

**Manubhai & Shah LLP**

Chartered Accountants

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

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

**NEWSLETTER**

DECEMBER

**2020**

Covering Updates for the Month of November' 20  
For private circulation and clients only

# TABLE OF CONTENTS

- Overview – Alternative Investment Funds
- Company Law updates
- SEBI updates
- The Institute of Chartered Accountants of India (ICAI) Accounting updates
- Article – Reduction in tax rates for Specified Domestic Companies under the Income Tax Act
- Due dates of various compliances falling in the month of December 2020.



# OVERVIEW – ALTERNATIVE INVESTMENT FUNDS



Alternative Investment Fund (AIF) is a fund created or incorporated in India by pooling of funds from numerous investors whether Indian or foreigner by way of private placement for investment in a portfolio of securities as per the defined investment policy for the investor's benefit.

It is governed by SEBI ("Board") through the SEBI (Alternative Investment Funds) Regulations, 2012.

AIF can be registered as Company, LLP, Trust or Body corporate set up under the laws of the Central or State Legislature

## Category of AIFs

There are three main categories of AIFs:

- i **Category I** - Invests in start-ups, early stage ventures, social venture funds, SMEs or venture capital funds, infrastructure funds
- ii **Category II** - Invests in private equity funds, debt equity funds for which incentives or concessions are not given by the government or any regulator
- iii **Category III** - hedge funds, funds which trade with a view to make short term returns

## Operating Terms and Conditions of an AIF

All AIF shall state purpose of investment, its strategy and its methodology in its placement memorandum to the investors. In order to invest in any category of AIF, the investment shall be subject to the conditions specified hereunder:

- i **Investors** – The AIF may raise funds by way of issue of units from any investor whether Indian, foreign or non-resident Indians.
- ii **Minimum Corpus Requirement** – Each scheme of the AIF shall have corpus of at least INR 20 crores.
- iii **Minimum investment value** – The AIF shall not accept from an investor, an investment of value less than INR 1 crore ; provided that in case of investors who are employees or directors of the AIF or employees or directors of the Manager, the minimum value of investment shall be INR 25 lakhs.

- iv Continuing interest** – The Manager or Sponsor shall have a continuing interest in the form of investment in the AIF of at least 2.5% of the corpus or INR 5 crores, whichever is lower, and such interest shall not be through the waiver of management fees; provided that for Category III AIF, the continuing interest shall be not less than 5% of the corpus or INR 10 crores, whichever is lower.
- v Disclosure of investment** – The Manager or Sponsor shall disclose their investment in the AIF to the investors of the AIF.
- vi Limit on maximum investors** – No scheme of the AIF shall have more than 1,000 investors; provided that the provisions of the **Companies Act, 2013**

shall apply to the AIF, if it is formed as a company.

**vii Private placement** – The AIF shall collect investment only by way of private placement.

**viii Material change** – Any material change to the fund strategy shall be made with the consent of at least 2/3rd of unit holders (in value of their investment in the AIF).

**ix Limits of investment** – Category I and II AIF shall invest only upto 25% of the investable funds in one Investee Company. Category III AIF shall invest only upto 10% of the investable funds in one Investee Company.

### Raising of investment by AIF

- i in order to raise the investments, the AIF may launch schemes subject to filing of placement memorandum with the Board.
- ii Such placement memorandum shall be filed with the Board at least 30 days prior to launch of scheme along with the fees of INR 1 lakh by way of bank draft in favour of “The Securities and Exchange

Board of India” at Mumbai. The payment of scheme fees shall not apply in case of first launch of scheme by the AIF.

iii Prior to the launch of the scheme, the Board may communicate its comments, to the applicant, if any, and the applicant shall incorporate the same in the placement memorandum prior to launch of scheme.

### Tenure

- i Category I and II AIF or schemes launched by such funds shall have a tenure of atleast 3 years.
- ii The extension of the close ended AIF may be permitted up to 2 years subject to approval of two-thirds of the unit

holders by value of their investment in the AIF.

iii The AIF shall fully liquidate within one year following expiration of the fund tenure or extended tenure in case where consent for extension is not granted.

### Scenario in India

Investments by alternative investment funds (AIFs) rose to over Rs 1.4 lakh crore in December quarter 2019, registering an increase of 53 per cent over the year-ago period. The investment made by AIFs was pegged at Rs 1,42,115.104 crore in the latest quarter, while in the year-ago period, the figure stood at Rs 92,825 crore, the latest data available with SEBI showed. At

the end of September 2019 quarter, the investment stood at Rs 1.25 lakh crore. The category I AIFs pumped in Rs 13,904 crore, category II Rs 92,433 crore and category III Rs 35,777 crore during the period under review.

The category-I AIFs are those funds that get incentives from the government and regulators and include social venture, infrastructure and venture capital funds.



## Extension of LLP Settlement Scheme, 2020:

In September, 2020, MCA has provided extension of 3 months in LLP settlement scheme (i.e. upto **December 31, 2020**). However, corresponding change in **Applicability Date** was not made. To correct the same, it has been clarified that “Any defaulting LLP is permitted to file belated documents, which were due for filing till **November 30, 2020**” (In original notification the said date was August 31, 2020).

Further, it has been clarified that if a **statement of account** and solvency for the financial year 2019-2020 has been **signed beyond the period of six months** from the end of financial year but **not later than November 30, 2020**, the same shall **not be deemed as non-compliance**, which as per Act needs to be filed within six months from the end of financial year.

Notification can be accessed at:

[https://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.37\\_09112020.pdf](https://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.37_09112020.pdf)



## **Amendment in Schemes of Arrangement by Listed Entities**

SEBI has on March 10, 2017 laid down the framework for Schemes of Arrangement by listed entities. To further streamline the processing of draft schemes filed with the stock exchanges, these amendments are aimed at ensuring that the recognized stock exchanges refer draft schemes to SEBI only upon being fully convinced that the listed entity is in compliance with SEBI Act, Rules, Regulations and circulars issued thereunder. This Circular shall be applicable for all the schemes filed with the stock exchanges after November 17, 2020.

Circular can be accessed at:

[https://www.sebi.gov.in/legal/circulars/nov-2020/schemes-of-arrangement-by-listed-entities-and-ii-relaxation-under-sub-rule-7-of-rule-19-of-the-securities-contracts-regulation-rules-1957\\_48064.html](https://www.sebi.gov.in/legal/circulars/nov-2020/schemes-of-arrangement-by-listed-entities-and-ii-relaxation-under-sub-rule-7-of-rule-19-of-the-securities-contracts-regulation-rules-1957_48064.html)



# ICAI ACCOUNTING UPDATES



## i. Newly issued Guidance Notes

- a. Institute of Chartered Accountants of India (ICAI) has released Guidance Note on **Applicability of Accounting Standard (AS) 25 and Measurement of Income Tax Expense for Interim Financial Reporting**. The major area on which guidance has been provided are:
- Applicability of AS 25;
  - Effect of disallowed expenses in computing weighted average annual effective tax rate;
  - Measurement of income tax expense for interim financial reporting in the context of AS 25;
  - Effect of merger or amalgamation subsequent to the interim balance sheet date; and
  - Change in annual effective tax rate, etc.

Guidance Note can be accessed at:

<https://resource.cdn.icai.org/61671research50201gnas25.pdf>

- b. ICAI has released Guidance Note on **Accounting for Share-based Payments**. The major area on which guidance has been provided are:
- Equity settled share-based payment transactions;
  - Modifications to the terms and conditions on which equity instruments were granted, including cancellations and settlements;
  - Withholding Tax obligations;
  - Share-based Payment Plans with Cash Alternatives;
  - Share-based payment transactions among group enterprises;
  - Employee Share-based Payment Plan Administered through a Trust;
  - Implications on Earning Per Share;
  - Disclosures related to share-based payments, etc.

Guidance Note can be accessed at:

<https://resource.cdn.icai.org/61834cajournal-nov2020-8.pdf>

## ii. EAC Opinion:

Expert Advisory Committee (EAC) of ICAI has provided an Opinion on Disclosure / Classification of Late Payment Interest Charges Collected from Customers in the Statement of Cash Flows. The relevant text of the Opinion is reproduced below:

***“The late payment charges are fixed amount in case of domestic customers (irrespective of the days of delay) and variable percentage in case of other categories of customers. Thus, in case of customers other than domestic customers, the amount of consideration varies due to difference in timing of payments (as the consideration will increase with increase in timing of payment) and therefore, it appears that the late payment interest/charge in such a case is directly linked to the timing of payment by the customers.***

***The Committee is of the view that considering the business of the company of distribution of natural gas and that the company is not a financial institution / NBFC, the late payment interest / charge in case of customers other than domestic customers in the extant case should be presented as ‘cash flows from investing activities’. As far as domestic customers are concerned, the late payment interest / charge, to the extent, it represents time value of money, should be presented as ‘cash flows from investing activities’, otherwise, it should be considered and presented as ‘cash flows from operating activities’.***

EAC Opinion can be accessed at:

<https://resource.cdn.icai.org/61834cajournal-nov2020-8.pdf>



# ARTICLE – REDUCTION IN TAX RATES FOR SPECIFIED DOMESTIC COMPANIES UNDER THE INCOME TAX ACT



## 1. Normal Rate of Tax for Domestic Companies

Under the Finance Act, 2020, the normal rates of taxes for companies are as under:

- i If the Total Turnover or Gross Receipts of the company in the preceding year exceeds 400cr 30% plus applicable surcharge and cess.
- ii In other cases 25% plus applicable surcharge and cess.

## 2. Reduction in Rate of Tax for Specified Domestic Companies (Optional)

2.1 Section 115BAA which has come into effect from A.Y 2020-2021 (F.Y 2019-20) gives option to a Company to pay tax at the rate of 22% plus applicable surcharge and cess. (Effective rate 25.17%). This section provides that if a company exercises this option of lower rate of tax it will not be entitled to claim the following deductions under various sections for computing its Total Income.

(i) Section 10AA- Deduction of Income of SEZ Unit, (ii) 32(1) (ia)-Additional Depreciation of 20% on new plant and Machinery, (iii) 32AD- Investment in new Plant and Machinery in notified areas in certain states, (iv) 33AB- Deposits in Tea, Coffee and Rubber Development Account, (v) 35 (1)(ii), (ia),(iii),(2AA) and (2AB)- Specified deduction for donations or expenses for Scientific Research , (vi) 35AD- Deduction of Capital Expenditure for specified businesses, (vii)35CCC- Weighted deduction for specified expenditure on Agricultural Extension Project, (viii) 35CCD- Expenditure on skill Development Project and (ix) Sections 80HH to 80RRB- Deduction in respect of certain Income as provided in Chapter VI-A (Part C) excluding section 80JJAA dealing with expenditure on employment of new employees .

2.2 Further, the company will not be able to claim deduction for setoff of any carried forward loss or unabsorbed depreciation of earlier years which is attributable to the deductions under the above sections. However, the company will be entitled to claim depreciation under section 32, excluding additional depreciation under section 32(1) (ia), which is determined as prescribed in the Rules.

2.3 It may be noted that section 115JB (Tax on Book profits- MAT) will not apply to the company which exercises option under section 115BAA. Hence, the benefit of claiming accumulated MAT credit will not be available.

2.4 A Company which decides to take benefit of above concessional rate of Tax i.e. 22% will have to exercise its option for the A.Y 2020-21 filing Form no. 10-IC on or before the due date for filing the Return of Income Under Section 139(1) i.e. 31-1-2021.

If this option is not exercised for A.Y. 2020-21, it can be exercised in any subsequent year and will be valid from that year. Further, the company which has exercised this option cannot withdraw the option in any subsequent year. In other words the option once exercised will be binding on the Company for that year and all subsequent years.

2.5 It may be noted that option under Section 115BAA can also be exercised by a domestic company whose Turnover or Gross Receipt are more than Rs. 400 cr.

### **3. Amendments by the Finance Act, 2020 (A.Y. 2021-22)**

Section 115BAA has been amended from the A.Y. 2021-22 (F.Y. 2020-21). The effect of this amendment is that apart from the sections listed in Para 2.1 above, the company exercising option for lower rate of tax under section 115BAA, will not be able to claim deductions under Sections 80C to 80GGC. The effect of this amendment will be that deduction for Donations to Charitable Trusts (Section 80G), Donations to Scientific Research or Rural Development (Section 80GGA), Donations to Political Parties (Section 80GGB) etc. will not be available from A.Y. 2021-22 (F.Y. 2020-21). However, it may be noted that from A.Y. 2021-22 (F.Y. 2020-21) deduction under section 80M (Deduction of certain Inter Corporate Dividends) will be allowable.

### **4. Concessional Rate for New Manufacturing Domestic Companies**

4.1 New Section 115BAB has been inserted in the Income Tax Act from A.Y. 2020-21. This section provides that the tax payable by a new Manufacturing Domestic Company shall be 15% plus applicable surcharge and cess (effective rate 17.16%). The main condition is that the company is setup and registered on or after 1st October, 2019 and should commence manufacturing on or before 31st March, 2023. There are certain other conditions to ensure that there is no splitting up or reconstruction of existing business. The section also clarifies that the business of manufacture shall not include manufacture of certain specified articles. Further, if a Company wants to get the benefit of the concessional rate it will not be entitled to get deductions under this Section as stated in Section 115BAA as referred to in Para 2.1, 2.2, 2.3 and 3 above.

4.2 It may be noted that for claiming the benefit of concessional rate of tax under this section the Company will have to exercise its option by filing the Form No. 10.ID on or before the due date for filing Return of Income Under Section 139(1). The option exercised under this section will be valid for subsequent years also. Once the option is exercised, it cannot be withdrawn. The above concessional rate will apply to such a company even if its Turnover or Gross Receipts exceed Rs400 Cr.

### **5. General**

From the above analysis it will be evident that each Company will have to work out whether it will be beneficial to it to exercise the option under Section 115BAA before the due date for filing the return of income. This will depend on the facts of each case. However, it appears that if a Company is liable to pay tax at 25% it may be advisable for it to exercise option under Section 115BAA if the total deductions to be forgone under various sections listed under that section are less than 10% of its gross income (without those deductions). Similarly, in the case of a Company which is liable to pay tax at the rate of 30%, it will be advisable to exercise the option under Section 115BAA if the total deductions to be forgone under the various sections listed under that section are less than 25% of the gross income (without those deductions).

# DUE DATES OF VARIOUS COMPLIANCES FALLING IN THE MONTH OF DECEMBER 2020

## DUE DATES



Due Date	Act/Authority	Compliance Description
07-12-2020	GujRera	In case of projects whose dynamic quarter completes in November- 2020
07-12-2020	Income Tax	Deposit of Tax Deducted/Collected (TDS/TCS) during the month of November-2020
10-12-2020	GST	GSTR-7/GSTR-8 for the month of November-2020 for persons required to deduct TDS
10-12-2020	GST	GSTR-8 for the month of November-2020 for e-commerce operator required to Collect TCS
11-12-2020	GST	GSTR-1 for the month of November-2020
13-12-2020	GST	GSTR-6 for the month of November-2020
15-12-2020	Income Tax	Payment of 3rd Installment of Advance Tax for the financial year 2020-21
15-12-2020	PF/ESIC	Payment of PF / ESIC for the month of November-2020
20-12-2020	GST	Payment of GST & Filing of GSTR-3B for the month of November-2020, for taxpayers having turnover of more than Rs.5 Crore in preceding financial Year
20-12-2020	GST	GSTR-5 & 5A by Non-resident taxable person & OIDAR for the month of November-2020
22-12-2020	GST	Payment of GST & Filing of GSTR-3B for taxpayers having turnover upto Rs.5 Crore in preceding Financial year for the month of November-2020 depending on place of business(State)
24-12-2020		
31-12-2020	Income Tax	Filing of various audit report including Tax Audit Report u/s 44AB for financial year 2019-20
31-12-2020	Income Tax	Filing of Declaration under Vivad se Vishwas Scheme (VSVS)
31-12-2020	Income Tax	Filing of report u/s 92E in respect of international/domestic transaction for the financial year 2019-20
31-12-2020	Income Tax	Filing of Income Tax Return for the financial year 2019-20 for all assessee other than (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) partner of a firm whose accounts are required to be audited or (d) an assessee who is required to furnish a report under section 92E
31-12-2020	GujRera	Filing of GujRera Annual Compliance Report in Form 5 for the financial year 2019-20
31-12-2020	MCA	Availing benefits of Company Fresh Start Scheme – 2020
31-12-2020	MCA	Extended due date for filing Form-8 Annual Statement of Accounts & Solvency and Form-11 Annual Return for LLP
31-12-2020	MCA	Extended due date for filing of various forms like DIR-3 KYC, DPT-3, INC-22A etc





info@msglobal.co.in

## **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

### **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

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