placement Part I - Conditions for Qualified Institutions Placement	172(3) Eligibility conditions	The issuer shall not make any subsequent qualified institutions placement until the expiry of six months from the date of the prior qualified institutions placement made pursuant to one or more special resolutions.	The issuer shall not make any subsequent qualified institutions placement until the expiry of two weeks from the date of the prior qualified institutions placement made pursuant to one or more special resolutions.



NEWSLETTER

Regulation 172 of the ICDR Regulations, 2018 provides for the eligibility conditions for making a qualified institutions placement of eligible securities. One of the conditions being that the issuer shall not make any subsequent qualified institutions placement until the expiry of six months from the date of the prior qualified institutions placement made pursuant to one or more special resolutions. This period of six months has now been replaced by a period of two weeks.





4. Further extension of time for submission of financial results for the quarter/half year/financial year ending 31st March 2020 due to the continuing impact of the CoVID-19 pandemic

Date of Circular : June 24, 2020

Effective Date : June 24, 2020

Above Circular is available at the following link:

<https://www.sebi.gov.in/legal/circulars/jun-2020/further-extension-of-time-for-submission-of-financial-results-for-the-quarter-half-year-financial-year-ending-31st-march-2020-due-to-the-continuing-impact-of-the-covid-19-pandemic-46924.html>

Editor's Quick Take:

SEBI vide its circular dated June 24, 2020 has extended the timeline for submission of financial results under Regulation 33 of the LODR to July 31, 2020, for the quarter and the year ending March 31, 2020.

Similarly, the timeline under Regulation 52 of the LODR for submission of half yearly and/or annual financial results for the period ending March 31, 2020 for entities that have listed NCDs, NCRPS', CPs, MDS' is also extended upto July 31, 2020.



5. Further extension of time for submission of Annual Secretarial Compliance Report by listed entities due to the continuing impact of the CoVID-19 pandemic

Date of Circular : June 25, 2020

Effective Date : June 25, 2020

Above Circular is available at the following link:

https://www.sebi.gov.in/legal/circulars/jun-2020/further-extension-of-time-for-submission-of-annual-secretarial-compliance-report-by-listed-entities-due-to-the-continuing-impact-of-the-covid-19-pandemic_46933.html

Editor's Quick Take:

SEBI vide circular dated June 25, 2020 has extended the time for submission of Annual Secretarial Compliance Report for the financial year 2019-2020, by listed entities under regulation 24 A OF SEBI (LODR), 2015 due to the continuing impact of the COVID - 19 pandemic.

SEBI vide its circular dated March 19, 2020 had extended the deadline by one month from May 31 to June 30 and now it has further been extended to July 31, 2020.



6. Relaxation of time gap between two board / Audit Committee meetings of listed entities owing to the CoVID-19 pandemic

Date of Circular : June 26, 2020

Effective Date : June 26, 2020

Above Circular is available at the following link:

https://www.sebi.gov.in/legal/circulars/jun-2020/relaxation-of-time-gap-between-two-board-audit-committee-meetings-of-listed-entities-owing-to-the-covid-19-pandemic_46945.html

Editor's Quick Take:

SEBI vide its circular dated June 26, 2020 has further relaxed the requirement of maximum stipulated time gap of 120 days between two meetings of the board and Audit Committees of listed entities.

Previously the relaxation was provided for the meetings held/proposed to be held between the period December 1, 2019 and June 30, 2020, which is now extended till July 31, 2020.

It is however clarified that board of directors and audit committees of listed entities shall ensure that they meet atleast four times a year, as stipulated under Regulations 17(2) and 18(2)(a) of the LODR Regulations.



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NEWSLETTER

RBI



**Reserve Bank
of India**



1. Loans Sourced by Banks and NBFCs over Digital Lending Platforms: Adherence to Fair Practices Code and Outsourcing Guidelines

Date of Circular: June 24, 2020

Above circular is available at the following link:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11920&Mode=0>

Editor's Quick Take:

RBI vide its circular dated June 24, 2020 reiterated that banks and NBFCs, irrespective of whether they lend through their own digital lending platform or through an outsourced lending platform, must adhere to the Fair Practices Code guidelines in letter and spirit. They must also meticulously follow regulatory instructions on outsourcing of financial services and IT services.

It must be noted that outsourcing of any activity by banks/ NBFCs does not diminish their obligations, as the onus of compliance with regulatory instructions rests solely with them. Wherever banks and NBFCs engage digital lending platforms as their agents to source borrowers and/ or to recover dues, they must follow the following instructions:

- a) Names of digital lending platforms engaged as agents shall be disclosed on the website of banks/ NBFCs.
- b) Digital lending platforms engaged as agents shall be directed to disclose upfront to the customer, the name of the bank/ NBFC on whose behalf they are interacting with him.
- c) Immediately after sanction but before execution of the loan agreement, the sanction letter shall be issued to the borrower on the letter head of the bank/ NBFC concerned.



- d) A copy of the loan agreement along with a copy each of all enclosures quoted in the loan agreement shall be furnished to all borrowers at the time of sanction/ disbursement of loans.
- e) Effective oversight and monitoring shall be ensured over the digital lending platforms engaged by the banks/ NBFCs.
- f) Adequate efforts shall be made towards creation of awareness about the grievance redressal mechanism.

Any violation in this regard by banks and NBFCs (including NBFCs registered to operate on 'digital-only' or on digital and brick-mortar channels of delivery of credit) will be viewed seriously.



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NEWSLETTER

CBEC



**Central Board
of Excise & Customs**



1. Clarification in respect of levy of GST on Director's Remuneration.

Date of Circular : June 10, 2020

Above Circular is available at the following link:

https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_Refund_140_10_2020.pdf

Editor's Quick Take:

CBIC vide its circular dated June 10, 2020 has in respect of levy of GST on the Director's remuneration clarified that the part of Director's remuneration paid as an employee of a company which is declared as "Salaries" in the books of a company and is subjected to TDS under Section 192 of the IT Act, are not subject to GST and not treated as supply in terms of Schedule III of the CGST Act, 2017. Further, in respect of directors who are not the employees of the company, the services provided by them to the Company, in lieu of remuneration as the consideration for the said services, are clearly outside the scope of Schedule III of the CGST Act and are therefore taxable and the Company is liable to discharge the applicable GST on it on reverse charge basis. Accordingly, it is also clarified that the remuneration paid to such independent directors, or those directors, by whatever name called, who are not employees of the said company, is taxable in hands of the company, on a reverse charge basis. Further clarified that the part of Director's remuneration which is declared separately **other than "salaries"** in the Company's accounts and subject to **TDS under Section 194J of the Income Tax Act as Fees for professional or Technical Services** shall be treated as a taxable supply for GST and company is liable to discharge the applicable GST on it on the RCM basis.



2. CBIC allow Companies to verify GST Returns Through Electronic Verification Code (EVC)

Date of Notification: June 19, 2020

Effective Date : May 27, 2020

Above Notification is available at the following link:

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-48-central-tax-english-2020.pdf>

Editor's Quick Take:

The Central Board of Excise & Custom through Notification No. 48/2020 dated June 19, 2020 has notified that Companies Registered under Companies Act, 2013 can verify GSTR-3B & GSTR-1 through Electronic verification code (EVC) for the following period provided as under:

GSTR 3B - during the period from April 21, 2020 to the September 30, 2020

GSTR 1 - during the period from May 27, 2020 to the September 30, 2020



3. CBIC notifies interest rates for delayed filling and payment of GSTR-3B.

Date of Notification: June 24, 2020

Above Notification is available at the following link:

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-52-central-tax-english-2020.pdf>

Editor's Quick Take:

The CBIC vide its notification dated June 24, 2020 has provided one-time amnesty for non-furnishing of FORM GSTR-3B and relief by a conditional waiver of late fee for delay in furnishing returns in FORM GSTR-3B.

CBIC has further lowered/ waived off late fees for non-furnishing of FORM GSTR-3B from July, 2017 to January, 2020 and relief by a conditional waiver of late fee for delay in furnishing returns in FORM GSTR-3B for tax periods of February, 2020 to July, 2020.

Further, the total amount of late fee payable for a tax period, under section 47 of the said Act shall stand waived which is in excess of an amount of two hundred and fifty rupees for the registered person who failed to furnish the return in FORM GSTR-3B for the months of July, 2017 to January, 2020, by the due date but furnishes the said return between the period from July 01, 2020 to September 30, 2020.



WHITESPAN
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NEWSLETTER

CBDT



**Central Board
of Direct Taxes**



1. Announcement to launch an E-Filing portal by Income Tax Appellate Tribunal

Date of announcement : June 01,2020

Above announcement is available at the following link:

<https://www.itat.gov.in/files/uploads/categoryImage/1591015402-announcementofe-filingportal.pdf>

Editor's Quick Take:

The Hon'ble President of ITAT announced that the E-Filing Portal developed by the Income Tax Appellate Tribunal is ready for launch post compliance of mandatory security audit in accordance with the Guidelines issued by the Government of India.

The Standard Operating Procedures (SOPs) and detailed guidelines for use of the facility of E-Filing Portal is under consideration and shall be announced once the Portal is hosted on the NIC server after completion of formalities, very soon. It is expected that this initiative of development of portal and facility of E-Filing of appeals, etc. shall be of immense use to the taxpayers, tax consultants and other stakeholders.



2. Extension of various time limits under Direct Tax & Benami laws

Date of press release : June 24,2020

Above press release is available at the following link:

<https://pib.gov.in/PressReleasePage.aspx?PRID=1634070>

Editor's Quick Take:

Ministry of Finance (Central Board of Direct Taxes) vide its press release dated June 24, 2020, has announce the extension of various time limits under Direct Tax & Benami Laws :

Particulars	Extended Date
The time for filing of original as well as revised income-tax returns for the FY 2018-19	July 31, 2020
The due date for income tax return for 2019-20 extended to 30th November, 2020, therefore the returns of income which are required to be filed by 31st July, 2020 and 31st October, 2020	November 30, 2020
The date for making various investment/ payment for claiming deduction under Chapter-VIA-B of the IT Act which includes section 80C (LIC, PPF, NSC etc.), 80D (Mediclipaim), 80G (Donations) etc	July 31, 2020
The date for payment of self-assessment tax in the case of a taxpayer whose self-assessment tax liability is upto Rs. 1 lakh has also been extended to 30th November, 2020. (no extension for taxpayer whose self-assessment tax liability is more than Rs. 1 lakh)	November 30, 2020



3. Further extension for all dates for which action is to be completed by 31st December, 2020 to 31st March, 2021

Date of Notification : June 24, 2020

Effective Date : June 30, 2020

Above announcement is available at the following link:

https://www.incometaxindia.gov.in/news/notification_35_2020.pdf

Editor's Quick Take:

The CBDT vide its notification dated June 24, 2020 has provide further extension all dates for which action is to be completed by December 31, 2020 to March 31, 2021 except which have been specifically carved out and a shorter date has been notified. There shall be no further extension for the payment of taxes.

S. No	Particulars	Revise Due Date
1	Income Tax Return for F.Y. 2018-2019 (A.Y. 2019-2020)	July 31, 2020
2	Income Tax Return for F.Y. 2019-2020 (A.Y. 2020-2021)	November 31, 2020
3	TDS/TCS Statement for Fourth Quarter	July 31, 2020
4	TDS/TCS Certificate	August 15, 2020
5	Time Limit for Investment under Section 54 & 54GB	September 30, 2020
6	Time Limit for Investment under Chapter VI-A for F.Y. 2019-2020	July 31, 2020
7	Audit Report	October 31, 2020
8.	Linking of Aadhaar Card with PAN	March 31, 2020



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NEWSLETTER

Misc.Laws





1. Cabinet approves an upward revision of MSME definition and modalities/ road map for implementing the remaining two Packages for MSMEs (a) Rs 20000 crore package for Distressed MSMEs and (b) Rs 50,000 crore equity infusion through Fund of Funds.

Date of press release : June 01, 2020

Above press note is available at the following link:

<https://pib.gov.in/PressReleaseDetailm.aspx?PRID=1628344>

Editor's Quick Take:

The Cabinet committee on economic affairs vide its press release approves an upward revision of MSME definition and modalities/ road map for implementing the remaining two Packages for MSMEs

- (a) Rs 20000 crore package for Distressed MSMEs and
- (b) Rs 50,000 crore equity infusion through Fund of Funds.

Composite Criteria : Investment and Annual Turnover

classification	Micro	Small	Medium	
			On 13.05.2020	On 01.06.2020
Manufacturing & Service	Investment upto INR 1 Crore And Turnover upto INR 5 Crore	Investment upto INR 10 Crore And Turnover upto INR 50 Crore	Investment upto INR 20 Crore and Turnover upto INR 100 Crore	Investment upto INR 50 crore and Turnover upto INR 250 Crore



2. The Food Safety and Standards Authority of India (FSSAI) has decided to extend the date for a mandatory food safety audit of food businesses under the FSS (Food Safety Auditing) Regulations 2018

Date of Notice : June 12, 2020

Above Notice is available at the following link:

https://www.fssai.gov.in/upload/advisories/2020/06/5ee390ad9f377Letter_Date_Extension_FoodSafetyAudit_12_06_2020.pdf

Editor's Quick Take:

FSSAI vide its notice dated June 12, 2020 has extended the date for a mandatory food safety audit of food businesses under the FSS (Food Safety Auditing) Regulations 2018.

FSSAI, in order, has stated that the food businesses holding Central licences and falling under high risk category can now complete the mandatory audit by September 30, 2020.



3. FSSAI extend the grace period till 31st July 2020 for applying for renewal of Licences or registrations which are expired or expiring during the period of 22nd March 2020 to 31st July 2020.

Date of Order : June 18, 2020

Above Order is available at the following link:

https://fssai.gov.in/upload/advisories/2020/06/5eec55fcc79afOrder_Grace_Period_Extension19_06_2020.pdf

Editor's Quick Take:

FSSAI vide its order dated June 18, 2020 has issued order for providing a grace period to Food Business Operators (FBOs) till July 31, 2020 without any additional fee for applying for renewal of license/ registration expired/ expiring during the period from June 01, 2020 till July 31, 2020.

Previously Food Safety and Standards Authority of India vide its order dated April 13, 2020 has issued order for providing a grace period to Food Business Operators (FBOs) till June 30, 2020 without any additional fee for applying for renewal of license/ registration expired/ expiring during the period from March 22, 2020 till May 31, 2020.

Further for Union territory of Jammu and Kashmir & Ladakh a grace period till June 30, 2020 is provided to Food Business Operators (FBOs) without any additional fee for applying for renewal of license/ registration expired/ expiring during the period from August 01, 2019 till May 31, 2020.



Articles on:

1. Composition of Offence

2. Highlights of 40th GST Council Meeting with FAQs

3. Does NCLT has power to direct A Pre-Admission Enquiry?



Composition of Offence

Any offence whether committed by company or any office there of, may either before or after the institution of any prosecution be compounded by Regional Director or any officer authorized by the Central Government, if the penalty amount does not exceed rupees five lakh; or by the Tribunal, if the penalty amount exceed rupees five lakh. The offences which are punishable under this Act are divided into three categories.

(i) with fine only

(ii) with imprisonment or fine, or with imprisonment or fine or with both; and

(iii) with imprisonment only or with imprisonment and also with fine.

Further, an offence which is punishable with imprisonment or fine, or with imprisonment or fine or with both, shall be compoundable with the permission of the Special Court, in accordance with the procedure laid down in that Act. An offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable. An offence shall not be compounded, if investigation against the company has been initiated or is pending under this Act. An offence is not compoundable, if it is committed within a period of three years from the date on which a similar offence was compounded.



Department's Guidelines as to compounding of offences Guidelines dated 28-04- 1993-

Under section 621- A of the Companies Act, 1956, inserted by the Companies (Amendment) Act, 1988 w. e. f. 31-5-1991 offences under the Companies Act, which are not punishable with compulsory imprisonment are compoundable by the Regional Director, where the maximum amount of fine is Rs.5000/- (increased to Rs.50,000/- by the Amendment Act, 2000 and increased to Rs.5,00,000/- in the Companies Act, 2013). The salient features of these provisions of law are indicated below for the benefit of your constituent member-companies, and their directors:-

1. The offences punishable with imprisonment only or with imprisonment and also with fine are not compoundable. Offences, which are punishable with fine or imprisonment or both are however, compoundable.
2. As per procedure, an application for compounding is to be made by the delinquent company and/or its officers in default to the ROC concerned, who shall forward the same together with his comments thereon to the CLB (Tribunal as per Companies Act, 2013) or RD as the case may be.
3. When a particular offence is so compounded, no prosecution shall be filed thereafter in relation to such an offence.
4. In case, prosecution is pending before the court, it is open to the company and officers in default being prosecuted to make an application for compounding and after the offence is so compounded, the court shall discharge the company/ its officers as the case may be.
5. While compounding the offence, the CLB (Now NCLT)/ RD, may direct any officer of the company to file a return or other document(s) in question within such time, as may be specified in the order and non-compliance of the order shall be a punishable offence.



6. Compounding of an offence does not amount to conviction by a court of law and the prohibition contained in paragraph 1(a) in Schedule XIII to the Act does not apply.

7. It is open to the CLB/RD to compound more than one offence under one charging section at a time and from the date of such compounding, a similar offence committed subsequent to the date of compounding of this first offence, cannot be compounded within a period of three years from that date.

8. In the case of a company, the composition fee shall be paid from its fund. Directors/officers in default shall pay composition fee from their personal funds.

[Source: Circular No.5/93: [F.No.16/1/92-CL-V](#) dated 28-4-1993]

Compounding of offence- Companies under Liquidation General Circular No.6/2002, dated 6.03.2002 -

1. A point has been raised in one of the inspection following files as to whether the offences committed by directors of a company can be compounded under section 621A of the Companies Act, 1956, when a company in which they were directors is under liquidation without obtaining the leave of the company court under section 446 of the Companies Act, 1956.

2. The issue has been examined in the Department in consultation with the Ministry of Law and it is hereby clarified that in the light of the provisions of section 446 read with section 621A of the Companies Act, there is no legal bar for composition of an offence under section 621A of the Companies Act, 1956, provided the conditions specified in the section and guidelines, if any, are fulfilled. It is also further clarified that the provisions of section 446 of the Companies Act, 1956, do not bar criminal proceedings against the directors of the company for any offences committed under the Companies Act and the offences are compoundable under section 621A of the Act.



3. Where the penal provisions provided for proceedings against the companies also and if the offences are compoundable under section 621A of the Companies Act, 1956, compounding will not be permissible against the company in view of the provisions of section 446 of the Companies Act.

The circular has still relevance.

Compounding of offence when petition u/s 482 Cr.P.C. is filed

The parties can file petition for compounding irrespective of whether a prosecution is launched against them or not. As such there is no possibility of conflict of decisions.

The circulars have still relevance.

Composition In the absence of specific penalty

If the penalty clause is not followed, consequently, the penalty shall be the general penalty as prescribed under Section 629A of the Act. The provision is corresponding to section 450 of the Companies Act, 2013



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HIGHLIGHTS OF 40TH GST COUNCIL MEETING WITH FAQs

1. Waiver of Late Fee: No late fee will be charged for non filing of GSTR 3B during the tax period from July, 2017 to January, 2020 if there is no tax liability. Provided that GSTR 3B returns are furnished between July 1, 2020 to September 30, 2020.
2. Reduction in Late Fee: Reduction in late fee will be there for non-filing of GSTR 3B during the tax period from July, 2017 to January, 2020 if there is any tax liability. Maximum late fee has been capped at Rs. 500/- per return. Provided that GSTR 3B returns are furnished between July 1, 2020 to September 30, 2020.
3. Option to Revoke Cancelled GST Registration: Any taxpayer whose GST registration has been cancelled between July1, 2017 to June12, 2020 has an option to file an application for restoration of his cancelled GST registration up to 30.09.2020.
4. Relief to Small Taxpayers for February, March and April 2020 Tax Periods: Small taxpayers whose aggregate turnover is up to Rs. 5 crore interest @9% instead of 18%, will be charged for return of February, March and April 2020 tax periods filed beyond extended due date (i.e. staggered up to July 6, 2020) but up to September30, 2020. However, late fee may be levied for late filing of return for the said tax periods.
5. Relief to Small Taxpayers for May, June and July 2020 Tax Periods: Small taxpayers whose aggregate turnover is up to Rs. 5 crore no interest and late fee will be charged for GSTR 3B return of May, June and July 2020 tax periods, if filed by September, 2020 (staggered dates to be notified).



Frequently Asked Questions (FAQs)

I. I have not filed the GSTR 3B return for the tax periods from July, 2017 to January, 2020? Can I file now? If yes, what would be the late fee given that I have no tax liability?

Yes, one can file GSTR 3B of tax periods from July, 2017 to January, 2020, without paying any late fees which earlier was Rs. 20/- per day for subject to maximum Rs. 5000/- per return. However, to avail benefits of nil late fees one should file between 1.07.2020 to 30.09.2020.

II. I have not filed the GSTR 3B return from July, 2017 to January, 2020? Can I file now? If yes, what would be late fees and interest given that I have tax liability to pay?

Yes, one can file GSTR 3B of tax periods till date, without paying any late fees which earlier was Rs. 20/- per day subject to maximum Rs. 5000/- per return. However, to avail benefits of nil late fees one should file between 1.07.2020 to 30.09.2020.

No relief has been granted in respect of interest liability on late payment of GST. Interest shall be levied @18% per annum.

III. My GST registration is cancelled, can I revoke it?

Any taxpayer whose GST registration has been cancelled between July 1, 2017 to June 12, 2020 has an option to file an application for restoration of his cancelled GST registration up to 30.09.2020



IV. Waiver of/Reduction in late fees has been allowed for GSTR 3B filing which relates to tax period from July, 2017 to January, 2020. However, I have also not filed my GSTR 3B returns from February, 2020 to May, 2020, what about it?

Broadly speaking you can file your GSTR 3B even for Feb 2020 to May, 2020 without any late fee irrespective of turnover.

However, if your annual turnover is above Rs. 5 crore you need to pay interest@9% per annum (instead of 18% p.a). No interest shall be levied if your turnover is up to Rs. 5 crore.

V. What are the reliefs provided to small taxpayers for GSTR 3B of tax period February, 2020 to July, 2020?

Small taxpayers are those taxpayers whose aggregate turnover is below Rs. 5 crore.

Relief for February, March and April 2020 tax periods:

Broadly speaking:

No interest and late fee if it is filed by last week of June, 2020. However, Interest @9% per annum and late fee shall be levied if it is filed between July 2020 to September, 2020.

Relief for May, June and July 2020 tax periods:

No interest and late fee shall be levied if it is filed up to September, 2020.



VI. I had paid late fee of Rs. 1 lakh for late furnishing of GSTR 3B returns, can I claim refund of late fee already paid?

No refund can be claimed in respect of late fee already paid for late furnishing of GSTR 3B.



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DOES NCLT HAS POWER TO DIRECT A PRE-ADMISSION ENQUIRY?

An insolvency application filed by an Operational Creditor U/s 9 of the Insolvency and Bankruptcy Code, 2016 (“**I&B Code**”) can be resisted on the ground that there is an “**existing dispute**”, the I&B Code does not provide for such a defence for resisting an insolvency application filed in respect of a financial debt U/s 7 of the I&B Code.

In case of an application filed by a financial creditor, the Tribunal is only required to:

- (i) satisfy itself of the occurrence of default;
- (ii) ensure that the application is otherwise complete; and
- (iii) ascertain whether any disciplinary proceeding is pending against the proposed resolution professional.

In such a case, the debtor can resist an application only by highlighting that there is no debt, or the debt is not due either in law or in fact. The I&B Code is to be triggered as long as a default of an amount exceeding INR 1,00,000/- (now, INR 1,00,00,000/-) is made out by a financial creditor and in such a case, the Tribunal is not required to consider any other fact or even determine the exact amount of the default.

The NCLAT has reiterated this principle very recently in the decision of **Allahabad Bank Vs. Poonam Resort Ltd.** and **Allahabad Bank Vs. Link House Industries Limited**,



wherein the corporate debtor tried to defer and resist the admission of an insolvency application even though it had admitted to a default of financial debt exceeding INR 1,00,000/- on the ground that application contained certain false statements and that the application was filed with a fraudulent/malicious intent.

FACTS:

On **16.10.2019**, the National Company Law Tribunal, Mumbai Bench passed an order appointing a forensic auditor at the pre-admission stage to examine the correct position of the loan account and to test the corporate debtor's allegation that the financial creditor had furnished false information in its insolvency application. Such allegations were raised by the corporate debtor by filing an application under **Section 75** of the I&B Code which penalizes a financial creditor for knowingly providing materially false information in its application under **Section 7** and contemplates a fine of at least INR 1,00,000/- extending up to INR 1,00,00,000/-

Interestingly, on the one hand, the NCLT, Mumbai Bench records that "as per the statement of accounts a sum of Rs. 25 Crores was found to be physical disbursed", and, on the other hand, NCLT, Mumbai Bench directed a forensic investigation, considering an application under Section 75 of the I&B Code moved by Corporate Debtor.

Not surprisingly, thereafter, the NCLT, Mumbai Bench order was assailed by the Corporate Debtor before the NCLAT primarily on the ground that the Adjudicating Authority ordered a forensic investigation even though the application was otherwise complete and deserved to be admitted in terms of Section 7 of the I&B Code.



Further, it was also contended that the applications have been pending consideration since **September 2019**.

NCLAT Findings:

On **22.05.2020**, the NCLAT set aside the order of the Adjudicating Authority. The NCLAT reasoned that the Adjudicating Authority ignored the 14-day timeframe provided under the Code for admitting and rejecting insolvency application filed by the creditors. Amongst others, NCLAT relied on the Hon'ble Supreme Court's decision in the case of ***Innoventive Industries Limited Vs. ICICI Bank and Anr. ((2018) 1 SCC 407)***, wherein the Apex Court has opined that, *in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date.*

In the view of the above, the NCLAT held, that the Adjudicating Authority cannot direct a forensic audit and engage in a long-drawn pre-admission exercise which will have the effect of defeating the object of the I&B Code. NCLAT further observed that if the financial creditor failed to prove the occurrence of a default by presenting appropriate evidence, the Adjudicating Authority may reject the application, alternatively, the Adjudicating Authority may return the application if it is found to be incomplete.



While emphasizing on the importance of speedy adjudication and strict adherence to the timelines provided under the I& B Code, the NCLAT held that the Code does not envisage a pre-admission enquiry into the proof of default by an independent forensic audit as that may defeat the object of the I&B Code. It held that the corporate debtor cannot be allowed to thwart the insolvency application by resorting to section 75 of the Code *“unless in a given case forgery or falsification of documents is patent and prima facie established.”*

Considering that in the facts of the case, the corporate debtor had, in fact, admitted liability and default for an amount exceeding INR 1,00,000, the NCLAT refused to entertain the objections of the corporate debtor under Section 75 of the I&B Code.

Conclusion:

Understandably, provisions such as Section 75 have been inserted in the I&B Code to deter the creditors from wrongly invoking the I&B Code and protecting the corporate debtor from being dragged into insolvency process for extraneous purposes. A creditor who approaches the Adjudicating Authority with unclean hands and for no *bona fide* reasons should not be allowed to trigger the I&B Code which is intended for a holistic collective healing process. However, at the same time, the debtors apprehending an imminent corporate insolvency process cannot be allowed to invoke such provisions in a routine manner. It would be important for the debtor to *prima facie* satisfy the Adjudicating Authority that the creditor filed an application dishonestly which contains material misstatements before the insolvency proceedings can be stalled.



The insolvency proceedings are summary in nature and expected to be decided within 14 days from the date when the application is presented before the Adjudicating Authority and therefore, the Adjudicating Authority cannot, in such a summary proceeding, be allowed to be get into disputed questions of fact and deal with every faint allegation raised by a corporate debtor. The NCLAT very rightly held that the Adjudicating Authority cannot be permitted to delve into long drawn enquiry into every allegation raised under sections 65 and 75 of the Code to find out a potential violation at a pre-admission stage unless the corporate debtor meets the initial threshold and satisfies the Adjudicating Authority of a material wrongdoing and that the creditor failed to disclose the true state of affairs.

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**Compliance
Checklist**



Compliance Calendar for June 2020

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	



Income Tax Related Compliances

- Due date for deposit of Tax deducted/collected for the month of June, 2020. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan*
- Due date for deposit of TDS for the period April 2020 to June 2020 when Assessing Officer has permitted quarterly deposit of TDS under [section 192](#), [194A](#), [194D](#) or [194H](#)
- Issue of TDS certificate for tax deducted under section 194-IA ,194-IB and 194M in the month of May, 2020*
- Quarterly statement of TCS deposited for the quarter ending 30 June, 2020
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB and 194M in the month of June, 2020*
- Quarterly TCS certificate in respect of tax collected by any person for the quarter ending June 30, 2020
- Quarterly statement of TDS deposited for the quarter ending June 30, 2020
- Annual return of income for the assessment year 2020-21 for all assessee other than (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) working partner of a firm whose accounts are required to be audited or (d) an assessee who is required to furnish a report under [section 92E](#).



FEMA Related Compliances

- Reporting of actual transactions of External Commercial Borrowings (ECB) through AD Bank under FEMA
- Due date for filing Foreign Liabilities and Assets (FLA) annual return

RBI Related Compliances

- Monthly return (NBS-6) on exposure to capital market
- Monthly Return on Important Financial Parameters
- Monthly statement of short term dynamic liquidity in Form ALM-I

Economic, Industrial & Labour Law Related Compliance

- Monthly payment of PF (Non-Corporate)
- File monthly return (Form No.5) for employees leaving /joining during the previous month
- File monthly Return of employees entitled for membership of Insurance Fund (Form No.2(IF))
- File monthly Return for members of Insurance Fund leaving service during the previous month (Form no. 3(IF))
- File monthly return of members joining service during the previous month (Form no.F4(PS))
- Monthly return of PF for the previous month
- Monthly return of PF for the previous month with respect to international workers
- Payment of ESI Contribution for the month of February



GST Related Compliances

- Furnishing of Form GSTR-3B for the month of March 2020 (Upto Rs. 1.5 crores)
- Furnishing of Form GSTR-3B for the month of April 2020 (Upto Rs. 1.5 crores)
- Furnishing of Form GSTR-3B for the month of May 2020 (Upto Rs. 5 crores)



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