



Newsletter

Sharp View

August 2022

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The Government of India has declared 20th August as Renewable Energy (RE) Day, i.e., Akshay Urja Diwas to enlighten the masses about the importance and benefits of new and renewable energy. The Government has taken several steps to promote renewable energy, including wind energy, which include:

- Permitting Foreign Direct Investment (FDI) up to 100 % under the automatic route.
- Waiver of Inter State Transmission System (ISTS) charges for inter-state sale of solar and wind power for projects to be commissioned by 30th June 2025.
- Declaration of trajectory for Renewable Purchase Obligation (RPO) up to the year 2022.
- Setting up of Ultra Mega Renewable Energy Parks to provide land and transmission to RE developers on a plug and play basis.
- Laying of new transmission lines and creating new sub-station capacity for evacuation of renewable power.
- Setting up of Project Development Cell for attracting and facilitating investments.
- Standard Bidding Guidelines for tariff based competitive bidding process for procurement of Power from Grid Connected Solar PV and Wind Projects.
- Government has issued orders that power shall be dispatched against Letter of Credit (LC) or advance payment to ensure timely payment by distribution licensees to RE generators.
- Conducting skill development programmes to create a pool of skilled manpower for implementation, operation, and maintenance of RE projects.
- Concessional custom duty/exemption on certain components required for manufacturing of wind electric generators.
- Technical support including wind resource assessment and identification of potential sites through the National Institute of Wind Energy, Chennai.

Happy Reading!!

Interesting Facts & Figures

Solar capacity increased in the last 7.5 years from around 2.6 GW to more than

46 GW 

World's largest renewable energy expansion programme till 2022

175 GW 


Share of renewable energy in the total installed generation capacity in India stands at

26.53% 

India's position globally for overall installed renewable energy capacity

4th 

Solar power tariff reduced using Plug and Play model more than

75% 

Solar pumps installed between 2014-19 is higher about

19 times 

Renewable energy installed capacity increased in last 7.5 years

286% 

Solar park scheme doubled from 20 GW to

40 GW 

Record low solar tariff achieved at

₹1.99 per unit 

Highest ever wind capacity addition in 2016-17

5.5 GW 

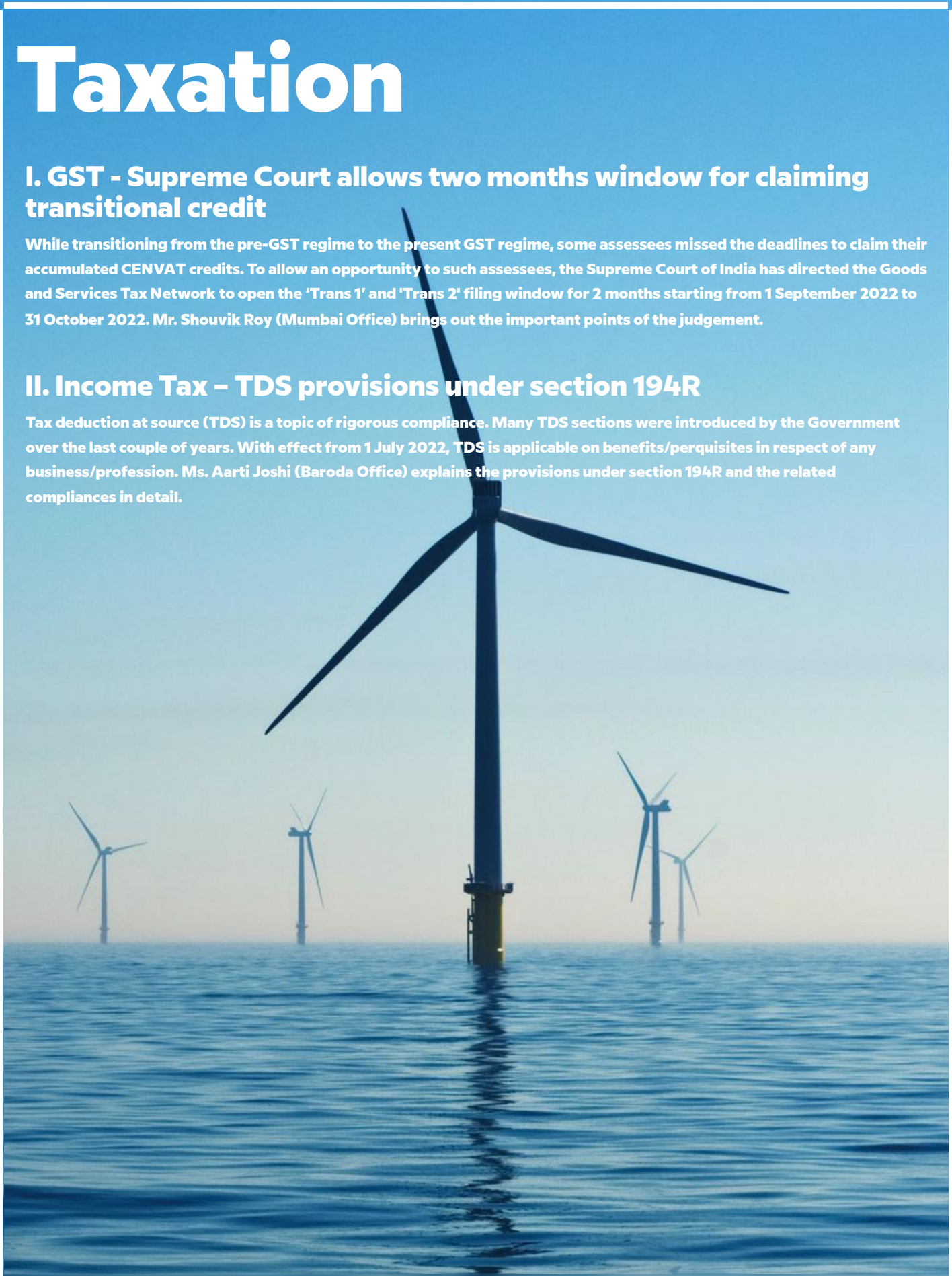
Taxation

I. GST - Supreme Court allows two months window for claiming transitional credit

While transitioning from the pre-GST regime to the present GST regime, some assesseees missed the deadlines to claim their accumulated CENVAT credits. To allow an opportunity to such assesseees, the Supreme Court of India has directed the Goods and Services Tax Network to open the 'Trans 1' and 'Trans 2' filing window for 2 months starting from 1 September 2022 to 31 October 2022. Mr. Shouvik Roy (Mumbai Office) brings out the important points of the judgement.

II. Income Tax – TDS provisions under section 194R

Tax deduction at source (TDS) is a topic of rigorous compliance. Many TDS sections were introduced by the Government over the last couple of years. With effect from 1 July 2022, TDS is applicable on benefits/perquisites in respect of any business/profession. Ms. Aarti Joshi (Baroda Office) explains the provisions under section 194R and the related compliances in detail.



Supreme Court judgement allows a new window of two months for availing transitional credit in Form Trans 1/Trans 2

Union of India vs. M/s Filco Trade Centre Pvt. Ltd. and Others

Summary

In a relief to several assesseees who missed the statutory deadline, the Supreme Court of India has directed the Goods and Services Tax Network (GSTN) to allow a 2-month additional window from 1 September 2022 to 31 October 2022 for claiming transitional credit. The relief will apply to all assesseees who had missed Trans 1 deadlines, and not just those who had filed writ petitions for reopening of Trans 1 window, before various High Courts (HCs).

Facts

Trans-1 and Trans-2 forms were introduced to allow assesseees to carry forward pre-GST credits (e.g., Cenvat credit) into the GST system. (Section 140 of the CGST Act).

As per the GST Rules, such claims had to be filed within 90 days from the date when the GST Act came into force, i.e. 1 July 2017.

Many assesseees/registered persons (RTPs) could not do so within the prescribed time frame, owing to systems glitches in the GST network (GSTN) portal.

Faced with the consequential loss of credit for no fault of their own, many of these affected RTPs approached HCs for relief, by filing writ petitions (WPs). Several High Courts passed directions for extending the timeline for filing Trans 1 applications, and/or allowing manual applications.

Aggrieved by such HC directions, the GST department approached the Supreme Court by filing special leave petitions (SLPs) against the HC orders, to quash the HC directions giving relief. The lead SLP was against the order of the Gujarat HC in the case of *Filco Trade Centre Pvt. Ltd.*

Supreme Court Verdict

A bench comprising *Justices S Abdul Nazeer and JK Maheshwari* passed the following directions on 22 July 2022, while disposing of the SLPs filed by the Union of India against orders passed by various HCs.

The following are the directions given by the Supreme Court:

- a. Goods and Services Tax Network (GSTN) is directed to open a common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months i.e., w.e.f. 1 September 2022 to 31 October 2022.
- b. GSTN has to ensure that there are no technical glitches during the said time.
- c. The concerned officers are given 90 days thereafter to verify the veracity of the claim/transitional credit and pass appropriate orders thereon on merits after granting an appropriate reasonable opportunity to the parties concerned.

Taxation | I. GST - Supreme Court allows two months window for claiming transitional credit

- d. Thereafter, the allowed transitional credit is to be reflected in the electronic credit ledger.
- e. If required, the GST Council may also issue appropriate guidelines to the field formations in scrutinising the claims.

Our Comments

The SC judgment will give relief to all affected parties that could not file Trans 1 applications in the mandated time due to GSTN portal glitches and were facing a consequential loss of credit. The new window to be opened from 1 September 2022 to 31 October 2022 will give them a fresh opportunity to file Trans-1 and Trans-2 claims.



I. Introduction

The Government of India has been keen on taxing various transactions which result in an income/gain to the recipient. In 2020, Tax collection at source (TCS) provisions under section 206C (1H) were introduced, making the 'seller' responsible to collect tax on payments received from the 'buyer.' From 1 July 2021, a similar provision of tax deducted at source (TDS) was introduced where the buyer was required to deduct tax from payments made to 'seller' at the time of payment/credit whichever is earlier. The Finance Act 2022 introduced a provision of TDS where a person providing a perquisite/benefit to another person in the nature of business or profession will be required to make TDS @ 10%.

Objective: In certain kinds of businesses/professions, the manufacturers/principals give discounts to those dealers who achieve certain specified targets. There is no employer-employee relationship, however, these benefits in cash or kind are generally offered to meet the business targets or to expand the overall business of the principal. Such gifts/perquisites in any form may not enter the 'computation of total income' of the recipient if they are in kind or if distributed in cash. Section 194R was introduced to tax such perquisites in the nature of business or profession.

194R. (1) Any person responsible for providing to a resident, any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession, by such resident, shall, before providing such benefit or perquisite, as the case may be, to such resident, ensure that tax has been deducted in respect of such benefit or perquisite at the rate of ten per cent of the value or aggregate of value of such benefit or perquisite.

II. Legal Position

- The benefit/perquisite should flow from one resident to another resident essentially arising from a business/profession. The benefit can be in cash/kind irrespective of whether it is convertible into money.
- 10% TDS should be deducted by the payer.
- The provision is effective from 1 July 2022 and only applicable when the aggregate value of the benefit exceeds or is likely to exceed INR 20,000 in a financial year (FY) (i.e. FY 2022-23 and onwards.)
- The TDs provision does not apply to an individual/HUF payer whose total sales, gross receipts or turnover does not exceed
 - INR 1 crore in case of business
 - INR 50 lakh in case of professionduring the FY immediately preceding the FY in which such benefit or perquisite is provided by such individual/HUF.

III. Points to be noted

To ensure smooth implementation of the TDS provisions, in June 2022, the Central Board of Direct Taxes (CBDT) issued guidelines through a detailed circular.

1. Whether the benefit/perquisite is taxable as business/professional income in the hands of the recipient?

No, it is not relevant whether the recipient categorises the benefit as his business income or not. The payer is also not under any obligation to determine whether such income of the recipient is exempt/taxable in his hands and if taxable, under what section. The only requirement is the benefit flows from a resident payer to a resident recipient in the course of payer's business/profession.

2. TDS payment where the benefit is partially/fully in kind

The payer must ensure that the TDS is deducted before providing the perquisite/benefit to the recipient. In cases where

- the entire benefit is in kind or
- is partially in cash and kind, and the cash portion of the benefit is insufficient to meet the TDS liability,

the payer should first ensure that the TDS deducted is paid to the Government before releasing such benefit to the payee. Following are the two alternatives available to the payer:

- a. The payer deducts TDS and pays it to the government as per the regular practice.
- b. The recipient pays it as an 'advance tax' and gives a declaration to the payer, that the required tax is paid in advance, accompanied by the advance tax challan copy.

In both the above cases, form 26Q, i.e. the TDS return needs to be furnished with such advance tax/TDS details.

3. Use of capital assets

Capital assets like land, building and motor vehicles given for use also fall under the category of benefit/perquisite. The provider of such perquisite is required to determine the fair market value of such benefit and deduct 10% TDS on the said value. However, in the below circumstances the fair market value is not determinable.

- a. The benefit/perquisite provider has purchased the benefit/perquisite before providing it to the recipient. In that case, the purchase price shall be the value for such benefit/perquisite.
- b. The benefit/perquisite provider manufactures such items and gives them as a benefit/perquisite, then the price that it charges to its customers for such items shall be the value for such benefit/perquisite.

GST will not be included for the purposes of valuation of benefit/perquisite.

4. Whether reimbursements and out-of-pocket expenses are liable for TDS?

Any liability of a person, if met or paid by another person becomes a perquisite – taxable in the hands of the first-mentioned person. E.g., X is rendering services to Y. The out-of-pocket expenses incurred by X for Y are reimbursed by Y.

Taxation | II. Income Tax – TDS provisions under section 194R

1. If the invoice for such expenses is in the name of Y and Y has directly paid for it, then no TDS is applicable.
2. If the invoice is not in the name of Y but, Y pays it directly or reimburses the amount to X, then Y has to deduct TDS.

5. TDS applicability on discounts, rebates

Sales discounts, cash discounts and rebates offered by sellers to the buyers below the retail price or for clearance of stock, etc. do not amount to a special benefit/perquisite as per the clarification from the Income-tax department. This is because the reduction in selling price by the seller decreases the purchase price of the buyer. Also, the discounts offered by such sellers are for buyers who are not specially identified for this purpose. If TDS provisions are applied, the sellers will face genuine hardships. Hence such discounts are kept out of the scope of section 194R.

However, the following are taxable (illustrative list). A person carrying out business/profession:

- gives incentives (other than discount, rebate) in the form of cash or kind such as car, TV, computers, gold coin, mobile phone etc.
- sponsors a trip for the recipient and his/her relatives upon achieving certain targets
- provides free tickets for an event
- gives medicine samples free to medical practitioners

6. Cases where the ultimate beneficiary is different from the receiver of the benefit

A company (ABC) receives some benefit from another entity/company/person (PQR) and the ultimate users of such benefits are ABC's employees/directors/owners. In such a case the person providing such benefits (i.e. PQR) to the recipient company must deduct TDS, even if the ultimate beneficiaries are its employees/directors/owners. This is because such persons, by their virtue of relationship with their company (ABC) are in a position to enjoy/avail the benefits.

Similar is the case where hospitals receive perquisites which are further distributed by the hospitals to their doctors/professional consultants. The provider of the benefit deducts TDS before paying such perquisite/benefit to the hospital. The hospital may further pass on/provide such benefit to its doctors by deducting TDS under section 194R or otherwise under section 192 as TDS on salary (if there is an employer-employee relationship.)



Consulting

Deposits under the Companies Act, 2013

It is common for companies to accept deposits from the public. Acceptance of deposits is a source of funds for a company. However, for accepting the deposits, a company is bound by the Company Law provisions as well as the Companies (Acceptance of Deposits) Rules, 2014. Ms. Aditi Jain (Baroda Office) unfolds the deposit-related provisions in a simplified way.



I. Meaning

Deposits refer to a company's general practice of borrowing money from its members or the public in the form of a loan or in any other manner permitted by applicable regulations; nevertheless, this term excludes certain types of transactions. To meet their financial needs, businesses try to get financing through a variety of cost-effective strategies. Sections 73 to 76 of the Companies Act, 2013 read with The Companies (Acceptance of Deposits) Rules, 2014 deals with provisions regarding Acceptance of Deposits.

Acceptance of deposits by banks, non-banking financial institutions (NBFC) and companies specified by the Government of India in consultation with the Reserve Bank of India (RBI) are separately regulated and hence are not dealt with in the Companies Act, 2013 (Act).

II. Can a company accept deposits?

A company can accept deposits subject to certain compliances and pre-conditions mentioned in the Act. An eligible public company may receive deposits from both members and the public.

Eligible company means a public company under section 76:

- a. having net worth of not less than INR 100 crore or turnover of not less than INR 500 crore
- b. which has obtained approval of its members by a special a resolution
- c. has filed the said resolution to the Registrar of Companies (ROC)/RBI, if applicable, before making invitation to public.

III. Other requirements/pre-conditions for accepting deposits

An eligible company shall accept deposits only if it complies with the following

- a. Passing of a resolution at its general meeting.
- b. Issuance of a circular (in the form of an advertisement in Form DPT-1) to its members accompanied by its statement on financial position and credit rating. The above-said circular and the financial position statement must be filed with ROC within 30 days *before* its issue to the members.
- c. Total amounts of deposits previously accepted.
- d. The deposits and the interest payment thereon must be secured, unsecured or partially secured deposits need to be disclosed in the above-said circular.
- e. At least 20% of the amount of deposits that will mature in the following financial year (FY) must be kept aside in a scheduled bank as 'deposit repayment reserve account' latest by 30th April every year. The money so earmarked cannot be used for any other purpose, except for repayment of the deposits.
- f. No company shall accept or renew any deposit, which is repayable
 - i. on demand; or
 - ii. on notice; or
 - iii. after a period of less than 6 months or more than 36 months from the date of acceptance or renewal of such deposits, as the case maybe.

IV. How much deposits can a company accept?

- An eligible company, other than a Government Eligible Company

Deposits from Members

Existing + Proposed deposits on the date of acceptance should be $\leq 10\%$ of Paid-up Share Capital + Free Reserves + Securities Premium (PUC+FR+SP)

Any other deposits

Existing + Proposed deposits (excluding deposits from members) on the date of acceptance should be $\leq 25\%$ of (PUC+FR+SP)

- An eligible company, being a Government Eligible Company

Any other deposits

Existing + Proposed deposits on the date of acceptance should be $\leq 35\%$ of (PUC+FR+SP)

- Any public company as per section 73(2)

Deposits from Members

Existing + Proposed deposits on the date of acceptance should be $\leq 35\%$ of (PUC+FR+SP)

- Specified public company in International Financial Service Centre (IFSC) i.e. unlisted public company which is licensed to operate by RBI or SEBI or IRDA from the IFSC located in an approved multi services SEZ and a private company

Deposits from Members

100% of PUC+FR+SP

- Private company which is a start-up for ten years from the date of its incorporation may accept deposits from members without any limit.

- Private company which is:

- a. not an associate or a subsidiary company of any other company
- b. borrowings of such a company from banks or financial institutions or anybody corporate is less than twice of its paid-up share capital or INR 50 crore, whichever is less; and
- c. such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under section 73, can accept deposit without any limit.



V. Return and repayment of deposits

Section 73(3) and 73(4)

a. Deposits received by a company must be repaid with interest in accordance with the terms and conditions of the contract. Failure of repayment of deposits attracts penal provisions towards the company which shall be maximum twice amount of the deposit or INR 1 crore, whichever is less. The company's officers also face fine and imprisonment upto 7 years and fines ranging from INR 25 lakh to INR 2 crore.

b. Failure of repayment of deposits received under the old Act of 1956 also attract fines and imprisonment. We discuss a short case law as under:

Bimal Kothari v. Unitech Ltd. The case was brought up at a time when the depositors' interests were at risk due to the company's deteriorating financial situation. The petitioners requested that the forum order the respondent company to repay their funds as soon as possible, but the respondent company filed a request for an extension of time to repay the funds, claiming that these depositors do not meet the definition of depositors under the 2013 Companies Act. The court concluded as a result that any deposit received in accordance with either the new or old Companies Acts fits under the definition of deposit.

c. All companies having any outstanding loan/amount as on 31st March of every financial year must furnish details and bifurcation of such outstanding amount irrespective of the fact whether such amount is falling under the definition of deposit, on or before 30th June of every year in form DPT-3.



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