
[2019] 102 taxmann.com 197 (Article)/[2019] 44 CPT 288 (Article)

[2019] 102 taxmann.com 197 (Article)

Date of Publishing: February 4, 2019

MCA introduces reporting of 'exempted deposits'

GAURAV N. PINGLE

CS

Introduction and Background

1. The Ministry of Corporate Affairs had constituted a Committee to review the offences under the Companies Act, 2013 ('Committee'). The Committee submitted its report in August 2018. The main recommendations of the Committee were: (i) Re-categorisation of the 16 offences out of the 81 which are in the category of compounding offences to an in-house adjudication framework, (ii) Reclogging the NCLT by enlarging the jurisdiction of the Regional Director and vesting in the Central Government the power to approve the alteration in the financial year, (iii) Vesting in the Central Government the power to approve cases of conversion of public companies into private companies, (iv) Corporate Compliance and Corporate Governance by introduction of declaration of commencement of business, protection of public deposits through greater disclosures, greater accountability w.r.t. the filing of charges, etc.

In addition to the above recommendations, the Committee noted that certain companies had misused the provisions relating to acceptance of deposits from the public. The definition of deposit under Rule 2(c) of the Companies (Acceptance of Deposits) Rules, 2014 excludes certain transactions from the ambit of 'deposits', and as a result these transactions go unreported. The Committee noted that some of the exclusions, such as the one relating to the appropriation of advance for supply of goods and services within a period of 365 days are being exploited for following dubious trade practices. The Committee further noted that during the assessment of the Basel Core Principles under the Financial Sector Assessment Programme (FSAP) of India, IMF has recommended that deposit taking by institutions that are not regulated as banks should be prohibited, notwithstanding a very small volume of such deposits.

Based on this background, the Committee recommended that an e-Form may be introduced where all companies (public or private) may be required to provide the details of transactions which are excluded from the purview of 'deposits' under the Rules.

Amendment to Rules relating to Acceptance of Deposits

2. Based on the above-mentioned background, the Companies (Acceptance of Deposits) Rules, 2014 were amended by the MCA Notification [F.NO.1/8/2013-CL-V], dated January 22, 2019. According to the notification, every company (other than Government Company) shall file a one-time return of outstanding receipt of money or loan by a company but not considered as deposits (in terms of clause (c) of sub-rule 1 of rule 2 of the Companies (Acceptance of Deposits) Rules, 2014) from April 1, 2014 to date of publication of the notification in the Official Gazette (i.e., January 22, 2019). The Return shall be filed in e-Form DPT - 3 within 90 days from the date of publication of the MCA Notification (i.e., January 22, 2019) along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.

This article is analysis (in FAQs format) of the amendments to the Companies (Acceptance of Deposits) Rules, 2014 and certain anomalies in the newly introduced e-Form DPT-3.

3. FAQs

3.1 Whether the return is a one-time return? - Pursuant to the MCA Notification and the Report of the Committee to review the offences under the Act, the return (*i.e.*, e-Form DPT - 3) is a one-time return. However, the return may be introduced as an annual return for the reporting of 'deposits' and 'exempted deposits'. This will again require amendment to the Companies (Acceptance of Deposits) Rules, 2014.

3.2 What is the reporting period in e-Form DPT-3? - According to the notification, the company shall submit e-Form DPT-3 of outstanding receipt of money or loan by a company but not considered as deposits (in terms of clause (c) of sub-rule (1) of rule 2 of the Companies (Acceptance of Deposits) Rules, 2014) from April 1, 2014 to January 22, 2019 (*i.e.*, the date of publication of the notification in the Official Gazette).

3.3 If the company has accepted 'deposits' under the Act, whether it shall file e-Form DPT-3? - According to the amendment (*i.e.*, Notification dated January 22, 2019), the company shall not file return for the deposits accepted. However, according to Rule 16 of the Companies (Acceptance of Deposits) Rules, 2014, every company shall on or before the 30th day of June, of every year, file with the Registrar of Companies, a return in Form DPT-3 along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014. Such company shall furnish the information contained therein as on the 31st day of March of that year duly audited by the auditor of the company.

3.4 If the company has accepted money or loans that are 'exempted deposits' under the Companies Act, 1956, whether such transaction should be reported in the e-Form DPT-3? - According to the amendment, every company shall file a return of outstanding receipt of money or loan by the company but not considered as deposits from April 1, 2014 to April 22, 2019 (*i.e.*, date of publication of notification in the Official Gazette) in Form DPT-3. As per said Rules, such amount is exempted as deposits from April 1, 2014. However, the 'exempted deposits' accepted under the Companies Act, 1956 shall be reported as an additional annexure to the e-Form.

3.5 If the company has accepted money or loans as 'exempted deposits', however, such amount has been repaid (during April 1, 2014 to April 22, 2019), whether such amount shall be reported in the e-Form DPT-3? - According to the amendment, the reporting is for the outstanding receipt of money or loan by a company but not considered as deposits. Therefore, if the company has accepted money or loans as 'exempted deposits' and the same have been repaid, then such amount shall not be reported in the e-Form DPT-3.

3.6 What are the attachments or annexures to the e-Form DPT-3? - According to the eForm DPT-3, the attachments are Auditors Certificate, Copy of trust deed, copy of instrument creating charge, list of depositors, details of liquid assets (in case of 'deposits' under the Act).

3.7 Whether fees are payable to the Registrar of Companies on filing of e-Form DPT 3? - Yes, the fees are payable in accordance with the provisions of the Companies (Registration Offices and Fees) Rules, 2014.

4. Certain anomalies in the Form DPT - 3

- (1) According to the amendment to the Companies (Acceptance of Deposits) Rules, 2014, filing of e-Form DPT-3 is not applicable to the Government Companies. However, in the eForm there is a field: Whether company is Government Company (Y or N). Does this mean that Government should file the e-Form DPT-3? This is not contemplated by the MCA Notification [F.NO.1/8/2013-CL-V], dated January 22, 2019;
- (2) The reference to the 'objects of the company' in the e-Form are irrelevant. Also, there is no clarity on disclosure of the objects, *i.e.*, main objects or ancillary objects?
- (3) In e-Form, there is a reference to 'Particulars of the receipt of money or loan by a company but not considered as deposits at the end of the financial year in terms of Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014'. However, as per the MCA Notification, the

company shall file the return of outstanding receipt of money or loan by a company but not considered as deposits from April 1, 2014 to date of publication of the notification in the Official Gazette (*i.e.*, January 22, 2019). The cut-off date is different in Rules and e-Forms;

- (4) Auditors Certificate is an attachment for the e-Form. Whether such certificate is for calculation of 'deposits' accepted, net-worth of the company, amount of deposits that have matured but not claimed/amount of deposits that have matured but claimed but not paid, details of liquid asset or particulars of the receipt of money or loan by a company but not considered as deposits. According to Rule 16 of the Companies (Acceptance of Deposits) Rules, 2014, every company shall, on or before the 30th day of June of every year, file with the Registrar of Companies a return in Form DPT-3 and such company shall furnish the information contained therein (as on the 31st day of March of that year) duly audited by the auditor of the company. There needs to be some clarity in the purpose of Auditors Certificate. If the company has not accepted 'deposits' but is in receipt of 'exempted deposits', whether the Auditors Certificate is required?

Concluding Remarks

5. The reporting mechanism of 'exempted deposit' is in accordance with the Report of the Committee to review the offences under the Act. Taking into consideration the monitoring of exempted deposits (which is the ultimate purpose of filing the e-Form), there ought to have been an independent e-Form for reporting of such 'exempted deposits'. The ultimate purpose of the amendment would be achieved if there are some changes in the reporting methodology and reporting requirements *i.e.*, there is alignment of the Companies (Acceptance of Deposits) Amendment Rules, 2019 with e-Form DPT-3.

■ ■