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CHART OF FORTHCOMING DUE DATES: -

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

Sr No.	Particulars	Due Date
1.	GSTR-1 (Monthly)	11.11.21
2.	GSTR-1 (QRMP)	13.11.21
2.	GSTR-3B	20.11.21

b) Others due dates falling in the month of November, 2021

Sr No.	Particulars	Due Date
1	TDS Payment	07.11.2021
2	ECB-2	07.11.2021
3	PF Payment	15.11.2021

I. OVERVIEW:

o DISQUALIFIED FROM DIRECTORSHIP BY ROC UNDER SECTION 164(2)(A)

The Registrar of Companies having different jurisdictions since 2017, then in 2018 and again in 2019 has disqualified many Directors under 'Section 164(2)(a)' of the **Companies Act, 2013**.

WHAT IS SECTION 164(2)(a) OF THE COMPANIES ACT, 2013?

In accordance with the Section 164(2)(a) of the Companies Act, 2013; *"no person who is or has been a director of a Company which has not filed financial statements or annual returns for any continuous period of three financial years shall be eligible to be re-appointed as a director of that Company or appointed in other Company for a period of five years from the date on which the said Company fails to do so."*

WHAT HAPPENS WHEN A PERSON IS DISQUALIFIED UNDER SECTION 164(2)(a)?

In simple words, any person who has failed to file financial statements i.e. eForm AOC-4 or annual returns i.e. eForm MGT-7 for a continuous period of three financial years shall not be eligible for being appointed as a Director of that particular Company or any other Company for a period of next five years.

For instance, the list of disqualified Directors in the year 2017 that was published on the Ministry portal, were the Directors disqualified from 2016 to 2020 for non-filing of financial statements or annual returns for the F.Y. 2013-14, 2014-15 and 2015-16. Similarly, the list published in the year 2018 were of the Directors which were disqualified from 2017-2021 for non-filing for the F.Y. 2014-15, 2015-16 and 2016-17.

WHAT IS THE SOLUTION OF THIS PROBLEM?

On disqualification, the Directors disqualified under Section 164(2)(a) of the Companies Act, 2013 has only two following options:

1. Wait for five years for ROC to remove the disqualification
2. Move a write petition to Hon'ble High Court having jurisdiction for removal of disqualification

To conclude, on removal of Director disqualification, the status of the DIN on "Enquire DIN Status" tab on MCA portal, shall change from "Disqualified by ROC u/s 164(2)(a) to "Active" and thereby, now the concerned individual can be the Director of any Company without any legal hurdle.

II. INCOME TAX ACT

WHAT IS TDS AND TCS IN INCOME TAX ?

TAX DEDUCTED AT SOURCE (TDS):

TDS is known as **Tax Deducted at Source**, it is the income tax which is deducted from the payment made at the time of making some specified payments like rent, professional fees, commission, interest, salary etc. Normally whenever any individual earns income it shall be necessary to pay tax on the same income but in case of TDS government makes sure that the income is reduced in advance from the payment which is going to be made by an individual. The receiver who will receive the income will get the net amount which is after deducting TDS. The receiver can add the gross amount to his income and the TDS amount will get adjusted against his liability of final tax.

PERIOD FOR TDS RETURN:

Return for Tax Deducted at Source is mandatory for filing who is deducting tax. TDS return shall be filed every quarterly and also numerous details shall be mentioned like TAN, type of payment, deducted TDS amount, PAN of deductee etc. There are many forms which is specified for returns which depends upon different type of Deduction of TDS. Different types of forms are as follows:

- Form 24Q which is for TDS in salary and due date for filing this return is Quarter 1 is 31st July, for Quarter 2 is 31st October, for Quarter 3 is 31st January and for Quarter 4 is 31st
- Form 27Q which is for TDS on all payments made to Non-Residents but except salaries and due date for filing this return is Quarter 1 is 31st July, for Quarter 2 is 31st October, for Quarter 3 is 31st January and for Quarter 4 is 31st
- Form 26QB which is for TDS on sale of property and due date for filing this return is 30 days from the end of the month in which TDS is deducted.
- Form 26QC which is for TDS on rent and due date for filing this return is 30 days from the end of the month in which TDS is deducted.

TAX COLLECTED AT SOURCE (TCS):

TCS is known as Tax Collected at Source which is the tax which is collected by seller from buyer at the time of sale. Section 206C of the Income Tax Act, 1961 controls the goods on which seller has to collect the tax from all the purchases.

LATEST UPDATE FOR TCS:

SECTION 206CCA:

New Section has been inserted for collecting a higher rate of TCS for those person who is not filing tax return from last two years, this was decided in Union Budget 2021.

Here tax is required to be collected at source under the provisions of Chapter XVII-BB, on any sum or amount received by a person (hereafter referred to as collectee) from a specified person, the tax shall be collected at the higher of the following two rates, namely: –

- i) at twice the rate specified in the relevant provision of the Act; or
 - ii) at 5 per cent
- “specified person” here means a person who has not filed the returns of income for both of the two AY relevant to the two FY immediately prior to the FY in which tax is required to be collected, for which the time limit of filing return of income under sub-section (1) of section 139 has expired; and the aggregate of TDS and TCS in his case is rupees fifty thousand or more in each of these two previous years

SECTION 206 (1H):

This is a new section which was launched in October, 2020 for collecting TCS from the buyers of goods who is making a payment of amount exceeding Rs 50 Lakhs which shall be towards the sale consideration in the current Financial Year. The TCS shall be collected by entities which is having more than Rs 10 Crore of turnover in the previous Financial Year.

The TCS is payable on the amount of receipt which is greater than 50 Lakhs and received after 1st. Oct. 2020. The rate of TCS is 0.1%

TCS PAYMENTS AND RETURNS:

- All the sums which is collected by an office of the Government shall be deposited on the same day of when it was collected.
- The seller has to deposit the amount of TCS in Challan 281 within 7 days from the last day of the month in which the tax has to be collected.
- If the person who is collecting the TCS, the tax collector is responsible for collecting the tax and he has to deposit the same amount to the government who is not collecting the tax or after he collects he doesn't pay the amount to the government as per the due dates which are mentioned above, then he will be liable to pat 1% interest per month.
- Tax Collector has to quarterly submit the return of TCS that is Form 27EQ which is related to the tax which is collected by tax collector in a particular quarter.

III. COMPANY LAW

LOAN GIVEN BY HOLDING COMPANY TO SUBSIDIARY COMPANY

Section 185(3) of **companies' act, 2013** states about **exemptions** from complying of sub section 1 and 2 of section 185 subject to conditions:

- ◆ Any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or
- ◆ **Conditions:** Loan must be utilised by the subsidiary Company for its principal business activities.

So, holding companies are not required to pass special resolution in general meeting for granting of loans to its wholly owned subsidiaries if above conditions are fulfilled.

REQUIREMENTS UNDER SECTION 186 OF COMPANIES ACT, 2013: -

1. APPROVAL OF BOARD AND PUBLIC FINANCIAL INSTITUTION: -

Pursuant to provisions of Section 186(5) of the Act, **every Company shall take consent of all the directors present at the board meeting before making any investment, giving loans and guarantee and providing security.** In case of Company has already taken loan etc., from any Public Financial Institutions, then it is mandatory to take prior approval from such Public Financial Institution.

Provided that prior approval of Public Financial Institution shall not be required where the aggregate loan, investment, guarantee and security proposed is within the limits as specified under section 186(2) and there is no default in repayment of loan or interest thereon to the Public Financials Institution as per the terms and conditions placed thereon.

2. APPROVAL FROM MEMBERS: -

Section 186(3), empowers a Company to give loan, guarantee or provide any security or acquisition beyond the limit but subject to prior approval of members by a special resolution passed at a general meeting.

Provided that where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of this sub-section shall not apply

DISCLOSURE OF PARTICULARS OF LOAN, GUARANTEE GIVEN AND SECURITY PROVIDED: -

Pursuant to provisions of Section 186(4) of the Act, the Company must disclose in the Financial Statement the full particulars of the loan given, investment made, guarantee given and security provided and utilization of the same.

The company shall disclose to the members in the financial statement the full particulars of the loans given, investment made or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilized by the recipient of the loan or guarantee or security. Such disclosure has to be in the Board's Report also.

REGISTER TO BE MAINTAINED: -

Section 186(10) of the Act mandates every Company to maintain a register which shall contain particulars of loan or guarantee given or security provided or investment made. This register shall be opened for inspection and copies may be furnished to members who demand the same on payment of prescribed fee.

INTEREST ON LOAN: -

No company can give loans at a rate of interest lower than the prevailing yield of one year, three years, five years or ten-years Government Security closest to the tenor of the loan.

TREATMENT OF LOAN AS DEPOSITS UNDER ACCEPTANCE OF DEPOSITS RULES

As per definition of deposits under rule 2(c) "deposit" includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include -

(vi) any amount received by a company from any other company;

As per **Companies (Acceptance of Deposits) Amendment Rules, 2019 Dated 22nd January 2019** the companies are required to file return of deposit or **particulars of transaction not considered as deposit** or both in Form DPT-3 on or before the 30th day of June, of every year, with the Registrar along with the fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and furnish the information contained therein as on the 31st day of March of that year duly audited by the auditor of the company.

IV. GST

GST FAKE INVOICES, ITC FRAUDS AND ITS CONSEQUENCES

WHAT IS A FAKE INVOICE?

Though, Fake Invoice is not defined under Goods & Services Tax Act, 2017. But in general, Fake Invoice refers to an Invoice which does not comply with the provisions of the Act and Rules. In simple terms, When a registered person issues a Tax Invoice without actual supply of goods or services or payment of GST then such invoice is presumed to be 'Fake Invoice'. As a matter of fact, the GST charged on those invoices is neither paid, nor intended to be paid. The fake invoice frauds are largely carried out by using a network of firms set up to usurp **Input Tax Credit** illegally.

The act has provided certain provisions which need to be satisfied by the Supplier to claim Input Tax Credit. **Eligibility to claim ITC U/s 16(2) of CGST Act, 2017** .

1. Possession of Tax Invoice / Debit or Credit Note / Supplementary Invoice issued by a supplier.
2. The said goods/services have been received.
3. Returns have been filed.
4. The tax charged has been paid to the government by the supplier.
5. Matching of Invoices and Reversal.

When registered persons claim ITC of the invoices which do not satisfy the eligibility criteria as per the Act, then these are considered as Fake Invoices.

The whole process of Fake Invoicing begins with the making of Bogus/Shell companies which are generally created in the names of peons, drivers or other workers. These companies are eventually closed within limited period of time without payment of actual tax liability.

TYPES OF FAKE INVOICE CASES IN GST

1. Fake & Bogus Invoices
2. Fraudulent Refund on exports, based upon fake invoices.
3. Fraudulent Refund of accumulated ITC without supply of goods & service.

WHY DO COMPANIES GET INVOLVED IN FAKE INVOICING?

1. For bank overdraft facility or to overcome NPA status.
2. To Increase turnover for higher valuation to investors.
3. Furnishing false information or falsification of financial records or fake accounts & documents with intent to evade payment of Income tax.
4. Siphoning of money by owners.
5. To avail export refunds and other ITC benefits.
6. Encashment of accumulated ITC.

HOW DETECTION OF FAKE INVOICES IS DONE BY THE DEPARTMENT?

- Multiple registrations for single **PAN** and common registration details, or Incorrect/fake address given on **GST portal** .
- Report of Non-filers of GSTR-1 & GSTR-3B, and persons who purchased from non filers.
- Report of Non-filers of GSTR-3B who only filed GSTR-1.
- Report of mismatch in HSN wise Sale & Purchase, mismatch between the volume of goods transacted in GSTR -1 and E-Way Bill generated.
- High Value Transaction by new registered persons.
- Substantial payment of tax through ITC only.
- Report of Export refund cases who are suspected as bogus.
- HSN Report of Taxpayers claiming ITC of those goods or services which not connected to business.

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Thanking you,

Yours faithfully,

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