

# Newsletter

AUGUST 2020



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**DVM Gopal and Associates**  
Company Secretaries

## Annual Secretarial Compliances & Relaxations - Covid-19 Pandemic

### ANNUAL GENERAL MEETING – Sec. 96 of the CA 2013

Every Company other than an OPC shall in each year hold Annual General Meeting (hereinafter referred to as “AGM”) and shall specify the meeting as such in the notices calling it.

- a) In case of First AGM, it shall be held within a period of 9 months from the date of closing of the first Financial Year (hereinafter referred to as “FY”) of the Company
- b) In any other case, the AGM shall be conducted within a period of 6 months from the date of closing of the Financial Year.
- c) Not more than 15 months shall elapse between the dates of two AGMs.

### BOARDS’ REPORT –Sec.134 of the CA, 2013

- a) The Board of Directors of every company to attach its report to the financial statements to be laid before the members at the annual general meeting.
- b) The Board’s Report is an important means of communication by the Board of Directors of a company with its stakeholders.
- c) The Board’s Report provides the stakeholders with both financial and non-financial information, including the performance and prospects of the company, relevant changes in the management and capital structure, recommendations as to the distribution of profits, future and on-going programmes of expansion, modernization and diversification, capitalization of reserves, further issue of capital and other relevant information

### SECRETARIAL AUDIT REPORT –Sec.204 of the CA, 2013

Following class of companies shall annex with its Board’s Report, a Secretarial Audit Report prepared by a Practicing Company Secretary in Form MR-3:

- a) Every Listed Company
- b) Every Public Company Having Paid up share Capital of Rs. 50 crores or more (or)

- c) Every Public Company having Turnover of Rs. 250 crores or more (or)
- d) Every Company having Outstanding Loans or borrowings from Banks or Public Financial Institutions of Rs. 100 crores or more

*[Paid up share Capital, Turnover, Outstanding Loans and Borrowings as the case may be, existing on the last date of latest audited financial statements shall be considered]*

### PENALTY PROVISIONS FOR DEFAULT UNDER CA, 2013

- a) **Penalty for Default in complying with provisions of Section 96 (Holding of AGM):**

Section 99 of the Companies Act, 2013 states that If any default is made in holding a meeting of the company in accordance with section 96 or in complying with any directions of the Tribunal, the company and every officer of the company who is in default shall be punishable with fine which may extend to Rs. 1 Lakh and in the case of a continuing default, with a further fine which may extend to Rs. 5000/- for every day during which such default continues.

- b) **Penalty for Default in complying with provisions of Section 134 (Board’s Report):**

Section 134 of the Companies Act, 2013 states that if a Company contravenes the provisions of Sec.134, The Company shall be punishable with fine which shall not be less than Rs. 50,000/- but which may extend to Rs.25 Lakh and every officer of the Company who is in default shall be punishable with imprisonment for a term which may extend to 3 years or with fine which shall not be less than Rs. 50,000/- but which may extend to Rs. 5 Lakhs, or with both.

Companies whose FY has ended on 31.12.2019	Companies whose FY has ended on 31.03.2020
<p>a) MCA, vide Circular No. 18/2020 (dated 21.04.2020) clarified that Companies whose FY (other than first FY) has ended on 31st December, 2019, can hold their AGM on or before 30th September, 2020, which means relaxation of 3 months (instead of 30th June, 2020) and the same shall not be treated as a violation.</p> <p>b) Prior to such relaxation, the Companies whose FY (not being the first FY) has ended on 31st December, had to conduct AGM within a period of 6 months from date of closing of FY i.e. on or before 30th June (Further extension of up to 3 months shall be provided by ROC for any special reason)</p> <p><i>Hence, Companies whose FY has ended on 31.12.2019, shall be allowed to hold AGM through VC or OAVM, up to 30th September, 2020</i></p>	<p>a) Companies whose Financial Year has ended on 31st March, 2020 are not covered under General Circular No. 18/2020 dated 21.04.2020. Hence, has to convene their AGM within 6 months of closure of Financial Year i.e., by September 30, 2020.</p> <p>b) If such Companies are unable to conduct their AGM within the prescribed time (within 6 months from the date of closure of FY which is on or before 30th September 2020) as per section 96 of the Companies Act, 2013, such companies are advised to prefer application, seeking for extension of time for holding AGM at a suitable point of time before the concerned ROC. Such application shall be made in e-form GNL-1 well in advance before the due date of AGM.</p>
<b>Mode of sending the Annual Report and Conduct of AGM through VC or OAVM</b>	
<p>In view of travel restrictions and threat posed by Covid-19, the MCA vide its General Circular no. 20/2020 dated 5<sup>th</sup> May, 2020, granted permission with respect to sending of Financial Statements (including Board's Report, Auditor's Report or other documents required to be attached therewith) by e-mail to the members, trustees of the debenture-holders in respect of any debentures issued by the Company and to all other persons so entitled in respect of meetings conducted through VC or OAVM.</p>	
<b>Holding of AGM through VC or OAVM, during the calendar Year, 2020</b>	
<p>a) AGM of companies which are not required to provide the facility of e-voting under the Act, may be conducted through VC or OAVM only by a Company which has in its record, the e-mail addresses of at least ½ of its total number of members, who:</p> <ol style="list-style-type: none"> <li>i. In case of Nidhi, holds shares of more than 1000 rupees or more than 1% of total paid up share capital, whichever is less</li> <li>ii. In case of other companies having share capital who represent not less than 75% of such part of paid-up share capital of the company as gives right to vote at the meeting.</li> <li>iii. In case of companies not having share capital, who have the right to exercise not less than 75% of total voting power exercisable at a meeting.</li> </ol> <p>b) Other than the ordinary business items, only those special business items may be transacted, at the AGM held through VC or OAVM, which are considered unavoidable by the Board</p>	

#### FAQs

**Q: Due to Covid 19 situation, what if the Company is unable to hold the AGM for the FY 2019-20 before the due date?**

**A:** Though no specific relaxation has been announced by MCA in respect of Companies whose FY has ended on 31st March 2020 for holding AGM, the Company can seek extension of time under the third proviso to Section 96(1) of the Companies Act, 2013 by making an application to ROC before the due date. However proper justification needs to be given to ROC for seeking extension of time for holding the AGM.

**Q: In view of physical distancing restrictions imposed due to Covid 19, is it possible to convene AGM for this year through VC or OAVM?**

**A:** MCA vide Circular No. 20/2020 dated 5th May 2020 has allowed Companies subject to certain conditions to conduct their AGM through Video Conferencing (VC) or Other Audio-Visual Means (OAVM) during the calendar year 2020.

# Corporate Social Responsibility (CSR)

Applicability Section 135 (1) to every company having:

- a) Net worth of **Rs. 500 crore or more** during the immediately preceding financial year or
- b) Turnover of **Rs. 1000 crore or more** during the immediately preceding financial year or
- c) Net profit of **Rs. 5 crore or more** during the immediately preceding financial year

## Compliances

### I. Constitution of the CSR Committee Criteria:

- a) Shall constitute a CSR Committee consisting of 3 or more directors, out of which at least 1 director shall be an Independent Director.

However, where a company is not required to appoint an independent director as per the provisions of Companies Act, in such case, it shall have in its CSR Committee, 2 or more directors.

- b) The Composition of the CSR Committee shall be disclosed in the Board of Director's Report under Section 135(4) of the Companies Act, 2013

### II. Approval of CSR Policy of the Board after taking recommendations from the CSR Committee and disclosing contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed

Ensuring that the activities undertaken are included in CSR Policy of the company.

*Note: Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR.*

### III. Section 135(5) - Ensuring that the company spends, in every financial year, at least 2% of the average net profits of the company made during the 3 immediately preceding financial years.

If the company fails to spend such amount, the Board shall, in its report made under Section 134 specify the reasons for not spending the amount *and, unless the unspent amount relates to any on-going project, transfer such unspent amount to a Fund specified in Schedule VII, within a period of 6 months of the expiry of the financial year (The effective date for this amendment is not notified yet)*

<sup>1</sup>Section 135(6) -: Any amount unspent pursuant to any on-going project, fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its CSR Policy, shall be transferred by the company within a period of 30 days from the end of the financial year, to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the CSR Policy within a period of 3 financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of 30 days from the date of completion of the 3rd financial year.

## Recent Amendments to CSR Provisions

MCA has been taking a series of steps in the wake of the rapidly spreading COVID-19 and issued clarification on spending of CSR funds for COVID-19.

- a) MCA on 23<sup>rd</sup> March, 2020 vide its General Circular 10/2020 has clarified that the Company may spend funds for the various activities relating to COVID-19 pandemic under its Corporate Social Responsibilities (CSR) under the Companies Act, 2013 under following heads of Schedule VII of the said Act:

(i) Eradicating hunger, poverty, and malnutrition, promoting health care including preventive health care and sanitation including contribution to the Swachh Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water, and (xii) disaster management, including relief, rehabilitation and reconstruction activities.

- b) MCA vide notification dated 23<sup>rd</sup> June 2020 has included contribution made towards the benefit of Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans and their dependents including widows, within the ambit of Schedule VII related to CSR.

<sup>1</sup>The effective date for this amendment is not notified yet

## FAQ

**1. Whether contribution made to ‘Chief Minister’s Relief Funds’ or ‘State Relief Fund for COVID-19’ shall qualify as CSR expenditure?**

No, Contribution made to ‘Chief Minister’s Relief Funds’ or ‘State Relief Fund for COVID-19’ shall qualify as CSR Expenditure since the same does not qualify as admissible CSR expenditure under Schedule VII of the Companies Act, 2013.

**2. What will happen if a company fails to spend CSR amount for Financial Year 2019-20 as on 31<sup>st</sup> March 2020?**

As per the Companies Act, 2013, if companies which have to provide for CSR, do not fully spend the funds, they must disclose the reasons for non-spending in their Boards’ Report.

As per the Companies (Amendment) Act, 2019, the Company will have to transfer the CSR amount on or before 30<sup>th</sup> September 2020 to the Funds as mentioned in Schedule VII. **However, the amendments are still not effective as on date.**

**3. What if a company is holding the unspent amount for ongoing project for the Financial Year 2019-20 as on 31<sup>st</sup> March 2020?**

As per the Companies (Amendment) Act, 2019, the company will have to open an Unspent Corporate Social Responsibility Account and transfer the unspent CSR amount before 30<sup>th</sup> April 2020. Such amount shall be spent within 3 years from the date of transfer i.e., on or before 30<sup>th</sup> April 2023.

Further, if a company fails to spend amount in Unspent CSR Account for a period of 3 years, then the Company shall transfer on or before 30<sup>th</sup> April 2023 to the Funds as mentioned in Schedule VII. **However, these amendments are still not effective as on date.**

**4. Is there any penalty on non-compliance with non-spending of CSR amount under Companies Act, 2013?**

There is ambiguity on the penalty on non-compliance with respect to non-spending CSR amount as per the Companies Act, 2013, as this is being interpreted as both, mandatory as well as discretionary. This seems to emanate from interpreting the second proviso of Section 135(5) of the Act to mean that specifying reasons for not spending in the Board Report discharges the obligation to undertake CSR activities. This seems to be a limited interpretation.

The amendments to Section 135 by the Companies (Amendment) Act, 2019, have inserted penal provision, however these are still not effective.

*Also as per the Companies (Amendment) Bill, 2020, following will be the penalty for default in transfer of unspent CSR amount to the respective funds once the Bill comes into force:*

**On the Company:** *Twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent CSR Account or 1 Crore whichever is lower, and*

**On every Officer in default:** *1/10<sup>th</sup> of the amount required to be transferred in the respective funds specified in Schedule VII or the Unspent CSR Account or Rs. 2 lakhs, whichever is lower.*

**5. Whether a company can set-off the CSR amount spent more than the CSR obligation during a financial year?**

There are no provisions in the Companies Act, 2013, where a Company can set-off the CSR amount spent in excess of the CSR obligation during a financial year towards their CSR obligations in subsequent financial years.

*However, as per the proposed Companies (Amendment) Bill, 2020, the companies will be able to set-off the excess CSR amount spent during a particular financial year towards their CSR obligations in subsequent financial years once the Bill comes into force.*

**6. When will a Company be under an obligation to constitute a CSR Committee?**

Under the Companies Act, 2013, companies with net worth, turnover or profits above a specified amount are required to constitute CSR Committees and spend 2% of their average net profits in the last three financial years, towards its CSR policy.

*However, as per the proposed Companies (Amendment) Bill, 2020, there will be an exemption for companies with a CSR liability of up to Rs 50 lakhs a year from setting up CSR Committees once the Bill is passed.*

**Note:** *points, which are in **italic** are not notified as on date. Therefore, those points are provided for your information.*

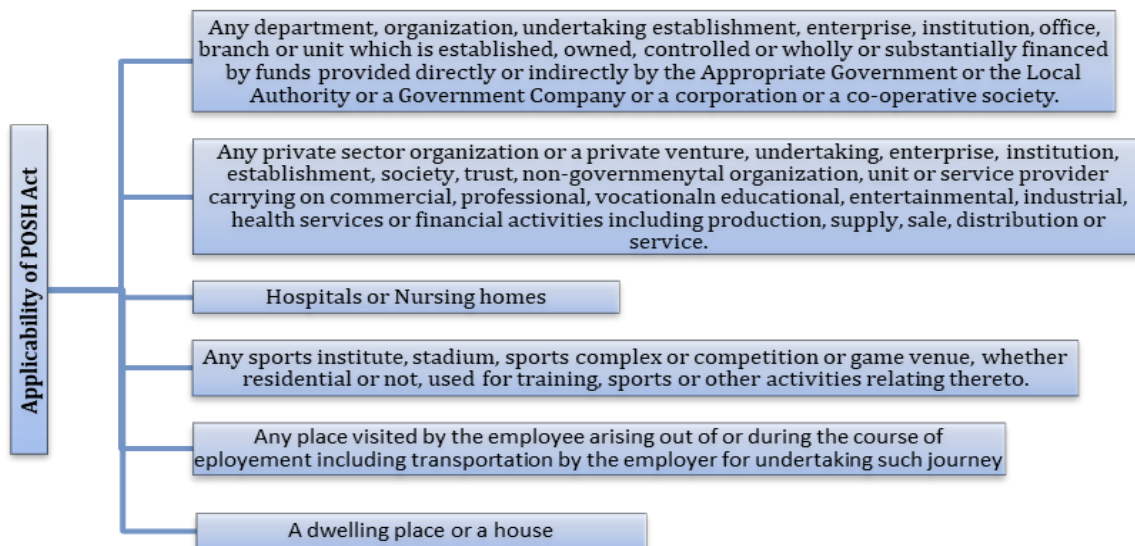
# Prevention of Sexual Harassment (POSH)

## I. Introduction

In the light of increasing and consistent growth in incidents relating to sexual harassment of women and inconveniences caused at workplaces, The Parliament of India has enacted its first codified legislation specifically focusing and dealing with the prevention, prohibition and redressal of sexual harassment of women in workplace and the legislation was named as Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 [hereinafter referred to as “POSH Act”]

## II. Applicability

- a) The POSH Act applies to both the organized and unorganized sectors in India.
- b) However, “unorganized sector” in relation to a workplace means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.



## III. Committee Formation

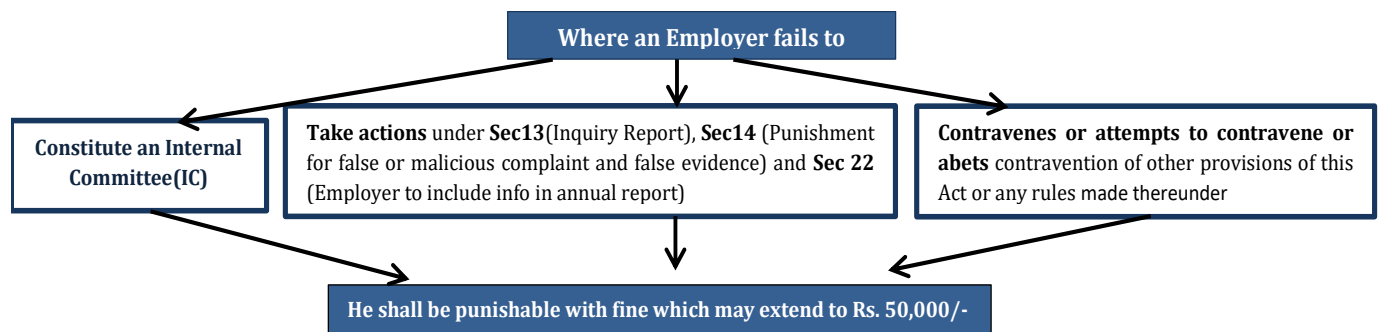
- a) **Internal Committee (IC)** shall be constituted at every office of the organization or institution, having more than 10 employees, to hear and redress complaints pertaining to sexual harassment.
- b) Failure to constitute the IC shall lead to imposition of a fine under the POSH Act.
- c) Presiding Officer shall be a Woman employed at a senior level at the workplace from amongst the employees. Members Not less than 2 members from amongst employees. (Preferably committed to the cause of women or who have had experience in social work or have legal knowledge).
- d) External member shall be a person from an NGO or association committed to the cause of women or person familiar with issues relating to sexual harassment.
- e) Not less than half of the IC Members shall be women
- f) The term of the IC Members shall not exceed 3 years
- g) A minimum of 3 Members of the IC including the Presiding Officer are to be present for conducting the inquiry.

- a) Local Committee (LC) shall be constituted in every district by the District Officer where the number of employees is less than 10.
- b) Chairperson shall be an eminent woman in the field of social work and committed to the cause of women.
- c) Local Woman shall be one of the members to be nominated from amongst the women working in block, taluka, tehsil or ward or municipality in the district.
- d) NGO members: Two members, out of which, at least one shall be a woman to be nominated from a NGO or an association committed to the cause of women or a person familiar with issues pertaining to sexual harassment
- e) At least one of the members should have a background in law. ☒
- f) At least one of the members should be a woman belonging to the Scheduled Castes or Scheduled Tribes.

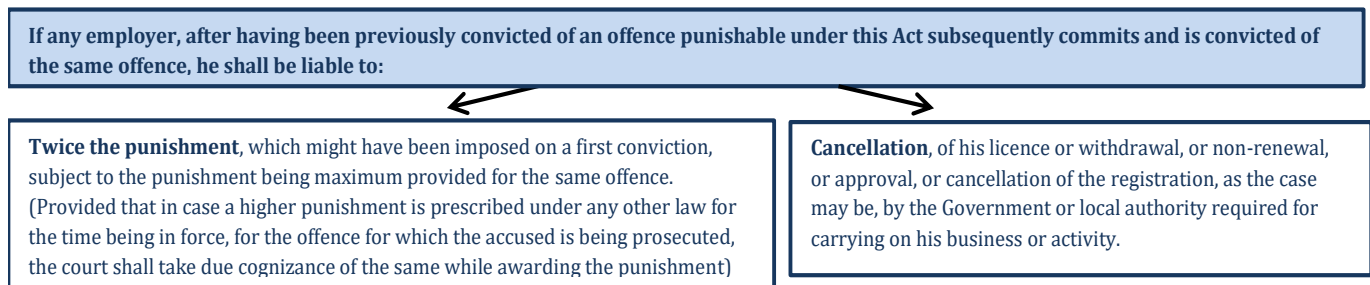
**IV. Corporate Filings**

- a) As per section 21 of the POSH Act, The Internal Committee shall, in each calendar year, prepare an Annual Report and submit the same to the employer and the District Officer on or before 31st January for the preceding calendar year. The District Officer is usually the District Magistrate or Collector appointed by the State Government.
- b) With an amendment notification dated 31st July, 2018, in the Company (Accounts) Rules, 2014, it is now Mandatory for every company other than a One Person Company and a Small Company to disclose a statement in the Board or Directors’ Report (Section 134 of Companies Act,2013) that the company has complied with provisions relating to the constitution of Internal Committee under the POSH Act, 2013

**V. Penal Provisions**



**Note:**



**FAQ**

**1. Who is an Aggrieved Woman?**

According to section 2(a) of the POSH Act, An aggrieved woman means, in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent and in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house

**2. Shall an employer be held responsible if an employee is sexually harassed at a party, event or a gathering sponsored or held by the Company after working hours?**

The applicability of POSH Act, states that Any place visited by the employee arising out of or during the course of employment, including transportation by the employer for undertaking such journey, such concept shall be treated as 'notional or 'extended workplace'. Hence, Employer shall be held liable in case an employee is sexually harassed at a party, event or a gathering sponsored or held by the Company, whether within or outside working hours.

**3. Does POSH Act cover provisions in relation to False or Frivolous complaints?**

Yes, Section 14 of the POSH Act covers punishment for false or malicious complaint and false evidence.

**4. Is POSH Applicable as a relief for employees of all levels?**

Yes, the POSH Act is available as a relief to all female employees whether full time employees, part time employees, interns or consultants irrespective of its location or nature of the industry

**5. What is the time limit within which an aggrieved woman can raise a complaint?**

The aggrieved woman is required to file the complaint, in writing, within three months from the date of the alleged incident of sexual harassment, or three months from the date of the last alleged incident of sexual harassment, if there's a series of incidents.

**6. Can the time limit of three months be extended?**

Yes, any delay in filing the complaint can be condoned by up to further three months

**7. Can a harassment complaint be filed by other person on behalf of the aggrieved woman?**

Yes, In case of physical or mental incapability or death of the aggrieved woman, her legal heirs or such other person as described in Rule 6 of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 ("the Rules") may make a complaint.

**8. Does this Act cover women workers not directly employed by the Organization?**

Yes, it covers all women workers whether working on daily wages, contractual rolls, temporarily employed.





# Compliance Calendar

## Compliance Calendar – Income Tax

Compliance details	Applicability	Reporting period	Due Date	Extended Due date due to Covid	Form
Deposit of Tax Deducted	Non-government deductors	July 2020	7 <sup>th</sup> August 2020	-	Challan 281
Issue of TDS certificate u/s 194IA 194IB and 194M	All deductors	June 2020	14 <sup>th</sup> August 2020	-	Form 16B & 16C
Quarterly TDS certificate (other than salary)	All deductors	April to June 2020	15 <sup>th</sup> August 2020	-	-
TDS/TCS for the month of July, 2020 which has been paid without the production of a challan	Government Deductors	July 2020	15 <sup>th</sup> August 2020	-	Form 24G
Challan-cum-statement for TDS u/s 194IA , 194IB and 194M	All deductors	July, 2020	30 <sup>th</sup> August 2020	-	Form 26QB & 26QC
Monthly Return for Profession Tax more than 50,000/-	Entities registered with PT Authorities	July, 2020	15 <sup>th</sup> July 2020	-	Through State wise Portal

## Compliance Calendar – GST

Compliance details	Applicability	Reporting period	Due Date	Extended Due date due to Covid	Form
Return of outward supplies of taxable goods and/or services	Taxpayers with Annual Turnover not more than INR 1.5 Cr	Apr to June 2020	31 <sup>st</sup> July 2020	3 <sup>rd</sup> August, 2020	GSTR 1
Return of outward supplies of taxable goods and/or services	Taxpayers with Annual Turnover more than INR 1.5 Cr	June 2020	10 <sup>th</sup> July 2020	5 <sup>th</sup> August, 2020	GSTR 1
Return of outward supplies of taxable goods and/or services	Taxpayers with Annual Turnover more than INR 1.5 Cr	July 2020	10 <sup>th</sup> August 2020		GSTR 1
Return for Details of Supplies and the amount of tax collector	E-commerce Operator	Mar, Apr, May, June & June 2020	10 <sup>th</sup> of the next succeeding month	31 <sup>st</sup> August, 2020	GSTR 8
Return for TDS under GST	Government Authorities	Mar, Apr, May, June & July 2020	10 <sup>th</sup> of the next succeeding month	31 <sup>st</sup> August, 2020	GSTR 7
Return for details of ITC received and distribution	Input Service Distributors	Mar, Apr, May, June & July 2020	13 <sup>th</sup> of the next succeeding month	31 <sup>st</sup> August, 2020	GSTR 6
Summary Return of Outward and Inward Supplies along with payment of Tax	Taxpayers with Annual Turnover not more than INR 5 Cr	July 2020	20 <sup>th</sup> August 2020	27 <sup>th</sup> September, 2020	GSTR 3/3B

<b>Summary Return of Outward and Inward Supplies along with payment of Tax</b>	Taxpayers with Annual Turnover more than INR 5 Cr	July 2020	20 <sup>th</sup> August 2020		GSTR 3/3B
<b>Summary Return of Outward taxable supplies and tax payable</b>	Non-Resident Taxpayers	Mar, Apr, May, June & July 2020	20 <sup>th</sup> of the next succeeding month	31 <sup>st</sup> August, 2020	GSTR 5&5A
<b>Return for details of goods and services purchased in India</b>	Taxpayer claiming Refund & having UIN	July, 2020	28 <sup>th</sup> August, 2020		GSTR 11

## Compliance Calendar - FEMA

Compliance details	Applicability	Reporting period	Due Date	Extended Due date due to Covid	Form
<b>Reporting of actual transactions of External Commercial Borrowings (ECB) through AD Bank under FEMA</b>	all categories of ECB	July 2020	7 <sup>th</sup> August 2020	-	ECB 2

## Compliance Calendar - Labour Laws

Compliance details	Applicability	Reporting period	Due Date	Extended Due date due to Covid	Form
<b>Deposit of Provident Fund Contributions</b>	Entities registered with PF Authorities	July 2020	15 <sup>th</sup> August 2020	-	Monthly ECR
<b>Deposit of Contributions</b>	E.S.I.C Entities registered with ESIC Authorities	July 2020	15 <sup>th</sup> August 2020	-	Monthly ECR