

PKP NEWSLETTER

VOLUME 5 | MARCH 2020 | PAGES 28

An initiative by Pratapkaran Paul and Co.



Disclaimer

The information contained in this document is prepared by Pratapkaran Paul & Co. (PKP) and is furnished to the recipient, for information purposes only.

The views and expression expressed or implied in the PKP Monthly newsletter are those of the authors and do not necessarily reflect those of PKP & Co..

In no way should this document be treated as marketing or efforts to solicit a client. Material in this publication may not be reproduced whether in part or wholly without the consent of PKP & Co.

PKP & Co will not be liable for any loss or damage caused by the readers reliance on information obtained through this report.

PKP & Co. does not assume any responsibility or liability for any loss or damage, resulting from use of this report or from any content for communications or material available in this report. The contents are provided for your reference only.

HAPPY 63rd PKP & CO DAY



INSIDE

04 CARO 2020 vs CARO 2016

20 SPICe+

24 DIRECT TAX UPDATE

Greetings!

In , the juncture of celebrating the 63rd Anniversary of Pratapkaran Paul & Co., we are happy to present you with the 5th edition of the PKP & Co., news letter which had come out as a special edition of Companies (Auditor's Report) Order (CARO 2020) and about the Introduction of the SPICe+ (SPICE PLUS) Form.

With the ever-changing trends in industry, our team brings to light issues that are relevant now, more than ever. We hope that our team's efforts bring to you both knowledge and understanding in these emerging and important areas. As always, your suggestions are welcome.

Regards
PKP Presentation Team

COMPANIES (AUDITOR'S REPORT) ORDER 2020

Introduction:

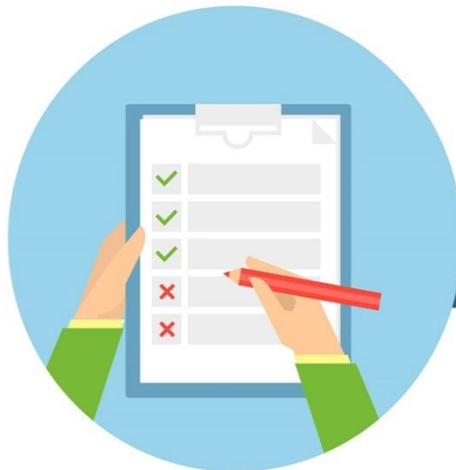
The Ministry of Corporate affairs has introduced Companies Audit Report Order (CARO) in order to enable the Auditors report / comment on various additional issues towards increasing the transparency, accountability and Comparability of the Financial Statements.



CA. Eswar Kumar
Manager

Can be reached- eswar.kumar.b@icai.org

The Ministry of Corporate Affairs introduced National Financial Reporting Authority (NFRA) towards establishing high quality standards of accounting and auditing and exercising effective oversight of accounting functions performed by the companies and bodies corporate and auditing functions performed by auditors.



MCA CARO 2020
New & Modified
Additions and Omissions

Since the Introduction, the CARO has undergone numerous changes increasing quality and quantum of reporting and responsibility of the auditors. CARO 2020 with enhanced reporting requirements marks the impact of the Introduction of National Financial Reporting Authority (NFRA).

1	Applicability	Small Company exemption removed CARO made applicable to Consolidated Financial Statements (Only Clause XXI – SL.No.24 is applicable)
2	Fixed Assets	Retained with major Modifications
3	Inventory	Retained with major Modifications
4	Loans given by company	Retained with major Modifications
5	Loans to director and investment by a company	Same as CARO 2016
6	Deposits	Same as CARO 2016
7	Maintenance of Cost Records	Same as CARO 2016
8	Undisputed and Disputed Statutory dues	Retained with minor Modifications
9	Undisclosed Income	New Clause
10	Defaulted Loan repayment	Retained with Major Modifications
11	Utilisation of IPO, FPO, Private Placement and Preferential Issue	Same as CARO 2016
12	Fraud Reporting	Retained with Major Modifications
13	Approval of managerial remuneration	Removed
14	Nidhi Company	Retained with Major Modifications
15	Related Party Transaction	Same as CARO 2016
16	Private Placement of Preferential Issues	Consolidated with S.No.11
17	Internal Audit System	New Clause
18	Non Cash Transaction	Same as CARO 2016
19	Registration under RBI Act 1934	Retained with Major Modifications
20	Cash Losses	New Clause
21	Resignation of Statutory Auditor	New Clause
22	Material Uncertainty	New Clause
23	Corporate Social Responsibility	New Clause
24	Qualifications in CARO of Standalone Companies considered for Consolidation	New Clause

Clause by Clause Explanation to CARO 2020

Clause I – Fixed Assets

CARO 2020	CARO 2016
<p>(a) (A) whether the company is maintaining proper records showing full particulars, including quantitative details and situation of Property, Plant and Equipment; (B) whether the company is maintaining proper records showing full particulars of intangible assets;</p> <p>(b) whether these Property, Plant and Equipment have been physically verified by the management at reasonable intervals; whether any material discrepancies were noticed on such verification and if so, whether the same have been properly dealt with in the books of account;</p> <p>(c) whether the title deeds of all the immovable properties (other than properties where the company is the lessee and the lease agreements are duly executed in favour of the lessee) disclosed in the financial statements are held in the name of the company, if not Provide the details in format below</p> <p>(d) whether the company has revalued its Property, Plant and Equipment (including Right of Use assets) or intangible assets or both during the year and, if so, whether the revaluation is based on the valuation by a Registered Valuer; specify the amount of change, if change is 10% or more in the aggregate of the net carrying value of each class of Property, Plant and Equipment or intangible assets;</p> <p>(e) whether any proceedings have been initiated or are pending against the company for holding any benami property under the Benami Transactions (Prohibition) Act, 1988 (45 of 1988) and rules made thereunder, if so, whether the company has appropriately disclosed the details in its financial statements;</p>	<p>(a) whether the company is maintaining proper records showing full particulars, including quantitative details and situation of fixed assets;</p> <p>(b) whether these fixed assets have been physically verified by the management at reasonable intervals; whether any material discrepancies were noticed on such verification and if so, whether the same have been properly dealt with in the books of account;</p> <p>(c) whether the title deeds of immovable properties are held in the name of the company. If not, provide the details thereof;</p>

Comments :

Previously in CARO, we need not mention about revaluation of assets. Now, if the change is more than 10% of the aggregate of the net carrying value of each class of Property, Plant and Equipment or intangible assets, then it is to be reported in the prescribed format. Also a new reporting point on the proceedings related to Benami Transactions (Prohibition) Act, 1988 has been included.

Clause II – Inventory

CARO 2020	CARO 2016
<p>(a) whether physical verification of inventory has been conducted at reasonable intervals by the management and whether, in the opinion of the auditor, the coverage and procedure of such verification by the management is appropriate; whether any discrepancies of 10% or more in the aggregate for each class of inventory were noticed and if so, whether they have been properly dealt with in the books of account;</p> <p>(b) whether during any point of time of the year, the company has been sanctioned working capital limits in excess of five crore rupees, in aggregate, from banks or financial institutions on the basis of security of current assets; whether the quarterly returns or statements filed by the company with such banks or financial institutions are in agreement with the books of account of the Company, if not, give details;</p>	<p>Whether physical verification of inventory has been conducted at reasonable interval by the management and if so, whether any material discrepancies has been noticed on such verification and if so, whether the same has been properly dealt with in the books of account</p>

Comments :

In the recent times, the Banks in many instances found that the Companies have altered the Inventory Statements which are submitted to banks to increase the Credit Facilities. This way a check has been put to misrepresentation of Information by the companies. However, This increases the responsibility of the auditors towards verification of Stock and Receivables Statements submitted on a Quarterly basis to the Banks and the same way Companies needs to reconcile the Stock before submitting to the Bank and shall not make any changes post submission as the fact of misrepresentation would be evident on the Audit report.

Clause III – Loans & Advances by companies

CARO 2020	CARO 2016
<p>whether during the year the company has made investments in, provided any guarantee or security or granted any loans or advances in the nature of loans, secured or unsecured, to companies, firms, Limited Liability Partnerships or any other parties, if so,-</p> <p>(a) whether during the year the company has provided loans or provided advances in the nature of loans, or stood guarantee, or provided security to any other entity [not applicable to companies whose principal business is to give loans], if so, indicate-</p> <p style="padding-left: 20px;">(A) the aggregate amount during the year, and balance outstanding at the balance sheet date with respect to such loans or advances and guarantees or security to subsidiaries, joint ventures and associates;</p> <p style="padding-left: 20px;">(B) the aggregate amount during the year, and balance outstanding at the balance sheet date with respect to such loans or advances and guarantees or security to parties other than subsidiaries, joint ventures and associates;</p> <p>(b) whether the investments made, guarantees provided, security given and the terms and conditions of the grant of all loans and advances in the nature of loans and guarantees provided are not prejudicial to the company's interest;</p> <p>(c) in respect of loans and advances in the nature of loans, whether the schedule of repayment of principal and payment of interest has been stipulated and whether the repayments or receipts are regular;</p> <p>(d) if the amount is overdue, state the total amount overdue for more than ninety days, and whether reasonable steps have been taken by the company for recovery of the principal and interest;</p> <p>(c) whether any loan or advance in the nature of loan granted which has fallen due during the year, has been renewed or extended or fresh loans granted to settle the overdue of existing loans given to the same parties, if so, specify the aggregate amount of such dues renewed or extended or settled by fresh loans and the percentage of the aggregate to the total loans or advances in the nature of loans granted during the year [not applicable to companies whose principal business is to give loans];</p> <p>(f) whether the company has granted any loans or advances in the nature of loans either repayable on demand or without specifying any terms or period of repayment, if so, specify the aggregate amount, percentage thereof to the total loans granted, aggregate amount of loans granted to Promoters, related parties as defined in clause (76) of section 2 of the Companies Act, 2013;</p>	<p>Whether the company has granted any loans, secured or unsecured to companies, firms, LLP or other parties covered in the registered maintained under Section 189 of the Companies Act, 2013. If so, Whether terms and conditions of the grant of such loan are not prejudicial to the company's interest.</p> <p>(b) Whether the schedule of repayment of principal and payment of interest has been stipulated and whether the repayments and receipts are regular</p> <p>(c) If the amount is overdue, state the total amount overdue, state the total amount overdue for more than 90 days and whether reasonable steps have been taken by the company for recovery of principal.</p>

Comments :

This Clause is extensively modified including in the Scope the reporting of Loans to Unrelated Parties. The extent of reporting in this clause marks the level of verification the auditor shall carry in the matter of Loans and Advances issued by a company from Loan agreements, terms, Repayments till renewal. In Companies of decent size, this Sub clause (e) adds up huge amount of responsibility of the auditors to track the fund flow with the level of information available. On a whole, this shall impart accountability and documentation which again increases transparency and Legality of the transaction. However, as the majority of Loans and advances throughout the Private Companies are Demand Loans and without documentation it will be tougher for the companies to adapt to this level of documentation.

Clause IV – Loans to director and Investment by a company

CARO 2020	CARO 2016
In respect of loan, investment, guarantees and security whether provision of Sections 185 and 186 of the Companies Act, 2013 has been complied with. If not, provide the details thereof.	Same

Clause V – Deposits

CARO 2020	CARO 2016
in respect of deposits accepted by the company or amounts which are deemed to be deposits, whether the directives issued by the Reserve Bank of India and the provisions of sections 73 to 76 or any other relevant provisions of the Companies Act and the rules made thereunder, where applicable, have been complied with, if not, the nature of such contraventions be stated; if an order has been passed by Company Law Board or National Company Law Tribunal or Reserve Bank of India or any court or any other tribunal, whether the same has been complied with or not;	Same

Clause VI – Maintenance of Cost Records

CARO 2020	CARO 2016
<p>whether maintenance of cost records has been specified by the Central Government under sub-section (1) of section 148 of the Companies Act and whether such accounts and records have been so made and maintained;</p>	<p>Same</p>

Clause VII – Undisputed and Disputed Statutory dues

CARO 2020	CARO 2016
<p>(a) whether the company is regular in depositing undisputed statutory dues including Goods and Services Tax, provident fund, employees’ state insurance, income-tax, sales-tax, service tax, duty of customs, duty of excise, value added tax, cess and any other statutory dues to the appropriate authorities and if not, the extent of the arrears of outstanding statutory dues as on the last day of the financial year concerned for a period of more than six months from the date they became payable, shall be indicated;</p> <p>(b) where statutory dues referred to in sub-clause (a) have not been deposited on account of any dispute, then the amounts involved and the forum where dispute is pending shall be mentioned (a mere representation to the concerned Department shall not be treated as a dispute);</p>	<p>Same except for Goods and Service tax is added</p>

Clause VIII – Undisclosed Income

CARO 2020	CARO 2016
<p>whether any transactions not recorded in the books of account have been surrendered or disclosed as income during the year in the tax assessments under the Income Tax Act, 1961 (43 of 1961), if so, whether the previously unrecorded income has been properly recorded in the books of account during the year;</p>	<p>New Clause</p>

Comments :

The Scope of the Statutory Audit is hereby expanded to the verification of Income tax Assessment Orders and reporting of the Undisclosed income added in those orders and its accounting in the books if any in the CARO.

Clause IX – Defaulted Loan Repayment

CARO 2020	CARO 2016
<p>(a) whether the company has defaulted in repayment of loans or other borrowings or in the payment of interest thereon to any lender, if yes, the period and the amount of default to be reported as per the format below</p> <p>(b) whether the company is a declared wilful defaulter by any bank or financial institution or other lender;</p> <p>(c) whether term loans were applied for the purpose for which the loans were obtained; if not, the amount of loan so diverted and the purpose for which it is used may be reported;</p> <p>(d) whether funds raised on short term basis have been utilised for long term purposes, if yes, the nature and amount to be indicated;</p> <p>(e) whether the company has taken any funds from any entity or person on account of or to meet the obligations of its subsidiaries, associates or joint ventures, if so, details thereof with nature of such transactions and the amount in each case;</p> <p>(f) whether the company has raised loans during the year on the pledge of securities held in its subsidiaries, joint ventures or associate companies, if so, give details thereof and also report if the company has defaulted in repayment of such loans raised;</p>	<p>New Clause</p>

Comments :

This Clause imparts the same accountability and Transparency for the Loans availed by the Company, however increasing the responsibility of the auditor towards verification of Loans including Repayment, Purpose of Loan, Utilisation of Loans and the security. It is still a question how the auditor shall obtain the reliable information of declaration of wilful defaulter by any bank or FI.

Clause X – Utilisation of IPO, FPO, Private Placement and Preferential Issue

CARO 2020`	CARO 2016
<p>(a) whether the company has defaulted in repayment of loans or other borrowings or in the payment of interest thereon to any lender, if yes, the period and the amount of default to be reported as per the format below</p> <p>(b) whether the company is a declared wilful defaulter by any bank or financial institution or other lender;</p> <p>(c) whether term loans were applied for the purpose for which the loans were obtained; if not, the amount of loan so diverted and the purpose for which it is used may be reported;</p> <p>(d) whether funds raised on short term basis have been utilised for long term purposes, if yes, the nature and amount to be indicated;</p> <p>(e) whether the company has taken any funds from any entity or person on account of or to meet the obligations of its subsidiaries, associates or joint ventures, if so, details thereof with nature of such transactions and the amount in each case;</p> <p>(f) whether the company has raised loans during the year on the pledge of securities held in its subsidiaries, joint ventures or associate companies, if so, give details thereof and also report if the company has defaulted in repayment of such loans raised;</p>	<p style="text-align: center;">New Clause</p>

Clause XI – Fraud Reporting

CARO 2020	CARO 2016
<p>(a) whether any fraud by the company or any fraud on the company has been noticed or reported during the year, if yes, the nature and the amount involved is to be indicated; 7</p> <p>(b) whether any report under sub-section (12) of section 143 of the Companies Act has been filed by the auditors in Form ADT-4 as prescribed under rule 13 of Companies (Audit and Auditors) Rules, 2014 with the Central Government;</p> <p>(c) whether the auditor has considered whistle-blower complaints, if any, received during the year by the company;</p>	<p>whether any fraud by the company or any fraud on the Company by its officers or employees has been noticed or reported during the year; If yes, the nature and the amount involved is to be indicated;</p>

Clause XII – Nidhi Company

CARO 2020	CARO 2016
<p>(a) whether the Nidhi Company has complied with the Net Owned Funds to Deposits in the ratio of 1: 20 to meet out the liability;</p> <p>(b) whether the Nidhi Company is maintaining ten per cent. unencumbered term deposits as specified in the Nidhi Rules, 2014 to meet out the liability;</p> <p>(c) whether there has been any default in payment of interest on deposits or repayment thereof for any period and if so, the details thereof;</p>	<p>whether the Nidhi Company has complied with the Net Owned Funds to Deposits in the ratio of 1: 20 to meet out the liability and whether the Nidhi Company is maintaining ten per cent unencumbered term deposits as specified in the Nidhi Rules, 2014 to meet out the liability;</p>

Clause XIII – Related Party Transaction

CARO 2020	CARO 2016
whether all transactions with the related parties are in compliance with sections 177 and 188 of Companies Act where applicable and the details have been disclosed in the financial statements, etc., as required by the applicable accounting standards;	Same

Clause XIV – Internal Audit System

CARO 2020	CARO 2016
(a) whether the company has an internal audit system commensurate with the size and nature of its business; (b) whether the reports of the Internal Auditors for the period under audit were considered by the statutory auditor;	New Clause

Comments:

This Clause adds weight and importance to Standards on Auditing 610 Usage of work of Internal Auditor. It expands the scope of the Statutory Audit to comment on the Internal audit system and verification of Internal audit reports. As the Companies Act Specifies limits for applicability for Compulsory appointment of Internal auditor, it needs to be clarified on the general applicability of this clause and still the first subclause is quite subjective and the auditors shall take due care. The intent of the law is not clear as the reporting requirement on adequate internal financial controls is removed as part of CARO 2016 and now this has been introduced

Clause XV – Non Cash Transaction

CARO 2020	CARO 2016
<p>whether the company has entered into any non-cash transactions with directors or persons connected with him and if so, whether the provisions of section 192 of Companies Act have been complied with;</p>	<p>Same</p>

Clause XVI – Registration under RBI Act , 1934

CARO 2020	CARO 2016
<p>(a) whether the company is required to be registered under section 45-IA of the Reserve Bank of India Act, 1934 (2 of 1934) and if so, whether the registration has been obtained;</p> <p>(b) whether the company has conducted any Non-Banking Financial or Housing Finance activities without a valid Certificate of Registration (CoR) from the Reserve Bank of India as per the Reserve Bank of India Act, 1934;</p> <p>(c) whether the company is a Core Investment Company (CIC) as defined in the regulations made by the Reserve Bank of India, if so, whether it continues to fulfil the criteria of a CIC, and in case the company is an exempted or unregistered CIC, whether it continues to fulfil such criteria; 8 (d) whether the Group has more than one CIC as part of the Group, if yes, indicate the number of CICs which are part of the Group;</p>	<p>whether the company is required to be registered under section 45-IA of the Reserve Bank of India Act, 1934 and if so, whether the registration has been obtained.</p>

Clause XVII – Cash Losses

CARO 2020	CARO 2016
whether the company has entered into any non-cash transactions with directors or persons connected with him and if so, whether the provisions of section 192 of Companies Act have been complied with;	Same

Clause XVIII – Resignation of Statutory Auditors

CARO 2020	CARO 2016
whether there has been any resignation of the statutory auditors during the year, if so, whether the auditor has taken into consideration the issues, objections or concerns raised by the outgoing auditors;	New Clause

Comments:

With the increasing resignations by auditors in maintaining the Internal Risk matrix, this stands as a radar on the incoming auditors whether the concerns / issues of the previous auditor were considered.

Clause XIX – Material Uncertainty

CARO 2020	CARO 2016
<p>on the basis of the financial ratios, ageing and expected dates of realisation of financial assets and payment of financial liabilities, other information accompanying the financial statements, the auditor’s knowledge of the Board of Directors and management plans, whether the auditor is of the opinion that no material uncertainty exists as on the date of the audit report that company is capable of meeting its liabilities existing at the date of balance sheet as and when they fall due within a period of one year from the balance sheet date;</p>	<p>New Clause</p>

Comments:

The Analytics performed by the auditor were earlier only the work paper of the auditor and the conclusion of the work paper is required to be reported to increase the transparency on the reporting of material uncertainty and Going Concern of the entity. However it is not just the ratios and ageing of one year which determine the material uncertainty and Going concern and hence the conclusions arrived out of subjective matters shall be documented properly.

Clause XX – Corporate Social Responsibility

CARO 2020	CARO 2016
<p>(a) whether, in respect of other than ongoing projects, the company has transferred unspent amount to a Fund specified in Schedule VII to the Companies Act within a period of six months of the expiry of the financial year in compliance with second proviso to sub-section (5) of section 135 of the said Act;</p> <p>(b) whether any amount remaining unspent under sub-section (5) of section 135 of the Companies Act, pursuant to any ongoing project, has been transferred to special account in compliance with the provision of subsection (6) of section 135 of the said Act;</p>	<p style="text-align: center;">New Clause</p>

Clause XXI – Qualifications in CARO of Standalone Companies considered for Consolidation

CARO 2020	CARO 2016
<p>whether there have been any qualifications or adverse remarks by the respective auditors in the Companies (Auditor's Report) Order (CARO) reports of the companies included in the consolidated financial statements, if yes, indicate the details of the companies and the paragraph numbers of the CARO report containing the qualifications or adverse remarks.;</p>	<p style="text-align: center;">New Clause</p>

Comments :

This is in line with reporting of Qualifications or adverse remarks by the auditors of the Subsidiaries / Joint ventures / Associates in the Consolidated audit report. The same way the Qualifications or adverse remarks by the auditors of the Subsidiaries / Joint ventures / Associates are to be reported in the said clause. This shows the increasing importance and reliability of the Consolidated Financial Statements



CONCLUSION

Maintenance of Proper documentation and Internal Audit systems takes them closer to the SME Listing requirements. The Intent of the Government is clear towards increasing Accountability, Transparency and Comparability of the Financial Statements. However, the burden of work and increasing responsibility on the Statutory Auditors and small companies shall also be considered and reviewed.

Introduction of SPICe+ for the Name Reservation and Incorporation of Companies

BACKGROUND:

The Central Government vide GSR 128(E) hereby makes the following rules further to amend the Companies (Incorporation) Rules, 2014, by way of notifying **Companies (Incorporation) Amendment Rules, 2020** with effect from 23rd February 2020 for the following amendments:



CS. Arun Sreenivas Ramdoss
Practicing Company Secretary
Can be reached - kgrarun@gmail.com

To substitute existing Rule 9 of Companies (Incorporation) Rules, 2014 with the following:

“Rule 9. Reservation of name or change of name.- An application for reservation of name shall be made through the web service available at www.mca.gov.in by using web service SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32), and for change of name by using web service RUN (Reserve Unique Name) along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014, which may either be approved or rejected, as the case may be, by the Registrar, Central Registration Centre after allowing re-submission of such web form within fifteen days for rectification of the defects, if any, with effect from the 23rd February, 2020.”

And also, the following words, brackets and letters shall be substituted in Companies (Incorporation) Rules, 2014 wherever appears in Rule 10, 12, 19, 38 and 38A-

- ❑ Form No INC-32 (SPICe) shall be substituted with **“SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32)”**.
- ❑ “Electronically (SPICE)” shall be substituted with **“Electronically Plus (SPICE+)”**
- ❑ “Employees’ Provident Fund Organisation (EPFO) Registration” shall be substituted with **“Employees’ Provident Fund Organisation (EPFO) Registration and Profession Tax Registration and Opening of Bank Account”**
- ❑ “AGILE” shall be substituted with **“AGILE-PRO”**

INTRODUCTION OF SPICe+

As part of Government of India's Ease of Doing Business initiatives, the Ministry of Corporate Affairs (MCA) has deployed a new Web Form christened SPICe+ pronounced as 'SPICe Plus' (Simplified Proforma for Incorporating Company electronically Plus) replacing the existing SPICe form with effect from 23rd Feb 2020. Reserve Unique Name (RUN) facility would be applicable only for 'change of name' of an existing company w.e.f.23rd Feb 2020.

SPICE vs SPICe+

SPICe+ is an integrated web form which offers 10 services by 3 Central Govt Ministries & Departments. (Ministry of Corporate Affairs, Ministry of Labour & Department of Revenue in the Ministry of Finance) and One State Govt (Maharashtra), thereby saving as many procedures, time and cost for Starting a Business in India. The multiple services under SPICe+ are below :

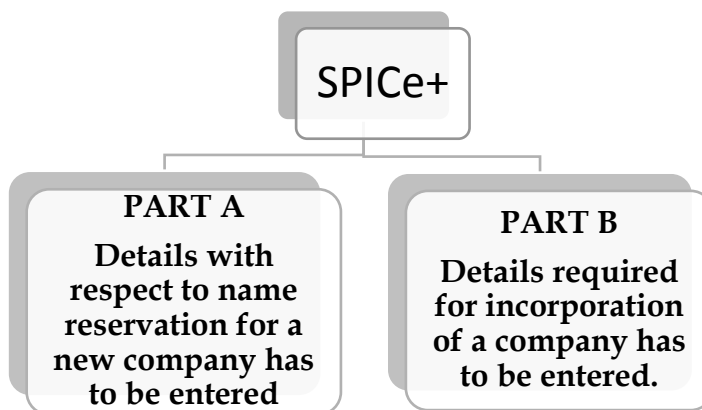
- Name Reservation
- Incorporation
- DIN Allotment
- Mandatory issue of PAN
- Mandatory issue of TAN
- Mandatory issue of EPFO
- Mandatory issue of ESI
- Mandatory issue of PT (only for the state Maharashtra)
- Mandatory opening of bank account (at present with PNB and gradually many public and private sector banks would also be integrated with SPICe+)
- Allotment of GST number (if so, applied for)

Under the erstwhile SPICe, the issuance of EPFO, ESI and Professional Tax were not mandatory and no option was available to open a bank account through SPICe. It was not a web-based form and the INC 9 declaration shall be manually attached to Form SPICe.

FEATURES OF SPICe+

- ✓ Users may either choose to submit Part-A for reserving a name first and thereafter submit Part B for incorporation & other services or file Part A and B together at one go for incorporating a new company and availing the bouquet of services as above.
- ✓ A new and user-friendly Dashboard on the Front Office is being created for company incorporation application.
- ✓ Incorporation applications (Part B) after name reservation (In Part A) can be submitted as a seamless process in continuation of Part A of SPICe+.
- ✓ Stakeholders will not be required to even enter the SRN of the approved name as the approved Name will be prominently displayed on the Dashboard and a click on the same will take the user for continuation of the application through a hyperlink that will be available on the SRN/application number in the new dashboard.
- ✓ Resubmission of applications for company name reservation and/or incorporation shall also be handled through the application number/Name applied for link on the new dashboard. A hyperlink will be available for the SRN/application number, so as to enable easy resubmission, wherever required.
- ✓ The new web form would Facilitate On-screen filing and real time data validation for seamless incorporation of companies.
- ✓ For ensuring ease while filing, SPICe+ will be structured into various sections. Information once entered can be saved and modified.
- ✓ All Check form and Pre-scrutiny validations (except DSC validation) will happen on webform itself.
- ✓ Once the SPICe+ is filled completely with all relevant details, the same would then have to be converted into pdf format, with just a click of the mouse button, for affixing DSCs.
- ✓ All digitally signed applications can then be uploaded along with the linked forms as per the existing process.
- ✓ Changes/modifications to SPICe+ (even after generating pdf and affixing DSCs), can also be done by editing the same web form application which has been saved, generating, the updated pdf affixing DSCs and uploading the same.
- ✓ DSC validation and other validations will happen at Upload Level.
- ✓ All new companies incorporated through SPICe+ w.e.f 23rd February 2020 would also be mandatorily required to apply for opening the company's Bank account through the AGILE-PRO linked web form.
- ✓ Declaration by all Subscribers and first Directors in INC-9 shall be auto-generated in PDF format and would have to be submitted only in Electronic form in all cases, except where the total number of subscribers and/or directors is greater than 20 and/or any such subscribers and/or directors has neither DIN nor PAN.
- ✓ Subscribers photo is not required

SPICe+ divided into two parts i.e. PART A & PART B



There is no change in fee structure for the incorporation of Companies under SPICe+. Applicable fee for the Name Reservation (Part A) is Rs. 1,000 (One Thousand) and fee for the Name Reservation and Incorporation under INC - 32 (SPICe+) as per Annexure D of the Companies (Registration offices and Fees) Rules, 2014. Fees payable is subject to changes in pursuance of the Act or any rule or regulation made or notification issued thereunder.

PROCESSING AND APPROVAL OF SPICe+

This eForm is accompanied by supporting documents including details of Directors & subscribers, SPICe+ MoA, SPICe+ AoA, AGILE PRO and INC 9 Declaration. The duly filled in and signed forms shall be uploaded under the category of Linked Forms along with Form SPICe+.

On approval of SPICe+ forms, the Certificate of Incorporation is issued with PAN as allotted by the Income Tax Department. An electronic mail with Certificate of Incorporation as an attachment along with PAN and TAN is also sent to the user. Further PAN card shall be issued by the Income Tax Department.

Also DINs gets issued to the proposed Directors who do not have a valid DIN. Maximum three Directors are allowed for using this integrated form for filing application of allotment of DIN while incorporating a company other than a Producer company. In case of a Producer company, maximum of five directors are allowed to apply for allotment of DIN. Also PAN and TAN would get issued to the Company.

Sl. NO	Web Bases Form	Particulars
1	Form SPICe+ (INC 32)	Simplified Proforma for Incorporating Company electronically Plus
2	Form SPICe+ MOA (INC 33)	Memorandum of Association
3	Form SPICe+ AOA (INC 34)	Articles of Association
4	Form AGILE-PRO	Application for GSTIN, ESIC registration & EPFO registration, PT Registration and Opening of bank account

Trust can make investments in Co. in which NPCI holds 51% shareholding (Notification 15/2020)

The CBDT has inserted a new clause (v) to Rule 17C of the Income-tax Rules which prescribed modes of investment/deposits by a charitable or religious trust or institution. Now, investment in equity share capital or bonds or debentures of a Co. engaged in operations of retail payments system or digital payments settlement shall be an eligible investments. However, 51% of equity shares of said Co. are to be held by NPCI (National Payments Corporation of India).

Notice issued in name of transferor-co which ceased to exist due to amalgamation is illegal

The Hon'ble High Court of Gujarat in the case of M/s.Gayatri Microns Ltd. v.ACIT [2020] 114 taxmann.com 318 (Gujarat) has held that **Upon amalgamation, transferor company ceases to exist and thereafter notice issued under section 148 in its name would be fundamentally illegal and without jurisdiction.**

CIT(A) was wrong in rejecting valuation of shares by comparing factual results with projection adopted by valuer.

The Assessee company had issued shares of face value of Rs. 10/- each at a premium of Rs. 14.70 per share. Shares were issued after duly valuing shares based on Discount Cash Flow (DCF) method and valuation was done by a merchant banker.

The Assessing Officer adopted fair market value of shares based on Net assets value added method. CIT(A) proceeded to compare projections adopted by valuer with actual results or actual performance of assessee company in subsequent years and arbitrarily held that business was growing at 40 per cent and therefore determined the share value at Rs. 11.17 per share. The excess of amount received by assessee was treated as addition u/s.56(2)(viib).

The Hon'ble Mumbai ITAT in the case of **Vodafone M-Pesa Ltd.v. Deputy Commissioner of Income-tax Circle 8(3)(2), Mumbai [2020] 114 taxmann.com 323 (Mumbai - Trib.)** has held that where assessee company determined fair market value of shares issued at premium on basis of Discount cash flow method and valuation was done by a merchant banker, CIT(A) were unjustified in rejecting such valuation of shares by comparing factual results of company with projection adopted by valuer and changing method of valuation of shares to Net value added method.

Financial stringency would not justify non-remittance of TDS to Govt.;

The Hon'ble High Court of Karnataka in **KBR Infratech Ltd. v.Assistant Commissioner of Income Tax, Circle - 2(1), Bengaluru [2020] 114 taxmann.com 495 (Karnataka)** has held that financial stringency would not justify non-remittance of TDS to Government; levy of penalty justified.

Notice issued against a dead person :

The Hon'ble Supreme Court of India in the case of Income Tax Officer Ward 1(3)(7), Surat v. Durlabhbai Kanubhai Rajpara [2020] 114 taxmann.com 482 (SC) has dismissed the SLP filed against the order of High Court and was held that no valid notice could be issued against a dead person and, thus impugned notice was required to be quashed and set aside

Mere Change of Opinion :

The Hon'ble ITAT Ahmedabad in Deputy Commissioner of Income Tax(Exemptions), Circle 2, Ahmedabad v. Surat Urban Development Authority (SUDA) has held that CIT(A) rightly set-aside reassessment proceedings as it was initiated by AO on mere change of opinion. It was held that Where assessee had submitted complete books of accounts with bills and vouchers at time of completion of assessment u/s. 143(3), reopening of assessment denying benefit of section 11 on basis of change of opinion was not justified.

Two bungalows adjacent to each other to be treated as one for sec. 54F relief though two diff. registries were done

The assessee claimed exemption u/s. 54F on long-term capital gain invested in two bungalows which were adjacent to each other and used as one residential unit. The Assessing Officer disallowed same on ground that assessee could have claimed exemption u/s.54F with respect to investment in one bungalow only.

The Hon'ble ITAT Ahmedabad in Mohammadanif Sultanali Pradhan v. Deputy Commissioner of Income-tax, Circle-6(1), Ahd has held that under S.54F, no definition/clarification about area of residential property, has been provided, hence, one assessee can buy huge bungalow/property say thousand square meters and can claim deduction subject to conditions . The Assessee could not have been deprived of benefit conferred under statute merely on reasoning that there were two different registries of buildings/properties as from point of view of assessee, it was single property. Also it was held that both the properties purchased by assessee were located in same geographical area, therefore the assessee would be entitled for exemption provided u/s. 54F.

Deletion of S.68 additions as AO failed to produce any material evidence to support such addition :

The Hon'ble Delhi ITAT in the case of Anoop Jain v. Assistant Commissioner of Income-tax, Central Circle-53(1), New Delhi [2020] 114 taxmann.com 550 (Delhi - Trib.) has held that where Assessing Officer made addition u/s. 68 treating long term capital gain on sale of shares as not genuine, said addition was to be deleted in view of fact that Assessing Officer failed to produce any material/evidence to dislodge or controvert genuineness of conclusive documentary evidences produced by assessee in support of his claim that he was a genuine investor from past many years

Circular No.7/2020 - The Central Board of Direct Taxes (CBDT) has released frequently asked questions (FAQs) to clarify queries related to the 'Direct Tax Vivad se Vishwas Bill, 2020'

SC dismissed SLP against HC's order deleting concealment penalty as assessee offered reasonable explanation :

Where High Court upheld Tribunal's order deleting penalty under section 271(1)(c) on ground that assessee had rendered reasonable explanation in support of its claim for deduction under sec. 36(1)(iii), SLP filed against order of High Court was dismissed by the Hon'ble Supreme Court in the case of Principal Commissioner of Income-tax v. National Dairy Development Board [2020] 114 taxmann.com 554 (SC).

No reassessment just because there was retrospective amendment in provisions of Act.

The Hon'ble High Court of Madras in the case of Commissioner of Income-tax, Chennai v. Saint Gobain Glass India Ltd [2020] 114 taxmann.com 507 (Madras) has held that the reopening notice issued on basis of amendment to Explanation 1 to section 115JB brought by Finance Act, 2009 with retrospective effect from 1-4-2001 which disallowed provision for bad and doubtful debt for purpose of computing book profits under section 115JB for imposition of tax, was not justified.

Receipt of rent from children won't change let-out property to self-occupied for Sec. 24(b) deduction

MUMBAI ITAT - IT Appeal No. 4058 (MUM.) of 2013 - Md. Hussain Habib Pathan v. Assistant Commissioner of Income Tax

Assessee claimed deduction of interest on borrowed capital against rental income of house property, however, Assessing Officer finding that assessee was charging rent from his own son and daughter and, thus, treating house property as a self-occupied property, restricted claim of interest under section 24(b) to a particular amount, in view of fact that both daughter and son were financially independent and, as such, instead of transfer of funds to assessee per se, regarded, by mutual agreements, same as rent, as that would, apart from meeting interest burden to that extent, also allow tax saving to assessee-father, it was to be regarded as a genuine arrangement in order to minimise assessee's tax liability and, thus, impugned order passed by Assessing Officer was to be set aside .

ITAT remanded matter to tax commission received by employee from employer as his business income

That part of amount received by the assessee from employer constituted commission which was liable to be taxed as business income, in view of fact that assessee had been issued Form No. 16 for salary received and Form No. 16A for commission paid and, moreover, applicable rate of TDS had been deducted, impugned order passed by AO bringing to tax entire income as 'salaries', was to be set aside and, matter was remanded back for disposal afresh

AO cannot make additions towards undisclosed income only on basis of presumption u/s.132(4A)

HIGH COURT OF ALLAHABAD - IT Appeal No. 357 of 2010 - Ajay Gupta v. Commissioner of Income-tax

No addition could be made on account of undisclosed income only on basis of presumptions under section 132(4A) without recording any findings as to how loose sheets found during search were linked to assessee.

Assessee was entitled to receive interest on delayed payment of interest on refund under section 244A

HIGH COURT OF HIMACHAL PRADESH - IT Appeal No. 20 OF 2019 - Principal Commissioner of Income tax v Ambuja Darla Kashlog Mangoo Transport Co-operative Society

S.244A interest on delayed refund becomes part of principal amount and, thus, delayed interest not only includes interest for not refunding principal amount but also interest on delayed refund.

If there is a valid question, where an order, notification, instruction or Circular is to be challenged as illegal or ultra vires, an appeal can be filed before High Court even if tax effect of appeal is less than monetary limit

HC directed revenue to grant refund as same wasn't released despite repeated reminders

HIGH COURT OF GUJARAT - R/SPECIAL CIVIL APPLICATION NO. 13075 OF 2019 - Jugal Kishore Mahendra Biyani v. Income Tax Officer

Where Appellate Tribunal deleted addition in income of assessee but despite repeated reminders, refund was not released, revenue was directed to release same within a period of six weeks.

Stay can't vacated after 365 days though delay in disposal of appeal wasn't attributable to assessee.

SUPREME COURT OF INDIA - Special Leave Petition (Civil) Diary Nos. 35564 of 2019 - Principal Commissioner of Income-tax v. Jindal Steel & Power Ltd.

Where revenue sought to raise a question as to whether order of Tribunal was to be treated as void-ab-initio in light of Third Proviso to section 254(2A) which provides that stay of demand stands vacated after expiry of a period of 365 days, even if delay in disposal of appeal is not attributable to assessee, however, High Court opined that such a question was not a substantial question of law, SLP filed against said order was to be granted.

HC quashed reassessment notice as it ratified by Chief Commissioner who wasn't authorised to do so

Where Assessing Officer issued reassessment notice on basis of sanction granted by Chief Commissioner, since Chief Commissioner was not specified officer u/s.151(2) to grant such sanction, impugned notice was to be quashed

Only profit element could be added as income u/s 69C if undisclosed purchases were noted

SUPREME COURT OF INDIA - SLP (CIVIL) DIARY NO(S). 8991/2019 - Principal Commissioner of Income Tax v. Subarna Rice Mill.

SLP dismissed as withdrawn due to low tax effect against High Court ruling that when undisclosed purchases are discovered in course of assessment, it is only profit embedded in said transactions which can be added to total income under section 69C.

Sec. 14A disallowance couldn't exceed exempt income earned during the year

HIGH COURT OF BOMBAY - IT Appeal No. 1034 of 2017 - Principal Commissioner of Income-tax-3 v. Reliance Ports and Terminals Ltd.

The disallowance under section 14A of the Income-tax Act, 1961, read with rule 8D of the Income-tax Rules, 1962 cannot be made more than exempt income itself.

Reopening of case just on any hypothesis or contingency which may emerge in future is unjustified.

HIGH COURT OF GUJARAT - R/Special Civil Application Nos. 21624, 21627, 21630 of 2019 - Vinodbhai Jivrajbhai Rabdiya v. Income Tax Officer, Ward-2

Reopening of assessment could be made only when Assessing Officer has a reason which is present in his mind when he forms his reason to believe that income has escaped assessment; assessment cannot be reopened under section 148 on any hypothesis or contingency that may emerge in future

No need for two separate satisfaction note if AO of searched person and other person is same: SC

SUPREME COURT OF INDIA - CIVIL APPEAL NOS. 2006-2007 OF 2020 - Super Malls (P.) Ltd. v. Principal Commissioner of Income Tax

Where Assessing Officer of assessee and Assessing Officer of searched person was same and satisfaction note recorded by Assessing Officer clearly stated that documents seized belonged to other person assessee herein and not searched person, there can be one satisfaction note prepared by the Assessing Officer it could be concluded that High Court was justified in holding that mandatory requirement of section 153C had been fulfilled and, thus, matter was rightly remanded back to Tribunal for disposal afresh on merits.

**Pratapkar Paul and Co.,
Chartered Accountants**

B – 8, Gems Court.

25/14, Khader Nawaz Khan Road, Nungambakkam,
Chennai , Tamil Nadu, India. 600006

Website: www.pkpandco.com

Email – pkpandco@gmail.com

LinkedIn: Pkp&co

Facebook: Pkp&co

Telephone: 044 2833 1646 / 1647