

THE NEWSLETTER

UPDATE YOURSELF

Clarification in Respect of Brought Forward Loss and MAT Credit for Companies Exercising Option u/s 115BAA

The Central Board of Direct Taxes (“**Board**”) vide **Circular No. 29/2019 dated 02.10.2019** (“**Circular**”) has issued two clarifications with respect to the newly inserted Section 115BAA in the Income-tax Act, 1961 (“**Act**”) by the Taxation Laws (Amendment) Ordinance, 2019 (“**Ordinance**”) w.e.f. 01.04.2020. As per Section 115BAA introduced by the Ordinance, a domestic company shall, at its option, pay tax at a lower rate of 22% for any previous year beginning from previous year 2019-20 subject to fulfilment of certain conditions. The Ordinance also amended Section 115JB of the Act pertaining to Minimum Alternate Tax (“**MAT**”) to provide that MAT provisions shall be not be applicable in case of a person who has exercised option u/s 115BAA of the Act. In light of the above background, the Circular has provided clarification on the following issues for the companies who are desirous of exercising option u/s 115BAA:



Central Board of Direct Taxes
(CBDT)

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(I) Allowability of brought forward loss on account of additional depreciation

As regards allowability of brought forward loss on account of additional depreciation, it may be noted that Section 115BAA(2)(i) provides that a domestic company which would exercise option for availing benefit of lower tax rate u/s 115BAA shall not be allowed to claim set off of any brought forward loss on account of additional depreciation for an Assessment Year for which the option has been exercised and for any subsequent Assessment Year.

The Board has clarified that as there is no time line within which option u/s 115BAA can be exercised, it may be noted that a domestic company having brought forward losses on account of additional depreciation may, if it so desires, exercise the option after set off of the losses so accumulated.

(II) Allowability of brought forward MAT credit

As regards allowability of brought forward MAT credit, the Board has clarified that as the provisions of Section 115JB relating to MAT itself shall not be applicable to the domestic company which exercises option u/s 115BAA, the tax credit of MAT paid by the domestic company exercising option u/s 115BAA of the Act shall not be available consequent to exercising of such option. It has been further mentioned by the Board in the Circular that as there is no time line within which option u/s 115BAA can be exercised, a domestic company having MAT Credit, if it so desires, can first utilise the said credit against the regular tax payable under the normal taxation regime and can opt for reduced rate of taxation u/s 115BAA subsequently.

FEMA: Non-Debt Instrument and Debt Instrument Rules, 2019

The Department of Economic Affairs, Ministry of Finance vide **Notification No. S.O. 3732(E) dated 17.10.2019** has enacted with the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (“**Non-debt Rules**”) under Section 46(2) of the Foreign Exchange Management Act, 1999. The Non-debt Rules are in supersession of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017 and the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018. The said Non-debt Rules has come into force with effect from the date of 17.10.2019. The Non-debt Rules will govern the conditions relating to the issue and transfer of non-debt instruments like investments in equity instruments in incorporated entities: public, private, listed and unlisted, capital participation in LLP, investment in units of mutual funds, acquisition, sale or dealing directly in immovable property, contribution to trusts etc., between a person resident in India and person resident outside India. Likewise, the Department of Economic Affairs, Ministry of Finance vide Notification No. G.S.R. 796(E) dated 17.10.2019 has enacted Foreign Exchange Management (Debt Instruments) Regulations, 2019 (“**Debt Regulations**”) which is in supersession of Foreign Exchange Management (Transfer of Issue of Security by a Person Resident outside India) Regulations, 2017. The Debt Regulations will govern the conditions relating to the issue and transfer of debt instruments like dated Government securities/ treasury bills, non-convertible debentures/ bonds issued by an Indian company, Credit enhanced bonds, Listed non-convertible/ redeemable preference shares or debentures etc., between person resident in India and person resident outside India.



Duty Free Shops involved in ‘export’ of goods can avail ITC refund

In the case of *Sandeep Patil vs. Union of India* [Civil Appeal No. 14 of 2019, decided on 07.10.2019], the issue that arose before the High Court of Bombay (“**Bombay HC**”) was regarding refund of Input Tax Credit (“**ITC**”) accumulated on account of various services received by Duty Free Shops (“**DFS**”) at the airport. The DFS sold goods to both departing as well as arriving international passengers. Since the goods sold were mainly procured from SEZ units before the goods crossed the custom barriers, the goods were not duty-paid and hence the question of availing ITC on imported goods did not arise. However, the dispute arose when the Assessee claimed refund of credit accumulated from availing certain services such as renting of immovable property, maintenance service, CHA services, professional services, etc., from different service providers located inside or outside the DFS. The Bombay HC observed that the invoice for goods sold to departing passengers contained a signed declaration stating that the passenger would not consume the goods till he reaches a destination outside India and would only be considered the owner of the goods at such point. Further, the court observed that the sales in DFS are undertaken under the supervision of customs authorities which ensures that once the outbound passenger purchases goods, such passenger either boards the aircraft leaving India and if for some reason, such passenger is not able to board the aircraft, the goods have to be returned back to DFS whereupon the sale is declared void and refund is given. The Bombay HC also noted that the as per the Integrated Goods and Service Tax Act, 2017, ‘export of goods’ means ‘taking goods out of India to a place outside India’. Further, since the ITC availed by the DFS was from services that were used in the course of furtherance of his business of export, therefore the DFS was allowed to claim refund on the same.



Compliances for Individuals to be Appointed as an Independent Director

The Ministry of Corporate Affairs *vide* **Notification No. F. No. 8/4/2018-CL-I-Part II dated 22.10.2019** has issued Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019 (“**Amendment Rules**”), which shall be effective from 01.12.2019. The Amendment Rules has substituted Rule 6 of the Companies (Appointment and Qualification of Directors) Rules, 2014, which provides for compliances required by a person eligible and willing to be appointed as an independent director (“**ID**”). As per Rule 6, as substituted by the Amendment Rules, the compliances for an ID are following: (a) every individual who has been appointed as ID shall within a period of 3 months from commencement of Amendment Rules or who intends to get appointed as ID shall apply online to the ‘Indian Institute of Corporate Affairs at Manesar’ (“**Institute**”) for inclusion of his name in the data bank (“**DB**”) for a period of 1 year or 5 years or for his life-time (“**Time Period**”) till he continues to hold the office of ID; (b) every individual whose name has been included in DB shall file an application for renewal for a further Time Period, within a period of 30 days from the date of expiry of the period upto which the name of the individual was applied for inclusion in DB, failing which, the name of such individual shall stand removed from DB; (c) every ID shall submit a declaration of compliance of Rule 6(1) and Rule 6(2) to the board of directors; (d) every individual whose name is included in DB shall pass an online proficiency self-assessment test (“**Test**”) within a period of 1 year from the date of inclusion of his name in DB, failing which, his name shall stand removed from DB. However, the Test compliance shall not be applicable to individual who has served for a period of not less than 10 years as on the date of inclusion of his name in DB as director or key managerial personnel in a listed or an unlisted public company having a paid-up share capital of Rs.10,00,00,000/- or more. Further, an individual who has obtained a score of at least 60% shall be deemed to have passed the Test and there shall be no limit on the number of attempts for taking the Test.



Resignation of Statutory Auditor from Listed Entities and their Material Subsidiaries

SEBI *via* circular CIR/CFD/CMD1/114/2019 dated 18.10.2019 has listed certain conditions to be complied by a listed entity/ material subsidiary upon resignation of Statutory Auditor in light of the Securities Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**SEBI LODR**”). A listed entity/material subsidiary has to ensure that following conditions are included in terms while appointing/re-appointing an auditor:

- (i) If auditor resigns within 45 days from end of a quarter of a financial year then before resignation the auditor shall issue a limited review/audit report for such quarter. If the resignation is after 45 days, then he shall issue the limited review/audit report for such quarter as well as the next quarter. However, if the Auditor has signed limited review/audit report of first 3 quarters of a financial year, then he is bound to issue limited review/ audit report for last quarter of such financial year.



- (ii) If resignation is proposed by the Auditor then the concern with respect to proposed resignation, along with the relevant document shall be brought to the notice of the Auditor Committee. If the resignation is because of the non-receipt of information/explanation from the company, the Auditor shall inform the Audit Committee of details of information/explanation sought and not provided by the management. The Auditor Committee therein after shall deliberate on the matter and communicate its view to the management and auditor, as applicable.
- (iii) In case any of concern with management of the listed entity/material subsidiary such as non-availability of information/non-cooperation by the management which may hamper the audit process, the auditor shall approach the Chairman of the Audit Committee of the listed entity and the Audit Committee shall receive such concern directly and immediately without specifically waiting for the quarterly Audit Committee meetings.
- (iv) The Auditor shall provide appropriate disclaimer in the Audit report in case the listed entity/its material subsidiary did not provide information required by the Auditor.

The listed entity shall obtain all the information from the Auditor in the format specified in the circular and shall disclose the same to the stock exchange as per the SEBI LODR. Further, in case an entity is not mandated to have an Audit Committee, then the board of directors of the entity shall ensure compliance of this circular.

Scope and Ambit of Enquiry under Section 33(2)(B) of the Industrial Dispute Act

In a recent judgment of *John D'Souza vs. Karnataka State Road Transport corporation* [Civil Appeal No. 8042 of 2019] as decided on 16.10.2019, the Hon'ble Supreme Court ("SC") held that a labour court/tribunal cannot invoke adjudicatory powers vested under Section 10(i)(c) and (d) of the Industrial Dispute Act, 1947 ("ID Act") which provides for referral of dispute relating to dismissal or discharge of workmen among other matter, while holding an enquiry under Section 33(2)(b) of the Act. The SC determined the scope and ambit of the enquiry to be held by the labour court or industrial tribunal while granting or refusing approval for discharge or dismissal of a workmen under Section 33(2)(b) of the ID Act. It was held that the labour court and the industrial tribunal cannot dwell upon the proportionality of the punishment in the process of formation of their prima facie view under Section 33(2)(b) of the ID Act. The SC stated that the Section 33(2)(b) of the ID Act in its very nature provide for an enquiry by way of summary proceedings as to whether a proper domestic enquiry has been held to prove the misconduct so attributed to the workmen and whether he has been given a reasonable opportunity to defend himself in consonance with the principles of natural justice. Further, the Labour court and industrial tribunal will lift the veil to find out whether there is any hidden motive to punish the workmen. An order of approval granted under Section 33(2)(b) of the ID Act has no binding effect on the proceedings under Section 10(1)(c) and (d) which shall be independently decided while weighing the materials provided by the parties.



**THE INDUSTRIAL
DISPUTES ACT, 1947**

GST on the Service of Display of Name or Placing of Name Plates of The

Donor on The Premises of Charitable Organisations

Department of Revenue has issued a **Circular No. 116/35/2019-GST dated 11.10.2019** (“Circular”) which clarifies the issue regarding levy of GST on the service of display of name or placing of name plates of the donor in the premises of charitable organisations receiving donation or gifts from individual donors. In case where individual donors provide financial help or any other support in the form of donation or gift to institutions such as religious institutions, charitable organisations, schools, hospitals, orphanages, old age homes etc., the recipient institutions place a name plate or similar such acknowledgement in their premises as a sign of gratitude towards the donor. The issue is when the name of the donor is displayed in recipient institution premises, in such a manner, which can be said to be aimed at giving publicity to the donor and would be an advertising or promotion of his business. In that case, it can be said that there is supply of service for a consideration (in the form of donation) i.e. there is obligation (quid pro quo) on part of recipient of the donation or gift to do anything (supply a service). Therefore, there is GST liability on such consideration i.e. donation. However, if such donation is an expression of gratitude and public recognition of donor’s act of philanthropy, then there is no GST liability.



As per the Circular some examples of cases where there would be no taxable supply are as follows:-

- (a) “Good wishes from Mr. Rajesh” printed underneath a digital blackboard donated by Mr. Rajesh to a charitable Yoga institution.
- (b) “Donated by Smt. Malati Devi in the memory of her father” written on the door or floor of a room or any part of a temple complex which was constructed from such donation.

In each of these examples, it may be noticed that there is no reference or mention of any business activity of the donor which otherwise would have got advertised. Thus, Circular clarifies that GST is not leviable where all the three conditions are satisfied namely (i) the gift or donation is made to a charitable organization, (ii) the payment has the character of gift or donation and (iii) the purpose is philanthropic i.e. it leads to no commercial gain, and not advertisement.

KEY TAKE AWAYS

- The Ministry of Corporate Affairs has brought an amendment in Schedule VII of the *Companies Act, 2013* dated 18.10.2019, by which contributions to incubators funded by Central Government or the State Government or any agency or PSU, and contributions to public funded universities, IITs, etc. has been added to the list of activities which may be included by companies in their Corporate Social Responsibility Policies.
- Ministry of Law and Justice has notified the Right to Information (Amendment) Act, 2019 on 24.10.2019.
- The Ministry of Corporate Affairs vide its **notification dated 14.10.2019** has delegated the powers and functions of Central Government to provide officers and other employees to the Tribunal and the Appellate Tribunal referred in Section 418 of the Companies Act, 2013 to the President and Chairperson of the said Tribunal and the Appellate Tribunal, as the case may be.
- The Ministry of Corporate Affairs has vide **notification dated 11.10.2019** amended Rule 11 of the Companies (Meetings of Board and its Powers) Rules, 2014 providing for loans and investment by a company under section 186 of the Companies Act, 2013.
- It has been clarified vide **Circular No. 121/40/2019-GST dated 11.10.2019** that grant of alcoholic liquor license, against consideration in the form of license fee or application fee by State Government as neither a supply of goods nor a supply of service.
- The CBIC vide **Notification No. 47/2019-CT dated 09.10.2019** has made filing of annual return under section 44 (1) of CGST Act for F.Y. 2017-18 and 2018-19 optional for small taxpayers whose aggregate turnover is less than Rs 2 crore.
- As per **Notification No. 44/2019-CT dated 09.10.2019** issued by CBIC, the due date for furnishing of return in Form GSTR-3B for the months of October 2019 to March 2020 will be on or before the twentieth day of the month succeeding such month.
- As per **Notification No. 45/2019-CT dated 09.10.2019** issued by CBIC, the due date for furnishing Form GSTR-1 for registered persons having aggregate turnover of up to 1.5 crore rupees will be 31.01.2020 for October 2019 to December 2019 and 30.04.2020 for the period from January 2020 to March 2020.
- Full-Fledged Money Changer (FFMC) licensed by the Reserve Bank of India and its franchise agent have been exempted from Section 194N and are authorized to withdraw cash in excess of Rs. 1 crore limit specified under the section without deduction of TDS subject to the condition that the withdrawal is made for the limited purpose of:-
 - (i) purchase of foreign currency from foreign tourists or non-residents visiting India or from resident Indians on their return to India, in cash as per the directions or guidelines issued by Reserve Bank of India; or
 - (ii) disbursement of inward remittances to the recipient beneficiaries in India in cash under Money Transfer Service Scheme (MTSS) of the Reserve Bank of India;

KNOWLEDGE CENTRE

FAQs on Copyright

1. What is copyright?

Copyright is an exclusive right to do or authorize the doing of certain acts as provided under the Copyright Act, 1957 (“**Copyright Act**”), which is given to owners of the original literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. It is a bundle of rights including, *inter alia*, rights of reproduction, communication to the public, adaptation and translation of the work. The Copyright Act protects the abovementioned acts from any unauthorized usage.

2. Is it necessary to register a work to claim protection under Copyright Act?

No. Acquisition of copyright is automatic, and it does not require any formality. Copyright comes into existence as soon as a work is created, and no formality is required to be completed for acquiring copyright. However, certificate of registration of copyright and the entries made therein serve as prima facie evidence in a court of law with reference to dispute relating to ownership of copyright.

3. Who can apply for copyright registration?

The author of a work shall be the first owner of the copyright and therefore, the first owner of the work to be copyrighted can apply for copyright registration. However, in certain cases the first owner of a copyright may be different from the author of a copyright such as in the case of a work made in the course of the author’s employment under a contract of service or apprenticeship or under other cases as provided under section 17 of the Copyright Act.

4. What is the procedure for registration of a work under the Copyright Act?

To register a copyright, a copyright registration form is to be filed along with statement of particulars of the work to be copyrighted, statement of further particulars, etc. as prescribed under the Copyright Act and Rules made thereunder. However, facility for e-filing is also available on the website of the copyright office which can be accessed at www.copyright.gov.

5. What is the term of a copyright?

The term of a copyright is different for different categories of work. If copyright is published within the lifetime of the author of a literary, dramatic, musical or artistic work, the term is for the lifetime of the author plus 60 years. For cinematography films, records, photographs, posthumous publications, anonymous publication, works of government and international agencies, the term is 60 years from the beginning of the calendar year following the year in which the work was published.

6. What is the difference between a Trademark and a Copyright?

A trademark is a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours. Whereas, a copyright is a protection given to original works of the authors of books, music, videos, songs or even software, etc. under the Copyright Act.

7. Who is the owner of copyright in a government work?

In the case of a government work, government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein.

8. Is copyright assignable?

Yes. The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof.

KNOWLEDGE CENTRE FAQs on Copyright

9. What is meant by infringement of copyright?

The Copyright in a work shall be deemed to be infringed when any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under the Copyright Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under the Copyright Act does any act, the exclusive right to which is conferred upon the owner of the copyright and in such other cases as provided under Section 51 of the Copyright Act.

10. Is copyright infringement a criminal offence? If yes, what is the punishment for the same?

Yes. Any person who knowingly infringes or abets the infringement of the copyright in any work commits criminal offence under Section 63 of the Copyright Act which shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 3 years and with fine which shall not be less than Rs. 50,000/- but which may extend to Rs. 2,00,000/-.

11. Does reproduction, performance or publication of a work in which copyright subsists amount to infringement?

Yes, without a valid license, it amounts to copyright infringement. Any person willing to reproduce, perform or publish, for commercial use, any work in which copyright subsists requires a license from the owner of the work in which copyright subsists for public performance such as playing music, for commercial purpose by an event organizer.

EDITORIAL

Identification of Significant Beneficial Owner -By CS Harpreet Singh, Senior Associate

The legislature with an intent to, identify the individual who is ultimately controlling a company either individually or together with one or more person or trust, has come up with the provisions of identification of significant beneficial owner in a company as stated under Section 90 of the Companies Act, 2013 ('Act'). As per the provisions of Section 90 of the Act, an individual, who acting alone or together with one or more person or trust which includes a trust and persons resident outside India, holds beneficial interest of not less than 25% or 10% as prescribed under the Companies (Significant Beneficial Owners) Rules, 2014 ('Rules') (*as amended from time to time*), or who individually or together with any other person or trust have a right to exercise, or actual exercising of significant influence¹ or control² as defined in Section 2(27) of the Act, shall be considered as a significant beneficial owner and such an individual shall be required to give a declaration to the company in which he/she holds significant beneficial interest in such a manner specifying his/her nature of interest and such other particulars as may be prescribed under the relevant rules along with the period of acquisition of the beneficial interest in the shares of such company.

Now, as per the Rules significant beneficial owner in relation to a reporting company will be the **individual** who alone or acting together with one or more person or trust holds any of the rights or entitlements stated above i.e.:

- a. Such individual holds indirectly, or together with his direct holdings not less than 10% shares of the reporting company.
- b. Such individual holds indirectly, or together with his direct holdings, not less than 10% of the voting rights in the shares of the reporting company.
- c. Such individual possesses a right or entitlement to receive or participate in not less than 10% of the total distributable dividend or any other distribution in a financial year on account of such individual's indirect holdings alone, or together with any direct holdings.
- d. Such individual has a right to exercise, or he/she actually exercises significant influence or control in any manner other than through direct holdings alone.

The Rules defining meaning of the term 'significant beneficial owner' emphasizes on the **indirect holding** of an individual in the reporting company and categorically states that if an individual does not have an indirect holding as per clause a, b, c, above he will not be a significant beneficial owner of the reporting company. Further, the Rules describes as to how an individual is said to be having an indirect holding in shares of a company. Furthermore, it is imperative to state here that if an individual is having only **direct holding** in the reporting company then he will not be considered as a significant beneficial owner.

Direct Holding

As per the Rules, the direct holding means either the shares along with its beneficial interest are registered in the name of the individual or the beneficial interest in shares of a company

¹ 'significant influence' means the power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting company but is not control or joint control of those policies

² 'control' shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner

are with an individual and such individual has made a declaration under Section 89(2) of the Act.

Indirect Holding

Now, as far as the indirect holding of an individual is concerned, the Rules prescribes various tests of identifying indirect holding of an individual in shares of the reporting company and the Rules provides for several tests of identification of significant beneficial owner based on the nature of member the reporting company is having viz. body corporate, trust, HUF, partnership entity, pooled investment vehicle.

Clause (i) to the Explanation III of the Rules provides for the scenario where the member of the reporting company is a body corporate. As per the said clause (i), where the member of the reporting company is a body corporate, whether such body corporate has been registered or incorporated in or outside India, then the individual holding majority stake³ in such body corporate or holding majority stake in the ultimate holding company (whether registered in or outside India) of that body corporate which is a member of the reporting company will be said to be holding indirect stake in the shares of the reporting company. The above test of identifying the indirect holding of an individual to classify him as significant beneficial owner can be better understood in the following manner:

- a. There shall be a body corporate who is a member of reporting company
- b. The **individual** should hold majority stake in such body corporate or ultimate holding company of such body corporate.

Clause (ii) of the Explanation III to the Rules provides for the scenario where the member of the reporting company is a HUF, the said clause states that where the member of the reporting company is a HUF, the Karta of the HUF shall be the significant beneficial owner and the Karta has to provide declaration of his significant beneficial ownership to the reporting company.

Clause (iii) of the Explanation III to the Rules provides for the scenario where the member of the reporting company is a partnership entity (*includes a limited liability partnership*), whether through itself or through its partner, and the significant beneficial owner in respect of such partnership entity member shall be:

- a. the individual who is a partner of such partnership entity; or
- b. the individual holding the majority stake in body corporate who is a partner of the partnership entity which is a member of the reporting company; or
- c. the individual holding majority stake in the ultimate holding company of the body corporate which is a partner of the partnership entity which is a member of the reporting company.

Clause (iv) of the Explanation III to the Rules provides for the provisions pertaining to identification of the significant beneficial owner in case where the member of the reporting company is a trust (through trustee), the said clause bifurcates the significant beneficial owner depending upon the nature of the trust. According to the said clause, the following shall be significant beneficial owners based on the nature of Trust:

- a. Where the trust is discretionary or charitable trust, then the individual who is a trustee or such trust shall be the significant beneficial owner.

³ 'majority stake' means:-

(i) holding more than one-half of the equity share capital in the body corporate; or
 (ii) holding more than one-half of the voting rights in the body corporate; or
 (iii) having the right to receive or participate in more than one-half of the distributable dividend or any other distribution by the body corporate;'

- b. Where the trust is a specific trust, the individual who is a beneficiary of the specific trust shall be the significant beneficial owner.
- c. Where the trust is a revocable trust, the author or settlor of the trust shall be the significant beneficial owner.

Clause (v) of the Explanation III to the Rules provides for the scenario where the member of the reporting company is either a pooled investment vehicle or an entity controlled by pooled investment vehicle which is based in the member state of the Financial Action Task Force on Money Laundering and the regulator of the securities market in such member state is the member of the International Organization of Securities Commissions, then in such a scenario the significant beneficial owner shall be:

- a. the individual who is a general manager of such pooled investment vehicle; or
- b. the individual who is an investment manager; or
- c. the individual is a Chief Executive Officer where the investment manager of such pooled investment vehicle is a body corporate or partnership entity.

Further for the Identification of the significant beneficial owner in case where the member of the reporting company is either a pooled investment vehicle or an entity controlled by the pooled investment vehicle, based in a jurisdiction which does not fulfill the requirement as stated in clause 20 above, then the provisions of clause (i),(ii),(iii) and (iv) of Explanation III to the Rules, as the case may be, shall apply.

As per the Rules, the significant beneficial owner has to report the disclosure regarding his significant beneficial ownership in form BEN-1 to the reporting company stating the relevant information required in the form. If any person fails to make a declaration regarding his/her significant beneficial ownership in the reporting company, then he/she shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than Rs. 1 Lakh but which may extend to Rs. 10Lacs or with both and where the failure is a continuing one, with a further fine which may extend to Rs. 1,000/- for every day after the first during which the failure continues.

As per the Rules, every company which has received disclosure of significant beneficial ownership in form BEN-1 shall file such the same in form BEN-2 within a period of 30 days from the date of receipt of declaration and shall maintain a register of significant beneficial owners in form BEN-3 and such register shall be open for inspection during business hours, at such reasonable time of not less than two hours, on every working day as the board may decide, by any member of the company on payment of such fee as may be specified by the company but not exceeding Rs. 50/- for each inspection. Any default of the said requirement by the company and its officer shall make the company and its officer who is in default punishable with fine which shall not be less than Rs. 10 Lacs but which may extend to Rs. 50 Lacs and where the failure is a continuing one, with a further fine which may extend to Rs. 1,000/- for every day after the first during which the failure continues.

The MCA vide general **circular No. 10/2019 dated 24.09.2019** has extended the last date of filing of E-form BEN-2 upto 31.12.2019 and in the said circular the MCA has stated that consequent to the extension in the last date of filing of E-form BEN-2, the date of filing of Form BEN-1 may be construed accordingly.

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