

CNK & Associates LLP

Bulletin

COVID-19 Impact: Fiscal Measures announced for the Revival of Indian Businesses

In order to augment growth and revive the Indian economy, the Finance Minister (FM) in a series of announcements (on 13/14/16/17 May), has announced the following key measures¹:

- A. A special economic package of INR 20 trillion (~ 10% of India's GDP), with a view to extending support to certain ailing sectors in desperate need for liquidity. The economic package pre-dominantly comprises of loans and other liquidity measures, and the cost to the Government by way of subsidies/cost outlays seems to be a relatively small proportion of the overall economic package.
- B. Tax and other relief measures directed towards infusing/enhancing liquidity with specific emphasis on Micro Small and Medium Enterprises (MSMEs), Non-Banking Financial Companies (NBFCs), Housing Finance Companies (HFCs), Micro Finance Institutions (MFIs), Electricity Distribution Companies (DISCOMs) and Real Estate sectors.
- C. Liberalization of the FDI norms in the Defence Sector by enhancing the FDI limits from the existing 49% to 74% without any Government Approvals.

A summary of the key tax and other economic measures intended to revive and left business sentiments in these sectors are summarized below.

TAX MEASURES:

A. Measure 1: Reduction in TDS / TCS rate by 25%

The Finance Minister announced that to provide liquidity in hands of income-tax payers, the prescribed rates of Tax Deduction at Source (TDS) and Tax Collected at Source (TCS) on non-salary transactions with residents will be reduced by 25%, as required. This was subsequently confirmed by the Central Board of Direct Taxes (CBDT), India's apex tax administration body, through a press release dated 13 May 2020 which states as under:

- The TDS rates in respect of non-salary payments to resident payees have been reduced by 25% on the amount paid or credited on or after 14 May 2020 till 31 March 2021.
- Similarly, the TCS rates have also been reduced by 25% in respect of amounts received or debited on or after 14 May 2020 till 31 March 2021.
- The reduced TDS / TCS rate will not apply in cases where higher tax is required to be deducted or collected due to non-furnishing of PAN (or Aadhaar) by the resident payee.

CNK Comments:

- The reduced TDS and TCS rates are provided in Annexure I and Annexure II respectively. The reduced rates are not applicable to salary payments and payments made to non-residents (including foreign companies). Interestingly, TDS on cash withdrawals under section 194N and TCS on alcoholic liquor for human consumption, TCS on foreign tour and TCS on remittances under Liberalised Remittance Scheme have not been covered in the press release. Accordingly, it appears that the reduced TDS / TCS rate will not apply in these cases.

¹ Source: Press Release issued by Ministry of Finance dated 13 May 2020, 14 May 2020, 16 May 2020 and 17 May 2020.

- The tax rates provided by Finance Act, 2020 have not been reduced. Accordingly, the reduction in the rates of TDS / TCS will not have any impact on the final tax liability of the recipient. While the reduction may help taxpayers who generally claim refund in tax return, for others, suitable upward addition to advance tax installments will be required. Accordingly, it is only a matter of timing difference.
- The 25% reduction in rate will not apply to a specific lower TDS rate that has been provided in any certificate issued under section 197.
- The reduced rates apply only to transactions accounted or paid on or after 14 May 2020 to 31 March 2021. For the transactions accounted or paid on or after 1 April 2020 to 13 May 2020, the full TDS / TCS rate will apply.

B. Measure 2: Extension of various due dates

The Finance Minister announced extension of various due dates under income-tax law falling due in the upcoming months as summarized in the table below:

Sr. No.	Due Date pertaining to	Due Date	Extended Due Date
1	Furnishing of income-tax returns for FY 2019-20 where audit is not applicable	31 July 2020	30 November 2020
	Furnishing of income-tax returns for FY 2019-20 in all other cases	31 October 2020	
2	Due date for filing Tax Audit report for FY 2019-20 (where transfer pricing not applicable)	30 September 2020	31 October 2020
3	Due date for filing Tax Audit report for FY 2019-20 (where transfer pricing is applicable)	31 October 2020	
4	Last date for opting for Vivad Se Vishwas Scheme without paying additional 10% of disputed tax	30 June 2020	31 December 2020
5	Completion of Assessments for the AY 2018-19	30 September 2020	31 December 2020
	Completion of Assessments for the AY 2019-20	31 March 2021	30 September 2021

CNK Comments:

It appears that the due date for filing income-tax returns for FY 2018-19, as announced by the earlier press release, continues to be 30 June 2020.

C. Measure 3: Release of pending refunds

It has been announced that the pending income-tax refunds to charitable trusts, non-corporate businesses and professions including proprietorship, partnership, LLPs, co-operatives shall be issued immediately.

CNK Comments:

It needs to be seen whether all refunds for stand-alone years are issued in cash or are adjusted against any tax demand reflected as outstanding in the records of the income-tax department. If the refunds are to be adjusted against any pending tax demands, the same should be restricted only to undisputed tax demands. Adjustment of refunds against disputed tax demands will defeat the purpose of the announcement and also reduce the attractiveness of the taxpayer to opt for the Vivad Se Vishwas Scheme.

OTHER ECONOMIC MEASURES:

D. Impetus to MSMEs

I. Collateral-Free Automatic Loans – INR 3 lakh Crores:

Objectives:

- To enable MSMEs to meet working capital funding requirements with the twin objectives of kick-starting economic activities and to ensure job protection for workers employed in this sector.

Key Features:

- Emergency Credit Line to businesses up to 20% of outstanding credit as on 29 February 2020.
- Term Loans at concessional interest rates with a tenure of 4 years and a moratorium of 12 months for repayment of principal. No guarantees/ collaterals would be required to be placed by MSMEs to secure the loan.

Eligible Borrowers:

- Facility available to units fulfilling the following conditions:
 - Outstanding credit up to INR 25 crores;
 - Turnover of up to INR 100 crores and
 - Account should be a standard account.

Eligible Lenders:

- Banks/NBFCs.

Credit Guarantee to Eligible Lenders:

- 100% credit guarantee cover would be extended to Banks and NBFCs providing the facility.

Validity:

- Till 31 October 2020.

CNK Comments:

- The 100% credit guarantee cover is likely to instill greater confidence in banks/NBFC to extend financial facilities to the stressed MSME Sector.
- The MSME Sector stands to benefit greatly by securing soft loans and without any guarantees/collaterals; would reduce costs and help greatly in kick-starting the business.

II. Sub-ordinate Debt for Stressed MSMEs – INR 20,000 Crores:

Objectives:

- Provision of equity and to revitalize the functioning of stressed MSMEs (likely to benefit 2 lakh units).

Key Features:

- Banks to provide loans to Promoters with an end-use restriction that the loan will be deployed for equity infusion into the Promoter's company/business.
- Quantum of Loan = 15% of Promoter's existing stake, subject to a maximum of INR 75 lakhs.

Credit Backing:

- Government shall provide INR 4,000 crores to Credit Guarantee Trust for Micro and Small Enterprises (CGTMSE); which shall in turn provide partial credit guarantee support to Banks.

CNK Comments:

- Sub-ordinate debt to stressed MSMEs enables such MSMEs to raise funds for re-starting business operations, which would have otherwise been very difficult to raise, considering their NPA status.

III. Fund of Funds – Equity Infusion for MSMEs – INR 50,000 Crores:**Objectives:**

- Equity support to MSMEs with the twin objectives of facilitating expansion in terms of size and capacity and to encourage such MSMEs to get listed on the main board of Stock Exchanges.

Key Features:

- Government to establish a Fund of Funds (FOF) with a corpus of INR 10,000 crores to assist in mobilization of equity. The FOF shall be operated through a holding-subsidary structure and the leveraging of funds would take place at the subsidiary level.

Eligible Borrowers:

- MSMEs - particularly those with growth potential and viability.

CNK Comments:

- Paves the way for Public-Private Partnerships in the MSME Sector.

IV. Definition of MSME – Redefined Scope:**Key Features:**

- Definition of MSME amended to facilitate coverage of additional units/businesses within its ambit.
- Twin eligibility criteria of investment-cum-turnover limits to be met as per the amended definition; investment limits for MSMEs increased and an additional turnover criterion introduced.
- Sector-wise bifurcation of enterprises between manufacturing and services eliminated.

Erstwhile Definition:

Classification	Micro	Small	Medium
Manufacturing Enterprises	Investment < INR 25 lakh	Investment < INR 5 cr.	Investment < INR 10 cr.
Service Enterprises	Investment < INR 10 lakh	Investment < INR 2 cr.	Investment < INR 5 cr.

Revised Definition:

Classification	Micro	Small	Medium
Manufacturing & Service Enterprises	Investment < INR 1 cr. AND Turnover < INR 5 cr.	Investment < INR 10 cr. AND Turnover < INR 50 cr.	Investment < INR 20 cr. AND Turnover < INR 100 cr.

CNK Comments:

- The amendment of MSME definition is a positive announcement and will result in many more units being covered within the ambit of MSME with corresponding benefits.

V. Protection to MSMEs under the Insolvency and Bankruptcy Code (IBC):

Objectives:

- To insulate and safeguard the interest of MSMEs and to enhance the ease of doing business.

Key Features:

- Minimum threshold limits for initiating insolvency proceedings against MSMEs raised to INR 1 crore from the existing limit of INR 1 lakh.
- Initiation of fresh insolvency proceedings suspended for up to one year, depending upon the COVID-19 pandemic situation.
- COVID-19 related debt excluded from the definition of “*default*” for the purposes of triggering insolvency proceedings under IBC.
- Special Insolvency Resolution Framework to be introduced for MSMEs.

CNK Comments:

- The announcement is aimed at creating a protective shield around MSMEs and prevents lenders/creditors from initiating proceedings against MSMEs under IBC in the near future.

VI. Supplementary Measures for MSMEs:

Objectives:

- To help MSMEs overcome marketing and liquidity related challenges.

Key Features:

- Promotion of e-market linkage as a substitute for trade fairs and exhibitions.
- Use of fin-tech to enhance transaction based lending using data generated by the e-market place.
- Global bidders disallowed in Government procurement tenders of up to INR 200 crores.
- MSME receivables from the Government and Central Public Sector Enterprises (CPSEs) to be released within 45 days.

CNK Comments:

- The announcement enhances the marketing capabilities of MSMEs and is in keeping with the “Make in India Initiative”, widely promoted by the Government.
- Most of the FM announcements by the FM are aimed at improving the present liquidity constraints, which cater to the supply side of the economy; the measures to revive consumer demand seem to be few and far.

E. Boost to Non-Banking Finance Companies (NBFCs), Housing Finance Companies (HFCs) and Micro Finance Institutions (MFIs)

I. Special Liquidity Scheme for NBFCs, HFCs and MFIs - INR 30,000 Crores:

Objectives:

- To reduce difficulties faced by NBFCs, HFCs and MFIs in raising debt funds and to supplement RBI/Government measures to improve liquidity in the economy.

Key Features:

- Full Government guarantee of investments made through primary and secondary markets transactions, in investment grade debt paper of NBFCs/HFCs/MFIs.

Eligibility:

- NBFCs, HFCs and MFIs

II. Partial Credit Guarantee Scheme 2.0 for Liabilities of NBFCs, HFCs and MFIs - INR 45,000 crores:

Objectives:

- To enhance liquidity and to enable NBFCs, HFCs and MFIs with lower credit ratings to extend fresh loans to MSMEs/ individuals.

Key Features:

- Government to provide 20% first loss sovereign guarantee.
- Existing Partial Guarantee Scheme (“PCS”) extended to cover borrowings, such as primary issuance of bonds/commercial paper (CPs).

Eligibility:

- AA rated or lower rated NBFCs, HFCs and other MFIs, including unrated paper.

CNK Comments:

- The announcements are aimed at addressing the liquidity constraints faced by these institutions and to encourage on-lending by these institutions, with a view to improving the overall liquidity position in the economy.

F. Enhancement of Foreign Direct Investment (FDI) Limits in Defence Manufacturing

Objectives:

- To give a fillip to the ‘Make in India’ initiative and to make India self-reliant in Defence Production.

Key Features:

- FDI limits in Defence Manufacturing under the Automatic Route increased to 74% from the existing 49%.

CNK Comments:

- The announcement is expected to enhance India’s capabilities in defence and make it self-dependent.

G. Ease of Doing Business – Corporate Law Amendments

Objectives:

- To decriminalize defaults under the Companies Act and to provide for an alternative resolution mechanism in an attempt to de-clog the NCLT by means of a significant reduction in the number of compounding cases referred to it.

Key Features:

- Decriminalization of various offences, including minor technical and procedural lapses such as defaults in CSR reporting, inadequacies in board report, filing defaults, delay in holding AGMs; 7 compoundable offences dropped all-together, whilst 5 others to be dealt with under an alternative framework.
- Majority of compoundable offences (58 vis-à-vis only 18 earlier) being shifted to an Internal Adjudication Mechanism.

CNK Comments:

- This announcement is expected to de-clog the NCLT from compounding matters under the Companies Act and also rationalizes penal provisions for improving “ease of doing business” for corporate.

H. Other Key Reforms/Measures

Objectives:

- To rationalize regulations or streamline measures with a view to improving the ease of doing business.

Key Features:

- Direct Listing of securities by Indian public companies in permissible foreign jurisdictions.
- Private Companies listing Non-Convertible Debentures on stock exchanges would not be considered as Listed Companies.
- Provisions of Part IXA of the Companies Act, 1956, pertaining to Producer Companies to be incorporated under the Companies Act, 2013.
- Power to create additional/special benches for NCLAT
- Reduction in penalties relating to all defaults committed by Small Companies, One Person Companies, Producer Companies and Start-Ups.
- Exit of Public Sector Enterprises from non-strategic sectors to promote private sector participation. In strategic sectors, private sector participation permissible alongside public participation.
- Focus on technology driven education - top 100 universities permitted to automatically start online courses by 30 May 2020.
- Increase in allocation by INR 40,000 crores under the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) to boost employment and rural economy through higher production.

I. Provident Fund Support for Businesses/Organized Workers

I. Extension of Time Limit:

Objectives:

- To reduce the financial burden of businesses.

Key Features:

- Government contributions (to the extent of 12% of basic salaries of employer/employee contributions) to EPF accounts extended for an additional period of 3 months (i.e. up to August 2020).

Eligibility:

- Establishments eligible under the Pradhan Mantri Garib Kalyan Package ('PMGKP').

II. Reduction of EPF Contributions:

Objectives:

- To provide support to ramp up production over the next quarter, to increase the take home salary for employees and to give relief to employers in payment of PF dues.

Key Features:

- Reduction in the Statutory Provident Fund (SPF) contributions for both **employee and employer** from the existing **12% to 10%** for all establishments (except Central/ State Public Sector Units) covered by EPFO for the next 3 months (i.e. up to August 2020).
- For Central and State Public Sector Units, employer's contribution to continue **@12%**.

Eligibility:

- Workers who are not eligible for 24 EPF support under PMGKP and its extension.

CNK Comments:

- Whilst, the announcements are intended to reduce the financial burden for employers and to increase the take home for employees (due to reduction in PF Contribution rates), it remains to be seen whether this benefit will make a significant difference for employers or translate into reality for employees.
- The reduction in PF Contribution rates will a corresponding increase in the take-home may result in an additional tax liability/TDS for employees.

J. Liquidity for Power Distribution Companies (DISCOMs) - INR 90,000 crores**Objectives:**

- To enhance the revenues and to ease cash flows of DISCOMs.

Key Features:

- Government to lend monies through Power Finance Corporation and Rural Electrical Corporation (in two equal installments) against State guaranteed receivables owed to DISCOMs. DISCOMs in turn to deploy the funds to repay their dues to Transmission and Generation companies.
- Central Public Sector Generation Companies (CPSGC) to offer rebates to DISCOMS which shall be passed on to final consumers (industries) as a relief towards their fixed charges.

CNK Comments:

- The announcement is aimed at easing the liquidity pain for the power sector (both the DISCOMs and the generating/transmission companies) and reducing the power bills of industrial units.

K. Relief to Contractors**Objectives:**

- To ease cash flows and create liquidity for contractors.

Key Features:

- Extension to contractors of up to 6 months for completion of contracts awarded by central agencies such as Railways, Ministry of Road Transport and Highways, Central Public Works Departments, etc.
- Extension of concession period by six months for Public-Private Partnership contracts.
- Government agencies to partially release bank guarantees of contractors, in proportion to the work completed.

Eligibility:

- Contractors dealing with central agencies such as Railways, Ministry of Road Transport and Highways, Central Public Works Departments, etc.

CNK Comments:

- This is a positive announcement for Government contractors, as it not only improves their cash flows but also gives them more time to fulfill their contractual obligations.

L. Relief to Real Estate Projects**Objectives:**

- To de-stress real estate developers and ensure completion of projects with a view to ensuring delivery of flats to home buyers within revised timelines.

Key Features:

- Extension of registration and completion date suo-moto (without the need for individual applications) by 6 months for all RERA registered real estate projects, with the possibility of a further extension by another 3 months (if required), depending upon the State Situation.
- COVID-19 to be treated as an event of “Force Majeure” under RERA.
- Extension of various statutory compliances under RERA concurrently.

Eligibility:

- All RERA registered estate projects expiring on or after 25 March 2020.

CNK Comments:

- This announcement is to boost the sentiments of the real estate sector by rationalizing time-lines for project completion/ other statutory timelines, whilst ensuring that home-buyers are protected due to such rationalization.

M. Relief for Migrant Workers- Employee State Insurance Corporation (ESIC) and Gratuity**Objectives:**

- To enhance welfare benefits for workers.

Key Features:

- Expansion of ESIC coverage on a PAN India basis to cover all establishments employing 10 or more employees.
- ESIC coverage also extended to also cover establishments with less than 10 employees on a voluntary basis. However, EPC coverage for establishments with less than 10 employees and operating in notified hazardous industries, would be mandatory.
- For fixed term employment, gratuity to be paid on completion of one year of service as against the current five years period.

Eligibility:

- Migrant Workers

Annexure I – TDS rates applicable for Financial Year 2020-21

Section	Nature of Income	Rate of TDS applicable for the period		Threshold Limit
		1 April -13 May 2020	14 May 2020-31 March 2021	
193	Interest on Securities	10%	7.50%	-
194	Dividend	10%	7.50%	Rs. 5,000 in case of Individual
194A	Interest other than interest on securities	10%	7.50%	Rs. 5,000 to Rs. 50,000
194C	Payment to Contractors	1% (if deductee is an individual or HUF) 2% (in any other case)	0.75% (if deductee is an individual or HUF) 1.5% (in any other case)	Single payment: Rs. 30,000 Aggregate payment: Rs. 100,000
194D	Insurance Commission	10% (if deductee is domestic company) 5% (in any other case)	7.5% (if deductee is domestic company) 3.75% (in any other case)	Rs. 15,000
194DA	Payment in respect of life insurance policy	5%	3.75%	Rs. 1,00,000
194EE	Deposit under National Savings Scheme	10%	7.5%	Rs. 2,500
194F	Re-purchase of units of mutual funds or UTI	20%	15%	-
194G	Commission & Other payments on sale of lottery tickets	5%	3.75%	Rs. 15,000
194H	Commission & Brokerage	5%	3.75%	Rs. 15,000
194-I(a)	Rent for plant and machinery	2%	1.5%	Rs. 2,40,000
194-I(b)	Rent for immovable property	10%	7.5%	Rs. 2,40,000
194-IA	Payment for acquisition of immovable property	1%	0.75%	Rs. 50 lakhs
194-IB	Payment of rent by certain individuals or HUF	5%	3.75%	Rs. 50,000
194-IC	Payment for Joint Development Agreements	10%	7.5%	-

Section	Nature of Income	Rate of TDS applicable for the period		Threshold Limit
		1 April -13 May 2020	14 May 2020-31 March 2021	
194J	Royalty and Fees for Professional or Technical Services	2% (if royalty is payable towards sale, distribution or exhibition of cinematographic films 2% (if recipient is engaged in business of operation of call centre) 2% [If sum is payable towards fees for technical services (other than professional services)] 10% (in all other cases)	1.5% (if royalty is payable towards sale, distribution or exhibition of cinematographic films 1.5% (if recipient is engaged in business of operation of call centre) 1.5% [If sum is payable towards fees for technical services (other than professional services)] 7.5% (in all other cases)	Director's fees: Nil Others: Rs. 30,000
194K	Payment of dividend by Mutual Funds	10%	7.5%	Rs. 5,000
194LA	Compensation on Acquisition of Immovable property	10%	7.5%	Rs. 2,50,000
194LBA(1)	Payment of income by Business trust	10%	7.5%	-
194LBB	Payment of income by Investment Fund	10%	7.5%	-
194LBC	Payment of income by Securitisation Trust	25% (if deductee is an individual or HUF) 30% (in all other cases)	18.75% (if deductee is an individual or HUF) 22.5% (in all other cases)	-
194M	Payment to contractor, commission agent, broker or professional by certain Individuals or HUF	5%	3.75%	Rs. 50 lakhs
194O	TDS on e-commerce Participants	1% (w.e.f. 1 Oct. 2020)	0.75%	Rs. 5 lakhs subject to conditions

Annexure II – TCS rates applicable for Financial Year 2020-21

Section	Goods & Services liable to TCS	Rates of TCS applicable for the period	
		1 April -13 May 2020	14 May 2020-31 March 2021
Section 206C(1)	<ul style="list-style-type: none"> - Timber obtained under Forest lease - Timber obtained by any mode other than under a forest lease - Any other forest produce not being timber or tendu leaves 	2.50%	1.875%
Section 206C(1)	Tendu leaves	5%	3.75%
Section 206C(1)	Minerals, being coal or ignite or iron ore	1%	0.75%
Section 206C(1)	Scrap	1%	0.75%
Section 206C(1C)	Grant of license, lease, etc. of: <ul style="list-style-type: none"> - parking lot - toll plaza - mining & quarrying 	2%	1.50%
Section 206C(1F)	Sale of Motor Car of the value above Rs. 10 lakhs	1%	0.75%
Section 206C(1H)	Sale of goods in excess of Rs. 50 lakh	0.10% (w.e.f. 1 Oct. 2020)	0.075%

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Our Offices in India

Mumbai

Mistry Bhavan, 3rd Floor,
Dinshaw Vachha Road, Churchgate
Mumbai 400020
Tel No. +91 22 6623 0600

Mumbai (Suburban Office)

501/502, Narain Chambers,
M.G. Road, Vile Parle (East)
Mumbai 400 057
Tel No:+91 22 6457 7600/01/02

Ahmedabad

'Hrishikesh',
2nd Floor, Vasantbaug Society,
Opp Water Tank, Gulbai Tekra
Ahmedabad 380 006
Tel. No. +91 79 2630 6530

Bengaluru

96, 7th Cross,
Domlur,
Bengaluru 560 071
Tel. No.+91 80 2535 1353

Chennai

Kochu Bhavan
Ground Floor, Old No 62/1, New No 57,
McNichols Road, Chetpet
Chennai 600 031
Tel No. +91 44 4384 9695

New Delhi

Suite 1101,
KLJ Towers, NSP
New Delhi 110 034
Tel No.+91 11 2735 7350

Vadodara

C-201/202, Shree Siddhi Vinayak Complex,
Faramji Road, Alkapuri,
Vadodara 390 005
Tel. No. +91 265 234 3483

Our Overseas Office

Dubai

Suite#17.06 Dubai World Trade Centre
Shaikh Zayed Road, Dubai, P.O. Box.454442
Tel. No. +971 04 355 9533