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I. CHART OF FORTHCOMING DUE DATES: -

Month	TDS Payment	GSTR -1 Monthly	Advance Tax	ESIC Payment	P.F. Payment	GSTR -3B	GSTR - 1
June 2018	7th	10 th	15 th	15 th	15 th	20 th	30 th

II. OVERVIEW :

o ANGEL INVESTORS EXEMPTED FROM INCOME TAX ON THEIR INVESTMENT IN STARTUPS:

The government has refined the definition of startup and put in place a mechanism for **such companies to secure exemption from the so-called 'angel tax'** with **retrospective effect** and **avail tax incentives** under its startup policy.

Angel investors have been exempted by the country's income tax department, subject to certain conditions laid down by the Department of Industrial Policy and Promotion last month, providing significant relief to the early stage investor community.

"The Central Government hereby notifies that the provisions of clause (viib) of sub-section (2) of section 56 of the said Act shall not apply to consideration received by a company for issue of shares that exceeds the face value of such shares, if the consideration has been received for issue of shares from an investor in accordance with the approval granted by the Inter-Ministerial Board of Certification."

The tax relief impacts startups that are approved by an inter-ministerial panel, in which the paid-up capital and the share premium of the beneficiary company does not exceed Rs 10 crore after the issue of shares. The notification comes into effect retrospectively from April 11, 2018.

However, it will now be compulsory for startup ventures to have merchant banker-validated valuations, to determine the fair market value of equity shares. In its recent amendment, chartered accountants have now been excluded to assess the same.

The issue surrounding calculation of a startup's fair value has been a major bone of contention. Currently, the fair value of a startup is being assessed by income tax officials at their discretion, which the ecosystem members point out, is being done in a completely arbitrary manner.

According to the notification, an **angel investor** with a **minimum net worth of Rs 2 crore or an average returned income of over Rs 25 lakh in the preceding three financial years would be eligible for 100 per cent tax exemption** on investments made into start-ups above fair market value.

'Angel tax', or tax on capital raised by unlisted companies by issuing shares in excess of their 'fair market value', has been a contentious issue for startups for more than 18 months after the government exempted 'innovative' startups from this tax.

Tax incentive and definition:

Under the startup policy, **100% deduction of profits and gains** from income is **allowed for three out of seven consecutive assessment years under 80 IAC** of the Act.

A startup incorporated after April 1, 2016 but before April 1, 2021, will be eligible for this tax incentive. It would need to make an application to the board for certificate of exemption.

Startups set up as private limited company or limited liability partnership and incorporated after April 1, 2016, would be eligible for tax concessions.

III. INCOME TAX:

o AMENDMENT TO SECTION 50C BY FINANCE ACT 2018.

Sec 50C of Income Tax Act' 1961 states that, where the consideration received or accruing as a result of the transfer by an assessee of a **capital asset, being land or building or both**, is less than the value adopted or assessed by any authority of a State Government (hereafter in this section referred to as the "**stamp valuation authority**") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall, for the purposes of **section 48**, be **deemed to be the full value of the consideration** received or accruing as a result of such transfer.

Recent amendment by Finance Act, 2018 to section 50C allowing 5% deviation may be curative in nature and hence there is a case that the same may be treated as having a retrospective effect from the date on which section 50C came into force i.e. 1-4-2003 it will reduce burden on assessee.

Current Scenario

❖ At present, while taxing income from capital gains (section 50C), business profits (section 43CA) and other sources (section 56) arising out of transactions in immovable property, the **sale consideration or stamp duty value**, whichever is **higher** is adopted. The **difference is taxed as income both in the hands of the purchaser and the seller.**

Rationalization of section 43CA, section 50C and section 56.

It has been pointed out that this variation can occur in respect of similar properties in the same area because of a variety of factors, including shape of the plot or location. In order to minimize hardship in case of genuine transactions in the real estate sector, it is proposed to provide that no adjustments shall be made in a case where *the variation between stamp duty value and the sale consideration is not more than five percent of the sale consideration.*

These amendments will take effect from 1st April 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

○ PERMANENT ACCOUNT NUMBER BY ALL FOREIGN DIRECTORS:

Section 139A (1) of Income tax Act as amended by Finance Act 2018 w.e.f 1.04.2018 is read as under:

As per Sec 139A (1), Every person -

- (i) if his total income or the total income of any other person in respect of which he is assessable under this Act during any previous year exceeded the maximum amount which is not chargeable to income-tax; or
- (ii) carrying on any business or profession whose total sales, turnover or gross receipts are or is likely to exceed five lakh rupees in any previous year; or
- (iii) who is required to furnish a return of income under sub-section (4A) of section 139; or

(iv) being an employer, who is required to furnish a return of fringe benefits under section 115WD, or

(v) being a resident, other than an individual, which enters into a financial transaction of an amount aggregating to two lakh fifty thousand rupees or more in a financial year; or

(vi) who is the managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer of the person referred to in clause (v) or any person competent to act on behalf of the person referred to in clause (v), and who has not been allotted a permanent account number shall, within such time, as may be prescribed, apply to the Assessing Officer for the allotment of a permanent account number.

Accordingly, all foreign directors need PAN under clause (vi) above.

Non-compliance will attract **penalty of Rs.10,000 u/s 272B.**

IV. GOODS & SERVICE TAX

o PENALTY ON ACCOUNT OF NON-DISPLAY OF GSTIN NUMBER IN BUSINESS PREMISES.

GST department have started conducting raids on business to check if the GSTIN no is visible on sign board of the business premises. Notice can be issues if the GSTIN no is not mentioned on signboard and front door of business premises u/s 125 of CGST Act and **penalty under the above-mentioned section up to Rs. 25,000/-.**

V. INSOLVENCY BANKRUPTCY CODE

○ REDUCTION IN VOTING THRESHOLD OF CREDITORS OF COMMITTEE

Resolution Professional during the corporate insolvency resolution process, shall not take action in major decisions without prior approval of Committee of Creditors (CoC). No action shall be approved by CoC unless **approved by a vote of 75% of the voting shares.**

With a view to encouraging resolution as opposed to liquidation, the voting threshold has been brought down to 66% from 75% for all major decisions such as approval of resolution plan.

○ PERSON NOT ELIGIBLE TO BE A RESOLUTION APPLICANT

Sec 29A of IBC, a person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person –

- (a) is an undischarged insolvent;
- (b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;
- (c) has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan.

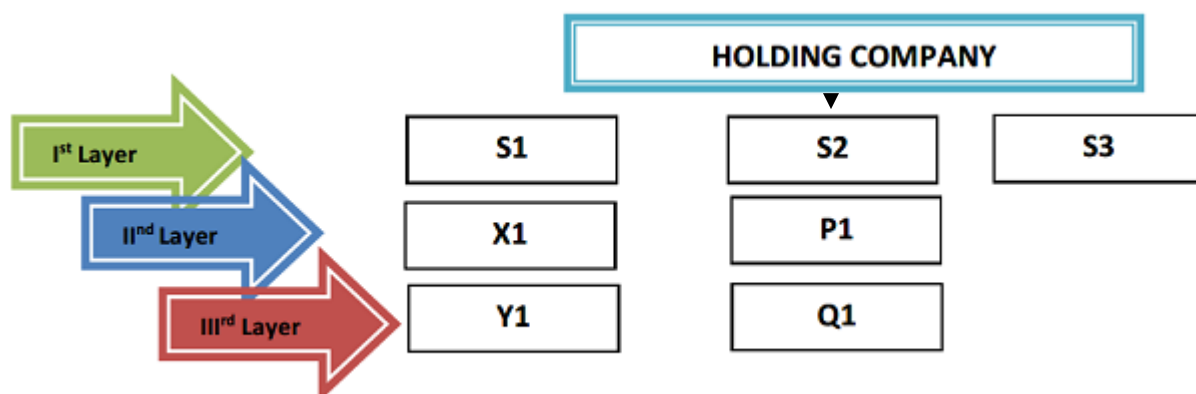
The existing Section 29(A) of the IBC, 2016 has also been **fine-tuned to exempt pure play financial entities from being disqualified on account of NPA.** Similarly, a resolution application holding an NPA by virtue of acquiring it in the past under the IBC, 2016, has been provided with a three-year cooling-off period, from the date of such acquisition. In other words, **such NPA shall not disqualify the resolution application during the currency of the three-year grace period.**

VI. COMPANY LAW

o NUMBER - LAYERS OF INVESTMENT IN SUBSIDIARIES

Company other than mentioned below shall have not more than **two layers of subsidiaries**.

- Banking Company,
- Non-Banking Financial Company,
- Insurance Company,
- Government Company



Exemption to Company:

- i. **Acquiring Company incorporated outside India:** These provisions shall not affect a company from acquiring a Company incorporated outside India with subsidiaries beyond two layers as per the law of such Country.

Note:

In case Company having more than 2 layers of subsidiaries as on 20.09.2017 it's has to '(i) file form CRL-1 with ROC within 150 days (ii) no need to reduce the excess no. of layers by dis- investment in Companies.

Penalty if Company fails to file CRL-1?

If any company contravenes any provision of these rules the company and every officer of the company who is in default shall be punishable with fine which may extend to ten thousand rupees and where the contravention is a continuing one,

with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.

VII. RBI

○ TRANSFER OF SHARES FROM NON - RESIDENTS TO RESIDENTS.

Under Indian foreign exchange regulations, general permission is available for transfer of shares / convertible debentures between non-residents (NR) and Indian residents (IR) by way of gift or sale under private arrangement.

Transfer of shares from NR to IR or vice versa is subject to the following:

- a. activities of the investee company are under automatic route;
- b. sectoral limits under foreign direct investment policy are not breached;
- c. sale consideration is in compliance with the pricing guidelines; and
- d. such transfer is not subject to Indian Takeover Code;

If a transfer does not meet any of the above requirements, **a prior RBI approval** will be necessary.

Requirement under (Indian) Foreign Exchange Regulations for Transfer of Shares from Non-residents to Residents:

An NR can transfer, by way of sale, shares of an Indian company under private arrangement to an IR, subject to the following:

- Sale Consideration must be determined as per following principles:
 - **Listed Company** - Sale consideration must not be more than minimum price at which preferential allotment of shares are made as per SEBI.
 - **Unlisted Company** - Sale consideration must not be more than fair value of shares determined as per internationally accepted pricing methodology on arm's length basis and duly certified by Chartered Accountant or a SEBI registered Merchant Banker.
- Sale consideration (net of taxes) must be remitted outside India through an authorized dealer ("AD") bank.
- Transfer of shares must be reported in Form FC-TRS to RBI through an AD bank within 60 days of receipt / remittance of sale consideration. The onus of submission of the said Form FC-TRS is on the transferor / transferee resident in India.

Requirement under the (Indian) Companies Act, 2013 for Transfer of Shares from Non-residents to Residents

(a) In order to transfer shares, an instrument of transfer called securities transfer form ("STF") i.e. SH-4 will need to be executed by transferor and transferee. The duly executed and witnessed SH-4 must be delivered to the company within two months of its execution. A stamp duty on the value of the shares (i.e. consideration or the fair value, whichever is higher) will need to be paid in Indian rupees.

(b) Once the STF is lodged with the company, the latter will hold a Board meeting and transact the following business:

(i) approve and record the transfer of the shares; and

(ii) endorse the transfer on share certificate in favor of the transferee.

(c) The transferee / his agent must submit to the company a certificate in the Form FC-TRS endorsed by the AD bank that the payment has been made by the transferee. On receipt of the said certificate, the company may record the transfer in its books.

○ RBI TO WITHDRAW EXEMPTIONS FROM GOVERNMENT OWNED NBFCs.

Government owned companies always reaped in many exemptions from provisions of NBFC regulations. To bring government NBFCs on equal footing with non-government NBFCs (or private NBFCs), RBI has withdrawn certain exemption granted to government NBFCs with respect to compliance.

RBI in its circular has specified the timelines to meet the norms on capital adequacy, asset classification, maintenance of reserve fund and provisioning requirements, corporate governance framework and fair practice code.

The government NBFCs will now have to comply with provisioning norms including treatment of income recognition, provisioning of non-performing assets and implementation of corporate governance frameworks in line with non- government NBFCs and the fair practice code by the end of this financial year.

Further, government NBFCs will have to **maintain a minimum of 15 per cent of their outstanding deposits**, in compliance with RBI's existing statutory provisions. They may reach this minimum level by increasing the provisioning by **five percentage points every year between financial year 2019 and financial year 2022** to comply with provision of section 45 IB of RBI Act, 1934.

It shall also be required to **create a reserve fund and transfer therein a sum not less than 20 % of its net profit** every year as disclosed in the profit and loss account and before any dividend is declared to comply with Section 45 IC of the RBI Act, 1934 from the end of this financial year.

Further, the government NBFCs shall be required to obtain minimum investment grade for acceptance of public deposits from the end of this financial year. A Government NBFC-D having investment grade credit rating can accept deposits only up to 1.5 times of its Net Operating Fund. Government NBFCs holding deposits in excess of the limit shall not access fresh deposits or renew existing ones till they conform to the limit, the existing deposits will be allowed to run off till maturity. All other directions of Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016 shall be applicable from Balance Sheet dated March 31, 2019.

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