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NEWSLETTER

MARCH 2021

COVERING UPDATES FOR
THE MONTH OF FEBRUARY 2021

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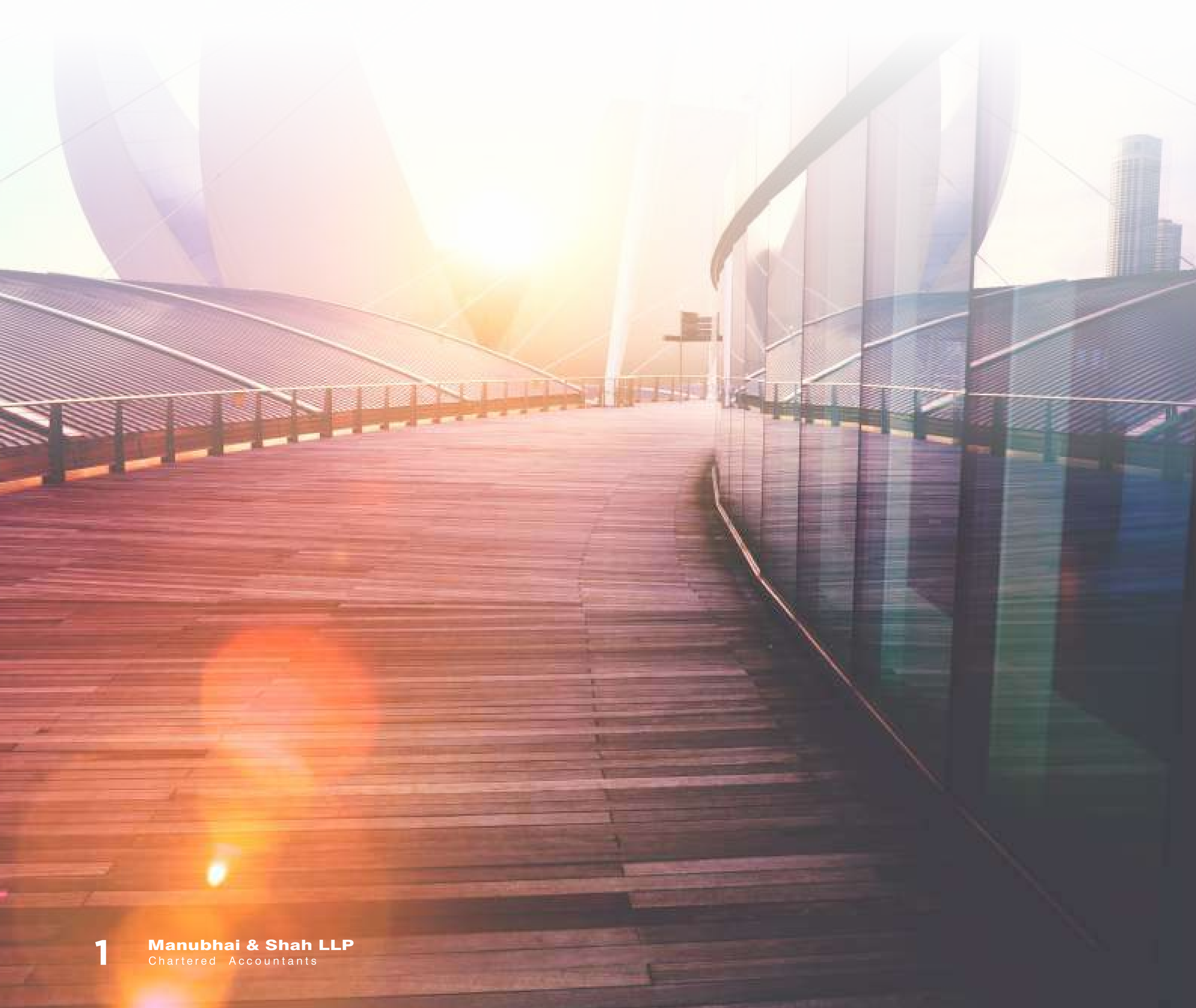
CONTENTS



COMPANY LAW UPDATES

Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2021:

The rules are amended to clarify that a scheme of merger or amalgamation under section 233 of the Act may be entered into between (i) two or more start-up companies or (ii) one or more start-up company with one or more small company.

Rules can be accessed at:

http://www.mca.gov.in/Ministry/pdf/AmalgamationsAmndtRules_02022021.pdf

Revision in Definition of Small Company:

The Rule amends the definition of Small Company by increasing limit of Turnover and Paid-up Capital to Twenty Crores and Two Crores respectively.

Rules can be accessed at:

http://www.mca.gov.in/Ministry/pdf/SpecificationAmndtRules_02022021.pdf

Companies (Incorporation) Second Amendment Rules, 2021:

The Rules amends the limit of stay in India for residential status from 180 Days to 120 Days. Further, it also amends rule 6 related to One Person Company to Convert itself into a Public Company or a Private Company in Certain Cases and Rule 7 related to Conversion of private company into One Person Company. Accordingly, it omits E-form INC-5 and amends E-form INC-6.

Rules can be accessed at:

http://www.mca.gov.in/Ministry/pdf/CompaniesSecondAmndtRules_16022021.pdf

Producer Companies Rules, 2021:

The Rules outline (i) the procedures to be followed and forms to be filed in case of change of place of registered office of the Company from one State to another and (ii) list of eligible investments which a Producer Company shall make from and out of its general reserves.

Rules can be accessed at:

http://www.mca.gov.in/Ministry/pdf/ProducerCompaniesRules_16022021.pdf

Companies (Share Capital and Debentures) Amendment Rules, 2021:

The Rules are amended to clarify, with reference to Section 62, the time limit within which the offer shall be made for acceptance shall not be less than seven days from the date of offer.

Rules can be accessed at:

http://www.mca.gov.in/Ministry/pdf/CompaniesShareCapitalDebenturesRules_16022021.pdf

Amendment in Definition of Listed Entities with effect from April 1, 2021:

A new Rule 2A has been inserted which provides list of companies not to be considered as listed companies, namely:

a. Public companies which have not listed their equity shares on a recognized stock exchange but have listed their –

   i. non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or

   ii. non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or

   iii both categories of (i) and (ii) above.

b. Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008.

c. Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Act.

Rules can be accessed at:

http://www.mca.gov.in/Ministry/pdf/CompaniesSpecification2ndAmndtRules_22022021.pdf

SEBI UPDATES

A. Revised disclosure formats under SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations):

In light of amendments to the PIT Regulations effecting the inclusion of member of the promoter group, and designated person in place of employee, in Regulation 7 of PIT Regulations; and on the basis of feedback received from market participants and stock exchanges, the relevant disclosure formats (Forms B to D) have been suitably revised.

Circular can be accessed at:

https://www.sebi.gov.in/legal/circulars/feb-2021/revised-disclosure-formats-under-regulation-7-of-sebi-prohibition-of-insider-trading-regulations-2015_49068.html

B. Extension of facility for conducting meeting(s) of unit holders of REITs and InvITs through Video Conferencing (VC) or through other audio-visual means (OAVM):

It has been decided to extend the facility to conduct meetings of unit holders, through VC or OAVM for REITs/InvITs, as under:

(i) Annual meetings of unitholders which becomes due in the calendar year 2021, to be conducted till December 31, 2021.

(ii) For meetings other than annual meeting of unitholders, till June 30, 2021.

Circular can be accessed at:

https://www.sebi.gov.in/legal/circulars/feb-2021/extension-of-facility-for-conducting-meeting-s-of-unitholders-of-reits-and-invits-through-video-conferencing-vc-or-through-other-audio-visual-means-oavm-_49307.html

C. Pre-Expiry Margin on commodities under Alternate Risk Management Framework:

In light of an unprecedented event of negative final settlement price in the crude oil futures markets in the recent past, SEBI had prescribed an Alternate Risk Management Framework (ARMF) that would be applicable in case of near zero and / or negative prices for any underlying commodities / futures.

To encourage significant reduction of open interest as the contract approaches expiry date, it has been decided that pre-expiry margins shall be imposed on cash settled contracts wherein the underlying commodity is deemed susceptible to possibility of near zero and/or negative prices as identified by exchange/CC under ARMF circular. In case of these contracts, pre-expiry margins shall be levied during the last five trading days prior to expiry date, wherein they shall increase by 5% every day.

Circular can be accessed at:

https://www.sebi.gov.in/legal/circulars/feb-2021/pre-expiry-margin-on-commodities-under-alternate-risk-management-framework_49229.html

ACCOUNTING UPDATES

A. EAC Opinion:

Expert Advisory Committee (EAC) of ICAI has provided an Opinion on Accounting Clarification on Revenue Recognition under Input Method in Respect of Manufactured Goods-Ready for Despatch.

The relevant text of the Opinion is reproduced below:

"The Committee notes from paragraph 39 of Ind AS 115 that an entity should recognise revenue over time by measuring the progress towards complete satisfaction of performance obligation and while measuring progress, the objective is to depict an entity's performance in transferring control of goods or services promised to a customer. Paragraph B18 states that under input method, revenue is recognised on the basis of the entity's efforts or inputs to the satisfaction of a performance obligation, for example, costs incurred relative to the total expected inputs/cost to the satisfaction of that performance obligation. Further, the Committee notes that in the extant case, the conditions of paragraph B 19 of Ind AS 115 are not met as these items and equipment's are manufactured and designed internally by the company for specific projects and are not simply procured from a third party.

Rather, cost of these items, since reflect the company's efforts or inputs to the satisfaction of performance obligation as per the contract with the customer, the cost incurred thereon should be included in the measure of progress of the performance."

EAC Opinion can be accessed at:

https://resource.cdn.icai.org/62911cajournal-feb2021-9.pdf

DIRECT TAX UPDATES

i. Extension of time limit for completion of proceedings under Income tax Act (CBDT Notification No. 10/2021 dated 27.02.2021)

CBDT has extended time for completion of following proceedings, in exercise of power under the section 3(1) of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 –

1. for imposition of penalty under Chapter XXI of the Income-tax Act till 30.06.2021.
2. for assessment or reassessment or proceedings under section 153 or section 153B under the Income-tax Act, —
   i. Date for passing of assessment or reassessment orders under the IT Act, that are getting time barred on 31.03.2021 vide notification dated 31st December, 2020 has been extended to 30.04.2021;
   ii. Date for passing assessment or reassessment orders (not covered by (I) above), that are getting time barred on 31.03.2021, specified in section 153/ 153B of the Income-tax Act, has been extended to 30.09.2021.
3. Date for issue of notice & passing of orders by Adjudicating Authority under the Prohibition of Benami Property Transaction Act, 1988, (Benami Act) extended to 30.09.2021.

II. Extension of time limit under Vivad Se Vishwas Scheme (CBDT Notification no. 09/2021 dated 26.02.2021)

CBDT has given extension of time under the Vivad Scheme as under:

i. Last date for making an application under the Vivad se Vishwas Scheme is extended till 31.03.2021 from 28.02.2021

ii. Last date for making payment under the Scheme without any additional charge is extended till 30.04.2021 from 31.03.2021

ARTICLE ON CHARITABLE TRUSTS AND INSTITUTIONS AMENDMENTS IN THE INCOME TAX ACT

The Finance Act, 2020 introduced some amendments in the provisions dealing with exemptions to Charitable Trusts and Institutions .These were to be effective from 1st June, 2020 but this date was extended from time to time by the Ministry of Finance and is now effective from 1st April, 2021. With these amendments, small Charitable Trusts will find it difficult to comply with the various procedural requirements. In this article some of the important changes made by the Finance Act, 2020, which come into force on 1st April, 2021,are discussed.

New Procedure for Registration:

The Finance Act, 2020, has inserted a new section 12AB effective from 1st April, 2021 which specifies the new procedure for registration of the Charitable Trusts. Similarly, Sec.10(23C) is also amended and similar procedure, as stated in Section 12AB, will have to be followed. All the existing Charitable trusts and other Institutions registered under Section10(23C) and 12AA will have to apply for fresh registration under the new provisions of section 10(23C)/112AB on or before 30/06/2021. The fresh registration will be granted for a period of 5 years. Thereafter, all Trusts / Institutions, claiming exemption under Sections 10(23C)/11 will have to apply for the registration every 5 Years. Broadly stated, the revised procedure as stated in Sections 12AB/10(23C) is as under :-

1. FOR EXISTING CHARITABLE TRUSTS, EDUCATIONAL INSTITUTIONS, HOSPITALS ETC. REGISTERED UNDER SECTIONS 12AA OR 10(23C):

i. They have to apply for fresh registration under section 12AB or 10(23C) in the prescribed form on or before 30 June 2021.

ii. The designated authority will grant registration under section 12AB or 10(23C) for a period of 5 years. He will have to pass the order within 3 months from the end of the month in which application made.

iii. The trust/ institution will have to apply to the designated authority for renewal of registration Six months before the expiry of the above period of 5 years.

2. FOR NEW CHARITABLE TRUSTS, EDUCATION INSTITUTIONS, HOSPITALS, ETC.

i. The application for registration in the prescribed form should be made to the designated authority at least one month prior to the commencement of the previous year relevant to the assessment year from which registration is sought.

ii. The designated authority will grant provisional registration for a period of three assessment years. He has to pass the order within one month from the end of the month in which application is made.

iii. Where such provisional registration is granted for 3 years, the Trust/Institution will have to apply for renewal of registration at least six months prior to the expiry of the period of the provisional registration or within six months of commencement of its activities, whichever is earlier.

iv. The designated authority will thereafter grant registration, after making enquiry, for a period of 5 years. This order is to be passed within 6 months from the end of the month in which application is made.

3. FOR INSTITUTIONS APPROVED UNDER SECTION 10(23C) OR 10(46):

Section 11(7) is amended to provide that the registration of the Trust under section 12A/12AA will become inoperative from the date on which the trust is approved under section 10(23C)/10(46) or on 01/07/2021 whichever is later. In such a case the trust can apply for registration under Section 12AB. For this purpose, the application for the registration under section12AB will have to be made at least 6 months prior to the commencement of the assessment year from which registration is sought. The designated authority will have to pass the order within 6 months from the end of the month in which application is made.

4. IN CASE OF MODIFICATION OF OBJECTS OF THE TRUST OR INSTITUTION

Where a trust or institution has made modification in its objects and such modification does not confirm with the conditions of registration, application should be made to the designated authority within 30days from the date of such modification.

5. POWERS OF THE DESIGNATED AUTHORITY :

Where the application for registration or renewal of registration is made, as stated above, the designated authority will grant registration for 5 years or reject the application for registration after making such inquiry in order to satisfy about (a) the genuineness of the activities of the trust/institution ; and (b) the compliance with requirements of any other applicable law for achieving the objects of the Trust or Institution after giving hearing to the trustees. If the application is rejected, the Trust or Institution can file appeal before ITA Tribunal within 60 days. The designated authority has also power to cancel the registration of any Trust or Institution under section 12AB on the same lines as provided in the existing section 12AA.

NEW PROCEDURE FOR APPROVAL UNDER SECTION 80G:

A new procedure is introduced under section 80G of the Income Tax Act which is as under:

(i) Where the Trust/Institution holds certificate under section 80G it will have to make a fresh application for a new certificate under that section on or before 30.06.2021. In such a case the designated authority has to give a fresh certificate which will be valid for 5 years. The designated authority has to give this certificate within 3 months from the last day of the month in which application is made.

(ii) For renewal of the above certificate, application will have to be made at least 6 months before the date of expiry of such certificate.

(iii) In a new case, the application for certificate under section 80G will be required to be filed at least one month prior to commencement of the previous year relevant to the assessment year for which the approval is sought. In such a case , the designated authority will give provisional approval for 3 years. He has to give the provisional approval within one month from the last day of the month in which application is made.

(iv) In a case where provisional approval is given, application for renewal will have to be made at least 6 months prior to expiry of the period of provisional approval or within 6 months of commencement of the activities by the Trust/Institution whichever is earlier.

In cases of renewal of approval as stated in (ii) and (iv) above , the designated authority shall renew the certificate under section 80G after verification of required documents etc.as he thinks necessary in order to satisfy genuineness of the activities of the trust/institution. If he is not so satisfied, he can reject the application after giving hearing to the trustees. The Trust/Institution can file appeal to ITA Tribunal within 60 days if the approval under section 80G is rejected.

PROCEDURE FOR FILING PARTICULARS OF DONORS:

Amendment in section 80G and 35(1)(ii)(iia)/(iii) further provides that every trust/institution holding section 80G certificate will be required to file with the prescribed Income tax Authority particulars of all donors in the prescribed form within the prescribed time. The Trust/Institution has also to issue a certificate in the prescribed form to the donor about the donations received by the Trust/institution. Donor will get deduction under section 80G or 35(1)(ii)(iia)/(iii) only if the trust/institution has filed the required statement with the Income Tax Authority and issued the above certificate to the donor. In the event of failure to file the above statement or issue the above certificate within the prescribed time the trust/institution will be liable to pay fee of Rs.200 per day for the period of delay under the new Section 234G.Further penalty of Rs. 10,000/ (minimum) which may extend to Rs 1 lakh (maximum) may also be levied for the failure to file details of donors or issue of certificate to donors under the new section 271K. There is no provision for filing appeal before CIT(A) or ITA Tribunal against fee charged

ARTICLE ON ONE PERSON COMPANY

Background:

The concept of a One Person Company was first time introduced in the Companies Act, 2013. This type of entity structure was introduced to simplify the complex procedure and compliance requirements that come along with other types of business models. The concept of One Person Company in India was mooted, in the report of Dr J.J. Irani Committee.

What is OPC:

According to Section 2 (62) of the Companies Act, 2013, an OPC is defined as "a company which has only one person as a member." Therefore, as per the definition, as defined by the Companies Act, 2013 that a company which has only one shareholder as a member of the company is a One Person Company in India. Generally speaking, an OPC is founded by only one founder or promoter.

Difference between Sole Proprietorship and OPC:

A sole proprietorship form of business might seem very similar to one-person companies because they both involve a single person owning the business. But there actually exist some differences between them.

The main difference between the two is the nature of the liabilities they carry. Since an OPC is a separate legal entity distinguished from its promoter, it has its own assets and liabilities. The promoter is not personally liable to repay the debts of the company.

On the other hand, sole proprietorships and their proprietors are the same persons. So, the law allows attachment and sale of promoter's own assets in case of non-fulfilment of the business' liabilities which is not the case in OPCs.

Salient features of OPC:

- **Private company:**

  Section 3(1)(c) of the Companies Act provides that a single person can form a company for any lawful purpose. It further describes OPCs as private companies.

- **Single-member:**

  OPCs can have only one member or shareholder, unlike other private companies.

- **Nominee:**

  A unique feature of OPCs that separates it from other kinds of companies is that the sole member of the company has to mention a nominee while registering the company. An individual cannot incorporate more than one OPC or become a nominee in more than one OPC. Furthermore, no minor is allowed to become member or nominee of the One Person Company or hold share with beneficial interest.

The Annual Budget 2021 proposed the following in order to promote and ease the formation of OPCs in India:

1. Non-resident individuals with entrepreneurial potential are now enabled to set up One Person Companies (OPC) with no paid up capital and turnover restrictions, reducing registration timeline from 182 days to 120 days. Earlier only Indian resident citizens were permitted to set up OPCs
2. Removed the restriction of paid up capital and average annual turnover for the purpose of mandatory conversion of such OPCs into other form of Companies.

- **Succession**

  At the time of incorporation the sole member has to appoint a nominee. If the member is not able to continue the operations due to death or some unforeseen circumstances then nominee will be responsible to continue the business of the company.
- **Minimum one director:**

  OPCs need to have minimum one person (the member) as director. They can have a maximum of 15 directors.
- **No minimum paid-up share capital:**

  Companies Act, 2013 has not prescribed any amount as minimum paid-up capital for OPCs.
- **Special privileges:**

  OPCs enjoy several privileges and exemptions under the Companies Act that other kinds of companies do not possess.

It may be noted that:

- OPC cannot be incorporated or converted into a company specified under section 8 of the Companies Act, 2013.
- Such a company cannot carry out Non-Banking Financial Investment activities, including investment in securities of any Body Corporates.

Management of an OPC:

- **Number of Directors**

The number of Directors can be minimum 1 Director and maximum 15 Directors.

- **Appointment of director**

An individual member shall be deemed to be the First Director. There is no separate provision for appointment of First Director in articles of the company.

- **Board Meetings/ Annual General Meeting**
  - ➢ For holding Board Meetings, in case of an OPC which has only one director, it is adequate compliance if all resolutions required to be passed by such a Company at a Board meeting. They are entered in the minutes-book, signed and dated by the member, and such date is considered as the date of the Board Meeting for all the purposes under this Act.
  - ➢ For other OPCs, at least one Board Meeting should be held in each half of the year, and the gap between the two meetings must not be less than 90 days. (Section 173)
  - ➢ There is no requirement of holding Annual General Meeting. (Section 96)
- **Chairman**
  - ➢ Chairman of the meeting is not required.
  - ➢ The concept of notice, quorum, passing of resolution etc. contained in Section 96 and Sections 100 to 111 are not applicable to OPCs.
- **Board's Report** not to include the information required u/s 134(3) except explanation/comments on qualification/adverse remark/disclaimer made in auditors report.
- **Annual Return** filed by such company to be signed CS or by director in his absence.

- **Business Transactions in OPC**
  - Minutes to be maintained for business transacted.
  - Ordinary business of AGM to be transacted in meeting and enter into minutes book.(If opted to do so)
  - Date of entering and signing of Minutes book and the date of communication shall be the date of transaction of such business.
  - The financial statements of an OPC have to be signed by the only director of the company. Furthermore, the cash flow statement is not a mandatory part of financial statements for a One Person Company.
  - Copy of Financial Statements duly adopted by member to be filed with ROC within 180 days from the end of the financial year.
- **Related party contract by OPC (Section 193)**
  - The contract with sole member, who is also director of OPC
  - Contract should be in Writing
  - If not in writing, the terms and conditions to be noted in minute book of the meeting
  - Meeting shall be first meeting held next after entering into contract.
  - Informing Registrar within a period of 15 days of the date of approval by BOD.
  - Provisions not applicable to contracts entered into in *the ordinary course of company's business.*

When OPC can be preferred as an option compared to Sole proprietorship?

Following aspects are to be considered while considering an option to choose between OPC and Sole Proprietorship:

- Limited Liability
- Compliance of legal requirements
- Business continuity
- Taxation

DUE DATES OF VARIOUS COMPLIANCE FALLING IN THE MONTH OF MARCH 2021

Due Date	Act/Authority	Compliance Description
07-03-2021	GujRera	In case of projects whose dynamic quarter completes in February- 2021
07-03-2021	Income Tax	Deposit of Tax Deducted/Collected (TDS/TCS) during the month of February-2021
10-03-2021	GST	GSTR-7/GSTR-8 for the month of February-2021 for persons required to deduct TDS
10-03-2021	GST	GSTR-8 for the month of February -2021 for e-commerce operator required to Collect TCS
11-03-2021	GST	GSTR-1 for the month of February-2021
13-03-2021	GST	Filing of Invoice Furnishing Facility (IFF) for the month of February-2021 for taxpayers who opted for Quarterly Return Monthly payment(QRMP) Option
13-03-2021	GST	GSTR-6 for the month of February-2021 for Input Service Distributor
15-03-2021	PF/ESIC	Payment of PF / ESIC for the month of February-2021
15-03-2021	Income Tax	Payment of 4th instalment of Advance Tax of Financial Year 2020-21
20-03-2021	GST	Payment of GST & Filling of GSTR-3B for the month of February-2021, for taxpayers having turnover of more than Rs.5 Crore in preceding financial Year
20-03-2021	GST	GSTR-5 & 5A by Non-resident taxable person & OIDAR for the month of February-2021
22-03-2021 24-03-2021	GST	Payment of GST & Filling of GSTR-3B for taxpayers having turnover upto Rs.5 Crore in preceding Financial year for the month of February-2021 depending on place of business(State)
25-03-2021	GST	Payment of GST in form GST PMT-06 for the month of February-2021 for taxpayers who opted for Quarterly Return Monthly payment(QRMP) Option
31-03-2021	GST	Opting Option for Composition Scheme for financial year 2021-2022
31-03-2021	GST	Filing of GSTR-9/9A/9C-Annual Return and Annual Audit for the financial year 2019-2020
31-03-2021	Income Tax	Extended due date to file TDS returns for Q1 and Q2 of Financial Year 2020-2021
31-03-2021	Income Tax	Filing of Income Tax Return for Financial year 2019-2020 with penalty for both audit and non audit cases.
31-03-2021	Income Tax	Filing of Revised Income Tax Return for the Financial year 2019-2020
31-03-2021	Income Tax	Filing of Application under Direct Tax Vivad Se Vishwas Act, 2020
31-03-2021	Income Tax	Linking of Aadhar with PAN

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