Steel Users Federation of India

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info@sufi.org.in

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NOV., 2018

I. CHART OF FORTHCOMING DUE DATES: -

a) GST

Month	GSTR -1 Monthly	GSTR -3B
Nov 2018	11th	20th

b) Others

Month	TDS Payment	ESIC Payment	P.F. Payment
Nov 2018	7th	15th	15th

II. OVERVIEW:

o THE COMPANIES (AMENDMENT) ORDINANCE, 2018

Promulgated on 2nd November, 2018, the Companies Amendment (Ordinance), 2018 is introduced to provide the much-needed relief to the corporates and professionals alike by decriminalizing a host of offences. The Ordinance further promotes the Indian Government's intent to promote ease of doing business.

The important reforms introduced by the Ordinance include the following:

❖ Re-categorizing of Offences

Sr. no.	Section	Nature of Default	Punishment	
			Pre-Ordinance	**Post Ordinance**
1	Section 53(3) Prohibition of issue of shares at a discount	Prohibition of issue of shares at a discount	Fine or imprisonment or both	Penalty Only
2	Section 64(2) Notice to be given to	Failure/delay in filing notice for	Fine only	Penalty Only

	Registrar for alteration of share capital	alteration of share capital		
3	Section 92(5) Annual return	Failure/delay in filing annual return	Fine or imprisonment or both	(i) the company liable to- penalty Only, (ii) every officer in default – penalty Only
4	Section 102(5) Statement to be annexed to notice	Attachment of a statement of special business in a notice calling for general meeting	Fine Only	Penalty Only
5	Section 105(3) Proxies	Default in providing a declaration regarding appointment of proxy in a notice calling for general meeting	Fine only	Penalty Only
6	Section 117(2) Resolutions and Agreements to be filed	Failure/Delay in filing Certain resolutions	Fine only	Penalty Only
7	Section 121(3) Report on annual general meeting	Failure/Delay in filing Report on AGM by public listed company	Fine only	Penalty Only
8	Section 137(3) Copy of financial statement to be filed with Registrar	Failure/Delay in filing financial statement	Fine or imprisonment or both	(i) the company liable to- penalty Only, (ii) the managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other

				director who is charged by the board of directors with the responsibility of complying with the provisions of Section 137, and, in the absence of any such director, all the directors of the company shall be liable to - Penalty Only
9	Section 140(3) Removal, resignation of auditor and giving of special notice	Failure/Delay in filing statement by auditor after resignation	Fine only	Penalty only
10	Section 157(2) Company to inform Director Identification Number to Registrar	Failure/Delay by company in informing DIN of director	Fine only	Penalty Only
11	Section 159 Punishment for Contravention – in respect of DIN	Contraventions related to DIN	Fine or imprisonment or both	<u>Penalty for default in certain provisions</u> Non-compliance with Section 152 (Appointment of directors), Section 155 (Prohibition to obtain more than one Director Identification Number) and Section 156 (Director to intimate Director Identification Number) shall result in any individual or director of a company in default being liable to –

				Penalty Only
12	Section 165(6) Number of Directorships	Accepting directorships beyond specified limits	Fine only	Penalty Only

❖ Declogging the NCLT

In order to reduce the multitude of cases before the NCLT and to enable it to focus on more serious and significant matters, following provisions have been amended:

Sr. no.	Section	Amendment	Old provision	New Provision	Remarks
1.	2 (41)	Application to follow a different financial year by holding, subsidiary or associate of foreign company	NCLT	CG	Pending applications to be decided by NCLT
2.	14	Approval for conversion of public co. to private co.	NCLT	CG	Pending applications to be decided by NCLT
3.	441(1)(b)	Application for compounding of offences	Max. fine < 5 lakhs= RD NCLT in other cases	Max. fine < 25 lakhs= RD NCLT in other cases	
4.	441(6)(a)	Compounding of Certain Offences	permission of the Special Court for compounding of offences	Omitted	

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❖ Registration of Charges

PRE-AMENDMENT	POST AMENDMENT (CHARGES CREATED AFTER EFFECTIVE DATE)
Time Limit with Normal Fees •30 days from creation	Time limit (with normal fees) •30 days from creation
Time limit (with additional fees) •Further 270 days	Time limit (with additional fees) •Further 30 days
Further extension of time •Delay to be condoned by CG No max. time limit	Further extension of time •Further 60 days with ad valorem fees

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❖ Other Corporate Governance related reforms

Section 10A (New Section) Commencement of Business

- Re-introduction of Section 11
- Declaration by a company having share capital before it commences its business or exercises borrowing power

Section 12-Registered Office of Company

- Insertion of sub-section (9) to section 12
- The Registrar may cause a **physical verification of the registered office of the company**
- **if any default** is found in complying with the requirements of sub- section (1),
- **initiate action for the removal of the name of the company from the register of companies**

Section 90-Register of significant beneficial owners in a company

- the punishment for violation of section 90(1) is enhanced to the effect that the contravention is punishable with **fine or imprisonment or both**, instead of being punishable with only fine.

Section 164-Disqualifications from appointment of directors

- **A new clause (i) after clause (h) in section 164(1) inserted,**
- If a person shall be disqualified if, he :
  - accepts directorships exceeding the maximum number of directorships provided in section 165

III. INCOME TAX:

o Concessional Tax Treatment under Section 112A

➢ **Applicability**

The new Section 112A has been inserted by the Finance Act 2018, providing a concessional tax rate of 10% for Long Term capital gains arising on transfer of equity share in a company or a unit of an equity-oriented fund or a unit of a business trust exceeding Rs. 1,00,000.

The above concessional rate shall apply to the capital gains arising from a transfer of long tern capital asset, being an equity share in a company, only if Securities Transaction Tax (STT) has been paid on acquisition and transfer of such capital.

➢ **Effective date**

Before Assessment Year 2018-2019, long-term capital gain tax on transfer of equity share, units of equity-oriented funds and units of business trust was exempted as per provisions of section 10 (38).

With effect from 1st April, 2018, provisions of section 10 (38) will not be applicable to any income arising from transfer of equity share, units of equity-oriented funds and units of business trust.

From 1st April, 2018, provisions of section 112A shall be applicable to tax income arising from transfer of equity share, units of equity-oriented funds and units of business trust.

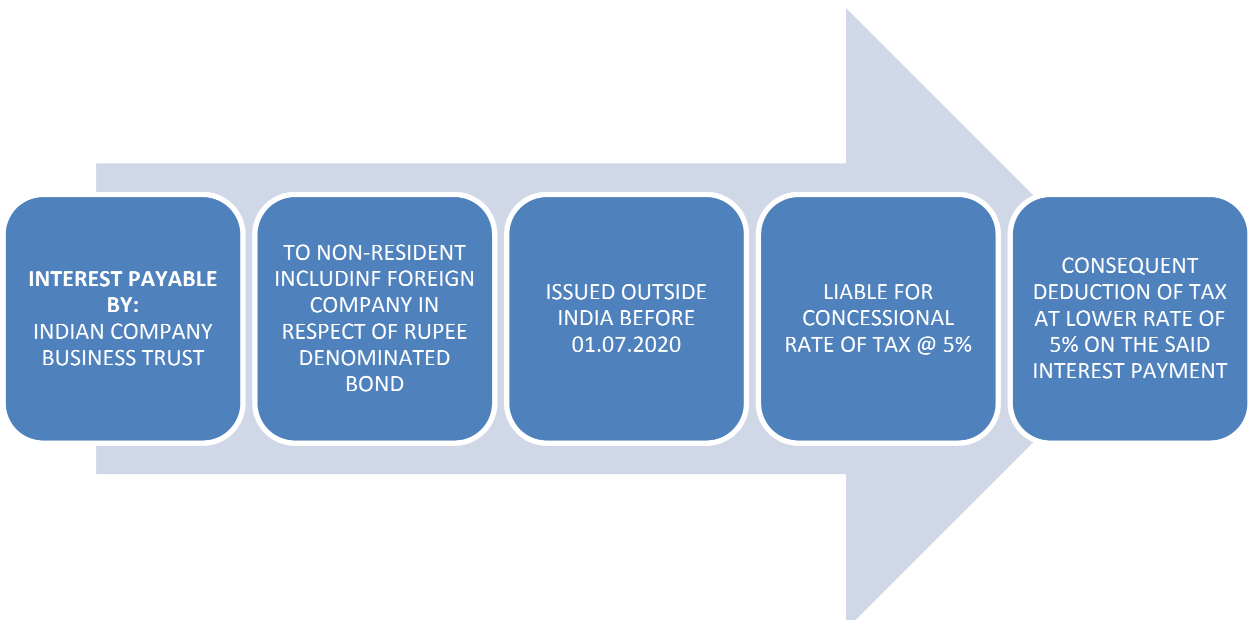
Notification no. 60/2017 dated 01.10.2018 notified that the condition of chargeability to STT shall not apply to transactions entered into before 01.10.2004 or on or after 01.10.2004 which are not chargeable to STT, except certain specified transactions, namely:

- Acquisitions of existing listed shares in preferential issues of a company whose equity shares are not frequently traded in a recognized stock exchange in India,
- Acquisition of existing listed Equity Shares in a company not entered through a recognized stock exchange of India; and
- Acquisitions of Equity Shares of Company during the period of its delisting.

- ### Exemption to interest income on specified off-shore Rupee denominated Bonds

Interest payable by an Indian company or a business trust to non-resident, including a foreign company, in respect of rupee denominated bond issued outside India before 1.7.2020 is liable for concessional rate of tax 5% consequently, section 194LC provides for the deduction of tax at a lower rate of 5% on the said interest payment.

Further to this, the interest payable by an Indian company or a business trust non -resident , including a foreign company, in respect of rupee denominated bond issued outside India during the period from 17.9.2018 to 31.3.2019 shall be exempt from tax, and consequently, no tax shall be deducted on the payment of interest in respect of the said bond under section 194LC.



IV. GOODS & SERVICE TAX

o FURTHER AMENDMENT TO THE GOODS AND SERVICES TAX ACT AND RULE

➢ **Substitution in sub rule 10 of rule 96 { refund of integrated tax paid on goods or services exported out of India }**

For the period from 23.10.2017 to 08.10.2018, Refund can be claimed only by persons who have not:

a) Received supplies by availing the following benefits :

- Domestic supplies made against advance authorization, supply of capital goods against EPCG authorization supply of goods to EOU & supply of gold by a bank or PSU against advance authorization.
- Supplies made to merchant exporter at the rate of 0.1% in case of IGST or 0.05% each in case of CGST & SGST.

b) Availed the benefit under following:

- Exemption from Customs Duty & IGST under Customs on goods imported or procured from Public or Private Warehouse or from International Exhibition by 100% EOU, STP, or EHTP units.
- Exemption from Customs Duty & IGST under Customs on imports under EPCG, Advance Authorization for Annual Requirements, for Export prohibited goods and Narrow woven Fabrics, etc.

➢ **Notifications issued under CGST Act 2017 applicable to Goods and Services tax (compensation to states) Act 2017**

The provisions of the CGST Act and the rules made thereunder, shall apply in relation to the levy and collection of Compensation Cess as provided under Section 9(2).

In view of the above, vide Circular dated 5th October, 2018, the Central Government has issued clarification the Notification no. 16/2017-CT (R) dated 28th June, 2018 issued for notifying organizations for claiming refunds of taxes paid on notified goods shall be applicable to Goods and Services (Compensation to States) Act, 2017

- **Modification to the guidelines for deductions and deposits of TDS by the DDO under GST**

To enable the DDOs to account for the TDS bunched together (in terms of Option II), following sub-head related to the GST-TDS below the Head 8658.00.101-PAO Suspense has been opened.

S. No.	Major Head	Sub-Head Description	Major Head Serial Code (8-Digit reduced accounting Code)	SCCD Code
1	8658-00-101	08-GST TDS	86580344	367

- **Extension of time limit for submitting the declaration in Form GST TRAN-1 under rule 117(1a) of Central Goods and Service Tax Rules, 2017 certain cases**

Extension in the period for submitting the declaration in FORM GST TRAN-1 till 31st January, 2019, for those registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal.

- **Rate of TCS to be collected by every electronic commerce operator for intra-state taxable supplies and inter-state taxable supplies**

Central Government vide Notification No. 52/2018 – CT dated 20th September, 2018 notifies that every electronic commerce operator, not being an agent, shall collect an amount calculated at a rate of half per cent of the net value of intra-state taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the said operator.

Further, Central Government vide Notification No. 02/2018 – Integrated Tax dated 20th September, 2018 notifies that every electronic commerce operator, not being an agent, shall collect an amount calculated at a rate of one per cent. of the net value of inter-state taxable supplies made through it by other suppliers where consideration with respect to such supplies is to be collected by the said operator.

V. Companies Act

o CONSTITUTION OF NATIONAL FINANCIAL REPORTING AUTHORITY

The National Financial Reporting Authority (NFRA) is a body constituted under the provisions of Section 132 of the Companies Act 2013. The Constitution of this Authority is effective from 1st October, 2018. This Authority will act as an independent regulator for the auditing profession which is one key changes brought by the Companies Act 2013. It further aims at improving the investor and public confidence in the Financial Reporting of an entity.

➢ **Role of NFRA**

- Make recommendations on the foundation and laying down of accounting and auditing policies and standards;
- Monitor and enforce the compliance of the accounting standards and auditing standards:
- Oversee the quality of service of the professionals (such as auditors, CFOs, etc) and suggest measures required for improvement in the quality of service;
- Perform such other functions related to the above.

➢ **Scope of NFRA**

NFRA has the power to investigate and also conduct quality reviews of the auditors of the following class of companies and bodies corporate namely:

❖ Companies Listed on stock Exchange in India or outside India

❖ <u>Unlisted Public Companies as on 31st March of immediately preceding financial year having</u>

a) Paid up Capital $\geq$ Rs. 500 Crores

OR

b) Annual Turnover ≥ Rs. 1000 Crores

OR

c) Outstanding loans, Debentures and Deposits (in aggregate) ≥ Rs. 500 Crores

- Insurance companies, banking Companies, companies engaged in the generation or supply of electricity, companies governed by any special Act for the time being in force or bodies corporate incorporated by an Act in accordance with clauses (b), (c), (d), (e) and (f) of sub-section (4) of section 1 of the Act;
- Any Body corporate or company or person, or any class of bodies corporate or companies or persons, on a reference made to the Authority by the Central Government in public interest; and
- A body corporate incorporated or registered outside India, which is a subsidiary or associate company of any company or body corporate incorporated or registered in India as referred to in clauses (a) to (d), if the income or networth of such subsidiary or associate company exceeds twenty per cent. of the consolidated income or consolidated networth of such company or the body corporate, as the case may be, referred to in clauses (a) to (d).

A company or a body corporate other than a company governed under this rule shall continue to be governed by the Authority for a period of three years after it ceases to be listed or its paid-up capital or turnover or aggregate of loans, debentures and deposits falls below the limit stated therein.

Every **existing body corporate** other than a company governed by these rules, shall inform the Authority within thirty days of the commencement of these rules, in **Form NFRA-1**, the particulars of the auditor as on the date of commencement of these rules.

Every Body corporate, other than a company as defined in clause (20) of section 2, formed in India and governed under this rule shall, **within fifteen days of appointment** of an auditor under sub-section (1) of section 139, inform the Authority in **Form NFRA-1**, the particulars of the auditor appointed by such body corporate:
Provided that a body corporate governed under clause (e) of sub-rule (1) shall provide details of appointment of its auditor in Form NFRA-1

VI. Insolvency and Bankruptcy Code

o Fourth Amendment to the Regulations for Insolvency Resolution Process for Corporate Persons

The Insolvency and Bankruptcy Board of India on 5th Oct, 2018 has notified the Fourth Amendment to the Regulations for the Insolvency Resolution Process for Corporate Persons

- **Operational Creditors given priority over Financial Creditors**

  The main change brought about by the Amendment, is that now all payments due to operational creditors as contemplated under a resolution plan, and not just the minimum prescribed amount, have to be made in priority to financial creditors.

- **The Interim Resolution Professional (IRP) or Resolution Professional (RP) to preserve the physical and electronic copies of the records related to Insolvency Resolution Process of the Corporate Debtor as per the record retention schedule.**

  This will enable a financial creditor in a class, who could not vote on a matter before the meeting, to vote after minutes of the meeting are circulated.

- **Minutes of meeting of the Committee of Creditors to be circulated to the “Authorized Representative” also and the Authorized Representative shall circulate the minutes of the meeting to creditors in a class**

- **Exercise of Votes by the Authorized Representative by electronic means or through electronic voting system as per instructions received by him from the Creditors in a Class.**

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VII. RBI

- **Liberalization of External Commercial Borrowings Policy**

A. ECB by Company in Manufacturing Sector Upto USD 50 million or equivalent Can be raised by eligible borrowers	
Earlier Provisions	**Amendments**
With minimum average maturity period of 3 years	With minimum average maturity period of 1 year

B. Underwriting and market making by Indian banks for Rupee denominated bonds (RDB) issued overseas:	
Earlier Provisions	**Amendments**
Indian banks, subject to applicable prudential norms, can act as arranger and underwriter for RDBs issued overseas. In case of underwriting an issue, their holding cannot be more than 5 per cent of the issue size after 6 months of issue	Indian banks can now participate as arrangers/underwriters/market makers/traders in RDBs issued overseas subject to applicable prudential norms.

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