

CHAPTER 4

Regulatory updates



ITFG clarifications' bulletin 21

The Ind AS Technical Facilitation Group (ITFG) of the Institute of Chartered Accountants of India (ICAI) issued its clarifications' bulletin 21 on 17 September 2019. The bulletin provides clarifications on five issues relating to application of Ind AS 116, *Leases* as follows:

- Eligibility for short-term lease exemption under Ind AS 116
- Accounting treatment of rent equalisation liability
- Treatment of a lease classified as finance lease under Ind AS 17, *Leases* upon transition to Ind AS 116
- Application of Ind AS 116 for leases acquired in a business combination by a first-time adopter of Ind AS
- Treatment of foreign exchange differences relating to lease liability.

(Source: ICAI-ITFG clarification bulletin 21 dated 17 September 2019)

The Code on Wages, 2019

On 8 August 2019, the Code on Wages, 2019 (the code) received the assent of the President of India. The code amends and consolidate the laws relating to wages and bonus and the related matters. Accordingly, the code subsumes the following acts:

- a. The Payment of Wages Act, 1936
- b. The Minimum Wages Act, 1948
- c. The Payment of Bonus Act, 1965 and
- d. The Equal Remuneration Act, 1976.

Key features of the code are as follows:

- a. Coverage:** The code will apply to all employees. The Central Government (CG) will make wage-related decisions for employments such as railways, mines, oil fields, air transport service and others. State governments will make decisions for all other employments.
- b. Minimum wage:** The code prohibits employers from paying wages less than the minimum wages. Minimum wages will be notified by the central or state governments. This will be based on time, or number of pieces produced. The minimum wages will be revised and reviewed by the central or state governments at an interval of not more than five years.

- c. Floor wage:** As per the code, the CG will fix a floor wage, taking into account living standards of workers. Further, it may set different floor wages for different geographical areas. Before fixing the floor wage, the CG may obtain the advice of the Central Advisory Board and may consult with state governments.

The minimum wages decided by the central or state governments must be higher than the floor wage. In case the existing minimum wages fixed by the central or state governments are higher than the floor wage, they cannot reduce the minimum wages.

- d. Determination of bonus:** All employees whose wages do not exceed a specific monthly amount, notified by the central or state government, will be entitled to an annual bonus. The bonus will be at least: (i) 8.33 per cent of an employee's wages, or (ii) INR100, whichever is higher. Additionally, the employer will distribute a part of the gross profits amongst the employees. This will be distributed in proportion to the annual wages of an employee. An employee can receive a maximum bonus of 20 per cent of his/her annual wages.

- e. Gender discrimination:** The code prohibits gender discrimination in matters related to wages and recruitment of employees for the same work or work of similar nature. Work of similar nature is defined as work for which the skill, effort, experience, and responsibility required are the same.

Effective date: The code will come into force on such date as the CG may, by notification in the official gazette appoint. Different dates may be appointed for different provisions of the code.

(Source: The Code on Wages, 2019 issued by the Ministry of Law and Justice dated 8 August 2019)

Extension of the due date of Goods and Services Tax (GST) annual return and reconciliation statement

Background

On 21 June 2019, Central Board of Indirect Taxes and Customs (CBIC) through its press release, extended the due date for filing annual return in the FORM GSTR-9/ FORM GSTR-9A and reconciliation statement in the FORM GSTR-9C for the financial year 2017-18 till 31 August 2019.

New development

The CBIC through its press release dated 26 August 2019 further extended the due date for furnishing above returns/reconciliation statement by three months till 30 November 2019.

(Source: CBIC-press release dated 26 August 2019)

Advisory on auditor's reporting on Section 197(16) of the Companies Act, 2013

Section 197(16) of the Companies Act, 2013 (2013 Act), requires an auditor of a public company to state in his/her auditor's report (under Section 143(3) of the 2013 Act) whether the remuneration paid by the company to its directors is in accordance with the provisions of Section 197 or whether remuneration paid to any director is in excess of the limit laid down and give such other details as may be prescribed.

On 9 September 2019, ICAI issued an advisory and clarified that the reporting requirement under Section 197(16) should be covered under 'Report on Other Legal and Regulatory Requirements' section of the auditor's report.

The advisory comes into force with immediate effect.

(Source: ICAI announcement dated 9 September 2019)

National Financial Reporting Authority (Amendment) Rules, 2019

The Ministry of Corporate Affairs (MCA) through its notification dated 5 September 2019, amended the National Financial Reporting Authority (NFRA) Rules, 2018. The amendment to the NFRA Rules, 2018 has extended the due date of submission of annual return in FORM NFRA-2 by an auditor of a company and a body corporate covered under NFRA Rules by six months i.e. 30 November every year (earlier it was required to be filed by 30 April every year).

The amendment to the NFRA Rules, 2018 also prescribes the format of the FORM NFRA-2.

The notification comes into effect from 5 September 2019.

(Source: MCA Notification no. G.S.R. 636 (E) dated 5 September 2019)

Report on unpaid dues by listed entities before filing a draft scheme of arrangement

On 12 September 2019, the Securities and Exchange Board of India (SEBI) issued a circular (no. SEBI/HO/CFD/DIL1/CIR/P/2019/192) (the circular) regarding unpaid dues. This circular requires all listed entities to ensure that all dues, fines and penalties imposed by SEBI, stock exchanges and depositories have been paid/settled by them before filing a draft scheme of arrangement with the stock exchange.

In case of unpaid dues, fines and penalties, the listed entity should submit a 'Report on the unpaid dues' to the stock exchanges along with the draft scheme in the format specified by SEBI in Annexure B to the circular.

For a detailed read, please refer to KPMG in India's Notes on 'SEBI issues directions for settlement of outstanding dues prior to filing a scheme of arrangement' dated 24 September 2019.

(Source: SEBI circular no. SEBI/HO/CFD/DIL1/CIR/P/2019/192 dated 12 September 2019)

Loan exposure limit to a single NBFC enhanced by RBI

Background

Currently, bank's exposure to a single Non-Banking Financial Company (NBFC) is restricted to 15 per cent of its tier-I capital. For entities in the other sectors the exposure limit is 20 per cent of tier-I capital of the bank, which can be extended to 25 per cent by a bank's board under exceptional circumstances.

New development

In order to harmonise the exposure limit to a single NBFC with that of the general limit, the Reserve Bank of India (RBI) through its notification dated 12 September 2019, has enhanced bank's exposure limit to a single NBFC (excluding gold loan companies) to 20 per cent of its eligible capital base.

A bank's finance to NBFCs that are predominantly engaged in lending against gold will continue to be governed by limits prescribed in relevant circular.

(Source: RBI notification no. RBI/2019-20/60 dated 12 September 2019)

Revised FAQ on presentation of dividend and dividend distribution tax

On 17 September 2019, the ICAI issued a revised Frequently Asked Question (FAQ) on presentation of dividend and Dividend Distribution Tax (DDT). The FAQ clarified that if a financial instrument is classified as debt, the dividend or interest paid thereon is in the nature of interest which should be recognised in the statement of profit and loss. Dividend or interest paid on a financial instrument which is classified as equity, should be recognised in the statement of changes in equity.

With respect to presentation of DDT, it clarified that the presentation of DDT paid on the dividends should be consistent with the presentation of the transaction that creates those income tax consequences. Therefore, DDT should be recognised in the statement of profit and loss if the dividend itself is recognised in the statement

of profit and loss. If the dividend is recognised in equity, then DDT should be recognised in equity.

For a detailed read, please refer to our article on 'Presentation of dividend distribution tax' in the current month's edition of AAU (Issue no. 38 - September 2019).

(Source: ICAI announcement dated 17 September 2019)

The Taxation Laws (Amendment) Ordinance, 2019

On 20 September 2019, the Ministry of Law and Justice issued the Taxation Laws (Amendment) Ordinance, 2019 (ordinance) and made certain amendments to the provisions of Income-tax Act, 1961 (IT Act) and the Finance (No. 2) Act, 2019 with effect from financial year 2019-20.

The key amendments made by the ordinance are as follows:

Particulars	Amendments
Reduction in tax rates for domestic companies	An option has been given to domestic companies to pay tax at the rate of 22 per cent (effective tax rate is 25.17 per cent including surcharge and cess) subject to the condition that no exemption/incentive under the IT Act has been taken by them. Also, such companies are not required to pay Minimum Alternate Tax (MAT).
Tax rate for newly incorporated domestic companies	Any domestic company which has been incorporated on or after 1 October 2019 and makes fresh investment in manufacturing can choose to pay income tax at the rate of 15 per cent (effective tax rate is 17.01 per cent including surcharge and cess). The benefit is subject to the condition that such companies will not claim any exemption/incentive and should commence their production on or before 31 March 2023. Also, such companies are not required to pay Minimum Alternate Tax (MAT).
Option to companies which continue to avail tax exemptions	A company which does not opt for the concessional tax regime and avails the tax exemption/incentive should continue to pay tax at the pre-amended rate (25 or 30 per cent as the case may be ¹). However, such companies can opt to pay tax at the concessional rate of 22 per cent after the tax holiday/exemption period is over. The option once exercised cannot be subsequently withdrawn. The rate of MAT for companies which continue to avail exemptions/incentives has also been reduced from 18.5 per cent to 15 per cent.
Buy-back of shares by listed companies	Listed companies which have announced buy-back of shares before 5 July 2019 are not required to pay tax on buy-back of shares.
Minimum Alternate Tax (MAT)	With effect from 1 April 2020 (financial year 2019-20): <ul style="list-style-type: none"> MAT rate has been reduced to 15 per cent from 18 per cent. MAT provisions will not apply to a person who has exercised the option to avail the concessional tax rate of 22 per cent or concessional tax rate of 15 per cent to new manufacturing companies.

For a detailed read, please refer to KPMG in India's Tax Flash News on 'Government introduces tax measures to provide stimulus to boost the economy' dated 21 September 2019.

(Source: The Taxation Laws (Amendment) Ordinance, 2019 issued by the Ministry of Law and Justice dated 20 September 2019)

1. Domestic companies with a total turnover or gross receipt (in previous year 2017-18) of less than INR400 crore are required to pay corporate tax at the rate of 25 per cent of the total income and domestic companies with a total turnover or gross receipt of INR400 crore or more are required to pay corporate tax at the rate of 30 per cent of the total income.

Constitution of the Company Law Committee

The MCA through its order dated 18 September 2019, constituted a Company Law Committee (the committee) for examining and making recommendations to the government on various provisions and issues pertaining to implementation of the 2013 Act and the Limited Liability Partnership Act, 2008.

Accordingly, the objectives of the committee, *inter alia*, include the following:

- Analyse the nature of offences (compoundable and non-compoundable) and submit its recommendations as to whether any of the offences could be re-categorised as 'civil wrongs' along with measures to optimise the compliance requirements under the 2013 Act

- Examine the feasibility of introducing settlement mechanism and deferred prosecution agreement under the 2013 Act and
- Propose measures to further de-clog and improve functioning of the National Company Law Tribunal (NCLT).

The committee is required to submit its recommendations to the government from time to time as may be decided by the chairperson of the committee.

(Source: MCA order dated 18 September 2019)

