

COVID-19: India tax and regulatory update

Key highlights of economic measures in India in the wake of the COVID-19 pandemic

14 April 2020

The COVID-19 outbreak has created a worldwide health emergency and in anticipation of a major crisis, the Indian Prime Minister had announced a nation-wide lockdown (excluding essential commodities) for 21 days from 25 March 2020 to 14 April 2020. Today, in a telecast to the nation, the Prime Minister announced an extension of the lockdown till 3 May 2020.

Lockdown 2.0 will involve a strategy for continuous monitoring of COVID-19 cases in every city, town and district till 20 April 2020. Based on the data collected upto 20 April 2020, there may be a gradual relaxation of norms in certain zones in order to partially commence economic activity. Detailed guidelines in this regard will be released tomorrow. The focus of the guidelines will largely be on aiding farmers in the ongoing harvest season and providing support to daily wage earners. While a substantial economic stimulus package is expected to be provided by the Indian Government in the next few weeks, no announcement of this has been made as yet.

Earlier, the Indian Government had announced several relief measures for the poorer sections of society as well as some relaxations in its policies, particularly relating to statutory and regulatory compliances for business.

We summarize below the key highlights of the tax and regulatory measures announced by the Indian Government:

➤ Direct taxes

- A special fund, Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund' ('PM CARES Fund') has been set up to accept donations in order to provide relief to people affected by COVID-19. The donations to this fund made up to 30 June 2020 will be eligible for 100% deduction in the FY 2019-20, although FY 2019-20 has already ended on 31 March 2020.
- The due date for filing an application and payment of tax under the "tax amnesty scheme", Vivad se Vishwas scheme, which was recently introduced by the Government to reduce litigation, has been extended from 31 March 2020 to 30 June 2020. The additional tax of 10% which was earlier payable if the tax payments were made on or after 1 April 2020 is now applicable to tax payments made on or after 1 July 2020.
- The due date for furnishing a delayed/revised return of income for FY 2018-19 has been extended from 31 March 2020 to 30 June 2020.
- Keeping in mind the fact that cash flows have been affected due to the lockdown, the due dates for making various investments eligible for a tax break for FY 2019-20 have been extended to 30 June 2020 instead of 31 March 2020 such as life insurance and mediclaim premiums, contribution to pension funds, donations, investments in eligible exemption schemes in respect of capital gains, etc.
- The due date of commencement of operations for Special Economic Zone ('SEZ') units which are eligible for certain tax exemptions, has been extended from 31 March 2020 to 30 June 2020 for those units that have received the necessary approvals on or before 31 March 2020.
- The validity of certificates for lower withholding of taxes issued for FY 2019-20 has been extended to 30 June 2020 for those taxpayers whose applications for FY 2020-21 are pending for disposal with the tax office, provided such taxpayers had received a certificate for FY 2019-20. Further, those taxpayers which had received the certificate for FY 2019-20 and could not apply for the certificate for FY 2020-21 shall be granted the extension provided they submit their application by email to the tax office, as per the procedure specified in this regard. Further, directions have been issued that in case of payments made to non-residents having a Permanent Establishment in India and which neither have a certificate for FY 2019-20 nor have applied for a certificate for FY 2020-21, tax shall be withheld at a flat rate of 10% till 30 June 2020.
- The rate of interest charged on non-payment or late payment of income tax, withholding tax, tax collected at source, Equalization Levy, Securities Transaction Tax, etc. which are due for payment between the period 20

March 2020 and 29 June 2020, has been reduced from 12%/18% p.a. as applicable, to 9% p.a. In case of non-payment of such tax, penalty proceedings will not be initiated.

- In order to provide immediate relief to business entities and individuals, the Government has decided to immediately issue all pending refunds up to INR 0.5 million (~USD 7,000).
- Various due dates pertaining to issue of notices, intimations, orders, appeals and completion of proceedings by the tax authorities have been extended to 30 June 2020.

➤ Indirect taxes

- The Government has allowed entities with annual turnover of less than INR 50 million (~USD 0.7 million) to file their monthly Goods and Services Tax ('GST') returns for the months of March, April and May 2020 by the end of June 2020, instead of in the immediately following month, without the levy of interest or penalty. However, for other entities, a reduced rate of interest at 9% p.a. shall be charged once a period of 15 days after the due date has lapsed.
- The due date for furnishing the annual GST return for FY 2018-19 has been extended from 31 March 2020 to 30 June 2020.
- For entities wishing to opt for the Composition Scheme under the GST regime, the date for opting for the Composition Scheme has been extended to 30 June 2020 instead of before the commencement of the financial year. For those already covered under the Composition Scheme, the due dates for making tax payments for the last quarter of FY 2019-20 and submitting the annual return for FY 2019-20 have been extended to 30 June 2020, which was earlier required to be done in the month of April.
- In order to provide immediate relief to business entities and individuals, it has been decided to immediately issue refunds under the GST and Customs law.
- The Government had previously introduced a dispute resolution scheme to settle disputes relating to the erstwhile indirect taxation regime. Payments covered under this scheme can now be made till 30 June 2020 without paying any additional interest.
- To ensure that the export and import procedures do not get adversely affected by the reduced working capacity, the Government has announced that Custom clearances will be available on 24 X 7 basis till the end of June 2020.
- In view of irregularities in working conditions, various due dates under the GST law and the Customs law for issue of notices, approvals, appeals, furnishing of returns and other compliances have been extended to 30 June 2020.
- The existing Foreign Trade Policy which was valid till 31 March 2020 has been extended for 1 year to provide for continuity amidst the global pandemic.

➤ Corporate law updates

- The Ministry of Corporate Affairs ('MCA') has classified donations to PM CARES Fund as an eligible Corporate Social Responsibility ('CSR') activity in order to encourage corporates to donate to the said fund.
- The MCA has waived the late filing fees for all documents, returns or statements to be filed during a moratorium period between 1 April 2020 and 30 September 2020. Further, the MCA also launched a "Companies Fresh Start Scheme" giving a one-time opportunity to defaulting companies to furnish pending documents between 1 April 2020 and 30 September 2020 without paying any penalty.
- Rules regarding holding Board meetings have been relaxed till 30 September 2020 and the maximum permissible gap between two board meetings has been allowed to be extended from 120 days to 180 days. The requirement of holding board meetings with the physical presence of board members for approval of financial statements, board reports etc. has also been relaxed till 30 June 2020 by permitting them to do the same with the help of video conferencing or other audio-visual means. Further, the requirement for independent directors

to conduct at least one meeting without the presence of other directors has also been relaxed for FY 2019-20. The non-fulfilment of the condition that at least one director of a company should have been present in India for 182 days or more will not be treated as a violation.

- In anticipation of the lockdown and irregularity in working conditions, the MCA took the initiative and rolled out a form to be filled by all companies to determine their readiness if their employees need to work from home.
- Various relaxations have been provided to companies that are required to invest in certain specified debentures or deposits keeping in mind irregularities in cash flows.

➤ **Securities market**

- The Securities and Exchange Board of India ('SEBI') has relaxed certain provisions for listed entities (including REITs and InvITs).
- Additional time limit ranging from 21 days to 90 days beyond the respective due dates has been provided for various reporting and filing requirements relating to investor complaints, shareholding pattern, meetings between committees, corporate governance, listing obligations, Foreign Portfolio Investors ('FPIs'), Annual General Meetings ('AGMs') etc.

➤ **Banking regulations**

- The Reserve Bank of India ('RBI') has reduced the repo rate from 5.15% to 4.40%, the reverse repo rate from 4.90% to 4.00% and the Cash Reserve Ratio from 4.00% to 3.00% to infuse liquidity into the economy.
- The RBI has permitted all commercial banks, Non-Banking Finance Companies ('NBFCs') and rural banks to grant a moratorium period of 3 months to all term loans (including agricultural loans). The moratorium period will apply to all payments relating to principal or interest, EMI and credit card dues falling between 1 March 2020 and 31 May 2020. It was clarified that interest will continue to be charged during the moratorium period.
- In respect of working capital facilities such as overdrafts or cash credits, lenders have been permitted to defer the recovery of interest falling between 1 March 2020 and 31 May 2020.
- The RBI emphasized that such rescheduling of payments between the moratorium period shall not affect the asset classification or the credit rating of the borrower to ensure that borrowers can "tide over the economic fallout due to COVID-19".
- The RBI has notified that the limit for investment in corporate bonds by FPIs has been increased to 15% of outstanding stock for FY 2020-21. It also notified a "Fully Accessible Route" permitting non-residents to invest in Government securities with effect from 1 April 2020 without any quantitative limit.
- It is noteworthy that the RBI did not delay the amalgamation schemes of Public Sector Banks, which will come into force with effect from 1 April 2020.

➤ **Other measures**

- The Central Government has approved a deduction of 30% in the salary of Members of Parliament for a period of one year beginning from 1 April 2020. The monetary savings shall be deposited into the Consolidated Fund of India to fight COVID-19. The officers and staff of the Ministry of Finance, including the officials of Public Sector Banks have pledged to donate a day's salary, aggregating to INR 4,301 million (~USD 57 million), to the PM CARES Fund.
- The Indian Railways has successfully converted 2,500 coaches to fully equipped isolation centres. The Indian Railways have further supported the fight against the pandemic by running special "Parcel" trains for the transport of medical supplies and food. Similar transportation facilities have also been provided by the Indian Air Force.

- The Employees' Provident Fund Organization ('EPFO') has released an online application form, using which, the members of the fund can withdraw 75% of the amount in their fund, restricted to a maximum amount of 3 months' wages.
- The Insolvency and Bankruptcy Board of India has increased the minimum amount of default by corporates to INR 10 million (~USD 0.13 million). It has further clarified that the period of lockdown shall not be counted in any timeline which is a part of the Corporate Insolvency Process.
- The Government has extended the date for renewal of third-party motor insurance and health insurance policies to 21 April 2020 for those policies expiring between 25 March 2020 and 14 April 2020.
- The Government has, by way of an office memorandum, clarified that any disruption in supply chains with any country due to COVID-19 would be covered under "Force Majeure".
- The Life Insurance Corporation of India has clarified by way of a press release that claims relating to COVID-19 deaths will be processed at the earliest and such claims will not be excluded by covering them under "Force Majeure". Apart from this, the regulatory body for insurance companies, the Insurance Regulatory and Development Authority of India, has provided an additional grace period of 30 days for renewal of health insurance policies.

➤ Relief package by the Indian Government

The Finance Minister by way of a press release announced a relief package of INR 1,700 billion (~USD 23 billion) to help the poor in fighting the battle against COVID-19, which includes the following:

- An insurance cover of INR 5 million (~USD 7,000) per health worker will be provided in the event of loss of life of any health worker on account of COVID-19 duty or while treating the COVID-19 patients. Approximately 2.2 million health workers are covered under this scheme.
- Approximately 800 million poor people will get specified quantities of wheat or rice and pulses free of cost for a period of three months.
- Monetary assistance has been announced for farmers, construction workers, 200 million women who are bank account holders under a specified scheme of the Government, 30 million poor senior citizens, poor widows and the poor with special needs.

➤ Industry specific regulations

- Petroleum, Oxygen and Gas industry – The Petroleum and Explosives Safety Organization (PESO) and the Ministry of Commerce and Industry have issued various directions to ensure uninterrupted manufacturing, transportation and storage of medical oxygen to hospitals and healthcare facilities.
- Power sector
 - The Power Ministry and the Ministry of Railways and Coal have ensured 24x7 supply of power to all consumers, considering the fact that 70% of power generation is from coal-based power plants.
 - Directions have been issued to the Central Electricity Regulatory Commission to grant a moratorium of 3 months to Distribution Companies to make payments to electricity generating companies without levy of any late payment surcharge.
- Pharmaceuticals sector
 - The Department of Pharmaceuticals is working in close co-ordination with other ministries like the Ministry of Health and Family Welfare, Ministry of Commerce and Industry, Customs department and Drug and Medical Associations to ensure regular manufacture, availability and supply of medicines.

- Control rooms and helplines have been set up to ensure smooth communication with other departments to address various issues arising from time to time on priority.
- Agriculture sector - Shops dealing in agricultural machinery, spare parts and repair services will be allowed to remain open to facilitate transportation of farm produce. Tea plantations have also been permitted to function at 50% capacity.

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