Introduction

Dividend is distribution of reward to the shareholders by the company from its profits. Under present provisions of section 115-O of the Income Tax, 1961 (“IT Act”), domestic companies are required to pay dividend distribution tax (“DDT”) @15% (plus surcharge and cess), on the income distributed by way of dividend. Further, the dividend income is exempt in the hands of the shareholder up to the limit of Rs. 10 Lakh in aggregate during a financial year and thereafter at the flat rate of 10% (plus surcharge and cess), under section 10(34) read with section 115BBDA of the Act.

On February 01, 2020, the Finance Minister had introduced the Finance Bill, 2020¹ (“Bill”) before the Parliament containing various amendments w.r.t taxability on dividend in the hands of the domestic companies and the shareholders. It is proposed to remove the burden of tax in the form of DDT, on income distributed by the domestic companies. Also, the whole dividend income is proposed to be made taxable in the hands of the recipient which was earlier exempted up to the limit of Rs. 10 Lakh and thereafter at the flat rate of 10% (plus surcharge and cess) from tax under section 10(34) of the IT Act. These amendments will become applicable from April 01, 2020.

Anticipating the implications of the amendments in the Bill, India Inc, with high promoter holding, have started to act accordingly and rushing to declare interim dividend before March 31st, 2020.

Considering the stringent timelines and long list of compliances under Companies Act, 2013 and LODR, 2015, to be adhered to while declaring interim dividend, we have tried to collate the compliance in this article. However, before dealing with the compliance requirement, let us briefly understand the background of the motivation of the companies rushing to declare interim dividend before March 31st, 2020.

1. Tax burden on the shareholder on receipt of dividend income – current regime vs amended regime

At present, shareholders in the country need not pay any tax on income from dividends from domestic companies for receipts up to Rs 10 lakh, and they are taxed at a flat rate of 10% on dividend income beyond Rs 10 lakh. After the abolition of DDT on corporates, investors will have to pay the tax on dividend received according to their respective tax slabs which can be as high as 30%.

¹https://www.indiabudget.gov.in/doc/Finance_Bill.pdf
Accordingly, the companies with high promoter shareholding, in order to reduce the additional tax burden, applicable from April 01, 2020, on the promoters, are motivated and thus rushing to pay dividend to the shareholders. Several large listed companies having high promoter’s stake have already intimated the stock exchange(s) for declaration of the dividends which will be disbursed to the shareholders on or before March 31, 2020.

2. Which sort of Companies will not be rushing and will be better off after April 01, 2020?

Professionally managed companies or companies not having substantial promoter holding will remain indifferent with the to be abolished DDT. In fact, technically speaking, if such companies pay dividend after April 01, 2020, they will be substantially saving on the cost to the company on declaration of dividend.

Also, the foreign companies having Indian subsidiaries will now be eligible to claim credit on the tax paid on dividend in India according to their domestic tax laws and Double Taxation Avoidance Agreement (“DTAA”) provisions, if any.

3. What all does the companies have to do for declaration of interim dividends?

Section 123 of the Companies Act, 2013 (“Act, 2013”) provides the manner and the preconditions of declaration of Interim dividend. The preconditions for declaration of Interim dividend are as under:

i. Sources of interim dividend

Interim dividend can be declared from the following sources after providing depreciation:
   a. Surplus in the P & L; or
   b. Profits of the financial year for which such interim dividend is sought to be declared; or
   c. Profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend.

ii. Setting off of the previous losses and depreciation not provided in the previous years

All accumulated losses, depreciation till date of declaration should be deducted of the profits. Also, the profits should not include any notional / unrealised gain or gain from revaluation or carrying amount of any asset.

Also, the directors should ensure that the company will incur profits at the end of the current financial year even after the interim dividend is paid out.

iii. Declaration of interim dividend in case of losses

In case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend,
iv. **Declaration of interim dividend in case of default of section 73 and 74**

Where, a company has defaulted in repayment of deposits under section 73 and 74 of the Act, 2013, it shall not declare the dividend on its equity shares until the default is made good.

4. **What is the procedure for declaration of dividend by the company?**

The procedure for declaration of dividend as follows:

i. Issue of notice under section 173 of the Act, 2013 at least 7 days before from the date of board meeting for declaration of dividend and fixing record date;

ii. Fixation of record date under regulation 42 of SEBI (LODR) Regulations, 2015 (“Listing Regulations”)

Regarding closure of share transfer book as per section 91 of the Act, 2013, it is to be noted that SEBI, vide its notification\(^2\) dated June 8, 2018 and thereafter vide press release\(^3\) dated March 27, 2019 mandated the approval of requests for transfer of securities in the dematerialized form only.

Further, The Ministry of Corporate Affairs (“MCA”) had vide its notification\(^4\) dated September 10, 2018, also enforced the provisions w.r.t the transfer of securities in dematerialized form only.

Accordingly, the closure of share transfer book, which is solely for the purpose of recording physical transfers has lost its practical lost its purpose.

iii. Intimation to Stock Exchange(s) w.r.t the record date at least 7 days (excluding the date of intimation and date of meeting) before such record date;

iv. Prior intimation to stock exchange under regulation 29 of the Listing Regulations, at least 2 working days (excluding the date of intimation and date of meeting) before the date of board meeting;

v. Convening of board meeting and declaration of dividend at least 5 days before (excluding the date of intimation and date of meeting) the record date as per regulation 42 of the Listing Regulations;


vi. Intimation to the stock exchange(s), in case of listed company, within 30 minutes from the date of conclusion of board meeting as per regulation 30 read with Schedule III of the Listing Regulations;

vii. Depositing the dividend amount in separate bank account within 5 days from the date of board meeting for declaration of interim dividend as per section 123(4) of the Act, 2013;

viii. Dispatch of dividend amount in the form of dividend warrants/cheques or in electronic mode within 30 days from the date of declaration under section 124 of the Act, 2013;

ix. Transferring the unpaid dividend into the unpaid dividend account after the expiry of 30 days from the date of declaration under section 124 of the Act, 2013.

5. By when should the companies start working if they have to complete distribution by March 31, 2020?

In order to avail the existing exemption u/s section 10(34) of the Act, the companies should plan and declare the interim dividend in such a way that the dividend is declared prior to 31st March, 2020. The following should be kept in mind in order to avail the benefit of the current tax structure:

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<tr>
<th>Sr. No.</th>
<th>Particulars</th>
<th>Tentative dates</th>
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<tbody>
<tr>
<td>1.</td>
<td>Issue of notice for board meeting (if not on shorter notice)</td>
<td>On or before February 23, 2020</td>
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<td>2.</td>
<td>Closure of Trading Window pursuant to Code of Conduct under SEBI (PIT) Regulations, 2015</td>
<td>From February 23 till 48 hours after making disclosure to Stock Exchange</td>
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<td>3.</td>
<td>Intimation to stock exchange for convening board meeting for declaration of dividend</td>
<td>On or before February 27, 2020</td>
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<td>4.</td>
<td>Intimation to stock exchange w.r.t record date for declaration of dividend</td>
<td>On or before February 28, 2020</td>
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<td>5.</td>
<td>Declaration of dividend and fixation of record date in board meeting</td>
<td>On or before March 01, 2020</td>
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<td>6.</td>
<td>Deposit of amount in bank account</td>
<td>On or before March 06, 2020</td>
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<td>7.</td>
<td>Record date for ascertaining the shareholders to whom the dividend will be distributed</td>
<td>On or before March 07, 2020</td>
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<td>8.</td>
<td>Payment of dividend to the shareholders as on record date</td>
<td>On or before March 31, 2020</td>
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Conclusion:

With the amended provisions, while the government has cater to the demand of the corporates to completely abolish DDT, a considerable burden has been shift the burden back on to the Investors. This will impact investors with large size investments only. The rationale with which DDT was introduced no longer remains reasonable as it acts as a deterrent to genuine companies who wish to reward their shareholders by distributing high amounts of dividend in profitable years.