

KNOWLEDGE UPDATE

MAY'20

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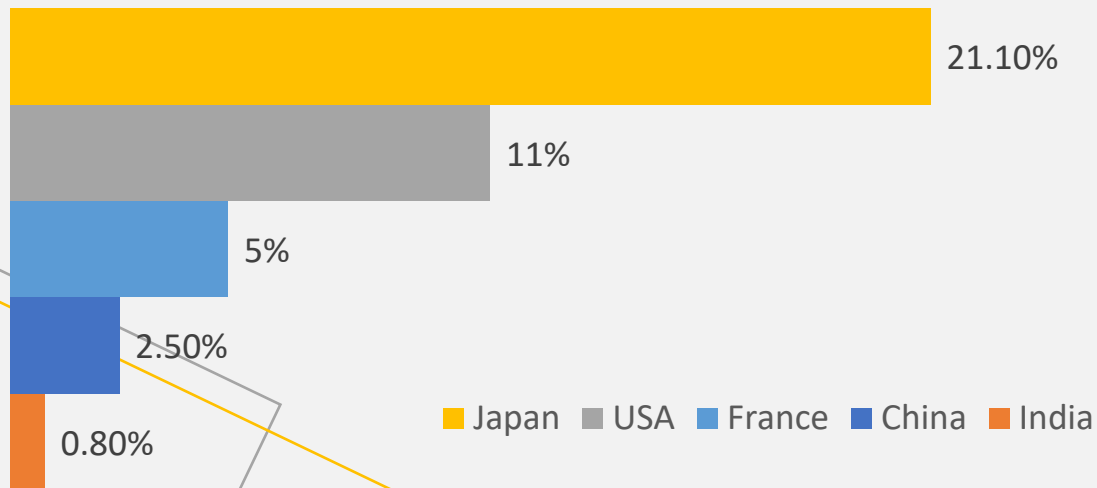
INDIA INC'S DEMANDS FROM RELIEF PACKAGE 2.0

Major economies across the world have allocated over **\$12 Trillion** on fiscal stimulus packages to help individuals and businesses fight the Covid-19 situation. US alone declared a relief package of about \$3.5 Trillion reports Business Today.

The Government of India, so far, has spared less than 1% of its GDP, focusing mostly on measures which seemed apparent from the unforeseen situation like direct cash pay-outs to the poor or distributing free food.

- **While we're here:** Countries like Japan, Canada, US, Australia and Brazil have declared stimulus worth over 5% of their GDP.

A snapshot of fiscal stimulus as % of GDP:



The Indian Government is expected to announce a second package of fiscal stimulus, including an allocation of estimated ₹1 Trillion for the MSME sector.

- **Zoomout:** Small businesses account for nearly 1/4th of India's economy & employ more than 500 million Indians reports ET.

While we're here: Countries across the globe have jumped to save their small businesses, like:

- USA – \$349 Billion + \$320 Billion worth of loan guarantee program to pay for utilities, rent, mortgage and payroll.
- UK – Funding grants of GBP 10,000 to 25,000. Support promised to businesses that need cash;
- France – Suspension of Rent & Utility bills;
- Spain – Loan guarantee of 100 billion euros;
- Australia – Deferment of loan repayment by 6 months;
- UAE - Three billion dirham has been allocated to SME credit guarantee scheme;
- Thailand – Baht 150 Billion worth soft loans @ 2% interest rate.

Nitin Gadkari, MSME Minister, has sent an array of recommendations to the FM, who is expected to announce relief package 2.0 soon.

- **Our take:** It is likely to be a subset of all the above.

INDIA INC'S DEMANDS FROM RELIEF PACKAGE 2.0 (CONT.)

Here are some demands and expectations of industry bodies from the next fiscal stimulus:



Automobile

Federation of Automobile Dealers Associations (FADA)'s appeal:

- Paying **salaries** through ESIC;
- Reduction in **GST rate** for cars and two-wheelers to help cut down the cost of vehicles. Alternatively, it suggests a **3-4%** reduction in the **interest rate** to lower the overall cost of owning a vehicle;
- Extension of Corporate **Depreciation** Scheme till FY2021 and providing similar benefits to individuals for FY2021 at an effective rate of 25 per cent (WDV);
- An **incentive-based** vehicle scrappage policy for all vehicles that have been in use since before 2010. FADA cited the '**Cash for Clunkers**' programmes used in USA and EU as examples, stating that if implemented correctly, such policies instantly boost demand;
- Inclusion of the auto industry in **Priority Sector** lending to ensure that both retail and wholesale financing can be made available easily.



Aviation

The civil aviation industry chamber is seeking an urgent financial rescue package and tax incentives for airlines. Key points:

- Bringing aviation turbine fuel under the Goods and Services Tax (GST);
- Deferment on GST payments by airlines;
- An amount of at least \$1 billion should be infused into the industry;
- Reduction in airport charges and overflight fees;
- Temporary cut in excise duty on jet fuel.



Morbi's Clock Industry

Gujarat's Morbi's clock industry is a 800 crore industry, employing up to **20K people**. They've appealed for the following:

- **GST** relief of up to 50% post lockdown to protect the mass employment (Over 80% of the employees working in these units are women).
- **Anti-dumping duty** on Chinese clocks and clock parts. (Currently only 10% import duty has been imposed on clock and clock parts).



Startups

Over 50 Startups and venture capital firms have requested the Government to grant them a relief package. Demands include:

- Meet 50% **salary** for the next 6 months;
- Interest free **loans** from Banks;
- Waiver of **rent** for next 3 months;
- **Tax** benefits.



Industry Body

NASSCOM has made a representation to the government:

- Extension of the Sunset Clause for Special Economic Zones (SEZs) registration by 1 year;
- Expenses incurred by companies for enabling employees to work from home should be considered as eligible business expenses;
- Defer payment of advance income tax in the 1st quarter by MSMEs;
- Introduce a furlough scheme like in the UK where companies can furlough those employees who are not on projects.



Mining & Metals Sectors

Confederation of Indian Industries (CII) approached the Centre seeking an incentive package for the **mining and metals sector**:

- Extension on **concession interest rate**, free additional working capital credit lines from the banks considering the nil margin to meet the shortfall in cash flows due to national lockdown;
- Relaxation on Aggregate **Sanctioned Credit Limit** (ASCL) norms for the fiscal year 2019-20 till further notice or exclusion of up to 25% of incremental borrowing from banking sector in ASCL computation;
- Deferred payment of **Mining Levies** (Royalty, DMF & NMET);
- Waiver of **GST Compensation Cess** of **INR 400** per million tonne for power, aluminum, coking coal and import dependent sector like pig iron and steel;
- Waiver of fixed charges pertaining to **electricity and PNG** accrued during the period of lockdown;
- Reduction in **coal freight rates** by 25% for the next 6 months and re-introduction of concession in freight rates for Short Lead Goods Traffic;
- Also seeking reduction in **warfage and port charges**;
- Additional **fiscal incentives to exports**, at least for a period of 6 months.



Hospitality

National Restaurants Association of India (NRAI) with an annual turnover of approximately **INR 4 Lakh Crore** and employing close to **7 million Indians** appeals to Central and State government and local authorities:

- Restore **Input Tax Credit** on GST to bring down fixed operating costs;
- Seek support from all the Landlords (including mall owners) across the country to waive off the rentals and CAM for **3 months** and work on a moderate **revenue sharing model** for **6 months** post that till the business regains some lost foothold;
- Appeal to various State Governments to extend extension of due dates on state taxes like **Excise** and **VAT**.

Federation of Hotel & Restaurant Associations of India (FHRAI)

- **GST** holiday for **6 months** from both State and Central Govt;
- An **interest rate** cut by almost **200** basis points;
- Relief in **electricity** bills either as waiver or subsidy of FAC charges, and electricity duty.



Textile

Confederation of Indian Textile Industry (CITI) has appealed to GOI for the following:

- Moratorium for repayment of principal and interest amount to the banks for **4 quarters**;
- Exemption of all raw materials, dyes and chemicals, intermediaries, spares, accessories, etc., from **anti-dumping duty** and basic customs duty;
- Interest Equalization Scheme (IES) and Merchandise Exports from India Scheme (MEIS) benefits with immediate effect to **prevent job losses** for lakhs of people in the handloom, powerloom and spinning sectors;
- Extend soft loans equivalent to government dues pending in the books of individual textile units that could be adjusted as soon as the government clears the dues.

A. Employees' provident fund (EPF):

1. Individuals can now withdraw, lower of:
 - **3 months Basic salary + Dearness allowance;** or
 - **up to 75%** of the amount standing to the credit (employer's share+ employee's share + interest)
2. How to initiate: Go to epfindia.gov.in and file claim under COVID-19 tab;
 - The EPF withdrawals have been exempt from service charge;
 - One can withdraw by online application if and only if:
 - UAN is validated with Aadhaar;
 - KYC of bank account is done;
 - Mobile number is seeded in UAN;
 - Aadhaar should also be linked with mobile, to get OTP;
 - Scanned copy of cancelled cheque will also be required as proof;
 - [Here's an FAQ](#) issued by the government.
3. For the month of Mar, Apr, May'20: **Employer contribution** of 12% + **Employee contribution** of 12% to be **paid fully by the government.**, if number of employees is **<100** and **90%** are drawing wages **<15000**;
4. Due date for payment of EPF contributions (employer and employee) for the month of March'20: Extended from 15-April to 15-May. (Employers who have disbursed wages for the month of March, 2020 are eligible to avail the benefit of the above extension);
5. ESI Contribution for the months of Feb, Mar'20: Extended by 1 month.



C. Income Tax:

1. The Department of Revenue, Ministry of Finance (vide Press Release Dated 08-April) has decided to issue all the pending income-tax refunds where **claim amount** is **up to INR 5 lakh** immediately with a view to provide immediate relief to the business entities and individuals. Expected to benefit around **14 lakh taxpayers**;
2. **Chapter VIA**-80C, 80G, 80D, Donation, PPF, Life and Health insurance: Related investments can be made till **30-June** to claim Chapter VIA deduction (Original due date: 31-March);
3. Last date for filing income tax returns for the financial year 2018-19: Extended from **31-March** to **30-June**.
4. The interest rate on delayed income tax payment: decreased from **12%** to **9%**.

D. TDS:

1. Interest on delayed payment of TDS reduced from 18% to 9% p.a.
2. TDS Returns (Forms 24Q and 26Q) for March'20 quarter: Extended from 31-May to 30-June;
3. Form 24QB/QC/QD: Feb, Mar, Apr'20: Extended to 30-June;
4. Issue of form 16/16A: For March quarter: Extended from 15-June to 30-June;
5. Issue of form 16B/16C/16D: Extended to 30-June.

E. Indirect tax (Customs Act and GST):

1. **Exemption** from custom duty on import of ventilators, personal protection equipment and Covid-19 testing kits & Inputs for these goods (vide notification no. 20/2020-customs dated 09-April).
2. Issue all pending **Customs & GST refunds** which is likely to benefit up to **1 lakh businesses**.



RELIEF PACKAGE 1.0 BY GOVERNMENT OF INDIA (CONT.)

3. GST Due dates extended to:

Aggregate Annual turnover of previous year	GSTR 3B (usually filed by 20th of following month)				GSTR 1 (usually filed by 11th of following month)
	Feb	Mar	Apr	May	Mar, Apr, May
<=1.5 crore	30-June	03-July	06-July	14-July	30-June
>1.5 crore & <=5 crore	29-June	29th Jun	30-June	14-July	30-June
>5 crore	24-June*	24-June*	24-June*	27-July	30-June

*Interest will be payable @ 9% (Not 18%) if amount is paid after 15 days from the normal due date

- Late filing fees and penalty has been waived for all of the above;
- For the month of Feb'20 and Mar'20, FY 2018-19's turnover needs to be considered. From thereafter, turnover of FY 19-20 needs to be considered to determine due dates;
- GSTR 1: The due date has not been extended but the late filing fees has been waived, provided the form is filed within 30-June;
- The new rule of claiming ITC in 3B only to the extent of 110% of eligible ITC appearing in GSTR 2A of the relevant month: Relaxed for the month of Feb, Mar, Apr, May, Jun, Jul, Aug'20. However, the same will apply cumulatively for the month of Sep'20.

Extended due dates: For Composite taxpayers

- Quarterly filing for the quarter ended Mar'20 has been extended to 07-July;
- Due date for filing Form GSTR 4 (annual return): 15-July;
- Due date for opting for composition scheme: extended to 30-June.

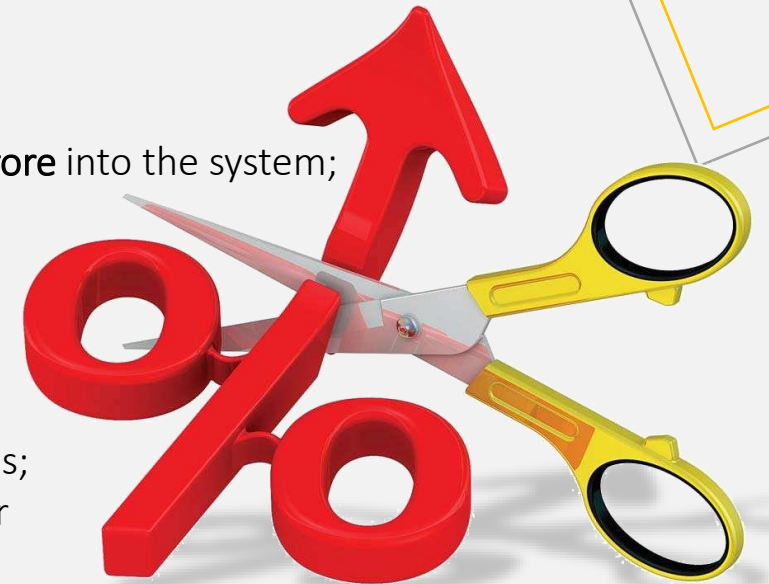
**March GST collection
is reportedly down
by over 70%**

A. Monetary Policy dated 27-March:

- Following the global wave of interest rate reduction to pump up liquidity, RBI also slashed repo rate by **75 basis points** to **4.4%**
- Reverse repo rate sharply slashed by **90 basis points** to **4%** (further slashed by **25 basis points** to **3.75%** on **16-April**), making it unattractive for banks to deposit funds with RBI;
- The last time these rates were this low, was during the financial crisis of **2007-08**;
- RBI to undertake repo operation to infuse **₹ 1 lakh crore**;
- Cash Reserve Ratio (CRR) cut sharply by **100 bps** to **3%** releasing further **₹ 1.37 lakh crore** into the system;

B. Term Loan Moratorium:

- All repayments of Term Loans being due between **01-March** to **31-May**, will be pushed forward by **3 months**;
- The scheme is **optional** for both the bank and the borrower;
- The scheme covers repayment of **all** term loans/cash credit/overdraft/credit card dues;
- Opting for moratorium will **not lead to down grading** of the borrower's credit rating or affect the risk of classification of loan;
- Economic times gives an entire list of bank-wise option in relation to the moratorium [here](#);
- Loans **TO NBFCs** are **not covered** under this scheme but loans **BY NBFCs** (being a 'lending institution') **are covered**;
- **Interest will continue to accrue** on the amount outstanding;
- A **petition** has been filed in the supreme court that interest shall not allowed to be accrued during the moratorium.



CLARIFICATION BY MINISTRIES

1. Ministry of Corporate Affairs (MCA):

- I. **Donation to PM Cares Fund** and State Disaster Management Authorities will be considered as a valid Corporate Social Responsibility (CSR) expense. However, Donation to Chief Minister's Relief fund is not a valid CSR expense;
- II. **Payment of salary and wages** to employees during lockdown is a **moral obligation** of the employers and **not a statutory obligation**.
 - **Pro:** Businesses with acute cash crunch can now plan for survival more strategically.
 - **Con:** Compensation cut of employees and laborers will not only affect them personally but will also make the consumption level fall on a macro scale, making the recovery of the economy even slower.

2. Ministry of Finance:

- I. Clarified through an office memorandum that the ensuing pandemic may be considered to be a natural calamity, which may allow a person to invoke the **force majeure** clause under a contract.
 - **Benefit:** Parties to the contract can avoid payment of levies payable on non-performance of any contractual obligation.

3. Central Board of Indirect Taxes and Customs (CBIC):

- I. Clarified that in case **GST is paid** by the supplier on advances received for a future **event, which got cancelled** or the **goods** supplied by a supplier are **returned** by the recipient (**owing to the lockdown**) and where tax invoice had been issued, the supplier is required to issue a **credit note**.
 - If no invoice was generated and the supplier has paid **GST on advances** received for an event which got cancelled, he is required to issue a **refund voucher** which can be used to **apply for a refund of GST** paid on such advances by filing **FORM GST RFD-01** under the category "Refund of excess payment of tax".
 - **Plus point:** GST paid on advances could get clogged up as refund applications take their own time in being processed. Meanwhile, the Government has also ordered for immediate release of all GST refunds that are due by the department.

1 Supreme Court: Rajasthan Electricity Board vs Dy Commissioner

Brief: Bona Fide mistake in IT return cannot be penalized

- An assessee who makes a bona fide mistake/oversight while filing returns should not be charged with penal action through a mechanical action of sec 143 (1-A);
- Provision can be invoked only when it is found on facts that the smaller amount stated in the return was a result of an attempt to evade tax;
- Burden of proof of evasion is on the Revenue.

2 Bombay High Court: Agrocel Industries vs United India Insurance

Brief: Economic distress plea at the time of insurance claim must be proven

- United India Insurance awarded an insurance claim to which Agrocel Industries gave its acceptance;
- Plea of financial distress was raised 5 months after accepting the amount from the insurer, therefore rejected.
- **Decision of the court:**
 - If a firm wants to plead that it accepted an insurance amount under economic distress, it must show with evidence that the payment received by it was not true settlement but it was foisted on it by the insurance company;
 - There should not be an unreasonable delay in filing the complaint;
 - Decision was given in favor of United India Insurance.

3 Karnataka High Court: The Union of India vs M/S LC Infra Projects Pvt Ltd

Brief: Interest demand without issuance of show cause notice and violation of principle of natural justice.

Summary:

- The assessee filed late return and did not pay interest on demand u/s 50(1) of the CGST Act, 2017;
- As a consequence for such non-payment of demand the department attached the bank account of the assessee;
- Department did not issue show cause notice for such interest demand, violating the principles of natural justice;
- High Court noted that sub section (1) of Section 73 of the GST Act is applicable when any tax has not been paid or short paid. It further explains that a Show Cause Notice (SCN) is to be issued to the assessee calling upon him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under Section 50 of the GST Act;
- The learned Single Judge has correctly laid down the fact that an SCN is mandatory before proceeding for recovery of interest payable, failing which there is a violation of principle of natural justice;
- Decision made in favor of the assessee.

4 Rajasthan Advance Ruling Authority: Case of M/S Clay Craft India Pvt. Ltd.

Brief: GST is payable under reverse charge mechanism on director remuneration

Summary:

- Crockery maker Clay Craft India Pvt. Ltd. had sought an advanced ruling on the applicability of GST on **salary paid** to its directors.

- Stated facts to AAR: They were **employed full-time** and the company was **deducting tax at source (TDS)** and **contributing provident fund** on their behalf. It was **already paying GST** on a reverse-charge basis on the **commission paid** to the directors.
- AAR ruling: Consideration in the form of salary and commission to directors is against the **services** provided to the company, according to the AAR. Therefore, the company is a 'recipient', while the directors are 'suppliers' of the services, it said. Such a consideration would therefore become liable to tax under the reverse charge mechanism.

Conundrum

- The government notification (GST rate 13/2017) mentions “**services** provided by a director to a body corporate is taxable under reverse charge mechanism (RCM)”.
- However, Schedule III of CGST Act, 2017 mentions “service of an employee to the employer in the course of or in relation to the employment **shall not** be considered as a **supply of service**”.
- If a director who is being paid salary and all the statutory compliances in relation to an employee are being duly complied with, then the director shall be considered as an employee in relation to the salary being paid.

Our take

- Therefore such services of directors is not even a valid supply of service per GST Act, hence should not be taxable under RCM.
- The fact that salaried directors are employees and that employer-employee relationship cannot be taxed is also well established by courts in their rulings under the erstwhile tax regime, i.e. Service tax act.

1. New GST return filing system, e-invoicing, QR code: Postponed to 1 October'20
2. Due date of filing GSTR 9 (Annual return) and GSTR 9C (Auditor's reconciliation) for FY 2018-19: Postponed to 30 June'20
3. GSTR 9C for FY 18-19: Made optional if aggregate annual turnover is less than 5 crore (Earlier limit was 2 crore)
4. Late fees waived: for filing GSTR 9 and GSTR 9C of FY 17-18 and FY 18-19, if aggregate annual turnover is less than 2 crore
5. Mobile phones become expensive: GST rate increased from 12% to 18% (Effective 1 April'20)

Did you Know?

Statutory auditors can now issue audit reports and certificates by signing them digitally, as announced by the Institute of Chartered Accountants of India (ICAI).

GST – INTEREST ON LATE PAYMENT

On 11th of February'20, Central Board of Indirect Taxes & Customs (CBIC) initiated the process of recovering interest on late payment of GST, estimated to be around INR 46,000 crore.

Set into motion: Taxpayers started receiving mails from the department (Even from seemingly unofficial gmail ids), asking them to deposit the interest amount calculated by the department and also inform them once it's done.

Position of law: Section 50(1) of CGST Act'17 says, every person who is liable to pay tax, but fails to pay within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, interest at such rate, not exceeding 18%.

The amendment: Section 50 has been amended to levy interest on unpaid taxes only to the extent of that portion paid in cash i.e. through the electronic cash ledger. This benefit will however not extend to those cases where proceedings have been initiated under Section 73 and Section 74.

39th GST Council Meeting dated 14th March'20: Interest on delayed payment to be calculated on net tax liability (i.e. amount paid through electronic cash ledger only) with retrospective effect from 1 July, 2020.

Advisory: Do a thorough calculation of the interest payable, before making any deposit, despite the fact that the amounts are already calculated by the department. Ensure that interest is only payable on GST paid through **electronic cash ledger**. If the interest on tax paid through **electronic credit ledger** is also being demanded through the mail, you may consider replying with appropriate reference of the amendment act and the decision announced by the GST council.



THIS IS GOOD – LESSON FOR LIFE

An old story is told of a king in Africa who had a close friend with whom he grew up. The friend had a habit of looking at every situation that ever occurred in his life (positive or negative) and remarking, “**This is good!**”

One day the king and his friend were out on a hunting expedition. The friend would load and prepare the guns for the king. The friend had apparently done something wrong in preparing one of the guns, for after taking the gun from his friend, the king fired it and his thumb was blown off. Examining the situation the friend remarked as usual, “This is good!” To which the king replied, “No, this is NOT good!” and proceeded to send his friend to jail.

About a year later, the king was hunting in an area that he should have known to stay clear of. Cannibals captured him and took him to their village. They tied his hands, stacked some wood, set up a stake and bound him to the stake. As they came near to set fire to the wood, they noticed that the king was missing a thumb. Being superstitious, they never ate anyone that was less than whole. So untying the king, they sent him on his way.

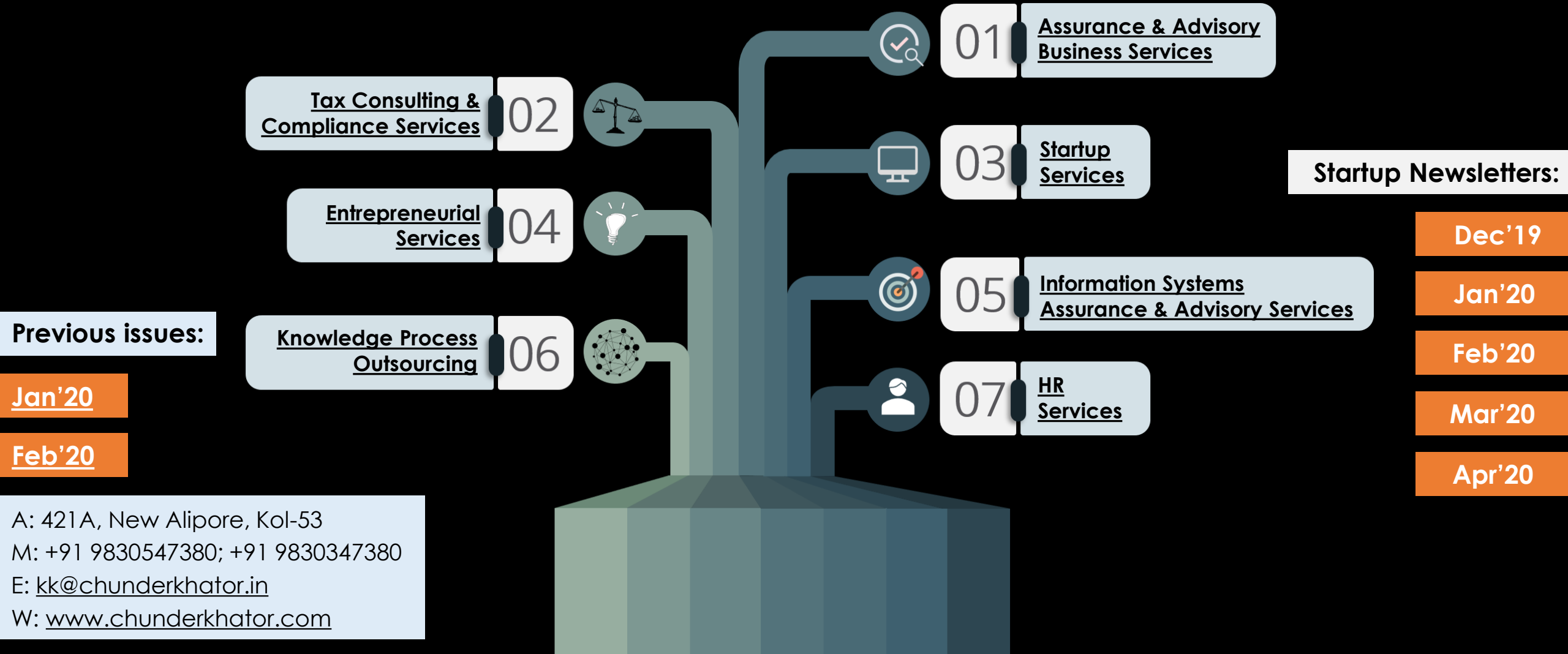
As he returned home, he was reminded of the event that had taken his thumb and felt remorse for his treatment of his friend. He went immediately to the jail to speak with his friend. “You were right,” he said, “it was good that my thumb was blown off.” And he proceeded to tell the friend all that had just happened. “And so I am very sorry for sending you to jail for so long. It was bad for me to do this.”

“No,” his friend replied, “This is good!” “What do you mean, ‘This is good’? How could it be good that I sent my friend to jail for a year?” “If I had NOT been in jail, I would have been with you.”

**During the ensuing pandemic, personally, I have been able to spend much more time with my family and learn things that I wouldn't have learnt otherwise.
So I say, “This is Good!” Can you?**

OUR SERVICES

Our services are passionately focused on the professional development and success of our clients



We thank Ritwik and Kartikeyan for their contributions.

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