

KP ASSOCIATES

ADVOCATES & CONSULTANTS

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K.P. Associates is a multi-service law Firm delivering legal, regulatory and advisory services to its clientele.

We deal in all the major disciplines and work with clients ranging from global organizations, government and non-profit businesses, to micro, small and medium organizations, private individuals and entrepreneurs.

At K.P. Associates we are followers of the belief that our success will come from our client's success. Therefore, we ensure a great degree of partner involvement and availability, attention to detail, and responsiveness towards client sensitivities.

THE COMPANIES (AMENDMENT) BILL, 2020

The Lok Sabha on September 19, 2020 passed the Companies (Amendment) Bill, 2020 ("Amendment Bill"), which inter alia seeks to decriminalize certain offences under the Companies Act, 2013 ("Companies Act"), reduce/omit certain penalties prescribed under the Companies Act, and offer some relaxations from processes/compliances to achieve ease of doing business.

Set out below are a few salient features of the Amendment Bill:

- (i) **Decriminalization of certain offences:** Certain contraventions, such as (i) publishing of prospectus by a public company in contravention of provisions of Section 26 (Matters to be Stated in Prospectus) of the Companies Act; (ii) contravention of the provisions set out under Section 8 (Formation of Companies with Charitable Objects, etc.) of the Companies Act by the company; (iii) failure of person to file a declaration under Section 90 (Register of Significant Beneficial Owners in a Company) of the Companies Act, entailed a penalty of imprisonment along with the prescribed monetary penalty. The Amendment Bill seeks to decriminalize such offences, and limit the penalties to monetary penalties only.
- (ii) **Reduction in penalties:** Certain contraventions, such as failure by the company to comply with the provisions of Section 56 (Transfer and Transmission of Securities) of the Companies Act levied a penalty ranging from Rs. 25,000-Rs. 5,00,000 for the company, and Rs.10, 000-Rs. 1,00,000 for the officer in default. The Amendment Bill proposes to limit the penalty for both the company and the officer in default to Rs. 50,000. Further, the Amendment Bill proposes to reduce the monetary penalty in connection with the failure by a company to maintain the register of significant beneficial owners/seek information about the significant beneficial owners as required under Section 90 of the Act, to a

FIRM'S PRACTICE AREAS

Corporate & Commercial, Estate Planning, Trusts and Private Client, Dispute Resolution, Employment & Labour, Environment, Real Estate and Construction, White Collar Crimes, Start Ups, Non Governmental Sector, Insurance & Pension, Trademarks, Brands & Designs, Renewable Energy Practice, Insolvency And Bankruptcy Practice, Antitrust/Competition, Taxation Advisory, Media & Entertainment, Aviation, Education, Immigration, Cyber Laws, Medico-legal etc.



range of Rs. 1,00,000-Rs. 5,00,000 (as opposed to the current penalty of Rs. 10,00,000- Rs 50,00,000 and additional daily penalties).

(iii) **Other amendments:** The Amendment Bill also seeks to offer some relaxations from processes/compliances to achieve ease of doing business, such as:

- a) Under the Companies Act, where a company proposes to raise further capital by way of a rights issue, the existing shareholders are mandatorily required to be offered a period of 15-30 days to render their acceptance/rejection of the offer. The Amendment Bill proposes to provide that a period lesser than 15 days may also be prescribed to the shareholders to apply for the rights issue, thereby speeding up the rights issue process.
- b) The Amendment Bill also proposes to provide a relaxation to companies from setting up a CSR committee, if the amount to be spent by a company toward corporate social responsibility is less than Rs. 50,00,000. The Amendment Bill also allows eligible companies under Section 135 (Corporate Social Responsibility) to set-off any amount spent in excess of their corporate social responsibility spending obligation in a particular financial year towards such obligation in subsequent financial years.

INCOME TAX LAWS

DIRECTIONS ISSUED BY THE CBDT ON FACELESS ASSESSMENT

On the subject of **Faceless Assessment**, the CBDT has issued directions dated 18.09.2020 ("Directions"). The said directions have been issued in pursuance of a webinar-dated 10.08.2020 between the CBDT officials and the field authorities. The Directions inter alia provide as follows:

- Cases of search which are pending with the jurisdictional AOs (other than the cases which are already with Central and International Charge) shall be transferred to the Central Charge.
- Transfer pricing cases will continue to be handled by the Transfer Pricing Officers.
- All cases of survey where some material has been impounded will be transferred to the Central Charge, and where no material has been impounded the same will be handled through faceless assessment.
- Re-assessment proceedings, till further orders, are to be carried out by the jurisdictional AO.
- Cases set aside for de-novo consideration will be done by the

AOs of International Taxation/Central Charge or through Faceless Assessment, as the case may be.

- Partly set-aside cases will be dealt with by the jurisdictional AO in a faceless manner.
- Verification units, as constituted under the Faceless Assessment Scheme, will carry out verification with regard to additional evidence referred by CIT (A).

ANALYSIS

While the Directions issued have managed to quell some of the ambiguous points, such as that the reassessments will be carried out through Faceless Assessment. Having said that, the Directions have managed to create further ambiguity in terms of cases relating to search and seizure and their centralisation under Section 127 of the Income-tax Act, 1961 wherein reasons are to be recorded before the transfer of a case and such transfer orders are subject to the scrutiny of a writ court. Accordingly, further clarity on the subject would be required.

PARAMETERS FOR COMPULSORY SCRUTINY ASSESSMENT OF ITR FOR FY 2020-21

The CBDT has issued guidelines dated 17.09.2020 providing the parameters for selecting the income tax return of an assessee for compulsory scrutiny assessment, and has prescribed the relevant authority for conducting such assessment proceedings.

The parameters provided *vide* these guidelines are as follows:

S. NO.	PARAMETERS FOR COMPULSORY SCRUTINY ASSESSMENT	ASSESSMENT PROCEEDINGS TO BE INITIATED BY
SURVEY CASES		
1.	<p>Survey cases will be picked up for compulsory scrutiny assessment. This will include cases where an assessee has retracted from disclosure made during survey proceedings.</p> <p>Cases where books of accounts, documents etc. have not been impounded and the returned income is not less than the returned income of preceding AY then such cases will not be taken up in scrutiny.</p>	<p>Where a case has been selected for compulsory scrutiny assessment and where books/documents have been impounded, the notice for such assessment shall be issued by the jurisdictional AO. Once the notice has been issued, the case will be transferred to Central Charge within 15 days of the issuance of notice.</p> <p>Where a case has been selected for compulsory scrutiny assessment, but the books/documents have not been impounded, the notice of selection of return will be issued by the jurisdictional AO, however, assessment proceedings will be conducted through faceless assessment.</p>
SEARCH & SEIZURE CASES		
2.	Compulsory scrutiny assessment in case of search and seizure cases will be conducted.	Cases where the seized items belong to any other person i.e. a person other than the person on whom such search was carried out, and if such cases are outside the Central Charge, then such cases shall be transferred to the Central Charge within 15 days from the issue of notice for compulsory scrutiny assessment.
NOTICE FOR RETURN OF INCOME		
3.	Where the assessee has failed to furnish the return of income despite issuance of notice, the case shall be taken up for compulsory scrutiny assessment.	In such cases, the assessment shall be conducted via faceless assessment.
	Where return has been furnished in response to the notice (issuance of notice is, <i>inter alia</i> , on the basis of information received from AIR).	Cases will not be taken up for compulsory scrutiny assessment and selection of such cases for scrutiny assessment will be through CASS.
	Where return has been furnished in response to the notice (issuance of notice is, <i>inter alia</i> , on the basis of information received from law enforcement agencies).	Compulsory scrutiny assessment shall be conducted via faceless assessment after the issuance of notice by jurisdictional AO.
CASES OF RE-ASSESSMENT		
4.	Where no return of income has been furnished in response to the notice of re-assessment, the case shall be taken up for compulsory scrutiny assessment.	Jurisdictional AO to issue notice calling for information. Assessment proceedings to be done through faceless assessment.
	Where return has been furnished in response to the notice (issued <i>inter alia</i> , on the basis of information received from AIR).	Cases will not be taken up for compulsory scrutiny assessment and selection of such cases for scrutiny assessment will be through CASS.

	Where return has been furnished in response to the notice (issued inter alia, on the basis of information received from Law enforcement agencies).	Compulsory scrutiny assessment shall be conducted via faceless assessment after the issuance of notice by jurisdictional AO.
CASES RELATING TO APPROVAL/REGISTRATION		
5.	Where in a case approval/registration has not been granted or has been cancelled / withdrawn, pertaining to benefits under section 12A, or in relation to Section 10(23C), or in relation to scientific expenditure, and the assessee is still claiming the benefit such cases shall be taken up for compulsory scrutiny assessment.	Compulsory scrutiny assessment shall be conducted via faceless assessment after the issuance of notice by jurisdictional AO.

DISCLAIMER:

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