

FAQs on e-Form DPT-3

Updated upto June 28, 2019

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Introduction

The Ministry of Corporate Affairs (“MCA”) had come up with the Notification dated January 22, 2019 prescribing amendment in the Companies (Acceptance of Deposits) Rules, 2014, with respect to filing of return of deposit in e-Form DPT-3, effective from the same date which were further amended vide another Notification dated April 30, 2019. The details of both the notifications have been provided herein below:

Notification	Content of the Notification
The Companies (Acceptance of Deposits) Amendment Rules, 2019 vide MCA notification dated January 22, 2019¹	<ol style="list-style-type: none">1. Insertion of an explanation under Rule 16 to provide for filing requirement of DPT 3 for amounts not considered as deposits. Post insertion of the same the Rule reads as follows: <i>“Every company to which these rules apply, shall on or before the 30th day of June, of every year, file with the Registrar, a return in Form DPT-3 along with the fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and furnish the information contained therein as on the 31st day of March of that year duly audited by the auditor of the company.</i> <i>Explanation.- It is hereby clarified that Form DPT-3 shall be used for filing return of deposit or particulars of transaction not considered as deposit or both by every company other than Government company.”</i>2. Insertion of new sub- rule (3) under Rule 16A to provide for the requirement of filing a onetime return for the amounts not considered as deposits. Post insertion of the same, Rule 16A reads as follows: <i>“(1) Every company, other than a private company, shall disclose in its financial statement, by way of notes, about the money received from the director. (2) Every private company shall disclose in its financial statement, by way of notes, about the money received from the directors, or relatives of directors.</i> <i>(3) Every company other than Government company shall file a one-time return of outstanding receipt of money or loan by a company but not considered as</i>

¹ <http://egazette.nic.in/WriteReadData/2019/195975.pdf>

	<p><i>deposits, in terms of clause (c) of sub-rule 1 of rule 2 from the date of April 01, 2014 to the date of publication of this notification in the Official Gazette as specified in Form DPT-3 within ninety days from the date of said publication of this notification along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.”</i></p>
<p>The Companies (Acceptance of Deposits) Second Amendment Rules, 2019 vide MCA notification dated April 30, 2019²</p>	<p>1. Amended sub- rule (3) to make the reporting period as 31st March, 2019 post which the Rule reads as follows:</p> <p><i>“(3) Every company other than Government company shall file a one-time return of outstanding receipt of money or loan by a company but not considered as deposits, in terms of clause (c) of sub-rule 1 of rule 2 from the date of April 01, 2014 to the date of publication of this notification in the Official Gazette 31st March, 2019 as specified in Form DPT-3 within ninety days from the date of said publication of this notification ninety days from 31st March, 2019 along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.”</i></p>

While the amendment was brought out on January 22, 2019, however the revised e-Form DPT-3 was floated only on May 19, 2019 and as mentioned above, the last date of filing the one time return was revised to June 29, 2019

With the Notification and the e-Form into place, there are several practical queries which needs to be answered so as to keep both the letter of law and intent of the filing of the return of deposit intact.

Keeping in mind the need of the hour, we have listed down the probable questions that one can have with respect to reporting of the details in e-Form DPT-3 with potential answers to such questions.

² <http://egazette.nic.in/WriteReadData/2019/203312.pdf>

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Applicability

1. What is “Deposit”?

As per section 2(31) of the Companies Act, 2013 (“Act”) read with rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014 (“Deposit Rules”) deposit includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include the receipt of money as provided under the exclusion list in the rule 2(1)(c) of the Deposit Rules.

2. What is “Exempted Deposit”?

The amounts received by a company but excluded from being deposits as per the list provided in Rule 2(1)(c) are exempted deposits.

3. What is the net requirement of the amendment?

As per Rule 16A(3) of the Deposit Rules, one-time return is required to be filed for any receipt of the Exempted Deposits by the company for the specific period **from April 01, 2014 to March 31, 2019 and outstanding on March 31, 2019.**

As per Rule 16 of the Deposit Rules, annual return of deposit is required to be filed for (a) deposit and (b) the outstanding receipt of Exempted Deposits by the company, **which were taken at any point of time and outstanding as on 31st March of every financial year.**

4. Which class of companies are required to comply with the amendment?

Seemingly, the amendment will hit almost all companies irrespective of the status thereof i.e. public or private, as it is almost impossible to not having any receipt of money which will not fall under the list of Rule 2(1)(c).

However, the Notification has explicitly excluded Government companies from the reporting requirements. Also, as per Rule 1(3) of the Deposit Rules, the following class of companies are not required to file any return on deposits (the Rules are completely not applicable to these companies):

- a. Banking companies
- b. Registered NBFCs including insurance companies [see Q No. 5]
- c. Registered HFCs
- d. Such other companies as may be specified by the Central Government

5. Whether insurance companies are required to file the returns in e-Form DPT-3?

The first proviso to section 73 (1) of the Act, states:

*“Provided that **nothing in this sub-section shall apply to a banking company and non-banking financial company as defined in the Reserve Bank of India Act, 1934 and to such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.**”*

On reading the definition of NBFC under the RBI Act, 1934, the following is given under section 45IA – “(f) ‘non-banking financial company’ means– (i) a financial institution; XX”

Further, the term “*financial institution*” is defined to mean “any non-banking institution which carries on as its business or part of its business any of the following activities, namely:–
XX

(iv) the carrying on of any class of insurance business; XX”.

VKC View:

Accordingly, even though the Deposit Rules, extend the non-applicability to NBFCs registered with RBI, the same has to be read in limitation to the scope of the principal section and be interpreted in a manner that it does not travel beyond the scope of the section.

Hence, an insurance companies are not governed by the deposit provisions under the Act, and its allied rules.

View in ICSI Webinar:

However, MCA officials in the webinar of ICSI dated June 17, 2019 stated that since the insurance companies are not required to be registered with the RBI but with Insurance Regulatory and Development Authority of India (IRDAI), the deposit provisions will be applicable to it. Accordingly, the insurance companies are required to report the particulars of Exempted Deposits, if any, by filing one-time and annual return in e-Form DPT-3.

6. What is one-time return and which companies are required to file one-time return?

As per the MCA Notifications dated January 22, 2019 and April 30, 2019, the applicable companies are required to file a return of Exempted Deposits during the period from April 01, 2014 to March 31, 2019, in e-Form DPT-3 within 90 days from March 31, 2019 i.e. June 29, 2019.

7. Whether there is any requirement of filing yearly/annual return for Exempted Deposits?

Yes. As per the newly inserted explanation under Rule 16, e-Form DPT-3 shall also be used as an annual return for filing details of Exempted Deposits.

8. What are the due dates of filing one-time return and annual return?

As per rule 16 of the Deposit Rules, yearly return is required to be filed on or before 30th June every year.

Whereas, as per rule 16A(3) of the Deposit Rules, one-time return is required to be filed within 90 days from March 31, 2019 i.e June 29, 2019.

9. What is the difference between one-time return and annual return?

As per Rule 16A(3) of the Deposit Rules, the one-time return is required to be filed for any receipt of the Exempted Deposits by the company for the specific period **from April 01, 2014 to March 31, 2019 and outstanding on March 31, 2019.**

Whereas, as per Rule 16 of the Deposit Rules, the annual return is required to be filed inter alia, for the outstanding receipt of Exempted Deposits by the company, **which were taken at any point of time and outstanding as on 31st March.**

Further, one-time return requires display of only the aggregate quantum of the Exempted Deposits and not the detailed break-up of the transactions. On the other hand, the annual return requires the detailed break-up of the Exempted Deposits against each of the categories mentioned in the e-Form as on March 31, 2019.

10. Whether nil return is required to be filed in case of one-time and annual return?

In our view, no nil reporting is required.

11. What are the different purposes for which e- Form DPT 3 is required to be filed?

E-Form DPT-3 is to be filed for:

- one-time return for disclosure of Exempted Deposits;
- annual return of Deposits;
- annual return of Exempted Deposits; and
- annual return of Deposits + Exempted Deposits.

12. Can both one- time return and the annual return be filed in one Form or two different Forms to be filed for the two purposes?

Separate e-Forms is to be used for separate purposes. E-form DPT-3 contains radio button for each purpose and allows to choose only one purpose at a time by choosing respective radio button.

13. Whether e-Form DPT-3 mandates the certification by a practicing professional?

The details required in e-Form DPT-3 are to be digitally signed by the director/manager/CEO/ CFO/CS of the company.

No certification by the practicing professional is required for filing the e-Form.

14. What is the statutory fees for filing the one-time and annual return with RoC?

The filing fees for aforesaid returns will be as per the Companies (Registration offices and Fees) Rules, 2014, the details of which have been provided hereunder:

i. Fee applicable in case of company have share capital

Nominal Share Capital	Fee applicable
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Less than 1,00,000	Rupees 200 per document
1,00,000 to 4,99,999	Rupees 300 per document
5,00,000 to 24,99,999	Rupees 400 per document
25,00,000 to 99,99,999	Rupees 500 per document
1,00,00,000 or more	Rupees 600 per document

ii. Fee applicable in case of company have share capital

Fee applicable
Rupees 200 per document

iii. Additional fee

Period of delays	All forms
Up to 30 days	2 times of normal fees
More than 30 days and up to 60 days	4 times of normal fees
More than 60 days and up to 90 days	6 times of normal fees
More than 90 days and up to 180 days	10 times of normal fees
More than 180 days	12 times of normal fees

However, it is pertinent to note that in case of filing of the aforesaid returns beyond the time prescribed in Rule 16/16A of the Deposit Rules, the provisions of section 403 and 460 of the Companies Act, 2013 w.r.t additional filing fees and other legal actions and condonation of delay shall also come into play.

15. Whether auditors' certificate is required to be attached for filing of each return in the e-Form DPT-3?

As per the help kit of the e-Form, auditor's certificate is mandatory only if the Form is filed either as "return of Deposits" or as "return of Deposits as well as Exempted Deposits".

Therefore, if the e-Form is filed as the "return of Exempted Deposits" (whether as one-time return or annual return), auditors' certificate is not required to be attached.

16. What should be the date of last closing of accounts in the annual return to be filed?

Field No. 7 of the e-Form requires the following information: "*date of last closing of accounts*"

The last date of closing of accounts will be March 31, 2019 for FY 18-19 and March 31, 2020 for FY 19-20 and so on.

17. Whether closure of accounts is based on finalisation of accounts or adoption by the shareholders?

The closure of accounts is neither linked to completion of audit nor finalisation/ approval of accounts by the Board nor adoption of the same by the shareholders.

18. What is the meaning of "date of return" mentioned in Field No. 8 of the e-Form DPT 3?

The most logical interpretation of “date of return” as mentioned in point no. 8 of e-Form DPT-3, in our view, is the period for which return is being filed which should ideally for this year should be March 31, 2019.

19. What should be the base year for the purpose of giving details of net worth?

With respect to ascertaining the financial year for the purpose of the net worth of the company, the Form refers to - "latest audited balance sheet preceding the date of the return". Since the date of return would be the last of the financial year i.e. March 31, accordingly, details as per the latest audited balance sheet preceding the date of return will be considered March 31, of the preceding year. Therefore for the return for FY 18-19, the net worth as appeared in the balance sheet of March 31, 2018 shall be considered.

20. Whether specific intangible assets will be considered under the head “other intangible assets” while computing net worth in e-Form DPT-3 or all intangible assets will be taken into consideration?

The particulars required in point 8 of the e-Form DPT-3 is not as per the definition of net worth as provided in section 2(57) of the Act. In our view, for "Other intangible assets", all intangible assets needs to be considered. The determination of intangible assets needs to be done in accordance with the applicable AS/IND-AS.

21. Whether interest accrued and due/not due on borrowings is also to be reported in Form DPT 3?

In our view, amount outstanding in relation to receipt of money is required to be reported. In case of loans and debentures, the amount reflected in balance sheet on liability side comprises of both principal as well as interest accrued and due. Accordingly, the same needs to be reported.

Interest accrued but not due is not an outstanding liability as it is not even due, therefore, the same need not be reported.

22. Loan taken from NBFCs are to be shown in which point no. of the e-Form DPT-3?

Since, the loan has been received from NBFC, which happens to be a company itself, such transaction will require to be reported in point no. 15 (f) of e-Form DPT-3.

23. ABC Limited, holding company has made a payment of Rs. 10 lakhs, on behalf of XYZ Limited, its subsidiary company on December 31, 2018 and such amount shall be repayable by the subsidiary to its holding company as reimbursement. Whether such amount will be treated as Exempted Deposit?

Here, it is pertinent to note that the subsidiary is not in any “receipt of money” *per se*. Infact, the subsidiary company has to reimburse the amount spend by the holding on its behalf. Therefore such amount will not tantamount to be “Exempted Deposit” and accordingly, the same is not required to be reported in one-time and annual return.

24. Following are the queries w.r.t amount received from members:

- a. Whether any amount received by a private limited company from its member on 31.12.2017, will be treated as Exempted Deposit?**

No, as per section 73(2) of the Act, such amount will fall under the ambit of “Deposit” and accordingly, the “return of deposit” will required to be filed in e-Form DPT-3.

The only leeway provided to a private company is with respect to the list of compliance to be adhered for accepting deposits. Please refer MCA notifications dated June 5, 2015³ and June 13, 2017⁴

- b. Will the answer be different in the aforesaid situation, if the company is a public company?**

No, the answer will remain the same. As per section 73(2) of the Act, any amount received by a company from its members will be treated as “Deposit”, irrespective of the fact whether the company is a private or public limited.

25. The following is the categorization of the deposits, for different scenarios;

Sr. No.	Particulars of the person from whom the amount has been received	Category of applicable deposit
1.	Director of the private limited company	Exempted Deposit
2.	Son in law of director of private limited company	Exempted Deposit
3.	Member of private limited company	Deposit (Only compliances are relaxed)
4.	Director of the public limited company	Exempted Deposit
5.	Father of director of public limited company	Deposit
6.	Member of public limited company	Deposit
7.	Amount received (equal to 7 months salary) from HR head of the public limited company	Exempted Deposit

- 26. ABC Limited is having inter corporate deposits in some of its group companies, which are re-payable on demand. The interest liability on said ICDs are booked by the said companies at the financial year end and TDS is deposited accordingly. There is no due date for the payment of principal amount and interest. Same is paid on the basis of fund availability with the company.**

In the above case, whether the said interest liability shall be included for the purpose of disclosure as Exempted deposits.

In this case, since the company had booked the interest component and also deposited the TDS thereon, the same cannot be considered as 'interest accrued but not due'.

³ [http://www.mca.gov.in/Ministry/pdf/Exemptions to private companies 05062015.pdf](http://www.mca.gov.in/Ministry/pdf/Exemptions%20to%20private%20companies%2005062015.pdf)

⁴ <http://www.mca.gov.in/ministry/pdf/exemptionprivatecompanies.pdf>

Further, interest component forms part of the accounts only if the contingency of availability of fund for payment of interest is known to the company on the date of closure of the accounts. Therefore, the interest component will be disclosed in DPT 3.

27. Whether cash credit / overdraft / working capital is required to be shown in the DPT – 3 for the Annual and one-time return?

In terms of the provisions of Rule 2(1)(c) of the Deposits Rules, "deposit" excludes any amount received as loan or facility from any banking company or from a banking institution notified by the Central Government under section 51 of the Banking Regulation. Providing cash credit/ overdraft/ working capital may be regarded as a facility provided by banks. Accordingly, the same needs to be reported in e-Form DPT-3.

28. Whether “Derivative Financial Instruments” shown under “Financial Liabilities – Others” which represents the loss towards the forward contracts, are also required to be considered as Exempted deposit for the purpose of filing DPT-3.

Mark-to-market (MTM) loss on a derivative liability shall not be construed as a deposit since there is no receipt of money by the company. For a transaction to qualify as a deposit, the same has to be preceded with the receipt of money, followed by an obligation of repayment in the form of money. Therefore, Derivative Financial Instruments shall neither be treated as deposits nor exempted deposits.

29. Whether the following transactions are required to be reported in Form DPT-3?

- a. Area based Incentives under GST received from Central Government;**
- b. Export sales incentives received from Central Government;**
- c. Government grants;**
- d. Commission payable to directors but is outstanding as on March 31, 2019.**

Effectively two types of information is filed in e-Form DPT-3:

- i. Acceptance of deposits by the company;
- ii. Acceptance of such sum which are exempted to be deposit u/r 2(1)(c) of the Deposits Rules

Item (a), (b) and (c) are incentives/grants provided by the Government to the Company and are exempted to be deposit u/r 2(1)(c)(i) under the head “any amount received from the Central Government or a State Government”.

While Government grants are constituted to exempted deposits however their innate nature is that these are provided only after one becomes eligible for it i.e. to say government grants are provided after the entity has fulfilled/satisfied the required conditions and made expenses. Therefore, these are generally not “outstanding”. Once received, these form part of “other income” and will not be outstanding as on the end of financial year, therefore these are not required to be reported in e-Form DPT-3.

Whereas, Item (d) is remuneration payable by the Company to its directors, which is neither Deposit nor Exempted Deposit. Therefore, these are not required to be reported in e-Form DPT-3.

30. ABC Private limited had allotted unsecured Non-Convertible Debentures ('NCD') to XYZ Limited, unlisted company on January 11, 2019. Whether the same is required to be reported in e-Form DPT-3?

In terms of the Deposits Rules, unsecured and unlisted NCDs are treated as Deposits [Clause (ix) & (ixa) of Rule 2(1)(c)]. In other words, secured NCDs even if unlisted, and listed NCDs even if unsecured, shall not be treated as Deposits.

However, in the aforesaid case, even though the NCDs were unsecured but being issued to another company will be treated as Exempted Deposits. Accordingly, the same will be reported in one-time and annual return in e-Form DPT-3.

31. Whether running balances of customers' advances, where no transaction has taken place from last 365 days would fall under the ambit of Deposit?

As per the rule 2(1)(c)(xii), the advance received by the company has to be allocated or appropriated against identified or specified goods or services within 365 days of acceptance. It is not necessary for the company to actually deliver the goods or services within 365 days. That is to say that the company may actually supply goods / materials / services ordered at its convenience as long as the advance received by it is set aside and marked for the respective goods or services within 365 days. In such a scenario, the advance received would not be treated as deposit. For more details please refer our article here⁵.

32. Whether the company can consider the advances from customers (being the companies) as exempted deposit taking the plea that the transaction is between "Company to Company."

Since there is a specific clause for showing advance against supply of goods, the same shall be disclosed in that particular field.

33. X Ltd. has given an order for supply of 1 lac bags of sugar to Z Ltd. and deposited advance amount of Rs. 1 crores with it on 1st January, 2018. The supply of sugar bags was made as per the requirement of X Ltd. on various time intervals and last sugar supply was made on say 31st March, 2018, which is having total aggregate value of Rs. 0.75 lac. No requirement for supply of sugar raised by X Ltd. thereafter, and thus, no sugar was supplied. Consequently, Rs. 0.25 lac. (Rs. 1 lac – Rs. 0.75 lac) is still lying with the company as on date. Thus, Rs. 0.25 lac is lying with the company for more than 365 days. Whether the remaining amount will be considered as deposit?

Please note that the moment the company identifies the goods (sugar) against such advance, the same is considered to be appropriated against such goods. In the present case, the company had done so well within 365 days. Therefore, the said advance will not be treated as deposits even if a part of the supply is yet to be made by the Company.

34. C Ltd. had taken advance from A Ltd. and supplied sugar against the same of required quantity. However, A Ltd. fails to claim the sales promotion incentives available to it and such amount (Sales promotion incentive) is lying with the company for more than 365 days. Whether the incentive amount will be considered as deposit?

⁵ http://vinodkothari.com/wp-content/uploads/2017/03/Advances_received_against_goods_not_Deposit.pdf

As regards the incentive amount, the same is a sales promotion incentive payable by the C Ltd. and not an amount received from the dealer. Since the entire concept of deposit starts with **receipt of money by the Company** and C Ltd. had not received any money other than an advance against supply of goods, the incentive component will nowhere come into picture.

- 35. There is a liability on the company for repaying a debtor in relation to purchase of capital goods by the company for business purpose. However, some amount is still due for repayment with the company. Accordingly, the company wants to know whether the same shall qualify as deposit under the Act?**

Deposit refers to receipt of money by the company for a purpose. Accordingly, a liability on the company for repaying its debtors shall not be regarded as deposit in accordance with the Act.

- 36. What should be the date of last closing of accounts in case when the audited accounts of financial year ended 31.03.2019 has been approved by the Board of Directors but pending for the approval of the shareholders?**

In the aforesaid case, the date of last closing of accounts should be March 31, 2019 irrespective of the fact that the same has been adopted by the shareholders or pending for adoption.

- 37. What should be the date of last closing of accounts in case when the audited accounts of financial year ended 31.03.2019 has not been approved by the Board of Directors as well as the shareholders?**

The reference is not made to last audited accounts. It simply refers to accounts last closed, which will be March 31, 2019. While the accounts may be pending to be audited, but last closing will be last date of immediately preceding financial year.

- 38. Every Company shall file a One Time Return of outstanding receipt of money or loan by the company but not considered as deposits in terms of Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014 from April 01, 2014 to March 31, 2019 as specified in Form DPT 3. In that regard, what would be the position in the following cases:**

- a. Case 1: If a Private Limited Company has received the loan of Rs. 3 Lakh from its Director before April 1, 2014 and there is no change in the same as on March 31, 2019, how the Company should report the same in Form DPT 3?**

As per Rule 16A(3) of the Deposit Rules, every company other than Government company is required to file a one-time return of outstanding receipt of money or loan by a company but not considered as deposits, in terms of rule 2(1)(c) of the Deposit Rules, from the April 01, 2014 to March 31, 2019.

If we split the provision, we get the requirement as under:

Query	Response in view of Rule 16A (3)
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Which companies shall file one time return?	Every company other than Government company
What will be reported?	receipt of money or loan by a company not considered as deposits
For what period?	from the April 01, 2014 to March 31, 2019 and outstanding on March 31, 2019

This has been clarified by MCA officials in the webinar dated June 17, 2019 as well⁶. Amount received prior to April 1, 2014 will not be required to be reported in the one-time return.

In the aforesaid case, since the private limited company has received the loan from its director before April 01, 2014, the same is not required to be report in one-time return.

However, such amount is required to be reported in the annual return for the financial year ended March 31, 2019.

- b. Case 2: If a Private Limited Company has received the loan of Rs. 3 Lakh from its Director before April 1, 2014 and there is additional loan of Rs. 2 Lakh from the said Director which has been received by the Company in the financial year 2015 which is outstanding as on March 31, 2019, how the Company should report the same in Form DPT 3?**

Since the additional loan amount of Rs. 2 Lakh has been taken during the period of the April 01, 2014 to March 31, 2019, the same is required to be reported in one-time return.

Further, the total outstanding amount of Rs. 5 Lakh is required to be reported in the annual return, if the initial amount of Rs. 3 Lakh is also outstanding as on March 31, 2019.

- c. Case 3: If a Private Limited Company has received the loan of Rs. 3 Lakh from its Director before April 1, 2014 and there is additional loan of Rs. 2 Lakh from the said Director which has been received by the Company in the financial year 2015 and Rs. 1 Lakh has been repaid to him in financial year 2016 and balancing figure of Rs. 4 Lakh is outstanding as on March 31, 2019, how the Company should report the same in Form DPT 3?**

Since the loan amount of Rs. 2 Lakh has been taken and Rs. 1 Lakh has been repaid during the period of the April 01, 2014 to March 31, 2019, the remaining amount of Rs. 1 Lakh is required to be reported in one-time return.

Further, the total outstanding amount of Rs. 4 Lakh is required to be reported in the annual return.

⁶ https://www.youtube.com/watch?v=0BAi_yX18-Y&t=2043s (25th minute onwards)

- d. Case 4: If a Private Limited Company has received the loan of Rs. 3 Lakh from its Director before April 1, 2014 and there is additional loan of Rs. 2 Lakh from the said Director which has been received by the Company in the financial year 2015 and R. 1 Lakh has been repaid to him in the financial year 2016 and balancing figure of R. 4 Lakh is outstanding as on March 31, 2019, how the Company should report the same in Form DPT 3, if the said Director has resigned before March 31 2019?**

In this case, the remaining amount of R. 1 Lakh is required to be reported in one-time return even if the person has resigned from the post of director before March 31 2019.

Further, the total outstanding amount of R. 4 Lakh is required to be reported in the annual return.

- 39. In terms of Rule 16 of the Companies (Acceptance of Deposit) Rules, 2014 every Company has to file Form DPT 3 giving Particulars of the transactions not considered as deposit as per Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014.**

Will the Transaction already reported in One Time Return will also require to be reported in this return or the only transactions which are done during the Financial Year 2018-19 and outstanding as on March 31, 2019 will only be required to be reported in the said Form?

All transactions which fall under the ambit of rule 2(1)(c) of the Deposit Rules, and outstanding as on March 31, 2019 are required to be reported in annual return, irrespective of the fact that the same have already been reported in one-time return or not.

- 40. What will be the consequences for non- reporting?**

Section 76A and Rule 21 are concerned about the penal consequences. Section 76A provides huge fines on the company as well as on the officers for accepting deposits in contravention of the prescribed manner or conditions in the Chapter and the Rules and also in case of failure in repayment of deposits. Further, in case of officers, the offence is non-compoundable as it involves fine and imprisonment both. The Section provides the following:

1. On the company: A fine of minimum one core rupees or twice the amount of deposit so accepted, whichever is lower, which may extend to ten core rupees; and
2. On the officers of the Company who is in default: imprisonment up to seven years and with a fine of not less than twenty five lakh rupees which may extend to two core rupees.

From the above, it can be construed that the penal provisions provided in Section 76A shall apply only to those companies which have accepted money falling under the purview of deposits as per the definition. Therefore, if a company accepted money (e.g. ICD) which falls under the exclusion list shall not be subjected to the penal consequences of Section 76A as ICD is not a deposit.

On the other hand, on a reading of the language, Rule 21 seems to cover any other person also in its purview. The Rule provides fine for any other person apart from the companies covered in Sections 73 and 76, which contravenes any of the provisions of the Rules for which no punishment is provided in the Act. Therefore, for the applicability of Rule 21, one has to see the compliance requirements of the Rules also. Since the new reporting requirement has been made a part of the Rules which applies to every companies (excluding certain categories mentioned above), the consequences of Rule 21 shall apply to those companies also. Rule 21 prescribes a fine which may extend to five thousand rupees and in case of continuing violation a further fine which may extend to five hundred rupees for every day after the first day of such contravention.

Link to our other related articles:

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