



dvmgopal & associates
Company Secretaries

October - 2024

NEWSLETTER

Liberalized Remittance Scheme (LRS)



Late Submission Fee



FEMA

Foreign Exchange
Management Act

TOPICS:

- FEMA Liberalized Remittance Scheme & Late Submission Fee scheme
- Monthly Statutory Updates in September – 2024
- Compliance Calendar – October 2024

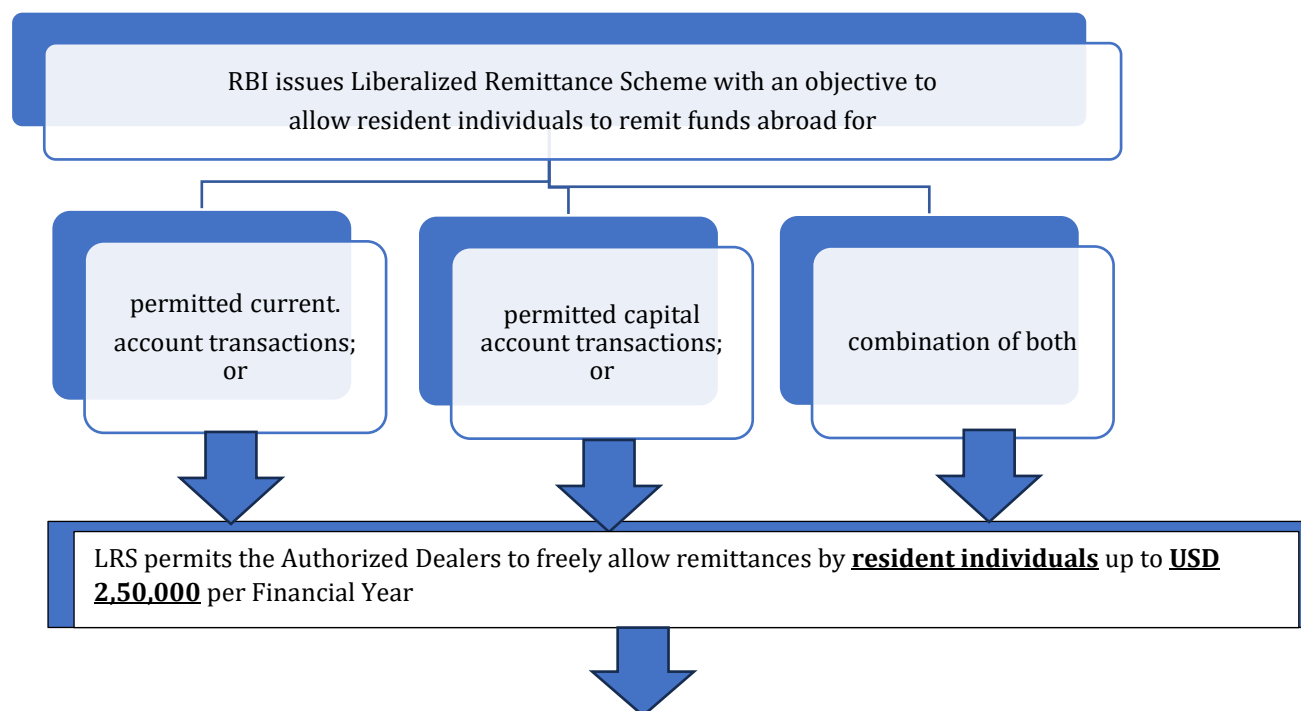
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LIBERALIZED REMITTANCE SCHEME (LRS)

Remittance Facilities to Resident Individuals -

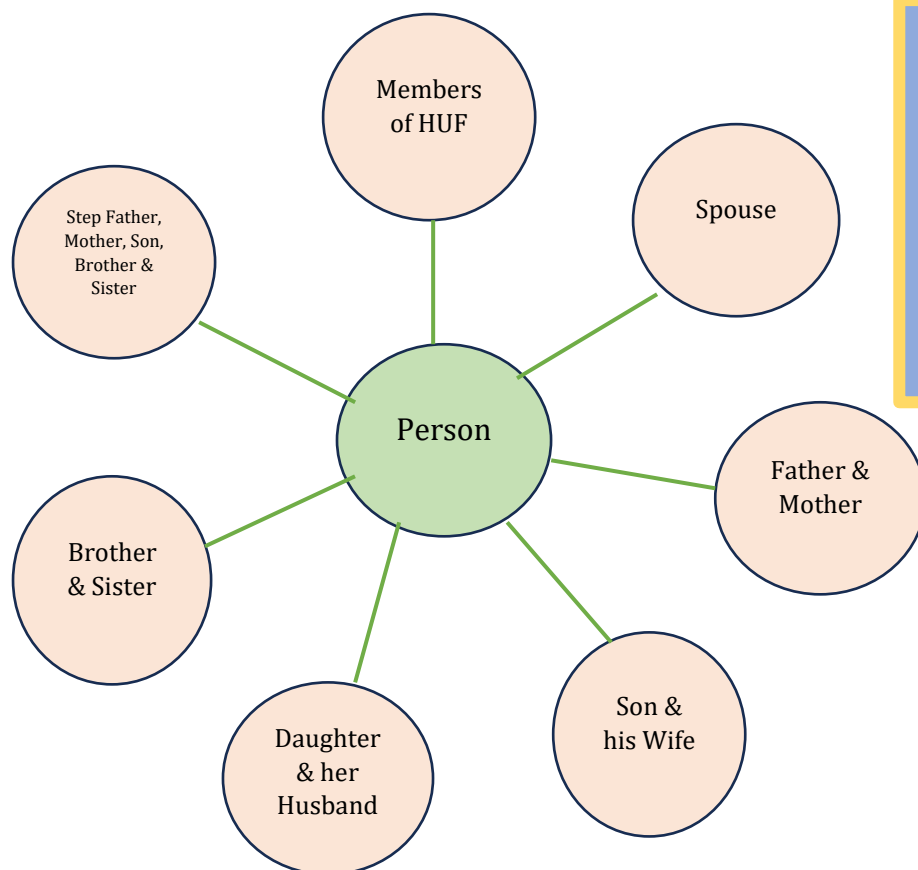
- LRS is an initiative by the RBI that allows resident individuals to remit a certain amount of money abroad without requiring special permission.
- A 'person resident in India or Resident Individual is defined in Section 2(v) of FEMA, 1999 as a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year.
- Includes minors with guardian approval.
- LRS is not available to corporates, partnership firms, HUF, Trusts etc.



Important points

- 1) The person must be a person resident in India as per FEMA. Once an individual is a resident under FEMA, he is eligible to avail benefits of LRS, whether or not he is an Indian citizen.
- 2) Remittances under the Scheme can be consolidated in respect of family members. Example, husband and wife aggregating their limit of 2,50,000 USD each, may carry out any consolidated transaction of amount up to 5,00,000 USD.
- 3) Clubbing is not permitted by other family members for capital account transactions
- 4) One resident cannot gift the limit of 2,50,000 USD to another resident.

Relative [Sec. 2(77) / Rule 4 of Companies (Specification of Definitions details Rules, 2014



Exclusions:

- ✚ Grand Parents
- ✚ Grand Children
- ✚ Step Daughter
- ✚ Brother's Wife
- ✚ Sister's Husband

Inclusions:

- ✚ Stepfather

Permissible Current Account Transactions by an individual under

Type of transaction	Limits
Business or Private visit (<i>other than Nepal & Bhutan</i>)	<ul style="list-style-type: none"> ✚ Resident individual can obtain foreign exchange up to an aggregate amount of USD 2,50,000, from an Authorized Dealer, in any one financial year ✚ Number of visits does not matter
Gift or Donation	Any resident individual may remit up-to USD 2,50,000 in one Financial Year as gift to a Non-Resident Indian (NRI) / Person of Indian Origin (PIO), who is a close relative
Going outside India for employment	A person going abroad for employment can draw foreign exchange up to USD 2,50,000 per Financial Year from any Authorized Dealer in India.
Emigration	A person wanting to emigrate can draw foreign exchange from AD Category I bank – Upto 2,50,000 USD Or amount prescribed by the country of emigration, whichever is higher
Medical treatment abroad	<ul style="list-style-type: none"> ✚ Authorized Dealers may release foreign exchange up to an amount of USD 2,50,000 without any estimation from the doctor. ✚ In case of higher amount, authorized dealer may release amount after receiving estimation from doctor in India / foreign ✚ amount up to USD 250,000 per financial year is allowed to attendant also.



Students for pursuing their studies abroad	<ul style="list-style-type: none">AD may release foreign exchange up to USD 2,50,000 to resident individuals for studies abroad without any estimation from the foreign UniversityIn case of higher amount, authorized dealer may release amount after receiving estimation from foreign university
Any other current account transaction not covered under the definition of current account in FEMA 1999	<ul style="list-style-type: none">AD bank may undertake the remittance transaction without RBI's permission for all residual current account transactions which are not prohibited/ restricted transactions under Schedule I, II or III of FEM (CAT) Rules, 2000, as amended or are defined in FEMA 1999.AD must satisfy themselves about the genuineness of the transaction, as hitherto.

Note – Release of foreign exchange in excess of USD 2,50,000, requires prior RBI permission.

Permissible capital account transactions by an individual under

The following are the permissible Capital account transactions under LRS:

- ❖ Opening of foreign currency account abroad with a bank outside India
- ❖ Purchase of immovable property abroad
- ❖ Investments in shares, securities, mutual funds, etc abroad in accordance with Overseas Investment Rules and Regulations, 2022 and the directions made thereunder
- ❖ Setting up wholly owned subsidiaries (WOS) and Joint Venture (JV) abroad for bonafide business subject to stipulated terms and conditions
- ❖ Acquisition of qualification shares
- ❖ Extending loans in INR to NRIs who are **relatives** as defined in Companies Act, 2013

Note: Bank shall not extend any kind of credit facilities to facilitate capital account transactions

Documentation by the remitter

- ❖ The resident individual should carry out all the transactions under LRS through AD.
- ❖ It means all the remittances shall be made through authorized dealer.
- ❖ Applicants should have maintained the bank account with the bank for a minimum period of one year prior to the remittance.
- ❖ Bank to ensure compliance with income tax TDS, KYC norms, and AML Rules.
- ❖ Resident individual should file Form A2 for purchase of foreign exchange under LRS.
- ❖ Form A2 shall be filed by resident individual with AD along with Form 15CA, 15CB from an CA.
- ❖ In case of remitter being a minor, the Form A2 to be signed by the minor's natural guardian.

PAN card – PAN card is mandatory for all transactions under LRS

Note – Recent Amendment

- ◇ Investor can reinvest the income earned on investments made from LRS.
- ◇ All received/realized/unspent/unused foreign exchange, if not invested, shall be repatriated, and surrendered to the Authorized Person within 180 days from the date of receipt/realization/purchase/acquisition or date of return to India, in accordance with FEM (Realization, Repatriation and Surrender of Foreign Exchange) Regulations, 2015.
- ◇ In case the individual is not able to bring back unused foreign exchange with 180 days, then the compounding proceedings can be initiated under FEMA.
- ◇ Under Section 13 (1) of FEMA, the person shall be liable to a penalty up to three (3) times the sum involved and further penalty of Rs. 5000/- every day after contravention.
- ◇ There is another possibility of ED issuing the notice for contravention of Section 3(a) of FEMA, as any such contravention may be construed as retention of assets abroad.

Investments in Foreign Entities abroad

One of the key issues for remitters under LRS is the investment in foreign entities abroad, which is subject to the regulations and directions issued by the RBI under the Overseas Investment ('OI') Regime that consists of the OI Rules, 2022[i], the OI Regulations, 2022, and the OI Directions, 2022[ii].

- Prior to the promulgation of the OI Rules / Regulations, the field was governed by Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 ("TIFS Regulations"). These regulations provided that any resident individual may remit monies abroad for the purpose of setting up a wholly owned subsidiary or joint venture abroad.
- In other words, the regulations permitted making overseas direct investments in the shares of a foreign company, subject to certain restrictions contained in the regulations (e.g., there should be no round-tripping of funds), and stringent reporting requirements (e.g., filing of Form ODI, and annual filing of Annual Performance Returns). These restrictions were strict and prevented many investors from freely making portfolio investments in companies abroad. At the same time, LRS also permitted the remittance of funds for making investments abroad. The abovementioned restrictions were not applicable to remittances made through the LRS.
- Thus, there existed two routes for making investments in the shares of foreign companies – (i) through the ODI route, under the TIFS Regulations, and (ii) through the LRS route, under the LRS scheme. While the LRS scheme provided that while 'setting up' a wholly owned subsidiary or a joint venture, the conditions provided in TIFS Regulations are to be satisfied, it did not require so when an LRS remittance was being made for 'making an investment' in shares of companies abroad. Thus, while the TIFS Regulations and LRS were in force in parallel (i.e., prior to August 2022), it was possible to make investments abroad through the LRS in the shares of foreign companies, without stringent filing and reporting conditions. The only requirement would have been to file Form A2 with the AD bank, with the correct FETERS code specified (e.g., S0001 for making portfolio investments).
- Now, in order to remove the above contradiction, the LRS has been amended (Paragraph 6 of the scheme) and any remittances to be made in the shares of any foreign company would have to be made in satisfaction of the OI Rules/Regulations.

Remittances to International Financial Services Centers (IFSCs) in India

Authorised Persons may facilitate for all permissible purposes under LRS for

- Availing financial services or financial products as per the IFSC Authority Act, 2019 within IFSCs; and
- All current or capital account transactions, in any other foreign jurisdiction (other than IFSCs) through a foreign currency account held in IFSCs.
- Resident individuals may open Foreign Currency Account (FCA) in IFSCs for these permissible purposes.
- Resident individuals shall not settle any domestic transactions with other residents through these FCAs held in IFSC.

Prohibited Transactions

- Remittance from India for margins or margin calls to overseas exchanges / overseas counterparty.
- Remittances for investment in FCCBs issued by Indian companies in the overseas secondary market.
- Remittance for trading in foreign exchange abroad.
- Capital account remittances, directly or indirectly, to countries identified by the Financial Action Task Force (FATF) as "non-cooperative countries and territories", from time to time.
- Remittances directly or indirectly to those individuals and entities identified as posing significant risk of committing acts of terrorism as advised separately by the Reserve Bank to the banks.
- Remittance for any purpose specifically prohibited under Schedule-I (like purchase of lottery tickets/sweep stakes, proscribed magazines, etc.) or any item restricted under Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000.
- Gifting by a resident to another resident, in foreign currency, for the credit of the latter's foreign currency account held abroad under LRS



LATE SUBMISSION FEE SCHEME

History

RBI for the first time introduced the concept of Late Submission Fee (LSF) vide its Notification No. FEMA 20(R)/2017-RB dated November 07, 2017 for Foreign Investment (FI) transactions undertaken on or after November 7, 2017.

Thereafter, LSF was made applicable to the reporting delays concerning

- External Commercial Borrowings (ECB) vide RBI A.P. (DIR Series) Circular No. 17 dated January 16, 2019 (ECB Circular)
- Overseas Investment (OI) vide RBI A.P. (DIR Series) Circular No. 12 dated August 22, 2022 (OI Circular)

Introduction to Uniform LSF

Recently, RBI vide its A.P. (DIR Series) Circular No. 16 dated September 30, 2022 (LSF Circular) superseded the LSF calculation matrix given under RBI Notification, ECB Circular and OI Circular and brought uniformity in imposition of LSF across functions (i.e. FI, ECB and OI).

Purpose

- To save time and efforts of the Applicants and downsize the workload of the compounding authority
- Simplified the process of paying the penalty to the RBI

Who is responsible for File LSF?

- Applicant responsible for filing the reports would be liable for payment of LSF for any reporting delays.

LSF – Reporting Delays Concerning FI

- The RBI Notification provides that the Applicant responsible for filing the reports [FC-GPR, FC-TRS, FLA, ESOP, DRR, Form LLP(I), Form LLP (II), LEC(FII), LEC(NRI), Form DI, Form CN or Form InVi] would be liable for payment of LSF for any reporting delays.

LSF – Reporting Delays Concerning ECB

- The ECB Circular provides that any borrower, who is otherwise in compliance of ECB guidelines, can regularise the reporting delay of drawdown of ECB proceeds before obtaining the Loan Registration Number (LRN) or delay in submission of Form ECB/Form ECB 2 returns, by paying LSF

LSF – Reporting Delays Concerning OI

- The OI Circular provides that the reporting delays in respect of OI related transactions can be regularised by paying LSF.
- Pay the Late Submission Fee (LSF) through the designated AD bank in accordance with regulation 11 of OI Regulations
- The LSF calculation matrix for reporting delays concerning OI is as under

Uniformity in imposition of LSF across Functions

The LSF Circular superseded the LSF calculation matrix given under RBI Notification, ECB Circular and OI Circular and brought uniformity in imposition of LSF across functions.



Effective Date: September 30, 2022

Calculation Matrix for LSF for reporting delays concerning FI, ECB and OI

Type of Reporting Delays	LSF Amount (in INR)
Form ODI Part-II/APR, FCGPR (B), FLA Returns, Form OPI, evidence of investment or any other return which does not capture flows or any other periodical reporting	7,500
FC-GPR, FCTRS, Form ESOP, Form LLP(I), Form LLP(II), Form CN, Form DI, Form InVi, Form ODI-Part I, Form ODI-Part III, Form FC, Form ECB, Form ECB-2, revised Form ECB or any other return which captures flows or returns which capture reporting of non-fund transactions or any other transactional reporting	$[7500 + (0.025\% \times A^{\wedge} \times n^*)]$
[^] 'n' is the number of years of delay in submission rounded-upwards to the nearest month and expressed up to 2 decimal points. * 'A' is the amount involved in the delayed reporting.	

The LSF Circular also provides that:

- ❖ LSF amount is per return.
However, for any number of Form ECB-2 returns, delayed submission for each LRN would be treated as one instance for the fixed component. Further, 'A' for any ECB-2 return would be the gross inflow or outflow (including interest and other charges), whichever is more.
- ❖ **Maximum LSF amount:** Limited to 100% of 'A' and would be rounded upwards to the nearest hundred.
- ❖ If LSF is not paid within 30 days, such advice would be considered as null and void and any LSF received beyond this period would not be accepted. If the applicant subsequently approaches for payment of LSF for the same delayed reporting, the date of receipt of such application would be treated as the reference date for the purpose of calculation of "n".
- ❖ **Timelines for LSF:** available up to 3 years from the due date of reporting/submission.
The option of LSF would also be available for delayed reporting/submissions under the Notification No. FEMA 120/2004-RB and earlier corresponding regulations, up to 3 years from the date of notification of OI Regulations.
- ❖ In case a person responsible neither makes submission/filing within the specified time nor makes such submission/filing along with LSF, **such person would be liable for penal action under the provisions of FEMA.**

Changes in the Minimum and Maximum LSF:

Minimum LSF	Maximum LSF
<ul style="list-style-type: none"> • Minimum LSF amount (in case of FI and ECB) has increased to INR 7,500. • Resultantly, the Applicants who were earlier subjected to minimum LSF <ul style="list-style-type: none"> ○ amount of INR 100 (in case of FI) and ○ INR 5,000 (in case of ECB) will now be subjected to minimum LSF amount of INR 7,500, irrespective of the amount involved in Reporting. 	<ul style="list-style-type: none"> • Maximum LSF amount (in case FI and ECB) has been restricted to 100% of the amount involved in the delayed reporting, • It will reduce the financial burden of lot of Applicants falling thereunder.

Note -

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- Payment of LSF is an option (and not compulsion) for regularising reporting delays without undergoing the compounding procedure.
- LSF is made known to the Applicant along with the conditional approval of the respective report filed.
- The final acknowledgement/communication is given after LSF is paid by the Applicant.
- The Applicant cannot claim a refund in any manner for the amount already deposited as LSF.
- However, if the Applicant is not satisfied with LSF amount calculated by the RBI, it need not pay the LSF and can proceed to file compounding application before the compounding authority for adjudication of the penalty.

Monthly Statutory Updates in September – 2024

Ministry of Corporate Affairs (MCA)

1. Amendment to Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2016 which shall come into force with effect from 17th day of September, 2024
 - a. Notification Link: <https://bit.ly/4dw10Vi>
2. Amendment to Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2024 Rules shall come into effect with immediate effect. The changes introduced are intended to streamline the process for investors to claim lost or unclaimed securities and protect the interests of both investors and companies
 - a. **Notification Link:** <https://bit.ly/3zzk4Ep>
3. Amendment to Companies (Indian Accounting Standards) Second Amendment Rules, 2024 further to amend the Companies (Indian Accounting Standards) Second Amendment Rules, 2015 vide MCA Notification dated 09th September, 2024 which shall come into force with immediate effect
 - a. **Notification Link:** <https://bit.ly/4epUAZd>
4. Amendment to Companies (Accounts) Amendment Rules, 2024 further to amend Companies (Accounts) Rules, 2014 vide its notification dated September 24, 2024. These amendments to rules shall come into force with effect from 24th day of September, 2024
 - a. **Notification Link:** <https://bit.ly/4et92j8>
5. **Clarification on holding of Annual general Meeting (AGM), and EGM through video conference (VC) or other Audio-visual means (OAVM) and passing of Ordinary and Special resolutions by the companies under the Companies Act, 2013.** It has been decided to allow companies whose AGMs are due in the Year 2024 or 2025, to conduct their AGMs through VC or OAVM on or before 30th September, 2025
 - a. **Circular Link:** <https://bit.ly/4euCxB3>

Foreign Exchange Management Act (FEMA)

Amendment to introduced Foreign Exchange (Compounding Proceedings) Rules, 2024:

The Finance Ministry of India altered the compounding process introduced Foreign Exchange (Compounding Proceedings) Rules, 2024 on 12th September and made significant amendments to the laws, such as raising the monetary maximum for settling disputes by RBI officials, permitting online payments, and so on. These rules shall come into force with effect from 12.09.2024.

Circular Link: <https://bit.ly/47TwSCj>

Income Tax Updates

- ✚ Time Limit for E-Verification of ITR - If a taxpayer fails to E-Verify their ITR within 30 days from the date of filing, the return will now be considered as filed on the date of e-verification.
- ✚ Reduction of Time Limit Under Section 148A for Issuing Notice - The time limit for reopening cases u/s 148A has been reduced. The updated time limit for reopening cases with income
 1. Up to Rs.50 lakhs – The cases should not be reopened within 3 years from the end of the assessment year.
 2. Above Rs.50 lakhs – The time limit for reopening cases u/s 148A has been reduced from the earlier 10 years to 5 years.

Securities Exchange Board of India (SEBI)

SEBI has issued Master Circular on September 23, 2024 which is categorized subject wise under various headings. Viz., trading rules and shareholding in dematerialized mode, monitoring of unauthenticated news circulated by SEBI registered market intermediaries through various modes of communication and disclosure reporting under the SEBI (Prohibition of insider Trading) Regulations, 2015. The said Master Circular rescinds the Circulars listed in Annexure-7.

Circular link: <https://bit.ly/4gMYyTl>

Circulars issued by SEBI towards:

- ✚ Modification in the timeline for submission of status regarding payment obligations to the stock exchanges by entities that have listed commercial paper
- ✚ Allowing securities funded through cash collateral as maintenance margin for Margin Trading Facility (MTF) Valuation of Additional Tier- 1 Bonds
- ✚ Modifications in Guidelines for Business Continuity Plan (BCP) and Disaster Recovery (DR) of Market Infrastructure Institutions (MIIs)
- ✚ Optional mechanism for fee collection by SEBI registered Investment Advisers (IAs) and Research Analysts (RAs)
- ✚ Reporting by Foreign Venture Capital Investors
- ✚ Enabling T+2 trading of Bonus shares where T is the record date
- ✚ Modification in framework for valuation of investment portfolio of AIFs
- ✚ Flexibility in participation of Mutual Funds in Credit Default Swaps (CDS)
- ✚ Ease of Doing Business in the context of Standard Operating Procedure for payment of “Financial Disincentives” by Market Infrastructure Institutions (MIIs) as a result of Technical Glitch
- ✚ Usage of UPI by individual investors for making an application in public issue of securities through intermediaries
- ✚ Parameters for Performance Evaluation of Market Infrastructure Institutions
- ✚ Reduction in the timeline for listing of debt securities and Non-convertible Redeemable Preference Shares to T+3 working days from existing T + 6 working days (as an option to issuers for a period of one year and on a permanent basis thereafter such that all listings occur on a T+3 basis)
- ✚ Operational Guidelines for Foreign Venture Capital Investors (FVCIs) and Designated Depository Participants (DDPs)

Circular link: <https://bit.ly/3TXEQnZ>

Compliance Calendar – October

Companies Act, 2013

Compliance details	Form	Applicability	Due Date
Return for outstanding paymnet due to MSME as per the provisions of MSME Development Act, 2006	Form MSME 1 (Half Yearly)	Specified Companies which get supplies of goods or services from MSME, and whose payments exceed 45 days from the date of acceptance of the goods or services	10/31/2024
Filing financial statement and other documents with the Registrar	Form AOC-4/ AOC-4 CFS (XBRL & Non-XBRL)	Every Company	30 days from AGM Date
Form for filing Report on AGM	Form MGT-15	Every Listed Public Company	30 days from AGM Date
Filing of Cost Audit Report	Form CRA-4	Every Company to which Cost Audit is applicable	30 days from - receipt of Cost Audit Report

FEMA

External Commercial Borrowings (ECB) - FEMA	Form ECB-2	All Companies having ECB	10/7/2024
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SEBI LODR Regulations

Regulation 13(3)	Statement of Investor complaints.	All Listed Entity	10/21/2024
Regulation 27 (2)	Corporate Governance	All Listed Entity, other than (a) the listed entity having equity paid up capital upto Rs. 10.00 Cr & net worth upto Rs. 25.00 Cr, as on the last date of the previous FY (b) the listed entity listed on the SME Exchange.	10/21/2024
Regulation 31(1) (b)	Shareholding Pattern.	All Listed Entity	10/21/2024

SEBI(DP) Regulations, 2018

Regulation 76 of	Reconciliation of Share Capital Audit Report		10/30/2024
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Labour Laws

State Professional Tax (PT)	From V	Entities registered with PT	10/10/2024
Deposit of Provident Fund Contributions	Monthly ECR	Entities registered with PF Authorities	10/15/2024
Deposit of E.S.I.C Contributions	Monthly ECR	Entities registered with ESIC Authorities	10/15/2024
Rule 14(3): Contracts of Apprenticeship Training by the establishment shall be forwarded to Regional Director or State Apprenticeship Advisor	Form App-4	For the apprentices engaged	10/31/2024
Rule 14(10): Employer to maintain record and send report at the end of each quarter in Form Apprenticeship 6	Form APP-1		10/15/2024
Quarterly Return by employer having ten or more employees to the inspector	Form XXVII	Rule 33	10/10/2024

INCOME TAX

TDS Payment	Challan 281	Non-government deductors	10/7/2024
TDS returns	Form 24Q/26Q/27Q	All Tax deductors	10/31/2024
TCS returns		All Tax collectors	10/15/2024
Tax Audit return	Form 3CA-3CD	corporate-assessee or non-corporate assessee (who is required to submit his/its return of income on Nov 30)	10/31/2024
Transfer Pricing Report	From 3CEB	assessee having international or specified domestic transaction	10/31/2024
Income tax return	Respective ITR's	assessee not having any international or specified domestic transaction, is (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	10/31/2024

GST

Return of outward supplies of taxable goods and/or services	GSTR 1	GST Taxpayers who have not opted for QRMP scheme	10/11/2024
Return of outward supplies of taxable goods and/or services	GSTR 1	GST Taxpayers who opted for QRMP scheme -Optional	10/13/2024
Summary Return of Outward and Inward Supplies along with payment of Tax	GSTR 3B	GST Taxpayers who have not opted for QRMP scheme	10/20/2024
GST Challan Payment if no sufficient ITC		GST Taxpayers who opted for QRMP scheme and not having sufficient ITC	10/25/2024
Summary Return of Outward taxable supplies and tax payable	GSTR 5 & 5A	Non-Resident GST Taxpayers	10/20/2024
Return for details of ITC received and distribution	GSTR 6	Input Service Distributors	10/13/2024
Return for TDS under GST	GSTR 7	Government Authorities	10/10/2024
Return for Details of Supplies and the amount of tax collector	GSTR 8	E-commerce Operator	10/10/2024
Return for details of goods and services purchased in India	GSTR-11	Taxpayer claiming Refund & having UIN	10/28/2024
Summary Return of Outward and Inward Supplies along with payment of Tax	CMP-08	Composition taxpayers	10/18/2024