



CONNECT

JULY-2020

Message from the team

Till March 2020, the industries had long list of woes – slowing demand, GST rates, credit crisis, inflation and so on.

The inception of COVID-19 has put these woes to back burner and now everybody is watching helplessly and waiting for this time also to pass by soon.

However, the hindsight of this break is that it has enabled us to build resilience to cope and turn moments of anxiety and despair into one of hope and perseverance.

This edition of newsletter is focused on turning towards positive thinking and subsuming the negative thoughts about the situation.

Team LnCo

Only in the darkness
can you see the stars.
— Martin Luther King Jr.

AUDIT

CONNECT-JULY 2020

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Updates vis-à-vis Companies Act, 2013

Extension of time-limit for issue of sweat-equity shares by a start-up

- A start-up company, as defined in notification number [G.S.R. 127(E), dated the 19th February, 2019 issued by the Department for Promotion of Industry and Internal Trade], Ministry of Commerce and Industry, Government of India, may issue sweat equity shares not exceeding fifty percent of its paid up capital up to **Ten years (Prior to circular it was five years)** from the date of its incorporation or registration.

Relaxation in maintaining Debenture redemption fund for NBFCs, HFCs etc.

- NBFC's registered with RBI under section 45-IA of the RBI Act, 1934 and for Housing Finance Companies registered with National Housing Bank, other listed companies are exempted from maintaining debenture redemption fund. For, Unlisted Companies relaxation has been given to them for maintaining at 10% from previously 25%. (**Notification dated 5th June, 2020**).

Updates vis-à-vis Companies Act, 2013

Extension of time for EGMs

- Extension of time to allow Companies to conduct their EGM's through video conferencing (VC) or other audio-visual means (OAVM) or transact items through postal ballot up to 30th September 2020. (Circular dated 15th June, 2020)

Relaxation for filing forms to create and modify charges under Companies Act

- Scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013. The scheme is applicable in respect of filing of Form No. CHG-1 & CHG-9 and relaxations period have been set accordingly as per the creation/modification of charge by the company along with a nominal fee under the fees rules. (Circular reference: <http://ebook.mca.gov.in/Default.aspx?page=notification>, Dated 17th June, 2020)

Updates vis-à-vis Companies Act, 2013

- Every individual who has been appointed as an independent director in a company, on the date of commencement of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019, shall within a period of ten months (Previously before circular it was Seven months) from such commencement; or who intends to get appointed as an independent director in a company after such commencement, shall before such appointment, apply online to the institute for inclusion of his name in the data bank for a period of one year or five years or for his life-time. (Circular dated 23rd June, 2020)

Updates vis-à-vis SEBI (Due dates this month)

Compliance requirement for which timelines were extended vide SEBI circular No. dated April 16, 2020	S. No. in circular for which timeline is extended further	Extended timeline/ period of exclusion
Client Funding Reporting	I	Till July 31, 2020 for the months of April, May and June 2020.
Reporting for Artificial Intelligence (AI) and Machine Learning (ML) applications.	II	Till July 31, 2020 for the quarter ended on March 31, 2020.
Compliance certificate for margin Trading of CM Segment	III	Till July 31, 2020.
Risk Based Supervision	IV	Till July 31, 2020.
Internal Audit Report for half year ending (HYE) March 31, 2020	V	Till July 31, 2020 for the half year ended on March 31, 2020.
Net worth certificate in Margin Trading for CM Segment for HYE March 31, 2020.	VIII	
Net worth certificate for all members for HYE March 2020.	IX	

Updates vis-à-vis SEBI

Compliance requirement for which timelines were extended vide SEBI circular No. dated April 16, 2020	S. No. in circular for which timeline is extended further	Extended timeline/ period of exclusion
Penalty for non-collection / short collection of upfront margins in cash segment.	X	Till July 31, 2020.
Maintaining call recordings of orders/instructions received from clients	XI	
KYC application form and supporting documents of the clients to be uploaded on system of KRA within 10 working days.	III	Period of exclusion shall be from March 23, 2020 till July 31, 2020.
Submission towards weekly monitoring of client funds under the provisions of Enhanced Supervision	I	Till July 31, 2020
Submission of data on monthly basis towards clients' and fund balance under the provisions of Enhanced Supervision.	II	
Daily margin trading reporting	III	
Update in Income Tax Permanent Account Number of Key Management Personnel / Directors.	IV	Three months from the due date
Issue of Annual Global Statement to clients.	V	

Updates vis-à-vis SEBI

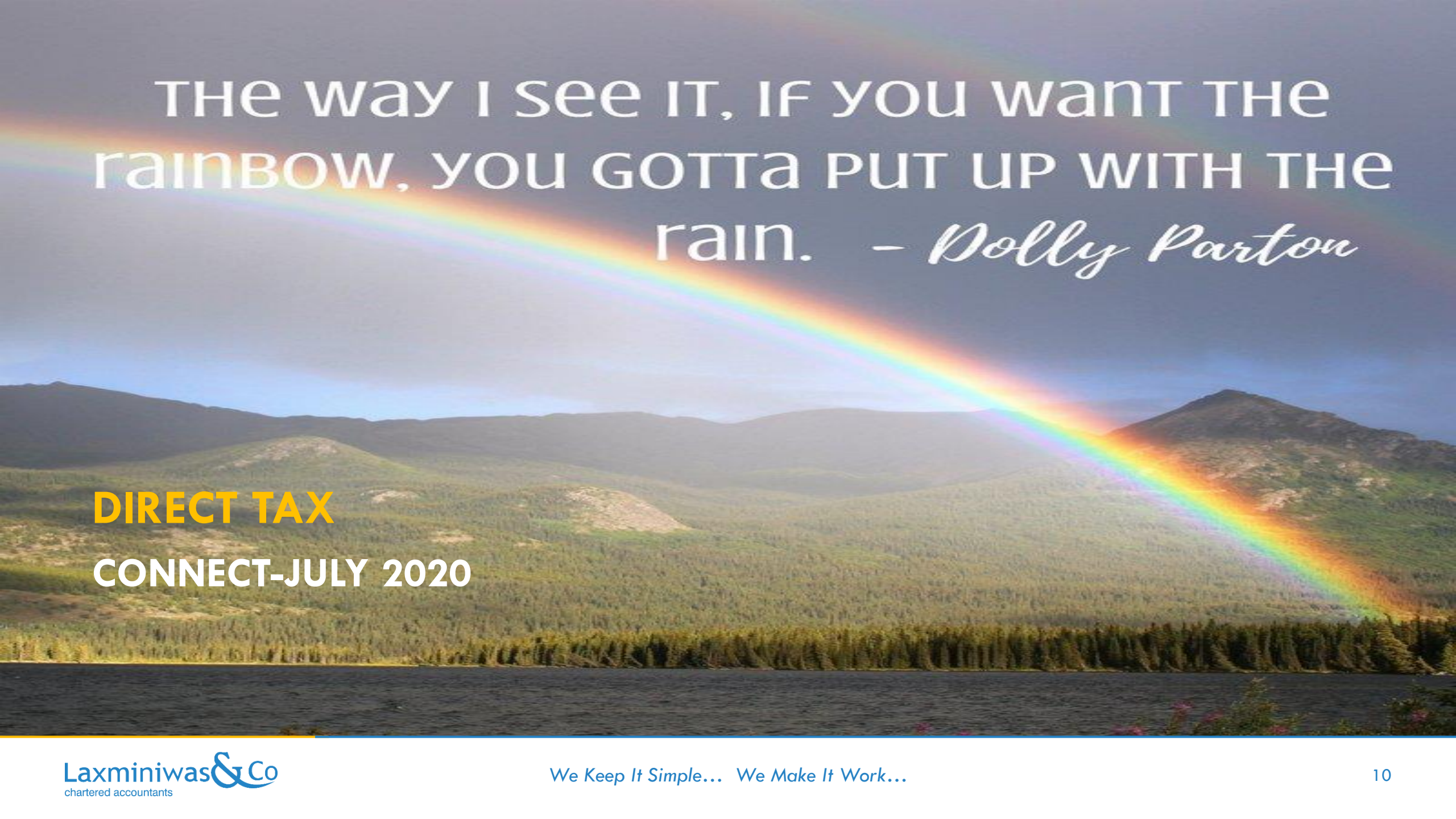
Further extension of time for submission of financial results for the quarter/half Year / financial year ending 31st March 2020 due to the continuing impact of the COVID-19 pandemic (Circular Dated June 24, 2020).

After taking into consideration the aforementioned issues, it has been decided to further extend the timeline for submission of financial results under Regulation 33 of the LODR Regulations by a month to July 31, 2020, for the quarter and the year ending 31st March 2020. Similarly, the timeline under Regulation 52 of the LODR for submission of half yearly and/or annual financial results for the period ending March 31, 2020 for entities that have listed NCDs, NCRPS', CPs, MDS' is also extended to July 31, 2020.

Update as per Employee State Insurance Corporation

- Mandatorily enabling mobile number and bank account details of an insured person while registering an employee with effect from 1st July, 2020. (Circular dated 29th June, 2020)

*** (Circular reference: <https://www.esic.nic.in/circulars>)



THE WAY I SEE IT, IF YOU WANT THE
RAINBOW, YOU GOTTA PUT UP WITH THE
rain. – *Dolly Parton*

DIRECT TAX

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FURTHER EXTENSION OF TIME-LIMITS

In continuation to relaxations provided in ordinance, CBDT vide notification no. 35/2020 dated 24.06.2020 has further extended the time limits for compliances with various provisions.

Particulars	Extended Due date as per ordinance dated 31.03.2020	Extended due date as per notification no. 35/2020 dated 24.06.2020
Completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action, by whatever name called, by any authority, commission or Tribunal, by whatever name called.	30 June 2020 (This was for the due dates falling between the period from 20 th March 2020 to 29 June 2020)	<u>31 March 2021</u> (This is for the due dates falling between the period from <u>20th March 2020</u> to <u>31 December 2020</u>)
Filing of any appeal, reply or application or furnishing of any report, document, return, statement, or such other record, by whatever name called.		
Furnishing of belated or revised return of income for AY 2019-20	30 June 2020	31 July 2020

FURTHER EXTENSION OF TIME-LIMITS

Particulars	Extended Due date as per ordinance dated 31.03.2020	Extended due date as per notification no. 35/2020 dated 24.06.2020
Delivering statement of TDS u/s 200(3) or statement of TCS u/s 206C(3) for the month of February 2020 or March 2020 or for the quarter ending 31 March 2020	30 June 2020	31 July 2020
Issuance of certificate u/s 203 for tax deducted at source u/s 192 (Form 16)	30 June 2020	15 August 2020
Making investment, deposit, payment for the purpose of claiming deduction under chapter VI A for AY 2020-21	30 June 2020	31 July 2020
Making investment, deposit, payment, acquisition, construction for the purpose of claiming exemption u/s 54 to 54GB for AY 2020-21	30 June 2020	30 September 2020
Furnishing of Audit report under any provision of the Income Tax Act, 1961 for AY 2020-21		31 October 2020

FURTHER EXTENSION OF TIME-LIMITS

Particulars	Extended Due date as per ordinance dated 31.03.2020	Extended due date as per notification no. 35/2020 dated 24.06.2020
Furnishing of Return of Income for AY 2020-21*		30 November 2020
Time limit for proceedings under Vivaad Se Vishwas Scheme 2020	30 June 2020	31 December 2020

**Extended date for filing of return will not be applicable for the purpose of charging Interest u/s 234A for delay in filing of return where the amount of self-assessment tax payable exceeds Rs. 1,00,000/-.*



CASE LAWS

Amendment made by Finance Act, 2015 to section 40(a)(ia) restricting disallowance for non-compliance with TDS to 30% of the amount is curative in nature and hence should be applied retrospectively.

(Muradul Haque Vs. Income Tax Officer Ward- 44 (1) New Delhi – ITAT Delhi - order dated 18.06.2020 - ITA No.114/Del/2019)

For reopening of assessment beyond 4 years from the end of assessment year where the original assessment is completed u/s 143(3), AO needs to establish that there is failure on part of assessee to disclose fully and truly all the material facts

Hon'ble ITAT Mumbai observed that the material based on which the AO formed reason to believe that income has escaped assessment was already available on record during the course of original assessment proceedings and in the reasons recorded for reopening also the AO has not alleged that there is any failure on the part of assessee to disclose fully and truly all the material facts and hence hon'ble ITAT held that the condition precedent for reopening as per proviso to section 147 is not fulfilled and therefore the reassessment proceedings are invalid.

(Bharat Chimanlal Parekh Vs. Income Tax Officer – ITAT Mumbai - order dated 17.06.2020 - ITA No.943/Mum/2019)



CASE LAWS

No TDS on guarantee commission u/s 195

Hon'ble ITAT Delhi observed that as per article 11 of DTAA between India and Netherlands all income earned from the 'provision of capital' by way of 'debt claim' constitutes interest, for an income to constitute interest there should be a 'debt' and there should be a 'claim' on that debt. In the instant case the company has paid commission/charges towards corporate guarantee and not for any provision of capital therefore the same cannot be treated as interest. Further corporate guarantee is a financial service and by no stretch of imagination it could be considered as consultancy service so as to constitute as technical service. Hence the assessee was not required to deduct TDS u/s 195 from the guarantee charges and consequently no disallowance is attracted u/s 40(a)(i).

[Lease Plan India (P) Ltd. Vs. Deputy Commissioner of Income Tax – ITAT Delhi - order dated 15.06.2020 - ITA Nos. 6461 & 6462/Del/2015]



INDIRECT TAX

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**“Difficult roads
often lead to
beautiful
destinations.”**

Notification issued under GST

Electronic Verification Code (EVC) now enabled for filing of GST returns for companies.

The CBIC had earlier allowed any registered person during the period from the April 21, 2020 to June 30, 2020, will be allowed to furnish the return under section 39 in Form GSTR-3B verified through electronic verification code (EVC). Currently, businesses are required to digitally sign GSTR-3B form while filing monthly return and paying taxes. However, with offices shut due to the lockdown, businesses are unable to generate digital signature which has led to delay in filing of returns.

- **Form GSTR-3B - During the period from the 21st day of April, 2020 to the 30th day of September, 2020**
- **Form GSTR-GSTR-1 – During the period from the 27th day of May, 2020 to the 30th day of September, 2020**

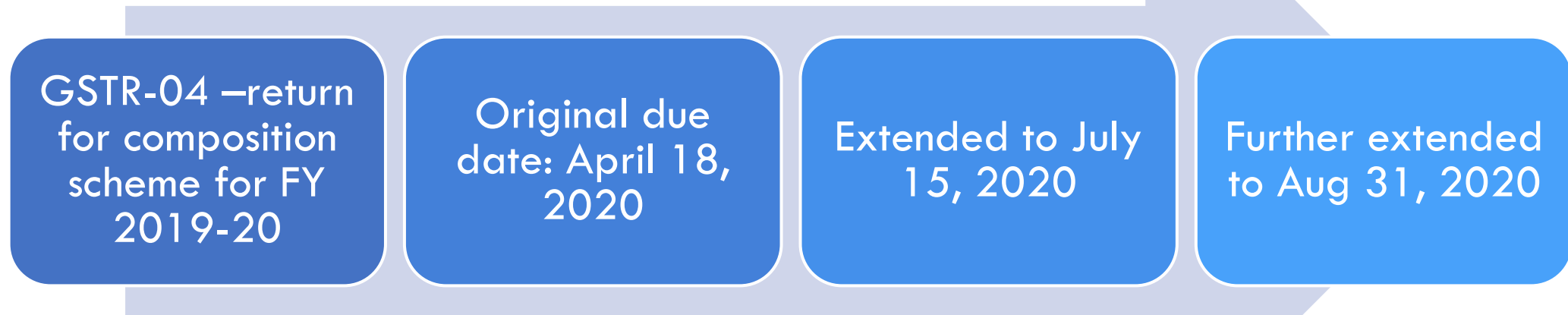
Filing of nil Form GSTR-1 (Outward supplies returns).

The government has issued guidelines to fill the **NIL GSTR-1** form through SMS. It said to initiate the SMS **facility**, the taxpayers need to send SMS to 14409 as **NIL**<space>**R1**<space>**GSTIN number**<space>**Tax period** (in **MMYYYY**). **Due date for filing Form GSTR-4 for composition tax payers extended.** We would like to mention here that the facility to file the NIL statement on monthly basis in GSTR-3B return through SMS has already available from June 8th, 2020.

Notification issued under GST

Due date for filing Form GSTR-4 for composition tax payers extended

Composition tax payers have earlier been done away with quarterly filing of returns instead they are now required to make quarterly payment in Form CMP-08 and file only one return for each year. The deadline for filing of GSTR-4 annual returns for 2019-20 by composition dealers from July 15 2020 to August 31 2020.



Return filing due dates

For Taxpayers having aggregate turnover of upto Rs 5 Crores in the previous Financial Year

Month	Extended Due Date-GSTR-3B *	Extended Due Date - GSTR-3B **	Interest
March, 2020	3rd July, 2020	5 th July 2020	Nil if the 3B is filed till due date, thereafter @ 9% if filed till September 30, 2020. Thereafter @ 18%
April, 2020	6th July, 2020	9 th July, 2020	Nil if the 3B is filed till due date, thereafter @ 9% if filed till September 30, 2020. Thereafter @ 18%
May, 2020	12th, September	15 th September, 2020	Nil if the 3B is filed till due date, thereafter @ 9% if filed till September 30, 2020. Thereafter @ 18%
June, 2020	23rd, September	25 th September, 2020	Nil if the 3B is filed till due date, thereafter @ 9% if filed till September 30, 2020. Thereafter @ 18%
July, 2020	27 th September	29 th September, 2020	Nil if the 3B is filed till due date, thereafter @ 9% if filed till September 30, 2020. Thereafter @ 18%

**Having principal place of business in-States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep*

***Having principal place of business in-States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi.*

Return filing due dates

For Taxpayers having aggregate turnover of more than Rs 5 Crores in the previous Financial Year

Month	Extended due date- GSTR-3B	Interest
March	5 th May, 2020	@9% if return is filed after due date but filed on or before 24 th June, 2020. Thereafter, @ 18% p.a.
April	4 th June, 2020	@9% if return is filed after due date but filed on or before 24 th June, 2020. Thereafter, @ 18% p.a.
May	27 th June, 2020	18% p.a. if return is filed after the due date [notification no. 36/2020]
June	20 th July, 2020	18% p.a. if return is filed after the due date [no notification for extension of due date]

Return filing due dates

Sl. No. (1)	Month/ Quarter (2)	Dates (3)
1.	March, 2020	10 th day of July, 2020
2.	April, 2020	24 th day of July, 2020
3.	May, 2020	28 th day of July, 2020
4.	June, 2020	05 th day of August, 2020
5.	January to March 2020	17 th day of July, 2020
6.	April to June 2020	03 rd day of August, 2020

Late fees for filing of Form GSTR-1 (outward supplies returns) waived till due date

Late fees for GST returns decoded

I.

The CBIC has waived/reduced late fees for the late filing of GSTR-3B returns for the period

- July 2017 to January 2020, as follows-

a) **If GST liability is Nil, and the GSTR-3B return is filed between 1st July, 2020 and 30th September, 2020**, then the amount of late fees stands waived.

b) **If the GST liability is not Nil, and the GSTR-3B return is filed between 1st July, 2020 and 30th September, 2020**, then the amount of late fees stand waived in excess of Rs.250* under the CGST Act. [*Rs.500 will be the total amount payable, Rs.250 under CGST and Rs.250 under SGST.]

II.

- For turnover more than Rs 5 crore: May 2020 – July 2020
- For turnover equal to or below Rs 5 crore: February 2020 – July 2020

the amount of late fees stand waived in excess of Rs.250* under the CGST Act. [*Rs.500 will be the total amount payable, Rs.250 under CGST and Rs.250 under SGST and for NIL returns the entire amount of late fees stand waived.

Payment of GST by Real estate promoter/developer

For Payment of GST by real estate promoter/developer supplying construction of residential apartment etc, on the shortfall value of inward supplies from registered supplier at the end of the financial year. FORM GST DRC-03, as already prescribed, shall be used for making the payment of such tax by promoter/developer. Accordingly, person required to pay tax in accordance with the said notification on the shortfall from threshold requirement of procuring input and input services (below 80%) from registered person shall use the form DRC-03 to pay the tax electronically on the common portal within the prescribed period.

[Refer Instruction 3/2/2020 dated June 24, 2020]

55/2020 dt June 24, 2020

Extension of comprehensive extension

- Notification 35/2020 was issued in April-2020 as a relief for all types of compliances, appeals, refunds, notice replies etc. which were due during March 20, 2020 to 29 June 2020 to 30 June 2020.
- Vide Notification 55/2020 this relief has been further extended to all compliances due from March 20 to Aug 30 to August 31, 2020.



CASE LAWS

GST on services from a foreign company which has a branch in India – Whether import of services?

A foreign company has entered into a long-term contract spanning over seventeen years from the date of commissioning of the equipment. The Maintenance & Repair Contract (MARC) Holder is responsible for supply of the spares, components, and consumables over the entire period. It will depute the officers, support staff and system expert at the site for maintenance and repair of equipment and train the BCCL personnel. It ensures supervision of the equipment, supply of spares and consumable and overheads for 5000 annual working hours for seventeen years, indicating sufficient degree of permanence to the human and technical resources employed at the sites. Therefore, the foreign company should register under GST vide their foreign branch i and pay tax under forward charge.

[M/s IZ-Kartez 04/WBAAR/2020-21 dated June 29,2020]



CASE LAWS

GST on sale of plots

Sale of developed plot is not equivalent to sale of land but is a different transaction. Sale of such plotted development tantamount to rendering of service. This view has also been taken by the Supreme Court in the case of M/s Narne Construction P Ltd. reported at 2013 (29) STR 3 (SC).

In present case, we also find that the applicant is the owner of the land, who develops the land with an infrastructure such as Drainage line, Water line, Electricity line, Land levelling etc. as per the requirement of the approved Plan Passing Authority (i.e. Jilla Panchayat). After this development of the land, he sales developed land as plots. His sales price includes the cost of the land as well as the cost of common amenities, Drainage line, Water line, Electricity line, Land levelling charges, etc. on a proportionate basis.

Thus, the said activity is covered under 'construction services' and GST is payable on the sale of developed plots in terms of CGST Act / Rules and relevant Notification issued time to time.

[M/s Shree Dipesh Anilkumar Naik GUJ/GAAR/R/2020/11 dated May 29, 2020]

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