Volume 74, October 2020

The Newsletter

TABLE OF CONTENTS

No Disallowance u/s 40A(3) r.w. Rule 6DD when Bank could not be Operated Because of Order of Attachment passed by ESI Department 2

Highlights of Companies (Amendment) Act, 2020 2

Change in rate of Custom Duty to be effected from the time when the notification was published in e-gazette 3

High Court does not have the power to interfere in any order of NCLT 4

SEBI strengthens role of Debenture Trustee 5

Writ jurisdiction cannot be invoked for retrenchment claims unless there are exceptional circumstances: Delhi High Court 5

Other Important Updates 6

FAQs related to Tax Collected at Source (“TCS”) on Sale of Goods beyond Rs. 50 Lakhs 7

FAQ’s on E-Invoice for Newsletter: Know about E-Invoice 12

Demystifying: Industrial Relations Code, 2020 14

No Disallowance u/s 40A(3) r.w. Rule 6DD when Bank could not be Operated because of Order of Attachment passed by ESI Department

In the case of **PCIT *v.* Sumukha Synthetics [2020] 119 taxmann.com 234 (Madras) dated 08.09.2020** certain payments were made by the assessee in cash towards conversion charges which were disallowed under section 40A(3) of the Income Tax Act, 1961 ("**IT Act**") by the department. Aggrieved by the same, the assessee preferred an appeal and after certain rounds of litigation the matter reached before the Hon'ble Madras High Court ("**HC**"). HC observed that in terms of the Section 40A(3) r.w. Rule 6DD, the assessee is prohibited from effecting cash payments over and above Rs. 20,000/- except where a payment is made in the case and circumstances specified in clauses (*a*) to (*l*) of Rule 6DD.

The HC observed that in the instant case, banking facility was available, but the bank account could not be operated by the very bank themselves because of an order of attachment passed by the ESI Department on the recipient. Thus, the recipient virtually came to the assessee with the begging bowl and requested to effect payment in cash. In such case the assessee is required to act as a prudent businessman, so that the job work is completed to his satisfaction with optimum quality. This has led the assessee to effect payments in cash. The argument of the revenue is on the ground that in order to avoid the attachment of the bank account the assessee has affected payment in cash. The HC said that what is relevant to be seen insofar as Section 40A(3) is the conduct of the assessee and not the payee. The question would be, did the assessee have a reasonable cause to effect payment in cash. If the assessee has a reasonable explanation, then the proviso under section 40A(3A) would stand attracted and the assessee would be entitled to relief. It may be true that merely because the payee is identifiable, it will automatically exonerate the assessee. The fact that the payee was identifiable and not a fictitious person would go to show the *bonafide*s of the transaction and this is what is required to be considered from the angle of a commercially expedient and prudent business house. Accordingly, the HC granted the relief to the assessee.

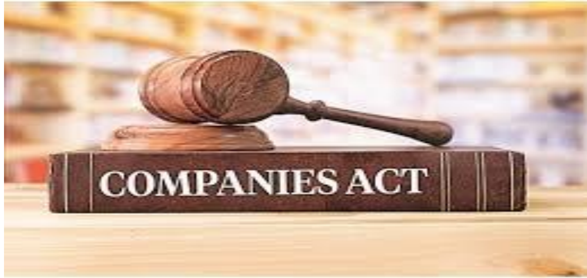
Highlights of Companies (Amendment) Act, 2020

The Ministry of Law and Justice in its gazette notification has published on 28.09.2020, the Companies (Amendment) Act, 2020 ("**Amendment Act**") which introduced certain modifications to the Companies Act, 2013 ("**Act**"). It shall come into force on such date as the Central Government may by notification in the Official Gazette may appoint. Key highlights from the Amendment Act are as follows:

Exclusion from listed companies: The Amendment Act has empowered Central Government in consultation with the SEBI, to exclude companies issuing specified classes of securities from the definition of "listed company".

Reduction in Penalties: The Amendment Act removes the penalty, imprisonment for certain offenses, and reduces the amount of fine payable in certain cases. However, under the Act, one person company, small company, start-up company or producer company, or by any of its officer in default, or any other person in respect of such company are

only liable to pay up to 50% of the penalty for certain offences.



Direct listing in foreign jurisdictions: A class of public companies will be allowed to list certain class of securities on stock exchanges in permissible foreign jurisdictions or such other jurisdictions, as may be provided by rules.

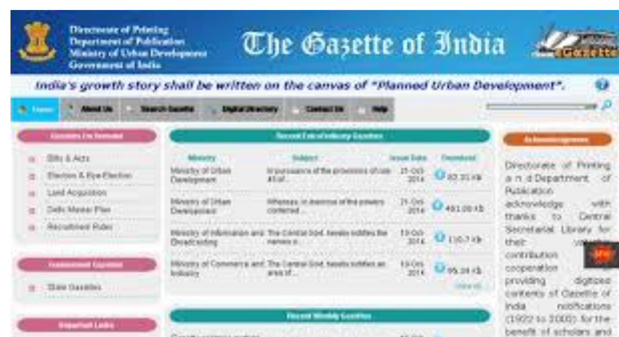
Exemptions from filing resolutions: The Act requires companies to file certain resolutions with the Registrar of Companies, which include resolutions of the Board of Directors of the Company to borrow money or grant loans. However, banking companies are exempt from filing resolutions passed to grant loans or to provide guarantees or security for a loan. This exemption has been extended to registered non-banking financial companies and housing finance companies.

Corporate Social Responsibility ("**CSR**")- Under the Act, companies with net worth, turnover or profits above a specified amount are required to constitute CSR committees and spend 2% of their average net profits in the three immediately preceding three financial years, towards its CSR policy. The Amendment Act exempts companies with a CSR liability up to Rs. 50 lakhs a year from setting up CSR committees and the companies which spend excess amount of their CSR obligation in a financial year can set off the excess amount towards their CSR obligations in subsequent financial years.

Change in rate of Custom Duty to be effected from the time when the notification was published in e-gazette

In the landmark case of ***Union of India vs. G S Chatha Rice Mills*** [2020 SCC Online SC 770], the Hon'ble Supreme Court held that the change in rate of custom duty will be applicable from the date and time when the same was issued in e-gazette and will not apply to bills of entry which were presented on the customs automated EDI system prior to it. After the Pulwama terrorist attack on 14.02.2019, the Union Government on 16.02.2019 issued Notification u/s 8 A of Customs Tariff Act, 1975 ("***CTA***") by which all goods originated in or exported from Pakistan were subjected to 200% customs duty. The precise time at which the notification (Notification 5/2019) was uploaded on the e-Gazette was 20:46:58 hours on 16.02.2019.

Some importers imported goods from Pakistan wherein self assessed bill of entries were filed before 20:46 hours of Customs duty was increased from Nil to 200 per cent for all imports from Pakistan w.e.f 16-12-2019 for which the Notification was uploaded at 20.46.58 hours of 16.02.2019.



The Customs authorities refused to release the goods on basis of the bills of entry which were self-assessed at the pre-existing rate and proceeded to recall them and re-assess the goods to the enhanced rate of duty applicable under notification 5/2019. As per Customs, it was submitted that the court must regardless of the time at which it was uploaded on

the e-Gazette treat it as being in existence with effect from midnight or 0000 hours on 16 February 2019. However, the Hon'ble Apex Court refused to accept the submission on the ground on the ground that the consequence of this interpretation would be to do violence to the language of Section 8A(1) of the CTA, and to disregard the meaning, intent and purpose underlying the adoption of provisions in the Customs Act in regard to the electronic filing of the bill of entry and the completion of self-assessment. The Hon'ble Court further held that with the change in the manner of publishing gazette notifications from analogue to digital, the precise time when the gazette is published in the electronic mode assumes significance. Since, Notification 5/2019 was uploaded in the e-gazette at a specific time and date, it cannot apply to bills of entry which were presented on the customs automated EDI system prior to it.

High Court does not have the power to interfere in any order of NCLT

The Division Bench of the Hon'ble High Court of Kerala comprising of Chief Justice S Manikumar and Justice Shaji P Chaly in **Sulochana Gupta and another v. RBG Enterprises Pvt Ltd and others**, has recently ruled that the Writ Jurisdiction of the High Court under Article 226 cannot be invoked to challenge an order passed by National Company Law Tribunal (hereinafter referred to as "**NCLT**").

The issue arose out of an order passed by the Ld. NCLT in July 2020 wherein the managing director of the company was restrained from convening any meeting or carrying out financial transactions upon a Compliant of Oppression and Mismanagement filed by the shareholders of the Company.

Being aggrieved of the order of the Ld. NCLT, the Managing Director of the Company invoked writ jurisdiction of the High Court under Article 226. The Ld. Single Judge of the Hon'ble High Court citing the practical difficulty due to ongoing pandemic permitted the petitioner to carry out financial transactions necessary for the day to day functioning of the Company.

The Order of the Ld. Single Judge was assailed before the division bench of the Hon'ble Kerala High Court wherein the Division bench observed that when none of the parties to the Petition is a state or an authority/instrumentality of the state or a private body discharging public function, the Writ petition under 226 is not maintainable. The court further went on to observe that the writ petition under Article 226 of the Constitution of India can only be filed for the enforcement of fundamental right or for any other purpose as envisaged under article 226 of the Constitution of India.

While setting aside the order of the Ld. Single Judge, the court further went on to hold that since there was an alternative remedy available in the form of an appeal before the National Company Law Appellate Tribunal, the Ld. Single judge should not have entertained the Writ Petition.

SEBI strengthens role of Debenture Trustee

In furtherance of the decision to strengthen the role of Debenture Trustee taken by SEBI at its meeting held on September 29, 2020, SEBI has enacted the (i) Securities and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 2020, (ii) Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2020 and (iii) Securities and Exchange Board of India (Issue and Listing of Debt Securities) (Amendment) Regulations, 2020.

The Debenture Trustee is now required to exercise due diligence to ensure that security on which charge is being created is free from any encumbrance or necessary consent from existing charge-holders has been obtained if the security has an existing charge and monitor asset cover on a quarterly basis.

The amendments mandate Debenture Trustee to obtain a certificate on half yearly basis from issuer's statutory auditor regarding value of receivables/ book debts.

Debenture trust deed is required to be structured in a manner that statutory/standard information pertaining to the debt issue is mentioned in Part A and details specific to the particular debt issue in Part B.

SEBI has also introduced new requirement of creation of 'recovery expense fund' which is to be created by the issuers for utilisation by the debenture trustee in the event of default or to take legal action to enforce the security. It is relevant to mention that the said fund is in addition to the existing requirement of creation of debenture redemption reserve and other funds as per Companies Act, 2013.

For the protection of interest of investors, several mandatory disclosures have been added in the format of information memorandum.

All listed entities are, now, required to disclose initiation and submit report of forensic audit along with comments of management. This disclosure is to be made without applying any test of materiality.

Writ jurisdiction cannot be invoked for retrenchment claims unless there are exceptional circumstances: Delhi High Court

The recent order passed by the Delhi High Court in **PTI Employees' Union v. PTI Limited** (Writ Petition (Civil) 10596/2018) comes as a sigh of relief for employers to an extent. In this case, the petitioners approached the court challenging the retrenchment of 297 employees by the respondent and sought quashing of the retrenchment notices issued to the impacted employees. The respondent, on the other hand, challenged the maintainability of the writ petition on the ground that the Industrial Disputes Act 1947 ("**IDA**") already contains a dispute resolution mechanism for industrial disputes. On the merits, the Respondent contented that there was no work for the retrenched workers for a very long time and that the establishment had been facing operational losses. These reasons were also communicated to the retrenched employees and all requisite severance payments were made to them. The court agreed with the respondent's contention, holding that the IDA is a complete code in itself when it comes to resolution of industrial disputes. Writ petitions in such matters should be entertained cautiously by courts and not unless there are exceptional circumstances established. This principle assumes more significance when there are disputed questions of fact.

Other Important Updates

Extension of Time for Holding Annual General Meeting for Financial Year 2019-20

Pursuant to the powers vested with the Registrar of Companies (“**ROC**”) under the third proviso to Section 96(1) of the Companies Act, 2013, all the concerned ROCs have issued extension orders dated 08/09/2020 for the Companies under their respective jurisdiction extending the time for holding an Annual General Meeting (“**AGM**”), other than the first AGM, for the financial year 2019-20. The said extension has been granted for a period of three months from the due date by which the AGM ought to have been held i.e. 30th September. Pursuant to the said order no fresh applications seeking extension for holding AGM is required to filed by the Company.

Read More: http://www.mca.gov.in/MinistryV2/extensionofagm.html

The Securities and Exchange Board of India has modified certain rules related to Mutual Fund Schemes.

SEBI vide circular no SEBI/HO/IMD/DF2/CIR/P/2020/175 dated 17/09/2020 modified rules related to mutual funds. As per the new rules which will be effective from 01/01/2021, SEBI has asked mutual funds to uniformly apply Net Asset Value (“**NAV**”) irrespective of the amount, across schemes upon realization of funds. The new circular requires that in addition to submitting the application before the cut off time, the money also has to reach the fund house on the same day to get that day’s NAV.

Read More: https://www.sebi.gov.in/legal/circulars/sep-2020/circular-on-mutual-funds_47574.html

Amendment in the Companies (Acceptance of Deposits) Rules, 2014 ("Deposits Rules") dated 08/09/2020 in Relation to Start ups

Rule 2(1) (c) of the Deposits Rules provides for the categories of amount which if accepted by a company will not be considered as deposits.

As per Rule 2(1)(c)(xvii), if a start-up has received from any person an amount of Rs. 25 Lakh or more, in a single tranche, by way of issue of convertible note (convertible into equity shares or repayable within a period not exceeding 5 years from the date of issue), then such amount is exempted from the definition of deposit.

Now through the said amendment, the term of conversion or repayment of convertible note has been extended to 10 years instead of earlier term of 5 years. Further, there is no limit on a private company which is a start-up to accept deposits from its members for a period of 10 years from the date of its incorporation. Earlier, the said period was 5 years from incorporation.

Read More: http://www.mca.gov.in/Ministry/pdf/Rule_08092020.pdf

System computed values of GSTR-1 Statement (Monthly filers), made available in Form GSTR-3B, as PDF statement on GST Portal

For the facilitation of the registered person, GST portal has started a functionality wherein the auto-populated Table 3 of GSTR-3B in PDF form can be downloaded and information from there can be used to file FORM GSTR-3B. The said PDF form will be generated on the basis of the details furnished by the registered person in their respective GSTR-1. This PDF will be available on

their GSTR-3B dashboard, from tax period of August 2020 onwards, containing the information of GSTR-1 filed by them on or after 4th September 2020. This facility is provided to all taxpayers registered as a Normal taxpayer, SEZ Developer, SEZ unit and casual taxpayer. This will make filing of their Form GSTR-3B easier for them. Currently, the said facility is available for those registered persons who are filing their GSTR-1 on monthly basis. However, the said facility will soon be available for the quarterly filers of GSTR-1 also.

Extension of timeline under erstwhile Indirect Tax laws:

Time limit for various activities like issuance of SCN, filing of reply and appeal etc. under Central Excise, Customs and Service Tax regime have been extended from 30 September 2020 to 31 December 2020.

Central Government Notifies Faceless Appeal Scheme 2020

The Central Government on 25th September 2020 has notified the Faceless Appeal Scheme 2020 vide Notification no. 76/2020 and 77/2020. For the purpose of this scheme, provisions for establishment of National Faceless Appeal Centre, Regional Faceless Appeal Centre and Appeal Units have been introduced. The allotment of appeals will be done through automated allocation system. Issuance of notices, hearings, and filing of written submissions will be done online and taxpayers are not required to appear before the aforesaid authorities, subject to some special circumstances where such taxpayers are allowed to attend hearings vide video conferencing.

Read More:
https://www.incometaxindia.gov.in/communications/notification/notification_77_2020.pdf

https://www.incometaxindia.gov.in/communications/notification/notification_76_2020.pdf

FAQs related to Tax Collected at Source ("TCS") on Sale of Goods beyond Rs. 50 Lakhs

In order to widen and deepen the tax net, the Finance Act 2020 has made an amendment by insertion of sub-section (1H) in Section 206C of the Income-tax Act, 1961 ("**Act**") which is effective from 1st October 2020.

In order to bring clarity regarding the amendments brought through sub-section (1H) of Section 206C by the Finance Act, 2020, we have attempted to address certain common queries by way of Frequently Asked Questions set out as under:

1. **How has Finance Act 2020 widened the tax net through insertion of sub-section (1H) of Section 206C?**

   Finance Act 2020 has widened and deepened the tax net by extending the provisions of TCS to the Seller of goods (as defined in FAQ 4) if he receives consideration for the sale of any goods of a value or aggregate of value exceeding Rs. 50 lakhs in any previous year from the Buyer of goods. The said provision is not

applicable on the sale of services. Hence, while determining the limit of Rs. 50 Lakh, consideration received on account of services will not be considered.

Goods which are specifically covered under sub-section (1), (1F) and (1G) of Section 206C shall not be covered under the newly inserted sub-section (1H) for TCS.

2. What is the applicable rate of TCS under Section 206C(1H) of the Act?

On receipt of consideration of a value exceeding Rs. 50 lakhs in a previous year from the buyer, the seller shall collect tax thereon @0.1% of the sale consideration exceeding Rs. 50 lakhs.
For e.g., if sale of goods to any buyer during the previous year is of Rs. 60 Lakh, then TCS would be collected on the sale value exceeding Rs. 50 lakhs i.e. Rs. 10 lakhs @0.1%. and not on the complete sale of Rs. 60 lakhs.
It is to be noted here that the above rate till 31.03.2021 has been reduced from 0.1% to 0.075% by The Taxation and Other Laws (Relaxation and amendment of certain provisions) Act, 2020.
However, if the buyer of the goods has not provided PAN/Aadhaar details to the seller, a higher rate shall be applicable as per Section 206CC read with proviso to Section 206C(1H).

3. What is the date of applicability of the provision of Section 206C(1H)?

The provision of sub-section (1H) is effective from 1st October 2020. This would mean that the provisions of this sub-section shall not apply on any sale consideration received before 1st October 2020. Consequently, it would apply on all sale consideration (including advance received for sale) received on or after 1st October 2020 even if sales were carried out before 1st October 2020. Meaning thereby even if invoice was issued to the buyer before 01.10.2020 but sale consideration for that invoice is received after 01.10.2020 then such consideration shall be taken into account for the purpose of determining TCS applicability u/s 206C(1H).

4. What is the definition of Seller as per Section 206C(1H)?

TCS shall be applicable on all sellers whose total sales or gross receipts or turnover from the business carried out exceeds Rs. 10 crores (Cr.) during the Financial Year (FY) immediately preceding the FY in which sale of goods is carried out. Therefore, it is applicable on all categories of person viz. Individual, HUF, Partnership Firm, LLP, Company, Trust, AOP, BOI, society, etc. whose total sales or turnover or gross receipts exceeds Rs. 10 Cr in previous FY. While calculating turnover of Rs. 10 Cr, sale of both goods and services will be considered.

However, TCS shall not be applicable on sellers specifically excluded by the Central Government through a notification in the Official Gazette. Currently, no such notification has been issued in this regard.

5. Whether GST component will be included while calculating the limit of Rs. 10 Cr. of total sales or gross receipts or turnover?

The terms 'total sales', 'turnover' or 'gross receipts' have not been defined in the Act. Same terminology has been used under Section 44AB of the Act for the purpose of determining tax audit limit, however it has not been defined there as well. As per the Guidance Note issued by Institute of Chartered Accountants of India ("ICAI") on tax audit u/s 44AB of the Act issued in 2014, if the excise duty and sale tax recovered are credited separately to the Excise Duty A/c or Sales Tax Account

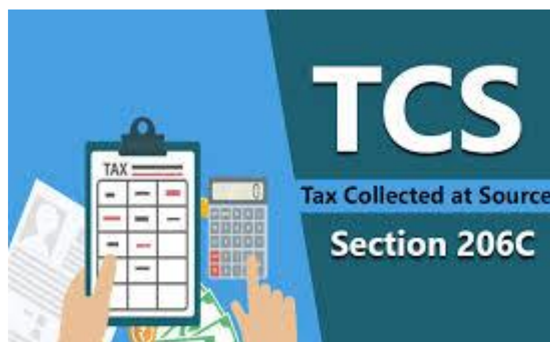
(being separate accounts) and payment to the authority is debited to the same account, they would not be included in the turnover. Also, reference to Section 145A of the Act would not be relevant for this purpose as scope of Section 145A is restricted only for the purpose of computing income chargeable under the head 'Profits and Gains of business or profession'.

Hence, where GST is being accounted separately in books of accounts and payment to the government is being debited in that account, it should not be included in the calculation of turnover for Section 206C(1H). In case, there is no separate accounting of GST in books, then it will form part of the turnover. However, the necessary clarification from CBDT in this regard is awaited.

6. Are the provisions of Section 206C (1H) applicable on all category of buyers of goods?

No, there are a few classes of persons which have been specifically excluded and, in whose case, TCS is not to be collected by the Seller. The same are as follows:

- Central Government, State Government, an embassy, a High Commission, legation, commission, consulate, and the trade representation of a foreign State.
- A local authority as defined in Section 10(20) of the Act.
- Person importing goods into India.
- Any person specified by the Central Government through a notification in the Official Gazette.
- A buyer who is liable to deduct tax at source ("**TDS**") of the Seller under any other provision of the Act and has deducted the same.



It is to be noted that public sector undertakings, government companies are not excluded from the scope of section and provisions of this sub-section would be applicable on them.

7. Whether TCS would be collected on Sale Value including GST or excluding GST?

As per the Guidelines issued by CBDT vide Circular No. 17 of 2020 dated 29.09.2020, *no adjustment on account of sales return, discount or indirect taxes including GST are required to be made for the collection of tax under sub-section (1H) of section 206C of the Act since collection is made with reference to receipt of amount of sale consideration.* Therefore, TCS shall be collected on the sale value including GST. For instance, if the value of goods mentioned in the Invoice is Rs. 100 and GST @18% has been charged on the same then TCS is to be collected on the total amount of Rs. 118 and not Rs. 100.

8. Whether GST will also be charged on the TCS amount along with Invoice Value?

No. The Central Board of Indirect Taxes & Customs ("**CBIC**") has clarified through the *Corrigendum to Circular No. 76/50/2018-GST dated 31st December, 2018 issued*

vide F.No. CBEC- 20/16/04/2018-GST- Reg dated 07.03.2019 the position of GST with respect to TCS collected under the Act that for the purpose of determination of value of supply under GST, Tax Collected at Source (TCS) under the provisions of the Income Tax Act, 1961 would not be included.

9. Whether the provision of Section 206C(1H) will apply where payment is being received from a third party other than the buyer of goods?

As per the provisions of the said section, seller needs to collect TCS from the buyer of goods. There is no such restriction that payment for such goods must also come from the buyer only. Hence in our view, in case of third party payment also, seller is liable to collect TCS from buyer in whose name sale invoice has been generated. Also, threshold of Rs. 50 Lakh needs to be determined for the buyer instead of payer or third party whose has made the payment on behalf of the buyer.

10. Whether sale consideration received prior to 01.10.2020 shall be considered for the purpose of determining the threshold of Rs. 50 Lakh for any buyer?

As clarified in the guidelines issued by CBDT vide Circular No. 17 of 2020 on 29.09.2020, threshold of Rs. 50 Lakh is for the whole previous year. Therefore, any sale consideration received from the buyer from 01.04.2020 to 30.09.2020 will also be considered while determining the limit of Rs. 50 Lakh for that buyer.

For e.g. Sale consideration received from any buyer up to 30.09.2020 was Rs. 45 Lakh and further consideration received on 01.10.2020 is of Rs. 10 Lakh. In that case, specified limit of Rs. 50 Lakh has been met. Now, since the limit of Rs. 50 lakhs, has been breached on 01.10.2020, TCS provisions shall become applicable in case of the said buyer and accordingly, TCS shall be collected on Rs. 5 lakhs (55 lakh- 50 lakh) while receipt of payment on 01.10.2020.

11. Whether TCS would be collected on the sale invoice issued prior to 01.10.2020 and sale consideration received on or after 01.10.2020?

Since the triggering event of the above provision is the receipt of consideration, therefore even though the sale invoice was raised prior to 01.10.2020 but sale consideration received on or after 01.10.2020 would also be subject to the provisions of this clause subject to the condition that aggregate value of sale consideration received from such buyer in the current financial year exceeds Rs. 50 Lakh.

12. TCS on sale of motor vehicle would be governed under which Section post insertion of this new sub-section (1H)?

TCS on sale of motor vehicle is covered under the existing provision of Sec 206C(1F) where any sale of motor vehicle exceeding Rs. 10 Lakh is subject to TCS @1% as Income Tax and where TCS is already collected under any other provision, then it would not be covered under Section 206C(1H).

Now, in case purchase value of any motor vehicle is below Rs. 10 Lakh, then Sec 206C(IF) is not applicable. However, if the total purchase value of such buyer during the year exceeds Rs. 50 Lakh, then TCS would be collected under Section 206C(1H).

The above provision under different scenarios is explained in the below table-

S. No.	Invoice Value	Applicable Section	Rema rks
1.	Single receipt of sale Consideration of Rs. 15 Lacs from any buyer w.r.t. a motor vehicle	Section 206C(1F)	Specific Section on sale of Motor Vehicle would be applicable.
2.	Single Receipt of Sale consideration of less than Rs. 10 Lakh and cumulative receipt of Rs. 60 lacs during any previous year	Section 206C(1H)	Specified threshold of Sec 206C(1F) not met while condition of Sec 206C(1H) is satisfied. Hence TCS will be collected under Sec 206C(1H).
3.	Single receipt of sale Consideration of Rs. 65 Lacs from any buyer w.r.t. a motor vehicle	Section 206C(1F)	Although requirement of both the sections is met, but since Section 206C(1F) is a specific section for motor vehicle, it would prevail and TCS would be collected under Section 206C(1F).

13. Whether any exemption has been provided on export of goods under this Section?

Goods which are being exported out of India have been specifically excluded from the scope of this section and thus TCS would not be collected on export of goods. The term 'Export' is not defined in this sub-section and thus there remains an issue whether sale to any unit in SEZ would be covered under the said provision or not. Clarification from CBDT is awaited in this regard.

FAQ's on E-Invoice under GST

1. To whom are the E-Invoicing provisions applicable?

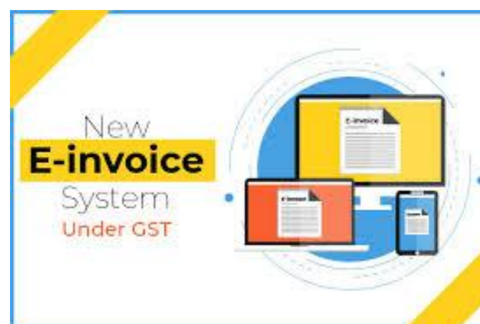
Ans. An E-Invoice is required to be generated by registered persons whose aggregate turnover in any of the preceding financial year from 2017-18 onwards exceeds Rs.500 crore.

2. From when are the E-Invoice provisions applicable?

Ans. E-Invoice is to be generated for all Invoices issued w.e.f. 01.10.2020. For the initial period of 01.10.2020 to 31.10.2020, E-Invoice may be generated within 30 days from the date of Invoice. [Notification No.73/2020-CT dated 01.10.2020]

3. Are there any exemptions available from E-Invoicing provisions?

Ans. SEZ units, Banks/Financing Companies, Input Service Distributors, Goods Transportation Agencies, persons providing Insurance services, passenger Transportation services and services of admission to exhibition films have been exempted.



4. How is the aggregate turnover computed for determining the applicability of E-Invoice?

Ans. The aggregate turnover for determining the applicability of E-Invoice shall be computed on PAN India basis i.e. including the turnover of all the registrations of an entity under the same PAN across India.

5. For which all documents are the E-Invoice to be generated?

Ans. GST invoices, Credit Notes and Debit Notes in respect of B2B Supplies & Exports [As also clarified by Notification No. 70/2020-CT dated 30.09.2020]

6. Is E-Invoice required to be generated for B2C supplies also?

Ans. No, E-Invoice provisions will be applicable for B2C supplies in the next phase. However, a dynamic QR code is to be displayed on the B2C Invoices by the seller himself w.e.f. 01.12.2020.[Notification No. 14/2020-CT dated 21.03.2020 read with Notification No. 71/2020-CT dated 30.09.2020]

7. What is the mechanism of preparing E-Invoice?

Ans. GST Invoices prepared through Accounting/Billing Software have to be reported to 'Invoice Registration Portal (IRP)'. On reporting, IRP returns signed e-invoice with unique 'Invoice Reference Number (IRN)' along with a QR Code. Then, the invoice (with QR Code) can be issued to receiver. A GST invoice will be valid only with a valid IRN.

8. What is IRN no.?

Ans. The unique 64 digit IRN will be based on the computation of hash of GSTIN of generator of document (invoice or credit note or debit note), Financial Year, Document Type and Document number like invoice number.

9. How can the E-Invoice be reported to IRP?

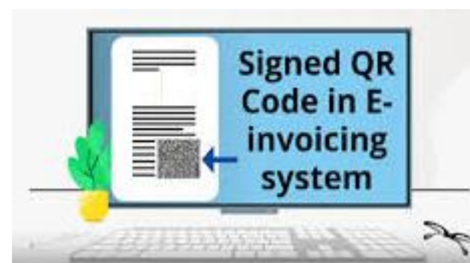
Ans. It can be reported through API, GSP, Mobile App, Offline Tool.

10. Who is the IRP?

Ans. National Informatics Centre (NIC) is the first IRP, more IRP's will be added from time to time.

11. What is QR code?

Ans. QR code contains the unique IRN (hash) along with some important parameters of invoice and digital signature so that it can be verified on the central portal as well as by a mobile App.



12. Can the E-Invoice be amended?

Ans. No, Invoices once reported to IRP cannot be amended through the IRP. They can be amended only on GST portal.

13. Is it possible to cancel an E-Invoice?

Ans. Cancellation of E-Invoice is allowed within a specified time after generation of IRN.

14. Is there any separate portal for E-Invoice?

Ans. 10 Common Goods and Services Tax Electronic Portals have been notified for the purpose of preparation of E-Invoice

15. What is the format for preparing E-Invoice?

Ans. It has been notified as Form GST INV-1.

Demystifying: Industrial Relations Code, 2020

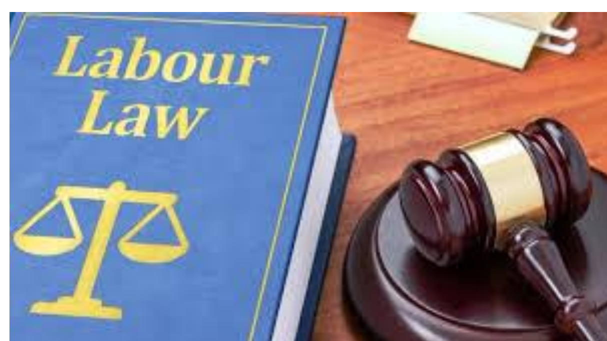
Adv. Harsha Totuka and Adv. Aastha Kothari

India is a complex jurisdiction in context of labour laws which, being a concurrent list item, are weaved into more than 38 archaic central and several state specific labour legislations. The complexity could be understood by the statement of the former vice-chairperson of Niti Aayog and a distinguished economist, Shri Aravind Panagariya, given in 2014:

"*The labour situation is incredibly complicated: when you go from six workers to seven in a firm, the Trade Unions Act kicks in. When you go from nine to ten, the Factories Act kicks in. And when you go from 19 to 20, something else kicks in, as happens again when you go from 49 to 50 and 99 to 100. The biggest killer is the Industrial Disputes Act, which says that if you are a manufacturing firm with 100 workers or more, you cannot dismiss any of them under any circumstances unless you get prior approval from the government. This is rarely given, and it applies even if you go bankrupt, in which case you still have to pay your workers. This has important consequences, because investors are not going to enter into an industry if they can't exit. So, India has a very pernicious set of labour laws and that really, to me, is the reason why Indian firms have remained so small on average*."

Unlike the USA or China, we are neither a capitalist nor a communist state, rather, our constitution calls us a socialist state, which ought to strike a balance between the interest of employers and workers. While all stakeholders have recognised the need of labour reforms in spirit, the letter of such reforms and any tilt in the said balance is bound to give rise to social and political discord. Despite many such discords, during the recently conducted controversial Monsoon session, acting upon its promise to rationalise labour laws, the NDA government has passed 3 labour codes, *viz.* the Occupational Safety, Health and Working Conditions Code, 2020, the Industrial Relations Code, 2020 ("**IR Code**"), and the Code on Social Security, 2020. The Code on Wages, 2019 had already been passed in August 2019.

The consolidation of the labour laws into 4 codes was first recommended by the National Commission on Labour in 2002 and it has taken India almost 18 years for acting upon the recommendations. With this pandemic having an adverse impact on the economy, the need of the hour is to revive the economy by facilitating ease of doing business and attracting foreign investment. These reforms appear to have been passed to further the same, with the aim of catalysing the creation of ample employment opportunities in the country.



The IR Code deals with industrial disputes, regulation of trade unions and standing orders in industrial establishments. The IR Code subsumes the Industrial Disputes Act, 1947 ("**ID Act**"), the Standing Orders Act, 1946 ("**Standing Orders Act**") and the Trade Unions Act, 1926 ("**Trade Unions Act**"). The effective date of the IR Code and the rules to be framed thereunder are yet to be notified. The IR Code aims at creating a formal and conducive industrial relations system by doing away with the ambiguities and uncertainties and ultimately aiding economic progress, employment generation and labour welfare. Following are the key changes made by the IR Code:

Industry

Under the ID Act, the definition of 'Industry' did not explicitly cover or exempt the charitable, social or philanthropic institutions within its ambit. The Supreme Court in the case of ***Bangalore Water Supply and Sewerage Board vs. A. Rajappa and Ors.*** *(AIR1978SC548)* had held that if an institution involves co-operation between employers and employees to produce and/or supply goods and/or services, it will fall under the ambit of the term 'industry', regardless of whether it was for a charitable purpose. On the other hand, in the case of ***Tirumala Tirupati Devasthanam vs.***

Commissioner of Labour (1979 ILLJ 448 AP), it was held that if the crucial, substantial and substantive aspects of institutional life, the nature of the relations between the participants is non-industrial, the institution cannot be held as an industry. Now, the IR Code proposes to bring about clarity and exempt institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service from the purview of the term industry. This would have the impact of excluding educational institutions, which employ thousands of workers, from the purview of IR Code.

Worker

The nomenclature of 'workman' which was at the core of applicability of ID Act has been changed to 'worker' in the IR Code. Its scope has also been expanded so that rights provided under the IR Code are made available to larger group. The definition of 'worker' now includes persons in supervisory capacity getting salary up to Rs. 18,000/- per month or an amount as may be notified by the central government from time to time. The ID Act, excludes a person in supervisory capacity, getting salary more than Rs. 10,000/- per month from the definition of a workman. The term 'worker' also excludes apprentice engaged under the Apprentice Act, 1961 from its ambit, which was not the case under the ID Act.

Employer

The IR Code aligns the definition of the term 'employer' with other labour laws. It has been expanded to include contractor and the legal representative of deceased employer as well. As per the revised definition, 'employer' now means and includes the head of the department, occupier of the factory, manager of the factory, managing director, contractor and legal representatives of a deceased employer. These provisions were missing in the definition of 'employer' under the ID Act.

Bipartite Forums

The ID Act provided that the appropriate government may by general or special order require the employer to constitute a Works Committee for promoting amity and good relations between the employer and workmen. Since there was a lack of a compulsory internal mechanism, the IR Code has introduced the mandatory formation of a 'Grievance Redressal Committee' for all industrial establishments having 20 or more workers and a 'Works Committee' for all industrial establishments having 100 or more workers, for the purpose of resolution of disputes between the employers and employees. The committees are to comprise of at least 50% representation from the workers and proportionate representation of women workers as well.

Trade Unions

Apart from retaining the provisions in relation to the formation of trade unions in as was done under the Trade Unions Act, the IR Code introduces a provision for recognition of a 'negotiating union' or 'negotiating council' in industrial establishments having registered Trade Unions for negotiating with the employer of the industrial establishment, on such matters as may be prescribed. The employer will be required to recognize the negotiating union which has the support of at least 51% of workers on the muster roll. The introduction of these negotiation bodies will assist in the voices of the workmen being heard by the employers.

Standing Orders

The IR Code, like the Standing Orders Act, provides for the adoption of the standing orders in line with the model standing orders to be made by the Central Government. The IR Code provides that each industrial establishment, to whom these provisions are applicable, shall draft the modifications required in the model standing orders, within a period of 6 months from the date of commencement of the IR Code. If the industrial establishment, to whom these provisions are applicable, does not get the modifications certified, then the model standing orders shall be deemed to be applicable to them.

The IR Code provides that all industrial establishments, with 300 workers or more must prepare standing orders on matters such as classification of workers, manner of informing workers about work hours, manner of informing

workers about work hours, holidays, paydays, and wage rates, termination of employment, and grievance redressal mechanisms for workers. The Standing Orders Act, 1946 had capped the applicability to industries with 100 or more than 100 workers only. However, labour laws being a subject of the concurrent list, various states such as Rajasthan, UP etc., had already increased the said threshold to 300.

The IR Code has further removed the provision for the Central Government making the provisions related to standing orders, applicable to establishments with less than the statutory threshold i.e. 300 workers. Additionally, as a move beneficial towards the employers, the IR Code has removed the requirement of application of the provisions relating to standing orders, even when an industry previously covered is no longer fulfilling the minimum workers threshold.

Closure Lay-Off and Retrenchment

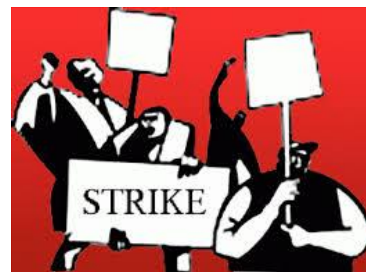
The ID Act provided that an industry having more than 100 workers was required to seek prior permission of the government before closure, lay-off, or retrenchment. However, certain states such as Andhra Pradesh, Assam, Haryana, Jharkhand, Madhya Pradesh, Rajasthan, Uttarakhand and Uttar Pradesh had already enhanced this threshold to 300. Now, as a step favourable to the employers, the IR Code has uniformalised the stance and provides for prior permission requirement only for establishments with at least 300 workers. The state government may fix a higher threshold through a notification and accordingly, the cumbersome process of amending a concurrent list union law will not be required to be followed.

It is pertinent to note here that the notice period and the monetary benefits which an employee was entitled to receive on lay-off closure, retrenchment compensation have been retained. However, the aforesaid change in threshold would mean that that workers in industry having workers between 100 to 300 will now be entitled to 1 months' notice or wages in lieu thereof as compared to earlier position as per the ID Act (in certain states) where they were entitled to 3 months' notice or wages in lieu thereof.

Section 25-H of the ID Act provided that any worker who has been retrenched shall be preferred to be hired by the employer. While this right has been retained in the IR Code, the preference period has been limited to 1 year only. This implies that the employer may hire any new person after waiting for a period of 1 year.

Strikes and Lockouts

The IR Code requires all persons to give a prior notice of 14 days before a strike or a lockout. As per the ID Act, this criterion was only applicable for public utility services such as railways, transportation, postal, telecommunication and other notified services. This will impact the ability of workers to strike and employers to lockout workers and curtail 'flash strikes'. On the other hand, the IR Code has increased the validity of the notice of strike from the earlier 6 weeks to 60 days.



The definition of 'strike' has been amended to include within its ambit, 'concerted casual leave on a given day by 50% or more workers employed in an industry'. The rationale appears to be that mass casual leave not only hampers production but also deteriorates the employer-employee relations.

Industrial Disputes

Originally, the definition of 'industrial dispute' under the ID Act did not expressly include disputes arising out of discharge, dismissal, retrenchment or termination of workers within its meaning and the same was includes by way of addition of Section 2A. Under the IR Code, for better clarity, disputes arising out of discharge, dismissal, retrenchment or termination of workers have been added in the definition of 'industrial dispute' itself.

In place of multiple adjudicating bodies like the Court of Inquiry, Board of Conciliation and Labour Courts under the ID Act, only Industrial Tribunals have been envisaged as the adjudicating body to decide appeals against the decision of the conciliation officer, making the process of dispute resolution streamlined and less complicated.

Fixed Term Employment

The IR Code introduces 'fixed term employment', which may allow employers the flexibility to hire workers for a fixed duration on need basis and for work that may not be permanent in nature. It may

also benefit workers, since fixed term employees would be entitled to the same benefits (such as social security, medical insurance and pension) and conditions of work, as are available to permanent employees even if the period of such employment does not extend to the qualifying period of employment required in the IR Code. The IR Code also requires fixed term employment to be included as a category of employment in classification of workers in the schedule for matters to be provided in Standing Orders. Further, to bring clarity, a clause has been added that termination of the service of a worker as a result of completion of tenure of fixed term employment would not amount to retrenchment.

Government's Power to Exempt

The IR Code provides the government with a more diverse power to exempt any new industrial establishment or class of establishment from any or all of its provisions based only on public interest, as opposed to the earlier requirements of such exemptions being in relation to a public emergency or for promotion of economic activities.

Penalties

The penalties under the IR Code for different types of violations have been rationalized to be commensurate with the gravity of the violations and provisions for compounding of offences have also been introduced.

Way Forward

The provisions of the IR Code are aimed at incentivising employers for increasing the size of their undertakings, in turn, increasing the employment opportunities for workers. The recent economic survey, 2019-20 too had indicated that greater flexibility is labour laws leads to higher quintile of entrepreneurial activity. However, in past experience, various reports[1] over the pro-employer amendments made by Rajasthan and other states, had indicated that similar labour reforms did not result in boosting industrialisation or job creation owing to reasons specific to the particular states. Nonetheless, the scale of amendments is substantially different this time and thus, it remains to be seen whether these reforms will be able to contribute to our economy's revival or not.

It would also be interesting to see how the government handles the enforcement of these labour reforms, checks evasion by employers and breaks the shackles of poor implementation and administrative hurdles. Nevertheless, it's now time for establishments to start preparing for the enforcement of this new regime.

[1]*Amendments in Labour Laws and Other Labour Reform Initiatives Undertaken by State Governments of Rajasthan, Andhra Pradesh, Haryana and UP: An Analytical Impact Assessment*, VV Giri National Labour Institute, 2017; *Impact of Labour Reforms on Industry in Rajasthan: A Survey Study*, PHD Chamber of Commerce and Industry, 2015.

Chiramrit Legal LLP
Jaipur | Mumbai | Delhi
www.chiramritlaw.com

WE ARE ON THE WEB

www.chiramritlaw.com

For any queries regarding 'THE NEWSLETTER', please get in touch with us at:
newsletter@chiramritlaw.com

Disclaimer:

The views expressed and the information provided in this newsletter are of general nature and are not intended to address the circumstances of any particular individual or entity. Further, the above content should neither be regarded as comprehensive nor sufficient for making decisions. No one should act on the information or views provided in this publication without appropriate professional advice. It should be noted that no assurance is given for any loss arising from any actions taken or to be taken or not taken by anyone based on this publication.

Reach us at:

Jaipur- 6th Floor, 'Unique Destination', Opp. Times of India, Tonk Road, Jaipur - 302 015 Off: +91-141-4044500

Surat– 202, 2nd Floor, SNS Square, Opp. Reliance Market, Vesu Main Road, Vesu, Surat— 395007

New Delhi– 301-302, 3rd Floor, Good Earth City Centre, Sector-50, Gurugram, Haryana - 122018

Mumbai– G-4, Ground Floor, Court Chambers, 35 Sir Vitthaldas Thackarsey Marg, New Marine Lines, Mumbai, Maharashtra - 400020