

NewsBites

Twenty-Sixth Edition

Greetings!

We are delighted to present our news bite for the month of May 2020. This News Bites intends to give an overview of what is happening in the sphere of direct and indirect taxation, audit and assurance, GST and Secretarial Compliances in the industry.

We hope you find this useful. For any feedback you can reach to us at info@sanca.in.

Best Regards,
S A N & CO.
Chartered Accountants

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Measures to boost MSMEs

Collateral-free Automatic Loans for Businesses, including MSMEs

Government has allowed Banks and Financial Institutions to grant a Collateral free automatic loans to Businesses/MSMEs have been badly hit due to COVID19.

A. Emergency Credit Line to Businesses/MSMEs from Banks and NBFCs up to 20% of entire outstanding credit as on 29.2.2020

- Borrowers with up to Rs. 25 crore outstanding and Rs. 100 crore turnover eligible
- Loans to have 4 year tenor with moratorium of 12 months on Principal repayment
- Interest to be capped
- 100% credit guarantee cover to Banks and NBFCs on principal and interest from Government
- Scheme can be availed till 31st Oct 2020
- No guarantee fee, no fresh collateral

B. Subordinate debt for NPA or stressed MSME: Promoters of the NPA or stressed MSME will be given subordinate debt by banks, which will then be infused by promoter as equity in the Unit.

C. Equity Infusion through Fund of Funds (FoF):

Fund of funds with corpus of Rs. 10,000 crores will be set up for MSMEs who face severe shortage of

- Equity funding will be done for MSMEs with growth potential and viability.
- FOF will be operated through a Mother Fund and few daughter funds.
- Help in expanding size and capacity of MSMEs and also encourage them to get listed on main board of Stock Exchanges.

Global tenders to be disallowed up to Rs. 200 crores

A. Indian MSMEs and other companies have often faced unfair competition from foreign companies.

B. Therefore, Global tenders will be disallowed in Government procurement tenders up to Rs 200 crores.

C. This will also help MSMEs to increase their business.

Other interventions for MSMEs

A. MSMEs currently face problems of marketing and liquidity due to COVID. Therefore e-market linkage for MSMEs to be promoted to act as a replacement for trade fairs and exhibitions.

B. Fintech will be used to enhance transaction based lending using the data generated by the e-marketplace.

C. Government has been continuously monitoring settlement of dues to MSME vendors from Government and Central Public Sector Undertakings.

D. MSME receivables from Government and CPSEs to be released in 45 days

Existing and Revised Definition of MSMEs

Existing MSME Classification			
Criteria: Investment in Plant & Machinery or Equipment			
Classification	Micro	Small	Medium
Manufacturing Enterprises	Investment < Rs. 25 Lakhs	Investment < Rs. 5 crores	Investment < Rs. 10 crores
Service Enterprise	Investment < Rs. 10 Lakhs	Investment < Rs. 2 crores	Investment < Rs. 5 crores

Revised MSME Classification			
Composite Criteria: Investment and Annual Turnover			
Classification	Micro	Small	Medium
Manufacturing and Services Enterprises	Investment < Rs. 1 crores and Turnover < Rs. 5 Crores	Investment < Rs. 10 crores and Turnover < Rs. 50 Crores	Investment < Rs. 20 crores and Turnover < Rs. 100 Crores
Service Enterprise	Investment < Rs. 10 Lakhs	Investment < Rs. 2 crores	Investment < Rs. 5 crores

EPF Support for Business & Workers for 3 more months

- A. Under Pradhan Mantri Garib Kalyan Package (PMGKP), an enterprise with less than 100 employees and whose 90% of employees draw less than Rs. 15,000 per month, in such case payment of 12% of employer and 12% employee contributions into EPF accounts for March, April and May, 2020 shall be made by Government of India. This support will be extended for another 3 months from June, July and August 2020 in order to provide more take home salary to employees and also to give relief to employees in payment of Provident Fund dues.
- B. Further for enterprises not falling under above criteria, statutory PF contribution of both employer and employee will be **reduced to 10% each from existing 12% each** for all establishments covered by EPFO for next 3 months.
- C. Central Public Sector Enterprises and State Public Sector Units will however continue to contribute 12% as employer contribution.



Income Tax

Relaxations Relating to Income Tax Due to Covid 19

A. The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance 2020 has extended the following due dates

- Last date for furnishing original or revised Return of income for asst year 2019-20 has been extended to 30 June 2020 from 31 March 2020.
- Due date of furnishing Return of income for all assesseees for asst year 2020-21 has been extended to 30 November 2020 in place of 31 July and 31 October 2020.
- Due date of furnishing Tax audit report or other audit report extended to 31 October 2020 from 30 September 2020.
- Due date of completion of assessment which were expiring on 30 September 2020 has been extended to 31 December 2020.
- Due date for completion of assessment which were expiring on 31 March 2021 has been extended to 30 September 2021.
- Last date for linking PAN with Aadhaar-PAN has been extended to 30 June 2020 from 31 March 2020.
- The date for making various investment/deposit/payment or such other action, by whatever name called, for claiming deduction under Chapter-VIA-B of the Income tax Act (i.e. sec 80C to sec 80GGC) which includes Section 80C (LIC, PPF, NSC etc.), 80D (Mediclaim), 80G (Donations), etc. which were required to be executed from 20 March 2020 to 29 June 2020 has been extended to 30th June, 2020. Hence the investment/payment can be made up to 30.06.2020 for claiming the deduction under these sections for FY 2019-20.

- The date for making investment, deposit, payment, acquisition, construction, purchase or such other action by whatever name called for claiming roll over benefit/deduction in respect of capital gains under sections 54 to 54GB of the Income tax Act which were required to be executed from 20 March 2020 to 29 June 2020 has also been extended to 30th June 2020. Therefore, the investment/ construction/purchase made up to 30.06.2020 shall be eligible for claiming deduction from capital gains arising during FY 2019-20.
- Under Vivad se Vishwas Scheme, the date has been extended up to 31.12.2020. Hence, declaration and payment under the Scheme can be made up to 31.12.2020 without additional payment.

B. Relaxation has been provided with regard to for rate of TDS and TCS from 14 May 2020 to 31 March 2021

W.e.f. 14 May 2020 to 31 March 2021, the rates of TDS and TCS in the sections have been reduced to 75% of the prescribed rates. the relaxation provided applies most of the TDS and TCS cases other than TDS on salary and TDS on payments to non residents due to the Covid 19 Pandemic. Refer Press release dated 13 May 2020



COVID19

Tax Deduction at Source (TDS)

Following are the Frequently used Sections with old rates & new rates :-

Sr.No.	Section of the Income-tax Act	Nature of Payment	Existing Rate of TDS Upto 13/05/2020	Reduced rate from 14/05/2020 to 31/03/2021
1	193	Interest on Securities	10%	7.5%
2	194	Dividend	10%	7.5%
3	194A	Interest other than interest on securities	10%	7.5%
4	194C	Payment to Contractors and sub-contractors	1% (individual / HUF) 2% (others)	0.75% (individual / HUF) 1.5% (others)
5	194D	Insurance Commission	5%	3.75%
6	194DA	Payment in respect of life insurance policy	5%	3.75%
7	194J	Fee for Professional or Technical Services (FTS), Royalty, etc.	2% (FTS, certain royalties, call centre) 10% (others)	1.5% (FTS, certain royalties, call centre) 7.5% (others)

C. New Form 26AS to include real estate, share transactions

- Making income tax return processing and assessment simpler and more effective, the income tax department has revamped Form 26AS to an 'Annual Information Statement' to include real estate and share trading related transactions.
- Form 26AS is an annual consolidated credit statement issued by the income tax to help assessee cross-verify income earned, tax deducted at source (TDS) and tax deposited during a given financial year.
- The form will now contain comprehensive information relating specified financial transactions, payment of taxes, demand/ refund and pending/completed proceedings undertaken by a taxpayer in a particular financial year that has to be mentioned in the income tax returns (ITR).
- The move would simplify the ITR filing process as most of the related details would be fetched from this form. The taxman will also be able to verify details given in the ITR and process the return quickly.
- The income tax department said the new form, which was announced in the Budget, will come into effect from June 1. Taxpayers would then be able to access the consolidated statement from the income tax department's e-filing portal using their PAN card.

Goods & Services Tax

Eligibility of ITC on COVID 19 related Expenses – Potential Bone of Contention between Assessee & Department

COVID 19 has taken the entire world at storm. Declaration of COVID as pandemic by WHO has heightened the attention of the world on the serious implication of the disease.

The pandemic has given rise to various new regulations/advisories issued by various governments as the use of masks, sanitizers etc. and practicing of social distancing has become the new 'normal'.

A. Regulations post COVID-19

In India also, both Central and State Governments along with various agencies has brought about various regulations with respect to functioning of the businesses. Some of the major regulations are discussed below:

- Union Government has invoked its powers under **Epidemic Diseases Act, 1897** (hereinafter referred to as -EDA) and **Disaster Management Act 2005** (hereinafter referred to as -DMA) and have been taking various measures timely and proactively to contain the spread of virus.
- Ministry of Home Affairs (MHA) have been issuing various orders with respect to activities permitted. The orders have specific mention that States/UT Governments cannot dilute these guidelines, though may impose more stringent conditions. The most recent order as on the date of publication of the article was dated 30th May 2020.

Some of the major requirements are;

- a) Use of Face Masks by all employees.
 - b) Installation of Thermal Scanners at the entry of office
 - c) Frequent sanitization of the workplace, particularly of the frequently touched surfaces.
 - d) Ensure regular supply of hand sanitisers, soap and running water in the washrooms.
 - e) Ensuring social distancing at workplaces.
 - f) Special Transportation facilities for workers coming from outside to reduce dependency on public transport [Present in earlier guidelines dated 15th April 2020, not mentioned in revised guidelines dated 30th May 2020].
 - g) Medical Insurance of workers [Present in earlier guidelines dated 15th April 2020, not mentioned in revised guidelines dated 30th May 2020].
- Ministry of Health Affairs has issued guidelines on preventive measures to contain spread of COVID-19 in workplace settings on 18.05.2020. The guidelines are recommendatory in nature.
 - Ministry of Corporate affairs has also issued a notification dated 26th May 2020 whereby donations made to Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM-CARES Fund) form part of CSR activities.
 - In addition, different States may have also issued various guidelines with respect to functioning of workplaces post opening after Lockdown due to Covid-19.

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B. Whether the expenses related to the preventive measures eligible for ITC?

The above regulations require business to shell out money on various items like Sanitizers, Masks, Social distancing apps, Medical insurance of workers, Buses for transportation, disinfection of office spaces etc.

It is thus imperative to understand whether the registered person under GST can claim ITC on above expenses.

Sec 16(1) of CGST Act states that “every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person”

The Hon'ble SC in case of **Commissioner of Income-Tax, Kerala v. Malayalam Plantations Limited** [1964 (4) TMI 9 – Supreme Court] has held that the expression ‘for the purpose of the business’ may include not only the day to day running of a business but also the rationalization of its administration and modernization of its machinery. It may include measure for the preservation of the business and for the protection of its assets and property from expropriation, coercive process or assertion of hostile titles. It may also comprehend payment of statutory dues and taxes imposed as a pre-condition to commence or for the carrying on of a business. It may also bring in many other acts incidental to the carrying on of a business.

From the above Judgment, it can be inferred that expenses incurred by a taxable person to run the business should be termed as expenditure incurred

in the course of business. To protect employees from the spread of COVID 19, employer incurs the subject expense so that business can run smoothly. Since all the above expenses are used in the course or furtherance of business, the above expenses are eligible as per section 16(1) subject to section 17(5).

As per Sec 17(5)(b), ITC is not available on supply of following goods or services viz;

- Food and beverages,
- Outdoor catering,
- Beauty treatment,
- Health services,
- Cosmetic and plastic surgery,
- Leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein,
- Life insurance and health insurance

However, input tax credit shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply.

Further, as per proviso, input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

Thus, the ITC can be claimed on the supply of goods or services specified in section 17(5)(b) if these specified expenses are mandated as per any law for the time being in force.

Goods & Services Tax

The above table illustrates such cases;

Sr.No.	Nature of Expenses	Whether Ineligible as per Sec 17(5)	Eligibility if mandated by law	Whether mandated by Ministry of Home Affairs guidelines
1	Masks, PPE Kits for Employees	Eligible	Yes	Yes
2	Sanitizers	Eligible	Yes	Yes
3	Sanitization services for Office/ Factory Premises	Eligible	Yes	Yes
4	Medical Insurance of Employees	Ineligible	Yes/ No	Mentioned in SOP of social distancing in MHA Order dated 15.04.2020. Not mentioned in revised guidelines issued as on 30.05.2020
5	Social distancing apps	Eligible	Yes	Yes
6	Renting of Motor Vehicles more than 13 passengers including driver for transportation of employees	Eligible	Yes/ No	Mentioned in SOP of social distancing in MHA Order dated 15.04.2020. Not mentioned in revised guidelines issued as on 30.05.2020
7	Renting of Motor Vehicles upto 13 passengers including driver for transportation of employees	Ineligible	Yes/ No	Mentioned in SOP of social distancing in MHA Order dated 15.04.2020. Not clearly mentioned in revised guidelines issued as on 30.05.2020. However, the guidelines require staggered working hours to maintain social distancing
8	Purchase of ceiling fans / renovation of central Air conditioning unit to make it Covid compliant	Eligible	No	No
9	Life Insurance of employees	Ineligible	No	No mention

It is further recommended that the invoices of all the above expenditures shall be in the name of the registered entity with proper mention of its GSTIN so that there is no cause of any potential dispute. Further it is also recommended that a separate ledger may be opened in books of accounts to book such expenses.

Furthermore, these expenses should not be considered for personal consumption as per section 17(5)(g) as these expenses are incurred due to obligation casted under law for the time being in force.



C. Donations / Supply of free goods due to COVID-19

In this era of pandemic various organizations are coming forward to help the society and undertake various welfare measures. The question which arises whether such expenditure may be eligible for ITC.

In this regard, it is important to note section 17(5)(h) states that ITC cannot be availed on goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.

We give below the following scenarios for donations made by corporates and their treatment under GST

Sr. No.	Description of Donation	Eligibility Test as per Sec 16(1) of CGST	Eligibility Test as per Sec 17(5) (h) of CGST	ITC may be Claimed or Not?
1	Provision of Food to poor / Buses for Migrant labourers/ Shelters for Underprivileged etc	It may be treated for the purpose of business if it is part of CSR as per Schedule VII to Companies Act, 2013	If it is a part of CSR than, it may not be deemed as free goods	ITC may be claimed
2	Donation to PM CARES Fund	It may be treated for the purpose of business if it is part of CSR as per Schedule VII to Companies Act, 2013	It is a money transaction so not applicable	Not within Purview of GST
3	Sanitization of Colonies of Employees	Business Expenditure as undertaken for Employees	Sec 17(5)(h) refers to goods and this being services thus not applicable	ITC may be claimed
4	Donation to any NGO etc.	It may be treated for the purpose of business if it is part of CSR as per Schedule VII to Companies Act, 2013	It is a money transaction so not applicable	Not within Purview of GST



The The Companies Act, 2013

Period/Days of Extension for Names Reserved and Resubmission of Forms

Ministry of Corporate Affairs has further allowed additional period on following secretarial activities:

- A. Name reservation, for incorporation of new company or LLP or in case of change of name of existing LLP, expiring between 15th March, 2020 to 31st May, 2020 will be given additional 20 days after May 31, 2020.
- B. Any SRN expiring between 15th March, 2020 to 31st May, 2020 will be given additional 15 days after May 31, 2020.
- C. Name reservation, for change of name of existing company, expiring between 15th March, 2020 to 31st May, 2020 will be given additional 60 days after May 31, 2020.

The Insolvency and Bankruptcy Code

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 is brought into effect from June 05, 2020 to further amend the Insolvency and Bankruptcy Code, 2016.

Further considering the Covid 19 situation, following provision has been inserted after Section 10:

“No new application for initiation of corporate insolvency resolution process shall be filled, for any default arising on or after 25th March, 2020 for a period of six months or such further period as may be notified.

Provided that no application shall ever be filled for initiation of corporate insolvency resolution process for the said default occurring during the said period.”

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