



news flash

March 2020



NEWSFLASH – THE IMPACT OF COVID-19 ON LEGAL, TAX AND EMPLOYMENT IN INDIA

Since the last 10 days, various Government agencies and ministries have been making daily announcements on a number of issues. In this newsflash, the ALMT corporate, tax and employment team have put together a snapshot of some of the important measures, relaxations and clarifications that would affect businesses in India:

PART A – The Ministry of Corporate Affairs (“MCA”) has issued circulars stating:

1. The requirement of physical presence of majority directors in a board meeting for certain matters, such as approval of financial statements, board report, restructuring etc. is dispensed with till 30th June 2020;
2. All companies and limited liability partnerships (“LLPs”) have been requested to voluntarily file the Form CAR (Companies Affirmation of Readiness Towards COVID-19) (“**Form CAR**”) to show their preparedness for fighting against COVID-19. No penalty will be levied for non-filing of Form CAR.
3. Spending for COVID-19 out of the corporate social responsibility (“CSR”) fund of companies will be considered a valid CSR activity under the Companies Act. Funds may be spent for various activities related to COVID-19 such as promotion of healthcare, preventive healthcare, sanitation and disaster management.

PART B – Measures Announced by the Finance Minister

The Finance Minister, Ms. Nirmala Sitharaman in her address to the nation on 24th March 2020 announced certain additional reliefs and relaxations; some of the significant ones being summarised below:

1. Relaxation under the Companies Act

- No late filing fees will be applicable for delay in online compliance reporting till 30th September 2020;

- Every company is required to hold 4 board meetings in a year; with not more than 120 days' gap between 2 consecutive board meetings. The said timelines are relaxed for an additional 60 days for the next 2 quarters (i.e. until 30th September 2020);
- The Companies (Auditor's Report) Order, 2020, notified by the MCA in February 2020 was applicable for the financial year 2019-20. In a major relief to companies, the applicability of this requirement has been deferred by 1 year so the same is made applicable only from the next financial year (i.e. 2020-2021);
- Independent directors of the applicable category of public companies are required to hold at least one meeting in a year without the attendance of any non-independent director or management personnel of the company. The meeting, if not held during the year 2019-2020 will not be treated as a non-compliance;
- Newly incorporated companies were required to procure a commencement of business certificate within 6 months of incorporation. This timeline is extended by a further period of 6 months.
- Every company is required to have at least 1 resident director (i.e. the director should have stayed in India for at least 182 days in the financial year). Non fulfilment of this requirement will not be treated as violation of the Companies Act for the time being.
- Companies which have accepted deposits are required to create a deposit reserve of 20% of maturing deposits on or before 30th April 2020 every year. The deadline for creating a reserve for this year is extended till 30th June 2020.
- Similarly, companies who have issued redeemable debentures are required to create a debenture redemption reserve of 15% of debentures maturing in a year on or before 30th April 2020. This deadline has also been extended till 30th June 2020.

2. Relaxation under the Insolvency and Bankruptcy Code

In order to prevent triggering of the Insolvency and Bankruptcy Code (“**IBC**”) proceedings for medium and small enterprises, the default threshold limit for initiating IBC proceedings is increased from Rs. 100,000 to Rs. 10 million.

The MCA may consider suspending provisions of IBC that allow financial and operational creditors and corporate applicants to file insolvency proceedings against a company for a period of 6 months, if the present near emergency situation continues beyond 30th April 2020.

3. Relaxation under direct and indirect tax laws

Various deadlines that in the normal course will come between now and June for tax filings and other matters have been extended to the last week of June 2020. Where deadlines have not been extended for matters such as deposit of advance tax and withholding tax, penal provisions have been suspended till 30th June 2020 (though interest for delayed filing, albeit at a lower rate, in some cases will still apply).

4. Income Tax

- The last date for income tax returns for the financial year 2018-19 has been extended from 31st March, 2020 to 30th June, 2020.
- The last date for the Aadhaar-PAN linking date has been extended from 31st March, 2020 to 30th June, 2020.

- Due dates for various procedural matters such as issue of notices, intimation, filing of appeal, furnishing of return, statements, applications, etc and any compliance including investment in saving instruments under the Income Tax Act and various other laws where the time limit expires between 20th March 2020 to 29th June 2020 have been extended to 30th June 2020.
- For delayed payments of various taxes including advance tax, self-assessment tax, TDS, etc made between 20th March 2020 and 30th June 2020, a reduced interest rate at 9% instead of 12% to 18% per annum) will be charged for delay relating to this period.

5. GST/Indirect Tax

- The last date for filing various returns which are due in March, April and May 2020 will be extended to various dates for different regions within the last week of June, 2020 with similar waivers / reduction in interest, penalty and late payment charges for different categories of taxpayers.
- Similar extensions as for income tax on extension of time for procedural matters such as issue of notices, filing of appeals, etc till 30th June 2020.
- Clearing of goods through customs has been classified as an essential service and will operate 24x7

6. Labour and Employment matters:

Impact of Lockdown

As we all know, a complete lock down was ordered, initially until 31st March 2020 and now extended until 14th April 2020. This means that all commercial establishments have been mandated to remain closed and to have all their employees to work from home only. Exceptions have of course been granted to essential services as banks, ATMs, insurance, FinTech and related services; print and electronic media; IT and ITeS, including telecom, postal, internet and data services; supply chain and transport of essential services; e-commerce of essential goods like food and medical equipment; sale of food items including their transportation; hospital, pharmacies etc

Many of these services have been directed to work with the bare minimum of staff and encouraged to keep those in office to 5 or less that are critical for their operations or to support other critical operations. Some States have mandated companies who cater to these essential services to intimate the relevant labour commissioner if they are keeping their establishment open, the number of staff coming to office and the measures they are taking to maintain hygiene levels, etc.

Impact on employers

The Prime Minister in his address to the Nation last week encouraged employers not to terminate employees and not to reduce wages. Following this the Commissioner of Labour in Mumbai has issued a directive to all employers not to terminate or reduce the wages of any employee or worker, including casual or contract workers. The Government seems to recognise that businesses may have no option but to cut costs by reducing staff and salaries and this circular is an advisory that urges employers to refrain from these actions. The legal impact of this circular needs to be examined and businesses are advised to seek proper advice before initiating such steps.

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