

Corporate Law Referencer

Presenting 360° view of the Companies Act, 2013 with section-wise arrangement of all Circulars, Orders, Rules and Notifications including Procedures, FAQs, Judicial Precedents and Forms



FY 2019-20
Updated upto 30th April, 2019

Sumit Pahwa

FAQs on e-Form DPT-3
CLR Online Supplement No. 2 dated 27th June, 2019

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FAQs on Form DPT-3

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FAQs on DPT-3

[Pursuant to the provisions of Section 73 - 76A of Companies Act, 2013 read with Companies (Acceptance of Deposit) Rules, 2014, vide Notification No. GSR 42 (E) dated 22nd January, 2019, Notification No. GSR 341(E) dated 30th April, 2019 and General Circular No. 05/2019 dated 12th April, 2019 (hereinafter referred to as "Circular")]

General FAQ's

1. What are Deposits?

Ans. As per Section 2(31) of the Companies Act, 2013 Deposit includes any receipt of Money by the Company by way of Deposits or Loans or in any other form.

2. What is Return of Deposits and Exempted Deposits?

Ans. After 01st April, 2014 the Companies accepting Deposits were required to report Deposits in Form DPT-4 i.e. the Return of Deposits by 30th June of the year.

With the inclusion of Rule16 and 16A to the Deposit Rules, every Company is now required to report the both Deposits and Exempted Deposits in one single Form DPT-3, by way of 4 different Radio Buttons.

3. Who is required to sign the Form? And is certification of professional required?

Ans. The Form DPT-3 can be signed by any one of Director or Manager or CEO or CFO or CS. Also no professional certification is required in the Form.

4. Why are two separate DPT-3 Forms required to be filed in respect of Exempted deposits, with the same figures?

Ans. Earlier only Companies accepting Deposits were required to report the Deposits in Annual Return DPT-4. With the advent of Companies Act, 2013 the exempted deposit list changed but was not required to be reported. MCA has called for filing 2 Returns this year i.e. a one time return of all Exempted Deposits received between 1st April, 2014 and 31st March, 2019 and outstanding on 31st March, 2019 and an annual return of deposits and / or exempted deposits (accepted anytime) and outstanding on 31st March, 2019. By next year, the Companies will be filing only One return.

5. What is the difference between One Time Return and Annual return in Form DPT-3?

Ans. The difference between the two Returns is provided as below:

One Time Return	Annual Return
This return contains the details of exempted Deposits	This return contains the details of Deposits and / or Exempted Deposits
Money received between 01.04.2014 to 31.03.2019 is to be reported	Money received any time post incorporation is reported
Balances outstanding as on 31.03.2019 are to be reported	Balances Outstanding as on the 31st day of March of every year are to be reported
Radio Button 1 in Form DPT-3	Radio Button 2, 3 or 4 in Form DPT-3
To be filed latest by 29.06.2019	To be filed latest by 30 June of every year

6. What are the options for filling Form DPT-3?

Ans. Following options can be used for reporting Deposit/ Exempted Deposits in Form DPT-3.

- Radio Button 1: One Time return for Exempted Deposits accepted between 01.04.2014 to 31.03.2019
- and
- Radio Button 2: Annual Return of Deposits (only)
- or
- Radio Button 3: Annual return of Exempted Deposits (only)
- or
- Radio Button 4: Return of Deposits and Particulars of transactions by a Company not considered as Deposits (Both)

7. Can unaudited figures be reported in DPT-3?

Ans. Reporting unaudited figures in DPT-3 is fine, except Net Worth, which needs to be as per the audited financial statements of the preceding financial year. However, auditor's Certificate is required mandatorily for Return of Deposits (radio Button 2 and 4)

8. Can Companies expect a further extension in date of filing Form DPT-3?

Ans. As clarified by MCA in the Webinar held on 17.06.2019, no further extension will be provided for filing Form DPT-3.

FAQ's related to Applicability

9. Do all Companies need to file Form DPT-3?

Ans. All Companies to which Companies (Acceptance of Deposit) Rules, 2014 apply (hereinafter referred to as "Rules") are required to file Form DPT-3, except Companies prescribed under Rule 1(3) viz Government Companies, Banking Companies, Non-Banking Financial Companies, Housing Finance Companies and Companies specified by Central Government.

10. Do Insurance Companies need to file Form DPT-3?

Ans. Insurance Companies have not been exempted to file Form DPT-3, therefore they are also required Form DPT-3.

FAQ's related to Auditor's Certificate

11. When is Auditor's Certificate required to be filed in Form DPT-3 and in which format?

Ans. Auditor's Certificate is mandatorily required for reporting Deposits i.e. if the purpose selected in the Form DPT-3 is 'Return of Deposit' or 'Return of Deposit and Particulars of transactions by a company not considered as Deposit' i.e. Radio Button 2 and 4. For reporting Exempted Deposits in One time or Annual return, Auditor's Certificate is not mandatorily required to be filed. No specific format of Auditors Certificate has been prescribed.

12. Can ROC ask for Auditor's certificate in One time return of Exempted Deposits?

Ans. Form DPT-3 is a Non Straight through Processing Form (NON STP) and ROC may exercise his due diligence while approving the Form and may seek for additional information/ Documents, including Auditors Certificate, for approving the Form. This is purely as per discretion of the approving ROC.

13. In case of zero outstanding balances of Deposits/ Exempted Deposits as on 31.03.2019 a Company is not required to file Form DPT-3. What document/ confirmation a Company needs to secure in its records if Auditors also do not give anything in writing?

Ans. Companies Act does not prescribe for any internal confirmations. Moreover, the financial statements of the Company will truly reflect the status. However, the Company Secretary / compliance Officer may take internal confirmations from the Accounting / Finance / Internal Audit teams etc.

FAQ's related to fields of Form DPT-3

14. Which date is to be mentioned in Form DPT-3 as date of last closing of Accounts?

Ans. As per Circular dated 30.04.2019 the Date to be mentioned in Point no.7 as date of closing of Accounts should be 31.03.2019, irrespective of the date of audited Financials available for reporting.

15. Can figures of Audited Balance Sheet of 2018 be filled up in form DPT-3 ?

Ans. As per the General Circular dated 30th April, 2019 a Company is required to report the monies received by a company and which are outstanding as on 31st March, 2019. In case the Company does not have Audited Financials for FY 2018-19, it may report unaudited Figures in the form, except Net Worth which shall be taken from audited Financials of FY 2017-18, as required in the Form DPT-3.

FAQ's related to Attachments to Form DPT-3

16. What attachments are required in Form DPT-3 if there are charges outstanding as on 31.03.2019?

Ans. The only attachment required to be filed in Form DPT-3 is Auditor's Certificate, in case of reporting Deposits via Radio Button 2 and 4. There is no requirement of filing any separate document in the form for Charges. Also the charge documents would have been filed with ROC at the time of creation of charge itself. It is optional for the Company to file Charge documents with Form DPT-3.

17. Whether a Company needs to file a NIL Return?

Ans. As per the Deposit Rules, the intent of one time return and Annual Return of Deposits is to capture the monies received, in whatsoever form, and which remain outstanding as on 31.03.2019. Therefore, if a Company has no such receipts of monies which remain outstanding as on 31.03.2019, it shall not be required to file Form DPT-3.

18. Can a Company attach a covering note in DPT-3 if the object clause is not correct?

Ans. Generally MCA captures Objects of a Company with its CIN from the following sources:-

- Incorporation: Industrial activity code
- Form AOC-4 : ITC Codes/ NPCS 4 digit code
- Form MGT-7: NIC 2008 Codes
- Extract of Annual Return in Form MGT-9: NIC 2008 Codes

However, the Objects clause in Form DPT-3 may not be in sync with the MOA/AOA. The Company may ignore if the objects are not pre-filled correctly in Form DPT-3 as the objects will not get changed by filing Form DPT-3. Companies have also been advised not to raise tickets on MCA in this regard.

19. Whether a Company is required to furnish return in Form DPT-3 if it has received secured/ unsecured loan/ ECB from its Holding/ Subsidiary or Associate Company?

Ans. There is no specific exemption granted for reporting monies in any form from a Holding/ Subsidiary or Associate Company. Therefore, information about all outstanding loan/money is required to be furnished in e-Form DPT-3, either as Deposits or as Exempted Deposit.

20. What are the consequences of Non Filing of Form DPT-3?

Ans. As per Rule 21 non filing of Form DPT-3 will lead to Penalty provided below (apart from the additional fee):

- On Company: uptoRs. 5,000/-
- On every Officer in default: Rs.5,000/-
- On Continuing default: Penalty extending uptoRs. 500/- for every day after the 1st day during continuing contravention.

21. What is the purpose of Radio Button 4 in filing Form DPT-3?

Ans. Radio button 4 can be used for Annual return for filing Deposits and Non Deposits together instead of 2 separate Forms. So in case a Company has only Deposits, it may select Radio Button 2 else 4 while filing the Annual Returns. In one Form only one Radio Button can be used for reporting and not two radio buttons simultaneously.

22. In which Field will Loan taken from non banking financial institution be reported in Form DPT-3?

Ans. This shall be reported in Point No. 15(f) of the Form DPT-3.

23. In which Field will Amount received from shareholder who is not a promoter be reported in Form DPT-3?

Ans. Since there is no specific point provided for Shareholders in the Form DPT-3 therefore it can be reported in Point No. 15(n) of the Form DPT-3.

24. In which Field will Sales Tax Defferal Loan from State Government be reported in Form DPT-3?

Ans. This shall be reported in Point No. 15(a) of the Form DPT-3

25. In which Field will NCDs listed on exchange, secured by a first charge or a charge ranking pari-passu with the first charge on any assets be reported in Form DPT-3?

Ans. This shall be reported in Point No. 15(i) (a) of the Form DPT-3

26. In which Field will Amount received from state legislature for immovable property be reported in Form DPT-3?

Ans. This shall be reported in Point No. 15 (a) of the Form DPT-3

FAQ's related to Net Worth

27. Which Financial Statements shall be considered while mentioning Net Worth?

Ans. As per Form DPT-3, Net Worth is required as per the latest audited balance sheet preceding the date of the return. The date of the return will be deemed to be the date of filing of the return.

Therefore, for one time return and annual return as on 31.03.2019, the Net Worth as per the audited Financial Statements of 31.03.2018 will be considered. If the financials as on 31st March, 2019 are available, then the same shall be considered. For Companies incorporated after 01.01.2019 whose accounts are yet to be audited may mention the Net worth basis the unaudited Financials.

28. Can Capital Reserve be included while calculation of Net Worth?

Ans. Net Worth primarily comprises of Share capital and Free Reserves. Capital Reserve is the part of profit or surplus maintained as an account in Balance sheet that can be used only for special designated

purposes. Further all other specific purpose reserves like capital redemption reserve, cumulative translation reserve, etc. can't be treated as Free Reserves while calculating Net Worth.

29. For Companies incorporated during FY 2018-19, where Audited Financial Statements are not available, how will the Net worth be computed?

Ans. Net Worth is reported in Form DPT-3 as per the latest audited Balance Sheet preceding the Date of the Return. In case if the Company has been incorporated during FY 2018-19, it can be reported as per the Provisional Financials available as on 31st March, 2019.

FAQ's related to Advances

30. While reporting Customer advances, should the advance amount be gross or net of TDS and GST?

Ans. It should be gross i.e. inclusive of TDS and GST.

31. In which Field will Amount received from Customer advance received from a foreign company be reported in Form DPT-3?

Ans. This shall be reported in Point No. 15 (m) of the Form DPT-3

32. What is the treatment of Insurance Company receiving premium in advance which is not appropriated towards the Policy/without a proper proposal as on March 31, 2019?

Ans. Insurance premiums received in advance which are not appropriated against policy or without a proper proposal as on 31st March shall be treated as Advances received from Customers as per Rule 2 (xii)(a) until 365 days. However, after the policy is issued by the Insurance Company, the same will neither be deposit nor an exempted deposit.

33. What is the treatment of Advances under Companies (Acceptance of Deposit) Rules, 2014?

Ans. Any amount received as Advances from Customers for supply of goods or services, appropriated within 365 days, advance for immovable property under an agreement, advance for long term projects for supply of capital goods, advance for future services in form of warranty or maintenance contract, advance received from sectoral regulators and advance for subscription towards publication are treated as Exempted Deposits subject to certain conditions mentioned in Rule 2(c) (xii) and therefore reported accordingly in Form DPT-3.

34. In which Field will Advance received from holding Company for meeting expenses be reported in Form DPT-3?

Ans. This shall be reported in Point No. 15(f) of the Form DPT-3

35. Customer advance under litigation, pending for more than 365 days should be reported under which head?

Ans. Pursuant to Proviso to Rule 2 (xii) (a) if any advance is subject matter of any legal proceeding before any Court of Law, then the said time limit of 365 days may not apply i.e. till the time legal proceeding does not end, it may be reported as an Exempted Deposit.

36. Should a Credit Note issued to a customer which is outstanding for more than 365 days be treated as deposit?

Ans. The credit note will be treated as Advance received from customer and if the same is unpaid / un-appropriated against supply of good/ services for more than 365 days from date of its receipt. If the advance remains un-appropriated it shall be treated as Deposits and reported accordingly.

37. Will advance received from Group Company be reported?

Ans. Advance received from Group Company shall be reported as Exempted Deposits and be filed in Form DPT-3.

Unique FAQ's

38. If any excess amount lying with the company from a lessee against which the Lessor has issued a credit note but the tenant has neither adjusted the amount nor has claimed the amount and period of 365 days has already been passed, whether it would be treated as deposit?

Ans. Excess amount received from Tenant is an Advance received from customer and since the Tenant has neither adjusted the advance nor claimed the amount, it remains pending appropriating for more than 365 days and therefore be treated and reported as Deposits.

39. If an Education Institute collects fee for 6 months and recognizes revenue for 3 months and show the balance as 'Fee received in advance for the next three months' as on 31.03.19, whether the advance fee receipt to be shown as exempted deposit?

Ans. Excess amount received from Students for excess 3 months if remains un-appropriated for more than 365 days, it shall be treated as Deposits and reported accordingly.

40. In case of credit card facility availed by a Company – is the limit approved or the limit used is required to be reported?

Ans. Credit Card facility is treated as a borrowing facility taken from a Bank, which can be utilized in future as per fund requirements. While reporting this facility in Form DPT-3 we need not mention the overall limit of the credit card issued but only the borrowing limit consumed during the period, which is outstanding to be repaid as on 31.03.2019.

41. If customer advances are lying for more than 365 days what are the compliances for such companies?

Ans. Customer Advances outstanding for more than 365 days, un-appropriated, shall be treated as Deposits and be reported in Form DPT-3 accordingly. In case of non compliance of the provisions of Section 73-76A of Companies Act, 2013, consequences provided in Section 76A shall follow.

42. Please brief about the applicability of Advance from HUF, Karta and Coparcener?

Ans. In case HUF is a client of the Company then these advances shall be treated as Exempted Deposits as per Rule 2, subject to the condition that they get appropriated within 365 days of its receipt and shall be reported accordingly in DPT-3. In case these advances are pending appropriation for more than 365 days, they shall be treated as Deposits and be reported accordingly.

43. Does an advance receive from a Group Company needs to be reported?

Ans. Advance received from Group Company should be treated as any other advance received from a Company and be treated as Exempted deposits.

44. What is the nature of the following transactions- Deposits or Exempted Deposits?

Ans.

Sr. No.	Transaction	Treatment
1	Interest payable on inter corporate deposit	Exempted Deposits
2	Imprest given to Employees	Out of purview of Deposits
3	SBLC and Bank Guarantee (i.e. non fund based facilities)	Out of purview of

	obtained)	Deposits
4	Loan from Banks	Exempted Deposits
5	Short Term unsecured borrowings	Exempted Deposits
6	Bank Overdraft Account	Exempted Deposits
7	Loan from Members	Deposit
8	Shares held by Mutual Fund in the Company	Out of purview of Deposit
9	Security Deposit received from Dealers by a Company for Sales of its Goods on Credit or Cash and Company pays interest on such Security Deposits	Exempted Deposits
10	Interest received by Company from Bank on Fixed Deposits	Out of purview of Deposits
11	Deposit scheme closed in March 2004, however, certain amounts were not repaid due to order received from CBI and are still remain outstanding. No liquid assets are maintained and no advertisement etc. is published in newspaper.	Deposits
12	Amount taken from Individuals	Deposits
13	Optionally Convertible Debentures	Deposits
14	Amount borrowed by a Company from Partnership Firm in which all Directors are Partners	Exempted Deposits
15	Amount kept as security deposit of the contractor and to be paid after completion of the project	Exempted Deposits
16	Payments have been made by holding company on behalf of its subsidiary in India	Exempted Deposits
17	Reimbursements amounts payable to parent Company in foreign country	Exempted Deposits
18	Security Deposit received from Tenant	Exempted Deposits
19	Loan taken for GST payment as funds are not sufficient in the company	Exempted Deposits
20	Dues from employees in form of unpaid salary for more than one year and are outstanding as on 31-March-2019.	Deposits
21	Interest payable on inter corporate deposits	Exempted Deposits

45. If any amount is deducted from salary of employees and kept as Deposit up to 3 months salary, whether it will be reported in Form DPT-3?

Ans. As per Rules a Company can take money from its Employees in form of an interest free transaction upto the limit of his annual salary, as per his employment agreement. In this case if the said deduction is interest bearing in nature and outstanding as on 31st March, 2019 it should be treated as Deposits and be reported accordingly in Form DPT-3, else be treated as Exempted Deposits.

46. If a person was an employee when he gave deposit and later transferred before 31.03.2019 to a group company, would such deposit be classified as exempted deposit?

Ans. As per Rules a Company can take money from its Employees in form of a non interest bearing security deposit upto the limit of his annual salary as per his employment agreement. In this case the employment agreement shall come to end before 31st March, 2019 since he got transferred to another group Company. In case his deposit is outstanding as on 31st March, 2019, it shall be then treated as Deposits.

47. If a Company have borrowings from and repayments to the same party during a year, should the Net amount or the total borrowings amount be reported in Form DPT-3?

Ans. Net balance outstanding as on 31st March, 2019 shall be reported in Form DPT-3.

48. Will interest on loans be considered for Filing Form DPT-3?

Ans. Interest on loans will considered while calculating the outstanding balance of loan while reporting in Form DPT-3 if the same has been accounted for as such in the books of accounts.

49. Should interest accrued but not due on borrowings be reported or only interest accrued and due on borrowings be reported or both?

Ans. Interest accrued and due and outstanding as on 31st March, 2019 are required to be considered while reporting in Form DPT-3.

50. What will be the position of Interest on Loan account declared by Banks as NPA but if the company is providing for the same on accrual basis?

Ans. If the Company is booking the accrued interest in its financials and is outstanding as on 31st March, 2019, it should be considered as Exempted Deposits and be reported accordingly.

51. If the parent company infuses money as capital in subsidiary company, will this infusion be disclosed in DPT - 3?

Ans. As per the Deposit Rules, a Company is required to issue Shares within 60 days of receipt of Share application money. In case share allotment remains pending beyond 60 days, the share application money will be required to be refunded in next 15 days. If share application remains pending allotment beyond these 75 days, it shall be treated as Deposits and be reported accordingly in Form DPT-3. In case of partial allotment of Shares only the application money pending allotment, be reported in Form DPT-3.

52. Which Form will capture the following transactions?

Ans.

Sr. No.	Transaction	Return
1	Advance received from Debtors on 18.4.2018	Exempted Deposits in One Time Return and in Annual Return
2	An Exempted Deposit in the Financials of the Company standing since 2013	Annual Return

53. What is the treatment of Deposits accepted before 1st Apr, 2014 Companies Act, 1956?

Ans. As per Section 74 of Companies Act, 2013 a Company which has accepted Deposits under Companies Act, 1956 and the amount of such deposit or part thereof or any interest due thereon, remains unpaid on commencement of Companies Act, 2013 or becomes due at any time thereafter, the Company shall file within five months a Return of Deposits In Form DPT-4 and repay such deposits within 3 years from 01st April, 2014.

54. Why the period of 01st April, 2014 to 31st March, 2019 considered when the details required is only for the outstanding balances as on 31st March, 2019?

Ans. Relevance of 1st April, 2014 comes from commencement of Companies Act 2013. Earlier in 1956 Act companies were required to report annually the Deposits taken, however, with the advent of

Companies Act 2013 the exemption list of Deposits changed and now MCA is seeking information specifically for these 5 years beginning from 01st April, 2014 to 31st March, 2019 by way filing a One Time Return in Form DPT-3. Going forward Companies are required to report only One Annual return for the respective Financial Year.

55. If a Private Limited Company takes Loan from the person who is both Director and a Member of the Company, then this will come under exempted Deposit or Deposits?

Ans. As per the Deposit Rules any amount received from Directors of the Company is treated as an Exempted Deposit. On the other hand any amount received from Member is treated as Deposit. So treatment of this transaction would depend how the same has been booked in the Financials and whether the lent amount is owned or borrowed. Theoretically, if an amount is falling in two categories, the Company may take a position which is beneficial to it.

56. As per point No. 13(c) of the Form DPT-3, short particulars of the Property on which charge is created for securing depositors talks about Depositors then can we consider this point as only for Deposit and not for exempted Deposits?

Ans. As per Rules Depositor is any person lending / advancing money in whatsoever manner and need not be one from whom deposits have been accepted.

Form provides for language “Short particulars of the property on which charge is created for securing depositors”, the nomenclature “Depositor” used in the Form can’t be the basis of analyzing the transaction as a Deposit or an Exempted Deposit.

57. Can an ACTIVE non complaint Company file Form DPT-3?

Ans. An ACTIVE non compliant Company will not be able to file following event based information or change Form with ROC:-

- a. SH-07 (Change in Authorized Capital);
- b. PAS-03 (Change in Paid-up Capital);
- c. DIR- 12 (Changes in Director except cessation);
- d. INC-22 (Change in Registered Office);
- e. INC-28 (Amalgamation, De-merger)

So ACTIVE non complaint Companies can file Form DPT-3.

58. Can a Company file Form DPT-3 with Digital Signatures of Director of another ACTIVE non complaint Company?

Ans. Yes, the form does not restrict using such Digital signatures.

59. Is an NBFC required to file Form DPT-3 in case RBI has cancelled its NBFC registration and the same is under appeal for restoration?

Ans. As per Rule 1, Non Banking Financial Companies are not required to file Form DPT-3. In this case the status of the Company as on 31st March, 2019 shall be the criteria to determine the applicability of the said Rules. As on 31st March, 2019 if RBI has cancelled Company’s NBFC registration and the current status of the Company on MCA is out the purview of Rule 1, then it shall be required to file Form DPT-3.

60. Whether Advance taken by a Real Estate Developer from customers for construction of Flats where the said Flats have not been delivered within the agreed timeline, will be treated as an Advance or Deposit?

Ans. As per Rule 2 (xii) (b) any amount received in course of business as an advance for an immovable property under an agreement, will be treated as deposits only if such advance is not adjusted against such property in accordance with the terms of agreement.

Therefore the amounts taken by the real estate developers may be treated as deposits, if the immovable property is not handed over by such developers to the buyers as per builder buyers agreement. Till such time the amount shall be treated as Exempted Deposits and be reported in Form DPT-3.

61. Will DPT-3 be filed if a Partnership Firm has got converted into a Private Limited Company on 20th April, 2019?

Ans. As per Rule 16A every Company to which the Deposit Rules apply are required to file the Return of Exempted Deposits in Form DPT-3. In this case the Status of the entity as on 31st March, 2019 was a Partnership and hence is not required to file Form DPT-3.

62. If an amount is falling under two categories, one more specific and other general will it be classified under general or specific category in Form DPT-3?

Ans. The maxim “Ejusdem Generis” will apply i.e. Specific would prevail over General.

63. What is the treatment of Compulsorily Convertible Debentures which are unsecured? Ans. In case the Compulsorily Convertible Debentures are unsecured, they can still be treated as Exempted Deposits if the securities are convertible within a period of 10 years from date of issue.

Ans. In case the Compulsorily Convertible Debentures are unsecured, they can still be treated as Exempted Deposits if the securities are convertible within a period of 10 years from date of issue.

64. If there is any non compliance in the Company then whether filing of form DPT-3 is allowed?

Ans. As per Rule 1 every Company to which the Rules apply are required to report Deposits/ Exempted Deposits in Form DPT-3. There is no exemption provided from filing Form DPT-3 by a Company having non compliances.

65. An amount received for immovable property by Real Estate Company amounting to Rs. 10,00,000/- as on 01.01.2018 and sale for Rs. 6,00,000/- was booked on 31.03.2019, then what will be the amount of Exempted Deposits or Deposits?

Ans. Till 16th January, 2019 the amount received could be treated as Non Deposits and not later. Since the sale has happened on 31st March, 2019 of 6 Lakh - the entire amount 10 Lakh post 16th January, 2019 shall be treated as Deposits.

On 31st March, 2019 the advance has been appropriated and used, therefore the remaining balance of 4 Lakh shall be considered as Deposits and reported accordingly.

66. If a Company has been merged with its Wholly Owned Subsidiary w.e.f. 30.04.2019 as per the scheme of amalgamation, but INC-28 has not been approved. Whether DPT-3 needs to be filed with ROC?

Ans. As per Rule 16A every Company to which these Rules apply shall file a Return of Deposits/ Exempted Deposits in Form DPT-3. In this case if the status of the Entity as on 31st March, 2019 on MCA is “Active” and not “Amalgamated”, it should file Form DPT-3.

67. An amount outstanding as on 31st March 2014 might eventually become outstanding on 1st April 2014. Should not therefore an amount outstanding before 1st April 2014 which is also outstanding on 31st March 2019 not termed as deposits be considered for one time return.

Ans.As per Rule 16A, any money received, in whatsoever form between 1st April, 2014 to 31st March, 2019 and outstanding as on 31st March, 2019, be reported in One Time Return. The Balance outstanding as on 31st March, 2014 should be considered for Annual return and any fresh amount received from 1st April, 2014 to 31st March, 2019 be reported in One Time return.

68. What is the Treatment of Exempted Deposits?

Ans.As per Rule 16A every Company to which the Rules apply are required to file a return of Exempted Deposits in Form DPT-3, capturing the amounts received from 01st April, 2014 to 31st March, 2019, outstanding as on 31st March, 2019. The transactions of the Company which fall under the purview of Exempted Deposits shall be accordingly reported in form DPT-3.

69. What is the difference between a Banking Company and Scheduled banks?

Ans. A Banking Company generally means any company which transacts the business of a Banking Company in India. Examples of Banking company are HDFC bank, SBI, Axis Bank, Indus Ind Bank, etc. Scheduled Banks: All Banks which are included in the Second Schedule to the Reserve Bank of India Act, 1934 are Scheduled Banks. These banks comprise Scheduled Commercial Banks and Scheduled Co-operative Banks. Scheduled Commercial Banks in India are categorized into five different groups according to their ownership and / or nature of operation. These bank groups are (i) State Bank of India and its Associates, (ii) Nationalized Banks, (iii) Private Sector Banks, (iv) Foreign Banks, and (v) Regional Rural Banks. Scheduled Co-operative Banks consist of Scheduled State Co-operative Banks and Scheduled Urban Co operative Banks. So one has to assess the nature and status of the institution from which Borrowing is being done, before reporting in Form DPT-3.

70. What is required to be reported in field “Amount required to be invested in liquid assets” in Form DPT-3?

Ans. Liquid assets include the assets that can be converted into cash in a short time, with little or no loss in value. Examples of Liquid assets are amounts lying in Savings Account or Demand Deposits

71. How to report subsidies received from government in Form DPT-3?

Ans. Government subsidies are not deposits nor exempted deposits since they are not required to be repaid and will therefore not be reported in Form DPT-3.

72. Whether Loan taken from Directors required is to be reported?

Ans. Loan taken from a Director is treated as an Exempted Deposit and is reported in Point No. 15 (h) of DPT-3.

73. Whether Loan taken from Members is to be reported??

Ans. Loan taken from Members is treated as Deposits and is reported in Point No. 10 of the Form DPT-3.

74. Whether a Company needs to report contingent liabilities in Form DPT-3??

Ans. Not required to be reported.

75. Whether Data as at end of a different Financial Year or Financial Year ending on 31st March, is to be reported in One Time and Annual return?

Ans. Form DPT-3 in Point 15 provides for reporting Particulars of receipt of Money or Loan by a Company but not considered as Deposits, at the end of financial year, in terms of clause (c) of sub-rule

1 of rule 2 of the Companies (Acceptance of Deposits) Rules, 2014. However, the General Circular No.5/2019 dated 12th April, 2019 provides to report the data as on 31st March, 2019 for One time Return filing. Moreover Rule 16 specifies to report the data as on 31st March of every year by 30th June of that year. Therefore the data to be reported should be as on 31st March for both the Returns, irrespective of the Companies following different Financial Year.

76. Whether a Government Company, reflected as Non Government Company on MCA due to incorrect CIN, needs to file Form DPT-3?

Ans. As per the explanation to Rule 16 Government Companies are exempted to file Form DPT-3. If due to incorrect CIN the Company is reflected as “Non Government Company” on MCA, it will have to file Form DPT-3, unless the status of the Company on MCA is corrected with a new CIN.

77. Should the Companies incorporated after 01.04.2014 file One Time Return?

Ans. If the Company has accepted Exempted Deposits after incorporation and the same are outstanding as on 31.03.2019, then DPT-3 needs to be filed by such Companies.

78. What if Loan/Money has been received after 01.04.2014 but repaid before 31.03.2019 ?

Ans. No return will be filed if no money is outstanding as on 31st March, 2019.

79. What is the treatment of Bonds or Debentures ?

Ans. Any amount raised by issue of Bonds or Debentures shall be treated as Exempted Deposits, if they are secured by first charge on tangible assets and amount of such instruments do not exceed the market value of such assets as assessed by a registered valuer. In case of CCDs if they are convertible into Shares within 10 years.

80. Should a Company report a Loan outstanding in its Financials as on 31.03.2019, taken from a Director who has resigned before 31.03.2019?

Ans. The amount was an exempted deposit as on date of its receipt from the Director and therefore is required to be reported as such.

81. Where should a Company report a Loan taken from its Director in 2012?

Ans. Loan taken in year 2012 and outstanding as on 31.03.2019, should be reported in Annual return e Form DPT-3 as an Exempted Deposit.

82. What is the duty of a Company Secretary in filing of Form DPT-3?

Ans. A Company Secretary is required to confirm every figure reported in Form DPT-3 with Financial Statements or other supporting and ensure timely reporting.

83. Whether Form DPT-3 is to be filed by a Company under the process of liquidation?

Ans. In case the Company is in process of Liquidation / being strike off, but the Status of the Company on MCA portal is “ACTIVE”, it should file Form DPT-3, else not.

84. If a share application money is received from a foreign body corporate, will be treated as monies received from foreign source under rule 2(c) (ii) or rule 2 (c) (vii)?

Ans. Share application being a specific purpose, the same should be reported in rule 2(c) (vii).

85. How will the Amount paid to vendor on behalf of other company be treated?

Ans. The above transaction seems like a case of reimbursement of expenses. For instance, ABC Ltd. made a statutory payment on behalf of XYZ Ltd. to a regulatory Authority, so ABC Ltd. will raise an invoice for reimbursement of expenses to XYZ Ltd. As such XYZ Ltd. shall reimburse the said fee to

ABC Ltd. In this transaction, there is no receipt of money for either of the companies and hence it should be out of the purview this reporting.

86. What happens when Exempted Deposits become Deposits, for example, an Advance received for supply of goods and services which exceeds 365 days?

Ans.Rule 2 prescribes a List of transactions which are considered as Exempted Deposits which are subjected to certain conditions and provisos. On breaching such conditions the same transactions would tantamount to Deposits. In the given case if Advance remains un-appropriated for more than 365 days, the Advance will be treated as Deposits and consequences of non – compliance as per Section 76A shall follow.

87. What is the treatment of Loan from Members?

Ans.Loan from Members shall be treated as Deposits irrespective of the limits prescribed subject to compliance benefits available with Private / Start-up Companies under rule 3.

88. Whether currency fluctuation gain / loss on foreign currency loans / ECBs should also be reported in One time return/ Annual Return ?

Ans. If the foreign exchange gain / loss is booked in the P&L, then the same will neither deposit nor an exempted deposit.

89. Exempted Deposits of 2012 i.e. prior to April 2014, were already reported in DPT-4 on commencement of 2013 Act, why to report again as Exempted deposit in Annual Return?

Ans.Form DPT-4 was an e- Form introduced for reporting Deposits existing on the commencement of Companies Act, 2013. The particulars of only Deposits are required to be filed and not Exempted Deposits, therefore MCA is now seeking information of such Exempted Deposits in Form DPT-3.

90. Whether Accrued interest is to be considered while reporting Loan taken from Shareholder?

Ans.Loan from Member is treated as Deposits and in case its interest is accrued and is outstanding as on 31st March, 2019, it shall be considered while reporting Form DPT-3.

91. Amount received from Allottee will be treated as exempted deposits or deposits, if date of completion of project is in 2020?

Ans. As per Rule 2 (xii) (b) any amount received in course of business as an advance for an immovable property under an agreement, will be treated as deposits only if such advance is not adjusted against such property in accordance with the terms of agreement.

Therefore the amounts taken by the real estate developers may be treated as deposits, if the immovable property is not handed over by such developers to the buyers as per builder Buyer's agreement. Till such time the amount shall be treated as Exempted Deposits and be reported in Form DPT-3.

92. Whether loan received form HUF of director covered under exempted deposit?

Ans.As per Deposit rules Loan taken from HUF of Director is not captured in the list of Exempted Deposits and hence this transaction shall be treated as Deposit.

93. As per IND AS rules, preference shares should be considered as borrowing. Should we include the outstanding amount of preference shares while calculating net worth of company?

Ans.IND AS Rules are applicable for accounting purposes and is a mode of presenting Accounts. However, Net Worth is calculated as per the provisions of Companies Act, 2013 and accordingly Paid up Share capital shall include Equity and Preference Capital.

94. We do not take security deposit from our vendors, but in one case we retain some percentage from each invoice of the vendor till project completion. Would such retention constitute exempted deposit?

Ans. Payment to the vendor shall be as per the terms of the agreement and since the Company has not received anything in this case, this should be out of purview of Deposits.

95. Whether loan from LLP shall be considered as Non- Deposit?

Ans. As per the Deposit Rules, Loan from LLP doesn't is not getting covered in the list of Exempted Deposits and therefore it can be inferred that it shall be treated as Deposits and be reported accordingly.

96. If at the time of acceptance of Loan nature of lender was Company, however later on during the term of continuation of loan such company convert themselves into LLP. Whether shall be treatment of such loan?

Ans. To decide whether a loan is a deposit or not, nature on the date of transaction shall be considered. If at the time of acceptance of loan lender was Company then change in status of lender later on doesn't impact the borrower Company.

97. Whether a Member can give loan a Company from borrowed funds?

Ans. As per the Deposit rules, only Directors are required to declare about the status of the funds granted as Loan to the Company and not Members. So it can be inferred that a Member may grant loan to a Company from his borrowed funds.

98. Can Deposits/ Loans repaid by issue of shares of the Company?

Ans. Section 62 of Companies Act, 2013 provides for this provision of conversion of Loan into Equity and hence it can be inferred that Loans/ Deposits can be repaid by way of issuing Shares of the Company.

99. What is the treatment of Loan from a sole proprietorship of a Director ?

Ans. Director having a sole proprietorship can be considered as Director himself and since loan from Director is an exempted Deposit, this transaction shall also tantamount as an Exempted Deposit.

100. A Private Limited Company got converted into LLP before 31.03.2019. This Private Limited Company had taken a Loan before its conversion which remains outstanding in Accounts of LLP as on 31.03.2019. Is the LLP required to report such Loan in Form DPT-3?

Ans. Since LLPs are out of purview of the provisions of Companies Act, 2013, it will not be required to file Form DPT-3.

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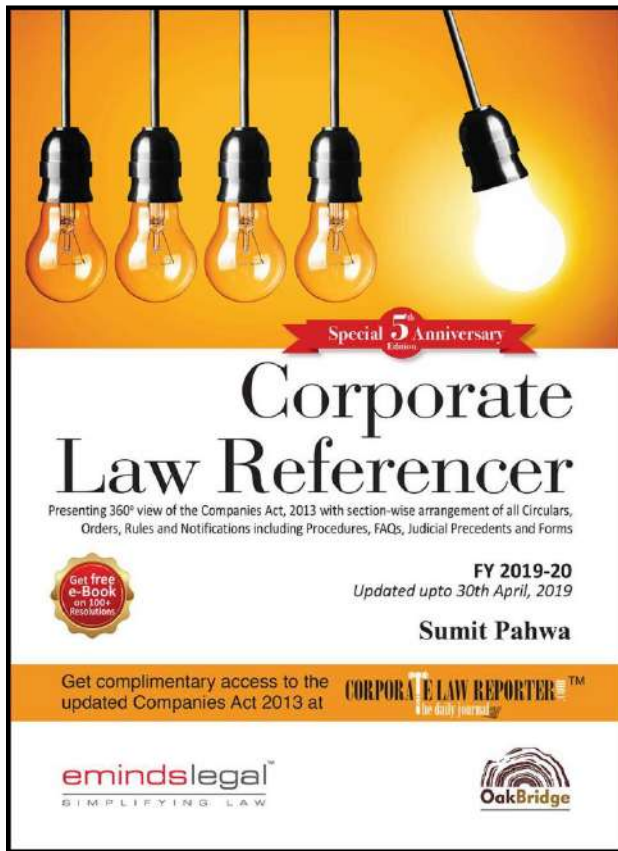
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