

# **Direct Tax Measures in view of Covid 19 outbreak in India**

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**Backdrop**

# The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance 2020

- The Ordinance has been promulgated in order to give full force to the relief measures announced by the FM.
- The Ordinance provides for an extension of compliance time limit contained in Rules, Notification or prescribed in the specified Acts.
- Specified Acts
  - The Wealth Tax Act 1957
  - The Income Tax Act 1961
  - Chapter VII of the Finance (No.2) Act 2004 – Security Transaction Tax
  - Chapter VII of the Finance Act 2013 – Commodity Transaction Tax
  - Chapter VIII of the Finance Act 2016 – Equalization Levy
  - The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act 2015
  - Direct Tax Vivad se Vishwas Act, 2020

# Direct Tax Measures due to Covid 19 Outbreak

- Filing of ITR, Return, Reports etc.
- Determination of interest on delay payment of any “tax or levy”
- Assessment and Penalties
- Other specific measures
- Practical issues and Q &A

# Fining of ITR, Reports, Statement etc.

- **Extension of due date of filing of all ITRs**
  - ITR for the AY 19-20
    - Notice u/s 143(2) can be issued till 30<sup>th</sup> September 2021
  - ITRs to be filed in response to notice issued u/s 153A/153C/147/142(1)/119- For any other years
    - Provided statutorily due after 20<sup>th</sup> March 2020
- **TDS compliances**
  - All the statutory TDS returns for the FY 2019-20 due for filing can be filed till 30<sup>th</sup> June 2020
- **Filing of Reports, Documents, Statement etc.**
  - Filing of Form 61A – SFT (Specified Financial Statement) for the FY 19-20 can be filed till 30<sup>th</sup> June 2020.
  - Filing of Form 61 for quoting specified transaction under Rule 114D - (Quoting PAN) for the declarations received in Form 60 from 1<sup>st</sup> October 2019 to 31<sup>st</sup> March 2020
  - Filing of CbCR in Form 3CEAD for the FY 2018-19 can be filed till 30<sup>th</sup> June 2020

# Payment of “Tax or Levy” u/s 3(2)

- Scope of section 3(2):-
  - It covers all the due date for payment of any tax or levy either specified in, or prescribed, or notified, under the specified Act,
  - Such due date should fall during the period from 20<sup>th</sup> March 2020 to 29<sup>th</sup> June 2020,
  - On such delay payment, the Taxpayer is liable to pay interest not more than 0.75% per month or part of the month covered by the period of default
    - “**the period of default**” means the period between the due date and the date on which the amounts has been paid.
- Can I defer my obligation to comply with the relevant provisions of the specified Acts till 30<sup>th</sup> June 2020?
  - **Second proviso to Section 3(1)** of the Ordinance:-

Provided further that such action shall not include payment of any amount as is referred to in sub-section (2).

# How to calculate interest?

- TDS deducted on 31<sup>st</sup> March 2020 of Rs.50,000, the due date for remittance is 30<sup>th</sup> April 2020. If the Taxpayer makes the payment on 30<sup>th</sup> June 2020 then on delayed payment interest is payable at
  - 0.75% per month
- In the above case, if Rs.30,000 is paid on 30<sup>th</sup> June 2020 and balance Rs.20,000 is paid on 31<sup>st</sup> July 2020.
  - On Rs.30,000, interest is payable at 0.75% for 2 months and on Rs.20,000 at 1.5% for 3 months
- Whether an Assessee can defer the obligation to deduct TDS by virtue of this Ordinance?
- Advance tax installment for the FY 19-20 due on 15<sup>th</sup> March 2020 has been paid on 30<sup>th</sup> June 2020. How to calculate the interest?
  - Any payment made till 31<sup>st</sup> March is considered as payment of “advance tax”. (Section 211)
  - Section 3(1) extends the due date prescribed or notified in the Act.
  - For the “Default Period” interest shall be payable at 0.75% p.m.

# How to calculate interest?

- On self assessment tax payable for the AY 19-20, how to calculate the interest liability u/s 234B?
  - Section 140A – Self Assessment Tax to be paid before the filing of ITR
  - Interplay between section 3(1) and 3(2)
- If the Taxpayer disclose additional income for the AY 2013-14 u/s 153A or 147, then on self assessment tax liability how to calculate interest u/s 234B if the return is filed before the 30<sup>th</sup> June 2020?
  - From 1<sup>st</sup> April 2013 to 31<sup>st</sup> March 2020- 1% p.m.
  - From 1<sup>st</sup> April to 30<sup>th</sup> June 2020- 0.75% p.m.
- What would be the consequence in case the taxpayer does not make the payment till 30<sup>th</sup> June 2020?
  - Interest shall be payable as if his case is not covered by the ordinance.
- Divided declared on 15<sup>th</sup> March 2020. if DDT is paid on 30<sup>th</sup> June 2020 then what are the consequences.



## Section 3(2)

- **No Penalty and Prosecution for any such defaults**
  - Defaults committed prior to 20<sup>th</sup> March are not absolved
- **Fees payable u/s 234F**
  - ITR filed u/s 139(1) alone is covered
- **Levy of fees u/s 234E- Late filing of TDS return**
  - “Due date” is extended till 30<sup>th</sup> June 2020
  - For any delay in filing of TDS return/statement beyond the statutory time period late fees u/s 234E will be charged.

# Ongoing proceeding under the specified Act 3(1)(a) and 3(1)(b)

- **Rectification Order u/s 154:-**

- Order u/s 154 in relation to all the pending applications can be passed by the AO which are required to be passed within the specified time period can be passed till 30<sup>th</sup> June 2020.

- **Revisionary Power u/s 263 and 264:-**

- Any order passed by the AO during the FY 2017-18, in all such appropriate cases, order u/s 263 can be passed upto 30<sup>th</sup> June 2020.
- Application u/s 264 can also be filed within the extended time limit.

- **Reassessment proceeding u/s 147:-**

- For the AY 2013-14; notice u/s 147 can be issued till 30<sup>th</sup> June 2020 if the escaped income is more than 1 lac.
- For the AY 2015-16 and subsequent assessment years the notice for reopening u/s 147 of the IT Act can be issued by the AO till 30<sup>th</sup> June 2020 without any limit.
- Reassessment proceedings initiated in June 2020 will get time barred on 31<sup>st</sup> March 2022. (21 months time to complete the proceeding)

# Conti.

- **Penalties under chapter XXI:-**

- The Penalty order u/s 271(1)(c) and/or other penalty statutorily leviable under chapter XXI initiated by the AO/CIT(A) and getting time barred by March 2020 can be passed till 30<sup>th</sup> June 2020
- No penalty u/s 272A be levied for any compliance made till 30<sup>th</sup> June 2020

- **Assessment proceeding:-**

- The compliances in response to intimation issued u/s 143(1) or notices issued u/s 142(1) or 147 or show-cause notice issued u/s 263 or any notice issued under ITA
- The AO can pass the final assessment order u/s 143(3) rws 144C within the extended time limit

- **Appeal filing:-**

- The statutory time limit for filing of an appeal under the ITA if expiring between 20<sup>th</sup> March 2020 to 29<sup>th</sup> June 2020, the Assessee as well as the department can file such appeal till 30<sup>th</sup> June 2020.
- Department will also get extended time limit for filing appeal before the ITAT , HC or SC, as the case may be.

## Other specific measures

- **Due date for linking Aadhar with PAN has been also extended till 30<sup>th</sup> June 2020.**
  - TDS is to be deducted as if PAN is linked to Aadhar (Section 206AA)
- **Vivad se Vishwas Act**
  - The time limit for payment of tax is extended till 30<sup>th</sup> June 20. So no additional tax shall be payable after 31<sup>st</sup> March 20.
- **Relaxation in case of Trust**
  - Relaxation in case of newly set up trust in making application u/s 12AA
  - Accumulated funds u/s 11(2) set apart for charitable purpose which could not be applied till 20<sup>th</sup> March 2020 can be applied by the trust till 30<sup>th</sup> June 2020 (Section 11(3))
- **Payment of tax u/s 115O and 115QA**
  - Interest on delay payment of DDT payable after the specified date shall attract interest at 0.75% p.m.

# Conti.

- **PM CARES Funds**

- Payment to PM CARES Funds will qualify for 100% deduction without any limit.
- Any payment made between 1<sup>st</sup> April 2020 to 30<sup>th</sup> June 2020, the Taxpayer will have choice of claiming deduction either in FY 19-20 or FY 20-21.
  - Deduction u/s 80G can be claimed for entities opting for lower tax regime u/s 115BAA and 115BAB (only for the FY 19-20)
- Contribution will qualify for CSR expenditures

- **Application u/s 195 or 197 for lower or nil TDS (Order u/s 119 bearing F No. 275/25/2020-IT(B) dated 31<sup>st</sup> March 2020)**

- Validity of Lower/Nil certificate issued by department in FY 2019-20 extended till 30<sup>th</sup> June 2020
- To file application before the 30<sup>th</sup> June 2020
- NR/FC having PE in India, TDS is applicable at 10% till 30<sup>th</sup> June 2020

# Scope of “any Deduction /Exemption/Allowance”

- **Measures relating to any deduction, allowance and/or exemption under the ITA- 3(1)(c)**
  - Making any investment, deposit, payment, acquisition , purchase, construction or **any other action** , by whatever name called, for claiming any deduction, exemption or allowance
    - Section 54 to 54GB
    - Chapter VI-B- (Section 80C to 80GGC)- Tax payer will have choice
    - **Any other provision of the Act** as notified by the Government
- **What is the scope of “any other action”?**
  - Specific reference to the provision of section 10AA regarding time limit for commencement of operation to claim “exemption/deduction” under the Act.
  - Whether the business deductions such as donation u/s 35 or depreciation u/s 32 or 35(2AB) are also covered?
  - Whether is it necessary to demonstrate practical difficulty to claim the benefit?

# Issues

- Plant and Machinery purchased by the Assessee but could not be put to use due to lockdown in the country till 31<sup>st</sup> March 2020. However the installation takes place on 30<sup>th</sup> April 2020. is it possible to claim depreciation in FY 19-20?
  - Can it be said compliance ?
- Does it make any difference if the investment in new P&M is to be made in the backward area notified u/s 32AD of the Act?
- Whether business deductions by way of payment to approved Research Institution referred to in section 35 or payment to approved Institution u/s 35CCD etc. paid after 31<sup>st</sup> March 2020 but before the notified date?
- Whether the Assessee can claim higher depreciation on Motor car acquired before the 20<sup>th</sup> March 2020 but could not delivered due to lockdown in the country till 1<sup>st</sup> April 2020 as notified by the Income-tax (9<sup>th</sup> Amendment) Rules, 2019?
- Whether the provision of the ordinance will be applicable in case of taxpayer who has opted for moratorium period given by the RBI? (say for example payment of interest u/s 24 or HRA)

Change is the only constant thing in the world!

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