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MARCH 2020

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AUDIT

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CARO 2020 ANALYSIS & NEW REPORTING REQUIREMENTS

The Ministry of Corporate Affairs, to boost up the investor's confidence on the Company's Financial Statements and increased onus and responsibility on the Auditors, has been making regular amendments to Companies Act 2013. As part of such amendments The Companies (Auditor's Report) Order 2020 (hereinafter referred as CARO 2020) has been brought in making several amendments to the existing CARO 2016. In the new amended CARO along with the auditors the amendment has also made the management responsible for maintenance of data and information necessary to be reported in CARO.

A different feature of CARO 2020 is the enhanced due diligence responsibility on the auditors. A typical auditor is concerned about the truth and fairness of the FS; however, CARO 2020 covers many governance issues on which the MCA requires the auditors to comment. The audit has been used as a mechanism to control corporate misgovernance. The auditors have to state more details under CARO 2020 in order to strengthen the accountability of the management through the mouth of the auditor.

CARO 2020 ANALYSIS & NEW REPORTING REQUIREMENTS

Date of Applicability

- CARO 2020 is applicable for the financial year 2019-20

Applicability of CARO

- The applicability of CARO 2020 is the same as CARO 2016, in addition CARO 2020 is now also applicable to Consolidated Financial Statements only with respect to one specific clause as mentioned below:

“where any qualifications or adverse remarks are highlighted by the auditors in their respective standalone companies’ CARO reports, then the details of such remarks are to be mentioned by the auditor of the company in his CARO report of Consolidated Financial Statements.”

Clause wise modifications

Reporting on Fixed Assets – Modified

1. In addition to the reporting requirements as specified CARO 2016, the additional requirement is that the company has to maintain the details of all Intangible assets.
2. Reporting of Title deeds of immovable property, if not held in the name of the company have to be reported in a format specified
3. Reporting requirement on revaluation of Property, Plant and Equipment if done by a Registered Valuer and if the amount of change is $\geq 10\%$ of net carrying value of the Asset

Reporting on Benami Transactions – New clause inserted

1. Details of any proceedings pending under the Benami Transactions (Prohibition) Act, 1988 against the company; and its appropriate disclosure in Financial Statements to be reported in CARO 2020

Clause wise modifications

Reporting on working Capital Loans – new clause inserted

1. If sanctioned working capital limits in excess of Rs. 5 crore from banks or financial institutions on hypothecation of current assets then reporting is required of “whether quarterly returns filed with banks or financial institutions with respect to current assets are in conformity with books”

Reporting requirements on Investments, Loans and advances given – clause Modified

1. Proper disclosure of investments, granting of guarantee or security, and providing of loans or advances
2. Disclosure of aggregate amounts during the year and O/S balances of loans to subsidiaries, joint ventures and associate
3. Disclosure of aggregate amounts during the year and O/S balances of loans to parties other than subsidiaries, joint ventures and associates
4. In case of loans or advances repayable on demand, without any terms or period of payment, specify the amount of such loans given to the promoters & related parties
5. In case existing loans falling due during the year have been extended, renewed, replaced with fresh loans, specify the aggregate amount and percentage of such loans

Clause wise modifications

Reporting on transactions not recorded – new clause inserted

1. Reporting requirements with respect to transactions not recorded in the books of account but disclosed as income in the income tax proceedings/assessments
2. Proper disclosure of such unrecorded transactions has been done or not

Reporting on Defaults in repayment of loans and borrowings – clause modified

1. The details of period and amount of default in respect of repayment of loans or borrowings to banks, financial institutions, Government or debenture holders, format has been specified for disclosing of such defaults lender-wise details of default
2. Reporting on “Whether the company is declared as a willful defaulter by a lender”
3. Reporting on “Whether terms loans/short-term loans are applied for the purpose for which they were obtained; with details of diversion, if any”
4. Details of funds procured by the company to meet the obligations of subsidiaries, joint ventures and associates
5. Whether the company has raised loans on the pledge of securities held in subsidiaries, joint ventures and associates

Clause wise modifications

Reporting on Whistle-Blower Complaints – new clause inserted

1. Whistle-blower complaints received by the company during the year; to be considered by the auditor while submitting his audit report

Reporting on Internal Audit – clause inserted

This clause was existing in CARO 2003 which was removed in CARO 2016, now inserted back in CARO 2020

1. The company's internal audit system is commensurate with the size and nature of its business or not
2. Whether the statutory auditor has considered the internal audit reports of the company

Clause wise modifications

Reporting on Cash losses – clause inserted

This clause was existing in CARO 2003 which was removed in CARO 2016, now inserted back in CARO 2020

1. Cash losses incurred by the company in the current Financial year and in the preceding Financial Year
2. The amount of cash losses/negative balance reflecting in cash flow statement

Reporting on Resignation of Statutory Auditors – new clause inserted

1. *Any resignation of the statutory auditor during the year*
2. *Whether details of issues, objections or concerns raised by the outgoing auditors have been appropriately considered*

Clause wise modifications

Reporting on uncertainty to meet liabilities – new clause inserted

1. Details of material uncertainty with regard to realization of financial assets and payment of financial liabilities
2. Whether any such uncertainty exists on the date of audit report that the company will not be capable of meeting its liabilities as and when they fall due within a period of 1 year from the B/S date

Reporting on CSR – new clause inserted

1. In relation to ongoing CSR projects, details of transfer of unspent CSR amount to the Special Account within stipulated time in compliance with Section 135
2. For CSR projects other than ongoing ones, details of transfer of unspent CSR amount to the Fund specified in Schedule VII within stipulated time in compliance with Section 135

Clause wise modifications

Reporting on inventory – clause modified

1. Materiality is considered to be 10% or more for inventory items

Reporting on fraud – clause modified

1. Whether any report in FORM ADT-4 has been filed by the auditor with the Central Government in relation to suspected offense

Reporting on Nidhi Company – clause modified

1. Whether there is any default in payment of interest on deposits or repayment thereof

Registration under RBI – clause modified

1. Conduct of any NBFC activities without holding a valid Certificate of Registration (CoR)
2. Whether the company qualifies for a Core Investment Company (CIC)
3. The number of CICs if the group has more than one CIC

KEY TAKE AWAYS OF CARO 2020 -

Representation of funds, transfer of properties, ability to discharge liabilities, and disclosures on loans, guarantees, and investments of a company will now come under auditor scrutiny. To curb corporate scams, the Ministry of Corporate Affairs has specified 21 items that an auditor must include in its report, as per the government's recent notification on Companies Auditors Report Order 2020. Further, considering the same has been introduced only weeks before the end of the current FY, the companies and the auditors will be in a situation of tough tug-of-war of seeking information and giving explanations.



DIRECT TAX

CONNECT - MARCH 2020

CBDT issues FAQs on Vivad se Vishwas Scheme, 2020

The 'Vivad se Vishwas' Scheme was announced during the Union Budget, 2020, to provide for dispute resolution in respect of pending income tax litigation. Pursuant to the Budget announcement, the Direct Tax Vivad se Vishwas Bill, 2020 (hereinafter called ***Vivad se Vishwas***) was introduced in the Lok Sabha on 5th of February, 2020 and passed by it on 4th of March, 2020.

The objective of ***Vivad se Vishwas*** is to *inter alia* reduce pending income tax litigation, generate timely revenue for the Government and benefit taxpayers by providing them peace of mind, certainty and savings on account of time and resources that would otherwise be spent on the long-drawn and vexatious litigation process.

After considering various queries received from stakeholders, CBDT has clarified the same in the form of answers to frequently asked questions (FAQs) vide Circular No.7/2020 dated 04.03.2020.

These FAQs are available on the official website of the Income Tax Department at :

https://www.incometaxindia.gov.in/communications/circular/circular_no_7_2020.pdf.



CASE LAWS

Registration u/s 12AA cannot be denied on the basis that the trust is newly formed and has not carried out any activities

In this land mark judgement, Hon'ble Supreme Court held that there is no stipulation in Sec. 12AA that the applicant trust should have already been in existence and should have undertaken any activities before making the application for registration; term 'activities' in s. 12AA includes 'proposed activities', CIT is bound to consider whether the objects of the Trust are genuinely charitable in nature and whether the activities which the Trust proposed to carry on are genuine in the sense that they are in line with the objects of the Trust.

[Ananda Social & Educational Trust Vs. Commissioner Of Income Tax & Anr. – Supreme Court - order dated 19.02.2020 - 4 NYPCTR 159 (SC)]



CASE LAWS

Deduction u/s 10A to be computed before adjusting the business loss/unabsorbed depreciation

Hon'ble Bombay High Court upheld the order of Hon'ble ITAT Pune wherein the Hon'ble ITAT had held that deduction u/s 10A should be computed before adjusting for any business losses/depreciation. The term total income of the assessee should be understood as total income of the undertaking and after arriving at the total income of each undertaking (i.e. giving effect to the provisions of section 10A), provisions of chapter VI (aggregation of income and set-off and carry forward of losses) shall be applied.

[Principal Commissioner of Income Tax Vs. Aesseal India(P) Ltd. – Bombay High Court - order dated 27.01.2020- 4 NYPCTR 93]



CASE LAWS

If the case laws cited by the appellant are not dealt by ITAT while passing the order, it causes prejudice to the appellant and therefore liable to be set aside

Hon'ble Bombay High Court set aside the order passed by the Hon'ble ITAT Mumbai by holding that the same is against the principles of natural justice for the following reasons:

1. Tribunal has passed the order by relying on the case laws which were neither relied by appellant (assessee) nor by the respondent (department) and moreover the same were not brought to the notice of appellant during the course of hearing.
2. In the order passed, the tribunal has not dealt with any of the case laws relied upon by the appellant.

[Bhavya Construction Co. Vs. Asst. Commissioner of Income Tax Circle 21(1), Mumbai &Anr.— Bombay High Court - order dated 30.01.2020 in Income Tax Appeal no. 1009 of 2017]



CASE LAWS

Cash deposited in the bank account of the beneficiary cannot be covered by rule 6DD and hence the disallowance u/s 40A(3) is attracted

Hon'ble Allahabad High Court held that "Transaction by depositing cash directly in the bank account of the beneficiary is not routed through any clearinghouse nor is the money sent through electronic mode and therefore such a transaction cannot be covered by r.6DD(c)(v) and therefore benefit of the provision cannot be given to the assessee.

[Ajai Kumar Singh Khaldelial Vs. Principal Commissioner Of Income Tax &Anr. – Allahabad High Court - order dated 18.01.2020 in Income Tax Appeal no. 318 of 2016 - 4 NYPCTR 52]



CHANGE

INDIRECT TAX

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Key decisions @ 39th GST Council Meeting

- *Interest for delay in payment of GST to be charged on “Net tax liability”; Law to be amended retrospectively*
- *A new facility called ‘Know Your Supplier’ to be introduced so as to enable every registered person to have some basic information about the suppliers with whom they conduct or propose to conduct business.*
- *Physical Verifications & Financial KYC for “New Registrations”*
- *Annual returns for FY 2018-19*
 - *Relaxation to MSMEs from furnishing of Reconciliation Statement in FORM GSTR-9C, for the financial year 2018-19, for taxpayers having aggregate turnover below Rs. 5 crores;*
 - *Due date for filing the Annual return and the Reconciliation Statement for financial year 2018-19 to be extended to 30.06.2020; and*
 - *Late fees not to be levied for delayed filing of the Annual return and the Reconciliation Statement for financial year 2017-18 and 2018-19 for taxpayers with aggregate turnover less than Rs. 2 crores.*

Key decisions @ 39th GST Council Meeting

- **e-Invoicing deferred to October 01, 2020**
 - Certain class of registered persons (insurance company, banking company, financial institution, non-banking financial institution, GTA, passenger transportation service etc.) to be exempted from issuing e-invoices or capturing dynamic QR code; and
 - The dates for implementation of e-invoicing and QR Code to be extended to 01.10.2020.
- **Continuation of existing system of furnishing FORM GSTR-1 & FORM GSTR-3B till September, 2020. New return system to be introduced after this date.**
- **Union Territories – Daman & Diu and Dadra and Nagar Haveli and Ladakh**
 - A special procedure for registered persons in Dadra and Nagar Haveli & Daman and Diu during transition period, consequent to merger of the UTs w.e.f. 26.01.2020; transition to be completed by 31.05.2020.
 - Extension of due dates for FORM GSTR-3B for the month of July, 2019 to January, 2020 till 24th March, 2020 for registered persons having principal place of business in the Union territory of Ladakh. Similar extension is also recommended for FORM GSTR-1 & FORM GSTR-7.

Key decisions @ 39th GST Council Meeting - RATE CHANGES

- *Mobile phones - GST increased from 12% to 18%*
- *GST Council shall deliberate on the issue of calibrating the rate in other items for removing inversion in future meetings with further consultation and examination of issue.*
- *To reduce GST rate on Maintenance, Repair and Overhaul (MRO) services in respect of aircraft from 18% to 5% with full ITC and to change the place of supply for B2B MRO services to the location of recipient. This change is likely to assist in setting up of MRO services in India.*



Tackling the GST Portal issues

Shri Nandan Nilekani, on behalf of Infosys, made a presentation addressing the system related issues that are being faced by the taxpayers in the GST system.

To ensure a better uptake of the new return, the transition to the new return system may be made in an incremental manner. The journey could start with linking of the details of the statement of outward supplies in FORM GSTR-1 to the liability in FORM GSTR-3B. This would be followed by the linking of the input tax credit in FORM GSTR-3B to the details of the supplies reflected in the FORM GSTR-2A.

Shri Nandan Nilekani would attend the next 3 meetings of the GST Council and update the council of the status of implementation of the decisions taken by the Council and assist the Council in taking appropriate decisions on technology related issues



CASE LAWS

HC: AAR cannot reject application citing 'place-of-supply' determination, remits matter for fresh consideration

Kerala HC Quashes AAR order which rejected Petitioner's application on the aspect of taxability of Information Technology Enabled Services rendered to customers outside India under an intra-company arrangement with the parent company incorporated in USA on the premise that same is outside its ambit in terms of Sec 97(2) of CGST Act; Opines that, while issue relating to determination of 'place supply' is not expressly enumerated in any of clauses as per clauses (a) to (g) of Sec. 97(2) of the CGST Act, but said issue which is one of crucial issues to be determined as to whether or not it fulfills definition of place of service, would also come within ambit of larger of issue of "determination of liability to pay tax on any goods or services or both" envisaged in clause (e) of Section 97(2) of CGST Act; Observes that AAR has proceeded on a tangent and missed said crucial aspect and had taken a very "hyper technical view", Citing importance of foreign investment into India in changing global scenario, opines that they require clarity and precision about various aspects of taxation in transactions and hence, applicant concerned is given the right to seek advance ruling even in such a larger issue as the one as per clause (e) of Sec. 97(2) of CGST Act, consequently, remits the matter to AAR for fresh consideration

[Sutherland Mortgage Services Inc. vs. The Principal Commissioner and Ors. TS -148-HC-2020 (KER)-NT]



CASE LAWS

AAR: 'Plotted Land Development under JDA not a sale of land but taxable as 'works-contract service'

Madhya Pradesh AAR holds that activity of development of land under joint development agreement (JDA) entered into with landowners cannot be classified under Para 5 of Schedule III (sale of land), same constitutes a 'supply of service'; Notes that in terms of the agreement, applicant undertakes development of plots which includes civil construction, construction of concrete roads & compound walls, development of garden, etc. and revenue accruing from sale of plots is shared and that land is under mortgage of SBI, Jabalpur; Rejects applicant's plea that no GST is applicable merely on developing common facilities like drainage, electricity, road facilities, garden development, etc. and the activity constitutes a sale of land; Perusing the permission taken by the bank, observes that, it is clear that activity undertaken by applicant is in the nature of development of land into residential layout and sale of plots is incidental to main activity of land development. Holds that applicant supply constitutes a 'works contract' and in terms of Rule 31, the value of supply is equal to the amount received/receivable by the applicant which is equal to 40% of the value at which each of the plots is sold which is a consideration u/s 2(31)

[M/s Vedit Builders C.No. 19/2019/AAR/R-28/03 dated January 06, 2020]

LAXMINIWAS & Co.

Head Office

Hyderabad

6-3-569, 4th Floor, Above BMW Showroom,

Opp. RTA Office, Khairatabad, Hyderabad - 500 082,

Telangana, India.

+91 - 40 - 2324 0700 / 2324 0900 | Lnco@Lncofirm.com

BRANCH OFFICES

Bangalore | Mysuru | Chennai | Visakhapatnam

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