

# TAX FLASH NEWS

21 September 2020



## Lok Sabha passes the Bill encompassing reliefs and extension of various timelines due to COVID-19, faceless proceedings and certain amendments relating to the Finance Act 2020

In view of the spread of COVID-19 pandemic across many countries of the world including India, it had become imperative to relax certain provisions, including extension of time limits, in the taxation and other laws. Consequently, on 24 March 2020, the Finance Minister in a press conference announced several relief measures.

On 31 March 2020, the President had promulgated the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020, to provide relaxation of certain provisions, extension of certain compliance due dates, waiver of penalty, etc. Subsequently, various relaxations were also provided by way of notifications and press releases<sup>1</sup>.

On 18 September 2020, the Finance Minister, introduced the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Bill, 2020 (the Bill) in the Lok Sabha and on the next day, the Lok Sabha has also passed the Bill. Several provisions of the Ordinance and subsequent Central Board of Direct Taxes (CBDT) notifications/press releases issued in connection thereto are now proposed to be incorporated in the Bill. Further it also proposes certain amendments with respect to provisions introduced/amended by the Finance Act, 2020. Key amendments are summarised as follows:

### Reliefs and extension in relation to timelines for various compliances

On 31 March 2020, the President had promulgated the Ordinance, to provide relaxation in certain provisions and extension of various due dates. On 24 June 2020, the Central Board of Direct Taxes (CBDT) had issued a Notification<sup>2</sup> and a Press Release to further extend

various due dates. Originally, an extension was provided for some of the due dates falling between 20 March 2020 and 29 June 2020. This was extended to 31 December 2020. Similarly, the time limit for completion or compliance of various actions falling under 20 March to 31 December 2020 was extended to 31 March 2021 subject to certain exceptions.

The Bill proposes to ratify such extensions and reliefs provided through the Ordinance and Notifications. The Bill does not provide any further relief or extension to taxpayers in relation to timelines for various compliances.

### Extension of exemption to AIF III in IFSC and its unit holders

The existing provisions of the Income-tax Act, 1961 (the Act) provides tax exemption to AIF III operating in IFSC, which fulfills certain conditions, with respect to gains arising on transfer of prescribed capital assets listed on a Recognized Stock Exchange (RSE) established in the International Financial Services Centre (IFSC) (specified fund).

The Bill proposes to extend the exemption to the following income earned by such specified fund:

- Income on transfer of securities (other than equity shares of an Indian company) such as derivatives listed on NSE / BSE.
- Income from offshore securities.
- Any income from a securitisation trust which is chargeable under the head 'profits and gains of business or profession'.

The above exemption shall be available only to the extent units of the AIF III are held by non-residents (not being a permanent establishment of a non-resident in India) and computed in the prescribed manner. The manner of computation shall be prescribed by CBDT in due course.

<sup>1</sup> CBDT Notification No. 35/2020, dated 24 June 2020, CBDT Press Release dated 13 May 2020, CBDT Notification No. 56/2020, dated 29 July 2020, etc.

<sup>2</sup> CBDT Notification No. 35/2020, dated 24 June 2020

The income earned by the unit holders of the AIF III set-up in IFSC, whether from such AIF III or from transfer of units of such AIF III, is proposed to be exempt.

These amendments will apply from financial year 2020-21 onwards.

### **Taxability of income earned by specified fund and withholding thereon**

The Bill proposes to provide for concessional rates of tax for certain taxable incomes earned by the specified fund. The income in respect of securities held by the specified fund is proposed to be taxable at the rate of 10 per cent.

The above provision shall apply only to the extent of income that is attributable to units held by non-resident (not being a permanent establishment of a non-resident in India) calculated in the prescribed manner.

While computing the total income of a specified fund, deductions<sup>3</sup> shall not be allowed while computing the income in respect of securities. Further, deduction under Chapter VI-A (Chapter VI-A under the heading 'C- Deductions in respect of certain incomes') shall not be allowed while computing the total income of the specified fund.

The provisions of Alternate Minimum Tax shall not apply in computing the income of the specified fund.

The above amendments will apply from financial year 2020-21 onwards.

Consequential amendments are proposed in withholding tax provisions to provide that income in respect of securities payable to an AIF III shall be subject to a withholding tax at the rate of 10 per cent. This amendment providing for withholding tax at the rate of 10 per cent shall be subject to the provisions of Section 194LD that prescribes tax withholding at the rate of 5 per cent in respect of interest on rupee denominated bonds of an Indian company that fulfils certain conditions. These amendments will apply from 1 November 2020 onwards.

### **Sovereign wealth fund and pension fund**

- The Finance Act, 2020 introduced Section 10(23FE) which provides exemption to a specified person on any income in the nature of dividend, interest or long-term capital gains arising from an investment made by it in India, whether in the form of debt or share capital or unit, subject to specified conditions. The 'specified person' has been defined to mean a wholly owned subsidiary of the Abu Dhabi Investment Authority, a sovereign wealth

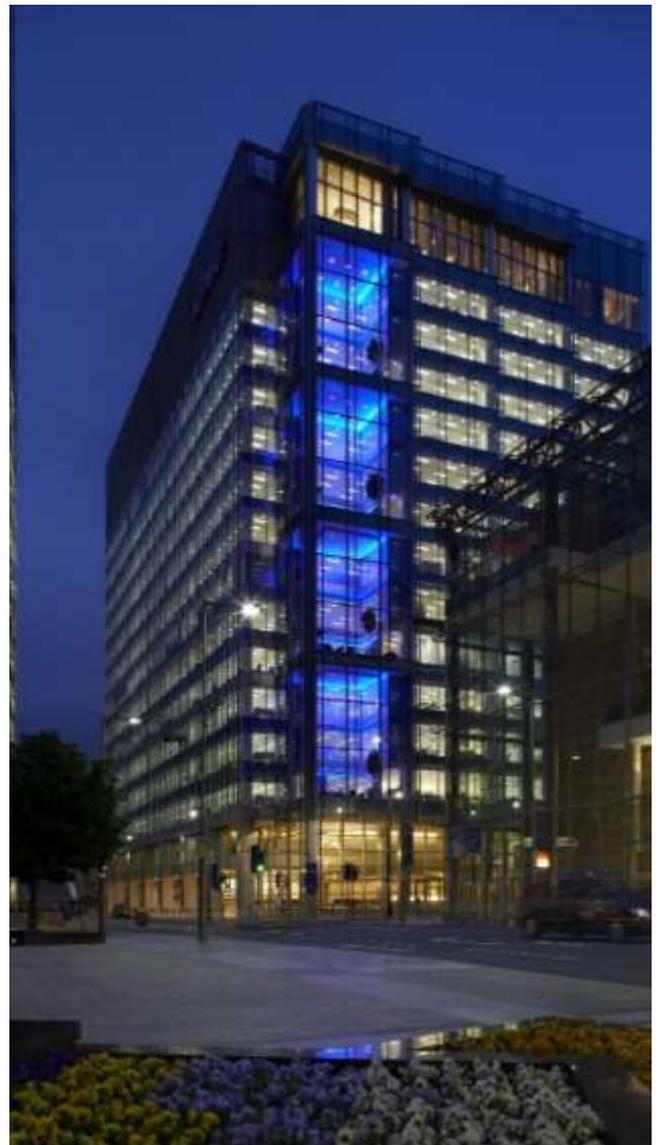
fund and a pension fund, who will fulfill the prescribed conditions. Further, the aforesaid exemption is applicable to a wholly owned subsidiary of the Abu Dhabi Investment Authority if it is resident of United Arab Emirates.

The Bill proposes that instead of United Arab Emirates, the wholly owned subsidiary should be resident of Abu Dhabi.

- The exemption is applicable to 'sovereign wealth fund' and 'pension fund' which fulfils the specified conditions. One of the conditions is that 'sovereign wealth fund' and 'pension fund' is notified by the central government in Official Gazette.

The Bill proposes that in addition to the fulfilment of present conditions, 'sovereign wealth fund' and 'pension fund' shall also fulfil conditions specified by the central government in the Official Gazette.

- The above amendments will apply from financial year 2020-21 onwards.



<sup>3</sup> Either under the head 'Profits and Gains from Business or Profession' or 'Income from Other Source'

## Relief to non-corporate FPIs on surcharge applicable to Dividend Income

In a major relief to the non-corporate FPIs, the Bill proposes to cap the surcharge rate at 15 per cent on the dividend income received. Resultantly, the highest effective tax rate for non-corporate FPIs will now be restricted at 23.92 per cent as compared to 28.496 per cent.

<b>Tax Rates on Dividends/Income in respect of shares &amp; units of Mutual Fund (Non-corporate FPIs)</b>					
Particulars	If net taxable income does not exceed INR 5 million	If net taxable income exceed INR 5 million but does not exceed INR 10 million	If net taxable income exceed INR 10 million but does not exceed INR 20 million	If net taxable income exceed INR 20 million but does not exceed INR 50 million	If net taxable income exceed INR 50 million
<b>Proposed Rates</b>	<b>20.80</b>	<b>22.88</b>	<b>23.92</b>	<b>23.92</b>	<b>23.92</b>
Existing Rates	20.80	22.88	23.92	26.00	28.496
<ol style="list-style-type: none"> <li><i>The above rates are inclusive of surcharge and cess, wherever applicable. These rates are subject to applicable tax treaty entered into by the Central Government under Section 90.</i></li> <li><i>Withholding tax provisions on dividend income shall be applicable as per proposed rates mentioned above.</i></li> <li><i>The dividend tax rates on corporate FPIs remains the same and there is no change.</i></li> <li><i>The proposed tax rates on dividend income, if the Bill is enacted in present form, will be applicable retrospectively from 1 April 2020.</i></li> </ol>					

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## Amendments to residency rules for individuals<sup>4</sup>

### Indian citizen or Person of Indian Origin

- One of the conditions to trigger residency in India was that an individual should be present in India for 60 days (or more) in the relevant financial year and 365 days (or more) in the past four years. The 60 days threshold was extended to 182 days in case of an individual being a citizen of India or Person of Indian Origin (PIO) who, being outside India, comes on a visit to India.
- The Finance Act, 2020 reduced this period of stay in India from 182 days to 120 days for triggering residency for an Indian citizen or a PIO having a total income, other than income from foreign sources, exceeding INR 1.5m during the relevant tax year and also provided that such individual shall be treated as 'not ordinarily resident'.
- However, it was not clear whether such an individual need to be based outside India and comes on a visit to India to trigger this rule. The Bill proposes to clarify that the new rule will apply to an Indian citizen or PIO who, being outside India, comes on a visit to India.

### Deemed residency

- The Finance Act 2020 introduced the deemed residency provision providing that an individual, being a India citizen having total income, other than the income from foreign sources, exceeding INR 1.5 million during the previous year would be deemed to be a resident in India if such an individual is not liable to tax in any other country or territory on account of his residency or domicile (or any other prescribed criteria) in that country. However, it was not clear whether an individual who otherwise qualifies as a resident (ordinary resident) under the normal rule can claim himself to be not ordinarily resident under the deemed residency rule.
- The Bill proposes that the above deemed residency condition shall not apply in case of an individual who is said to be resident in India under the normal provisions.

### Income from foreign sources

- Relating to residency provisions, the Finance Act, 2020 inserted the definition of 'income from foreign sources' to mean income which accrues or arises outside India (except income derived from a business controlled in or a profession set up in India). It was not clear whether or not incomes which actually accrue or arise outside India but are deemed to accrue or arise in India (for instance, interest, royalty, fees for technical services etc., received from residents) will be treated as 'income

from foreign sources'. The Bill proposes to clarify this by specifically providing that 'income from foreign sources' shall not include incomes which are deemed to accrue or arise in India.

## Faceless proceedings

On 13 August 2020, the PM launched 'Transparent Taxation' platform encompassing faceless assessments, faceless appeals, etc. On the same day, CBDT issued a Notification<sup>5</sup> to amend the E-Assessment Scheme and to implement the Faceless Assessment Scheme under Section 143(3A). Further in exercise of the powers conferred by Section 143(3B) to give effect to the Scheme, CBDT also amended<sup>6</sup> the relevant directions.

The Bill proposes that Faceless Assessment Scheme is to be incorporated under the Act with effect from 1 April 2021 i.e. assessment orders passed on or after 1 April 2021. However, assessment orders which are passed on or before 31 March 2021 will be governed by the Faceless Assessment Scheme provided under the existing Notifications.

- Mechanism to approach Dispute Resolution Panel (DRP) at the stage of draft assessment order passed under the proposed provisions in faceless manner has been provided.
- Any assessment order passed on or after 1 April 2021 otherwise than in faceless manner will be treated as invalid (except in case where proceedings are transferred to jurisdictional Tax Authority pursuant to powers in the proposed provisions).
- Further, with effect from 1 November 2020, it is proposed to grant powers to the central government for formulating faceless schemes in relation to:
  - Proceedings before Transfer Pricing Officer for determination of arm's length price in relation to international and/or domestic transactions with associated enterprises
  - Assessment proceedings for the purpose of issuance of directions by the Dispute Resolution Panel (DRP)
  - For the purpose of reassessment and related proceedings
  - For the purpose of rectification of any mistake apparent from record, issuance of demand notice, intimation of loss eligible to be carried forward by taxpayer, etc.
  - Appeal proceedings before Income Tax Appellate Tribunal
  - Revision proceedings

<sup>4</sup> These provisions are proposed to be effective from financial year 2020-21.

<sup>5</sup> Notification No. 60/2020, dated 13 August 2020

<sup>6</sup> Notification No. 61/2020, dated 13 August 2020

- Income tax proceedings for:
  - ❖ Exercise of all or any of the powers and performance of all or any of the functions conferred on, or, as the case may be, assigned to income-tax authorities
  - ❖ Vesting the jurisdiction with the Assessing Officer
  - ❖ Exercise of power to transfer cases
  - ❖ Exercise of jurisdiction in case of change of incumbency
- Income tax proceedings for
  - ❖ Calling for any information from any taxpayer
  - ❖ Collection of certain information from the place/building belonging to taxpayer
  - ❖ Calling for information by prescribed income-tax authority
  - ❖ Inspection of register for companies, etc.
- Income tax proceedings for
  - ❖ Issuing notice or making inquiry before assessment
  - ❖ Directing the taxpayer to get his accounts audited
  - ❖ Estimating the value of any asset, property or investment by a valuation officer
- Proceedings in relation to passing of order giving effect to orders of various authorities and Courts<sup>7</sup>
- Proceedings for the purposes of issuance of certificate for deduction of income-tax at any lower rates or no deduction of income-tax under Section 197. Proceedings for the issuance of certificate for lower collection of tax and proceedings for default in deduction/collection of tax at source
- Proceedings in relation to payment of advance tax; for reduction or waiver of interest on any demand payable, for extension of time limit for payment of any demand, all proceedings in relation to taxpayer being 'assessee-in-default' for collection of demand including levy of interest and penalty, proceedings before Tax Recovery Officer, issuance of tax clearance certificate, etc.
- Proceedings in relation to initiation of prosecution as well as compounding of any offence under the Act
- For the purposes of granting approval or registration, as the case may be, by income-tax authority under any provision of the Act

- It is proposed that the central government shall introduce a scheme for above proceedings by way of a notification in the Official Gazette.
- Further, in order to give effect to and smooth functioning of any scheme so introduced for aforesaid proceedings, it is proposed that the central government will have power to issue a notification directing that certain provisions of the Act shall not apply or shall apply with such exceptions, modifications and adaptation as may be specified. However, any such directions are to be issued on or before 31 March 2022.

### **Powers for conducting survey**

CBDT<sup>8</sup> had directed that the officers posted in Directorates of Investigation (Investigation Wing) and Commissionerates of TDS, only and exclusively shall act as 'Income Tax Authority' for the purposes of power of survey under Section 133A. The competent authority for approval of such survey action under Section 133A shall henceforth be DGIT (Inv) for investigation wing and Pr.CCIT/CCIT (TDS) for TDS charges, as the case may be. The order shall come into force with effect from 13 August 2020.

The Bill proposes to make appropriate amendments in the Act to give effect to the above amendments.

### **Lower tax deduction/collection in certain cases for limited period**

CBDT vide its press release<sup>9</sup>, in order to provide more funds at the disposal of the taxpayers for dealing with COVID-19 pandemic, reduced TDS rates by 25 per cent for the non-salaried specified payments made to residents during the period from 14 May 2020 to 31 March 2021.

The Bill proposes to include the aforesaid amendments in the Act with retrospective effect from 14 May 2020.

### **New registration procedure for charitable entities and research institutions**

The Finance Act, 2020 introduced new registration procedure with effect from 1 June 2020 for charitable entities and research institutions registered under various provisions of the Act. Under the new procedure tax exemptions registrations and donor tax benefit exemption registrations for all charitable entities restricted to five years requiring renewal on expiry of such registrations.

In May 2020, the CBDT<sup>10</sup> clarified that due to COVID-19 impact, the new registration procedure will be deferred to 1 October 2020. Further, on 24 June 2020, the CBDT<sup>11</sup> clarified that the old procedure will continue till 30 September 2020.

<sup>8</sup> CBDT Order, dated 13 August 2020

<sup>9</sup> CBDT Press Release, dated 13 May 2020

<sup>10</sup> CBDT Press Release dated 8 May 2020

<sup>11</sup> CBDT Press Release dated 24 June 2020

<sup>7</sup> Supreme Court, High Court, Income-tax Appellate Tribunal, Commissioner of Income-tax (Appeals), etc.

The Bill proposes that the new registration procedure for charitable entities and research institutions registered under various provisions shall be effective from 1 April 2021 (instead of 1 October 2020). The old regime of registration will continue till 31 March 2021. The Bill also proposes consequential amendments with respect to the above registration procedure in other provisions.

### **Penalty for non-furnishing statements of donors/issuing certificates to donor by specified charitable entities and research institutions**

The Finance Act 2020 introduced new penalty provision whereby charitable or research association, university or college, etc., to furnish statement of donors and issue certificates of donation to donors for the purposes of claiming deduction. Where the taxpayer failed to file such statement, the penalty ranging from INR10,000 to INR1,00,000 for non-submission or delay in compliance will be applicable. These provisions were effective from 1 June 2020.

The Bill proposes that the above penalty provision will be effective from 1 April 2021 as the applicability of compliance provisions were deferred to 1 April 2021.

### **Specified authority to approve eligible projects and schemes under Section 35AC**

Under the Act, where the taxpayer incurs any expenditure by way of payment of any sum to a public sector company or a local authority or to an association or institution approved by the National Committee for carrying out certain eligible social development projects and schemes, the taxpayer shall be allowed a deduction of the amount of such expenditure. This deduction was withdrawn from FY 2017-18.

In case the National Committee withdraws its approval upon violation of conditions subject to which approval was granted, deduction claimed in an earlier year is deemed as income of such company or specified payee in the tax year in which such approval is withdrawn and tax is chargeable thereon at the maximum marginal rate.

The Bill proposes to substitute the 'Committee' and 'National Committee'<sup>12</sup> with 'the Principal Chief Commissioner of Income Tax (Exemption) or the Chief Commissioner of Income Tax (Exemption)'. The amendment shall be effective from 1 November 2020.

### **Direct Tax Vivad se Vishwas Scheme**

The Ordinance had extended the time limit for making payment to avail the Vivaad Se Vishwas Scheme without any additional amount from 31 March to 30 June 2020. The Finance Minister<sup>13</sup> further extended the timeline from 30 June 2020 to 31 December 2020<sup>14</sup>.

The Bill proposes to extend last date for making payment (without any additional amount) till 31 December 2020 and to empower the central government to notify certain dates relating to filing of declaration and making of payment. Further, the Bill proposes that any payment made on or after 1 January 2021 but before the last date for availing benefit of the Scheme shall attract an additional amount of 10 per cent.

The Bill also proposes to extend due date for any compliance falling between 20 March 2020 to 30 December 2020 till 31 December 2020.

### **Government's power to remove difficulties**

The Bill proposes to empower the government to remove difficulty, if any, arising in giving effect to the provisions or inconsistent with the provisions of the Act, within two years from the end of the month in which this Bill receives assent of the President of India.

### **Our comments**

The Bill proposes to provide various reliefs in terms of compliance requirements for taxpayers amid the COVID-19 pandemic. The bill seeks to make faceless assessment scheme applicable to various proceedings under the Act, including for collection and recovery of tax and gathering of information. Faceless proceedings scheme amongst others will now cover transfer pricing proceedings, DRP proceedings, appeal to the Tribunal, etc. However, it is not clear how the faceless proceedings will practically work in cases of rectification order, set-aside orders, etc.

The Bill proposes to provide various reliefs to FPI like capping of surcharge on dividend incomes to 15 per cent for non-corporate FPIs, FPI taxation regime extended to AIF-Category III located in IFSC, etc.

The Bill also confirms extended due date of 31 December 2020 for opting the Vivad se Vishwas Scheme without any additional payment. Further, the Bill proposes that any payment made on or after 1 January 2021 but before the last date for availing benefit of the Scheme shall attract an additional amount of 10 per cent. It also proposes to extend due date for any compliance falling between 20 March 2020 to 30 December 2020 till 31 December 2020.

The Bill proposes clarificatory amendments with respect to certain shortcomings of residency provisions. It also deferred new registration process applicable to charitable entities and research institutions from 1 October 2020 to 1 April 2021.

The changes proposed in the Bill are a welcome move by the central government. The amendments will enable the taxpayers to adhere to the compliance requirement in this critical situation of Covid-19 pandemic.

<sup>12</sup> Which has powers to withdraw approval in case of non-compliance

<sup>13</sup> 13 May 2020

<sup>14</sup> The same was also provided in the CBDT Notification No. 35/2020, dated 24 June 2020

## KPMG in India addresses:

### Ahmedabad

Commerce House V, 9th Floor,  
902, Near Vodafone House, Corporate  
Road,  
Prahlad Nagar,  
Ahmedabad – 380 051.  
Tel: +91 79 4040 2200

### Bengaluru

Embassy Golf Links Business Park,  
Pebble Beach, 'B' Block,  
1st & 2nd Floor,  
Off Intermediate Ring Road, Bengaluru –  
560071  
Tel: +91 80 6833 5000

### Chandigarh

SCO 22-23 (1st Floor),  
Sector 8C, Madhya Marg,  
Chandigarh – 160 009.  
Tel: +91 172 664 4000

### Chennai

KRM Towers, Ground Floor,  
1, 2 & 3 Floor, Harrington Road,  
Chetpet, Chennai – 600 031.  
Tel: +91 44 3914 5000

### Gurugram

Building No.10, 8th Floor,  
DLF Cyber City, Phase II,  
Gurugram, Haryana – 122 002.  
Tel: +91 124 307 4000

### Hyderabad

Salarpuria Knowledge City,  
6th Floor, Unit 3, Phase III,  
Sy No. 83/1, Plot No 2, Serilingampally  
Mandal,  
Ranga Reddy District,  
Hyderabad – 500 081.  
Tel: +91 40 6111 6000

### Jaipur

Regus Radiant Centre Pvt Ltd.,  
Level 6, Jaipur Centre Mall,  
B2 By pass Tonk Road,  
Jaipur – 302 018.  
Tel: +91 141 - 7103224

### Kochi

Syama Business Centre,  
3rd Floor, NH By Pass Road,  
Vytila, Kochi – 682 019.  
Tel: +91 484 302 5600

### Kolkata

Unit No. 604,  
6th Floor, Tower – 1,  
Godrej Waterside,  
Sector – V, Salt Lake,  
Kolkata – 700 091.  
Tel: +91 33 4403 4000

### Mumbai

1st Floor, Lodha Excelus,  
Apollo Mills,  
N. M. Joshi Marg,  
Mahalaxmi,  
Mumbai – 400 011.  
Tel: +91 22 3989 6000

### Noida

Unit No. 501, 5th Floor,  
Advant Navis Business Park,  
Tower-A, Plot# 7, Sector 142,  
Expressway Noida,  
Gautam Budh Nagar,  
Noida – 201 305.  
Tel: +91 0120 386 8000

### Pune

9th floor, Business Plaza,  
Westin Hotel Campus, 36/3-B,  
Koregaon Park Annex,  
Mundhwa Road, Ghorpadi,  
Pune – 411 001.  
Tel: +91 20 6747 7000

### Vadodara

Ocean Building, 303, 3rd Floor,  
Beside Center Square Mall,  
Opp. Vadodara Central Mall,  
Dr. Vikram Sarabhai Marg,  
Vadodara – 390 023.  
Tel: +91 265 619 4200

### Vijayawada

Door No. 54-15-18E,  
Sai Odyssey,  
Gurunanak Nagar Road, NH 5,  
Opp. Executive Club, Vijayawada,  
Krishna District,  
Andhra Pradesh – 520 008.  
Tel: +91 0866 669 1000

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KPMG Assurance and Consulting Services LLP, Lodha Excelus, Apollo Mills Compound, NM Joshi Marg, Mahalaxmi, Mumbai - 400 011 Phone: +91 22 3989 6000, Fax: +91 22 3983 6000

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