



**THE INSTITUTE OF
CHARTERED ACCOUNTANTS OF INDIA**

(Set up by an Act of Parliament)

**PUNE BRANCH
OF WIRC OF ICAI**

NEWSLETTER

**Issue NO. 08
AUGUST 2020**

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Talent is a perfume bottle. If you never open it, nobody knows the fragrance inside it. Be open and have fragrance in your life.

Chairman's Communique



CA. Abhishek Dhamne
Chairman
Pune Branch of WIRC of ICAI

Dear Members,

At the outset wishing you a Happy Independence Day and Ganesh Festival. This month all are excited to celebrate 74th Independence Day and Ganesh Festival. Though we will be celebrating both these events with social distancing and

norms laid down by the government's authorities, the joy and devotion will be the same.

A variety of programs were held in the month of July 2020 for members as well as students in mark of "CA Foundation Day". Highlights of the programs held July, 2020 were webinar on "ATMA NIRBHAR BHARAT" by Shri. Avinash Dharmadhikari, Ex-IAS Officer, CA Day Sanvad Satra - with Various Stakeholders, Investor Awareness initiative on Current Economic Scenario & Investment by Mr. Nilesh Shah, Managing Director, Kotak Mahindra Asset Management Co. Ltd..

Apart from these, Blood Donation and Tree Plantation drives were also organised at various locations. Entertainment program 'एक संगीतमय शाम कोरोना वॉरियर्स के नाम' was held on CA Foundation Day to pay tribute the phenomenal work done by Corona worriers during these pandemic situation of Covid-19.

We also had Virtual CPE Meeting on "Company Law Series". There was an e-meeting held to discuss and understand 'Difficulties faced by CA firms due to Covid 19 and Lockdown'.

Also Kaun Banega Chatur Chanakya (KBCC)- Quiz Competition for Members and Students was held jointly with WIRC.

As you are aware that, your branch is taking various initiatives to combat in this unprecedented situation, we have successfully launched Virtual ITT and OP batches for students w.e.f. 1st august, 2020 under the guideline from ICAI. Pune ICAI has been a pioneer to start virtual batches taking due care of required

infrastructure.

Pune ICAI has been instrumental on technical front as well. We are happy to launch 4 research papers on varied topics of professional interest. We are also glad to share that, recent publication of "**Technical guide on Easy Incorporation of Companies through SPICe+**" released by Corporate Laws and Corporate Governance Committee and **Office Management Manual for CAs in Practice** released by Committee for Members in Practice ICAI has been contributed by Pune Based Study Group. On behalf of entire managing committee, we would like to thank all contributors who have devoted their time and energy for betterment of the fraternity.

We are glad to share, the 58th Annual General Meeting for F.Y. 2019-2020 was held on a Virtual electronic platform. We have also launched Covid-19 CABF Help Desk at Pune ICAI. Please visit Puneicai.org for more details.

We plan to organise various programs in the month of August, 2020 which includes Direct and Indirect Tax Refreshers Course with the Theme: Profession - Tomorrow and Beyond.

We are planning for "Pune ICAI Ganesh Festival, 2020" wherein CA's from Pune would get an opportunity to show case their Talent. We are also planning daily "Virtual Ganesh Aarti" where in physically challenged CA's member of Pune ICAI would be invited as Special Invitee to perform the Aarti.

Once again Wishing you a Happy Independence Day and Ganesh Festival!!!

गणपती बाप्पा मोरया. . . मंगलमूर्ती मोरया.

Happy to Serve,

Abhishek Dhamne,

Chairman, Pune ICAI,

August 1, 2020 श्रावण 13, 1942 (Saka)





See your goal, understand the obstacles, create a positive mental picture, clear your mind of self doubt, embrace the challenge and stay on track. Show the world you can do it!

LIST OF RECORDED WEBINARS

HELD IN THE MONTH OF JULY 2020 AVAILABLE ON PUNE ICAI YOUTUBE CHANNEL

| SR. NO. | DATE | TOPIC | SPEAKER | LINK |
|---------|-----------------|---|--|---|
| 1 | 1st July, 2020 | Flag Hoisting on the Occasion of CA Foundation Day Celebration | CA. Abhishek Dhamne, Chairman – Pune ICAI | https://youtu.be/ c-RaLs2pWU |
| 2 | 1st July, 2020 | Seminar on "ATMA NIRBHAR BHARAT" on the Occasion of CA Foundation Day Celebration | Mr. Avinash Dharmadhikari, Ex-IAS Officer | https://youtu.be/k6NwJYKfyc |
| 3 | 1st July, 2020 | ‘एक संगीतमय शाम कोरोना वॉरियर्स के नाम’ Ek Sangitmay Sham Corona Worriers ke Naam On the Occasion of CA Foundation Day Celebration | Singers :- • Madhura Datar • Jitendra Abhyankar Participants :- • CA. Rekha Dhamankar • CA. Mahesh Lunkad | https://youtu.be/xPMO74aA9uM |
| 4 | 2nd July, 2020 | CA Day Sanvad Satra - CGST Department | Smt. Krishna A. Mishra, Hon. Chief Commissioner, Central Taxes (Pune - I) | https://youtu.be/fjOL93BDHrY |
| 5 | 3rd July, 2020 | CA Day Sanvad Satra With Hon. ROC, Pune | Shri. Mangesh Jadhav, Hon. Registrar of Companies, Pune | https://youtu.be/E_m6G_a1ZLc |
| 6 | 3rd July, 2020 | Virtual CPE Meeting on "New Udyam Registrations Process" | CA. Maheshwar Marathe | https://youtu.be/DxnaOZEKiFE |
| 7 | 4th July, 2020 | Investor Awareness Programme On The Occasion of CA Foundation Day | Mr. Nilesh Shah | https://youtu.be/dytq5Yq-F6o |
| 8 | 7th July, 2020 | Final round of Kaun Banega Chatur Chanakya (KBCC)- Quiz Competition for Members Organised by WIRC of ICAI in Support with Pune Branch of WIRC of ICAI | N. A. | https://youtu.be/CISJND8gpzk |
| 9 | 19th July, 2020 | Interactive Session on Handling Change Jointly with Pune WICASA | CA. Swami Krishnadasji | https://youtu.be/U9hMm1lwv2E |
| 10 | 20th July, 2020 | Virtual CPE Meeting on "Company Law Series" (Day 1) | • CA C V Chitale • CA Durgesh Kabra | https://youtu.be/WBsfImAqseI |
| 11 | 21st July, 2020 | Virtual CPE Meeting on "Company Law Series" (Day 2) | • CA Kamal Garg • CA Avinash Rawani | https://youtu.be/oMA8Wc8IdOw |
| 12 | 22nd July, 2020 | Virtual CPE Meeting on "Company Law Series" (Day 3) | • CA Pramod Jain • CA Aniket Talati | https://youtu.be/1L6MbzPXBds |
| 13 | 25th July, 2020 | Virtual CPE Meeting on "Master Class on Trusts and NPOs" | • CA Abhay Kamat • CA Pramod Shingte • CA Ishaan Patkar | https://youtu.be/o99Jvsah9Lg |



Sometimes people try to expose what's wrong with you because they can't handle everything that's right with you.

BEGINNING OF AUTOMATION ERA

Contributed by :- CA. Karan Chandwani
Email Id :- karandchandwani@icai.org

The **term automation** was first coined in the automobile industry about 1946 to describe the increased use of automatic devices and controls in mechanized production lines. The word came from D.S. Harder, an engineering manager working at the Ford Motor Company then. Automation or control (automatic), is the using various systems of controls for equipment operating such as on machines, with various processes, network switching and other applications reduced human intervention.

A **report of McKinsey Global Institute** mentions, "We estimate that between 400 million and 800 million individuals could be displaced by automation and need to find new jobs by 2030 globally, based on our most rapid report of automation adoption scenarios." The report also says that the demand for professionals (accounting & finance) in India will drastically come down to about 46% of the **demand** now.



Is automating the processes really important? No, but we will surely end up paying the cost for not automating it which may be by losing our jobs, may be losing certain work assignments. It is not like if we don't automate, others too won't. But it is like everyone will be bound to automate processes and

tasks after a certain period of time. And let us all not forget that the pandemic of COVID-19 has taught us a lot in these terms that we all are now dependent on technology in all spheres of our life be it personal or professional meetings, work, collaboration, be it any task, activity or process, everything has now become online, on cloud for us and gradually with the help of artificial intelligence (AI), our tasks and processes will be automated soon, too.

There are various **AI frameworks and tools** already in the market viz. AWS, AI-ONE, Deeplearning4j, Azure, PyTorch, UiPath, etc. These tools not only do help us with to automate our tasks, activities and processes but also help us interact with our clients, business partners, customers, team members and literally everyone using the chat bots and related tools.



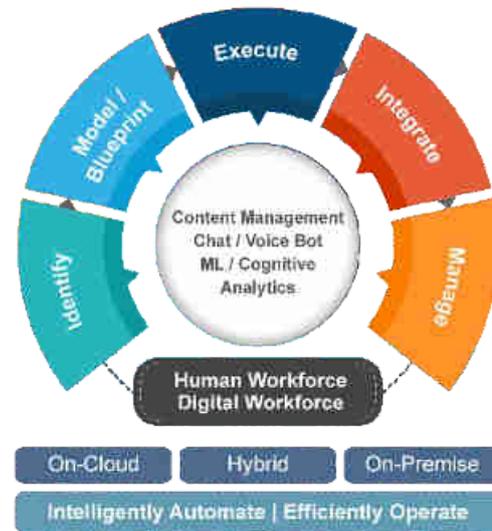
Earlier the world was focused on humans to learn and to plan and then to execute the tasks given and now it is for the machines to go through the same. **Machine learning** is an AI application that supports the systems to automatically learn and improve from experience without being specifically programmed for it. Machine learning focuses on the access of data and using it to learn for themselves through development of computer programs.



Concept of robots is not new as the first autonomous robots were created by William Grey Walter in the history of automation in 1948. These two 'tortoises' were: Elmer and Elsie. These robots found their way around obstacles without human intervention by following light and making use of a bump sensor. The success in the interaction of these light and touch inputs, enabled robots to work, also helped us to understand our own nervous system better. Alan Turing in 1950 formulated and designed a way to measure the 'intelligence' of a machine, which tested the thinking ability of a machine. The above test is famously known as The Turing Test and is in use still today.

Business process automation or BPA (recently becoming known as robotic process automation or RPA) is becoming more refined, efficient and turning out to be productive. Today, the automation software has become a necessity rather than a luxury. Its widespread use is optimising employee time and work, and leading to enormous resource and time saving. We experience AI & automation in our daily routine activities too, be it on Twitter, in emails, in our video games and so on. We have AI assistants in our phones, in our cars and in our homes. Siri doesn't always give us the answer, Alexa occasionally makes mistakes in hearing us. Recently in 2016 we saw the failure that was of Microsoft's Tay. But despite these shortfalls and failures, AI and automation are more versatile now than ever before. And they're developing and improving by the day.

Intelligent Business Process Automation



What is BPA? BPA automates business processes – either simple tasks or multi-layered workflows and domains. You might have heard it called robotic process automation, which refers to the notion of “software bots” or implies AI input which in short catalyses the activities and processes. Either way, the automation of business processes typically involves an automation platform, design and flow, formulae and syntax, multiple system integrations, and a series of conditional processing rules (If this happens, then do that).



How will BPA be of use to us at business?

BPA is useful for activities and process, big and small. First, it can take monotonous, mundane, or repetitive tasks on hand and help us save our time there. But it's also capable of handling complex tasks and orchestrating larger workflows (i.e., ones that involve a series of steps and actions across multiple

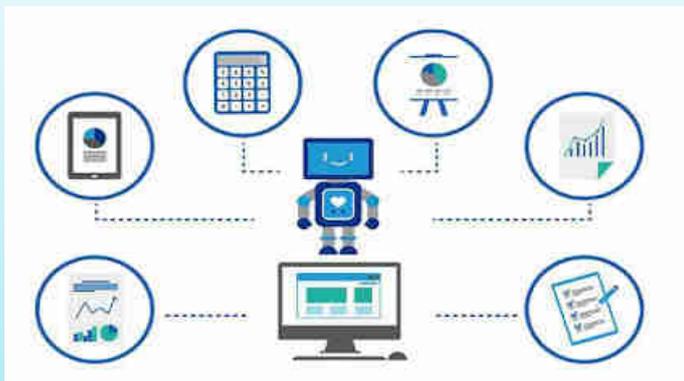
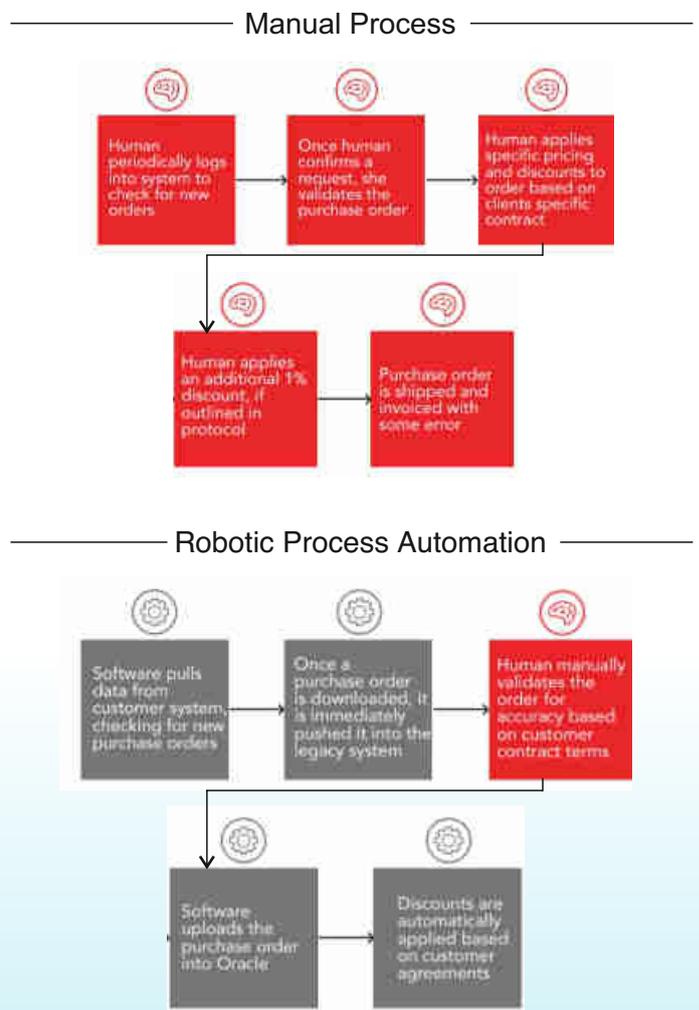


applications) and don't be surprised if it does it wonderfully. In fact, one of the best things about automation software is that it is so flexible and customisable and also can be programmed accordingly. BPA is not an out of the box solution at all. It's more of a personalized platform that you control. You develop a structure and set rules for the software to follow, and you design workflows to cover the tasks you want to automate. Then, BPA does its work. This means that BPA can help you with any particular area or all areas of your business, from customer management to sales processes to IT workflows to accounting and bookkeeping and various other tasks and processes. It's really up to us. So, automation will do whatever you need it to do so that you can save time and resources and use them to focus on the more challenging and higher value tasks.

RPA in use: RPA is also said to as a system to manage data of transactions flowing from a myriad of systems and applications related to IT. At several large multinational companies, automation is fully in process, in the accounting and finance departments assisting accountants finance executives in the analysis of their company. Most of the automation in finance is deployed in cash applications and invoice creation for international orders to cash and in various other tasks too. Director of Finance, Bob Kurpershoek, at NBC Universal says: "The volume of our transactions is high, and the processes are quite standardized. Therefore the combination of these two makes the return on investment of putting a robot in

When will accounting be automated? Accounting is being automated right now. Software like Accounting Seed, Automation Anywhere, Auto Entry, etc are leading the way in delivering accurate, streamlined financial management and access to real-time data to make better decisions faster. Does this eliminate the human factor? Will accountants be replaced by robots? Not at all. Automated accounting software simply helps businesses and financial professionals to get automated yet customized reports and being more productive in lesser time and then to save the time of the executives and human resources to do their job more efficiently.

Human Driven (Manual) Process vs RPA³:



We've come a long way and have had a lot of changes in the accounting and bookkeeping domain. The creation of the double-entry bookkeeping was probably the last innovation in



accounting. That was over 500 years ago! Now is the age of automation, and, accounting is at the forefront.

Accounting automation focuses on the lifecycle of entire accounting, not just one part of financial management but everything related to which means that the entire process of accounting, the capturing, manipulating, and interpreting of data (transactions), is done by software, with less dependence on manual transactional entries by people.

How should we determine what type of automation is best for us? There's no right answer to this! Firstly, the companies range in size, in terms of both revenue and budget matters. Which means that even a company with significant revenue might not have the budget or need for accounting automation. Secondly, companies span many different industries usually which means that accounting processes can be specialized based on the core operations of a business, and therefore require different capabilities.



Way forward & What Next? The automation history, despite a few obstacles along its way, has seen a lot of success in a short period. It continues to grow and evolve even today, providing us with more creative and innovation-based solutions, interactive AI, and assists in unravelling the secrets of the universe. It's impossible to know if the science fiction writers wrote right about a robot rebellion in the future and we will only come to know this in the near

future and the years to come. What's clear is that the future looks to be automated, gradually but fully. The current and future tech is really exciting, we should not forget the history of automation or the work that it has taken to get us where we are today which has really proved to be of very much use and productiveness to us.

Automation is on a rise in across all the industries and in all the parts of the world. We can see them in customer experience, product development, manufacturing and operations and other processes and departments too. They're on the job in legal and HR and now gradually into finance and accounts as well. In our motive of improving efficiency, being more productive without and of course sacrificing quality, automation is a new suite of technology tools you can put to work. As organizations look to continue with their automation journey in the digital world (referring to the human driven process vs RPA image above taken from a report of ACCA Global), here are some **steps to consider as prescribed by ACCA Global in their report:** Learn more; Build a list of opportunities; Identify pilot possibilities; Pilot projects; Scale that works. So, let us all Start now; Explore; Learn; Invest, have an automated environment in place and Focus on our core tasks!





DDT ABOLITION – THE FINE PRINT (PART II)

Contributed by :- CA. Kaushik Saranjame
Email :- kaushik.saranjame@gmail.com

Amendments in brief

The Finance Act, 2020 does away with the imposition of Dividend Distribution Tax (DDT) levied under section 115-O of the Income-tax Act in respect of dividend declared, distributed or paid by domestic companies from 1 April 2020 onwards. As a corollary, it also does away with the tax exemption on dividend income which was available to shareholders by insertion of a second proviso in section 10(34) of the Income-tax Act. Section 115BBDA of the Income-tax Act has also been amended to restrict its applicability to dividend declared, distributed or paid upto 31 March 2020.

Section 8 – a key that is often lost

Under section 8 of the Income-tax Act, dividend declared, distributed or paid is income of the year in which it is declared, distributed or paid, except in case of interim dividend, which is income of the year in which it is made unconditionally made available by the company to the shareholder (in short, of the year in which it is received by the shareholder).

The second proviso to section 10(34) (as proposed in the Finance Bill, 2020) essentially withdrew the exemption under section 10(34) in respect of dividend received by the shareholder from 1 April 2020 onwards. Based on a concern of double taxation of dividend declared, distributed or paid before 1 April 2020 (which would have suffered DDT under section 115-O) but received by the shareholder on or after 1 April 2020 (thus apprehended to be taxable in the hands of the shareholder on receipt basis), the second proviso to section 10(34) as finally enacted retained the exemption in respect of the dividend that has suffered tax under section 115-O and wherever applicable, section 115BBDA as well.

Considering the provisions of section 8, the above concern of double taxation should not have been relevant at all in the context of ordinary dividend (other than interim dividend) declared in FY 2019-20 (but received in FY 2020-21), as the same would have been exempt under section 10(34) in FY 2019-20 itself (assuming section 115BBDA did not apply in that year to the shareholder) – there should have been really no concern around its inclusion in the 'total income' of FY 2020-21 on receipt basis. More on section 115BBDA later.

Therefore, the dividend that the second proviso to section 10(34) refers to would only be the interim dividend declared in FY 2019-20 but received by the shareholder in FY 2020-21. Such interim dividend would have suffered DDT under section 115-O, thereby satisfying the first condition in the second limb of the second proviso to section 10(34) which refers to taxation of the dividend under section 115-O.

Section 115BBDA – festers loose drafting even in the year 2020

The other condition in the second limb of the second proviso to section 10(34) which refers to taxation of the dividend under section 115BBDA (wherever applicable), merits more attention.

Section 115BBDA levies a tax @ 10% (plus the applicable surcharge and cess) on specified resident shareholders where the dividend declared, distributed or paid and included in the 'total income' of the shareholder exceeds Rs 10 lacs (INR 1 million). The first proviso to section 10(34) excludes from the purview of section 10(34) the dividend chargeable to tax under section 115BBDA.

The co-joint reading of the provisions of section 10(34), the first proviso thereto and section 115BBDA create a chicken and egg situation – however, this is something that can be resolved without much violence to the language of the statute by interpreting the expression 'total income' appearing in the main part of section 115BBDA(1) to mean 'total income without giving effect to the provisions of section 10(34)'.

Needless to say, inclusion of dividend in 'total income' as a result of the co-joint reading of these provisions would have to be as per the rules laid down in section 8. Therefore, ordinary dividend (other than interim dividend) declared in FY 2019-20 (but received in FY 2020-21) would be considered for the purposes of potential application of section 115BBDA in FY 2019-20 itself – there is no question of considering it again in FY 2020-21 on receipt basis. Therefore, in the context of FY 2020-21, section 115BBDA would apply only in the context of interim dividend declared in FY 2019-20 but received by the shareholder in FY 2020-21. Reference to section



Tough times are like physical exercise. You may not like it while you are doing it, but tomorrow you will be stronger because of it.

115BBDA in the third proviso to section 2(9) of the Finance Act, 2020 (dealing with advance tax of FY 2020-21) is supportive.

Accordingly, in FY 2020-21, for the purposes of computation of the threshold of Rs. 10 lacs (INR 1 million) under section 115BBDA, only such interim dividend ought to be reckoned. It would help if the CBDT comes out with a Circular reiterating this position to avoid unnecessary litigation on this point.

The question that still remains is the rationale for inclusion of this condition of taxation of the dividend under section 115BBDA (wherever applicable) in the second limb of the second proviso to section 10(34). The first proviso to section 10(34) still stands. Therefore, it would be a

contradiction in terms to say that the exemption under section 10(34) would be available to cases where the dividend is appropriately subjected to tax under section 115BBDA (as well as section 115-O) when the first proviso to section 10(34) is designed to explicitly deny such exemption to cases where the dividend is appropriately subjected to tax under section 115BBDA. It would have therefore sufficed if the second proviso to section 10(34) had merely included the condition of taxation of the dividend under section 115-O.

(Part I of this series was published in the May 2020 edition of this newsletter.)



CA Foundation Day Celebration



Flag Hoisting



72 CA Day Celebration



Inauguration of Blood Donation Camp by Smt. Medhatai Kulkarni, Hon. Ex MLA, Pune



Blood Donation Camp



CA. Jagdeesh Dhongde Anchor & CA. C. V. Chitale, CCM-ICAI



Ek Sangitmay Sham Corona Worriers ke Naam by Singers Madhura Datar & Jitendra Abhyankar



Ek Sangitmay Sham Corona Worriers ke Naam by Singers CA. Rekha Dhamankar & CA. Mahesh Lunkad



God said "Build a better world". I said, "How? The world is such a complicated, cold dark place and there is nothing I can do". God said "Just build a better you".

YUM RESTAURANTS DECISION ON SECONDMENT OF EMPLOYEES- ANOTHER PIECE TO THE JIGSAW PUZZLE?

Contributed by :- Payal Sabnis and Harsh Lalwani

Email :- sudin.sabnis@nangia-andersen.com

With the advent of globalization and the governments initiatives to increase ease of doing business in India, multinational corporations ('MNE') have over a period of time exponentially expanded its operations globally and in the Indian market. It is often observed that MNE employees travel to India for various reasons – be it for quality control to ensure the Indian entity adheres to group standards, technical support activities, management support activities, trainings etc. Depending on the need of the activity (by the Indian entity or foreign entity), the personnel are seconded to India (usually for long term activity) or travel to India on short term business visas.

A secondment agreement generally precedes secondment of employees which lays down terms and conditions of such secondment. Such terms and conditions usually stipulate who would supervise the employee, to whom would he report to, who would benefit the results of his work, the manner and nature of work, compensation, termination etc. Owing to continuation of social security benefits and maintenance of family of the seconded employee in most cases, the foreign entity pays his salary in the home country and cross charges the same to the Indian entity (as the Indian entity reaps the benefits of his employment and is considered to be the 'economic employer'). As many Indian tax treaties have service permanent establishment (PE) clauses which trigger establishment of PE in India on rendering services in India beyond the prescribed threshold, most MNE's prefer to second their employees to the Indian entities to avoid risk of PE formation. Such an arrangement is easier said than done though, as such secondment of employees has been a subject matter of litigation, with the tax authorities often alleging a PE of the foreign entity in India (owing to foreign entity retaining its status as economic employer) and also seeking to tax the salary cross charge made by the foreign

entities as fees for technical services. This has given rise to prolonged litigation in many cases with varied jurisprudence from multiple courts and tribunals.

The concept of 'legal employer' v/s 'economic employer' finds place in the OECD Commentary which pre-supposes various conditions, on satisfaction of which the employer may be regarded as 'legal' or 'economic' employer of the employee. The entity which possesses the following rights over the employee is generally regarded as an economic employer and work is regarded to be performed by the employee for such an employer. Thus, in case the Indian entity qualifies to be the economic employer in such cases, the seconded employee is regarded as an employee of the Indian entity itself, working for the Indian employer. As against a formal contractual employer, to qualify as an economic employer, the following facts should be evident in the contract and followed in letter and spirit:

- Authority to instruct regarding the manner in which the work has to be performed;
- Controls and responsibility over the work and the place at which the work is performed;
- Remuneration is directly charged to the enterprise to which the services are provided;
- Determines the number and qualifications of the individuals performing the work;
- Right to select the individual who will perform the work and to terminate the contractual arrangements entered into with that individual for that purpose;



- Right to impose disciplinary sanctions related to the work of that individual;
- Determines the holidays and work schedule of that individual etc.

Various Tribunals have upheld the aforesaid principles to regard the Indian entity as economic employer, thereby negating any allegation of a PE of the foreign entity in India. However, the Supreme Court in the case of **DIT vs Morgan Stanley**, while dealing with PE exposure on secondment of employees, observed that employees travelling to India who undertake stewardship activities (e.g. quality control activities, shareholder activities etc.) would not give rise to a PE. However, employees on deputation could constitute a PE for the foreign entity in India if the foreign entity retains a 'lien on employment' and control and supervision over the employees including on any initiation of disciplinary action. In such cases, the Supreme Court observed that the deputed employee remains an employee of the US Company and is providing services to and for the Indian Company and by virtue thereof a service PE is created.

The Delhi High Court in the case of **Centrica India Offshore (P) Ltd vs CIT**, on observing the clauses of the secondment agreement, pronounced that no employee – employer relationship exist between the Indian entity and seconded employee as right of termination of the seconded employee existed with the overseas entity even if the seconded employee is under the control and supervision of the Indian entity.

It may be observed that in both these cases, the foreign entity did retain substantial rights with itself to be regarded as an economic employer, despite the fact that the employee was rendering services and was being supervised by the Indian entity. Similar views have been taken by various Tribunals in this regard following the said decisions thus considering the foreign entity as economic employer and classifying the income of the foreign entity as 'FTS/FIS' or as constitution of a 'service PE' in India. It is therefore of utmost importance to ensure that no or minimal (administrative) rights are retained by the foreign entity to minimize the risk of PE formation in such cases.

Recently, the Hon'ble Delhi Tribunal ('Delhi ITAT') in the case of **M/s Yum! Restaurants (Asia) Pte. Ltd ('Yum Singapore')** held that secondment arrangement between the taxpayer and the Indian affiliate did not constitute service PE of the foreign entity in India, as the Indian affiliate holds the right of complete employment including the lien on employment and exercises the control and supervision over the secondee. Interestingly, the Tribunal has distinguished the ruling of the jurisdictional High Court in the case of Centrica Software while delivering its verdict and hence comes as a welcome relief to the taxpayers.

In this case, the foreign entity i.e. Yum Restaurants ('assessee') is a tax resident of Singapore and was engaged in business of franchising KFC, Pizza Hut and Taco Bells in Asia Pacific Region (including India). Its Indian affiliate entered into a deputation agreement wherein an International employee ('Assignee') would be deputed to the Indian affiliate and would act as a Director to carry out its day to day functioning. The compensation of the Assignee would be paid by the assessee and the same is reimbursed on cost to cost basis by the Indian affiliate. The emoluments paid to the Assignee were offered to tax in India as salary and withholding taxes.

On an allegation by the Revenue authorities of formation of PE of the assessee in India, the Tribunal based on facts and the intricacies of the deputation agreement concluded that there existed no PE of the Assessee in India. While arriving at this conclusion, the Tribunal noted that:

- The Assignee was under direct control and superintendence of the Indian Affiliate.
- The assessee discharged the Assignee from all obligations and rights whatsoever, including lien on employment.
- Salary paid to Assignee has been brought to tax in India and the Indian Affiliate has claimed it as its business expenditure.
- All the facts and circumstance of the case and clauses of deputation agreement indicate that the Assignee was employee of the Indian affiliate and the assessee had simply acted as conduit to pay



salary to him in Singapore as his family was there in Singapore.

The marketing activities were on behalf of the Indian Affiliate and its franchisees and in the absence of any link whatsoever with the business of the assessee Company, there is no merit in attribution of contribution made by the Independent third-party franchisees, to constitute PE of the assessee Company in India.

Interestingly, the Tribunal while observing that the assessee did not have service PE in India, pointed out that even if deemed to be a PE, the deduction of the salary cost would result in nil income and there would be no income attribution to the PE.

The judgment is certainly a positive addition to the plethora of international tax decisions pronounced by the Indian courts in the past on this issue. Though the decisions have been a mixed bag for the taxpayers, the importance of proper drafting of secondment agreements should not be lost sight of as they play a very vital role in such arrangements. Certain important aspects such as control and supervision, lien on employment, termination of contract of employment, secondees right to sue in case of nonpayment of salary etc. should be carefully drafted in order to minimize litigations in India. Though the final word on the issue may not be out as yet, the taxpayers should be cautious enough to safeguard themselves from unwanted litigations.



Seminar on ATMANIRBHAR BHARAT by MR. AVINASH DHARMADHIKARI, Ex- IAS Officer



The screenshot shows a Zoom meeting interface with five participants in a grid view. The participants are: CA Abhishek Dhamne (Chairman), CA Jagdeesh Dhongde, Avinash Dharmadhikari (the speaker), CA Sameer Ladda (Vice Chairman), and CA Yashwant Kasar. The meeting title is 'Webinar on Atma Nirbhar Bharat' and it was held on July 9, 2021. The Zoom controls at the bottom show options for mute, video, chat, and share. The Zoom logo and 'Pure ICAI' branding are visible in the bottom left corner.



THE CURIOUS CASE OF FEHLT (MISSING) CASH

Contributed by :- CA Jinesh Sheth
Email :- fizireal@gmail.com

Munich based Wirecard AG (<https://www.wirecard.com/>) filed for insolvency on 25th June 2020. Readers might feel that well, we have been hearing a lot about bankruptcies, Chapter 11, insolvencies globally so it's nothing new? My response would be what if this company admits that a cash of EUR 1.9 billion has vanished (Fehlt in German means missing) overnight. Yes! If you heard it for the first time, you heard it right.

Wirecard, employing more than 5,300 people, is a constituent of DAX30 Index, which is the main index of Frankfurt Stock Exchange (a barometer of German stock markets). DAX 30 comprises of 30 largest German companies. Wirecard developed software & systems used for online payments. It grew very fast organically and also through aggressive M&As. It had transitioned from a startup that enabled financial services to adult entertainment & gambling into a full-fledged Fintech. Soon, the Fintech company became a pioneer in digital payments. On 18th June 2020, its auditors Ernst & Young (GmbH) while refusing to sign the 2019 balance sheet, informed the company that “no sufficient audit evidence could be obtained so far of cash balances on trust accounts to be consolidated in the consolidated financial statements in the amount of EUR 1.9 billion”. They further added that there are indications of fake balance confirmations being provided from the trustee to the auditor. The CEO Dr. Markus Braun resigned the day after and was arrested later. On 22nd June 2020 Wirecard admits that the cash of EUR 1.9 billion was not found. Stock (WDI) was trading at EUR 104.2 on 17th June 2020 and fell to EUR 1.4 on 26th June 2020. A fall of almost 99% in the stock price lead to a wealth erosion of almost EUR 12.5 billion in a week.

The response of E&Y GmbH was that there were “clear indications that this was an elaborate and sophisticated fraud, involving multiple parties around the world in different institutions, with a deliberate aim of deception.” It also admitted that even a “robust and extended audit procedures” were unsuccessful in uncovering the fraud.

In 2008 and from 2015 till 2019 it was subject to allegations for financial irregularities, but the management strongly denied as nothing was uncovered.

In 2019, the Financial Times reported that the company appears to fraudulently inflate sales and profits. In response to that, completely dismissing the allegation, Wirecard had claimed that FT's reporters have aligned with short sellers to manipulate the stock prices.

On 28th April 2020, KPMG AG during a special independent audit did raise a few concerns and shortcomings as it was unable to trace transactions worth EUR 1 billion, as per the Bloomberg, and was mostly inconclusive due to lack of sufficient documents in its 74-page report issued in German language, however as per the press release issued by Wirecard AG, it mentions that KPMG pointed out that for 2016-2018 “available evidence and audit procedures were sufficient to provide evidence of the revenues from third party”. The Company also claimed that KPMG's forensic examination for the period December 2019, “did not give rise to any indications of discrepancies between sales revenues reported and the account balances”.

In Aug 2019, major credit rating agency, Moody's had assigned a first-time Baa3 long-term issuer rating. Their outlook on ratings was “stable”. Moody's mentioned that “Wirecard's liquidity is strong”. They also mentioned that the company “benefits from its high cash on the balance sheet”.

Moody's defines Baa as “Obligations rated Baa are judged to be medium-grade and subject to moderate credit risk and as such may possess certain speculative characteristics.”

As per Bloomberg data, as on 30th May 2020, 40% of all the analysts had “BUY” recommendation on the stock, 52% had “HOLD” and only 8% had a “SELL” Rating on the WDI stock (Back then it was trading at EUR 93.9)



When you start caring about yourself, you start loving somebody, but when you start caring about others, somebody will start loving you.

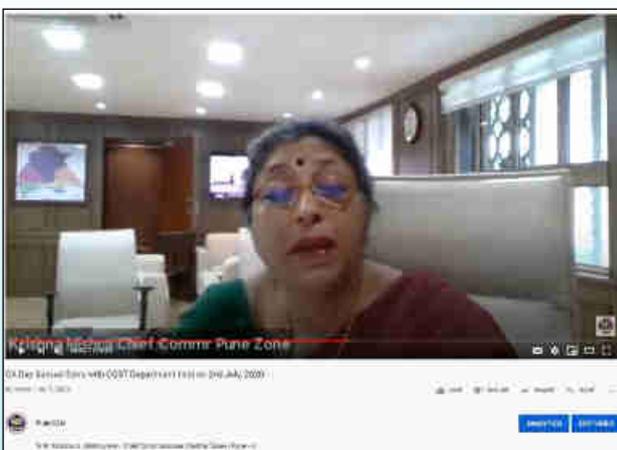
Although facts are still emerging (as this is written on 27th June 2020), whether it was inflating of books or siphoning of money we shall soon know, but no matter what, it shall be looked as a major failure on the part of German regulators, auditors, rating agencies, lenders and compliance professionals. It raises a big question on the effectiveness of German regulatory compliances. Questions would also be raised on the quality of due diligence done by lenders as it owes EUR 3.5 billion to bankers, creditors and bond holders. Questions would also be raised on the rating agencies. As per Euronews, the European Union has asked the European Securities and Markets Authority (ESMA) to investigate the role of BaFin (German Federal Financial Supervisory Authority). As per CNBC, German shareholder's association SdK stated that they have filed criminal complaint against E&Y. As per Der Spiegel (German news magazine), Softbank (who had invested EUR 900 million in Wirecard) is also planning to file a case against E&Y. Although, Softbank spokesperson denied to comment on this matter. As per Barrons, German Finance Minister, Olaf Scholz, mentions this as "unparalleled scandal". "Such a scandal must be a wake-up call that we need more oversight, more controls".

To Conclude - Take it by Your stride – But don't forget to learn from it

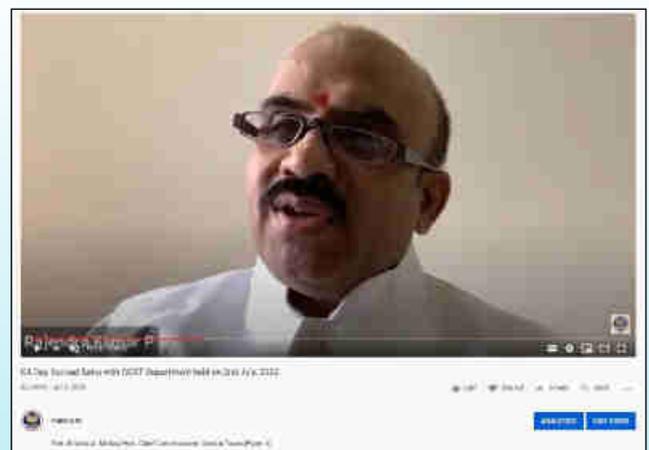
Compliance lapse of this magnitude in a developed market raises lot of eyebrows by the users of the financial statements. Questions are being raised that balance confirmations are amongst the very basic things that needs to be done by an auditor, how come it escaped in the past? Several other critical questions would be raised. Whether there was a collusion or not we shall come to know in future, yet the world would start passing their judgement on not just the German auditors but unfortunately our entire community. Let us not dwell too much on the opinion of someone who does not understand the complexities of auditing such firms, but let's take this as a constructive criticism; introspect ourselves and emerge stronger from the learnings. On a positive side, I am sure that this would lead to strengthening the compliance systems and processes not just in Germany but also all around the world. As it unfolds, this event would become a case study for all accounting, audit and compliance professionals around the globe. For young Auditors, do keep a close eye on the events, as there would be lot to learn.



CA Day Sanvad Satra - CGST Department



Smt. Krishna A. Mishra,
Hon. Chief Commissioner,
Central Taxes (Pune - I)



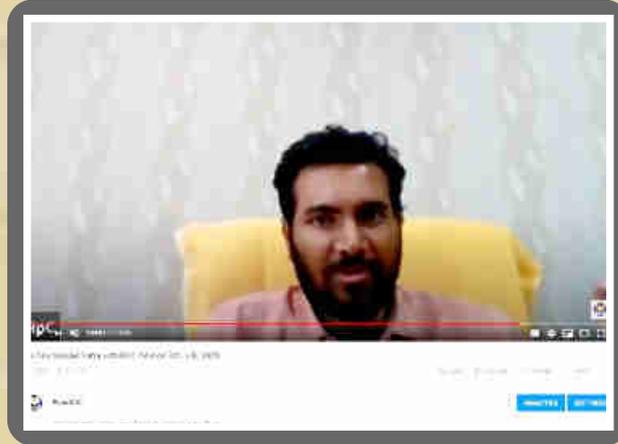
CA. Rajendra Kumar P.,
CCM & Chairman - GST Committee, ICAI



People do not change when you tell them a better option. They change only when they realize that there is no other option.

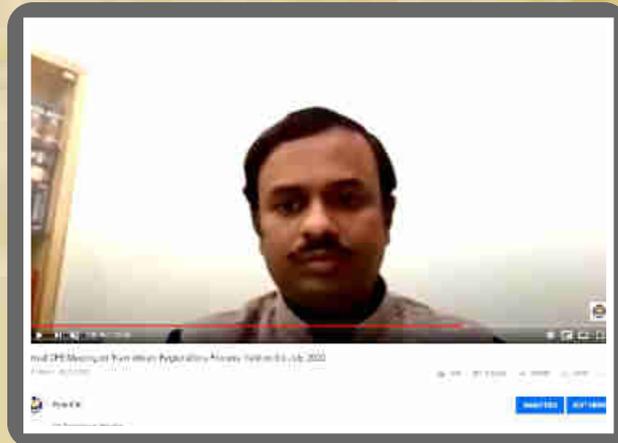
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Hon. Registrar of Companies, Pune



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by CA. Maheshwar Marathe



Interactive Session on
Handling Change

by CA Swami Krishnadasji





Those who joyfully leave everything in God's hand, will eventually find God's hand in everything. Worry ends where faith begins.



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CA Pramod Jain - Speaker



CA Aniket Talati - Speaker



Virtual CPE Meeting on Master Class on Trusts and NPOs



CA Abhay Kamat - Speaker



CA Pramod Shingte - Speaker





BIRD'S EYE VIEW ON PROVISIONS OF THE COMPANIES AMENDMENT ACT 2019 (W.R.T. CHARGES) AND CIRCULAR NO 23/2020 DATED 17.06.2020

Contributed by :- FCS Aniruddha Paralikar & FCS Rucha Patwardhan
Email :- aniruddha.parialikar@gmail.com & ruchapatwardhan@gmail.com

• Charge Registration

As per sec 2(16) of Companies Act 2013, Charge means an interest or lien created on the property or assets of the company or any of the undertakings or both as security and includes mortgage. Provisions of Section 77 to section 87 of the Companies Act 2013 deals with Charges. The Company has to create a charge and register the particulars of such charge with Registrar of Companies within 30 days.

Position before The companies Amendment Ordinance 2018

Earlier to the Companies Act 2018, if the charge was not registered within 300 days of creation/modification, the application to Central Government was required to be made for condoning the delay in registration of charge.

Position before The companies Amendment Ordinance 2019

The Companies Amendment Ordinance 2018 was promulgated by president on 2nd November 2018.

Thereafter, "The Companies Amendment Ordinance 2018" was replaced by "The Companies Amendment Bill, 2019" on 04th January, 2019 by 'House of People' (Lok Sabha). But "The Companies Amendment bill 2019" could not be taken up for consideration and for passing of council of states (Rajya Sabha).

Meanwhile, "The Companies Amendment Ordinance 2018" was going to lapse on 21st January, 2019, Hence, to give continued effect to "The Companies Amendment Ordinance 2018", "The Companies Amendment Ordinance 2019" was passed as the parliament was not in session.

Position after "The Companies Amendment Ordinance 2019"

On 12th January, 2019, The Companies Amendment Ordinance, 2019 was promulgated by the President to further amend "The Companies Act 2013", which came into force with effect from 02nd November, 2018.

Position after "The Companies Amendment Act 2019"

On 31st July, 2019, "The Companies Act 2013" was amended to become "The Companies Amendment Act 2019" by way of an Ordinance. On this day, "The Companies (Amendment) Act 2019", No.22 of 2019 received the ascent of the President and got published in the Gazzate of India.

The provisions of this Act, except certain sections, came into force retrospectively from 02.11.2018. Section 77 – "Duty to Register Charges" is one of the sections that got amended since this date.



With the amendment in section 77, the time limit for registering the charges with Registrar of the Companies and fees thereof got amended. Now, with this amendment, the date 02.11.2018 became of at most importance as the charge creation, modification date got bifurcated into two periods:-

1. Charges created or modified before 02.11.2018 and
2. Charges created or modified after 02.11.2018.

The time limit for filing the form for registration of charges for the charges created before 02.11.2018 was allowed to be for maximum 300 days. The provision for condonation of delay was removed which was present before "The Companies Amendment Ordinance 2018".

Further, if registration was not made within the said 300 days then charge shall be registered within 180 days from the date of "The Companies Amendment Ordinance 2019" (i.e. 180 days from 02.11.2018) by paying additional fees.

That means one cannot file form for registration of charge after total 300 days from the date of creation. However, one can register the form after 30 days with additional fees depending on the actual delay period in days. (i.e. Delay from 30 days to 300 days)

The time limit for filing the form for registration of charges for the charges created after 02.11.2018 was allowed to be for maximum 60 days. Beyond 60 days, one may apply to Registrar of Companies and if Registrar satisfies he may allow additional 60 days (Total 120 Days) for registration of charge with certain ad valorem fees in addition to additional fees.

That means one cannot file form for registration of charge after total 120 days from the date of creation. However, one can register the form after 30 days with additional fees and ad valorem fees depending on the actual delay period in days. (i.e. Delay from 30 days to 120 days)

Effect of Circular No. 23/2020 dated 17.06.2020

With the effect of Pandemic caused by Covid 19, the Ministry of Corporate affairs has received many representations for relaxation in filing form relating to charge creation and modification.

In consideration with these requests, MCA vide General Circular No. 23/2020 dated 17.06.2020 has provided some relaxation to address the said issue.

The Central Government has decided to introduce a scheme namely "Scheme of relaxation of time for filing forms related to creation or modification of charges under the Companies Act 2013" for condonation of delay in filing the forms.

With this Circular, the period starting from 01.03.2020 to 30.09.2020 shall to be excluded for the purpose of calculation of 120 days. That means if the date of creation of charge falls before 02.11.2019, then the provisions of this circular would not be applicable.

However, if the date of creation falls on or after 02.11.2019, then for the calculation of the period of 120 days the period falling between 01.03.2020 to 30.09.2020 shall be excluded.





This can be explained with the help of few examples: -

| Sr. No | Date of Creation of Charge | Benefit of Circular 23/2020 is available? | Due Date (After considering 120 days from Date of creation) | Relaxation granted for number of days | Remarks |
|--------|----------------------------|---|---|---|--|
| 1 | 31.10.2019 | No | 28.02.2019 | Nil | No relaxation as 120 days are completed before 01.03.2020 |
| 2 | 31.01.2020 | Yes | 30.12.2020 | 91 Days (Period falling from 01.03.2020 to 30.09.2020) | Relaxation Is available and it would be calculated from 01.10.2020. Hence, Due date will be 30.12.2020 |
| 3 | 29.02.2020 | Yes | 28.01.2021 | 120 Days (Period falling from 01.03.2020 to 30.09.2020) | Relaxation Is available and it would be calculated from 01.10.2020. Hence, Due date will be 28.01.2021 |
| 4 | 01.03.2020 | Yes | 28.01.2021 | 120 Days (Period falling from 01.03.2020 to 30.09.2020) | Relaxation Is available and it would be calculated from 01.10.2020. Hence, Due date will be 28.01.2021 |
| 5 | 20.06.2020 | Yes | 28.01.2021 | 120 Days (Period falling from 01.03.2020 to 30.09.2020) | Relaxation Is available and it would be calculated from 01.10.2020. Hence, Due date will be 28.01.2021 |

- Provisions of this circular would not be applicable to Satisfaction of Charge.
-

The Birds Eye View on the combined provisions of "The Companies Amendment Act 2019" (By Ordinance) and Circular 23/2020 dated 17.06.2020 can be better explained with the help of following Table:





Those who joyfully leave everything in God's hand, will eventually find God's hand in everything. Worry ends where faith begins.

Birds Eye view on the Provisions of sections relating to Charges after Companies Amendment Ordinance 2019 and General Circular No 23/2020 dated 17.06.2020

| Type of Transaction | Charge Form | Specifications | Case | Date of charge Creation / Modification | Form allowed to be filed up to | Condonation Allowed | Normal Fee (Rs) | ROC filing Fees & Penalty | | | | | | Penalty (In addition to Normal Fees and Additional Fees) |
|-----------------------------------|-------------|---|------|--|--|---------------------|-----------------|--|------------------------|---|-------------------------|--|--|---|
| | | | | | | | | Additional Fees (In addition to Normal Fees) | | Advalorem Fees (In addition to Normal Fees and Additional Fees) | | Penalty (In addition to Normal Fees and Additional Fees) | | |
| | | | | | | | | Up to 30 | 31 to 60 | 61 to 90 | 91 to 180 | | 180 to 300 | |
| Creation / Modification of Charge | CHG 1 | - | 1 | On or before 06.07.2018 | 01.05.2019 | No | 200 to 600 | 2 Times of Normal Fees | 4 Times of Normal Fees | 6 Times of Normal Fees | 10 Times of Normal Fees | 12 Times of Normal Fees | - | No filing can be done |
| | | - | 2 | From 07.07.2018 to 01.11.2018 | Creation / Modification Date + 299 days | No | 200 to 600 | 2 Times of Normal Fees | 4 Times of Normal Fees | 6 Times of Normal Fees | 10 Times of Normal Fees | 12 Times of Normal Fees | - | No filing can be done |
| | | - | 3 | From 02.11.2018 to 31.07.2019 | Creation / Modification Date + 120 days | No | 200 to 600 | 2 Times of Normal Fees | 4 Times of Normal Fees | 6 Times of Normal Fees | No filing can be done | No filing can be done | - | No filing can be done |
| | | If Small Company / One Person Company | 4 | From 1.08.2019 onwards till 01.11.2019 | Creation / Modification Date + 120 days | No # | 200 to 600 | 3 Times of Normal Fees | - | - | No filing can be done | No filing can be done | 3 Times of Normal Fees+ Ad valorem fees of 0.025% of amount secured by charge s/t Max. Rs 1,00,000/- | No filing can be done |
| | | If Small Company / One Person Company | 5 | From 02.11.2019 till 29.02.2020 | Creation / Modification Date + 120 days | YES* | 200 to 600 | 3 Times of Normal Fees | - | - | No filing can be done | No filing can be done | 3 Times of Normal Fees+ Ad valorem fees of 0.025% of amount secured by charge s/t Max. Rs 1,00,000/- | No filing can be done |
| | | Other than Small Company / One Person Company | 4a | From 1.08.2019 onwards till 01.11.2019 | Creation / Modification Date + 120 days | No # | 200 to 600 | 6 Times of Normal Fees | - | - | No filing can be done | No filing can be done | 6 Times of Normal Fees+ Ad valorem fees of 0.05% of amount secured by charge s/t Max. Rs 5,00,000/- | No filing can be done |
| | | Other than Small Company / One Person Company | 5a | From 02.11.2019 till 29.02.2020 | Creation / Modification Date + 120 days | YES* | 200 to 600 | 6 Times of Normal Fees | - | - | No filing can be done | No filing can be done | 6 Times of Normal Fees+ Ad valorem fees of 0.05% of amount secured by charge s/t Max. Rs 5,00,000/- | No filing can be done |
| | | If Small Company / One Person Company | 6 | From 01.03.2020 till 30.09.2020 | Creation / Modification Date + 120 days | YES** | 200 to 600 | 3 Times of Normal Fees | - | - | No filing can be done | No filing can be done | 3 Times of Normal Fees+ Ad valorem fees of 0.025% of amount secured by charge s/t Max. Rs 1,00,000/- | No filing can be done |
| | | Other than Small Company / One Person Company | 6a | From 01.03.2020 till 30.09.2020 | Creation / Modification Date + 120 days | YES** | 200 to 600 | 6 Times of Normal Fees | - | - | No filing can be done | No filing can be done | 6 Times of Normal Fees+ Ad valorem fees of 0.05% of amount secured by charge s/t Max. Rs 5,00,000/- | No filing can be done |
| Satisfaction of Charge | CHG 4 | - | 1 | Date of Satisfaction of Charge | Date of Satisfaction + 300 days With Condonation of delay beyond 300 days | Yes beyond 300 days | 200 to 600 | 2 Times of Normal Fees | 4 Times of Normal Fees | 6 Times of Normal Fees | 10 Times of Normal Fees | 12 Times of Normal Fees | - | No Ad-valorem Fees, However, In addition to Normal and additional fees beyond 300 days delay; on approaching for Condonation of Delay with Central Government (Regional Director), he/she will levy a Penalty for the delay at his discretion |

Reference

| Notes | 1 | Case 4 & 4a | # | If the date of creation or modification falls between 01.08.2019 to 01.11.2019, then No condonation is allowed as per General Circular No. 23/2020 dated 17.06.2020 as 120th day falls on or before 29.02.2020. |
|-------|---|-------------|----|---|
| | 2 | Case 5 & 5a | * | If the date of creation or modification falls between 02.11.2019 to 29.02.2020, then condonation is allowed as per General Circular No. 23/2020 dated 17.06.2020. As per the said circular 120 days shall be reckoned excluding the period of Covid affected period of 01.03.2020 to 30.09.2020. If date of creation/modification is 02.11.2019 then 120th day (i.e. due date shall be 01.10.2020) that is to say only 1 day condonation is allowed (excluding period of 01.03.2020 to 30.09.2020) If date of creation/modification is 31.01.2020 then 120th day (i.e. due date shall be 30.12.2020) that is to say 91 days condonation is allowed (excluding period of 01.03.2020 to 30.09.2020) If date of creation/modification is 29.02.2020 then 120th day (i.e. due date shall be 28.01.2021) that is to say full 120 days condonation is allowed (excluding period of 01.03.2020 to 30.09.2020) |
| | 3 | Case 6 & 6a | ** | If the date of creation or modification falls between 01.03.2020 to 30.09.2020, then condonation is allowed as per General Circular No. 23/2020 dated 17.06.2020. As per the said circular 120 days shall be reckoned excluding the period of Covid affected period of 01.03.2020 to 30.09.2020. If date of creation/modification is 01.03.2020 then 120th day (i.e. due date shall be 28.01.2021) that is to say full 120 day condonation is allowed (excluding period of 01.03.2020 to 30.09.2020) If date of creation/modification is 19.06.2020 then 120th day (i.e. due date shall be 28.01.2021) that is to say full 120 days condonation is allowed (excluding period of 01.03.2020 to 30.09.2020) |



It's always better to be unique than the best Bcoz..Being the best makes you the number one but being unique makes you the only one..!!

4) Normal Fees for Indian Companies having share capital

| Sr No. | Nominal Share Capital | Fees Applicable (Rs) |
|--------|------------------------|----------------------|
| 1 | Up To 99,999/- | 200/- |
| 2 | 1,00,000 to 4,99,999 | 300/- |
| 3 | 5,00,000 to 24,99,999 | 400/- |
| 4 | 25,00,000 to 99,99,999 | 500/- |
| 5 | 1,00,00,000 or more | 600/- |

5) Normal Fees for Indian Companies not having share capital

Rs. 200/-

6) Normal Fees for Foreign Companies

Rs. 6,000/-

Notes:-

1) Small Company

Small company means other than Public company satisfying both conditions-

1) Paid up share capital < 50,00,000/-

and 2) Turnover < 2,00,00,000

Small company excludes:-

- 1) Holding or Subsidiary Company
- 2) Company registered under section 8
- 3) Company governed by special act

2) One Person Company

One person company means a company which has only one person as a member





Work for a cause and not for applause. Live life to express and not to impress. Do not strive to make your presence noticed, just make your absence felt.

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Achievement always comes to the person who is working for it, but not to the person who is just waiting for it.



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Plot No.8, Parshwanath Nagar, CST No. 333,
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