



# CARO 2020: Acceptance of deposits and payment of statutory dues



This article aims to:

- Discuss the reporting requirements of CARO 2020 relating to acceptance of deposits and payment of statutory dues by a company along with highlighting the related guidance provided by ICAI.



## Introduction

The Companies (Auditor's Report) Order, 2020 (CARO 2020) has introduced enhanced reporting requirements for auditors of specified companies. The aim of reporting requirements is to highlight critical areas involved with the operations of the companies and also showcasing how far the companies are compliant with the respective laws and regulations.

Companies cater to their financial needs in various forms, such as raising capital through issuance of shares/debentures, acquiring funds from lending institutions, etc. An alternate mode through which companies fulfil their financial needs is through acceptance of deposits from members or public. Stringent

provisions are laid down under the Companies Act, 2013 (2013 Act) with respect to acceptance of deposits by a company. With a view to ensure whether these provisions are followed in spirit by the companies, CARO 2020 requires the auditors to report on the compliances met by companies vis-à-vis deposits accepted by them.

Companies are also obliged to make certain payments under various laws and regulations such as sales-tax, Tax Deducted at Source (TDS), Provident Fund (PF), income-tax, duty of customs, etc. These amounts are to be deposited with the concerned regulatory authorities within the timelines prescribed. Delay or non-payment of such dues attracts penal provisions.

Therefore, companies need to ensure that these are paid in a timely manner. Non-compliances of certain provisions are also required to be reported in the auditors' report.

In this article, we aim to cast our lens on the requirements of CARO 2020 related to acceptance of deposits and payment of statutory dues by a company along with highlighting the key considerations as stipulated in the guidance note on CARO 2020 (guidance note) issued by the Institute of Chartered Accountants of India (ICAI).



## Acceptance of deposits by a company

CARO 2020 has modified the reporting requirement relating to acceptance of deposits by a company vis-à-vis CARO 2016 and includes reporting on 'amounts which are deemed to be deposits'. As per the revised clause, an auditor is required to report whether the directives issued by the Reserve Bank of India (RBI) and the provisions of Sections 73 to 76 or any other relevant provisions of the 2013 Act and the rules made thereunder, where applicable, have been complied with, in respect of deposits accepted by the company or **amounts which are deemed to be deposits**. If there are contraventions, then an auditor is required to report the nature of such contraventions.

Also, if an order has been passed by Company Law Board (CLB), National Company Law Tribunal (NCLT), RBI, any court or any other tribunal, an auditor would need to evaluate whether the same has been complied with or not.

*(Emphasis added to highlight the addition made by CARO 2020 vis-à-vis CARO 2016)*

### Applicability of provisions of the 2013 Act

The deposit related provisions under the 2013 Act are applicable to the following classes of companies:

- A company that accepts deposits from its members. Such a company has to pass a

resolution in its general meeting according to the Rules prescribed and subject to the fulfilment of the specified conditions (Section 73(2))

- A company that is eligible to accept deposits from the public (Section 76) (i.e. eligible company<sup>1</sup> as defined under the Companies (Acceptance of Deposits) Rules, 2014 (Deposits Rules)).

However, certain companies are exempted from the deposit related provisions and they are as follows:

- A banking company
- A Non-Banking Financial Company (NBFC)
- A housing finance company
- A company as may be specified by the Central Government (CG) after consultation with the Reserve Bank of India (RBI).

1. An eligible company means a public company fulfilling the following conditions:

- Net worth of not less than INR100 crore or a turnover of not less than INR500 crore
- Obtained prior consent of the company in the general meeting by means of a special resolution\*, and
- Filed the said resolution with the ROC before making any invitation to the public for acceptance of deposits.

(\*In case, deposit is with respect to the limits specified under Section 180(1)(c) of the 2013 Act, an ordinary resolution may suffice the requirement.)

### Definition of term 'deposits' and 'amount deemed to be deposits'

Section 2(31) of the 2013 Act defines 'deposit' to include any receipt of money by way of deposit or loan or in any other form by a company but does not include such categories of amount as may be prescribed in consultation with the RBI. Further, the Deposits Rules provide various categories and items that are excluded from the definition of deposits.

Some of the significant items which are not to be categorised as deposits except in specific situations where they can be classified as *deemed deposits* are as follows:

- **Receipt of amount towards subscription of securities in certain situations:** An amount received towards subscription of securities would not be treated as a deposit except in the following situations:

- a. The securities against which amount has been received could not be allotted within 60 days from the date of receipt of the application money, or
- b. Advance for such securities and application money or advance has not been refunded to the subscribers within 15 days from the date of completion of 60 days.

As per the guidance note, the above receipts of amount (point (a) and (b)) would be considered as *deemed deposits*.

- **Receipt of amount for the purpose of business:** Any amount received in the course of, or for the purposes of, the business of the company would not be treated as a deposit. For example, amount received as:

- a. An advance for the supply of goods or provision of services provided that such an advance is appropriated against supply of goods or provision of services within a period of 365 days from the date of acceptance of such advance
- b. An advance received in connection with consideration for an immovable property under an agreement/arrangement, provided that such advance is adjusted against such property in accordance with the terms of the agreement/arrangement
- c. An advance received under long-term projects for supply of capital goods except those covered under (b) above
- d. Security deposit for the performance of the contract for supply of goods or provision of services
- e. An advance towards consideration for providing future services in the form of a warranty

or maintenance contract as per the written agreement/arrangement, if the period for providing such services does not exceed the period prevalent as per common business practice, or five years from the date of acceptance of such service, whichever is less.

However, above amounts would be *deemed to be deposits* on the expiry of 15 days from the date they become due for refund.

If an amount (given in point (a), (b) and (c) above) become refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission or approval, wherever required, to deal in the goods or properties or services for which the money was taken, then the amount received would be *deemed to be a deposit*.

### Conditions for acceptance of deposits

A company (including an eligible company) intending to invite deposits is required to comply with certain conditions while accepting deposits. These, *inter alia*, includes:

- **Maintenance of liquid assets:** On or before 30 April of each year, an amount not less than 20 per cent of the amount of deposits maturing during the following Financial Year (FY) should be kept in a scheduled bank (in a separate bank account) to be called as 'deposit repayment reserve account.'

Such a reserve should be used only for the purpose of repayment of deposits.

- **Credit rating**

- *Eligible company:* Every eligible company is required to obtain at least once in a year, a credit rating for deposits accepted by it and the copy of such rating should be sent to the ROC along with the return of deposits in Form DPT-3.

Such a credit rating should not be below the minimum investment grade rating or other specified credit rating for fixed deposits from any one of the approved credit rating agencies (as specified for NBFCs).

- *Company covered under Section 73(2):* Company taking deposits from its members also needs to provide credit rating obtained in the circular issued to its members.

- **Repayment of deposits:** A company should not default in the repayment of the deposit (or interest thereon) accepted before or after the commencement of the 2013 Act. Companies which have made good on a default committed in the past are allowed to accept deposits after five years from the date of default remediation.



## Other considerations

- **Permissible amount of deposits:** The 2013 Act along with the Deposits Rules, prescribes the following limits for acceptance of deposits from members and the public:
  - *Eligible company (excluding government company):* An eligible company is allowed to accept deposits up to 10 per cent of the aggregate of its paid-up share capital, free reserves and securities premium account from its members.  
  
In case of any other deposits, deposits of up to 35 per cent of the aggregate of the paid-up share capital, free reserves and securities premium account are permitted.
  - *Other company (i.e. public company which is not an eligible company and private company):* Such other company is allowed to accept deposits up to 35 per cent of its paid-up share capital, free reserves and securities premium account from its members.
  - *Private company:* A private company is allowed to accept deposits up to 100 per cent of the aggregate of its paid-up share capital, free reserves and securities premium account from its members and does not have to comply with the conditions specified under Section 73(2) of the 2013 Act. It has to file details of monies so accepted with ROC in Form DPT-3.
- **Disclosures:** Following disclosures are required:

**a. Return of deposits:** Every company is required to file with the ROC a return of deposits (comprising information contained therein as on 31 March of that year duly audited by the auditor of the company) in Form DPT-3, on or before 30 June of every year along with the specified fees. Form DPT-3 (return of deposits) should be used for filing:

- i. A return of deposit
- ii. Particulars of a transaction not considered as deposit or
- iii. Both.

This form has to be filed by every company, other than a government company.

**b. Disclosure in financial statements:** Every company is required to disclose the amount received from the director (also relatives of directors in case of a private company) in the notes to the financial statements.

## Guidance by ICAI

The guidance note requires reporting on compliance by the company with regard to all matters specified in Sections 73 to 76 of the 2013 Act by an auditor. In case of companies with large number of deposits, an auditor would examine the system by which deposits are accepted and records are maintained by the company. With respect to assessment of amounts which could be deemed to be deposits, companies should maintain a list of amounts received in the course of, or for the purposes of, the business of the company (for instance, advances and security deposits) for an auditor to verify. Further, an auditor would examine the efficacy of the internal controls instituted by the company to evaluate that the deposits accepted by the company remain within the limits.

In addition to commenting on the compliance with the provisions of the 2013 Act relating to deposits accepted by a company, an auditor is required to report on compliance with any order, if issued by the CLB, NCLT, RBI, any court or any other tribunal in response to contravention of provisions relating to deposits or any other relevant provisions of the 2013 Act and the rules thereunder. Accordingly, companies would need to inform about all such instances along with the steps taken to comply with those orders to an auditor. In case of non-compliance with the order issued by CLB, NCLT, RBI, any court, or any other tribunal, the fact would be reported along with the nature of contravention in the auditor's report.



## Payment of statutory dues

Another reporting requirement that has been modified by CARO 2020 vis-à-vis CARO 2016 relates to payment of statutory dues by a company. As per the revised clause, an auditor is required to report on the regularity of payment of the company in depositing undisputed statutory dues including **Goods and Services Tax (GST)**, provident fund, employees' state insurance, income-tax, sales-tax, service tax, duty of custom, duty of excise, value added tax, cess and any other statutory dues to appropriate authorities.

If the company is not regular in depositing the stated undisputed statutory dues, then an auditor is further required to state the extent of arrears of statutory dues which have remained outstanding as at the last day of the financial year concerned for a period of more than six months from the date they became payable.

*(Emphasis added to highlight the addition made by CARO 2020)*

Additionally, in case the above-mentioned statutory dues have not been deposited on account of any dispute, then an auditor is required to report the amounts involved and the forum where dispute is pending. Under CARO 2016, this reporting was restricted to non-payment of income-tax, sales-tax, service-tax, duty of customs, duty of excise and value added tax on account of any dispute.

It is to be noted that mere representation to the concerned department would not be treated as a dispute for the purpose of reporting under this clause.

### Guidance by ICAI

#### *Regularity of payment of statutory dues*

As per the guidance note, the term 'any other statutory dues' would cover all types of dues under various statutes which may be applicable to a company having regard to its nature of business. Therefore, an auditor would be required to comment on the regularity of the company in depositing any other statutory dues payable by the company to appropriate authorities as per the statutes applicable to the company, in addition to the ones specifically listed under the clause.

As the intent of reporting is to ascertain how regular the company is in depositing statutory dues with the appropriate authorities, the scope of reporting would be limited to cover only those statutory dues which the company is required to deposit regularly to an authority under a statute. Consequently, the reporting would not cover those amounts which may be levied by an appropriate authority from time to time upon occurrence or non-occurrence of certain

events and therefore, are not required to be paid regularly. Following are examples of dues which will not be classified as statutory dues for the purpose of reporting under this clause:

- a. Any sum payable to an electricity company as electricity bill as the due has arisen on account of supply of goods or services between the parties.
- b. Dividend payment to shareholders under the 2013 Act as the same is on account of contractual obligation with the shareholders.
- c. Bonus to an employee
- d. Any sum payable to public sector undertakings, despite the fact that such undertakings are incorporated, owned and operated by the state government/CG.

It is to be noted that any dues recoverable as arrears of land revenue by the concerned authority would be treated as a statutory due.

Further, while assessing the regularity of payment, due consideration needs to be given to the nature of the statutory dues. With respect to some of the dues such as PF, GST, etc., regularity could be a normal feature as companies are required to deposit the money with appropriate authorities on a monthly or quarterly basis. However, in case of other dues such as duty of custom on import of goods, demands arising on account of assessment orders, etc., wherein a company is required to pay as and when an event giving rise to the liability of the company occurs, payments would be considered regular if the company deposits them as and when they occur. Though, reporting would cover regularity of the company in depositing the installments, if any, granted by an authority in respect of a demand against the company.

Accordingly, non-payment of advance income-tax and non-deduction of TDS would constitute default in payment of statutory dues. Erroneous adjustments of one category of GST credit with other category without appropriately applying the prevailing laws would also be considered as default in payment to be reported.

#### *Period of default and amounts payable*

Reporting under this clause would cover all such cases where the company has been in default in depositing the statutory dues anytime during the year, irrespective of the fact that there are no arrears on the balance sheet date.

For the purpose of reporting, statutory dues would be considered as payable:

- As at the date of the expiry of the stay granted by the authorities or
- Where installments have been granted for the payment of statutory dues, the date on which the default occurs, and the amount becomes payable to the authorities.

Reporting would be restricted to actual arrears and would not include the amounts which have not fallen due for payment to appropriate authority and have been recognised as outstanding dues at the balance sheet date. However, penalty and/or interest levied under the respective laws would be covered within the term 'amounts payable'.

As per the guidance note, while indicating the arrears, the period to which the arrears relate should preferably be given and further, wherever possible, the fact of subsequent clearance or otherwise may also be indicated by an auditor in its report.

#### *Disputed statutory dues*

In case of non-payment of any statutory due on account of any dispute, an auditor is required to state the amounts involved irrespective of the treatment of such disputed amounts in books of accounts along with the forum where the dispute is pending. The reporting would cover minor amounts as well.

As per the guidance note, a matter would be considered as 'disputed', where there is a positive evidence or action on the part of the company to show that it has not accepted the demand for payment of tax or duty, e.g., where the company has gone into an appeal. Further, in case the demand notice/intimation for the payment of a statutory due is for a certain amount and the dispute relates only to a part and not the whole of such amount, then only that part of amount would be treated as disputed. Balance amount would be regarded as undisputed.

Issuance of a show cause notice by the concerned department should not be construed to be demand payable by a company. Though, tax demands which have been stayed by the relevant authority would be regarded as disputed dues. Further, in cases where the appellate authority has decided a case in favour of a company, but the department may prefer to make an appeal to a higher authority, there will be no dispute until the time the department makes an appeal to the relevant appellate authority. In case where amount under dispute is pending for an appeal to be filed and the time limit for filing the appeal has lapsed, then the disputed amount would become a statutory due.

## Conclusion

To facilitate reporting, companies may need to maintain a list of various statutes under which they are required to make payments regularly to appropriate authorities, the kind of payments under each statute, the due date for making the payment to the appropriate authority, the date on which the payment is made by the company, the arrears not due and the arrears overdue for more than six months along with the underlying documents for an auditor to verify and report accordingly.

Also, companies may need to maintain adequate system to identify amounts which may be considered as deemed deposits under the 2013 Act and consequently, would need to ensure compliances with the provisions of the 2013 Act with respect to such deposits.

