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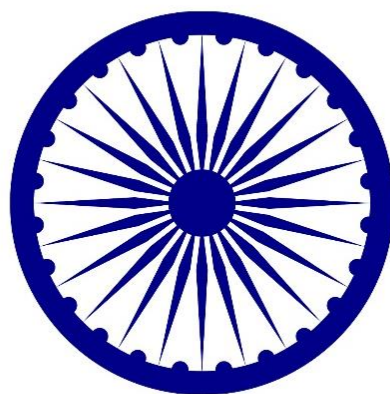
NEWSFLASH INDIA

ADDING VALUE

Issue:
February
2019

Latest news on compliance, tax and business in India

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REGULATORY UPDATES IN INDIA:

→ REPORTING PERTAINING TO DEPOSITS AND MICRO, SMALL AND MEDIUM ENTERPRISES

→ REPORTING PERTAINING TO SIGNIFICANT BENEFICIAL OWNERS OF THE COMPANY

→ REPORTING PERTAINING TO DEPOSITS AND MICRO, SMALL AND MEDIUM ENTERPRISES

With a aim to facilitate promotion and development and to ensure timely and smooth flow of funds to the Micro and Small Enterprises (MSE), the Central Government has directed that all companies, who get supplies of goods or services from MSE suppliers and whose payments to MSE suppliers exceed forty-five days from the date of acceptance or the date of deemed acceptance of the goods or services, shall submit a half yearly return to the Ministry of Corporate Affairs. Accordingly, Ministry of Corporate Affairs has issued, on 22nd January, 2019, notification whereby, every company, who has outstanding dues to MSE suppliers, is required to file a return containing details of all outstanding dues to MSE suppliers.

Further, with a view to bring more transparency on availing of loans by the companies, the Ministry of Corporate Affairs has issued notification wherein companies who has outstanding receipt of monies and loans (which are not considered as deposits under the Companies Act, 2013 and rules made thereunder), are now required to file a return disclosing all such outstanding receipt of monies or loans.

Key highlights of the MSE reporting are as under:

APPLICABILITY

- All companies who receive supply of goods and services from MSE suppliers and whose outstanding payments to MSE suppliers exceed forty five (45) days from the date of acceptance or the date of deemed acceptance of goods or services. It is also applicable to a company who has any outstanding payments to MSE suppliers as on the date of the notification i.e. as on 22nd January 2019.

RETURN

- Every company as specified above is required to file a half yearly return in “MSME Form I” with the Registrar of Companies (ROC), the form as available on the Ministry of Corporate Affairs (MCA) website.
- Details of outstanding dues to MSE suppliers and reasons for non-payment is required to be stated in the above mentioned return

DUE DATE

- “MSME Form I” is required to be filed on or before 21st February, 2019 i.e. within thirty days of publication of the notification stating amounts due to MSE suppliers which are outstanding as on 22nd January 2019.
- Additionally, a half-yearly return is also required to be filed i.e. for the period from April to September on 31st October and for the period from October to March on or before 30th April in every financial year.

Key highlights of the return deposits are as under:

APPLICABILITY

- All companies other than Government companies which, as on the date of notification, have outstanding receipts of money or loans and which are not considered as deposits as per rule 2 (1) (c) of the Companies (Acceptance of Deposits) Rules, 2014 as specified in rule 16 (A) (3).

The terms “outstanding receipts of money or loans which are not considered as deposits” shall include amounts received from foreign banks, foreign body corporates, any amounts received from local or statutory authorities, loans or facility from banks (whether secured or unsecured), any advance received from customers and not more than 365 days have elapsed from date of receipt of such advance, amounts received by the company from any other company, amounts received from individual (who at the time of receipt of the money) was a director or relative of director of a private company, etc.

RETURN

- Every company as specified above is required to file a one-time return in “Form DPT-3”, as available on the website of the Ministry of Corporate Affairs (MCA).
- Details of all outstanding receipts of money or loan which are not considered as deposits from 01st April, 2014 up to 22nd January, 2019, shall be stated in the above return verified by the certificate from auditor of the company.

DUE DATE:-

- “Form DPT-3” is required to be filed on or before 22nd April, 2019 i.e. within ninety days of publication of notification.
- Subsequently, “Form DPT-3” will be required to be filed on or before 30th June every year as per the audited information contained therein as on 31st March of that year.

→ REPORTING PERTAINING TO SIGNIFICANT BENEFICIAL OWNERS OF THE COMPANY

The MCA has issued amendments to significant beneficial ownership rules by introducing Companies (Significant Beneficial Owners) Amendment Rules, 2019 (“Rules”) on February 08, 2019, with aim to have more clear regulatory frameworks that would help to identify of the person(s) behind the curtain who is/are having a significant beneficial ownership of the Company and is/are essentially controlling the management and daily affairs of the Company.

Accordingly MCA has introduced new rules which bestows responsibility upon the reporting Company (Company) to find out significant beneficial owners (SBO), identify the individual and cause such individual to make a declaration to the Company within 90 days from the commencement of these Rules and further the Company to file such return with the Registrar. In order to find out about the SBO, the Company shall send notice to all its members (other than individuals) holding not less than 10 % of the company’s shares/voting rights/right to receive/participate in the dividend or any other distribution payable in a financial year.

Key highlights amended rules are as under:

APPLICABILITY:-

- These rules are applicable to every individual, natural person in case of Body Corporate (singly or along with other person) having significant influence or control or holding significant beneficial ownership in the shares of the Company except where such shares are held by IEPF/Central/State Government/ Local Authority/SEBI, RBI registered investment vehicles.

LEGAL PROVISION:-

a. Who is significant beneficial owner (SBO)?

SBO in relation to Company, means any person (singly or along with other person including trust and person's resident outside India) possessing one or more following rights or entitlements, shall become SBO with respect to shares in a Company if:

1. holds 10 % of the shares, directly or indirectly; or
2. holds 10 % of the voting rights in the shares, directly or indirectly; or
3. right to receive/participate in not less than 10 % of total distributable dividend in a financial year through direct or indirect holdings; or
4. right to exercise, or the actual exercising of significant influence or control other than direct holding alone.

b. What is significant influence?

Significant influence means power to participate, directly or indirectly, in the financial and operating policy decisions of the Company.

c. Shares:

The term shares shall mean equity shares, Compulsorily Convertible Preference Shares and Compulsorily Convertible Debentures. Accordingly any significant beneficial interest in such instruments is required to be intimated.

REPORTING/COMPLIANCES:

a. The Compliances required on part SBO:

- SBO is required to give declaration to the Company in Form No. BEN-1 (a physical form) within 90 days from such Commencement of Rules i.e. on or before May 7, 2019.
- In case an individual becomes SBO after the Commencement of these rules or any changes occur in such ownership then declaration will be required to be made within 30 days from the acquiring such significant beneficial ownership or such change therein.
- Penalty for non-compliance:
 - imprisonment for a term up to one year; or
 - fine of INR 1,00,000/- to INR 10,00,000/- or with both; and
 - in case of continuing default per day penalty of INR 1,000/-

- b. The Compliances required on part of Company:
- The Company is required to file such declaration as received from a SBO within 30 days from the receipt, in Form No. BEN-2 (Form No. BEN-1 as mandatory attachment) with the Registrar along with the fees.
 - The Company is also required to maintain register for such declarations received from SBO in the format prescribed in Form No. BEN-3.
 - The Company is made liable to send notice in Form No. BEN-4 for obtaining declaration from the SBO in case where suo-moto declaration has not been received.
 - In case even after sending of notice, declaration from the SBO has not been received, then the Company is mandatorily required to move an application to the Tribunal (NCLT).
 - Penalty for non-compliance:
 - Company and every officer in default with fine of INR 10,00,000/- to INR 50,00,000/- and
 - in case of continuing default per day penalty of INR 1,000/-

CONTACT FOR FURTHER INFORMATION



Soumitra Dole
soumitra.dole@roedl.com



Rushak Tadmalkar
rushak.tadmalkar@roedl.com

Imprint

Rödl & Partner Consulting Pvt Ltd
Lunkad Sky Cruise, Wing-B
Survey No 210/3, Viman Nagar
Pune -411014
T +91 0 2066 2571 00
www.roedl.de | www.roedl.com

Responsible for the content:
Soumitra Dole
Soumitra.dole@roedl.com

and

Rushak Tadmalkar
Rushak.tadmalkar@roedl.com

Layout/Type:
Karuna Advani
Karuna.advani@roedl.com

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