



dvmgopal & associates
Company Secretaries

September - 2024

NEWSLETTER



TOPICS:

- Impact of recent Income Tax amendment on Buy Back of Shares
- Monthly Statutory & Legal Updates in August – 2024
- Compliance Calendar – September 2024

Disclaimer!!



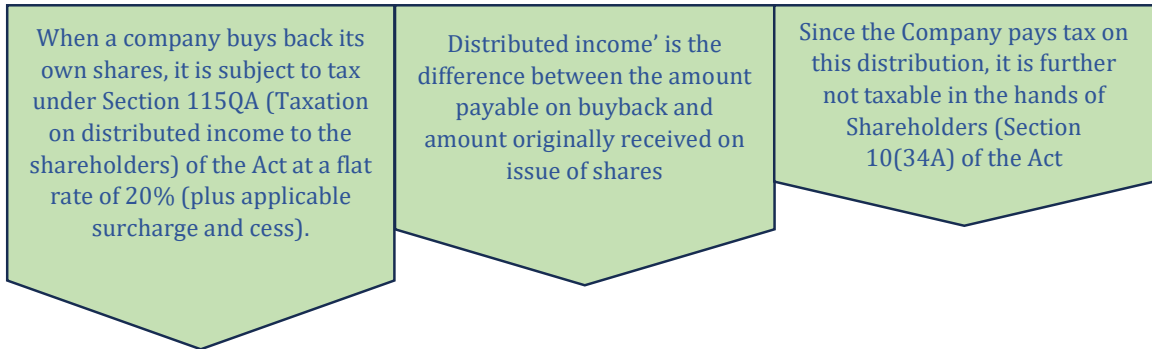
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Impact of recent Income Tax amendment on Buy Back of Shares

A buyback, also known as a share repurchase, is a corporate action in which a company buys back its own shares from the existing shareholders.

This process reduces the number of outstanding shares, which can increase the value of the remaining shares and improve financial ratios such as earnings per share and other benefits.

1. Existing Provisions Under the Income-tax Act, 1961 ('the Act')



2. Amendment & Rational behind amendments

The Hon'ble Finance Minister in her Budget Speech for 2024 has announced that the tax burden on buyback should be shifted to the shareholders, akin to dividends distribution. The intent of the legislature is as follows –

Generally, a company that has a surplus have two options to return cash to its shareholders i.e. through declaration of dividend or through buyback of its own shares

Previously, companies paid Dividend Distribution Tax ("DDT") on declared dividends and the same were exempt in the hands of the shareholders. Section 115QA (existing regime for buyback) was introduced to prevent companies from using buybacks to avoid DDT

However, as per Finance Act, 2020, the tax on dividend declared after 1 April 2020 was shifted to shareholders.

By introducing the proposed amendments effective from the 1st Oct, 2024, now the buyback tax treatment is in line with taxation on dividends & leading to no advantage of choosing buyback over dividends

Impact due to taxation changes on buyback of share

Previously when any company was coming with the buyback offer, it was plain vanilla for investor. Only thing they were required to consider is "**Buyback Price**". As per section 10(34) of Income Tax Act, 1961; gains arising from buyback of shares were treated as exempt income in hands of investors. However, now the calculation doesn't seem that simple effective from 1st October 2024



It was not that harmful if the amendment was restricted to this, but it extends further and specifies that cost of acquisition will be treated as NIL for calculating amount of gain and said cost of acquisition will be allowed as capital loss in hands of investor as these shares have been extinguished and can be carried forward up to 8 years. There is no clarity in Law that whether it will be allowed as short-term capital loss or long-term capital loss.

➤ The below is illustrations which explains the effects of amendments:

Mr. A has purchased 200 shares of Rs. 1,000/- each (purchase cost of Rs. 2,00,000/-). The entire Shares were accepted under buyback by the company at a consideration of Rs. 1,500 per share. **The taxation of buy back of share will be calculated as follows:**

Particulars	Before October 1, 2024	After October 1, 2024
Income Tax Section	Section 115QA	Section 2(22)(f)
Tax Liability for Company:	<p>Net Distributed Income = ₹1,00,000 (i.e., $(200 \times 1500) - (200 \times 1000)$).</p> <p>Tax applicable on buyback = ₹1,00,000 x 23.296% = ₹23,296/-</p> <p>Therefore, the company has to pay a tax of Rs.23,296 as a buyback tax.</p> <p>This tax liability is applicable, regardless of whether Investor is within the tax slab or not. However, the tax in the hands of investors will remain NIL.</p> <p>However, Net Receipt in the hands of Shareholders will be 76,704 /- which is exempt from tax (1,00,000-76704).</p> <p>At the same time, the tax paid by the Company on this Buy-back (I.e., ₹23,296/), the shareholders is not eligible to claim credit, while computing his tax liability.</p>	<p>In this scenario the consideration received is Rs. 3,00,000/- will be subject to tax under the head "Income from other sources (similar to taxation of dividend) in the hands of Shareholder.</p> <p>If suppose, Mr. A is having other income apart from this buyback consideration and falls under 30% slab, this consideration will also be taxed at 30%.</p> <p>Tax on Buy back Consideration: 90,000 $(3,00,000 \times 30\%)$ plus cess</p> <p>Benefit of taxation Assuming long term capital loss to the investor which can be set off against Future Long term capital gain: 26000 $(2,00,000 \times 13\%)$ - (Assuming it to be long term loss and hence considered 12.5% plus 4%cess)</p> <p>Net Tax Liability = 64,000 $(90,000 - 26,000)$</p>
Conclusion	<p>If a company buys back shares before October 1, 2024, the Net Tax Liability is =23,296. However, if shares are bought back on or after October 1, 2024, the Net Tax liability=64000</p> <p>Hence if Buy Back occurs On or After 1st October2024, there would be increase in tax Liability of 40,704 $(64000 - 23296)$.</p>	

Monthly Statutory & Legal Updates in August - 2024

Ministry of Corporate Affairs (MCA)

1. Amendment to Limited Liability Partnership Rules, 2009:

The MCA has made Limited Liability Partnership (Amendment) Rules, 2024 to amend the Limited Liability Partnership Rules, 2009 which shall come into force with effect from 27th day of August, 2024.

The MCA vide notification August 5, 2024 has introduced the Centre for Processing Accelerated Corporate Exit established under a notification dated March 17, 2023 which aim to streamline and expedite the corporate exit procedures for LLPs.

As per amendment the application for striking off the name of LLP from the Register shall be made to the Registrar, the Centre for Processing Accelerated Corporate Exit.

Notification Link:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NDY1NTI2ODU4&docCategory=Notifications&type=open>

2. Amendment to Companies (Adjudication of Penalties) Rules, 2014:

Establishment of E- Adjudication Platform:

The MCA has introduced e-adjudication platform for conducting adjudications in all states by the adjudicating Officers appointed as per section 454 of the Act vide its notification dated 05.08.2024, which shall be effective from 16.09.2024.

As per amended rules a new rule 3A e-Adjudication Platform was inserted after rule 3 of Companies (Adjudication of Penalties) Rules, 2014 and also substituted the existing form ADJ, (Memorandum of Appeal). As per Rule 3A all the proceedings of adjudicating Officers and Regional Director under these rules shall take place in electronic mode only through the e-adjudication platform developed by the Central Government.

Notification Link:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NDY1NTg0NTk5&docCategory=Notifications&type=open>

3. Amendment to Companies (Registration of Foreign Companies) Amendment Rules, 2024:

The Ministry of corporate Affairs (MCA) has made Companies (Registration of Foreign Companies) Amendment Rules, 2024 further to amend the Companies (Registration of Foreign Companies) Rules, 2014 vide MCA Notification dated 12th August, 2024 which shall come into force with effect from 09th day of September, 2024.

As per amendment to Rule 3 sub rule (3) of Companies (Registration of Foreign Companies) Rules, 2014, Foreign Companies shall file all the required registration documents in Form FC-1 to Registrar, Central Registration Centre instead of local Registrar with such fee as provided in Companies (Registration offices and Fees) Rules, 2014.



The following proviso was inserted in Rule 8 in sub rule (1) of Companies (Registration of Foreign Companies) Rules, 2014:

“Provided that the documents for registration by a foreign company referred to in sub-rule (3) of rule (3) shall be delivered in Form FC-1 to the Registrar, Central Registration Centre.”

Notification Link:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NDY5MzQ1MDIy&docCategory=Notifications&type=open>

4. Amendment to Companies (Indian Accounting Standards) Rules, 2015:

The Ministry of Corporate Affairs made Companies (Indian Accounting Standards) Amendment Rules, 2024 to amend Companies (Indian Accounting Standards) Rules, 2015 vide its notification dated August 12, 2024.

This update brings significant changes to the Indian Accounting Standards (Ind AS) initially established in 2005. Key changes under new rules include:

- **Modifications to Ind AS 101:** This amendment updates the guidelines for first-time adoption of Ind AS, aiming to simplify and clarify reporting requirements for companies transitioning to these standards.
- **Revisions to Ind AS 103:** Changes in Ind AS 103 pertain to business combinations, refining the principles for accounting for acquisitions and mergers to ensure more accurate financial reporting.
- **Removal of Ind AS 104:** The amendment rules eliminate Ind AS 104, which previously dealt with insurance contracts, signaling a shift in the regulatory framework for insurance accounting.

These amendments to the rules shall come into force with effect from 12th day of August, 2024.

Notification Link:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NDcxMDI0Njcz&docCategory=Notifications&type=open>

FOREIGN EXCHANGE MANAGEMENT ACT (FEMA)

Amendment to Foreign Exchange Management (Non-debt Instruments) Rules, 2019:

The Ministry of Finance (Department of Economic Affairs) has amended the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (“NDI Rules”) vide MCA Notification dated 16th August, 2024 by introducing Foreign Exchange Management (Non-debt Instruments) (Fourth Amendment) Rules, 2024 (“Amendment Rules”). These rules shall come into force with effect from 16.09.2024.

In brief, these amendments aim to:

- (i) simplify cross-border share swaps and provide for issuance or transfer of equity instruments of Indian companies in exchange for equity capital of foreign companies;
- (ii) bring clarity on the treatment of downstream investments made by entities which are owned and controlled by overseas citizens of India (“OCI”) on a non-repatriation basis, thereby aligning it with the treatment of investments made by entities which are owned and controlled by non-resident Indians (“NRI”);
- (iii) standardizing the definition of “control” to bring consistency with other legislations;
- (iv) enable foreign direct investment (“FDI”) in white label ATMs to boost financial inclusion in India; and
- (v) harmonise the definition of a “startup company” with the definition contained in the notification issued by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India (“DPIIT”), on February 19, 2019.



These amendments have been brought about with the aim of facilitating global expansion of Indian companies via mergers, acquisitions and other strategic initiatives which would enable them to reach new markets.

Circular Link:

<https://taxguru.in/rbi/foreign-exchange-management-non-debt-instruments-fourth-amendment-rules-2024-a-thorough-analysis.html#>

<https://static.pib.gov.in/WriteReadData/specificdocs/documents/2024/aug/doc2024816377701.pdf>

Reserve Bank of India

- ✚ Prudential Treatment of Bad and Doubtful Debt Reserve by Co-operative Banks: This circular is applicable to all Primary (Urban) Co-operative Banks, State Cooperative Banks and Central Co-operative Banks. The instructions are applicable with immediate effect.
- ✚ Modified Interest Subvention Scheme for Short Term Loans for Agriculture and Allied Activities availed through Kisan Credit Card (KCC) during the financial year 2024-25
- ✚ Frequency of reporting of credit information by Credit Institutions to Credit Information Companies
- ✚ Review of regulatory framework for HFCs and harmonisation of regulations applicable to HFCs and NBFCs
- ✚ Review of Risk Weights for Housing Finance Companies (HFCs)
- ✚ Review of Master Direction - Non-Banking Financial Company – Peer to Peer Lending Platform (Reserve Bank) Directions, 2017
- ✚ Cessation of “Credit Suisse AG” as a banking company within the meaning of sub section (2) of Section 36 (A) of the Banking Regulation Act, 1949
- ✚ Cessation of “Krung Thai Bank Public Company Limited” as a banking company within the meaning of sub section (2) of Section 36 (A) of the Banking Regulation Act, 1949
- ✚ Exclusion of “Credit Suisse AG” from the Second Schedule of the Reserve Bank of India Act, 1934
- ✚ Processing of e-mandates for recurring transactions
- ✚ Inclusion of “UBS AG” in the Second Schedule of the Reserve Bank of India Act, 1934

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

SEBI has issued Master Circular on August 09, 2024 in exercise of powers conferred under section 11(1) of the Securities and Exchange Board of India Act, 1992. The said Master Circular supersedes the Master Circular dated May 22, 2024. The Master Circular dated May 22, 2024 has been updated to include all relevant circulars that were issued till date i.e. August 09, 2024.

Master Circular link:

https://www.sebi.gov.in/legal/master-circulars/aug-2024/master-circular-for-stock-brokers_85605.html

Circulars issued by SEBI towards:

- Amendment to Circular for mandating additional disclosures by FPIs that fulfil certain objective criteria
- Institutional mechanism by Asset Management Companies for identification and deterrence of potential market abuse including front-running and fraudulent transactions in securities
- Valuation of Additional Tier- 1 Bonds
- Amendment to Master Circular for Infrastructure Investment Trusts (InvITs) dated May 15, 2024 - Board nomination rights to unitholders of InvITs
- Amendment to Master Circular for Real Estate Investment Trusts (REITs) dated May 15, 2024 – Board nomination rights to unitholders of REITs
- Guidelines for borrowing by Category I and Category II AIFs and maximum permissible limit for extension of tenure by LVFs



- Modalities for migration of Venture Capital Funds registered under erstwhile SEBI (Venture Capital Funds) Regulations, 1996 to SEBI (Alternative Investment Funds) Regulations, 2012
- Cybersecurity and Cyber Resilience Framework (CSCRF) for SEBI Regulated Entities (REs)
- Amendment to Master Circular for Real Estate Investment Trusts (REITs) dated May 15, 2024 - Review of statement of investor complaints and timeline for disclosure of statement of deviation(s)
- Amendment to Master Circular for Infrastructure Investment Trusts (InvITs) dated May 15, 2024 - Review of statement of investor complaints and timeline for disclosure of statement of deviation(s)

Circular link:

<https://www.sebi.gov.in/sebiweb/home/HomeAction.do?doListing=yes&sid=1&ssid=82&smid=0>

LEGAL UPDATES

- Maintenance charges and IFMS (Interest-Free Maintenance Security) are not considered financial debt under Section 5(8) of IBC. The New Delhi Bench of National Company Law Tribunal (NCLT) while considering the order of NCLT, Hyderabad Bench in the case of Vasathi Anandi Owners Welfare Association v. Vasathi Housing Limited has held that the amount related to the maintenance and Interest Free Maintenance Security (IFMS) does not amount to financial debt within the meaning of Section 5(8) of the Insolvency and Bankruptcy Code, 2016 (IBC).
- The National Company Law Appellate Tribunal has recently stated that, when determining if an appeal has been filed within the stipulated time frame, the date to be considered is the date of electronic filing, even if there are defects in the filing at that time.
- The Central Government issues Companies (Adjudication of Penalties) Amendment Rules, 2024 to amend the Companies (Adjudication of Penalties) Rules, 2014 vide Notification No.: GSR476(E), dated 05/08/2024.
- The Central Government issues Limited Liability Partnership (Amendment) Rules, 2024 to amend the Limited Liability Partnership Rules, 2009 vide Notification No.: GSR475(E), dated 05/08/2024.
- As on 27/08/2024 The National Company Law Appellate Tribunal (NCLAT) has observed that conflict over GST dues is not considered a "pre-existing dispute" between the parties, which means it does not bar the initiation of the Corporate Insolvency Resolution Process under Section 9 of the Insolvency & Bankruptcy Code, 2016.

Compliance Calendar – September 2024



Companies Act, 2013			
Compliance details	Form	Applicability	Due Date
Annual General Meeting (AGM)	Annually	Every Company other than a One Person Company	9/30/2024
Intimation of Appointment of Cost Auditor to CG	Form CRA-2	Every company specified in item (A) and Item (B) of rule 3 of the Companies (Cost Records and Audit) Rules, 2014	within a period of 30 days of the BM in which such appointment is made or within a period of 180 days of the commencement of the financial year, whichever is earlier
KYC of the Director	DIR 3 KYC	Every person holding DIN	9/30/2024
FEMA			
Compliance details	Form	Applicability	Due Date
External Commercial Borrowings (ECB) - FEMA	Form ECB-2	All Companies having ECB	9/7/2024
SEBI(PIT) Regulations			
Compliance details	Form	Applicability	Due Date
Intimation of Trading Window Closure	-	Every Listed Company	9/30/2024
Labour Laws			
Compliance details	Form	Applicability	Due Date
State Professional Tax (PT)	Form V	Entities registered with PT	9/10/2024
PF Payment	Monthly ECR	Entities registered with PF Authorities	9/15/2024
ESI Payment	Monthly ECR	Entities registered with ESIC Authorities	9/15/2024
INCOME TAX			
Compliance details	Form	Applicability	Due Date
TDS Payment	Challan 281	Non-government deductors	9/7/2024
Advance tax - Q-2		Those taxpayers who has tax payable more than of Rs.10,000/-	9/15/2024
Tax Audit return	Form 3CA-3CD	corporate-assessee or non-corporate assessee (who is required to submit his/its return of income on October 31, 2022)	9/30/2024
GST			
Compliance details	Form	Applicability	Due Date
Return of outward supplies of taxable goods and/or services	GSTR 1	GST Taxpayers who have not opted for QRMP scheme	9/11/2024
Return of outward supplies of taxable goods and/or services	GSTR 1	GST Taxpayers who opted for QRMP scheme -Optional	9/13/2024
Summary Return of Outward and Inward Supplies along with payment of Tax	GSTR 3B	GST Taxpayers who have not opted for QRMP scheme	9/20/2024
GST Challan Payment if no sufficient ITC		GST Taxpayers who opted for QRMP scheme and not having sufficient ITC	9/25/2024
Summary Return of Outward taxable supplies and tax payable	GSTR 5 & 5A	Non-Resident GST Taxpayers	9/20/2024
Return for details of ITC received and distribution	GSTR 6	Input Service Distributors	9/13/2024
Return for TDS under GST	GSTR 7	Government Authorities	9/10/2024
Return for Details of Supplies and the amount of tax collector	GSTR 8	E-commerce Operator	9/10/2024
Return for details of goods and services purchased in India	GSTR-11	Taxpayer claiming Refund & having UIN	9/28/2024