



**Manubhai & Shah LLP**

Chartered Accountants

Ahmedabad • Mumbai • NCR • Rajkot • Baroda • Gandhinagar • Udaipur

# NEWSLETTER

## May 2020

For private circulation and clients only

[www.msglobal.co.in](http://www.msglobal.co.in)



# TABLE OF CONTENTS

- Article-Tackling business disruption due to COVID 19
- Income tax updates
- RBI updates
- SEBI updates
- FEMA updates
- Customs updates
- Corporate Laws updates
- Article - Penalty u/s 271AAD on false accounts





# CORONAVIRUS

## COVID-19

## Article - TACKLING BUSINESS DISRUPTION DUE TO COVID 19

In the current scenario - the number of COVID-19 confirmed cases are increasing and government responses are escalating rapidly around the globe. The coronavirus pandemic and the resulting decline in business performance, stock markets and consumer confidence could lead us into a global recession.

In order to weather the storm, organisations and business leaders need to execute their (crisis & business continuity plans) or rapidly develop them if they are not yet in place to mitigate the disruption to their operations.

A coordinated response is vital, and business leaders need to ensure they have the right people in their response team, who know what their roles and responsibilities are in areas such as human capital, IT, supply chain, communications and finance. This article aims to provide the readers with overview of the Challenges that are emerging due to Covid 19 and the possible response to those challenges. We hope you will have some ideas to ponder upon based on this article.

### CHALLENGES

Considerations here range from the potential areas of risk to the businesses, ability of the business organizations to respond to those risks quickly and in case organisation have a business continuity plan – is it working or can it work in the given situation – rather did we all anticipate such disruption in our Business Continuity Plan.

Further, considerations are the impact of immediate liquidity crisis, non-identification of short-term business demand, labor constraints and shortages on services and customers which has an impact on working capital coupled with supply-chain disruption.

In the current situation as successful businesses we all need to consider the aspects of:

- Third party vendors / outsourced services – who are performing critical function and our significant dependencies on them
- Key contract compliances, insurances and legal disputes that might get triggered.
- Business policies that will be no more valid with the current scenario considering the government and public policies

And that's even before considering technology issues such as potential upheaval from infrastructure changes, including new workforce locations. Additional questions to be considered are:

How will organisation respond to dynamic and unpredictable swings in consumer demand?

How are organisations managing employees' health and their wellbeing?

Does organisation have a proper system or structure to Communicate with Stakeholders?

### RESPONSE

In response to the challenges at the entity level the steps to be taken are:

- To Set up crisis management task force team and plan to tackle the situation
- Adoption of centralized management approach
- Encourage co-ordination of various committees and business functions across organization
- Evaluate business continuity plan, organizational operational risk and financial risk capabilities to minimize potential impacts
- Establish platform for timely information to stakeholders about COVID 19 Impact
- SWOT analysis of entity and its key business functions

## FINANCIAL MANAGEMENT

Board Level Strategy for financial management should be to

1. Prepare and review weekly cash flow statement
2. 12 months P&L under multiple scenarios to be reviewed
3. Suspend internal budgets
4. Constant / Transparent communication with ecosystem
5. Consult professionals before taking key decisions
6. Revisit & Modify DOAs
7. Robust internal audit to red flag immediately



## Specific scenarios for managing inflows and outflows

### 1. INFLOW MANAGEMENT

2. Cash is King
3. Revisit customer credit limits
4. No profit is better than loss
5. Focus on customer retention
6. Daily monitoring of investments
7. Reduce cash to cash conversion cycle
8. Reassess funding lines
9. Evaluate alternative supply chain financing
10. Think innovatively for new revenue streams

### OUTFLOW MANAGEMENT

Prioritize cash outflows

1. Revisit all service contracts
2. Procurement of raw material
3. Revisit capex plans
4. Finance cost & statutory payments
5. Revamp HR policies

## SUPPLY CHAIN AND GLOBAL TRADE

The coronavirus pandemic is having a big impact on global supply chains. Some of the geographical areas most affected are vital to global supply chains across a wide vertical of sectors. It's not only factory closings but also regulatory changes that are making supply chains increasingly problematic.

Challenges for organisations is to know:

- Availability of raw materials, sub-components and machine coupled with dependency on lower cost geographies – primarily China, Vietnam and Taiwan.
- distribution channels are facing issues on staffing, transportation, storage and much more.

**The response for any business organisation would be to:**

- Create transparency on multitier supply chains - that means to establishing a list of critical components, determining the origin of supply, and identifying alternative sources.
- Estimate available inventory along the value chain – including spare parts and after-sales stock – for use as a bridge to keep production running and enable delivery to customers. Having a clear understanding of organisation's supply chain across tiers and from raw materials to end product, will help identify where you are most vulnerable.
- Assess where most critical products and materials are sourced from and what options are available for back-up suppliers.
- Assess realistic final-customer demand and respond to (or, where possible, contain) shortage-buying behaviour of customers. Does COVID-19 have an impact on sales and overall demand of products? Organisation need to assess most critical products and how best to stabilise supply chain.
- Optimise production and distribution capacity to ensure employee safety, such as by supplying personal protective equipment and engaging with communication teams to share infection-risk levels and work-from-home options.
- Identify and secure logistics capacity, estimating capacity and accelerating, where possible, and being flexible on transportation mode, when required.
- Manage cash and net working capital by running stress tests to understand where supply-chain issues will start to cause a financial impact.

## GOVERNMENT AND PUBLIC POLICY

New and emergency legislation is being enacted around the globe every week, bringing with its new compliance expectations and potential business impact.

Organisations need to track various regulatory notifications and announcements resulting into:

- New compliance obligations
- Change in existing obligations
- Impetus to protect business
- Issue revised policies in line with company's strategy, philosophy and mandatory requirements
- Manage communication with various stakeholder including employees, customers, vendors, regulators and investors in line with changing regulatory requirements considering provisions of existing laws.
- Assess business impact of short-term measures announced through regulatory changes
- Scenario analysis from regulatory perspective for mid-term and long-term impacts of pandemic

## GOVERNMENT AND PUBLIC POLICY

For this to happen organisation will have to -

- ✓ Identify an individual or team to monitor the spread and progress of COVID-19 across geographies relevant to the organization, as well as government responses related to them.
- ✓ Designate points of contact to deal with governments and the press in relation to COVID-19 responses and those shifting compliance requirements?
- ✓ Establish dashboard monitoring to identify them.

## INSURANCE AND LEGAL DISPUTES

### Organizations:

- Need to carefully consider if adverse financial consequences of business interruption can be claimed under the insurance policy. For that organisation will have to Carefully review insurance policies as the extent of insurance cover available to a company will depend on the specific terms of each policy.
  - The organisation may also need to notify to the insurance company any material event which may result in the company being required to make an insurance claim and such notification requirement under the insurance policy needs to be strictly adhered to.
  - There is a requirement for informing insurance companies that the offices/factories are closed for more than 1 month due to lock down and the policies should not lapse – for that we would suggest contact Agent or Insurance Companies for the same
  - Performances under many contracts will be delayed, interrupted, or even cancelled. What are organisation's contractual obligations with customers and suppliers?
- We would suggest to seek legal advice to find out the Implication on Present Contracts and Future Contracts that are to be entered
  - In legal disputes, force majeure may be invoked –is this caveat present in contracts or insurance agreement? What needs to be taken care about force majeure:
    - Outline of force majeure – what events are defined in contracts as force majeure
    - Force Majeure Provisions Vary Widely - review them carefully and closely for each Contract/Each of the Contracts
    - Duty to Mitigate and exercise reasonable diligence - it's a subjective standard and will have to be interpreted case to case
    - Does the event have to be foreseeable- it must be unforeseeable or not reasonably foreseeable
    - Notification Requirements - Mostly contracts provide for and also the timeline is specified
    - Burden of Proof - on the party that generally relies on the force majeure
    - Keep Records - establishing that the company has done all that was reasonably possible to mitigate the losses.

## INFORMATION TECHNOLOGY AND CYBERSECURITY

### Rethinking IT Infrastructure

- First and foremost, dependency on computers lying at the office must be reduced
- Move to dumb terminals logging onto a common server on premises or on the cloud
- Newer Technologies like Virtual Desktops or Virtual Apps are the need of the day
- Endpoint and Network Protection tools a must, multiple products like Sophos and ZScaler provide all round security solutions
- A very competent IT team and a network of technical IT Vendors are very important to take care of all company needs
- Planning Flexible Bandwidth requirements for the office network as well as home networks

### Rethinking the way Employees work

- Work From Home to be included in Employment Contracts
- Emphasis on using productivity tools like Microsoft Teams, Task Management tools, etc.
- Taking steps to ensure staff is working productively, while Working From Home
- Clear cut communication regarding all tasks that the employee is supposed to undertake and periodical reporting of the same
- Move from a paper to a paperless environment, e.g. instead of writing cheques for salary, move to an online environment

## INFORMATION TECHNOLOGY AND CYBERSECURITY

### Cybersecurity

Cybersecurity is securing your Information Technology assets and technologies to maintain its confidentiality, integrity and availability.

#### Due to COVID-19:

- Increased Risk due to Remote Access
- Significant rise in Phishing and Malware attacks
- Ransomware attacks affecting remote IT networks

#### Cybersecurity Best Practices

- Use licensed and updated software (especially security updates)
- Multi Factor Authentication
- Strict Password Reset Policy
- Connection to office Infrastructure only through secured VPNs
- Periodical back ups in multiple places for redundancies
- Avoid opening suspicious emails
- Keep clearly communicating with staff regarding upcoming cybersecurity threats

## BUSINESS STRATEGY POST COVID 19

What Next – what can be the business strategy to survive this pandemic. Points to be considered are :

- Build and ensure support under new ways of working
- Digitization Of business processes – explore, analyze and execute
- Consider accelerating digital transformations as the shift to remote working reveals gaps in IT infrastructure, workforce planning and digital upskilling
- Protect growth and profitability through actions such as scenario planning, more frequent financial modeling exercises to improve resiliency, and new models that incorporate economic impacts of past pandemics
- Explore opportunities in case foreign companies exits China
- Take the pulse of your customers, thinking through longer-term considerations around shifts in core markets or business models as a result of the pandemic
- Peers action to deal with pandemic and keep an eye on their financial position
- Buying stake or acquire business of critical supplier at risk
- Explore emerging business lines due to COVID 19
- Diversification of revenue model for sustainable growth

## HUMAN CAPITAL

### Challenges to be addressed are:

- Working under mental and psychological pressure
- Striking a balance between productivity, efficiency and providing safe workplace
- Availability and need of labour force
- Restrictive Capacity at work floors
- Digital readiness
- Timely payroll payments

### Response to those challenges' organisations should consider:

- Managing physical and mental wellbeing of employees
- Educate employees on COVID 19 symptoms and prevention, reinforce screening protocols and Prepare for increased absenteeism
- Restrict non-essential travel and promote flexible working arrangements
- Assess work from home capabilities
- Work from home procedures and communication to be defined
- Develop workplace guidelines and consider reshaping HR policies
- Short Term Financial arrangement for making payment to staff who are essential for work
- Consider retrenchment of redundant staff and hiring new talented staff with better skill set
- Pause promotion and performance evaluation in stressed scenario

## HOW TO KEEP INTACT YOUR BRAND VALUE

Points to be considered are:

- Prioritize human safety first
- Set an example of hygiene and safe workplace
- Effective communications with all stakeholders of organization
- Focus on quality and customer satisfaction
- Quick after sales services
- Staying connected with customers and appraising them of the current scenario
- Innovative ways of marketing
- Prioritize payment to critical supplier at risk
- Effective implementation of CSR practices



## RENORMALISE OPERATIONS

Looking ahead - It is hard to say how the coronavirus pandemic will evolve in the weeks and months ahead, and what the long-term impact will be. The World Bank, IMF and OECD expect the impact on the global economy to be significant. For business leaders evaluating their continuity plan, it is important to use scenario analysis and model these to your business to determine your next steps.

From financial stress-testing and workforce planning to supply inventory. Assess your recovery timeline and continue to use the latest data in your scenario modelling to amend your response accordingly.

Some of the important tasks to be performed by organisations are:

- To Identify risk areas and assess impact
- Revamping business processes
- Develop and implement crisis management plan
- Weekly review of budgeted cash flow and actual cash flows
- Alignment amongst all business functions
- Scenario planning of finance and operation models
- Preparing your business regulatory and compliance calendar

It is impossible to know what will happen. But it is possible to consider the lessons of the past, both distant and recent, and on that basis, to think constructively about the future.

We believe the following elements will be important in shaping of the next normal—and that business leaders will need to come to terms with them – and as companies resume activity, they may be the world's first to shape the “next normal”:

- Rethinking social contracts- more government intervention in the economy:
- Defining the future of work and consumption
- Mobilizing resources at speed and scale
- Moving from globalization to regionalization
- The rise of the Contact free economy
- Changing industry structures, consumer behavior, market positions, and sector attractiveness



## INCOME TAX UPDATES

### Amendment by Finance Act, 2020 in respect of filing of audit reports:

The Finance Act, 2020 has made few amendments in the sections relating to Tax Audit, effective from 01.04.2020. These amended provisions shall be applicable to Tax Audit and e-filing of Tax Audit Report for A.Y. 2020-21 (F.Y. 2019-20). In brief, these provisions are as under:

- By amendment of Section 44AB, it is provided that in the case of a person carrying on business, if the aggregate amount received for sales, turnover or gross receipts in cash does not exceed 5% of sales, turnover or gross receipts and the aggregate payments (including expenditure incurred) in cash, does not exceed 5% of total payments, during the accounting year, Tax Audit U/sec 44AB shall be required only if the sales, turnover or gross receipts exceeds Rs.5 Crores in the accounting year. In other cases the turnover limit of Rs.1 Crores shall continue.
- Till A.Y. 2019-20, Tax Audit Report can be filed along with the Return of Income. By amendment of Sec 44AB, it is now provided that from A.Y. 2020-21, such Report should be filed with Tax Authority one month before the due date of filing the Return of Income.
- By amendment of section 139(1), the due date for filing Return of Income in the case of assesses required to get their accounts audited is extended from 30th September to 31st October. Therefore, Tax Audit Report will have to be filed by 30th September.
- Similar amendments are also made in the following sections which require filing of the Audit Reports specified in the respective sections along with the Return of Income. It is now provided that in all these cases the Audit Reports should be filed one month before the due date for filing the Return of Income under section 139(1). The sections referred to above are as under:
  - o Sec 10(23C), 12A (Charitable Trusts)
  - o Section 92E-Transfer Pricing Report; and
  - o Section 32AB, 33AB, 33ABA, 35D, 35E, 44DA, 50B, 80IA, 80-IB, 80JJA, 115JB and 115JC and 115VV.

### Postponement of Reporting of GAAR & GST details in Tax Audit Report

The C.B.D.T. vide its Circular No. 10 dated 24.04.2020 has reduced the compliance burden on taxpayers as well as tax auditors by keeping the following reportings in the Tax Audit Report in Form No. 3CD in abeyance till 31.03.2021, in view of the prevailing COVID-19 pandemic across the country:

- **Clause 30C: Reporting of transactions covered under GAAR (General Anti Avoidance Rule) –**

Reporting of the nature of such transactions with the amount of tax benefit arising to all the parties to the arrangement.

- **Clause 44 : Details relating to Goods and Service Tax (GST) –**

Reporting of details of GST viz. break-up of total expenditure with GST registered and non-registered entities and for the former, it further requires the break-up of expenditure relating to exempt supply covered under the composition scheme and other registered entities.

Hence, Tax Audit Report issued till 31.03.2021 for any tax year need not require to report about the GAAR and GST particulars.





## RBI UPDATES

### Asset classification standstill

- in respect of all accounts of term loan for which lending institutions decided to grant moratorium and which were standard (even if overdue) as on February 29, 2020, the 90-day NPA norm shall exclude the moratorium period, i.e., there would be an asset classification standstill for all such accounts from March 1, 2020 to May 31, 2020.
- In respect of all accounts of working capital facilities sanctioned in form of cash credit / overdraft for which deferment is granted and which were standard (even if overdue) as on February 29, 2020, the 90-day NPA norm shall exclude the deferment period, i.e., there would be an asset classification standstill for all such accounts from March 1, 2020 to May 31, 2020.

### Provisioning

- In respect of all the accounts for which moratorium / deferment is granted and the account is in default / overdue, and asset classification benefit is extended, all lenders will have to make general provisions of minimum 10% of total outstanding of such accounts. The provision of 10% shall have to be phased over two quarters i.e. minimum 5% each for March 2020 & June 2020
- These provisions can be adjusted later on against the provisioning requirements for actual slippages in such accounts. The residual provisions can be written back or adjusted against the provisions required for all other accounts. at the end of the financial year
- For calculation of Net NPA, the above provisions shall not be reckoned. Further, these provisions shall also not be netted from gross advances but shown separately in the balance sheet
- All other provisions on accounts already classified as NPA as on February 29, 2020 and ageing in these accounts shall be made in the usual manner

### Disclosure requirement

The lenders shall have to suitably disclose following in “Notes to Accounts” in their financial statements for 2019-20 & 2020-21 as well as for the half year ending September 30, 2020

- Respective Amounts in SMA / overdue categories, where moratorium / deferment was extended
- Respective amount where asset classification benefit is extended
- Provision made during March 2020 & June 2020 quarters
- Provisions adjusted during the respective quarters against slippages & the residual provisions

(RBI/2019-20/220 April 17, 2020)



## SEBI UPDATES

### **Prior intimation to stock exchanges about meetings of the board:**

Regulation 29 (2) of LODR specifies that stock exchanges need to be provided prior intimation about meetings of the board (excluding the date of the intimation and date of the meeting) as follows:

- i) at least 5 days before the meeting if financial results are to be considered;
- ii) 2 working days in other cases.

It has been decided that the above requirement of prior intimation of 5 days / 2 working days shall be reduced to 2 days, for board meetings held till July 31, 2020.

### **Clarification regarding use of digital signatures:**

SEBI has clarified that authentication / certification of any filing / submission made to stock exchanges under LODR may be done using digital signature certifications until June 30, 2020.

### **Relaxation in publication of advertisements**

Relaxation has been given for the requirements relating to publication of advertisements in newspapers as required under Regulation 47 as well as 52(8) of LODR Regulations till May 15, 2020.

**(Circular No. 63/2020 April 17, 2020)**

### **Relaxation of holding of AGM by top 100 listed entities**

SEBI vide circular dated April 23, 2020 provided relaxation on holding of AGM by top 100 listed entities: "the top 100 listed entities by market capitalization whose financial year ended on December 31, 2019 may hold their AGM within a period of nine months from the closure of the financial year (i.e., by September 30, 2020)".

**(Circular No. 71/2020 April 23, 2020)**

### **Relaxation in respect of buy-back Regulations**

SEBI vide circular dated April 23, 2020 provided relaxation under regulation 24(i)(f) of Buy-Back Regulations, 2018 wherein the said regulation restricted companies to raise further capital for a period of one year from the expiry of the buyback period, except in discharge of their existing obligations. However, the said period of one year has been reduced to six months on a temporary basis. This relaxation is temporary and will be applicable till December 31, 2020.

**(Circular No. 69/2020 April 23, 2020)**



# FEMA UPDATES

## FEMA UPDATES

### **Review of Foreign Direct Investment (FDI) policy for curbing opportunistic takeovers/acquisitions of Indian companies due to the current COVID-19 pandemic**

Review of Foreign Direct Investment (FDI) policy for curbing opportunistic takeovers/acquisitions of Indian companies due to the current COVID-19 pandemic Earlier, a citizen of Bangladesh or an entity incorporated in Bangladesh can invest only under the Government route. Now,

- an entity of a country, which shares land border with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country, can invest only under the Government route.
- further, In the event of the transfer of ownership of any existing or future FDI in an entity in India, directly or indirectly, resulting in the beneficial ownership falling within the restriction/purview of the para 3.1.1(a), such subsequent change in beneficial ownership will also require Government approval.

(Ministry of commerce and industry Press note No. 3/2020)





# CUSTOMS UPDATES

## CUSTOMS UPDATES

### Implementation of automated clearance:

The authority has implemented the facility of automated clearance of Bills of Entry to all customs formations where the customs EDI system is operational w.e.f. 5th March, 2020. This would mean that on completion of customs compliance verification by the designated officer who in turn would mark the completion in system. The system will then check receipt of applicable duty and automatically clear the said Bills of Entry. For details, refer Circular No.15/2020-Customs dated 28th February, 2020.

### Relaxation in submitting bonds for lockdown period:

The board vide its circular dated 3rd April, 2020 has approved relaxations in requirement of submission of bonds as required under section 18, 59 and 143 of customs act 1962 till 15th May, 2020 due to non-availability of notarized stamp papers. The relaxations are subject to compliance with conditions listed in said circular which mainly requires submission of an undertaking by the importer / exporter in lieu of bonds and submission of actual bond by 30th May, 2020. It also specifies that it is not a substitute for security, wherever it is mandated by act. For details, refer Circular No. 17/2020-Customs dated 3rd April, 2020 and 21/2020-Customs dated 21st April, 2020

### Clearance of goods without Original Certificate of Origin:

All import consignments where preferential treatment of goods under free trade agreement are claimed but the original certificate of origin (COA) is not submitted may be assessed and cleared provisionally in terms of section 18 of the Act on verification of electronic COA. The final assessment can be done on submission of original. For details, refer Circular No. 18/2020 – Customs dated 11th April, 2020.

### Enabling PDF Gatepass and OOC copy of BOE:

The revised process would enable the customs authorities to email the final eOOC copy of Bill of Entry and eGatepass to concerned customs broker or importer once the out of charge is granted. The eGatepass will allow the gate officer to allow physical exit of imported goods from the customs area.

### Extension of SB005 alternate mechanism:

As the exporters are facing genuine hardships due to SB005 errors, it has now been decided to extend the facility of SB005 error correction in Customs EDI system for shipping bills with date upto 31st December, 2019.

# CORPORATE LAW UPDATES

## CORPORATE LAW UPDATES

### Committee of Experts submits its report on framework for valuation professionals

The Committee of Experts (Chair: M.S. Sahoo) submitted its report on an institutional framework for valuation professionals (who determine the value of an asset). Based on its recommendations, the Committee also recommended a draft Valuers Bill, 2020 which aims to protect the interest of stakeholders, regulates the valuation profession, and develops a market for valuation services. Key features of the Draft Bill include:

**Registration of service providers:** The Institute can register individual valuers, valuer institutes (VIs) and valuation professional organisations (VPOs), based on an asset class (such as plant and machinery, or land and building). A VI will offer educational courses and conduct exams. A VPO will be responsible for the development of the valuation profession. The Bill also sets out other eligibility conditions for registration. For example, to register as a valuer, a person must have completed higher secondary examination and a national valuation programme of the relevant asset class.

**National Institution of Valuers:** The Bill sets up the National Institute of Valuers. The Institute will be governed by a Governing Council comprising of: (i) a Chairperson, (ii) three whole time members including a person with a degree and professional experience in law, (iii) two exofficio members representing the government and regulators, and (iv) eight part-time members. The Council will constitute a committee to recommend valuation standards. The Institute will specify valuation standards for valuers based on the recommendations of the Committee.

**Functions of the Institute:** Key functions include:

- (i) development and regulation of practices of service providers under the Act,
- (ii) registering service providers and monitoring their performance, and
- (iii) specifying model bye-laws for VPOs.

**Investigations:** An individual can inform the Institute if he is unhappy with the services of service providers under the Act. The Institute can direct an inspection or investigation (in serious cases) against the service provider based on this information or any other information on its record. The Bill specifies categories of scheduled offences. Based on the nature of violations, the orders against the service provider may range from warnings to cancellation of license. Appeals from these decisions can be made to the High Court within 30 days.



## ARTICLE – PENALTY U/SEC 271AAD ON FALSE ACCOUNTS - A DRACONIAN PROVISION

The Finance Act, 2020, has introduced a new section 271AAD in Chapter XXI – Penalties Imposable to discourage taxpayers to manipulate his books of accounts by recording false entries including fake invoices to claim wrong input credit in GST/VAT. The said section has been inserted following the investigation of Maharashtra Sales Tax Department, who had unearthed a scam of fictitious invoices in excess of Rs.10,000/- Crores claiming input credit of VAT under the Sales Tax Act. Even under the GST regime, the GST department unearthed few big scams of bogus invoices amounting to more than Rs.1,000/- crores, involving availing of GST Input Credit. The new section will be effective from 1st April 2020. The sub-section (1) read as under –

**"Without prejudice to any other provisions of this Act,** if during any proceeding under this Act, it is found that in the books of account maintained by any person there is –

1. a false entry; or
2. an omission of any entry which is relevant for computation of total income of such person, to evade tax liability,

the Assessing Officer may direct that such person shall pay by way of penalty a sum equal to the aggregate amount of such false or omitted entry."

Under this section an assessing officer can levy penalty when an assessee :

- i. has passed a 'false accounting entry' in his books of accounts maintained; or
- ii. has omitted to pass an accounting entry which has resulted into evasion of income tax.

**The quantum of penalty shall be the sum equal to the aggregate amount of such false or omitted entry.**

The scope of this section is very large which gives very wide power to an Assessing Officer, as he can levy penalty under this section apart from any penalty initiated or levied under section 270A or 271AAC. Further, penalty under this section can also be initiated when the assessment proceedings under section 143 or reassessment proceedings under section 147 are going on. So assessing officer can initiate penalty proceedings under this section even when the assessment proceedings are not yet completed.

For the purpose of this section, the term 'false entry' is defined in the Explanation to the section which includes use or intention to use of :

- a. forged or falsified document such as a false document ; or
- b. Invoice for supply or receipt of goods or services without actual supply or receipt of the same; or
- c. Invoice for supply or receipt of goods or services or both to or from a person who does not exist.

Thus, the meaning of the term 'false entry' is very wide, i.e., use or even intention to use a 'bogus invoice' shall result into 'false entry'. Thus, assessing officer may initiate penalty proceedings under this section merely on the ground that an assessee has 'an intention to use' a bogus invoice. Therefore, a clarification from C.B.D.T. is required on this issue.



Besides, this section also gives power to an assessing officer to initiate penalty proceedings under this section on any person other than an assessee who :

- I. causes the assessee to make a false accounting entry in his books of account maintained ;or
- ii. causes an assessee to omit any entry in his books of accounts which resulted into evasion of income tax.

So, an accountant of an assessee makes a false entry or omits an accounting entry in the books of an assessee which results in evasion of tax, then the assessing officer can initiate penalty under this section on both ,i.e. the assessee and his accountant as well.

The provisions of this section shall also be applicable to an assessee who files his return of income under sec 44AD or Section 44ADA on presumptive basis .

The term 'intention to use' false documents is not defined under this section which otherwise, gives wide power to an assessing officer to initiate penalty proceedings under this section merely on surmise. Therefore, a clarification from C.B.D.T. is required on this issue.

Further, a genuine buyer of goods or services will face a great hardship under this section due to conduct of seller of such goods and services who failed to pay the GST/VAT although the transaction is a genuine one.

For initiation of penalty under this section, the time limit is as provided under Sec 275(1)(c) ) of the Act, i.e. no order under Sec 271AAD can be passed after the expiry of the financial year in which the proceedings under this section has been initiated, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later.

#### **Grant of immunity :**

Another important point to be noted is that section 273B is not amended to grant immunity from levy of penalty for failure in compliance of any provision, if assessee proves that there was a reasonable cause.

#### **No Appeal against the order U/sec 271AAD:**

Any order of levying Penalty U/sec 271AAD are not appealable as corresponding amendment to Sec 246 of the Income Tax Act, 1961 is not made by the Finance Act, 2020. Therefore, there is no remedy available in the form of an appeal against such order levying penalty U/sec 271AAD is passed. Therefore, in the interest of justice, the C.B.D.T. ought to amend section 246 (1)(l)(iii).

#### **Conclusion**

The intention of the legislature in inserting this new section is to curb fraudulent practices of inflating expenses or taking input tax credit under the GST/VAT Act but will also punish a genuine assessee for the causes of someone. Besides, understanding of an assessing officer of accounting entries is very crucial else, he may initiate penalty under this section as he has been given wider power under this section. Therefore, clarifications from the C.B.D.T. is required on the grey areas discussed above else the new section will be a punishment to a genuine assessee.

## **Manubhai & Shah LLP**

Chartered Accountants

### **CORPORATE OFFICE**

G-4, Capstone, Opp. Chirag Motors,  
Gujarat College Road, Ellisbridge,  
Ahmedabad - 380 006, Gujarat, India.  
Phone : +91 79 2647 0000  
Email : [info@msglobal.co.in](mailto:info@msglobal.co.in)

### **MUMBAI OFFICE**

3C Marker Bhavan No II,  
18, New Marine Lines,  
Mumbai - 400 020, Maharashtra, India.  
Phone : +91 22 6633 3668/59/60  
Fax : +91 22 6633 3561/2203/7935  
Email : [infomumbai@msglobal.co.in](mailto:infomumbai@msglobal.co.in)

Unit No. 502,  
5th Floor, Modi House,  
Bajaj Cross Road, Kandivali (West),  
Mumbai - 400 067,  
Maharashtra, India,

### **NCR OFFICE**

1F-CS-44B (First Floor) Ansal Plaza,  
Vaishali, Ghaziabad (U.P.)-201010  
Phone : +91 98187 84187

### **KNOWLEDGE PROCESSING CENTRE**

2nd Floor, "D" Wing,  
Shivalik Corporate Park,  
Behind ICO Petrol Pump,  
132ft. Ring Road, Satellite,  
Ahmedabad - 380 015, Gujarat, India.

13th Floor, A Block,  
Ratnakar Nine Square,  
Opp. Keshav Baug party Plot,  
Mansi Road, Vastrapur,  
Ahmedabad - 380 015, Gujarat, India.

### **BRANCHES**

RAJKOT	UDAIPUR
BARODA	GANDHINAGAR



[info@msglobal.co.in](mailto:info@msglobal.co.in)