



*Life is about making an impact,
not making income.
~ Kevin Kruse*

Connection

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JUST TO
REMIND
YOU

- Jan 30 - Chalan cum statement in respect of tax deducted u/s 194IA & 194IB for the month of Dec
- Jan 31 - TDS Returns for December Quarter
- Jan 31 - GST TDS & TCS Returns for December Quarter

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Procedure for filing of Form 13 for Lower or no deduction of tax

1. As per sub-section (1) of section 197 of the **Income-tax Act, 1961**, where, in the case of any income of any person or sum payable to any person, income-tax is required to be deducted at the time of credit or, as the case may be, at the time of payment at the rates in force under the provisions of sections 192, 193, 194, 194A, 194C, 194D, 194G, 194H, 194I, 194J, 194K, 194LA, 194LBB, 194LBC] and 195, if the Assessing Officer is satisfied that the total income of the recipient justifies the deduction of income-tax at any lower rates or no deduction of income-tax, as the case may be, the Assessing Officer shall, on an application made by the assessee in this behalf, give to him such certificate as may be appropriate. Further as per sub-section (9) of section 206C of the Income-tax Act, 1961, where the Assessing Officer is satisfied that the total income of the buyer or licensee or lessee justifies the collection of the tax at any lower rate than the relevant rate specified in sub-section (1) or sub-section (1C), the Assessing Officer shall, on an application made by the buyer or licensee or lessee in this behalf, give to him a certificate for collection of tax at such lower rate than the relevant rate specified in sub-section (1) or sub-section (1C).

2. Vide Central Board of Direct Taxes **Notification No. 74/2018 dated 25.10.2018**, Rule 28/37G of the Income-tax Rules, 1962 has been amended to provide for filing an application for grant of certificate for deduction of Income-tax at any lower rate or no deduction of Income-tax under sub-section (1) of Sec-

tion 197/collection of the tax at any lower rate under sub-section (9) of Section 206C of the Income-tax Act, 1961 to be made in Form No. 13 electronically in accordance to the procedures, formats and standards for ensuring secure capture and transmission of data and uploading of documents to be laid down by the Principal Director General of Income-tax (Systems).

3. In exercise of the powers delegated by the Central Board



of Direct Taxes, under sub-rule (2) of Rule 28/sub-rule (2) of Rule 37G of the Income-tax Rules, 1962, the Principal Director General of Income-tax (Systems) hereby specifies the procedure, format and standards for the purpose of electronic filing of Form No. 13 and generation of certificate under sub-section (1) of section 197/sub-section (9) of section 206C through TRACES, as per procedure in the succeeding paragraphs.

4. Procedure for electronic filing of Form 13 shall be as follows:

4.1 The tax-payer/Deductee shall login in to the TRACES website for submission of application in Form 13 electronically, for grant of certificate for deduction of Income-tax at any lower rate or no deduction of Income-tax under sub-section (1) of Section 197/collection of the tax at any lower rate

under sub-section (9) of Section 206C of the Income-tax Act, 1961 through TRACES, as per procedure specified herein.

4.1.1 The tax-payer/Deductee who is not registered at TRACES shall be first required to register at TRACES (www.tdscpc.gov.in) for login and filing application in Form 13. Detailed procedure for registration can be accessed through the link <https://contents.tdscpc.gov.in/en/taxpayer-registration-logic-tutorial1.html>

4.2 The tax-payer/Deductee shall submit the Form No. 13 along with supporting documents electronically,

- (i) under digital signature; or
- (ii) through electronic verification code.

4.3 After an online request for lower/no deduction certificate has been submitted successfully, it shall reach the TDS-Assessing Officer on 'TRACES AO Portal' on his/her login. The tax-payer/Deductee can track the status of his/her application through option '**Track Request for Form 13**' under the tab '**Statement/Forms**'.

5. Procedure for assignment of application to the TDS Assessing Officers:

5.1 On the basis of details furnished by the applicant in Form No. 13, the application shall be forwarded to the concerned TDS Assessing Officer.

5.2 For applications filed in Delhi, Mumbai, Chennai, Kolkata, Bangalore, Hyderabad, Ahmedabad and Pune, cases where revenue foregone exceeds a sum of Rs. 50 Lakh, the applications shall be assigned to the DCIT/ACIT exer-



cising jurisdiction over TDS matters, and in other cases, the applications shall be assigned to the ITO exercising jurisdiction over TDS matters. If the jurisdiction orders are otherwise, the applications shall be assigned in accordance to such jurisdiction orders.

5.3 For applications filed in remaining cities/towns/jurisdictions, the applications where revenue foregone exceeds a sum of Rs. 10 Lakh, application shall be assigned to the DCIT/ACIT exercising jurisdiction over TDS matters, and in other cases, the applications shall be assigned to the ITO exercising jurisdiction over TDS matters. If the jurisdiction orders are otherwise, the applications shall be assigned in accordance to such jurisdiction orders.

5.4 After the applicant has successfully submitted application in Form 13, the following data, which are considered relevant and essential for the Assessing Officer to take a decision on the application will be obtained from CPC – ITR, E-filing and ITBA modules:

- (i) Processed data of Income Tax Returns of previous 4 F.Ys (if available).
- (ii) PAN Demand.
- (iii) e-filed Income Tax Returns of previous 4 F.Ys.
- (iv) Audit Report (along with form 3CD if accounts are audited) of previous 4 F.Ys.
- (v) Assessment Orders of previous 4 F.Ys (if available).

5.5 The application in Form 13 will then be assigned to the Assessing Officer exercising jurisdiction over TDS matters in respect of the applicant as explained in para 5.2 and 5.3. Such applications can be accessed by the Assessing Officer

through path 'Lower/ No Deduction Certificate > Generate Certificate > Certificate u/s 197(1)/206C (9) and select 'Open/ Restored' Request(s)'.

6. Processing of the tax-payer/Deductee's request by the TDS Assessing Officer, Range Heads and Commissioners of Income-tax:

6.1 Role of TDS Assessing Officer:

The Assessing Officer shall be required to process the application through TRACES – AO Portal after login using his / her credentials.

6.1.1 By navigating through the path 'Lower/No Deduction Certificate > Generate Certificate > Certificate u/s 197(1)/206C (9) and select 'Open/Restored' Request(sr. the Assessing Officer shall be able to access the following information:

- (i) Information furnished by the tax-payer/Deductee.
- (ii) Documents submitted by the tax-payer/Deductee.
- (iii) Information essential for processing the request in respect of the tax-payer/Deductee, as received from CPC (ITR), E-filing and ITBA.
- (iv) Information essential for processing the request in respect of the tax-payer/Deductee, as available at CPC (TDS).

6.1.2 If the Assessing Officer requires any further clarification or information or documents from the applicant for arriving at his/her decision, the same shall be obtained online using the option "Seek Clarification" available within the functionality. The query raised by the Assessing Officer shall be forwarded to the applicant through systems for furnishing a suitable response. The query will be available to the

applicant in his/her/its Inbox in TRACES Portal through the applicants login. The response submitted by the taxpayer/Deductee shall be visible to the Assessing Officer within the functionality for taking a decision on the application.

6.1.2 (a) Based on the parameters defined in rule 28AA /28AB/37H of the Income-tax Rules, 1962 an estimated rate of tax will be suggested by the system functionality. However, the AO shall be free to arrive at independent rate based on his her method of calculation or by taking into consideration any other information available with him/her.

6.1.3 Based on his/her findings, the Assessing Officer shall allow the deduction/ collection at such rate as evidenced in the "Permitted Tax Rate Table" by making any adjustments in respect of the rate, if required. The Assessing Officer may state the reason for arriving at a modified rate, if so is the case.

6.1.4 Once the Assessing Officer has taken a decision on the application in Form No. 13, the application will be forwarded to the supervisory authority, i.e. the JCIT or JCIT & CIT for according administrative approval in accordance to CBDTs Instructions on the subject.

6.2.Role of Range Head:

The Range Head shall be required to process the application through TRACES – AO Portal after login using his/her credentials for granting administrative approval to the recommendation of the AO or otherwise.

6.2.1 The Range Head may view the application details, received for administrative



approval, through the path [Lower/No Deduction Certificate > Generate Certificate > Certificate u/s 197\(1\)/206C \(9\) and](#)



select ['Open Request\(s\)'](#). The following information will be available for viewing by the Range Head:

- (i) Information furnished by the tax-payer/Deductee.
- (ii) Documents submitted by the tax-payer/Deductee.
- (iii) Information essential for processing the request in respect of the tax-payer/Deductee, as received from CPC (ITR), E-filing and ITBA.
- (iv) Information essential for processing the request in respect of the tax-payer/Deductee, as available at CPC (TDS).
- (v) Recommendation of the TDS Assessing Officer.

6.2.2 If required, the Range Head may seek clarification from the AO and after submission of clarification by the AO through the AO Portal, the Range Head shall take a final decision on the application. All these steps shall be carried out on AO Portal in electronic mode under respective logins of Range Head and AO.

6.2.3 After a decision on the application has been taken by the Range Head, if the revenue foregone is within the powers conferred upon the Range Head (as per CBDTs Instructions on the subject) to accord administrative approval, the application will be marked back electronically on AO Portal to the Assessing Officer for issuance/rejection of the certificate under section 197(1)/206C(9) of the Income-tax Act, 1961. The procedure for

issuance of certificate is prescribed below in paragraph 7. However, if the revenue foregone is within the powers conferred upon the CIT (as per CBDTs Instructions on the subject) to accord administrative approval, the application shall be forwarded to the CIT for a decision in the matter.

6.3. Role of the CIT:

The CIT shall be required to process the application through TRACES – AO Portal after login using his / her credentials for granting administrative approval to the recommendation of the AO or otherwise.

6.3.1 The CIT may view the application details, received for administrative approval, through the path [Lower/No Deduction Certificate > Generate Certificate > Certificate u/s 197\(1\)/206C \(9\) and select 'Open Request\(s\)'](#). The following information will be available for viewing by the CIT:

- (i) Information furnished by the tax-payer/Deductee.
- (ii) Documents submitted by the tax-payer/Deductee.
- (iii) Information essential for processing the request in respect of the tax-payer/Deductee, as received from CPC (ITR), E-filing and ITBA.
- (iv) Information essential for processing the request in respect of the tax-payer/Deductee as available at CPC (TDS).
- (v) Recommendation of the TDS Assessing Officer.
- (vi) Recommendation of the Range Head.

6.3.2 If any clarification is required by the CIT, the application may be sent back to the Range Head through TRACES AO-Portal for submitting clarification on the observations of the CIT by the Range Head / AO. All these steps shall be carried out on AO Portal in electronic mode under respective logins of the CIT, Range Head and AO.

6.3.3 The Range Head shall re-

submit the case to CIT alongwith the clarifications as required by the CIT. This will be carried out electronically on AO Portal.

6.3.4 Based on the information available and the report of the Range Head and the Assessing Officer, the CIT shall take a decision in the case.

6.3.5 After a final decision on the application has been taken by the CIT, the application will be marked back electronically on AO Portal to the Assessing Officer for issuance/rejection of the certificate under section 197(1) / 206C(9) of the Income-tax Act, 1961. The procedure for issuance of certificate is prescribed below in paragraph 7.

7. Issuance of Certificate:

7.1 Once approval of the competent authority has been received, the Assessing Officer shall generate the approved certificate / close the request (in case of rejection) based on decision taken on application filed in Form No. 13 through TRACES AO Portal. This will be carried out electronically on AO Portal and the certificate will be system generated and hence will not require a signature.

7.2 The generated certificates shall be available to the deductor and the applicant for download through their TRACES login.

7.3 The issued certificates shall be available to the officers for view through path [Lower / No Deduction Certificate > History > Certificate Issued'](#).

8. This issues with prior approval of the Pr. Director General of Income-tax (Systems).





No TDS on Interest to Senior Citizen if not exceeds Rs. Fifty Thousand

It has been brought to the notice of CBDT that in case of Senior Citizens, some TDS deductors/Banks are making TDS deductions even when the amount of income does not exceed fifty thousand rupees. The same is not in accordance with the law as the Income-tax Act provides that no tax deduction at source under **section 194A** shall be made in the case of Senior Citizens where the amount of such income or, the aggregate of the amounts of such income credited or paid during the financial year does not exceed fifty thousand rupees. (Please refer to the third proviso to sub-section 3

of section 194A)

2. Under sub-rule (5) of Rule 31A of the Income-tax Rules, 1962, the Director General of Income-tax (Systems) is authorized to specify the procedures, formats and standards for the purposes of furnishing and verification of the statements or claim for refund in Form 26B and shall be responsible for the day-to-day administration in relation to furnishing and verification of the statements or claim for refund in Form 26B in the manner so specified.

3. In exercise of the powers delegated by the Central Board of Direct Taxes

(Board) under sub-rule (5) of Rule 31A of the **Income-tax Rules, 1962**, the Principal Director General of Income-tax (Systems) hereby clarifies that no tax deduction at source under section 194A shall be made in the case of Senior Citizens where the amount of such income or, the aggregate of the amounts of such income credited or paid during the financial year does not exceed fifty thousand rupees.

President Assent Companies (Amendment) Ordinance, 2019

Promulgated by the President in the Sixty-ninth Year of the Republic of India.

An Ordinance further to amend the **Companies Act, 2013**.

WHEREAS the **Companies (Amendment) Ordinance, 2018** was promulgated by the President on the 2nd day of November, 2018;

AND WHEREAS the **Companies (Amendment) Bill, 2019** to replace the Companies (Amendment) Ordinance, 2018 has been passed by the House of People on the 4th day of January, 2019 and is pending in the Council of States;

AND WHEREAS the Companies (Amendment) Bill, 2019 could not be taken up for consideration and passing in the Council of States;

AND WHEREAS the **Companies (Amendment) Ordinance, 2018** will cease to operate on the 21st day of January, 2019;

AND WHEREAS it is considered necessary to give continued effect to the provisions of the Companies (Amendment) Ordinance, 2018;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

Short title and commence-

ment.

1. (1) This Ordinance may be called the **Companies (Amendment) Ordinance, 2019**.

(2) It shall be deemed to have come into force on the 2nd day of November, 2018.

Amendment of section 2.

2. In section 2 of the Companies Act, 2013 (hereinafter referred to as the principal Act), in clause (41),—

(a) for the first proviso, the following provisos shall be substituted, namely:—

“Provided that where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consoli-



ation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year:

Provided further that any application pending before the Tribunal as on the date of commencement of the **Companies (Amendment) Ordinance, 2019**, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.”;

(b) in the second proviso, for the words “Provided further that”, the words “Provided also that” shall be substituted.

Insertion of new section 10A.

3. After section 10 of the principal Act, the following section shall be inserted, namely:—

Commencement of business, etc.

“10A.(1) A company incorporated after the commencement of the Companies (Amendment) Ordinance, 2019 and having a share capital shall not commence any business or exercise any borrowing powers unless

(a) a declaration is filed by a director within a period of one hundred and eighty days of the date of incorporation of the company in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and

(b) the company has filed with the Registrar a verification of its registered office as provided in sub-section (2) of section 12.

(2) If any default is made in complying with the requirements of this section, the company shall be liable to a penalty of fifty thousand rupees and every officer who is in default shall be liable to

a penalty of one thousand rupees for each day during which such default continues but not exceeding an amount of one lakh rupees.

(3) Where no declaration has been filed with the Registrar under clause (a) of sub-section (1) within a period of one hundred and eighty days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (2), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.

Amendment of section 12.

4. In section 12 of the principal Act, after sub-section (8), the following sub-section shall be inserted, namely:—

“(9) If the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may cause a physical verification of the registered office of the company in such manner as may be prescribed and if any default is found to be made in complying with the requirements of sub-section (1), he may without prejudice to the provisions of sub-section (8), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.”.

Amendment of section 14.

5. In section 14 of the principal Act,—

(i) in sub-section (1), for the second proviso, the following provisos shall be substituted, namely:—

“Provided further that any alteration having the effect of conversion of a public company into a private company shall not be valid unless it is approved by an order of the Central Government on an application made in such form and manner as may be prescribed:

Provided also that any application pending before the Tribunal, as on the date of commencement of the Companies (Amendment) Ordinance, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement”;

(ii) in sub-section (2), for the word “Tribunal”, the words “Central Government” shall be substituted.

Amendment of section 53.

6. In section 53 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) Where any company fails to comply with the provisions of this section, such company and every officer who is in default shall be liable to a penalty which may extend to an amount equal to the amount raised through the issue of shares at a discount or five lakh rupees, whichever is less, and the company shall also be liable to refund all monies received with interest at the rate of twelve per cent. per annum from the date of issue of such shares to the persons to whom such shares have been issued.”.

Amendment of section 64.

7. In section 64 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Where any company fails to comply with the provisions of sub-section (1), such company and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues, or five lakh rupees whichever is less.”.

Amendment of section 77.





8. In section 77 of the principal Act, in sub-section (1), for the first and second provisos, the following provisos shall be substituted, namely:—

“Provided that the Registrar may, on an application by the company, allow such registration to be made

(a) in case of charges created before the commencement of the Companies (Amendment) Ordinance, 2019, within a period of three hundred days of such creation; or

(b) in case of charges created on or after the commencement of the Companies (Amendment) Ordinance, 2019, within a period of sixty days of such creation,

on payment of such additional fees as may be prescribed:

Provided further that if the registration is not made within the period specified—

(a) in clause (a) to the first proviso, the registration of the charge shall be made within six months from the date of commencement of the Companies (Amendment) Ordinance, 2019, on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies;

(b) in clause (b) to the first proviso, the Registrar may, on an application, allow such registration to be made within a further period of sixty days after payment of such additional fees as may be prescribed.”.

Amendment of section 86.

9. Section 86 of the principal Act shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-

section shall be inserted, namely:—

“(2) If any person wilfully furnishes any false or incorrect information or knowingly suppresses any material information, required to be registered in accordance with the provisions of section 77, he shall be liable for action under section 447.”.

Substitution of new section for section 87.

10. For section 87 of the principal Act, the following section shall be substituted, namely:—

Rectification by Central Government in Register of charges.

“87. The Central Government on being satisfied that

(a) the omission to give intimation to the Registrar of the payment or satisfaction of a charge, within the time required under this Chapter; or

(b) the omission or misstatement of any particulars, in any filing previously made to the Registrar with respect to any charge or modification thereof or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83,

was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company, it may, on the application of the company or any person interested and on such terms and conditions as it deems just and expedient, direct that the time for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or misstatement shall be rectified.”.

Amendment of section 90.

11. In section 90 of the principal Act,—

(i) for sub-section (9), the following sub-section shall be substituted, namely:—

“(9) The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8), within a period of one year from the date of such order:

Provided that if no such application has been filed within a period of one year from the date of the order under sub-section (8), such shares shall be transferred, without any restrictions, to the authority constituted under sub-section (5) of section 125, in such manner as may be prescribed;

(ii) in sub-section (10),—

(a) after the word “punishable”, the words “with imprisonment for a term which may extend to one year or” shall be inserted;

(b) after the words “ten lakh rupees”, the words “or with both” shall be inserted;

Amendment section 92.

. In section 92 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) If any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day during which such failure contin-

ues, subject to a maximum of five lakh rupees.”.

Amendment of section 102.



13. In section 102 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) Without prejudice to the provisions of sub-section (4), if any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is higher.”.

Amendment of section 105.

14. In section 105 of the principal Act, in sub-section (3), for the words “punishable with fine which may extend to five thousand rupees”, the words “liable to a penalty of five thousand rupees” shall be substituted.

Amendment of section 117.

15. In section 117 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of twenty-five lakh

rupees and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.”.

Amendment of section 121.

16. In section 121 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) If the company fails to file the report under sub-section (2) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees and every officer of the company who is in default shall be liable to a penalty which shall not be less than twenty-five thousand rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.”.

Amendment of section 137.

17. In section 137 of the principal Act, in sub-section (3),—

(a) for the words “punishable with fine”, the words “liable to a penalty” shall be substituted;

(b) for the portion beginning with “punishable with imprisonment”, and ending with “five lakh rupees or with both”, the words “shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees” shall be substituted.

Amendment section 140.

18. In section 140 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) If the auditor does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.”.

Amendment section 157.

of 19. In section 157 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) If any company fails to furnish the Director Identification Number under sub-section (1), such company shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees, and every officer of the company who is in default shall be liable to a penalty of not less than twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.”.

Substitution of new section for section 159.

20. For section 159 of the principal Act, the following section shall be substituted, namely:—

Penalty for default of certain provisions

“159. If any individual or director of a company makes any default in complying with any of the provisions of section 152, section 155 and section 156, such individual or director of the company

Companies Act 2013

shall be liable to a penalty which may extend to fifty thousand rupees and where the default is a continuing one, with a further penalty which may extend to five hundred rupees for each day after the first during which such default continues.”.

Amendment of section 164.

21. In section 164 of the principal Act, in sub-section (1), after clause (h), the following clause shall be inserted, namely:—

“(i) he has not complied with the provisions of sub-section (1) of section 165.”.

Amendment of section 165.

22. In section 165 of the principal Act, in sub-section (6), for the portion beginning with “punishable with fine” and ending with “contravention continues”, the words “liable to a penalty of five thousand rupees for each day after the first during which such contravention continues” shall be substituted.

Amendment of section 191.

23. In section 191 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) If a director of the company makes any default in complying with the provisions of this section, such director shall be liable to a penalty of one lakh rupees.”.

Amendment of section 197.

24. In section 197 of the principal Act,

(a) sub-section (7) shall be omitted;

(b) for sub-section (15), the following sub-section shall be substituted, namely:—

“(15) If any person makes any default in complying with the provisions of this section, he shall be liable to a

penalty of one lakh rupees and where any default has been made by a company, the company shall be liable to a penalty of five lakh rupees.”.

Amendment of section 203.

25. In section 203 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees.”.

Amendment section 238.

of 26. In section 238 of the principal Act, in sub-section (3), for the words “punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees”, the words “liable to a penalty of one lakh rupees” shall be substituted.

Amendment of section 248.

27. In section 248 of the principal Act, in sub-section (1)

(a) in clause (c), for the word and figures “section 455,”, the words and figures “section 455; or” shall be substituted;

(b) after clause (c) and before the long line, the following clauses shall be inserted, namely:—

“(d) the subscribers to the

memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub-section (1) of section 10A; or

(e) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12.”.

Amendment of section 441.

28. In section 441 of the principal Act,—

(a) in sub-section (1), in clause (b), for the words “does not exceed five lakh rupees”, the words “does not exceed twenty-five lakh rupees” shall be substituted;

(b) for sub-section (6), the following sub-section shall be substituted, namely:

“(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.”.

Amendment of section 446B.

29. In section 446B of the principal Act, for the portion beginning with “punishable with fine” and ending with “specified in such sections”, the words “liable to a penalty which shall not be more than one half of the penalty specified in such sections” shall be substituted.

Amendment of section 447.

30. In section 447 of the principal Act, in the second proviso, for the words “twenty lakh rupees”, the words “fifty lakh rupees” shall be substituted.



tuted.

Amendment of section 454.

31. In section 454 of the principal Act, —

(i) for sub-section (3), the following sub-section shall be substituted, namely: —

“(3) The adjudicating officer may, by an order

(a) impose the penalty on the company, the officer who is in default, or any other person, as the case may be, stating therein any non-compliance or default under the relevant provisions of this Act; and

(b) direct such company, or officer who is in default, or any other person, as the case may be, to rectify the default, wherever he considers fit.”;

(ii) in sub-section (4), for the words “such company and the officer who is in default”, the words “such company, the officer who is in default or any other person” shall be substituted;

(iii) in sub-section (8),—

(a) in clause (i), for the words “does not pay the penalty imposed by the adjudicating officer or the Regional Director”, the words, brackets and figures “fails to comply with the order made

under sub-section (3) or sub-section (7), as the case may be,” shall be substituted;

(b) in clause (ii)—

(i) for the words “Where an officer of a company”, the words “Where an officer of a company or any other person” shall be substituted;

(ii) for the words “does not pay the penalty”, the words, brackets and figures “fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be,” shall be substituted.

Insertion of new section 454A.

32. After section 454 of the principal Act, the following section shall be inserted, namely:—

Penalty for repeated default.

“454A. Where a company or an officer of a company or any other person having already been subjected to penalty for default under any provisions of this Act, again commits such default within a period of three years from the date of order imposing such penalty passed by the adjudicating officer or the Regional Director, as the case may be, it or he shall be liable for the second or subsequent defaults for an amount equal to twice the

amount of penalty provided for such default under the relevant provisions of this Act.”.

Repeal and Savings.

33. (1) The Companies (Amendment) Ordinance, 2018 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Ordinance.



Companies (Incorporation) Fourth Amendment Rules, 2018

In exercise of the powers conferred by clause (41) of section 2, section 3, sub-section (1) of section 7, section 10A, section 14 and sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Incorporation) Rules, 2014, namely: —

1. (1) These rules may be called the **Companies (Incorporation) Fourth Amendment Rules, 2018.**

(2) They shall come into force on the date of their publication in

the official Gazette.

2. In the Companies (Incorporation) Rules, 2014 (hereinafter referred to as the said rules), after rule 23, the following rule shall be inserted, namely:-

“23A. Declaration at the time of commencement of business.- The declaration under section 10A by a director shall be in Form No.INC-20A and shall be filed as provided in the Companies (Registration Offices and Fees) Rules, 2014 and the contents of the said form shall be verified by a Company Secretary

or a Chartered Accountant or a Cost Accountant, in practice:

Provided that in the case of a company pursuing objects requiring registration or approval from any sectoral regulators such as the Reserve Bank of India, Securities and Exchange Board of India, etc., the registration or approval, as the case may be from such regulator shall also be obtained and attached with the declaration.”.





3. In the said rules, after rule 39, the following rules shall be inserted, namely:-

“40. Application under sub-section (41) of section 2 for change in financial year

(1) The application for approval of concerned Regional Director under sub-section (41) of section 2, shall be filed in e-Form No. RD-1 along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 and shall be accompanied by the following documents, namely:-

- (a) grounds and reasons for the application;
- (b) a copy of the minutes of the board meeting at which the resolution authorising such change was passed, giving details of the number of votes cast in favour and or against the resolution;
- (c) Power of Attorney or Memorandum of Appearance, as the case may be;
- (d) details of any previous application made within last five years for change in financial year and outcome thereof along with copy of order.

(2) Where the Regional Director on examining the application, referred to in sub-rule (1), finds it necessary to call for further information or finds such application to be defective or incomplete in any respect, he shall give intimation of such information called for or defects or incompleteness, on the last intimated e-mail address of the person or the company, which has filed such application, directing the person or the company to furnish such information, or to rectify defects or incompleteness and to re-submit such application within a period of fifteen days, in e-Form No. RD-GNL-

S.

Provided that a maximum of two re-submissions shall be allowed.

(3) (a) In case where such further information called for has not been provided or the defects or incompleteness has not been rectified to the satisfaction of the Regional Director within the period allowed under sub-rule (2), the Regional Director shall reject the application with reasons within thirty days from the date of filing application or within thirty days from the date of last re-submission made as the case may be.

(b) In case where the application is found to be in order, Regional Director shall allow and convey the order within thirty days from the date of application or within thirty days from the date of last re-submission, as the case may be.

(c) where no order for approval or re-submission or rejection has been explicitly made by the Regional Director within the stipulated time of thirty days, it shall be deemed that the application stands approved and an approval order shall be automatically issued to the applicant.

(4) The order conveyed by the Regional Director shall be filed by the company with the Registrar in Form No. INC-28 within thirty days from the date of receipt of the order along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.

41. Application under section 14 for conversion of public company into private company. (1) An application under the second proviso to sub-section (1) of section 14 for the conversion of a public

company into a private company, shall, within sixty days from the date of passing of special resolution, be filed with Regional Director in e-Form No. RD-1 along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 and shall be accompanied by the following documents, namely:-

(a) a draft copy of Memorandum of Association and Articles of Association, with proposed alterations including the alterations pursuant to sub-section (68) of section 2;

(b) a copy of the minutes of the general meeting at which the special resolution authorising such alteration was passed together with details of votes cast in favour and or against with names of dissenters;

(c) a copy of Board resolution or Power of Attorney dated not earlier than thirty days, as the case may be, authorising to file application for such conversion;

(d) declaration by a key managerial personnel that pursuant to the provisions of sub-section (68) of section 2, the company limits the number of its members to two hundred and also stating that no deposit has been accepted by the, company in violation of the Act and rules made thereunder;

(e) declaration by a key managerial personnel that there has been no non-compliance of sections 73 to 76A, 177, 178, 185, 186 and 188 of the Act and rules made thereunder; (f) declaration by a key managerial personnel that no resolution is pending to be filed in terms of sub-section (3) of section 179 and also stating that the company was never listed in any of the Regional

Stock Exchanges and if was so listed, all necessary procedures were complied with in full for complete delisting of the shares in accordance with the applicable rules and regulations laid down by Securities Exchange Board of India:

Provided that in case of such companies where no key managerial personnel is required to be appointed, the aforesaid declarations shall be filed any of the director.

(2) Every application filed under sub-rule (1) shall set out the following particulars, namely:-

(a) the date of the Board meeting at which the proposal for alteration of Memorandum and Articles was approved;

(b) the date of the general meeting at which the proposed alteration was approved;

(c) reason for conversion into a private company, effect of such conversion on shareholders, creditors, debenture holders, deposit holders and other related parties;

(d) details of any conversion made within last five years and outcome thereof along with copy of order;

(e) details as to whether the company is registered under section 8.

(3) There shall be attached to the application, a list of creditors, debenture holders, drawn up to the latest practicable date preceding the date of filing of application by not more than thirty days, setting forth the following details, namely:-

(a) the names and address of every creditor and debenture holder of the company;

(b) the nature and respective amounts due to them in respect of debts, claims or liabilities;

(c) in respect of any contingent or unascertained debt, the value, so far as can be justly estimated of such debt:

Provided that the company shall

file an affidavit, signed by the Company Secretary of the company, if any, and not less than two directors of the company, one of whom shall be managing director, where there is one, to the effect that they have made a full enquiry into affairs of the company and, having done so, have formed an opinion that the list of creditors and debenture holders is correct, and that the estimated value as given in the list of the debts or claims payable on contingency or not ascertained are proper estimates of the values of such debts and claims that there are no other debts, or claims against, the company to their knowledge.

(4) A duly authenticated copy of the list of creditors and debenture holders shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect, and take extracts from the same on payment of ten rupees per page to the company.

(5) The company shall, atleast twenty-one days before the date of filing of the application_

(a) advertise in the Form No.1NC.25A, in a vernacular newspaper in the principal vernacular language in the district and in English language in an English newspaper, widely circulated in the State in which the registered office of the company is situated;

(b) serve, by registered post with acknowledgement due, individual notice on each debenture holder and creditor of the company; and

(c) serve, by registered post with acknowledgement due, a notice to the Regional Director and Registrar and to the regulatory body, if the company is regulated under any law for the time being in force.

(6) (a) Where no objection has been received from any person in response to the advertisement

or notice referred to in sub-rule (5) and the application is complete in all respects, the same may be put up for orders without hearing and the concerned Regional Director shall pass an order approving the application within thirty days from the date of receipt of the application.

(b) Where the Regional Director on examining the application finds it necessary to call for further information or finds such application to be defective or incomplete in any respect, he shall within thirty days from the date of receipt of the application, give intimation of such information called for or defects or incompleteness, on the last intimated e-mail address of the person or the company, which has filed such application, directing the person or the company to furnish such information, to rectify defects or incompleteness and to re-submit such application within a period of fifteen days in O-Form No. RD-GNL-5:

Provided that maximum of two re-submissions shall be allowed.

(c) In cases where such further information called for has not been provided or the defects or incompleteness has not been rectified to the satisfaction of the Regional Director within the period allowed under sub-rule (6), the Regional Director shall reject the application with reasons within thirty days from the date of filing application or within thirty days from the date of last re-submission made, as the case may be.

(d) Where no order for approval or re-submission or rejection has been explicitly made by the Regional Director within the stipulated period of thirty days, it shall be deemed that the application stands approved and an approval order shall be automatically





issued to the applicant.

(9) (i) Where an objection has been received or Regional Director on examining the application has specific objection under the provisions of Act, the same shall be recorded in writing and the Regional Director shall hold a hearing or hearings within a period thirty days, as required and direct the company to file an affidavit to record the consensus reached at the hearing, upon executing which, the Regional Director shall pass an order either approving or rejecting the application along with reasons within thirty days from the date of hearing,

failing which it shall be deemed that application has been approved and approval order shall be automatically issued to the applicant.

(ii) In case where no consensus is received for conversion within sixty days of filing the application while hearing or otherwise, the Regional Director shall reject the application within stipulated period of sixty days:

Provided that the conversion shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.

(10) On completion of such inquiry, inspection or investigation as a consequence of which no prosecution is envisaged or no prosecution is pending, conversion shall be allowed.

(11) The order conveyed by the Regional Director shall be filed by the company with the Registrar in Form No. INC28 within fifteen days from the date of receipt of approval along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.”.

Change in due date of Maharashtra VAT Audit report in Form 704

Whereas, the Government of Maharashtra is satisfied that circumstances exist which render it necessary to take immediate action further to amend the Maharashtra Value Added Tax Rules, 2005 and to dispense with the condition of previous publication thereof

under the proviso to subsection (4) of section 83 of the **Maharashtra Value Added Tax Act, 2002** (Mah. IX of 2005).

1. These rules may be called the Maharashtra Value Added Tax (Amendment) Rules, 2019.

2. In rule 66 of the Maharash-

tra Value Added Tax Rules, 2005, for the words “within nine months and fifteen days of the end of the” the words and figures “on or before 28th February of the immediate succeeding” shall be substituted.

Maharashtra Value Added Tax (Amendment) Act, 2018

An Act further to amend the **Maharashtra Value Added Tax Act, 2002**. WHEREAS both Houses of the State Legislature were not in session ;

AND WHEREAS the Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate action further to amend the Maharashtra Value Added Tax Act, 2002, for the purposes hereinafter appearing ; and, therefore, promulgated the Maharashtra Value Added Tax (Amendment) Ordinance, 2018 on the 24th October 2018 ;

AND WHEREAS it is expedient to replace the said Ordinance by an Act of the State Legisla-

ture ; it is hereby enacted in the Sixty-ninth Year of the Republic of India as follows :—

1. (1) This Act may be called the Maharashtra Value Added Tax (Amendment) Act, 2018.

(2) It shall be deemed to have come into force on the 24th October 2018.

2. In **section 23** of the Maharashtra Value Added Tax Act, 2002 (hereinafter referred to as “ the principal Act ”), in subsection (7),—

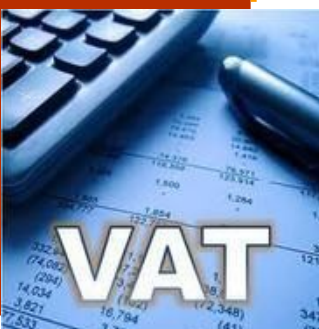
(1) for the words “ eighteen months” the words “twenty-four months” shall be substituted;

(2) in the proviso, for the words “ eighteen months” the words “

twenty-four months” shall be substituted.

3. (1) The Maharashtra Value Added Tax (Amendment) Ordinance, 2018, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken (including any notification or order issued) under the corresponding provisions of the principal Act, as amended by the said Ordinance, shall be deemed to have been done, taken or, as the case may be, issued under the corresponding provisions of the principal Act, as amended by this Act.



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Extension of last date for complying with the CPE hours

This is for kind information of the members that the last date for complying with the CPE Hours requirement for the Calendar Year 2018 – has now been extended to 31st January, 2019.

The members who could not complete their respective CPE hours requirements up to 31st December, 2018 for the Calendar year 2018, are requested to kindly complete the same at the earliest and latest by 31st January, 2019.



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