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I. CHART OF FORTHCOMING DUE DATES: -

a) GST due dates falling in the month of July 2021.

Sr No.	Particulars	Due Date
1.	GSTR-1 (Monthly)	11.7.21
2.	GSTR-1 (QRMP)	13.7.21
2.	GSTR-3B	20.7.21

b) Others due dates falling in the month of July 2021

Sr No.	Particulars	Due Date
1	TDS Payment	07.07.2021
2	TDS Return for Q4 20-21	15.07.2021
3	PF Payment	15.07.2021
4	TDS Return for Q1 21-22	30.7.2021

II. OVERVIEW:

○ WHY TO CHOOSE PRIVATE LIMITED COMPANY OVER A LIMITED LIABILITY COMPANY

Following highlight areas where a Private Company has an edge over LLP:

○ Ease of Raising Funds:

Raising funds from external sources is much easier for a private company as compared to LLP. The simple reason behind this is that due to extensive reporting requirements under the **Companies Act 2013**, it ensures high level of transparency in activities which builds trust among the investors to invest in private companies. Further, if the investor is a non-resident then it is more likely that it will invest in private companies as the process is quite simplified. In case of LLP, raising funds seems a challenge and can be difficult. The investor, who wants to infuse capital, has to be admitted as a partner in LLP and will enjoy the rights of a partner.

○ Clear Distinction of Ownership

A Private Company offers a clear distinction between the shareholders and the management of the company. The directors, who manage the working of a company need not be the owners of the company too. The shareholders do not necessarily participate in the day to day management of the company. In LLP, the partners holds both the ownership and management powers which makes the distinction impossible.

○ Liabilities in case of default:

One of the biggest advantage of a Private Company over LLP is that in case of a non-compliance, the manner for determining the liability for 'officer in default' is provided in the Companies Act, 2013.

Whereas, in case of LLP, the liability for non-compliance falls on the designation partners and since there is no shield or protection, there can be instances where the designated partners are personally liable along with the LLP.

○ Future Expansion of Business:

Every entrepreneurs while establishing their business only thinks of its expansion. A Private Company opens a door for expansion of your business to a next level. Since, it attracts investors, liquidity is less of a problem for them and

it's easy to grab the opportunities that come their way. In case of LLP, liquidity can be challenge which can restrict its growth.

○ **Listing with Stock Exchanges:**

Listing with stock exchanges is another important aspect that one should consider before deciding on the entity type. If your vision is to raise public funds and get your entity listed with stock exchanges in future, you should go with a Private Company as it can be converted into public company at a later stage and the shares of the company can be listed with stock exchanges. Whereas, LLP cannot be listed with stock exchanges.

○ **Credit Worthiness and Sale Value**

A Private Company holds a higher credit worthiness as compared to LLP. Due to high degree of corporate compliance, fund raising and procurement process is quiet easy in case of Private Company. Since, it is possible to have a true and fair view about the company it becomes more worthy to the investors to invest in it. Further, the market value of a Private Company is much higher in compared to LLP ensuring a higher sale value.

○ **Compounding and Penalties:**

The compliance requirement in case of LLP is less when compared to a Private Company. However, there are reliefs that might be available to the private company in case of a non-compliances. Moreover, the standards to accounting and auditing, secretarial standards are well defined for a private company making it easier to understand and comply with, whereas there is no clear defined standards for LLP and in case of any non-compliances the compounding and penalties can be huge when compared to a Private Company.

Hence, it is clear that even though the requirements in LLPs are less, a Private Company has an edge over LLP. Due to high level of compliances and defined standards, a Private Company is well-regulated and has more opportunities than a LLP. So, if you have a long term plan for your business a Private Company is a better option for you.

III. INCOME TAX ACT

SECTION 195 TDS ON NON-RESIDENTS

1) Who is responsible to deduct tax under section 195 of Income Tax Act, 1961?

Any person responsible for paying to a non-resident, not being a company, or to a foreign company, shall deduct income-tax thereon at the rates in force.

2) Nature of Payment

- a) Any interest (not being interest referred to in section 194LB, 194LC and 194LD)
- b) Any other sum chargeable under the provision of this Act (not being income chargeable under the head 'Salaries')

3) When to Deduct TDS under Section 195?

At the time of credit of such income to the account of payee or at the time of payment, whichever is earlier.

For this purpose credit to "Interest payable account" or "Suspense account" or any other name shall be deemed to be a credit of such income to the account of the payee.

For this purpose, "payment" can be in cash or by issue of a cheque or draft or by any other mode.

If interest is payable by the Government or a public sector bank or a public financial institution, then tax deduction shall be made only at the time of payment thereof in cash or by cheque or draft or any other mode.

Second Proviso to Section 195(1) exempting TDS on dividend referred to in Section 115-O has been deleted. [Finance Act 2020]

4) Threshold limit

No threshold limit. However, tax shall be deducted on sum chargeable to tax. Therefore, if no sum is chargeable to tax in India, then no tax is required to be deducted.

5) Other sums under Section 195

- **Applicability:** TDS to be deducted on **any sum chargeable under the provisions of Income Tax Act, 1961** not being income chargeable under the head 'Salaries'. (E.g. Payments such as interest, royalty, fees for technical services are liable for tax deduction u/s. 195 of the Act)
- **Payer:** Any person (both Resident and Non-resident)
- **Payee:** Non-residents / Foreign Company
- **Threshold limit:** NIL i.e. **No Threshold limit.**
- No TDS u/s. 195 on payment of Income chargeable under the head 'Salaries' or payments covered u/s. 194LB or 194LC or 194LD.
- TDS to be deducted at the time of **payment or credit, whichever is earlier.**

6) Income Deemed to Accrue or Arise In India

- As per the provisions of Section 5(2)(b) of the Act, the total income of a non-resident also includes all income which **accrues or arises** or is **deemed to accrue or arise in India** to the non-resident.

7) PERMANENT ESTABLISHMENT

> Any person who is responsible for paying any sum being royalty or fees for technical services to a non-resident / foreign company carrying on business through a **Permanent Establishment (PE)** in India shall deduct tax u/s. 195 of the Act at the rate

> **Thus, for payments to Foreign Companies having a PE in India:**

√ If amount exceeds Rs.1 Crore: 40% + 4% Cess + 2% Surcharge (42.432%)

√ If amount exceeds Rs.10 Crores: 40% + 4% Cess + 5% Surcharge (43.68%)

8) Withholding tax obligation u/s. 195

√ If the payment to non-resident or a foreign company is covered u/s. 9 of the Act and chargeable to tax, the provisions of Section 195 of the Act shall come into play.

√ As per **Section 195 (1)**-Tax is required to be deducted at the time of payment or credit, whichever is earlier at the **rates in force.**

√ Further, **TDS u/s. 195 is also required to be withheld at the time of making provision on accrual basis** the payee is identified and amount is ascertainable.

9) FORM 15CA & FORM 15CB

As per section 195 of the Income Tax Act, tax is required to be deducted for any sum which is taxable under the Income Tax Act. So when a person desires to make any payment or remit any money to non-resident, the bank will require to check whether the tax was paid or not. If not paid; it will be checked if it is certified by the Chartered accountant or the Assessing Officer. But there are at least 33 types of foreign remittance where assessee do not require any submission of Form 15CA or Form 15CB.

Analysis:- A person responsible for making a payment to a non-resident or to a foreign company has to provide the following details -

i. When payment made is below Rs 5 lakh

For such payments information is required in Part A of Form 15CA

ii. When payment made exceeds Rs 5 lakh

1. Part B of Form 15CA has to be provided
2. Certificate in Form 15CB from an authorized CA.
3. Part C of Form 15CA

iii. When the payment made is not chargeable to tax under IT Act

1. Part D of Form 15CA

IV. COMPANY LAW

DEFINITION OF SMALL COMPANY AND BENEFITS UNDER COMPANIES ACT 2013

The limits of paid up capital and turnover had been raised from the existing limits for small company :

1. Raise in threshold limit of Paid up capital from existing Rs. 50 lakh to Rs. 2 crore rupees and
2. Raise in Annual turnover from existing Rs. 2 crore to Rs. 20 crore rupees.

Accordingly the definition of Small Company shall be read as follows

Section 2(85) small company” means a company, other than a public company, –

- (i) paid-up share capital of which does not exceed Two Crore rupees
- (ii) turnover of which does not exceed Rs. 20 Crore

Provided that nothing in this clause shall apply to—

- (A) a holding company or a subsidiary company;
- (B) a company registered under section 8; or
- (C) a company or body corporate governed by any special Act;

So, It simply means that all those companies which shall be having the paid up capital less than 2 Crores or the turnover less than 20 crore, shall be terms as the Small Companies.

Benefits/ Privileges for small companies

1. Holding of Board Meetings:

Every company is required to hold 4 Board Meeting in a year. While a Small Company can hold only 2 Board meetings in a calendar year i.e. one board meeting in each half of the calendar year. However the gap between the two board meetings should not be less than 90 days. So in case of Small Companies, the Board is not required to conduct 4 meetings in a year as it is applicable in case of companies other than small and OPC companies

2. Signing of an Annual Return:

In case of Small Company, the Annual Return can be signed by Company Secretary alone or if there is no CS, by a single Director only.

3. Cash Flow Statements not required

A Small company does not require to maintain a Cash flow statement as a part of its Financial Statements. So while filing of Balance Sheet with Registrar of Companies, companies shall not be required to attach the CASH Flow Statements along with the Financial Statements

4. Abridged Director Report and Annual Return

For small companies, the format of director report is not vast rather an abridged Director Report shall also be sufficient. The format has already been prescribed by the Ministry for abridged Director Reports for Small Companies and One Persons Companies. Annual return form number MGT-7A is applicable from 31.3.2021.

Please Note That Matters to be included in Board's Report mention in Rule -8 of [companies \(Accounts\) Rules, 2014](#) not apply for small company.

5. Fast Track Merger Process

The merger process between small companies is less cumbersome and less expensive and hence, on a fast track basis as compared to the other one

6. No Auditor Retire By Rotation

Every Private Limited company having a capital more than Rs. 20 crore is required to rotate its auditor after a term of 5 years. But being a small company, having capital less than 20 crore, shall never be required to rotate its auditor according to Section 139(2) of Companies Act, 2013

Please Note that Section 139(2) of the Company Act 2013, which mandates the rotation of auditors every 5 years (individual auditors) and every 10 years (firm of auditors).

7. Need not to have Internal Financial Control Report

A Small Company does not require to report in its Audit Report regarding Internal Financial controls and the operating effectiveness of the company.

8. Lesser Fees

Fees for filings and other formalities u/s. 403 of the Companies Act, 2013 is also comparatively lower for the small companies.

9. Lesser Penalties

Lesser penalties for Small Companies under Section 446B of the Companies Act, 2013: - If a small company fails to comply with the provisions of section 92(5),

section 117(2) or section 137(3), such company and officer in default of such company shall be liable to a penalty which shall not be more than one half of the penalty specified in such sections.

10. No Certification by the Professional on E Forms

The companies are required to file the various E Forms pertaining to filing of Balance Sheets, Annual Returns, and various other event based e forms. If we look from the corporate point of view, the companies shall not be required to get the E Forms being certified from the Practicing Professionals.

V. GST

SHORT ANALYSIS ON E-WAY BILL REQUIREMENT

- **INTER STATE-**

1. If product is exempt than not required Eway Bill
2. If Taxable Product- Value above Rs. 50,000/- and Distance Exceed \geq 50KM - Part A & Part B both of Eway Bill Required
3. If Taxable Product- Value above Rs. 50,000/- and Distance $<$ 50KM - Part A only of Eway Bill Required
4. JOB Work/Handicraft Goods and Distance Exceed \geq 50KM - Part A & Part B both of Eway Bill Required
5. JOB Work/Handicraft Goods and Distance Exceed $<$ 50KM - Part A only of Eway Bill Required

- **INTRA STATE-**

1. If product is exempt than not required

2. **Intra State- Any Product and Any Distance- if Value less than Rs. 50,000/-.** Not Required Eway Bill
3. **Inter City- Any Product and Any Distance- Not Required Eway Bill**
4. **JOB WORK of Yarn, Fabrics, Hank and Garments- INTRA STATE- Any Amount and Any Distance- Not Required Eway Bill**
5. **Not Same City- Intra State- Value above Rs. 50,000/- Any Distance- Eway Required**

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