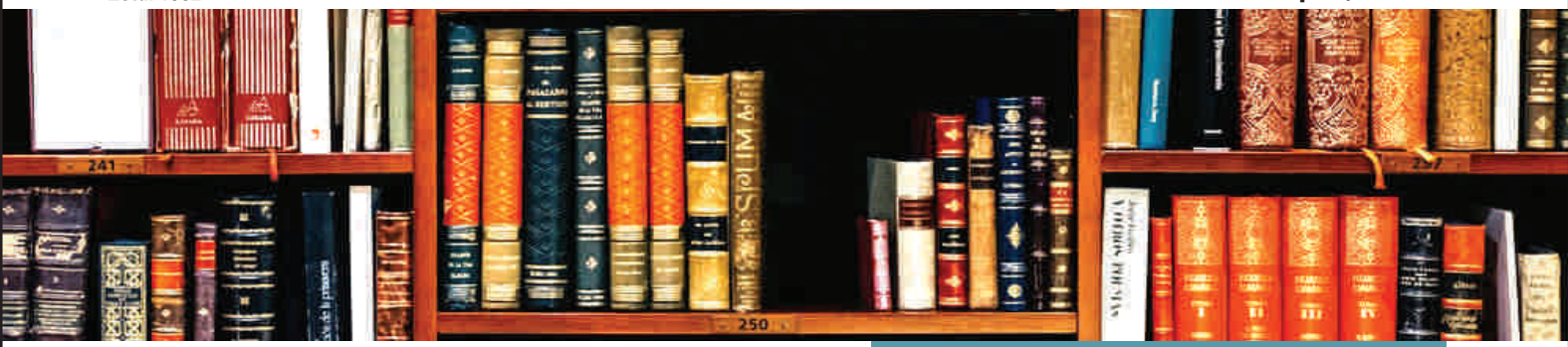
DTPA
Direct Taxes Professionals' Association
ज्ञानं एक्यं च न्यायार्थम
Estd. 1982

eBulletin
March-April, 2021



DEAR DTPAians,

First of all, on behalf of the Journal Editorial Board, I would like to express my warm wishes to the readers of the Journal. I take this opportunity to thank our President CA Narendra Kumar Goyal for giving me the responsibility of heading the Journal and other Publication Committee of DTPA. Moreover, I would also like to sincerely thank our Advisor CA Sumantra Guha who volunteered in contributing to the success of the Journal.

Here, we present you with the issue of DTPA E-JOURNAL for the month of APRIL 2021 which contains wide coverage of various subjects. It also includes article on Budget provisions as passed in both the houses of Parliament and other articles.

Writing a message to our Members could never have been so difficult, again we have big challenge before us fighting against the 2ND WAVE OF CORONA . The number of cases is increasing day by day, and the shortage of medicines and medical appliances is a major issue in this deteriorating situation.

Please avoid the unnecessary gatherings and take necessary precautions. As it is said that the prevention is better than cure.

Wish you all get through this crisis safe and healthy with all your family members.

With warm regards

CA MAHENDRA K AGARWAL
Chairman - DTPA Journal Committee
26th April, 2021

EDITORIAL BOARD MEMBERS

Headlines

- Capital Gains, Dividends And Interest Now To Be Reported To Income Tax Department
- Highlights Of The Finance Act, 2021
- Latest Income Tax Judgements
- Summary of new procedure and Forms for registration
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Dear Members,

The new edition of our E-Journal, with wide coverage on various subjects and the compliance calendar of April is in your hands. All of us are once again facing a big challenge before us to fight against the very intensive and severe 2nd Corona Wave. I sincerely request all to avoid unnecessary outings.

The DTPA Journal Committee led by CA Mahendra Kumar Agarwal had been on work and have completed the compilation of this monthly E-Bulletin with all its dedicated efforts, which I appreciate and applaud. This Volume includes articles on Budget Provisions as passed in both Houses of Parliament and other articles as well. I am sure you will like this edition too for its useful contents.

I would request all the Members to contribute useful articles and compilations, which I assure, will find place in the next published bulletin, if found worthy of publication.

My best wishes to all the Members,

With warm regards

CA Narendra Kumar Goyal
President - DTPA
26th April, 2021

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CAPITAL GAINS, DIVIDENDS AND INTEREST NOW TO BE REPORTED TO INCOME TAX DEPARTMENT

Narayan Jain, LL.M., Advocate

The income tax department will have direct access to details of capital gains, dividends received and interest earned by investors, as a NotificationNo. 16/2021 has been issued by the Central Board of Direct Taxes on March 12, 2021 to amend Rule 114E of Income Tax Rules. Sub-rule (5A) has been inserted. The statement of financial transaction required to be furnished under sub-section (1) of section 285BA of the Income Tax Act and as per rule 114E, the statement of Financial transactions is furnished in Form No. 61A electronically on the "Reporting Portal" (https://report.insight.gov.in). The amended Rule comes into force from 12th March 2021.

Rule 114E Sub-rule 5A reads: "For the purposes of pre-filling the return of income, a statement of financial transaction under subsection (1) of section 285BA of the Act containing information relating to capital gains on transfer of listed securities or units of Mutual Funds, dividend income, and interest income mentioned in column (2) of Table below shall be furnished by the persons mentioned in column (3) of the said Table in such form, at such frequency, and in such manner, as may be specified by the Principal Director General of Income Tax (Systems) or the Director-General of Income Tax (Systems), as the case may be, with the approval of the Board, namely:

Sl. No.	Nature of transaction	Class of person (reporting person)
1	Capital gains on transfer of listed defined securities or units of Mutual Funds	(i) Recognised Stock Exchange; (ii) depository as in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996);(iii) Recognised Clearing Corporation;(iv) Registrar to an issue and share transfer agent registered under subsection (1) section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992).
2	Dividend income	A company
3	Interest income	(i) A banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act); (ii) Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898 (6 of 1898). (iii) Non-banking financial company which holds a certificate of registration under section 45-IA of the Reserve Bank of India Act,1934 (2 of 1934), to hold or accept deposit from public

The important reporting requirements are as under:

1. **Details of Capital Gains on transfer of listed shares and securities, Units of mutual fund:** It requires recognised stock exchange, depositories, clearing corporations and registrars to an issue and share transfer agents to report details of capital gains.

2. **Details of dividend income:** A company is required to furnish details of dividend paid to the investors/ taxpayers.

3. **Details of Interest income:** A Banking company or a Co-operative Bank, Post Master General, Non-banking Financial Company (NBFC) is required to furnish information with regard to Interest paid or credited to the investor/ taxpayers.

4. Through this measure, the Government expects to check cases of under reporting or non-declaration of such income.

5. The above details will be pre-filled in Income tax returns by department.

Possible problems for Reporting Agencies:

a) The reporting agencies will face enormous problems in properly calculating the amount of capital gain in case of numerous tax payers in absence of availability of information regarding date of purchase and cost of shares or units. The reporting agency will have to the empowered to have access to such information from the income tax return of the concerned investors.

b) In case of reporting of capital gains and Interest, multiple agencies have been prescribed for reporting. It is advisable to fine-tune the sub- rule (5A) and specify as to which agency will be liable to what kind of reporting so that multiplicity of data may be avoided and to ensure that proposed pre-filled return reflects the correct data.

c) In case of many investors, the investment in in joint names say husband and wife or vice versa. In sone cases the name of son is also added. In practical life it has been seen that reporting under Rule 114E is done in name of all joint holders and the multiple proceedings take place. Generally the first holder is the actual investor. Therefore the CBDT should categorically state that reporting should be only with regard to the first holder and not all joint holders. The suggestion is in line with the objective of the Government "Ease of doing business". If the Government thinks appropriate the prescribed form for Investment may specifically ask the information as to the ownership of investment, so that future inconvenience may be eliminated.

d) The CBDT needs toanalyse the problems in implementation and take appropriate steps so that the possible difficulties in reporting are mitigated.

Rate of tax on Capital Gains at a glance:

The amount of income tax on long term capital gain exceeding rupees one lacs is charged to income tax @10% w.e.f. assessment year 2019-20 as per Section 112A. This rule will apply to transfer of equity shares or units of equity-oriented fund etc. on which security transaction tax (STT) is paid. In case the long-term capital gain arises on transfer of other assets, the tax will payable @20%.

Section 111A of Income Tax Act provides that in case of short-term capital gain on transfer of equity shares or unit of an equity-oriented fund, tax will be charged @15% provided STT is paid.

It may be also noted that if listed shares or securities or units of UTI or unit of equity-oriented fund is transferred after holding the same for 12 months or more then the capital gain will be treated as long term. In case of transfer of unlisted share or immovable property the period shall be 24 months for considering as long term.

The provisions for taxing capital gains have been frequently modified in recent years causing complications for taxpayers as well as tax administrators.

Narayan Jain is Honorary Co-ordinating Editor of Taxman and Chairman, PR & Representation Committee of DTPA. He is author of the famous books "How to handle Income Tax Problems" and "Income Tax Pleading & Practice".Email npjainadv@gmail.com

Congratulations

Hon'ble Justice Rajesh Bindal

Justice Rajesh Bindal

Hon'ble Justice Rajesh Bindal has been appointed as Acting Chief Justice of Calcutta High Court with effect from April 29, 2021.

CA Narendra Goyal, President DTPA alongwith team DTPA has expressed there happiness on his elevation.

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HIGHLIGHTS OF THE FINANCE ACT, 2021

Narayan Jain, LL.M., Advocate & CA Dilip Loyalka

1. Tax Rates

There are no changes in tax rates.

2. Definitions

2.1 No depreciation on goodwill [Sec. 2(11)(b), sec. 32, sec. 43, sec. 50, sec. 55(a)]

Nullifying the decision of Hon'ble Supreme Court in the case of **Smiff Securities Ltd. [2012] 348 ITR 302 (SC)**, sec. 2(11)(b), sec, 32, sec. 43, sec. 50, and sec. 55(a) have been amended w.e.f. AY 2021-22. After the amendment, no depreciation will be allowed on goodwill even if it is not self-generated.

Depreciation shall not be allowed even where goodwill forms part of block of depreciable assets as on 1.4.2020. In such case the cost of goodwill as reduced by the depreciation that would have been allowable (for AY commencing on or after 1.4.88) would need to be reduced in computing the Written Down Value of the block of assets on which depreciation can be made admissible.

However, on transfer of the goodwill, capital gain shall arise and for this purpose in case the goodwill is self-generated, the cost will be nil.

In respect of acquired goodwill on which depreciation has been claimed in past years upto 31 March 2020, the written down value (i.e., original cost less depreciation claimed in past) shall be the cost of acquisition and capital gain will be computed accordingly.

2.2 Unit Linked Insurance Policy to be taxed under the head capital gain [Sec. 2(14)(c), sec. 10(10D), sec. 45(1B), sec. 112A]

Any ULIP policy issued after 1.2.2021 having aggregate premium exceeding Rs. 2,50,000 in any year shall be charged to tax under the head capital gains at the rate of 10% under sec. 112A and no benefit of indexation will be available.

Further for applicability of sec. 112A, the criteria of requirement of investment of 90% and 65% mentioned in sec. 112A Explanation (a) need to be fulfilled by the Unit linked insurance plan.

The limit of Rs. 2,50,000 is not for single policy but it shall apply in a case, a person takes more than one policy, if aggregate premium for all the policies exceed Rs. 2,50,000 in a year.

In this connection it may be noted that the capital gain chargeable under sec. 112A upto Rs. 1 lakh is exempt and capital gain tax shall be payable on Long Term capital gain exceeding Rs. 1 lakh.

However, the proceeds received at the time of death of policy holder will be exempt from tax.

Further the proceeds from such receipts shall be liable to Securities Transaction Tax (STT).

2.3 Reconstruction or splitting up of Public Sector Companies deemed to be demerger and benefit of carry forward of loss and depreciation made allowable [Sec. 2(19AA), sec. 72A]

The reconstruction or splitting up of a public sector company into separate companies shall be deemed to be a demerger, if –

- Such reconstruction or splitting up has been made to transfer any asset of the demerged company to the resultant company; and
- The resultant company is a public sector company on the appointed date indicated in the scheme approved by the Government or any other body authorised under the provisions of the Companies Act, 2013 or any other Act governing such public sector companies in this behalf; and
- Fulfils such other conditions as may be notified by the Central Government in the Official Gazette.

Further carry forward of loss will also be permitted in case of reconstruction of demerged companies.

2.4 Income liable to tax to include exempt income [2(29A)]

The term 'liable to tax' has been used in section 6, sec. 10(23FE) and in various agreements entered under section 90 or section 90A of the Act. But the term was not defined. As such sec 2(29A) has been inserted w.e.f. AY 2021-22 to define 'liable to tax' in relation to a person and with reference to a country means that there is an income tax liability on such person under the law of that country, for the time being in force, andshall include a person who has subsequently been exempted from such liability under the law of that country.

2.5 Slump sale to include transfer by way of exchange, relinquishment or extinguishment of right [Sec. 2(42C)]

W.e.f. AY 2021-22, sec. 2(42C) has been amended to provide that the transfer of one or more undertakings "by any means" would constitute 'slump sale'.

The above amendment has been made to nullify the decision of Bombay High Court in the case of Bharat Bijlee 89 CCH 058 (Bom HC) and Madras High Court decision in the case of Areva T & D India Limited v. CIT 119 Taxmann.com 171(Madras), wherein it was held that where the consideration is not in terms of money, the same does not amount to sale, but exchange and hence not covered under slump sale.

2.6 Infrastructure debt fund permitted to issue Zero Coupon Bond [Sec. 2(48)]

W.e.f. AY 2022-23, notified Infrastructure Debt Fund can also issue Zero Coupon Bond. In this connection it may be mentioned that income of Infrastructure Debt Fund is exempt under sec. 10(47).

3. Exemptions

3.1 Tax Incentives to International Financial Services Centre (IFSC)

In order to make location in IFSC more attractive, following additional incentives have been provided:

Section 9A has been amended to provide that the Central Government may, by notification, specify that any one or more of the conditions mentioned in Sec. 9A(3)(a) to Sec. 9A(3)(m) or Sec. 9A(4)(a) to sec. 9A(4)(d) shall not apply (or apply with modification) to an eligible investment fund or its eligible fund manager, if the fund manager is located in an International Financial Services Centre and has commenced operations on or before 31.3.2024.

Sec. 10(4D) has been amended to provide that

the exemption to a specified fund located in IFSC shall also be available in case of any income accrued or arisen to, or received by the investment division of Offshore Banking Unit to the extent attributable to it and computed in the prescribed manner.

The specified fund is to include the investment division of Offshore Banking Unit which has been granted a category III Alternative Investment Fund (AIF) registration and fulfils other conditions to be prescribed including the condition of maintaining separate accounts for its investment division. The investment division is defined to mean an investment division of a Banking Unit of a non-resident located in an International Financial Services Centre and which has commenced operation on or before 31.3.2024.

Sec. 10(4E) has been inserted so as to exempt any income accrued or arisen to, or received by a non-resident as a result of transfer of non-deliverable forward contracts entered into with an Offshore Banking Unit of IFSC which commenced operations on or before 31.3.2024 and fulfils prescribed conditions.

Sec. 10(4F) has been inserted so as to exempt any income of a non-resident by way of royalty or interest on account of lease of an aircraft in a previous year paid by a unit of an International Financial Services Centre referred to in sec 80LA, if the unit has commenced operation on or before the 31.3.2024. For this purpose 'aircraft' means an aircraft or a helicopter or an engine of an aircraft or a helicopter or any part thereof.

Sec. 80LA has also been amended to provide that the deduction under the section shall also be available to a unit of IFSC if it is registered under the International Financial Services Centre Authority Act, 2019.

Sec. 80LA(2)(d) has been inserted to provide that the income arising from transfer of an asset, being an aircraft or aircraft engine, which was leased by a unit referred to in sec. 80LA(2)(c) of said section to a person subject to condition that the unit has commenced operation on or before 31st March 2024.

Sec. 80LA(3)(ii) has been amended to provide that in case the unit is registered under the International Financial Services Centre Authority Act, 2019 then the copy of permission shall mean a copy of the registration obtained under the International Financial Services Centre Authority Act, 2019.

Sec 10(23FF) has been inserted so as to exempt any income of the nature of capital gains, arising or received by a non-resident, which is on account of transfer of share of a company resident in India by the resultant fund and such shares were transferred from the original fund to the resultant fund in relocation, if capital gains on such shares were not chargeable to tax had that relocation not taken place.

Further sec. 47 has been amended to provide that any transfer, in relocation, of a capital asset by the original fund to the resultant fund shall not be considered as transfer for capital gain tax purpose. It has also been provided that any transfer by a shareholder or unit holder or interest holder, in a relocation, of a capital asset being a share or unit or interest held by him in the original fund in consideration for the share or unit or interest in the resultant fund shall not be treated as transfer for the purpose of capital gains.

W.e.f. AY 2022-23 benefits of section 115ACA of concessional rate of tax of 10% has been extended to include Global Depository Receipts (GDR) created in an International Financial Service Centre issued to investors against the issue of ordinary shares(of issuing foreign company), if such GDR is listed and traded in International Financial Service Centre.

W.e.f. AY 2022-23 provisions of Section 115UB has been extended to Category I or Category II Alternative Investment Fund regulated under the International Financial Services Centre Authority Act,2019.

For the purpose of providing exemption and carry forward benefit on account of relocation of fund, sec. 56(2)(x), sec. 49 and sec. 79 have also been amended.

3.2 Cash Allowance received in lieu of LTC exempt for AY 2021-22 [Sec. 10(5)]

For AY 2021-22 Cash Allowance received in lieu of LTC shall be exempt subject to the fulfilment of following conditions:

(a) The employee exercises an option for the deemed LTC fare in lieu of the applicable LTC in the Block year 2018-21;

(b) "specified expenditure" means expenditure incurred by an individual or a member of his family during the specified period on goods or services which are liable to tax at an aggregate rate of twelve per cent or above under various GST laws and goods are purchased or services procured from GST registered vendors/service providers;

(c) "specified period" means the period commencing from 12th day of October, 2020 and ending on 31st day of March, 2021;

(d) the amount of exemption shall not exceed Rs.36,000 per person or one-third of specified expenditure, whichever is less;

(e) the payment to GST registered vendor/service provider is made by an account payee cheque drawn on a bank or account payee bank draft, or use of electronic clearing system through a bank account or through such other electronic mode as prescribed under Rule 6ABBA and tax invoice is obtained from such vendor/service provider;

(f) If the amount received by, or due to an individual as per the terms of his employment, from his employer in relation to himself and his family, for the LTC is more than what is allowable to such person under the above discussed provisions, the exemption under the amendment would be available only to the extent of exemption admissible under above provisions.

Where an individual claims such exemption and the same is allowed in connection with the expenditure provided by rules, no exemption shall be allowed under the said clause in respect of the same expenditure to any other individual.

3.3 Income on deposit exceeding Rs. 2,50,000 in PF made taxable [Sec 10(11), 10(12)]

Interest accruing on employee's contribution to specified provident fund schemes, on contributions in excess of Rs. 2,50,000 per annum made on or after 1.4.2021, will be taxable.

However where employer has not made any contribution to the said fund the exemption of interest shall be allowed upto the investment of Rs. 500,000 instead of Rs. 250,000 by the employee.

3.4 Limit of receipts for exemption to educational and medical institutions without any registration raised to Rs. 5 crore from Rs. 1 crore [Sec 10(23C) (iiiad)/(iiiae)]

W.e.f. AY 2022-23, aggregate receipts of a person from Universities, Educational Institutions, Hospitals or Medical Institution shall be exempt if it does not exceed Rs. 5 crore.

In this connection it may be mentioned that prior to the amendment, the monetary limit of Rs. 1 crore of receipts were separately available for each educational and medical institutions. For example if a person was having 5 hospitals and 4

schools each having gross receipts of Rs. 90 lakhs, the same were exempt without having any registration or approval. However after the amendment, the gross receipts of the person will be Rs. 8.10 crore which exceeds Rs 5 crore, hence exemption shall not be available under sec 10(23C)(iiiad)/(iiiae) and for claiming exemption, the person has to obtain approval under sec. 10(23C)(vi)/(via) and comply with the conditions therein.

3.5 Rationalisation of provisions related to Sovereign Wealth Fund (SWF) and Pension Fund (PF)

Section 10(23FE) of the Act exempts dividend, interest or long term capital gain in the hands of notified Sovereign Wealth Fund and Pension Fund arising from an investment made by it in eligible Alternative Investment Infrastructure Fund in India. The Finance Act 2021 has made following amendments:

- Requirement of Alternative Investment Fund (AIF) to invest 100% of fund in eligible infrastructure company has been reduced to 50%.

- Category-I or Category-II AIF have been allowed to invest even in an Infrastructure Investment Trust (InvIT)

- Exemption under this clause shall be calculated proportionately, in case if aggregate investment of AIF in infrastructure company or in Inv IT is less than 100% in one or more of the Companies or Enterprises or Entities referred to in item (b), (d) or e) in sub-clause (iii) of section 10(23FE)or in an Infrastructure Investment Trust.

- Sovereign Wealth Fund/Pension Fundcan also invest through holding company subject to undermentioned conditions:
(a) Holding company should be a domestic company.
(b) Holding company should be set up and registered on or after 1.4.2021.
(c) Holding company should have minimum 75%investments in one or more infrastructure companies.
(d) Exemption under this clause shall be calculated proportionately, in case if aggregate investment of holding company in infrastructure company or companies is less than 100%.

- Sovereign Wealth Fund/Pension Fund have been allowed to invest in NBFC-IFC/IDF (Non-banking finance company-Infrastructure Debt Fund/Infrastructure finance company) subject to the following conditions:
(a)NBFC-IDF/IFC should have minimum 90% lending to one or more infrastructure entities.
(b)Exemption under this clause shall be calculated proportionately, in case aggregate lendingof NBFC-IDF or NBFC-IFC in infrastructure company or companies is less than 100%.

- Sovereign Wealth Fund/Pension Fund were not allowed to have loans or borrowings or deposit or investments as there is a condition that no benefit should enure to private person.

  Amendment has been made to provide that there should not be any loan or borrowing for the purpose of making investment in India. It has also been provided that the condition regarding no benefit to private person and assets going to government on dissolution would not apply to any payment made to creditor or depositor for

loan taken or borrowing other than for the purpose of making investment in India.

- Sovereign Wealth Fund/Pension Fund were not allowed to undertake any commercial activity.This condition has been removed and replaced with a condition that Sovereign Wealth Fund/Pension Fund shall not participate in day to day operation of investee. However, appointing director and executive director for monitoring the investment would not amount to participation in day to day operation.

  The term "investee" is defined to mean a Business Trust or a Company or an Enterprise or an Entity or a category I or II Alternative Investment Fund or an Infrastructure Investment Trust or a Domestic Company or an Infrastructure Finance Company or an Infrastructure Debt Fund, in which the Sovereign Wealth Fund/Pension Fund, as the case may be, has made the investment, directly or indirectly, under the provisions of this clause.

- Central Government shall prescribe the rules for computation of 50%or 75%or 90% investment in infrastructure.

3.6 Income of Institution for financing infrastructure and development exempt for ten years [Sec. 10(48D), sec. 47(viiae)]

W.e.f. AY 2022-23, any income accruing or arising to an institution established for financing the infrastructure and development set up under an Act of Parliament and notified by Central Government shall be exempt for a period of 10 (ten) consecutive assessment years beginning from the AY in which the institution is set up

Further any transfer of capital asset by India Infrastructure Finance Company Ltd. to an Institution established for financing the infrastructure and development set up under an Act of Parliament and notified by the Central Government shall not be considered as transfer under sec. 47(viiae).
The cost of the asset received by the transferee shall be the cost of the previous owner under sec. 49(1)(iii)(e).

3.7 Income of developmental financial institution exempt for five years [Sec 10(48E)]

W.e.f. AY 2022-23, any income accruing or arising to a DevelopmentalFinancing Institution licensed by RBI under an Act of the Parliament referred to in sec. 10(48D) and notified by the Central Government shall be exempt for a period of five consecutive assessment years beginning from the AY in which theDevelopmental FinancingInstitution is set up. The said period of 5 years may be extended for a further period not exceeding 5more years by the Central Government on fulfilment of conditions which may be specified.

4. Educational Institutions, Hospitals, Charitable Trusts etc.

4.1 Application out of corpus fund or loan not to be regarded as application of funds [Sec. 10(23C), sec. 11]

W.e.f. AY 2022-23, any application out of corpus shall not be considered as application for charitable or religious purposes. However, if any amount is deposited or invested back in the corpus funds from out of income of any year, the same shall be regarded as application of that year.

Similarly, any application from loans or borrowings shall not be regarded as application for charitable or religious purposes. However,

repayment of loan or borrowing from out of income of any year shall be regarded as application of income in the year of repayment.

The above amendments have been made on the ground that charitable trusts and institutions were claiming exemption for receipt of corpus donation but claiming application if such corpus funds were utilized for charitable purposes. Similarly, application from loan funds was claimed twice once as actual spending and again at the time of repayment of loan. To that extent, they were enjoying double benefit.

4.2 Set-off of excess application of earlier years denied [Explanation 5 to Sec. 11(1)]

W.e.f. AY 2022-23, Charitable trusts and institutions shall not be allowed to set-off any past year's excess application of any of the year preceding the previous year against its income of current year for computing application of '85% of income' which is required to be applied for charitable purposes for claiming exemption.

4.3 Corpus donation received also to be invested in modes prescribed under sec. 11(5)

W.e.f. AY 2022-23, any corpus donation received by charitable trust shall be exempt from 85% application rule only if such corpus donation is specifically invested or deposited into any one or more of the modes prescribed under sec. 11(5) of the Act.

5. Income from Business & Profession

5.1 Employee Contribution to ESI & PF not allowable if deposited beyond prescribed time [Sec. 36(1)(va) and Sec. 43B]

Nullifying large number of decisions of High Courts and ITAT, w.e.f. AY 2021-22, an Explanation 2 to sec. 36(1)(va) and Explanation 5 to sec. 43B have been inserted to provide that if employee contribution to ESI &PF are deposited after the due date prescribed under ESI & PF Act respectively, deduction for the same shall not be allowed even if the same is deposited before the due date of furnishing the return of income.

5.2 If difference between the consideration and stamp duty valuation for a residential property does not exceed 20%, no deemed consideration in the hands of buyer & seller [Sec 43CA, Sec 56(2)(x)]

If consideration from transfer of a residential unit, is less than the stamp duty value and the difference between the two is less than 20% of actual consideration, then the actual sale consideration is deemed to be full value of consideration for the purposes of computation of business income under sec 43CA and buyers income under sec 56(2)(x) if the following conditions are fulfilled:

i. The transfer of residential unit takes place between 12.11.2020 to 30.6.2021.

ii. The transfer is by way of first-time allotment of the residential unit to any person.

iii. The consideration received or accruing as a result of such transfer does not exceed Rs. 2 Crore.

For this purpose, residential unit has been defined to mean an independent housing unit with separate facilities for living, cooking and sanitary requirement, distinctly separated from other residential units within the building, which is directly accessible from an outer door or through an interior door in a shared hallway and not by walking through the living space of another household.
The above provisions have been incorporated in order to boost the demand in the real-estate sector

and to enable the real-estate developers to liquidate their unsold inventory at a lower rate to home buyers.

5.3 Increase of threshold for tax audit under section 44AB raised to Rs 10 crore where 95% of receipts and payments are in a mode other than cash [Sec. 44AB]

W.e.f. AY 2021-22, a assessee is not required to get his accounts audited under section 44AB if his total turnover or gross receipt in business does not exceed Rs. 10 crore provided cash payments or receipts does not exceed 5% of the total payments and receipts.

If the total receipts and payments in cash of an assessee exceed 5%, the threshold for tax audit shall continue to be Rs. 1 crore.

It may be pointed out that w.e.f. AY 2020-21, similar provisions were introduced with a threshold limit of Rs. 5 crore.

It has further been provided that payment or receipt by a cheque or a bank draft which is not account payee, shall be deemed to be payment or receipt, as the case may be, in cash.

Further If an assessee is not required to get his accounts audited for the reason that his turnover doesnot exceeds Rs. 10 crore and receipt and payment in cash does not exceed 5%, then even if he gets his accounts audited under sec. 44AB, the due date for filing of return shall be 31st July and not 31st October.

5.4 LLP carrying on profession not entitled to presumptive taxation [Sec 44ADA]

W.e.f. AY 2021-22, LLP has been excluded from the ambit of presumptive taxation under sec. 44ADA which allows individuals and partnership firms carrying on profession having turnover upto Rs. 50 lakh to opt for presumptive taxation.

The above amendment has been made keeping in mind the effect that LLP is required to maintain books of account under the LLP Act.

5.5 Tax Neutral Conversion of Urban Co-operative Bank into Banking Company [Sec. 44DB, sec. 47(vicb)]

The Reserve Bank of India (RBI) has permitted voluntary transition of primary Co-operative Bank [Urban Co-operative Banks (UCB)] into a banking company by way of transfer of Assets and Liabilities vide Circular reference No. DCBR.CO.LS.PCB. Cir.No.5/07.01.000/2018-19 dated September 27, 2018.

W.e.f. AY 2021-22, the scope of business reorganization under sec. 44DB shall include conversion of a primary co-operative bank to a banking company. The deductions mentioned in Sec.44DB (sections 32, 35D, 35DD and section 35DDA) shall also be made applicable in relation to such conversion of primary co-operative bank to the banking company in the proportion of the number of days before and after the date of business reorganization.

Further transfer of a capital asset by the primary co-operative bank to the banking company as a result of conversion and consequential share allotment to shareholders of co-operative society shall not be treated as transfer under section 47.

Prior to amendment, sec 44DB was applicable in the case of business re-organization of co-operative banks only.

6. Capital Gains

6.1 Taxability at the time of reconstitution or dissolution of firm revised [Sec. 9B, sec. 45(4), sec. 48]

Sec. 9B has been inserted w.e.f.AY 2021-22 to provide that any receipt of capital asset or stock in trade or both by a partner of a firm, member of an AOP/BOI in connection with the dissolution or reconstitution of the Firm, AOP, BOI shall be deemed to have been transferred and will be taxable as capital gains or business income, as the case may be, in the hands of firm/AOP/BOI.

W.e.f. AY 2021-22, sec. 45(4) has been substituted which provides that where a partner of a firm or member of AOP/BOI receives any money or capital asset or both at the time of reconstitution of the partnership firm or AOP /BOI, then any profits or gains arising from receipt of such money or capital asset or both in the hands of the partner of member of AOP/BOI shall be chargeable to income tax as income of the firm/AOP/BOI under the head 'Capital Gains' and shall be deemed to be the income of such firm/AOP/BOI of the previous year in which such money or capital asset or both were received by the partner/member. The profit or gains shall be determined as per the undermentioned formula:

A = B + C – D

Where,
A = Capital gains

B = Value of money received by specified person from specified entity on date of such receipt

C = Fair Market Value of capital asset received by specified person from specified entity on date of such receipt

D = Amount of balance in capital account (represented in any manner) of the specified person in books of account of specified entity at the time of its reconstitution

If the value of "A" that is capital gain in the above formula is negative, its value shall be deemed to be Zero. That means Capital loss, if any, arising on the basis of the aforesaid formula shall be ignored.

Revaluation of any asset/self-generated goodwill is to be ignored in computing the capital balance of the partner.

For this purpose, the mode of computation is prescribed under sec. 48(iii).

6.2 Transfer of capital assetby one Public Sector Company to another under a plan approved by Central Government shall not be regarded as transfer [Sec.47(viiaf), sec. 49(1)(iii)(e)]

The Finance Act, 2021 has inserted a new sub-sec. 47(viiaf) to provide exemption from capital gains arising from transfer of capital asset by a public sector company to another public sector company or to Central Government or to State Government, under a plan approved by Central Government. Further cost of the asset received by the transferee shall be the cost of the previous owner under sec. 49(1)(iii)(e).

6.3 Concept of fair market value for computing full value of consideration adopted for Slump Sale also [Sec. 50B(2)]

The fair market value of capital assets (as computed in the manner which is to be prescribed) transferred pursuant to slump sale shall be deemed to be the full value of consideration received or accruing for the purposes of computing capital gains.

The "net worth" of the undertaking or the division, as the case may be, shall be deemed to be the cost of acquisition and the cost of improvement for the purpose of section 48 and 49 and no regard shall

be given to the provision of the 2nd proviso to section 48. That means the indexation will not be available for this purpose.

Further as per explanation 2(aa) to section 50B, no deduction of goodwill (except purchased goodwill) shall be allowed as part of net worth in computation of capital gains pursuant to a slump sale.

Prior to the amendmentfor computing capital gain, there was no requirement of imputation of Fair Market Value for capital assets which were transferred pursuant to a slump sale. The capital gain was computed on the basis of the consideration agreed to between the parties to slump sale.

6.4 Slump sale to include transfer by way of exchange, relinquishment or extinguishment of right [Sec. 2(42C)]

W.e.f. AY 2021-22, sec. 2(42C) has been amended to provide that the transfer of one or more undertakings "by any means" would constitute 'slump sale'.

The above amendment has been made to nullify the decision of the Bombay High Court in the case of Bharat Bijlee 89 CCH 058 (Bom HC) and Madras High Court decision in the case of Areva T & D India Limited v. CIT 119 Taxmann.com 171 (Madras), wherein it was held that where the consideration is not in terms of money, the same does not amount to sale, but exchange and hence not covered under slump sale.

6.5 Exemption from capital gain for start-up extended for 1 more year [Sec 54GB]

Sec.54GB provides for capital gains exemption arising from transfer of residential property owned by the eligible assessee, if the net consideration is utilized in subscription of equity shares of an eligible start-up. The benefit was available if the residential property is transferred on or before 31.03.2021. The same has been extended for one more year, i.e., 31.3.2022.

7. Deductions

7.1 Extension of time limit for sanctioning loan for affordable housing for availing deduction under section 80EEA

As per section 80EEA a deduction in respect of interest on loan taken from any financial institution for acquisition of an affordable residential house property is allowable up to Rs. 1,50,000 provided the loan was sanctioned by the financial institution between 1.4.2019 to 31.3.2021. Further the deduction is available to first time buyers who invest in residential house property whose stamp duty value does not exceed Rs. 45 lakhs.

W.e.f. AY 2022-23, the period of sanctioning of loan by the financial institution has been extended to **31.3.2022**.

7.2 Extension of date of incorporation for 100% deduction of income of eligible start-up [Sec 80-IAC]

Sec. 80-IAC provides for a deduction of 100% of profits derived from an eligible business by an eligible start-up for three consecutive assessment years out of ten years at the option of the assessee. The eligible start-up is required to be incorporated on or after 1.4.2016 but before 1.4.2021. The said date has been extended for one more year, i.e.incorporated before **1.4.2022**.

7.3 Approval from competent authority for claiming tax holiday for construction of affordable housing project extended [Sec 80-IBA(2)]

For claiming 100 % tax holiday by an undertaking engaged in construction of affordable housing, the project was to be approved by the competent authority within 31.3.2021. The said date has been extended to **31.3.2022**.

7.4 Hundred per cent (100%) deduction from rental housing project [Sec 80-IBA(1A)]

With effect from AY 2022-23, a new sub-section 80-IBA(1A) has been inserted to provide 100% deduction of profit from the business of developing and building notified rental housing project which fulfils the conditions to be specified.
"Rental housing project" means project which is notified by the Central Government in the Official Gazette under this clause on or before 31.3.2022 and fulfils such conditions as may be specified in the said Notification.

8. Relief

8.1 Relief from double taxation of income from notified Overseas Retirement Fund [Sec. 89A]

W.e.f. AY 2022-23, new section 89A has been inserted, to address the issue of mismatch of taxation of income from Overseas Retirement Fund maintained in a notified country. It provides where a specified person has income accrued in a specified account, such income shall be taxed in such manner and in such year as may be prescribed. It is applicable for individuals who are resident in India and have opened Specified Retirement Fund accounts outside India, while being non-resident in India and resident in that country.
The terms have been defined as under, in explanation below sec. 89A:
"notified country" means a country as may be notified by the Central Government, for the purpose of this section;
"specified account" means an account maintained in a notified country by the specified person in respect of his retirement benefit and the income from such account is not taxable on accrual basis but is taxed by such country at the time of withdrawal or redemption;
"specified person"means a person resident in India, who opened a specified account in a notified country while being non-resident in India and resident in that country.

8.2 Provisions of sec. 115AD made applicable to Investment division of an Offshore Banking Unit

Section 115AD(1B) has been inserted to make the provision applicable to Investment division of an Offshore Banking Unit in the same manner as it applies to specified fund. However, the provisions of this section shall apply to the extent of income that is attributable to the investment division of such banking unit, referred to in sub clause (ii) of clause (c) to the Explanation to clause (4D) of section 10 as a Category-I portfolio investor under the Securities and exchange Board of India (Foreign Portfolio investors) Regulations, 2019 made under the Securities And Exchange Board of India Act, 1992 (15 of 1992), calculated in the prescribed manner.

The expression **"investment division of offshore banking unit"** shall have the meaning as assigned to it in clause (aa) of the Explanation to clause (4D) of section 10. It provides the meaning as "investment division of offshore banking unit" of a non-resident located in an International Financial Services Centre, as referred to in sub-section (1A) of section 80LA and which has commenced its operation on or before 31.3.2024.

8.3 Adjustment of book profit on account of secondary adjustment or APA [Sec. 115JB]

W.e.f. AY 2021-22, section 115JB(2) has been

inserted to provide that where there is an increase in the book profit of the income of a past financial year on account of an Advance Pricing Agreement (APA) entered into by the assessee u/s 92CC, or on account of secondary adjustment required to be made u/s 92CE, the AO shall re-compute the book profit and tax payable of the past years u/s 115JB(1), in the prescribed manner. The assessee will have to make an application in this regard to the assessing officer. The period of four years specified in Sec. 154(7) shall be reckoned from the end of the financial year in which the said application is received by the AO.

The above provisions will apply provided the assessee has not utilized the MAT credit in any subsequent year u/s 115JAA. Provisions of sec. 115JB(2) shall also apply to an assessment year beginning on or before 1st April 2020. Further no interest shall be payable to the assessee on refund, if any, which may arise to the assessee upon such re-computation of MAT liability.

8.4 Dividend and related expenditure:

W.e.f. AY 2021-22, since dividend income is taxable in the hands of the shareholders, the said income and the related expenditure is not to be reduced and added back for computing book profits u/s. 115JB.

However dividend income earned by foreign companies on their investments in India and the expense claimed in respect thereof are reduced and added back by way of amendment to clause (fb) and clause (iid) to Explanation 1 to Sec 115JB, while computing book profit in case of foreign companies where such income is taxed at lower than MAT rate due to DTAA.

Refer clause (fb) and clause (iid) to Explanation 1 to Sec 115JB

9. Return of Income

9.1 Due date of return of income of assessee covered under sec. 5A aligned with spouse due date where spouse is a partner in a firm liable for tax audit [Explanation 2(a) to Sec. 139(1)]

Section 5A of the Act provides for taxation of spouses governed by Portuguese Civil Code. On account of this provision any income earned by a partner of a firm whose accounts are required to be audited shall be apportioned between the spouses and included in their total income, if section5A applies to them.

Since the total income of a partner can be determined after the books of account of such firm have been finalised, the due dates of partners are already aligned with the due date of the firm. Thus, the due date for filing of original return of income of such partner is 31st October of the assessment year. However, this relaxation was not there for spouse of such partner to whom section 5A of the Act applies. Therefore, w.e.f. AY 2021-22, the due date for furnishing the return of income has been extended to 31st October of the assessment year in case of spouse of a partner of a firm whose accounts are required to be audited under the Act or under any other law for the time being in force, if the provisions of section 5A applies to them.

9.2 Due date of return of a partner of firm liable to audit under sec. 92E extended to 30 November [Explanation 2(aa) to Sec 139(1)]

In the case of a firm which is required to furnish audit report under sec. 92E for entering into international transaction or specified domestic transaction, the due date for filing of original return of income is 30th November of the assessment year. Since the total income of such partner can be determined after the books of account of such firm have been finalised, w.e.f. AY 2021-22, the due date of furnishing return of income of such partner has been extended to 30th

November of the assessment year.

9.3 Due date for furnishing belated or revised return advanced to 31st December of the AY [Sec 139(4), sec. 139(5)]

W.e.f. AY 2021-22, the last date for filing of belated or revised returns of income, has been reduced by three months. The belated return or revised return can be filed three months before the end of the relevant assessment year (i.e.within 31st December of the AY) or before the completion of the assessment, whichever is earlier.

9.4 CBDT empowered to issue notification for relaxation of conditions for treating return defective [Sec. 139(9)]

Sec. 139(9) provides that in case a return of income is found to be defective, the Assessing Officer will intimate the defect to the assessee and give him a period of 15 days or more to rectify the said defect and if the defect is not rectified within the said period, the return shall be treated as an invalid return and the assessee will be considered to have never filed a return of income. The Explanation to the sub-section lists the conditions in which a certain return of income shall be considered to be defective.

The aforesaid conditions create difficulties for both the assessee and the Department, as a large number of returns become defective by application of the said conditions. Therefore w.e.f. AY 2021-22, the Board has been empowered to specify, vide notification that any of the said conditions prescribed in Explanation below section 139(9) shall not apply for a class of assessee or shall apply with such modifications, as maybe specified in such notification.

10. Assessment, Re-assessment & Search cases

10.1 Prescribed Income Tax authority also empowered to issue notice under sec. 142(1)

W.e.f. 1.4.2021, prescribed Income Tax Authority have also been empowered to issue notice under sec. 142(1) requiring assessee to furnish return of income. Prior to the amendment only AO having jurisdiction had power to issue such notice. The above amendment has been made to facilitate centralized issue of notices under Faceless Regime.

10.2 Time limit for Processing under sec. 139(1) reduced by 3 months [Sec. 143(1)]

W.e.f. 1.4.2021, intimation under sec. 143(1) can be sent within 9 months from the end of the financial year in which return is furnished. Earlier the intimation under sec. 139(1) could have been sent within 12 months from the end of the financial year.

10.3 Scope of Prima facie adjustment under sec 143(1)(a) widened

Sec. 143(1)(a)(iv) has been amended w.e.f. 1.4.2021 to allow for the adjustment on account of increase in income indicated in the audit report but not taken into account in computing the total income.

Prior to the amendment only disallowance of expenditure was permitted on the basis of tax audit report.

10.4 No deduction under sec. 10AA and income linked deductions under Chapter VIA allowable while processing belated return of income [Sec. 143(1)(a)(v)]

W.e.f. 1.4.2021, no deduction under section 10AA or under any of the provisions of Chapter VI-A under the heading "C.-Deductions in respect of certain incomes" (sec. 80HH to 80RRB) shall be allowed while processing the return of income

where the assessee failed to furnish the return within the due date. Prior to the amendment, sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE were only covered.

10.5 Time limit for selection of return of income for scrutiny reduced by 3 months [Sec. 143(2)]

W.e.f. 1.4.2021, the time limit for issue of notice under sec. 143(2) of the Act has been reduced from six months to three months from the end of the financial year in which the return is furnished.

10.6 New reassessment procedure including assessment of search and survey cases [Sections 147, 148, 148A, 149, 150, 151, 152]

A) For the search initiated under sec. 132 or requisition of books of account under sec. 132A, on or after 1.4.2021, provisions of sec. 153A, 153B, 153C shall not apply. The assessment will be done under the new reassessment procedure.

B) In case of survey also new procedure of reassessment shall be followed.

C) Section 148 has been substituted by the Finance Act, 2021 w.e.f. AY 2021-22.

D) **New procedure for reassessment** :The new procedure for reassessment including for search & survey is given hereunder. Before issuance of reassessment notice under sec. 148, AO is required to perform following procedure under sec. 148A in a Faceless manner:

a) Department should possess "information which suggests that the income chargeable to tax has escaped assessment";

For this purpose, "information which suggests that the income chargeable to tax has escaped assessment" means (as per Explanation 1 to sec 148):

(i) any information flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;

(ii) any final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act.

b) **Explanation 2 to sec. 148:**Explanation 2 to sec. 148 defines deemed information, which reads as under:

(i) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April 2021, in the case of the assessee; or

(ii) a survey is conducted under section 133A in the case of the assessee on or after the 1st day of April 2021 other than a TDS survey under sec 133A(2A) or other than a survey in connection with a function, ceremony or event under sec. 133A(5); or

(iii) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under sec. 132 or sec. 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(iv) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under sec. 132 or sec. 132A in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee.

In the above cases, the A.O. shall be deemed to have information which suggests that the income chargeable to tax

has escaped assessment in the case of the assessee **for the 3 assessment years immediately preceding the assessment year** relevant to the previous year in which the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion or jewellery or other valuable articles or thing or books of account ordocuments are seized or requisitioned in case of any other person.

c) **New Section 148A:** Section 148A has been inserted by the Finance Act, 2021 w.e.f. AY 2021-22. It provides:

i) If required, the A.O. may conduct any enquiry with regard to, with respect to the information which suggests that the income chargeable to tax has escaped assessment with the prior approval of specified authority Pr. CIT, Pr. DIT, CIT, DIT of 3 years or less than 3 years have elapsed form the end of the relevant assessment year. However the prior approval will be required from Pr. CCIT, Pr. DGIT, CCIT, DGIT, in case more than 3 years have expired from the end of the AY.

ii) A show cause notice under sec. 148A is required to be served as to why a reassessment notice under sec. 148 should not be issued to the assessee on the basis of information which suggests that income chargeable to tax has excaped assessment in his case for the relevant assessment year and result of enquiry conducted, if any, as per sec. 148A(a).

iii) Showcausenotice should specifically mention the basis of information suggesting escapement of income and the result of inquiry, if any, conducted.

iv) The assessee shall be given an opportunity of being heard to respond within 7 to 30 days from the date on which such notice is issued or such time, as specified in show cause notice. However,the assessee may seek by an application, additional time which may be granted by the A.O. on the basis of facts.

v) The A.O.is required to consider the reply of assessee furnished, if any, in response to the show cause notice.

vi) The A.O. is required to pass an order under sec. 148A(d) on the basis of material available on record including reply of assessee, whether it is a fit case to issue reassessment notice under sec. 148 of the Act. Such order shall be passed with prior approval of Pr. CIT, Pr. DIT, CIT, DIT if 3 years or less than 3 years have elapsed from the end of the AY. Howeverin case more than 3 years have expired from the end of the AY, the approval of Pr. CCIT, Pr. DGIT, CCIT, DGIT is required.

vii) The above order is required to be passed within one month from the end of the month in which reply of the assessee is received or within

one month from the end of the month in which time or extended time allowed to furnish a reply, expires.

viii) Thereafter the final notice under sec. 148 is to be issued.

ix) If the above procedure under sec. 148A is not followed, the reassessment notice under sec.148 shall be regarded as invalid.

x) However,as per proviso to sec. 148A, in the undermentioned cases, the above procedure is not required to be followed provided the reopening is forthree years or lesser than 3 years from the end of the assessment year:
i) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of the assessee on or after the 1.4.2021; or
ii) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under section 132 or requisitioned under section 132A, in the case of any other person on or after the 1.4.2021, belongs to the assessee; or
iii) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisition under section 132A, in case of any other person on or after the 1.4.2021, pertainsor pertain to, or any information contained therein, relate to, the assessee.

xi) It may be noted that in case of survey under sec. 133A, procedure for issuing notice under sec. 148 mentioned above is required to be followed.

xii) The Act does not provide any remedy against the issuance of show cause notice under sec. 148A(b), passing of order under sec. 148A or notice under sec 148. Therefore, if assessee is aggrieved, a writ may be preferred by the assessee.

xiii) As per Explanation to section 147 w.e.f. 1.4.2021, the Assessing Officer mayassess or reassess or recompute the income in respect of any issue, whichhas escaped assessment, and such issue comes to his noticesubsequently in the course of the proceedings under section 147, irrespective of the fact that the provisions of section148A have not been complied with.

10.7 Time limit for reopening of assessment under new procedure [Sec. 149]

No notice u/s 148 of the Income Tax Act shall be issued after 3 years from end of assessment year to be reassessed except in the following cases where the time will be 10 years from the end of the assessment year:
(a)Where AO has in his possession books of account or other documents or evidence which reveal taxable income and the income is represented in the form of an asset, and income escaping assessment is Rs. 50 lakh or more in the said assessment year.For this purpose, asset shall include immovable property, being land or

building or both, shares and securities, loans and advances, deposits in bank account.

While determining period of limitation as aforesaid, following period is required to be excluded:

- Time or extended time allowed to assessee to reply to Show Cause Notice u/s 148A(b) of the Act
- Time period during which the proceeding u/s 148A are stayed by a anorder / injunction of any Court.

In case, if time for passing an order u/s 148A(d), left after above exclusion is less than 7 days, then period of limitation shall be deemed to be extended for 7 days.

No notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1.4.2021, if such notice could not have been issued at that time on account of being beyond the time limit specified under the provisions of erstwhile sec. 149(1)(b).

The 2nd proviso to section 149(1) provides that the provisions of section 149(1) shall not apply in a case, where a notice u/s 153A, or section 153C read with section 153A, is required to be issued in relation to a search initiated u/s 132 or books of account, other documents or any asset requisitioned u/s 132A, on or before 31.3.2021.

The earlier provision relating to reopening of assessment upto 16 years in case of escaped income from foreign assets is no more applicable as the new section does not contain the same.

10.8 Amendments in respect of Search related proceedings

The new reassessment procedure will also apply to the assessment / reassessment proceedings in search cases on the assessee and third person with certain modifications discussed below with respect to search carried on and from 1.4.2021.

In addition to search cases, this procedure will also apply to cases of survey under sec. 133A conducted on or after 1 April 2021.

Where the A.O./ department is satisfied that any money, bullion, jewellery or other valuable article or thing is seized or requisitioned in case of any other person on or after 1 April 2021 belongs to the assessee, then also the new procedure shall apply.

Where the A.O./ department is satisfied that any books of account or documents, seized or requisitioned, in case of other person on or after 1 April 2021, pertain to or any information contained therein relates to the assessee, then also the new procedure shall apply.

In cases of search / survey conducted on or after 1 April 2021, there is deeming fiction under Explanation to amended sec. 148 making event of the search or survey as information for income escaping assessment in the possession of department for past 3 years. In other words, reopening of the assessment for 3 years prior to year of search or survey can be done by the department without any additional requirement or compliance of conditions. In this case, Department is not required to follow procedure prescribed under sec. 148A of the Income Tax Act before issuance of reassessment notice in such case. However, A.O. will be required to obtain approval of CCIT/CIT or appropriate authority specified u/s 151 before issuance of reassessment notice under sec. 148 of the Income Tax Act.

Further, reading of Explanation 2 to sec. 148 also gives impression that fiction is extended to consider event of search / survey as escapement of income for these years. Hence, reopening of assessment for these 3 years may become mandatory, even if there may be no evidence of any escapement of income found in search / survey for these 3 years. This being statutory requirement, department may be duty bound to issue notices and conduct the assessment. This may lead to compliance burden and inconvenience to assessee.

In the new regime, there is no provision to abate ongoing assessment proceedings for any year on account of search action. This has led to serious issues on technical and practical counts. This

same is explained hereunder:

Consider a case of assessee against whom search action was initiated on 5.6.2021. If the AO issues notice under sec. 148 on 25.6.2021, the reassessment notice would need to be issued for 3 years viz AY 2021-22, AY 2020-21 and AY 2019-20.

AY 2019-20 assessment proceedings would be in process, as such AO cannot issue notice under sec. 148 during pendency of proceedings of assessment.

For AY 2020-21, notice under sec 143(2) can be issued upto 30.6.2021 and as such notice under sec. 148 cannot be issued.

For AY 2021-22, the due date for furnishing return of income has not yet expired, as such, notice under sec. 148 cannot be issued. As such necessary amendments are required for making the provisions workable.

It is not clear whether search cases in new regime will be conducted Faceless or not

10.9 Comparison between newly insert reassessment procedure and erstwhile procedure

A brief comparison between newly inserted reassessment procedure and erstwhile procedure is as under:

Particulars	Post Amendment	Pre-Amendment
Sections	Sec. 147, 148, 148A, 149 and 151. Sec 150, 152, 153 have not been amended and will continue to apply.	Sec. 147 to 152
Basis for assuming jurisdiction	Department should possess information which suggests that income chargeable to tax has escaped assessment.	Department has reason to believe that income has escaped assessment. Reasons for reopening are required to be recorded before assuming jurisdiction.
Requirement for obtaining approval	If reopening is less than 3 years - Approval of Pr CIT/CIT/Pr DIT/DIT is required. Where the reopening is more than 3 years, the approval of Pr CCIT/ Pr DGIT/CCIT/DGIT will be required. The approval shall be required - · For conducting enquiry before issuing notice with respect to information in possession of department which suggests that income chargeable to tax has escaped assessment. · At the time of opportunity u/s 148A · While passing order u/s 148A(d) - Before issuance of notice u/s 148	Where reopening is for 4 years or less - Approval of JCIT is required. Where reopening is for more than 4 years - Approval of Pr CCIT/Pr DGIT/CCIT/ DIT is required

Particulars	Post Amendment	Pre-Amendment
Requirement to follow procedure before issuing notice u/s 148	Separate procedure is prescribed u/s 148A. Tax Authority is also required to provide copy of order passed u/s 148A(d) along with of reassessment notice u/s 148.	- No formal Provision - However, as per Supreme Court Direction in the case of GKN Driveshaft, AO is required to supply reasons so recorded on Request of assessee after furnishing return of income and dispose the objections so raised by Assessee on recorded reasons before commencing reassessment of Income.
Pre-requisite for issuance of reassessment notice u/s 148	- Information with Tax Authority suggesting escapement of chargeable income - Obtaining of Prior Approval of Specified Authority u/s 151; Complying separate procedure prescribed u/s 148 (except in certain cases - mostly search related)	- Tax Authority has reason to believe that income has escaped assessment - Obtaining Prior Approval of Specified Authority
The Limit of issuance of Notice u/s 148	- 3 Years if not covered below - 10 years if following conditions are satisfied: · Tax Authority is in possession of books/documents/ evidence about escapement · Escaped Income Represented in the form of Asset · Likely quantum of escaped income is more than INR 50Lakhs · While determining limitation period, time taken inproviding opportunity to taxpayer u/s 148(b) or period of stay granted, if any, by Court on sec. 148A proceedings need to be excluded.	- 4 years General Limit for cases if not covered below - 6 years if Income escaped assessment is more than INR 1 Lacs; 16 years in case of Foreign assets
Can AO reassess items of income not indicated in the recorded reason	- Yes -Tax Authority can make addition on additional issue even if no addition made on primary issue [Explanation to sec. 147]	If no addition is made on primary issue identified for reassessment, addition on new issues was negated by various judicial Pronouncements [Explanation 3 to s. 147]

10.10 Time limit for completion of assessment reduced by 3 months [Sec. 153]

W.e.f. AY 2021-22, the assessment under sec. 143(3) or sec. 144 shall be completed within 9 months from the end of the assessment year in which the income is first assessable. Prior to the amendment the time limit was 12 months from the end of the AY in which income is first assessable.

11. Deduction of Tax at Source

11.1 No TDS on dividend to Business Trust by Special Purpose vehicle (SPV) [Sec. 194]

W.e.f. 1.4.2020, second proviso to section 194 has been amended to provide that no TDS is required to be deducted on dividend income credited or paid to a Business Trust by a special purpose vehicle or payment of dividend to any other person as may be notified.

11.2 No TDS on interest on zero coupon bond of infrastructure debt fund [Sec. 194A(3)(x)]

W.e.f. 1.4.2021, no TDS is required to be deducted on interest paid by an Infrastructure Debt Fund on the zero-coupon bond issued by it.

11.3 Bank to deduct TDS of senior citizen of 75 years or more from pension or interest [Sec. 194P]

A resident senior citizen of 75 years or more having pension income and interest income from the same bank only may furnish declaration in prescribed form to the bank. In such a case bank is required to compute tax on his total income and deduct the same under sec. 194P after giving effect to deduction under Chapter VIA and rebate under sec 87A. In such a case senior citizen is not required to furnish return of income.

11.4 Buyer liable to deduct tax on purchase of goods exceeding Rs. 50 lakh in a year [Sec 194Q]

W.e.f. 1.7.2021, Sec. 194Q has been inserted to provide that a buyer while making payment to resident for purchase of goods having value exceeding Rs. 50 lakhs in the previous year is required to deduct tax at source at the rate of 0.1% of such sum exceeding Rs. 50 lakhs.
The obligation to withhold arises only in cases where buyer's total sales, gross receipts or turnover from the business carried on by him exceed Rs. 10 crores during the financial year immediately preceding the financial year in which the purchase of goods is carried out.

The above provisions would not be applicable in cases where payment is already subject to Tax deduction at source or Tax collection of source obligation under other provisions of the Income Tax Act except TCS provisions under sec. 206C(1H). Where TCS under sec. 206C(1H) is applicable, the provision of sec. 194Q shall override and no collection of tax by the seller is required under sec. 206C(1H).

In case where buyer fails to furnish Permanent Account Number (PAN), then in such cases the rate of 5% would be applicable instead of rate of 0.1%.

11.5 TDS provisions on payment of income from securities to FII's rationalised [Sec. 196D]

Prior to the amendment, deduction of tax on income of FII from securities as referred to in sec. 115AD(1)(a) (other than interest referred in section 194LD) was to be made at the rate of 20%. Whereas as per DTAA, under sec. 90 or 90A, such income is chargeable to tax at a lower rate. Therefore w.e.f. 1.4.2021, sec. 196D has been amended to provide that in case of a payee to

whom an agreement referred to Sec. 90(1) / 90A applies and such payee has furnished the tax residency certificate, then the tax shall be deducted at the rate of 20% or rate or rates of income-tax provided in such agreement for such income, whichever is lower.

11.6 Higher rate of TDS/TCS for payment made to person who is not filing return of income [Sec. 206AB and 206CCA]

W.e.f. 1.7.2021, Sec. 206AB and 206CCA have been inserted to provide for higher rate for TDS or TCS for the non-filers of income-tax return.

Any person making payment or receiving any sum from a person (who has not filed the return of income for last two years preceding the financial year in which tax is required to be deducted/collected, and the tax deducted/collected is Rs.50,000 or more in each of the two preceding years), will be required to deduct/collect taxes at a rate twice the prescribed rate of tax deduction/collection at source or 5%, whichever is higher.

These provisions are not applicable to a non-resident not having a permanent establishment in India. These provisions are also not applicable when income tax is required to be deducted for payments in the nature of salary income under sec. 192 or sec. 192A, lottery or crossword puzzles under sec. 194B, winnings from race-horses under sec. 194BB, income from investment in Securitization Trust under sec. 194LBC and cash withdrawals under sec. 194N in excess of specified limit.

12. Interest

12.1 Interest under Sec. 234C to apply from the date of receipt of dividend [Sec. 234C]

W.e.f. AY 2021-22, liability to pay advance tax on dividend income arises from the date of receipt of dividend income. There shall be no levy of interest for shortfall arising in respect of advance tax instalments payable prior to distribution of dividend income, provided subsequent instalments of advance tax with respect to dividend income are fully paid.

The above provision shall not apply for deemed dividend under section 2(22)(e).

12.2 Late Fee of Rs. 10,000 for delayed filing of return removed[Sec. 234F]

W.e.f. AY 2021-22, return of income cannot be furnished after 31 December of the assessment year. As such late fee of Rs. 10,000 under sec. 234F for furnishing return of income after 31 December has become redundant and hence deleted.

It may be mentioned that for furnishing return beyond due date will continue to attract fee of Rs. 5,000 and in case the total income does not exceed Rs. 5 lakh, the late fee shall remain restricted to Rs. 1,000.

12.3 Fee upto Rs. 1,000 prescribed for not linking Aadhar with PAN within the prescribed time [Sec. 234H]

As per sec. 139AA(2) every person eligible to obtain Aadhaar is required to link/quote/intimate the same by 30 June 2021. Failure to do so will attract a fee upto Rs. 1,000.

13. Settlement Commission, Dispute Resolution Committee

13.1 Settlement Commission abolished [Sec. 245A]

W.e.f. 1.2.2021, Income Tax Settlement Commission has been abolished. No application for settlement can be furnished on and from 1.2.2021.

All applications that were filed under section 245C of the Act and not declared invalid under sub-section (2C) of section 245D and in respect of which no order under section 245D(4) of the Act was issued on or before the 31st January, 2021 shall be treated as pending applications.

Where in respect of an application, an order, which was required to be passed by the ITSC under section 245D(2C) on or before the 31st day of January, 2021 to declare an application invalid but such order has not been passed on or before 31st January, 2021, such application shall be deemed to be valid and treated as pending application.

The Central Government shall constitute one or more Interim Board for Settlement, as may be necessary, for settlement of pending applications. Every Interim Board shall consist of three members, each being an officer of the rank of Chief Commissioner, as may be nominated by the CBDT. If the Members of the Interim Board differ in opinion on any point, the point shall be decided according to the opinion of majority.

On and from 1.2.2021, the provisions related to exercise of powers or performance of functions by the ITSC viz. provisional attachment, exclusive jurisdiction over the case, inspection of reports and power to grant immunity from penalty and prosecution shall apply mutatis mutandis to the Interim Board for the purposes of disposal of pending applications and in respect of functions like rectification of orders for all orders passed under sub-section (4) of section 245D of the Act.

However, where the time-limit for amending any order or filing of rectification application under section 245D(6B) of the Act expires on or after 1st February, 2021, in computing the period of limitation, the period commencing from 1st February, 2021 and ending on the end of the month in which the Interim Board is constituted shall be excluded and the remaining period shall be extended to 60 days, if less than sixty days are left.

With respect to a pending application, the assessee who had filed such application may, at his option, withdraw such application within a period of three months from the date of commencement of the Finance Act, 2021 and intimate the Assessing Officer, in the prescribed manner, about such withdrawal.

Where the option for withdrawal of application is not exercised by the assessee within the time allowed, the pending application shall be deemed to have been received by the Interim Board on the date on which such application is allotted or transferred to the Interim Board.

The Board may, by an order, allot any pending application to any Interim Board and may also transfer, by an order, any pending application from one Interim Board to another Interim Board.

Where the pending application is allotted to an Interim Board or transferred to another Interim Board subsequently, all the records, documents or evidences, with whatever name called, with the ITSC shall be transferred to such Interim Board and shall be deemed to be the records before it for all purposes.

Where the assessee exercises the option to withdraw his application, the proceedings with respect to the application shall abate on the date on which such application is withdrawn and the

Assessing Officer, or, as the case may be, any other income-tax authority before whom the proceeding at the time of making the application was pending, shall dispose of the case in accordance with the provisions of the Income Tax Act as if no application under section 245C of the Act had been made.

However, for the purposes of the time-limit under sections 149, 153, 153B, 154 and 155 and for the purposes of payment of interest under section 243 or 244 or, as the case may be, section 244A, for making the assessment or reassessment, the period commencing on and from the date of the application to the ITSC under section 245C of the Act and ending with the date on which application is withdrawn shall be excluded.

Further the period of limitation will not be less than one year and where suchperiod is less than one year it shall be deemed to be extended to one year.

Further, the income-tax authority shall not be entitled to use the material and other information produced by the assessee before the ITSC or the results of the inquiry held or evidence recorded by the ITSC in the course of proceeding before it.

However, this restriction shall not apply in relation to the material and other information collected, or results of the inquiry held or evidence recorded by the Assessing Officer, or, as the case may be, other income-tax authority during the course of any other proceeding under this Act irrespective of whether such material or other information or results of the inquiry or evidence was also produced by the assessee or the Assessing officer before the ITSC.

The Central Government may make a scheme, by Notification in the Official Gazette, for the purposes of settlement in respect of pending applications by the Interim Board, so as to impart greater efficiency, transparency and accountability by eliminating the interface between the Interim Board and the assessee in the course of proceedings to the extent technologically feasible; optimising utilisation of the resources through economies of scale and functional specialisation; and introducing a mechanism with dynamic jurisdiction. The Central Government may, for the purposes of giving effect to the said scheme, by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations, as may be specified in the Notification.

However, no such direction shall be issued after the 31st March 2023. Every such Notification issued shall, as soon as may be after the Notification is issued, be laid before each House of Parliament.

13.2 Dispute Resolution Committee [Sec. 245MA]

W.e.f. 01.04.2021, a new Dispute Resolution Scheme has been introduced, the salient features of the which are as under:

(i) Only those disputes where the returned income is Rs. 50 lakh or less (if return has been filed) and the aggregate amount of variation proposed in specified order is Rs. 10 lakh or less shall be eligible to be considered by the DRC.

(ii) Following assessees are barred from opting Dispute resolution scheme:

a) Where the order is based on a search or requisition made under section 132A or a survey initiated under sec. 133A

b) Where the order is based on information received under an agreement referred to in section 90 or section 90A of the Act.

c) Where an order of detention has been made under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 with certain exception.

d) In respect of whom prosecution for any offence punishable under the provisions of the Indian Penal Code, the Unlawful Activities (Prevention) Act, 1967, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Prohibition of Benami Transactions Act, 1988, the Prevention of Corruption Act, 1988 or the Prevention of Money Laundering Act, 2002 has been instituted and he has been convicted of any offence punishable under any of those Acts;

e) In respect of whom prosecution has been initiated by an income-tax authority for any offence punishable under the provisions of Income Tax Act or the Indian Penal Code or for the purpose of enforcement of any civil liability under any law for the time being in force, or such person has been convicted of any such offence consequent upon the prosecution initiated by an Income-tax authority;

f) who is notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992;

iii) The Central Government shall constitute one or more Dispute Resolution Committee (DRC).

iv) This committee shall resolve disputes of such persons or class of person which shall be specified by the Board. The assessee would have an option to opt for or not opt for the dispute resolution through the DRC.

v) The DRC shall have the powers to reduce or waive any penalty imposable under Income Tax Act or grant immunity from prosecution for any offence under Income Tax Act in case of a person whose dispute is resolved under this provision subject to such conditions as may be prescribed.

(vi) Board will prescribe some other conditions in due course which would also need to be satisfied for being eligible under this provision

(vii) The Central Government has also been empowered to make a scheme by Notification in the Official Gazette for the purpose of dispute resolution under this provision. The scheme shall impart greater efficiency, transparency and accountability by eliminating interface to the extent technologically feasible, by optimising utilisation of resources and introducing dynamic jurisdiction. The Central Government may, for the purposes of giving effect to the scheme, by Notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the Notification. However, no such direction shall be issued after 31.3.2023. Every such Notification shall, as soon as may be after the Notification is issued, be laid before each House of Parliament.

14. Authority for Advance Ruling/ Board for Advance Rulings

14.1 Advance ruling is no more binding on revenue [Sec. 245N to 245W]

W.e.f. 01.04.2021 concept of advance ruling has been changed. The existing Authority for Advance Ruling is being dismantled from the date to be notified and in its place one or more Board(s) for Advance Ruling comprising of two members of rank of Chief Commissioner or above shall be constituted from a date to be notified. (Section 245-O and Section 245-OB)

The decision of advance ruling shall not be binding either on revenue or applicant. Both can file an appeal to the High Court if aggrieved by the order. (Section 245W)

The appeal to High court is to be filed within 60 days from date of communication of the ruling in such manner/ form as may be prescribed. A condonation period of 30 days may be allowed by High Court on existence of sufficient cause preventing filing of appeal in stipulated period.

The pending application with the Authority i.e. in respect of which order under section 245R(2) or section 245R(4) has not been passed before the notified date, shall be transferred to the Board for Advance Rulings along with all records, documents or material, by whatever name called and shall be deemed to be records before the Board for all purposes. (Section 245 Q)

The provisions of Section 245R which deals with the procedure of advance ruling shall apply mutatis mutandis to the Board for Advance Rulings

The Board can also declare a ruling pronounced by the AAR to be void under section 245T where the same is obtained by fraud or misrepresentation.

The Board of Advance Ruling shall also become faceless. The Central Government has been empowered to execute the same.

15. ITAT to be Faceless

15.1 ITAT to be faceless [Sec. 255(7) and 255(8)]

W.e.f. 01.04.2021, sec. 255(7) has been inserted to provide that the Central Government may notify a scheme for the purposes of disposal of appeal by the ITAT so as to impart greater efficiency, transparency and accountability by,—

a) Eliminating the interface between the ITAT and parties to the appeal in the course of proceedings to the extent technologically feasible.
b) Optimising utilisation of the resources through economies of scale and functional specialisation.
c) Introducing an appellate system with dynamic jurisdiction.

Sec. 255(8) empowers the Central Government, for the purpose of giving effect to the scheme for issuing Notification in the Official Gazette, to direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the Notification.

Such directions are to be issued on or before 31st March, 2023. Every Notification issued shall, as soon as may be after the Notification is issued, is required to be laid before each House of Parliament.

16. Provisional Attachment in case of Fake Invoices

16.1 Provisional attachment in fake invoice cases [Sec. 281B]

W.e.f. 01.04.2021, section 281B has been amended to enable the Assessing Officer to exercise the powers of provisionally attaching property of the assessee or any other person on whom penalty under sec. 271AAD is imposed for causing the assessee to make a false entry or omits or causes to omit any entry. The provisional attachment during the pendency of proceedings for imposition of penalty under section 271AAD, if the amount or aggregate of amounts of penalty imposable is likely to exceed Rs.2 crore.

17. Vivad Se Vishwas

17.1 Appeal pending arising out of Settlement Commission order not eligible for settlement under VSV [Sec 2(1) of DTVSV Act]

W.r.e.f. 17.3.2020, an appeal or writ petition arising out of an order of Income-tax settlement commission and which is pending before any appellate forum is not eligible for settlement under "The Direct Tax Vivad Se Vishwas Act 2020".

17.2 VSV Scheme extended to 31.03.2021 from 31.1.2021

The last date for filing of VSV application has been extended to 31.03.2021 from 31.1.2021. Further the last date of payment of taxes has been extended to 30.4.2021

18. Equalization Levy

The Finance Act, 2016 introduced Equalization Levy with effect from 1.6.2016. The Equalization Levy, as introduced by the Finance Act, 2016, is levied at 6% on the gross consideration received by non-residents for online advertisement and related services from specified persons.

Further, the Finance Act, 2020 which came into effect from 1 April 2020 extended the scope of Equalization Levy to charge a 2% levy on gross consideration received from online sale of goods or provision of services (including facilitation) by a non-resident operator of a digital facility or platform.

The Act provided for an exemption from income-tax where the amount was subject to Equalization Levy. There was ambiguity on the scope and the intent of the provisions under certain situations.
In this regard, the following amendments have been made to seek to address the ambiguities:

Taxation as royalty or fee for technical services under the income tax law would have priority over Equalization Levy. This would also bring in certainty on application of Equalization Levy provisions on income streams where both Equalization Levy and withholding tax on royalty/ fee for technical services could potentially apply.

In order to be regarded as "online sale of goods" and "online provision of services" for e-commerce supply or service, one or more activities need to be undertaken online. These are, namely:

a) acceptance of offer for sale;
b) placing purchase order;
c) acceptance of purchase order;
d) payment of consideration or
e) supply of goods or provision of services, partly or wholly.

Consideration received/ receivable for sale of goods and provision of services will be included

regardless of whether the e-commerce operator owns the goods or provides the service.

A transaction which is subject to Equalization Levy is exempt from income tax under section 10(50). Such an exemption provided to e-com Equalization Levy had certain anomaly or mismatch in the date of applicability of the provision.

Accordingly, applicability of income-tax exemption for consideration covered by e-com Equalization Levy will now be aligned with effect from 1 April 2020 along with date of applicability of e-com Equalization Levy. The amendments will take effect retrospectively from financial year starting from 1 April 2020.

Adv Narayan Jain is Hony Co-ordinating Editor of Taxman. Adv. Jain and CADilipLoyalka areauthors of famous books "How to Handle Income Tax Problems" and "Income Tax Pleading & Practice".

LATEST INCOME TAX JUDGEMENTS

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DEPRECIATION

PADMINI PRODUCTS (P) LTD. VS DEPUTY COMMISSIONER OF INCOME TAX : (2020) 109 CCH 0022 KarHC

The 5th proviso will apply only in the year of succession and not in subsequent years and also in respect of overall quantum of depreciation in the year of succession.

REASSESSMENT

GANGESHWARI METALS PVT. LTD. VS INCOME TAX OFFICER : (2020) 60 CCH 0154 DelTrib

"Reasons to believe" recorded by the AO, which is replica of information received from the Investigation Wing, cannot be a tangible material per se sufficient to form reasons to believe.

DWARKADHISH SAKHAR KARKHANA LTD. VS DEPUTY COMMISSIONER OF INCOME TAX : (2020) 60 CCH 0064 PuneTrib

Once assessment proceedings had already commenced after allowing a reasonable time from date of supply of reasons, there could have been no cause with AO to put assessment proceedings in abeyance and first deal with objections of assessee.

ADVANCE RULING

M/S. KARNATAKA STATE ELECTRONICS DEVELOPMENT CORPORATION LIMITED :

Ruling of original authority was set aside, as activity under contract was considered as composite supply of goods and services with supply of service being predominant supply, classifiable under Heading 999112 and rate of tax was 18%, as per appeal preferred under section section 100 of Central Goods and Services Tax Act 2017.

SECTION 80-IB OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - PROFITS AND GAINS FROM INDUSTRIAL UNDERTAKING OTHER THAN INFRASTRUCTURE DEVELOPMENT UNDERTAKINGS.

Commissioner of Income Tax, Chennai v. Doshi Estates - [2020] 120 taxmann.com 261 (Madras)

Housing projects : Where there was no material to support finding of Commissioner that assessee-firm was used as a device to divert excess profit to sons of partners of assessee, Commissioner erred in revising assessment order on issue of deduction under section 80-IB.

SECTION 37(1) OF THE INCOME-TAX ACT, 1961 - BUSINESS EXPENDITURE - ALLOWABILITY OF

Adadyn Technologies (P.) Ltd. v. Assistant Commissioner of Income Tax, Circle 1(1), Bengaluru - [2020] 120 taxmann.com 217 (Bangalore - Trib.)

Abandoned project : Where assessee was developing a new software platform but such new platform was abandoned during subsequent financial year due to rapid change in technology, expenditure incurred by assessee could not be

treated as capital expenditure incurred for development of a new product giving enduring benefit to assessee .

Adadyn Technologies (P.) Ltd. v. Assistant Commissioner of Income Tax, Circle 1(1), Bengaluru - [2020] 120 taxmann.com 217 (Bangalore - Trib.)

Marketing expenses : Where assessee incurred marketing expenditure towards overall promotion of business of company and there was no direct nexus between marketing expenses and new software platform being developed by assessee, expenditure incurred on same would be revenue expenditure .

M/S PRAGNYA CREST PROPERTIES PVT. LTD. (EARLIER KNOWN AS HABITAT PRAGNYA PROPERTY PVT. LTD.) VS DEPUTY COMMISSIONER OF INCOME TAX : (2020) 58 CCH 0453 BangTrib

Expenses incurred in the normal course of business is required to be allowed, after setting up of business irrespective of the fact whether the revenue is not yet earned.

TDS

HEALTHCARE TPA PRIVATE LIMITED VS DEPUTY COMMISSIONER OF INCOME TAX : (2020) 109 CCH 0033 KarHC

Payments are made to the hospitals and not personally Dy the payer to the individual doctors or professionals so, the nature of payment in the hands of the recipient, is determinative of deductibility of tax at source.

COMMISSIONER OF INCOME TAX VS SYNDICATE BANK : (2020) 109 CCH 0032 KarHC

If the refund does not include interest due payable on the amount refunded, the revenue would be liable to pay interest on the short fall.

REVISION

COMMISSIONER OF INCOME TAX VS PADMAVATHI : (2020) 109 CCH 0031 ChenH

Merely because the guideline was higher than the sale consideration shown in the deed of conveyance cannot be the sole reason for holding that the assessments erroneous and prejudicial to the interest of revenue.

GIGABY TECHNOLOGY (INDIA) PRIVATE LTD. VS COMMISSIONER OF INCOME TAX : (2020) 109 CCH 0029 MumHC

Where a final assessment order is made by the AO without compliance with the mandate of section 144C, the same is not merely an erroneous order but such an order is without jurisdiction.

SETTLEMENT OF CASES

COMMISSIONER OF INCOME TAX & ANR. VS INCOME TAX SETTLEMENT COMMISSION (IT&WT) & ANR. : (2020) 109 CCH 0030 PatHC

If revenue had duly made its representation, and the Settlement Commission had thereinafter accepted the settlement, it cannot be reopened.

SECTION 10(17A) OF THE INCOME-TAX ACT, 1961 – AWARDS

K. Vijaya Kumar v. Principal Commissioner of Income Tax, Chennai - [2020] 120 taxmann.com 257 (Madras)

Approval of Central Government : Reference to 'approval' in section 10(17A) does not only connote a paper conveying approval and bearing stamp and seal of Central Government but any material available in public domain indicating

recognition for such services, rendered in public interest.

SECTION 253 OF THE INCOME-TAX ACT, 1961 - APPELLATE TRIBUNAL - APPEALS TO

Perfect Circle India Ltd. v. Assistant Commissioner of Income Tax - [2020] 120 taxmann.com 262 (Bombay)

Condonation of delay : Delay of 3389 days in filing appeal before Tribunal could not condoned when no sufficient cause was shown by assessee .

SECTION 254 OF THE INCOME-TAX ACT, 1961 - APPELLATE TRIBUNAL - POWERS OF

Rathna Stores (P.) Ltd. v. Commissioner of Income-tax-III, Chennai - [2020] 120 taxmann.com 260 (Madras)

Power to condone : Where assessee waited for passing of penalty order for which direction was given by Commissioner under section 263 and when such penalty order was passed assessee filed an appeal before Tribunal and in that process, delay occurred, Tribunal could have condoned delay if reason for delay supported by an affidavit was made out by assessee before it; thus, matter was to be remanded back to Tribunal .

SECTION 28(i) OF THE INCOME-TAX ACT, 1961 - BUSINESS LOSS/DEDUCTIONS - ALLOWABLE AS

ACE Designers Ltd. v. Additional Commissioner of Income-tax - [2020] 120 taxmann.com 321 (Karnataka)

Investment in subsidiary : Where assessee-company made investment in its wholly owned subsidiary outside India for business purpose i.e for enhancement of its business activity in global market, however, said subsidiary could not perform upto company's expectations and same was wound up, loss arising from investment made in subsidiary was to be allowed as business loss of assessee .

SECTION 80-IB OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - PROFITS AND GAINS FROM INDUSTRIAL UNDERTAKINGS OTHER THAN INFRASTRUCTURE DEVELOPMENT UNDERTAKINGS

Commissioner of Income Tax, Bangalore v. Brigade Enterprises Ltd. - [2020] 120 taxmann.com 346 (Karnataka)

Housing Projects : Where housing project of assessee was approved in respect of an area of 48,939 square feet which satisfied condition of minimum area of one acre, it would be entitled to claim deduction under section 80-IB(10) .

SECTION 153A OF THE INCOME-TAX ACT, 1961 - SEARCH AND SEIZURE - ASSESSMENT IN CASE OF

Navneet Jhamb v. Assistant Commissioner of Income Tax, Central Circle Faridabad - [2020] 120 taxmann.com 314 (Punjab & Haryana)

Conditions precedent : Where no unaccounted cash was found to be paid by buyer to seller in respect of sale-purchase of land and addition made on account of on-money transaction in hands of buyer and seller was also deleted, addition made in hands of assessee-broker was to be deleted.

SECTION 10B OF THE INCOME-TAX ACT, 1961 - EXPORT ORIENTED UNDERTAKING

Karle International (P.) Ltd. v. Assistant Commissioner of Income Tax, Circle-6(1), Bangalore - [2020] 120 taxmann.com 264 (Karnataka)

Computation of deduction : Loss sustained by assessee-company from its hundred per cent export oriented unit (EOU) which was entitled to exemption under section 10B could be set-off against profit of its other units under same head of income.

California Software Co. Ltd. v. Commissioner of Income Tax-1, Chennai - [2020] 120 taxmann.com 322 (Madras)

Computation of exemption : Income brought to tax under section 41(1) by reversal of entry with regard to stock option scheme given to employees was also in nature of 'export income' for purpose of exemption/deduction under section 10A/10B.

SECTION 92B OF THE INCOME-TAX ACT, 1961 - TRANSFER PRICING - INTERNATIONAL TRANSACTION, MEANING OF

Samsung India Electronics (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle 2(2) - [2020] 120 taxmann.com 283 (Delhi - Trib.)

AMP expenses : Where there was a Marketing Fund Agreement (MDF) between assessee and AE regarding AMP and shop display activities, scope and value of International Transaction could not have been expanded beyond reimbursement received under MDF agreement to cover entire gamut of AMP expenditure incurred by assessee during year .

Bacardi India (P.) Ltd. v. Assistant Commissioner of Income Tax, Circle-4(1), New Delhi - [2020] 120 taxmann.com 451 (Delhi - Trib.)

Basic purpose of introducing various provisions of chapter X, was to prevent tax evasion in transactions undertaken between an Indian entity and its overseas AE a perceived/notional indirect benefit to AE due to incurring of certain expenditure by an assessee in India, is not covered by TP provisions .

SECTION 92C OF THE INCOME-TAX ACT, 1961 - TRANSFER PRICING - COMPUTATION OF ARM'S LENGTH PRICE

Samsung India Electronics (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle 2(2) - [2020] 120 taxmann.com 283 (Delhi - Trib.)

Comparables, functional similarity - Manufacturer : A company being an aggregator, providing a platform for sale of electronic products of multiple brands and thus having a different business model vis-à-vis assessee having routine buy-sell model would not be comparable.

Samsung India Electronics (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle 2(2) - [2020] 120 taxmann.com 283 (Delhi - Trib.)

Comparables, functional similarity - Manufacturer : A company engaged in sale of surgical and medical equipment would not be comparable to assessee engaged in business of manufacturing and trading of consumer electronics, home appliances, mobile phones and IT products .

Samsung India Electronics (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle 2(2) - [2020] 120 taxmann.com 283 (Delhi - Trib.)

Comparability factors - Financial year : A comparable cannot be rejected merely on ground that its financial year is different particularly when result can be extrapolated using quarterly result .

TRANSFER PRICING

INTERCONTINENTAL HOTELS GRUOP (INDIA) PVT. LTD. VS DEPUTY COMMISSIONER OF INCOME TAX : (2020) 60 CCH 0130 DelTrib

Company being a government enterprises is not comparable with a private business service provider because in case of government enterprises profit motive is not irrelevant consideration, and government companies work for other public sector undertakings and in that sense the related party transactions are much more than the filter of 25%.

LSI INDIA RESEARCH & DEVELOPMENT INDIA PRIVATE LIMITED VS DEPUTY COMMISSIONER OF INCOME TAX : (2020) 60 CCH 0140 BangTrib

Company having RPT in excess of 15% has to be excluded from the list of comparables.

SECTION 133A OF THE INCOME-TAX ACT, 1961 – SURVEY

Commissioner of Income-tax v. Pawan Kumar Goel - [2020] 120 taxmann.com 319 (SC)

Conversion of survey into search & seizure : SLP dismissed against High Court ruling that survey at residential premises of assessee could not have been converted into search and seizure without tax authorities recording that assessee had failed to co-operate or there was a suspicion that income was concealed by assessee warranting resort to process of search and seizure .

SECTION 139 OF THE INCOME-TAX ACT, 1961 - RETURN OF INCOME

Avadhut Ban (HUF) v. Principal Commissioner of Income Tax - [2020] 120 taxmann.com 347 (Pune - Trib.)

Revised return : Substitution of sub-section (5) of section 139 vide Finance Act, 2016 which came into force from 1-4-2017 is prospective in nature .

SECTION 271(1)(C) OF THE INCOME-TAX ACT, 1961, - PENALTY - FOR CONCEALMENT OF INCOME

Principal Commissioner of Income Tax v. Ashok Kumar Maneklal Parikh - [2020] 120 taxmann.com 269 (SC)

Disallowance of Claim, effect of : Where during assessment proceedings assessee had made full representation why according to his belief, receipt on sale of leasehold right was not chargeable to tax and High Court upheld order of Tribunal setting aside penalty order, SLP filed was to be dismissed .

SYMBYOSYS INTEGRATED SOLUTIONS PVT. LTD. VS INCOME TAX OFFICER : (2020) 60 CCH 0150 MumTrib

It is obligatory on the part of the A.O to have clearly put the assessee to notice as regards the default for which it was called upon to explain as to why penalty under Sec. 271(1)(c) may not be imposed.

JITENDRA SHARMA & ANR. VS JOINT COMMISSIONER OF INCOME TAX & ANR. (INTERNATIONAL TAXATION) : (2020) 60 CCH 0131 IndoreTrib

No penalty shall be imposable on the persons for any violation referred to in the said provisions (which in this case is Section 271C) if he proves that there was a reasonable cause for the said failure.

ACCOUNTS

INCOME TAX OFFICER VS RAJKALP MUDRAALAYA PVT. LTD. : (2020) 60 CCH 0187 AhdTrib

AO cannot reject the books of accounts for the reasons as discussed above in a situation where the assessee does not maintain the stock register.

INTEREST PAYABLE AND RECEIVABLE

GAZEBO INDUSTRIES LTD. VS ASSISTANT COMMISSIONER OF INCOME TAX (TDS) : (2020) 60 CCH 0185 MumTrib

Prior to 1.06.2015 late fee u/s 234E cannot be charged while processing quarterly return u/s 200A.

SECTION 9 OF THE INCOME-TAX ACT, 1961 - INCOME - DEEMED TO ACCRUE OR ARISE IN INDIA - ROYALTY/FEES FOR TECHNICAL SERVICES

Principal Commissioner of Income Tax v. Jay Chemical Industries Ltd. - [2020] 120 taxmann.com 315 (Gujarat)

Where non-resident agents had rendered their services outside India and all agents had overseas offices and they were not having any permanent establishment in India, commission paid to them was not liable to tax in India .

Amadeus IT Group SA v. Assistant Director of Income Tax, Circle-1(1), International Taxation, New Delhi - [2020] 120 taxmann.com 450 (Delhi - Trib.)

Where payments were received by appellant from British Airways in relation to alleged use of Altea Reservation System (ARS), keeping in view fact that computer terminals are at Airport terminals and since amounts had been received for utilization of ARS which was predominantly a reservation system, same may be treated as income from royalty. However, in the absence of corresponding change in the DTAA with regard to interpretation of royalty in the domestic law, the provisions of DTAA would have primacy over the domestic provisions and thus, royalty wouldn't be taxable in India .

Director of Income Tax (International Taxation) v. Autodesk Asia (P.) Ltd. - [2020] 120 taxmann.com 324 (Karnataka)

Computer software : Payment received by assessee, a Singapore based company, for sale of software license to customers in India would be taxable as royalty in hands of assessee at rate of 10 per cent as per substituted clause 2 of article 12 of India-Singapore DTAA .

SECTION 10AA OF THE INCOME-TAX ACT, 1961 - SPECIAL ECONOMIC ZONES

Principal Commissioner of Income Tax-I v. Jewels Magnum - [2020] 120 taxmann.com 316 (Madras)

Approval : A medallion is also classifiable as a pendant; therefore, assessee could not be denied exemption under section 10AA on ground that it had violated approval granted by Development Commissioner, Special Economic Zone for manufacturing gold pendants by saying that product manufactured by assessee was described as medallion .

SECTION 14A OF THE INCOME-TAX ACT, 1961 - EXPENDITURE INCURRED IN RELATION TO INCOME NOT INCLUDIBLE IN TOTAL INCOME

Principal Commissioner of Income Tax v. Jay Chemical Industries Ltd. - [2020] 120 taxmann.com 315 (Gujarat)

Conditions precedent : No disallowance under section 14A can be made if no exemption from income has been claimed .

SECTION 36(1)(III) OF THE INCOME-TAX ACT, 1961 - INTEREST ON BORROWED CAPITAL

Principal Commissioner of Income Tax v. Jay Chemical Industries Ltd. - [2020] 120 taxmann.com 315 (Gujarat)

Capital work-in-progress : Where presumption of Assessing Officer that total term loan received was applied towards capital work in progress was not based on relevant supportive evidence, disallowance of interest expenses was not sustainable .

SECTION 40(A)(IA) OF THE INCOME-TAX ACT, 1961 - BUSINESS DISALLOWANCE

Thomas Muthoot v. Commissioner of Income-tax - [2020] 120 taxmann.com 317 (SC)
Interest, etc., paid to resident without deduction of tax at source : SLP granted against High Court ruling that section 40(a)(ia) is automatically attracted on failure of an assessee to deduct tax on interest paid by him and fact that recipient has subsequently paid tax, will not absolve assessee from consequence of disallowance .

SECTION 80-IA OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - PROFITS AND GAINS FROM INFRASTRUCTURE UNDERTAKINGS

Principal Commissioner of Income Tax v. Jay Chemical Industries Ltd. - [2020] 120 taxmann.com 315 (Gujarat)
Power, meaning of : Where assessee-company was engaged in operation of captive power plant, 'steam' produced by assessee could be termed as 'Power' and would qualify for benefit available under section 80-IA(4) .

SECTION 194A OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - INTEREST OTHER THAN INTEREST ON SECURITIES

Thomas Muthoot v. Commissioner of Income-tax - [2020] 120 taxmann.com 317 (SC)
HUFs/Individuals : SLP granted against High Court ruling that benefit of exclusion from purview of section 194A is restricted only to those individuals and Hindu Undivided families whose total sales, gross receipts or turnover from business or profession do not exceed monetary limit specified under section 44AB(a) or (b) .

RETURN OF INCOME

KUNAL STRUCTURE (INDIA) PRIVATE LIMITED VS DEPUTY COMMISSIONER OF INCOME TAX : (2019) 103 CCH 0425 GujHC
Mere reference to the expression "corrected income" in the notice under sub-section (9) of section 139 does not mean that a fresh return of income has been filed under that sub-section.

INCOME

MEENU KAPOOR VS ASSISTANT COMMISSIONER OF INCOME TAX : (2020) 58 CCH 0444 DelTrib
Where the assessee produced sufficient documentary evidences on record to prove identity of the creditors, their creditworthiness and genuineness of the transaction and no further investigation was carried out by the A.O. on the documentary evidences filed by assessee, A.O. cannot fasten the assessee with such liability under section 68.

ADDITION

INCOME TAX OFFICER (INTERNATIONAL TAXATION) & ANR. VS C. ABDUL MAHAROOF & ANR. : (2020) 60 CCH 0059 CochinTrib
Violation of the principles of natural justice can result in total nullity of the entire addition.

SECTION 10A OF THE INCOME-TAX ACT, 1961 - FREE TRADE ZONE

Commissioner of Income-tax-III v. Narendra R Thappetta - [2020] 120 taxmann.com 320 (Karnataka)

Information technology : Where assessee received back office work from legal department of software companies in USA and back office standard required a level of control over formulation of editing of content of application, which was possible only with use of information technology, activities of assessee could be classified as Data Processing, Legal Databases and remote maintenance under Notification No. 890, dated 26-9-2000 .

SECTION 80P OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - INCOME OF CO-OPERATIVE SOCIETIES

Saravanampatti Primary Agricultural Co-operative Credit Society Ltd. v. Income Tax Officer, Non Corp. Ward-2(5), Coimbatore - [2020] 120 taxmann.com 311 (Madras)

Credit society : Assessing Officer was not justified in denying exemption under section 80P to assessee-society on interest income without considering assessee's argument that funds deposited which gave rise to interest income did not constitute a surplus, but a mandatory statutory reserve - K.2058,

SECTION 148 OF THE INCOME-TAX ACT, 1961 - INCOME ESCAPING ASSESSMENT - ISSUE OF NOTICE FOR

Assistant Commissioner of Income-tax Circle-2 v. Pankajbhai Jaysukhlal Shah - [2020] 120 taxmann.com 318 (SC)

Recording of reasons : SLP dismissed against High Court ruling that where reasons for reopening of assessment was recorded by an Assessing Officer who had jurisdiction over petitioner while reopening notice under section 148 for this purpose was issued by another Assessing Officer who had no jurisdiction over assessee, said notice was bad in law .

SECTION 194C OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - CONTACTORS/SUB-CONTRACTORS, PAYMENTS TO

Times VPL Ltd. v. Commissioner of Income-tax - [2020] 120 taxmann.com 356 (Karnataka)

Purchase of advertising space : Where assessee-company purchased an advertisement space in a local newspaper and exercised control over such space with right to either sell it to other or retain it for itself, payment made by assessee for purchase of such advertisement space would not be liable for tax deduction at source under section 194C .

Summary of new procedure and Forms for registration u/s 12AB and approval u/s 80G of Income tax Act w.e.f. 01.04.2021 for already I. tax regd. or new trusts etc.

By CA P.R. Kothari

Sl. No.	Applicant Category	Prescribed Form	Time limit for filing form	Whether accounts related information to be given?	Whether any enquiry as to activities etc. by registering authority?	Whether power to refuse registration?	Period for which registration will be granted (within what time?)	The manner of signing	When new regn. can be cancelled?
1	2	3	4	5	6	7	8	9	10
Registration u/s 12AB :									
1	Trust etc. already regd. u/s 12A/12AA as on 31.03.21	10A (Online)	Three months from 1st April 21 i.e. upto 30th June,21	No, if last due I. tax return filed Yes, if last due I. tax return not filed	No	No	5 years from 01.04.21 (Within three months from the end of the month in which application is made)	Like I. tax return	Yes, if it found that Form was not filled up correctly or it was not signed properly by proper person but cancellation shall be after giving opportunity of being heard to the assessee. Such cancellation will have effect as if registration and URN were never granted.
2	Newly formed trusts or existing trusts not already registered as on 31.03.21 u/s 12A/12AA of Income tax Act, 1961	- do -	At least one month prior to the commencement of the previous year relevant to the assessment year from which the registration is sought.* * There seems to be some errror of drafting in prescribed period for filing of form	Yes, applicable information shall have to be given as per particular category	No	No	Provisional registration for 3 years from the asst. yr. from which the registration is sought (Within one month from the end of the month in which application is made)	- do -	- do -
3	Existing trusts etc. who adopted or under took modification of objects which do not conform to conditions of registration	10AB (Online)	Within a period of 30 days from the date of such adoption or modification of objects	Yes	Yes	Yes	Five years (Within six months from the end of the month in which application is made)	- do -	- do -
4	Conversion of provisional registration to final registration	- do -	At least 6 months before the expiry of provisional registation or within 6 months of commencement of its activities, whichever is earlier.	Yes	Yes	Yes	Five years (Within six months from the end of the month in which application is made)	- do -	- do -

Contd....2.

Summary of new procedure and Forms for registration u/s 12AB and approval u/s 80G of Income tax Act w.e.f. 01.04.2021 for already I. tax regd. or new trusts etc.

Sl. No.	Applicant Category	Prescribed Form	Time limit for filing form	Whether accounts related information to be given?	Whether any enquiry as to activities etc. by registering authority?	Whether power to refuse registration?	Period for which registration will be granted (within what time?)	The manner of signing	When new regn. can be cancelled?
1	2	3	4	5	6	7	8	9	10
5	Renewal of registration u/s 12AB	10AB (Online)	At least 6 months before expiry of period of registration u/s 12AB	Yes	Yes	Yes	Five years (Within six months from the end of the month in which application is made)	- do -	- do -
6	Medical institutions, Hospitals, educational institutions and other entities covered by section10(23C)/ 10(46) where registration u/s 12A/12AA was made inoperative u/s 11(7)	- do -	At least 6 months before the commencement of ast. Yr. from which new registration is sought.	Yes	Yes	Yes	Five years (Within six months from the end of the month in which application is made)	- do -	- do -
Approval u/s 80G(5):									
1	Trust etc. already approved u/s 80G(5) as on 31.03.21	10A (Online)	Three months from 1st April 21 i.e. upto 30th June,21	No, if last due I. tax return filed Yes, if last due I. tax return not filed	No	No	5 years from 01.04.21 (Within three months from the end of the month in which application is made)	Like I. tax return	Yes, if it found that Form was not filled up correctly or it was not signed properly by proper person but cancellation shall be after giving opportunity of being heard to the assessee. Such cancellation will have effect as if registration and URN were never granted.
2	Newly formed trusts or existing trusts not already registered as on 31.03.21 u/s 80G(5) of Income tax Act, 1961	- do -	At least one month prior to the commencement of the previous year relevant to the assessment year from which the registration is sought.* * There seems to be some errror of drafting in prescribed period	Yes, applicable information shall have to be given as per particular category	No	No	Provisional registration for 3 years from the asst. yr. from which the registration is sought (Within one month from the end of the month in which application is made)	- do -	- do -

Contd....3.

Summary of new procedure and Forms for registration u/s 12AB and approval u/s 80G of Income tax Act w.e.f. 01.04.2021 for already I. tax regd. or new trusts etc.

Sl. No.	Applicant Category	Prescribed Form	Time limit for filing form	Whether accounts related information to be given?	Whether any enquiry as to activities etc. by registering authority?	Whether power to refuse registration?	Period for which registration will be granted (within what time?)	The manner of signing	When new regn. can be cancelled?
1	2	3	4	5	6	7	8	9	10
4	Conversion of provisional approval to final approval	10AB (Online)	At least 6 months before the expiry of provisional registation or within 6 months of commencement of its activities, whichever is earlier.	Yes	Yes	Yes	Five years (Within six months from the end of the month in which application is made)	- do -	- do -
5	Renewal of approval u/s 80G(5)	- do -	At least 6 months before expiry of period of registration u/s 12AB	Yes	Yes	Yes	Five years (Within six months from the end of the month in which application is made)	- do -	- do -

Notes:

1 Kindly go through the instruction to file new form no. 10A and 10AB of Income tax Rules 1962 carefully before filling up the applicable form and for list of documents required to be attached with the form.

2 Separate applications in form 10A or 10AB as the came may be shall have to be made for regn. u/s 12AB and approval under section 80G(5) of Income tax Act, 1961.

3 Any order passed u/s 12AB or 80G(5) is appealable before Hon'ble Income tax Appellate Tribunal.

4 The donee shall be allowed deduction u/s 80G(5) for donations made, only if

i) statement of particulars is filed electronically by donee trust etc. in Form 10BD giving the details of donors and donations recd. and other prescribed particulars of said donation received within a financial year and this has to be filed by 31st May, immediately following the financial year starting from financial year 2021-22. Correction to such statement shall also be permissible.

ii) a certificate in form 10BE is furnished by the donee by 31st May, immediately following the financial year starting from financial year 2021-22,to the donor specirfying the donation amount and other prescribed particulars of donation recd. from that person in that financial year.

5 A minimum penalty of Rs.10000/- which may extend upto Rs.100000/- is leviable on the donee trusts etc. for failing to file form no. 10BD to prescribed authority or failing to furnish certificate in form 10BE to donor though such levy of penalty is appealable before CIT(A)

CIRCULARS

CA Ankit Kanodia & CA Nishi Jain

Circular No. 145/01/2021 - GST dated. 11th February,2021.

Topic : SOP for implementation of the provision of suspension of registrations under sub Rule (2A) of Rule 21A of CGST Rules,2017

Background: Guidelines for suspension of registration in certain circumstances.

Through Notification No.94/2020 dated 22-12-2020, sub Rule 2A had been inserted to rule 21A of CGST Rules, 2017 which provides for immediate suspension of registration of a person where discrepancies are found in returns furnished by registered person under Section 39 with the details of

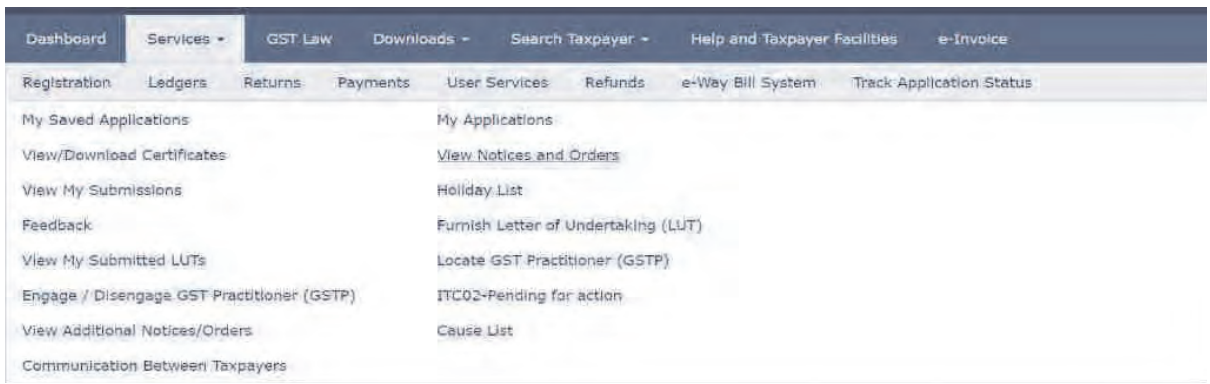
1. outward supplies furnished in **FORM GSTR-1** or,

b) inward supplies derived based on the details of outward supplies furnished by his suppliers in their **FORM GSTR 1.**

The suspension of registration shall be intimated to the said person in **Form GST REG -31** , electronically on the common portal, or by **sending a communication to his e-mail address** provided at the time of registration highlighting the said differences and anomalies and asking him to explain, within a period of thirty days, as to why his registration shall not be cancelled.

The Board hereby provides the following guidelines for implementation of the provision of suspension of registrations under the said rule till the time FORM GST REG -31 is developed on the portal-

1. The registration of specified taxpayers shall be suspended and system generated intimation for suspension and notice for cancellation of registration in **FORM GST REG-31,** containing the reasons of suspension, shall be sent to such taxpayers on their registered e-mail address. Till the time functionality for **FORM REG-31** is made available on portal, such notice/intimation shall be made available to the taxpayer on their dashboard on common portal in **FORM GST REG-17**. The taxpayers will be able to view the notice in the "View/Notice and Order" tab post login.



2. The taxpayers, whose registrations are suspended under the above provisions, would be required to furnish reply to the jurisdictional tax officer within thirty days from the receipt of such notice / intimation, explaining the discrepancies/anomalies,

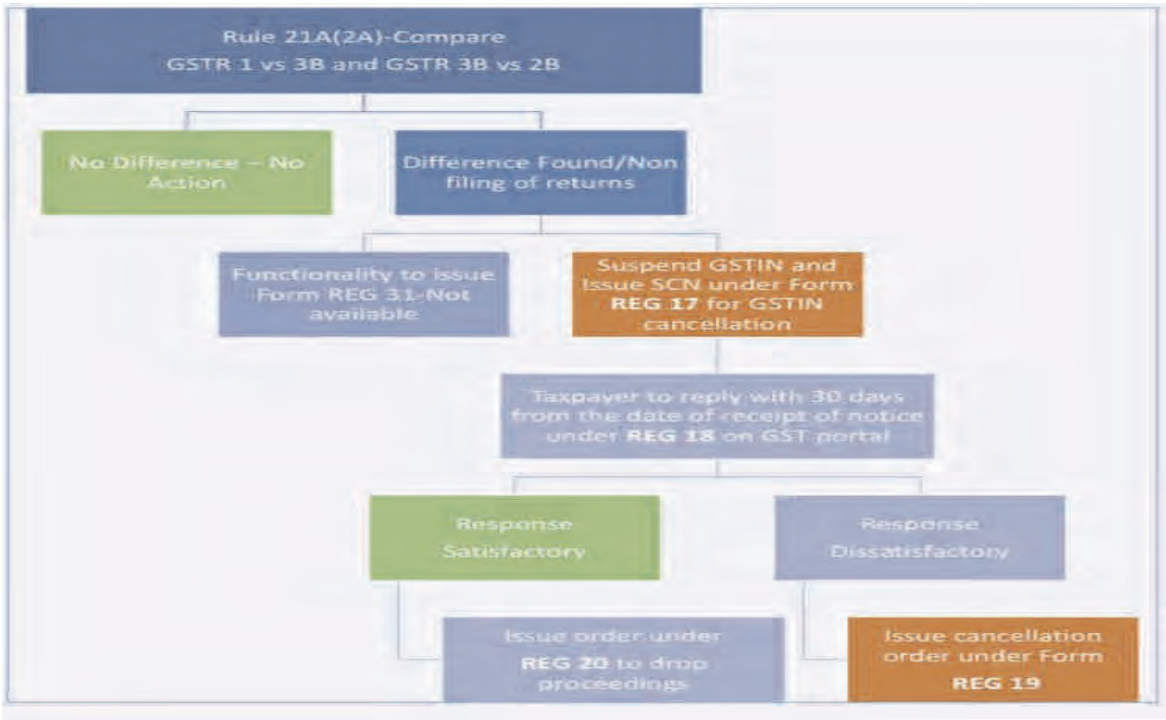
a) The said person would be required to reply to the jurisdictional officer against the notice for cancellation of registration sent to them, in **FORM GST REG-18** online through Common Portal within the time limit of thirty days from the receipt of notice/ intimation.

b) In case the intimation for suspension and notice for cancellation of registration is issued on ground of non -filing of returns, the said person may file all the due returns and submit the response.

3. Post issuance of **FORM GST REG-31** via email, the list of such taxpayers would be sent to the concerned Nodal officers of the CBIC/ States. Also, the system generated notice can be viewed by the jurisdictional proper officers on their Dashboard for suitable actions. Upon receipt of reply from the said person or on expiry of thirty days (reply period), a task would be created in the dashboard of the concerned proper officer under **"Suo moto cancellation proceeding"**

4. Post examination of the response received from the said person may pass an order either for dropping of proceedings for suspension/ cancellation of registration in **FORM GST REG-20** or for cancellation of registration in **FORM GST REG-19**. **Based on the action taken by the proper officer, the GSTIN status would be changed to "Active" or "Cancelled Suo-moto"**.

Revocation of Suspension of registration- If the proper officer is satisfied with the reply of the said person ,he may revoke the suspension by passing an order in **FORM GST REG-20**. If again after detailed verification after such revocation, proper officer finds that the registration of the said person is liable for cancellation, he can again initiate the proceeding of cancellation of registration by issuing notice in **FORM GST REG-17**.



Circular No. 146/02/2021 - GST dated. 23rd February,2021

Topic : Dynamic Quick Response (QR) code on B2C Invoices

Background : Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of notification 14/2020- Central Tax dated 21st March,2020.

Dynamic QR code was made applicable on invoices issued by taxpayers having aggregate turnover more than 500 crore rupees, w.e.f. 1st October, 2020, which was further extended to 1st December,2020, vide Notification No.71/2020 dated 30th September, 2020.

Further the amount of penalty was payable by a registered person was waived vide Notification No. 89/2020 dated-29th November,2020 for non-compliance of provisions of dynamic QR code in **B2C invoices** prescribed vide Notification No.14/2020 – Central Tax, dated March 21, 2020 between the period from the December 1, 2020 to March 31, 2021, subject to the condition that said person complies with provisions of said notification w.e.f. April 1, 2021.

Various confusions have come up regarding QR code on B2C invoices and compliance of Notification No.14/2020 dated 21st March,2020 , so to clarify the issues faced by taxpayers and in order to ensure uniformity in the implementation of the provisions of the law the Board introduced Circular No. 146/02/2021-GST dated 23rd feb,2021.

Through this Circular Board clarified certain issues which have been listed below –

1. Notification No. 14/2020 s applicable to a tax invoice issued to an unregistered person by a registered person (B2C invoice) whose annual aggregate turnover exceeds 500 Cr rupees in any of the financial years from 2017-18 onwards. However, the said notification is not applicable to an invoice issued in certain cases like where the supplier of taxable service is an insurer or a banking company , GTA, or supplying services by way of admission to exhibition of cinematograph in films in multiplex screens or OIDAR supplies made by any registered person,
2. In case of exports, though such supplies are made by a registered person to an unregistered person, however, as e-invoices are required to be issued in respect of supplies for exports, in terms of **Notification no. 13/2020-Central Tax, dated 21st March, 2020** treating them as Business to Business (B2B) supplies, Notification no. **14/2020-Central Tax, dated 21st March, 2020** will not be applicable to them.
3. Dynamic QR Code should contain the following information:-
   i. Supplier GSTIN number
   ii. Supplier UPI ID
   iii. Payee's Bank A/C number and IFSC
   iv. Invoice number & invoice date,
   v. Total Invoice Value and
   vi. GST amount along with breakup i.e. CGST, SGST, IGST, CESS, etc.

Further, Dynamic QR Code should be such that it can be scanned to make a digital payment.

4. If the supplier has issued invoice having Dynamic QR Code for payment, the said invoice shall be deemed to have complied with Dynamic QR Code requirements.

   In cases where the supplier, has digitally displayed the Dynamic QR Code and the customer pays for the invoice: –

   i. Using any mode like UPI, credit/ debit card or online banking or cash or combination of various modes of payment, with or without using Dynamic QR Code, and the supplier provides a cross reference of the payment (transaction id along with date, time and amount of payment, mode of payment like UPI, Credit card, Debit card, online banking etc.) on the invoice ; or

   ii. In cash, without using Dynamic QR Code and the supplier provides a cross reference of the amount paid in cash , along with date of such payment on the invoice;

5. In cases where the supplier makes available to customers an electronic mode of payment like UPI Collect, UPI Intent or similar other modes of payment, through mobile applications or computer based applications, where though Dynamic QR Code is not displayed, but the details of merchant as well as transaction are displayed/ captured otherwise ,then if the cross reference of the payment made using such electronic modes of payment is made on the invoice, the invoice shall be deemed to comply with the requirement of Dynamic QR Code.

6. If cross reference of the payment received either through electronic mode or through cash or combination thereof is made on the invoice, then the invoice would be deemed to have complied with the requirement of Dynamic QR Code; In cases other than pre-paid supply i.e. where payment is made after generation / issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice.

7. In case, the supplier is making supply through the E-commerce portal or application, and the said supplier gives cross references of the payment received in respect of the said supply on the invoice, then such invoices would be deemed to have complied with the requirements of Dynamic QR Code.

Comments:- The above clarifications will help in clearing many confusions faced by registered persons and thus will help in complying with the provisions of Dynamic QR code correctly.

Circular No:- 04/2021-Customs dated 16th February, 2021

Topic : Sanctioning of pending IGST refund claims due to mismatch error in GSTR 1 GSTR 3B

Background:- Extension of Board's Circular No. 12/2018for sanction of pending IGST refund claims where the records have not been transmitted to ICEGATE due to mismatch in GSTR 1 and GSTR 3B.

GSTR-1 and GSTR- 3B mismatch error

The exporters have faced many hardships due to refunds being stuck because of mismatches in the amount of IGST paid on export goods between GSTR 1 and GSTR 3B and due to this many refund claims could not get processed leading to blockage of funds for exporters.

Keeping the above scenario in mind a validation facility had been introduced in the GSTN system to ensure that the IGST paid on the export goods in any particular month [3.1(b)] is not less than the refund claimed by the exporter [Table 6A]. However, data provided by GSTN has revealed that this validation has failed in number of cases.

To ease some of the difficulties faced by the exporter the Board **through Circular No. 12/2018, dated 29Th May, 2018** proposed a interim solution which is discussed as below-

1. **Cases where there is no short payment**:

   a) The Customs policy wing would prepare a list of exporters whose cumulative IGST amount paid against exports and interstate domestic outward supplies, for the period **July' 2017 to March' 2018** mentioned in GSTR-3B is greater than or equal to the cumulative IGST amount indicated in GSTR-1 for the same period and GSTN shall send a confirmatory e-mail to these exporters regarding the transmission of records to Customs EDI system.

   b) The exporters whose refunds are processed/ sanctioned would be required to submit a certificate from Chartered Accountant before 31st October, 2018 to the Customs office at the port of export to the effect that there is no discrepancy between the IGST amount refunded on exports and the actual IGST amount paid on exports of goods for the period **July' 2017 to March' 2018.**

2. Cases where there is short payment:-In this case same procedure as above will be followed but the exporters here would have to make the payment of IGST equal to the short payment in GSTR 3B of subsequent months so as to ensure that the total IGST refund being claimed in the Shipping Bill/GSTR-1(Table 6A) is paid.

This circular was introduced for the 1st 9 months of introduction of GST till 31-3-2018.

The solution benefitted many exporters and the incidence of such errors greatly reduced but as it is known mistakes are common for any human being so these mistakes are being committed after 31-3-2018 also on account of which their records are yet to be transmitted to Customs system.

To help the exporters the Board vide **Circular No. 25/2019 dated 27th August,2019** extended the period of interim solution covered under Circular No.12/2018-Customs till **31st March,2019**.

The comparison between the IGST payments in GSTR 1 and GSTR 3B would now be for the period **April 2018 to March 2019** and the corresponding CA certificate regarding no discrepancy between IGST refunded on exports under this circular and the actual IGST amount paid on exports of goods for April 2018-March 2019 shall be furnished by 30th October,2019.

Till date many refunds are pending due to non availability of functionality to amend GSTR 3B and mistakes are still being committed by exporters and to ease their burden of blockage of funds The Board once again introduced **Circular No 04/2021-dated 16th February,2021** to extend the solution covered under Circular No. 12/2018 read with Circular No. 25/2019 till **for Shipping Bills filled during the FY 2019-20 and 2020-21**.

The comparison between the cumulative IGST payments in GSTR-1 and GSTR 3B would now be for the period April 2019 to March 2021. The corresponding CA certificate evidencing that there is no discrepancybetween the IGST amount refunded on exports in terms of this Circular and the actual

IGST amount paid onexports of goods for the period April 2019 to March 2020 and April. 2020 to March, 2021 shall be furnished by **31st March, 2021 and 30th October 2021, respectively.**

Comments:-

Time and time again Board have helped exporters in some way to expedite the processing of refunds.The above circulars have reduced the burden of exporters to a great extent and covering FY 2019-20 and 2020-21 will help many exporters receive their refunds pending since a long time.

Circular No:-05/2021-Customs dated 17th February, 2021

Topic :- IGST refunds on exports –extension in SB005 alternate mechanism

Background : IGST refunds on account of export of goods being stuck due to SB 005 error-alternate mechanism

Refund process in case of exports is a very time consuming process and to get the refunds at on go exporters have to declare correct information of IGST on export supplies in GSTR 3B and GSTR 1.Then data will be transmitted to the Customs system wherein the GST return data is matched with the shipping bill data.

If the matching is successful, ICES processes the claim for refund and the relevant amount of IGST paid with respect to each shipping bill is electronically credited to the exporter's bank account as registered with the Customs authorities. But, wherever the matching fails on account of some error, the refund do not get sanctioned. The matching between the two data sources is done at invoice level and any mis-match of the laid down parameters results in one or more of the following errors/responses:

Code	Meaning
SB001	Invalid SB details
SB002	EGM not filed
SB003	GSTIN mismatch
SB004	Record already received and validated
SB005	Invalid invoice number
SB006	Gateway EGM not available

SB005 is the most common error which occurs due to mismatch of invoice number as declared in the Invoice Table in the SB and that declared in the GSTR 1 for the same supply. This can happen due to:

1. Typographical mistake while entering data in GSTR 1 or the SB.
2. The exporter uses two sets of invoices, one invoice for GST and another invoice for exports resulting in mismatch of invoice numbers

The issue has been firstly taken by way of **Circular No.5/2018-Customs dated 23rd Feb,2018-** wherein it had been decided to provide an alternative mechanism to give exporters an opportunity to rectify such errors committed in the initial stages.This envisages an **officer interface** on the Customs EDI System through which a Customs officer can verify the information furnished in GSTN and Customs EDI system and sanction refund in those cases where invoice details provided in GSTR 1/ Table 6A are correct though

the said details provided in the shipping bill were at variance. It is pertinent to note that refund claims would be processed in only those cases where the error code is mentioned as **SB005.**

A procedure would be followed for processing of refunds which is discussed below-

a) The exporter shall provide a concordance table indicating mapping between GST invoices and corresponding Shipping Bill invoices.

b) After determining the correct refund amount, the officer need to enter the same into the Customs EDI system. The officer has the facility to edit the IGST paid details in case of short shipment or incorrect calculation by the exporter. The officer shall complete the verification by accepting or rejecting or amending the same.

The above procedure is available only for Shipping Bills filed till 31st December 2017. The above interface by officer as discussed above is very beneficial for exporters as there will be accurate checking at invoice level by officer so chances of mistake will be minimal.

Time and time many circulars have been brought up by the Board which extended the period of Shipping Bills which have been summarized below for ready reference-

CIRCULAR NUMBER	TIME LIMIT
Circular No. 05/2018-	31.02.2017
Circular No. 08/2018-	28.02.2018
Circular No. 15/2018-	30.04.2018.
Circular No. 22/2018-	30.06.2018
Circular No. 40/2018	15.11.2018.
Circular No. 26/2019	31.07.2019.
Circular No. 22/2020	31.12.2019

Through the above circulars it has been noticed that the quantum of Shipping Bills pending on account of such errors being committed by the Trade have come down significantly, but still it is occurring in some cases resulting in hold- up of IGST refunds.

So to ease the difficulties faced by exporters the Board introduced Circular No.05/2021-Customs dated-17th February,2021 wherein it has been decided as a measure of trade facilitation to keep the Officer Interface available on permanent basis to resolve such errors on payment of specified fee by the exporter.The exporter may avail the facility of correction of Invoice mis-match errors (error code SB-005) inrespect of all past shipping bills, irrespective of its date of filling, by following the procedure as provided in the above Circulars, subject to payment of Rs. 1,000/- as fee towards such rendering of service by Customs Officers for correlation and verification of the claim.

Comments:-

The permanent interface of officers and correction of all past Shipping bills ,irrespective of its date of filling will help in processing of long pending refunds.

Circular No:-147/03/2021-GST dated 12th March, 2021

Topic:-Clarification on refund related issues claimed by recipient of Deemed Export Supply

Background: Refund claimed by recipient in case of deemed export supply requires them to debit the amount so claimed from their electronic cash ledger.

Issue faced:

Refund in case of Deemed export either can be claimed by recipient of deemed export or supplier of deemed export. If the refund is claimed by recipient, the system allows to file the refund claim only when the said claimed amount is debited in electronic credit ledger.

On the other hand by circular No.125/44/2019 dated 18/11/2019 Department has placed a condition that the recipient claiming the refund shall submit an undertaking that he has not availed ITC on invoices for which refund is claimed.

Thus, in terms of the above circular, the recipient of deemed export supplies cannot avail ITC on such supplies but when they proceed to file refund on the portal, the system requires them to debit the amount so claimed from their electronic credit ledger.

For the above point Government brought a clarification that there is no restriction under the provision of GST law on recipient of deemed export supply, claiming the refund of tax paid on such deemed export supply on availment of ITC on the tax paid on such supply. Therefore, the para 41 of Circular No. 125/44/2019-GST dated 18.11.2019 is modified to remove the restriction of non-availment of ITC by the recipient of deemed export supplies on the invoices, for which refund has been claimed by such recipient.

Thus the above circular is modified for the benefit of taxpayers by stating that the amount should not exceed the amount of Input tax credit availed in the valid return filed for the said tax period.

Notification No. 01/2021 Dated 1st January, 2021

The Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017-

In the Central Goods and Services Tax Rules, 2017 in rule 59, after sub-rule (5), the following sub-rule shall be inserted namely:-

"(6) Notwithstanding anything contained in this rule, -

a) a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for preceding two months;

b) a registered person, required to furnish return for every quarter under the proviso to sub-section (1) of section 39, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the return in FORM GSTR-3B for preceding tax period;

c) a registered person, who is restricted from using the amount available in electronic credit ledger to discharge his liability towards tax in excess of ninety-nine per cent. of such tax liability under rule 86B, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the return in FORM GSTR-3B for preceding tax period.".

Before Government had issued Notification No.94/2020 dated 22nd December,2020 vide Rule 59(5) which **restricted filling of GSTR 1 in the following cases-**

Rule 59(5) -**Blocking of GSTR 1 in the following cases-**
1) On default of GSTR 3B for two preceeding Months-Taxpayers filling monthly
2) On default of GSTR 3B for preceeding period-taxpayer filing quarterly return
3) On default of GSTR 3B for preceeding month-taxpayer eligible to use 99% ITC

The previous Notification was effective from 22-12-2020 and the New notification is made effective from 01-01-2021 without substituting the Rule 59(5) but incorporating a new Rule 59(6) overriding all other provisions of Rule 59 w.e.f 01-01-2020.

Remarks- This Notification may be introduced to bring the provisions in alignment with changes effective from 01-01-2020 and also to save actions /restrictions from 22-12-2020 to 31-12-2020.

Instruction No. 1/2020-21 [GST-Investigation]

Subject : Instructions/Guidelines regarding procedures to be followed during Search Operations

Section 67 of CGST Act, 2017 contains the provisions for inspection, search and seizure.

As some instances have come to the notice of Board and Central Vigilance Commission that proper procedures have apparently not been followed during search proceedings or Panchnamas/statements have not been recorded as per guidelines & instructions, these discrepancies slowly weaken the trust of common people on the judicial

system, so to make the the search procedure hassle free some instructions/guidelines have been brought up which are listed below-

1) Valid and justifiable reasons should be there for authorizing a search and proper records should be maintained for the same.
2) The instructions related to the generation of DIN should be followed in a very careful way.
3) The premises of only that person can be searched against whom search warrant has been issued, and in case search warrant has been issued in the name of a dead person, the authorised officer should report to the Competent Authority and get a Fresh warrant issued in the names of the legal heirs.
4) A lady officer to be part of search proceedings in case of search of a residence.
5) The search shall be made in the presence of two or more independent witnesses who would preferably be respectable inhabitants of the locality, and if no such inhabitants are available or willing, the inhabitants of any other locality should be asked to be witness to the search.
6) The officers conducting the search shall first identify themselves by showing their identity cards to the person-in-charge of the premises.
7) A Panchnama containing a truthful account of the proceedings of the search shall necessarily be made and a list of documents/goods/ things recovered should be prepared. It should be ensured that the time and date of start of search and conclusion of the search must be mentioned.
8) In the sensitive premises videography of the search proceedings may also be considered and the same may be recorded in Panchnama.
9) The officers should be well mannered towards the party and respect social and religious sentiments of the persons under search. Special care to be given to elder, women and children.
10) The person under search may take copies or extracts of the documents seized but if it is believed that such documents may be tampered or it may effect investigation, then copies may not be allowed.
11) The officer authorized to search the premises must sign each page of the Panchnama and annexures.
12) In case any statement is recorded during the search, each page of the statement must be signed by the person whose statement is being recorded.
13) After the search is over, the- search authorization duly executed should be returned to the officer who had issued the said search authorization with a report regarding the outcome of the search. The names of the officers who had participated in the search should be written on the reverse of the search authorization and the officers should leave the premises immediately after the completion of Panchnama Proceedings.
14) During the prevalent COVID-19 pandemic situation, it is imperative to take precautionary measures such as maintaining proper social distancing norms, use of masks and hand sanitizers, etc.

Comments:-The above guidelines introduced will help make search procedure to be conducted in a smooth manner and will also strengthen the judicial security.

Notification No. 03/2021 Dated 23rd February, 2021

Through this Notification Government notifies certain categories to whom provisions of sub section (6B) or (6C) of Section 25 shall not apply which are listed below-

1) Not a citizen of India
2) A department or Establishment of Central Government or State Government
3) A local authority
4) A statutory body
5) A Public Sector Undertaking
6) A person applying for registration under the provisions of subsection (9) of Section 25 of the said Act.

For reference provisions of sub section (6B) and (6C) of Section 25 of CGST Act, 2017 is highlighted below:-

Section 25-Procedure for registration:-Every person who is liable to be registered shall apply for registration in every such State or Union territory in which he is so liable within thirty days from the date on which he becomes liable to registration.

Sub section (6B) and (6C) speaks about undergoing authentication or furnishing of Aadhar Number in order to get registered under GST. This is applicable for every person other than an individual and proof of possession of Aadhaar number should be furnished by the Karta, Managing Director, whole time Director, such number of partners, Members of Managing Committee of Association, Board of Trustees, authorised representative, authorised signatory and such other class of persons as may be notified.

Before Government had notified that the provisions of sub-section (6B) or sub-section (6C) of Section 25 of CGST Act,2017 shall not apply to a person who is not a citizen of India or to a class of persons other than the following class of persons, namely:–

(a) Individual;

(b) authorized signatory of all types;

(c) Managing and Authorized partner; and

(d) Karta of an Hindu undivided family.

The above was notified through Notification No.17/2020 dated 23rd March,2020 and Notification No. 03/2021 has been introduced in supersession of the earlier Notification.

Notification No. 04/2021 Dated 28th February, 2021

The time limit for furnishing of the annual return specified under section 44 of the said Act electronically through the common portal, for the **financial year 2019-20** has been extended **till 31st March,2021.**

Earlier the time due date for FY 2019-20 was extended till 28 February,2021 through Notification No.95/2020 dated 30th December, 2020.

Notification No. 05/2021 Dated 8th March, 2021

Through this Notification Government makes E- Invoice applicable for registered taxpayers whose aggregate turnover exceeds **Rs 50 crores w.e.f 01st April, 2021.**

Before Government had issued Notification No. 13/2020 dated 21st March,2020 in which E- Invoice was applicable for taxpayers whose aggregate turnover exceeded Rs 100 crores w.e.f 01st October, 2020 which was further amended vide Notification No. 88/2020 dated 10th November,2020 in which requirement of issuing E-Invoice was applicable w.e.f 01st January, 2021 to those taxpayers whose aggregate turnover exceeded Rs 100 crores.

Comments:-Through this Notification a great number of taxpayers will have to mandatorily issue E- Invoice which will help in curbing fake invoices to a large extent as Government will keep a strict eye on the same and chances of defrauding will be reduced.

Notification No. 06/2021 Dated 30th March, 2021

The government vide **Notification No.14/2020** dated 21st March,2020 had notified Dynamic QR Code for invoices issued by a registered person whose aggregate turnover in a financial year exceeds five hundred crore rupees to an unregistered person (hereinafter referred to as B2C invoice).

Then Government vide **Notification No.89/2020** dated 29th November,2020 had waived off the amount of penalty payable by any registered person under section 125 of the said Act for non compliance of the provisions of notification No.14/2020 dated 21st March,2020 between the period from the 1st day of December, 2020 to the 31st day of March, 2021, subject to the condition that the said person complies with the provisions of the said notification from the 1st day of April, 2021.

To ease the burden of registered persons in implementation of Dynamic Quick Response(QR) Code the Government again made changes in Notification No. 89/2020 dated 29th Novemeber,2020 vide **Notification No. 06/2021** dated 30th March,2021 where penalty was waived off for the period between 1st day of December, 2020 to the **30th day of June, 2021** subject to the condition that the said person complies with the provisions of the said notification from the **1st day of July, 2021.**

COMPANY LAW UPDATES

Mayur Agrawal, FCA, CS, LLB, B.Com (Hons)

Reference	Date	Topic	Description
Amendment Notification	18-03-2021	Amendment of Sch V of CA 2013	In case a company has no profits or its profits are inadequate, amount of remuneration that can be paid to a non-executive director or an independent director. http://www.mca.gov.in/Ministry/pdf/AmendmentNotification_19032021.pdf
Amendment Notification	24-03-2021	Amendment of SchIII of CA 2013	Various changes have been made to the format and content Financial Statements.http://www.mca.gov.in/Ministry/pdf/ScheduleIIIAmendmentNotification_24032021.pdf

Companies (Management and Administration) Amendment Rules, 2021, Dated 05.03.2021

MCA has notified that every company shall file its annual return in Form No.MGT-7 except One Person Company (OPC) and Small Company. One Person Company and Small Company shall file annual return from the financial year 2020-2021onwards in Form No.MGT-7A.

http://www.mca.gov.in/Ministry/pdf/CompaniesMgmtAdminAmndtRules_11032021.pdf

Companies (Accounts) Amendment Rules, 2021, Dated 24.03.2021

MCA has notified that from the Financial Year commencing on or after 1st April, 2021, every company which uses accounting software for maintaining its books of accounts, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in the books of accounts along with date when such changes are made and ensuring that the audit trail cannot be disabled.

http://www.mca.gov.in/Ministry/pdf/AccountsAmendmentRules_24032021.pdf

Companies (Audit and Auditors) Amendment Rules, 2021, Dated 24.03.2021

MCA has made additions to items to be disclosed in the Auditor's Report including details of funds given or received on behalf of Ultimate Beneficiary, the company has used accounting software for maintaining its books of account which has a feature of recording audit trail facility and the same has been operated throughout the year.

http://www.mca.gov.in/Ministry/pdf/AuditAuditorsAmendmentRules_24032021.pdf

Companies (Audit and Auditors) Second Amendment Rules, 2021, Dated 01.04.2021

The amendment made by notification dated 24th March, 2021 has been extended to come in force with effect from 1st April, 2022.

http://www.mca.gov.in/Ministry/pdf/AuditAuditorsAmendmentRules_01042021.pdf

Companies (Accounts) Second Amendment Rules, 2021, Dated 01.04.2021

The amendment made by notification dated 24thMarch, 2021 has been extended to come in force with effect from 1stApril, 2022.

http://mca.gov.in/Ministry/pdf/AccountsAmendmentRules_01042021.pdf

eBulletin
March-April, 2021

PRACTICAL DIFFICULTIES IN THE MERGER OF LIMITED LIABILITY PARTNERSHIP

CA Vishnu K Tulsyan

Introduction

The introduction of the concept of the Limited Liability Partnership through Limited Liability Partnership Act, 2008 has proved to be a boon to the modern Indian economic scenario. It has paved ways for a far more organised form of business than a traditional Partnership with lower administrative compliances unlike a company registered under the Companies Act, 1956 or 2013.

The Limited Liability Partnership (LLP) has helped in bringing the small scale industries and service sector enterprises such as lawyers, chartered accountants etc which were previously constituted as partnership firms, within the ambit of the organised business sector.

The advantages of Limited Liability Partnership form of business are widely known and have been discussed at various platforms since its inception and consequently it has gained popularity in the last few years. However, the provisions relating to restructuring involving LLP, i.e. the merger of an LLP with another LLP or company is faced with a lot of difficulties in current practical scenario and needs to be addressed from various statutory points of views to bring uniformity in interpretation and clarity in dealing such situations.

Provisions relating to merger of LLP.

A. Under LLP Act, 2008 read with LLP Rules, 2009

Section 60 to 62 under Chapter XII of the LLP Act, 2008 read with Rule 35 of the LLP Rules, 2009 contains the provisions relating to Compromise, Arrangement or Reconstruction of Limited Liability Partnerships which are identical to the provisions of Companies Act, 2013, wherein;

Section 60 provides for merger and amalgamation of one or more LLPs through National Company Law Tribunal (Tribunal) on application of the limited liability partnership, or of any creditors or partners of the limited liability partnership or liquidator, in case the limited liability partnership is being wound up.

Section 61 provides for the power of the Tribunal to enforce compromise and arrangement ordered under section 60 or to make such modification in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.
Section 62 facilitates reconstruction or amalgamation of limited liability partnership by the Tribunal.

Rule 35 of the LLP rules, 2009 provides the procedures to be followed and forms to be filed in relation to making an application to the Tribunal for compromise, arrangement or reconstruction of limited liability partnership and the filing of order with the Registrar. Rule 35 (1) specifies that the application for an order convening a meeting of creditors or partners or creditors and partners shall be supported by an affidavit in Form-20 along with a copy of proposed compromise or arrangement annexed as an exhibit to such affidavit.

B. Under the Companies Act, 2013 Read with National Company Law Tribunal Rules, 2016

Section 407 to 434 under Chapter XXVII (National Company Law Tribunal and Appellate Tribunal) of the Companies Act, 2013 read with National Company Law Tribunal, 2016 contains provisions relating to the structure, functioning of and proceedings before the National Company Law Tribunal and the Appellate Tribunal.

Section 408 of the Companies Act, 2013 provides for the Constitution of National Company Law Tribunal by the Central Government to exercise and discharge such powers and functions as are, or may be, conferred on it by or under the Companies Act, 2013 or any other law for the time being in force.

[Therefore, from the interpretation of the above section it is conclusive that the National Company Law Tribunal shall also exercise and discharge such powers and functions as are conferred on it under The LLP Act, 2008 being any other law.]

Rule 34(1) under Part IV of The National Company Law Tribunal Rules, 2016 contains General procedure which provides that "In a situation not provided for in these rules, the Tribunal may, for reasons to be recorded in writing, determine the procedure in a particular case in accordance with the principles of natural justice".

[This further confirms that the Tribunal is empowered to entertain a situation not specifically provided for in the National Company Law Tribunal Rules, 2016 to follow the principal of natural justice.]

C. Under the Income Tax Act, 1961

From the perspective of the Income Tax Act, 1961, the definition of amalgamation defines merger in the context of Companies.

As per Section 2 (1B) 'Amalgamation' in relation to companies, means the merger of one or more companies with another company or the merger of two or more companies to form one company (the company or companies which so merge being referred to as the amalgamating company or companies and the company with which they merge or which is formed as a result of the merger, as the amalgamated company) in such a manner that—

(i) all the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation;

(ii) all the liabilities of the amalgamating company or companies immediately before the amalgamation become the liabilities of the amalgamated company by virtue of the amalgamation;

(iii) shareholders holding not less than three-fourths in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary) become shareholders of the amalgamated company by virtue of the amalgamation,

otherwise than as a result of the acquisition of the property of one company by another company pursuant to the purchase of such property by the other company or as a result of the distribution of such property to the other company after the winding up of the first-mentioned company;

Further, company as defined in the

CompaniesAct, 2013 means a company incorporated under the Companies Act, 2013 or under any previous Company Law.

It however does not deal with the situation of Merger of one or more Limited Liability Partnership (LLP) into another Limited Liability Partnership (LLP). Unlike in the case of merger of Companies, the Income Tax Act, 1961 does not contain any specific provisions providing tax relief for mergers or restructuring of LLPs. Thus there is no clarity on taxation in the hands of transferor/transferee LLP and their partners.In absence of income-tax incentives, restructuring of LLPs may not take off.

D. Valuation by Registered Valuer

In case of any compromise or arrangement under Section 230 of the Companies Act, 2013, Clause v of Sub-section 2 of the said section requires the company or any other person by whom the application ismade under sub-section (1) to disclose to the Tribunal by affidavitinter-alia, a valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable of the company by a Registered Valuer.However, LLP Act and Rules are completely silent on such requirement of Valuation in case of restructuring under LLP.

E. Stamp Duty

Another important aspect in the restructuring of LLPs is the applicability of stamp duty. Most states have amended the definition of "Conveyance" to include orders passed under section 391 to section 394 of the Companies Act, 1956/ section 230 to 234 of the Companies Act, 2013, as "Conveyance," and accordingly, the same is liable to stamp duty. In addition, it is important to note that there are concessional rates of stamp duty in many states for such court orders. However, one needs to evaluate whether the order passed in case of merger of two LLPs would also be covered under the definition of "Conveyance". Before the amendment of the definition of "Conveyance," there have been contrary judgments on whether the NCLT order approving merger would be subject to stamp duty. Thus, even with regard to stamp duty, the implications for the merger of an LLP with another LLP are ambiguous.

Conclusion

In lights of what is stated above, clarification is required from the Ministry with regard to the applicability of NCLT Rules, 2016 on the proceedings before the Tribunal relating to the restructuring involving LLP i.e. Merger of LLP with another LLP. Though Chapter XII of the LLP Act, 2008 contains provisions for Merger of LLP and the power is given to NCLT but no specific rules have been prescribed by NCLT in this respect. Further, clarity on tax and stamp law on the taxability of Merger of an LLP with LLP would be very helpful.

Analysing the various laws relating to restructuring and more particularly merger, it can be said that the Merger of LLPs is marked with a lot of inconsistencies which makes it practically difficult in execution of proceedings under Section 60-62 of the LLP Act, 2008 and rules made thereunder.

The aforementioned discussions raise the following questions that seekclarifications;

Issues in Proceeding with the Merger of LLPs

1. Valuation The LLP Act, 2008 and its Rules does not contain any provision regarding the Valuation of LLPs.

Need to know (?): Whether the LLPs are exempt

from obtaining Valuation Report in respect of Merger?

2. Taxation Aspect - Unlike the merger of Companies, the Income Tax Act, 1961 does not contain any specific provisions providing tax relief for mergers or restructuring of LLPs. Thus there is no clarity on taxation in the hands of transferor/transferee LLP and their partners.

Need to know (?): Whether transfer of assets on amalgamation of one LLP into another LLP is exempt under the Income tax Act?

3. E-Filingon NCLT Portal – In the recently introduced feature of online Filing under NCLT, although the provision for making application under Section 60-62 of the LLP Act, 2008 has been given, but it does not specify LLP as such anywhere in it. The details sought are akin to an application under Companies Act, 2013. The Checklist provided in the portal referto the Companies Act, 2013 only.

However, In light of the above discussion, the following cases has been undertaken and heard by the Honble NCLT at various Benches for merger of LLP with another LLP.

eBulletin
March-April, 2021

DUE DATE FALLING ON HOLIDAY – GENERAL CLAUSES ACT

PARAS KOCHAR, Advocate

It has always been a matter of concern that if due dates for making statutory compliance by a person falls on a holiday, whether next working day will be considered as due date or holiday will be due date. Now another question arises as to which holiday? Public holiday, national holiday, Sunday, Saturday etc. Some people also ask that their establishment was closed on due date as per Shops and Establishment Act. The General Clause Act deals with due date falling on a holiday.

Section 10 in The General Clauses Act, 1897 reads as follows –

(1) Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the 6 Indian Limitation Act, 1877 (15 of 1877), applies.

(2) This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January, 1887.

According to this section, where any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the court or office is open. This section is clear that holiday mean when court or office is closed. It does not say that it should be a public holiday.

Section 4 of the Limitation act also provides that where the prescribed period for any suit, appeal or application expires on a day when court is closed, the suit may be instituted, preferred or made on the day when court reopens. Court is closed clearly means that if due date falls on Saturday or Sunday or any Central Government holiday, when office remains closed, the next working day will be due date.

The object of the section 10 of General Clause Act was succinctly explained by the ***Supreme Court in AIR 1957 SC 271*** wherein it was held that the object of this section is to enable a person to do what he could have done on a holiday, on the next working day. Where, therefore, a period is prescribed for the performance of an act in a court or office, and that period expires on a holiday, then according to this section the act should be considered to have been done within that period, if it is done on the next day on which the court or office is open. For section 10 to apply the requirement is that there should be a period prescribed and that period should expire on a holiday. Section 10 itself indicates that this provision is for computation of time. Therefore, if the limitation for filing an appeal or the extended period for filing an appeal expires on Sunday but it is filed on Monday, then by operation of section 10

it would be deemed to have been done within time.

As per CBDT circular no 639 dtd,13/11/1992, in case of due date falling on holiday, section 10 of General Clause Act will apply. It has been clarified in the circular that where the last date for submitting of returns of income is a day on which income tax office is closed, the return filed on next working day will be considered to be filed within due date, Reference can also be made in regard to another CBDT circular no 676dtd.14/01/1994 in which the board has clarified that even for advance tax last date of payment falls on Sunday on which bank remains closed, the next working date will be treated as due date for payment of advance tax. The mandatory interest leviable under sections 234B and 234C of the Income-tax Act, 1961 would not be charged.

Both the CBDT circulars mentioned above are not yet withdrawn.

It is interesting to note that the **CBDT vide its order u/s 119(1) dated 20/10/2004 instructed as under –**

"The last date for filing of return within the meaning of Explanation 2(c) to Section 139(1) of the Income Tax Act, 1961 had been extended from 31st July, 2004 to 31st October, 2004. The last date for filing of return in the case of corporate assessees, assessees whose accounts are required to be audited U/s 44AB and assessee filing returns under first proviso to section 139(1), is 31st October, 2004. The 30th and 31st October, 2004 being holidays (Saturday and Sunday), the Income tax authorities are hereby directed to make arrangements for accepting returns of income on 30th and 31st of October, 2004. The direction is issued for administrative convenience. ***Further, any returns filed on 01.11.2004 will be deemed to have been filed within due date in view of the Board's Circular No. 639 dated 13.11.1992."***

The CBDT had expressly clarified even though the offices will remain open on Sunday, 31st October for accepting returns, any return filed on November 1 shall also be deemed to have been filed within the due date.

The returns are filed online and no corresponding system has been developed in software for not charging interest u/s 234, or for allowing losses to be carried forward. Appeals filed as per General clause is also treated as filed within due date and it should not be required to be condone. However, it is also argued that since returns are filed online, even on a holiday and no physical visit is required by the tax payers, General Clause Act should not apply. But the General Clause Act says that if office or court is closed and hence income tax office if remains closed on holiday, the next working day should be treated as last day of due date. The CBDT should come forward to make suitable changes in software to remove hard ship of the tax payers, by issuing new circular.

Since income tax offices accept returns, appeals, petitions etc. round the clock as these are filed online, whether due date falling on holiday will be considered as due date or next working day will be due date? In view of above CBDT Circulars and also as per section 10 of General Clauses Act, returns of income, appeals, petitions etc. filed on a day after a due date falling on a holiday, even online, will be treated as filed within due date. This provision of General Clauses Act, not only applies to Income Tax proceedings, but to all statutory compliances whether GST, Companies Act etc. But at the same time when there is no system in online portals to admit next day of holiday as due date,the litigation will arise,so to avoid litigation always try to make your compliances within due date which falls even on a holiday.

eBulletin
March-April, 2021

UPDATE ON CODE OF ETHICS OF ICAI

CA Sumantra Guha

SOME IMPORTANT CASE LAWS ON PROFESSIONAL OR OTHER MISCONDUCT

UNDER SECTION 22 OF THE CHARTERED ACCOUNTANTS ACT, 1949

False Certificate issued by Member

Where a Chartered Accountant admitted before the Examination Committee that he had issued a certificate to a person that he worked with him knowing it to be false. Held, he was guilty of other misconduct. (K.C. Jain Satyavadi in Re:- Page 98 of Vol. II of the Disciplinary Cases and pages 221-222 of December, 1955 issue of the Institute's Journal - Judgement delivered on 7th November, 1955).

Fabrication or Window-Dressing of facts and figures

Where a Chartered Accountant filed two separate returns of income in his individual capacity viz. one for the income from the profession as Chartered Accountant for and from the A.Y. 1965-66 to 1986-87 and another for the income from LIC Commission for and from A.Y. 1967-68 to 1986-1987. Thus, the Respondent evaded substantial income-tax and was liable for punishment. The Respondent was also guilty of committing fraud by giving two separate names to evade payment of the proper amount of income-tax. Held that the Respondent was guilty of "Other misconduct". (The Chief Commissioner (Administration) & Commissioner of Income - Tax, Karnataka-I, Bangalore vs. H. MohanlalGiriyaPage 137 Vol. VIII-1-21(6) of Disciplinary cases).

Issuing certificate without verification

A Chartered Accountant issued consumption certificate of a firm on the strength of which Export Authorities issued licence for importing raw material and components. The Chartered Accountant failed to verify the certificate inspite of repeated enquiries raised by the Export Authorities. Held that the Chartered Accountant was guilty of misconduct by not replying within a reasonable time and without a good cause to the letters of the Deputy Chief Controller of Imports & Exports. It was his implicit duty to verify the certificate issued by him in the case of an inquiry by Public Authority and in not doing so he committed an act of impropriety. The words "professional or other misconduct" used in Section 21(1) are meaningful as they widen the authority of the Council not only to inquire into the professional misconduct of the Members, but misconduct otherwise also. (Sri Gopal Shukla in Re:- Published at pages 546-548 of December, 1979 issue of the Institute's Journal and page 32 of Vol. VI(1) of Disciplinary Cases - Judgement delivered on 6th August, 1979).

Possession of Government Records by a Member

Where a Chartered Accountant, being a tenant of premises, was searched in connection with the taxation matter of the owner of the said premises. During the search, Income-Tax Assessment records of a Hindu Undivided Family (HUF) were found inside the steel almirah in the bedroom of the said Chartered Accountant. When interrogated, he explained that he had requested the concerned

Income-tax Officer for one HUF assessment record to enable him to know how HUF accounts were prepared and maintained and, according to him the Income-tax Officer obliged him by handing over the said assessment records. The Income-tax Officer, however, categorically denied having passed on the Income-Tax Assessment records to him. The Council was of the opinion that the possession of Government records by a Chartered Accountant constitutes "other misconduct" under Section 21 of the Chartered Accountants Act, 1949. A Chartered Accountant is not expected to be in possession of Government records or to retain them with him. Such an action on the part of a Chartered Accountant is grossly improper and unworthy of his status as a Chartered Accountant and is against the ethics of the profession. The said Chartered Accountant could not give any satisfactory explanation as to how the records came into his possession and also why he did not return the records to the Department immediately when he came to know that the records came to be in his possession. He was held guilty of "other misconduct". (S.K. Bhaumik in Re:- Page 568 of Vol. VI(1) of Disciplinary Cases - Judgement dated 5th March, 1990).

Bogus Bills

The Respondent who was allotted the audit work of three branches of the Complainant-Bank for a year submitted bogus bills/receipts for claim of halting allowance expenses for audit of said branches, as found on the investigation by the Complainant Banks Vigilance Department. He was held guilty of "other misconduct". (State Bank of Patiala vs. Rishi K. Gupta – Page 291 of Vol. VII(1) of Disciplinary Cases – Council's decision dated 5th& 6th August, 1991 - Judgement dated 20th July, 2000).

Fake Certificate of Incorporation of Company

The Respondent was entrusted with the work of incorporation of a Company. He was also entrusted with the work of filing the return for registration of the charge in Form No. 8 with the Registrar of Companies. After making enquiries, he made available a certificate of incorporation issued by the Registrar of Companies. But on enquiry from the Office of the Registrar of Companies, it was learnt that the name of the said Company, was not borne on the Register of Companies and Form No. 8 was not traceable in the Registrar's office. He had later admitted that the above certificate was fake, forged and not genuine. He had not filed any of the documents with the Registrar of Companies. He had failed to make available or return the documents despite requests on the pretext that the same were not traceable. He had provided to the Complainant a communication issued by the Office of the Registrar of Companies which had also been discovered to be fake. He was, inter alia, held guilty for "other misconduct". (Deepak Pahwa vs. A.K. Gupta – Page 346 of Vol. VII (1) of Disciplinary Cases – Council's decision dated 6th September, 1995 - Judgement dated 4th September, 2000).

Authoring Book on Black Money

The Respondent authored a book titled 'Tax Planning for Secret Income (Black Money)'. On going through the preface as well as the contents of the book it was seen that the author had explained in detail the various methods of creation of black money followed by different sections of society and the methods, legal as well as illegal, generally adopted to convert the same into white. Since it appeared that the title of the book, its preface, its contents and in totality the book was likely to create an impression in the eyes of common man that Chartered Accountants are experts in helping in the creation of black money and its conversion into white money though there is no direct reference as such to the Chartered Accountants; this might tend to lower the image of the profession in the public eyes. Held that the Respondent was guilty of "other misconduct".

The Hon'ble Gujarat High Court in its judgement dated 14th February, 2003 observed that: "… Having regard to the old age of the Respondent, ailments that he is suffering from, repentance that he has shown in the Court and the time lag that has elapsed, as also his statement that he has never published any such writing after the publication of the said book, in our opinion, interest of justice will be met if the Respondent is removed forthwith from the membership of the Institute for a period of five years. We accordingly, while upholding the Respondent guilty of misconduct, direct that the Respondent be removed forthwith from the membership of the Institute for a period of five years. The reference stands disposed of accordingly with no order as to costs. At this stage, the learned counsel for the Respondent submits that the operation of this order may be stayed to enable the Respondent to approach the higher forum. In our opinion, in the facts and circumstances of the case, it will be improper for us to stay the operation of this order when the removal of the Respondent was due long back, having regard to the serious nature of the misconduct committed by him." The Respondent filed a review petition and special Leave Petition against the above judgement of the Gujarat High Court, in the Supreme Court. The Supreme Court, by its judgement dated 6 August 2003, dismissed the review petition. The text of the order is given below: "We have gone through the review petition and the connected papers. We do not find any good reason to review our order. It lacks merits. The review petition is therefore dismissed." (P.C. Parekh in Re: –Page 63 Vol. VIII-1-21(6) of Disciplinary Cases – Judgement of the Gujarat High Court dated 14th February 2003 and judgement of Supreme Court dated 6th August, 2003 and published in the February, 2004 issue of Institute's Journal at pages 869 to 890).

Fabrication/Forgery of challans

The Respondent had fabricated and filed challans for advance tax in respect of certain clients and relatives and then filed their returns of Income showing nominal income so as to claim refund against advance tax paid. On investigation it was found by the Income Tax Department that the Respondent had changed the amount of advance tax paid in copies of challans that are retained by the assessee and sent to the Department alongwith the return. The returns also, in many cases, were verified by him. The address given in the returns was his own so that the refund vouchers could reach him and he had, in fact, encashed these vouchers by opening bank accounts in the names of the assessees. The Respondent was said to have admitted having committed this forgery etc. thereby defrauding the exchequer to the tune of Rs. 15 lakhs. As per FIR filed by the Income Tax Officer, the Respondent was arrested and was remanded first to police custody and thereafter to judicial custody. Held that the Respondent was guilty of "Other misconduct". The Council also decided to recommend to the High Court that the name of the Respondent be removed permanently from the Register of Members. The Hon'ble Gujarat High Court while delivering the order observed that: "…The petitioner Council is one such representative body charged with responsibility of ensuring discipline and ethical conduct amongst its members and impose appropriate punishment on members who are found to have indulged in conduct which lowers the esteem of the professionals as a class. Adopting the aforesaid approach, it is not possible to find any infirmity, either on facts or in law, in the reasoning and the findings recorded by the Disciplinary Committee and the petitioner Council by holding the Respondent as being guilty of "other misconduct" under Section 21 read with Section 22 of the Act and hence, there is no necessity to interfere with the punishment recommended. It has been proved beyond reasonable doubt, in the facts and circumstances of the case and by the evidence on record, that the

Respondent and only the Respondent, is guilty of "other misconduct" and hence liable to punishment under section 21(6)(c) of the Act i.e. removal from membership of the Institute permanently. The reference is accordingly disposed of with a direction to the petitioner Council to remove the Respondent from the membership of the Institute permanently." (Commissioner of Income - Tax, Gujarat -III, Ahmedabad vs. Mukesh R. Shah –Page 161 Vol. VIII-1-21(6) of Disciplinary Cases – Judgement delivered dated 11th November 2003 and published in the January, 2004 issue of Institute's Journal at pages 764 to 781).

Issuing False Certificate for disbursement of Loan

A Chartered Accountant was engaged by his client for getting financial assistance from bank, but for disbursement of a term loan in favour of his client he issued a false certificate. The act of issuing the vague certificate by him contributed and enabled the officers of the bank to have paper formalities completed which amounted to aiding and abetting by the Chartered Accountant, for disbursement of the loan and for this act he was held guilty of "other misconduct". The High Court confirmed the decision of the Council. (Supdt. of Police, CBI, ACB, New Delhi vs. Dayal Singh - Page 177 & 288 Vol. IX-1-21(60) of Disciplinary cases-(25-CA(55)/92), Decision of the Council dated 30th April, 2001, 216th Meeting of the Council and Judgement of High Court dated 10th May, 2007).

eBulletin
March-April, 2021

SUPREME COURT UPHOLDS COMMERCIAL WISDOM OF COC

CA Binay Kumar Singhania

In the matter of KalprajDharmshi&AnrVsKotak Investment Advisors Ltd &AnrHon'ble Supreme Court passed order on 10th March, 2021 whereby apex court ruled the commercial and financial wisdom of COC will prevail.

Gist of the case

CIRP started for Ricoh India Limited on 14th May, 2018. RP issued four nos of form G for EOI but no response to EOI was received from any prospective resolution applicant, the fifth EOI was issued on 11th December, 2018 for which the last date of submission of resolution plan was 8th January, 2019 and on the last of submission of resolution plan, Kotak Investment Advisors Limited(KIAL) submitted the resolution plan. One another applicant WeP Solutions Ltd submitted its resolution plan jointly with Sattva Real Estate Pvt Ltd (WeP) on 13.1.19. Thereafter Kalpraj Dharmshiand RekhaJhunjhunwala (Kalpraj) submitted resolution plan on 27th January, 2019.

On 29th January, 2019 KIAL raised objection permitting Kalpraj to submit resolution plan as the last date of submission was 8th January, 2019.

On the next day ie, 30.1.2019 COC resolved to direct all the applicants to submit revised resolution plan. In view of this, KIAL submitted revised plan on 1.2.19 and again on 10.2.2019 raised objection for plan of Kalpraj. KIAL again submitted the second revised resolution plan on 12.2.19. Kalpraj also submitted revised resolution plan on 12.2.2019.

COC approved resolution plan of Kalpraj on 13/14.2.2019 with thumping majority of 84.36 % and submitted application for approval of resolution plan before NCLT, Mumbai bench on 18.2.2019. KIAL filed objection with NCLT on 14.3.2019.

NCLT, Mumbai bench approved resolution plan passed by COC of Kalpraj and rejected objection filed by KIAL on 28.11.2019. KIAL filed writ petition with Bombay High Court on 11.12.2019 on the ground that there was breach in principle of natural justice by NCLT. The High court dismissed the writ petition filed by KIAL on 28.1.2020 on the ground that KIAL had an alternate and effacious remedy of filing an appeal before NCLAT.

KIAL filed appeal before NCLAT on 18.2.2020. Kalpraj and RP objected the appeal on the ground that the appeal was filed beyond the limitation period ofI& B Code. NCLAT dismissed the objection and further found the procedure adopted by RP and COC in breach of I& B Code and allowed the appeal of KIAL on 5.8.2020. NCLAT directed COC to decide afresh on resolution plan within 10 days and COC approved resolution plan of KIAL on 13.8.2020.

Four appeals were filed with Hon'ble Supreme Court against the order passed by NCLAT, the appeals were filed by Successful resolution applicant KIAL, Financial Creditors, Erstwhile RP and Largest OC.

It was argued by Kalpraj that KIAL submitted the resolution plan twice after submission of plan by Kalpraj and therefore estopped for challenge on acceptance of plan approved with 84.36 % votes.Only one creditor Kotak Mahindra Bank which is holding company of KIAL having 0.97 % votes voted in favour of KIAL.

It was argued that according to section 61(2) of I & B Code the decision of NCLT can be challenged before NCLAT within 30 days. Further an appeal

would be tenable within a further period of 15 days only when NCLAT comes to a satisfaction for delay. Since I & B Code is a complete code it was crystal clear that appeal should have been filed with NCLAT. It was further stated that though the appeal was filed later on with NCLAT but there was no stay on implementation of resolution plan and finally NCLAT passed order on 5.8.2020.

It was stated that Kalpraj has expanded more than 300 crores to fulfil the resolution plan. Amount expanded was towards buy back of shares from thousands of shareholders, issue of debentures, One company Minosha Digital Solutions limited was merged with CD on 28.11.2019, Bankers Cheque were replaced, CIRP Cost was paid, and on 03.02.2020 RP who was acting as Monitoring Agent of Monitoring Committee, issued communication that approved resolution plan is implemented.

Matter before Hon'ble Supreme Court

In view of above following questions arise before apex court

(i) Whether the appeals filed by KIAL before NCLAT were within limitation?

(ii)Whether there was waiver and acquiescenceby KIAL, so as to estop it from challenging the participation of Kalpraj?

(iii) Whether NCLAT was right in law in interfering with the decision of CoC of accepting the resolution plan of Kalpraj?

(i) Whether the appeals filed by KIAL before NCLAT were within limitation?

Apex court considered limitation act, I & B code, wherein the time limit was mentioned for filing appeal before NCLAT, KIAL filed writ petition before Bombay High Court on 11.12.2019 and Hon'ble high court order was passed on 28.1.2020. Section 14 of Limitation act provides a relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum. It has been observed that legislature has enacted section 14 to exempt a certain period covered by a bona fide litigious activity.

Supreme Court mentioned "We have no hesitation to hold that KIAL was entitled to extension of the period during which it was bonafide prosecuting a remedy before the high court with due diligence".

(ii)Whether there was waiver and acquiescenceby KIAL, so as to estop it from challenging the participation of Kalpraj?

It is strenuously urged on behalf of the appellants, that under clause 10.4 of the Process memorandum if any resolution plan is received by RP from any eligible applicant(s) at any stage of Resolution Plan Process, RP is free to examine any resolution plan with the approval of COC and the applicant will not have any right to object the submission or consideration of such plan. It is further submitted, that even under clause 11.2 of the Process Memorandum, RP or COC, at their sole discretion, may request for additional information/documents and/or seek clarification from the resolution applicant after the due date for submission of the plan. The delay in submission of additional information and/or documents sought by RP, COC or the process manager would entitle RP, COC or the process manager to reject the resolution plan.

Paragraph 5(b) of the covering letter for submission of resolution plan by KIAL.

"5. We further represent and confirm as follows:

(a) …..

(b) **Acceptance**

We hereby unconditionally and irrevocably agree and accept the terms of the Process Memorandum and that the decision made by the CoC, Resolution professional and/or the Adjudicating Authority in respect of any matter with respect to, or arising out of, the Process Memorandum and the Resolution Plan Process shall be binding on us. We hereby expressly waive any and all claims in respect of the Resolution Plan Process."

Taking into consideration that KIAL had objected to participation of any other applicant after the

time limit mentioned in form G, KIAL is not estopped from challenging the process. At times, there is no option given to party and here too KIAL had no option in view of clause 11.2 of Process Memorandum and it had to run the risk of rejection of plan. As such, it can not be said that KIAL had waived or acquiesced its right to challenge the decision of RP or COC.

(iii) Whether NCLAT was right in law in interfering with the decision of CoC of accepting the resolution plan of Kalpraj?

The court held that it is the majority decision of COC about feasibility and viability of a resolution plan considering various aspect about the resolution plan including the manner of distribution of funds among the various classes of creditors. COC may ask to modify the resolution plan considering any practical issues. It was held that what is important is, the commercial wisdom of the majority of creditors, who is to determine through negotiation with the prospective resolution applicant, as to how and in what manner the corporate resolution process is to take place.

It has been held, that in an enquiry under section 31, the limited enquiry that the adjudicating authority is permitted is, as to whether the resolution planprovides:

(i)the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor,

(ii) the repayment of the debts of operational creditorsin prescribed manner,

(iii) the managementof the affairs of the corporate debtor,

(iv) the implementation and supervision of the resolution plan,

(v) the plan does not contravene any of the provisions of the law for the time being in force,

(vi) conforms to such other requirements as may be specified by the Board.

It will therefore be clear, that this Court, in unequivocal terms, held that the appeal is creature of statute and that the statute has not invested jurisdiction and authority either with NCLT or NCLAT, to review the commercial decision exercised by CoC of approving the resolution plan or rejecting the same.

Conclusion of Hon'ble Supreme Court

The court held that No doubt, it is sought to be urged, that since there has been a material irregularity in exercise of the powers by RP, NCLAT was justified in view of the provisions of clause (ii) of subsection (3) of Section 61 of the I&B Code to interfere with the exercise of power by RP, However, it could be seen, that all actions of RP have the seal of approval of CoC. No doubt, it was possible for RP to have issued another Form 'G', in the event he found, that the proposals received by it prior to the date specified in last form G could not be accepted. However, it has been the consistent stand of RP as well as CoC, that all actions of RP, including acceptance of resolution plans of Kalpraj after thedue date, albeit before the expiry of timeline specified by the I&B Code for completion of the process, have been consciously approved by CoC. It is to be noted, that thedecision of CoC is taken by a thumping majority of 84.36%.The only creditor voted in favour ofKIALis Kotak Bank, which is a holding company of KIAL, having voting rights of0.97%. We are of the considered view, that in view of the paramount importance given to the decision of CoC, which is to be taken on the basis of 'commercial wisdom', NCLAT was not correct in law in interfering with the commercial decision taken by CoC by a thumping majority of 84.36%.

It was mentioned that resolution plan of KIAL was passed by COC on 13.8.2020 in view of direction from NCLAT but since it was already clarified that decision of NCLAT does not stand scrutiny of law, subsequent approval of KIAL Plan becomes non-est in law. As such the decision taken by COC for approval of resolution plan of Kalpraj which was taken considering commercial wisdom of COC will prevail.

DTPA Media Coverage

विवाद से विश्वास स्कीम के तहत राशि के भुगतान का समय 30 जून तक बढ़ाया

नयी दिल्ली/कोलकाता : सरकार ने कोरोना के कारण अपनी प्रत्यक्ष कर विवाद निवारण योजना 'विवाद से विश्वास' के तहत भुगतान करने की समय-सीमा दो महीने और बढ़ाकर 30 जून तक कर दी है। उन मामलों में आकलन पुन: शुरू करने के लिए नोटिस जारी करने की तारीख भी 30 जून तक बढ़ा दी है, जिनमें आय का आकलन नहीं हुआ है। केंद्रीय प्रत्यक्ष कर बोर्ड (सीबीडीटी) के अनुसार यह भी निर्णय लिया गया है कि प्रत्यक्ष कर विवाद से विश्वास अधिनियम, 2020 के तहत देय राशि के भुगतान का समय, बिना किसी अतिरिक्त राशि के बढ़ाकर 30 जून, 2021 तक किया जायेगा। इस योजना के तहत घोषणा पत्र दाखिल करने की समय सीमा 31 मार्च को समाप्त हो गयी थी।

प्रत्यक्ष कर पेशेवर एसोसिएशन (डीटीपीए) और अन्य लोगों ने विस्तार के लिए आग्रह किया था। डीटीपीए प्रतिनिधि समिति के अध्यक्ष **एडवोकेट नारायण जैन** और अध्यक्ष **एन.के. गोयल** ने वित्त मंत्री के समयबद्ध निर्णय का स्वागत किया है। हालांकि, जैन ने कहा वीएसवी के तहत घोषणा पत्र दाखिल करने की तारीख को भी राष्ट्रीय हित में 30 जून, 2021 तक बढ़ाया जाना चाहिए और मुकदमों को कम करना चाहिए। हालांकि, जैन ने कहा वीएसवी के तहत घोषणा पत्र दाखिल करने की तारीख को भी राष्ट्रीय हित में 30 जून, 2021 तक बढ़ाया जाना चाहिए और मुकदमों को कम करना चाहिए। सीबीडीटी के अनुसार देश भर में गंभीर महामारी फैलने की आशंका के मद्देनजर कुछ अन्य समय सीमाओं को भी बढ़ाकर 30 जून, 2021 कर दिया गया है, इनमें शामिल हैं (i) कर निर्धारण या पुन: कर निर्धारण के लिए किसी भी आदेश को पारित करने के लिए समय सीमा, (ii) धारा 144C(13) के तहत विवाद समाधान पैनल (डीआरपी) के निर्देश के परिणामस्वरूप आदेश पारित करने की समय सीमा; (iii) पुन: कर निर्धारण के लिए धारा 148 के तहत नोटिस जारी करने की समय सीमा जहां आय कर निर्धारण से बच गई है; (iv) समान लेवी के प्रसंस्करण की सूचना भेजने के लिए समय सीमा।

Extend date for payment under Vivad Se Vishwas Scheme

Narayan Jain | Income Tax - Featured- News 23 Apr 2021 Print

3,999 Views 0 comment

DTPA has made a Representation to FM for extension of date for payment of amount under Vivad Se Vishwas Scheme to 31st July 2021 considering adverse impact on economy due to 2nd Wave of Corona. Full Text of their representation is as follows:-

DIRECT TAXES PROFESSIONALS' ASSOCIATION

Income Tax Building, 3, Govt. Place West, Ground Floor, Kolkata 700001 Ph – 033-22420638

Ref. No. DTPA/Rep/20-21/22

Date: 23rd April, 2021

The Telegraph has carried news of extension of date for payment under Vivad Se Vishwas Scheme also incorporating views of DTPA. Extension for completing assessments, reassessments, Issue of Notice under sec 148 etc. should be reviewed and rolled back.

The Telegraph

BUSINESS

CALCUTTA SUNDAY 25 APRIL 2021

More time to pay disputed tax

OUR BUREAU

Calcutta/New Delhi: The Central Board of Direct Taxes has extended the time frame for issue of assessment orders, notices and intimations under certain provisions of the Income Tax Act along with extension of time for payment of the amount of disputed tax payable under the Direct Tax Vivad Se Vishwas Act without an additional charge of 10 per cent by the end of June.

This extension comes amid the spiralling second wave of the coronavirus pandemic across the country.

Extra time has been allowed for completion of assessment, reassessment and re-computation of income as well as issuing a notice under section 148 of the Income Tax Act in cases where income has escaped assessment. The time limit for passing an order based on the direction of a dispute resolution panel has also been extended.

Moreover, time limits for the tax department to intimate businesses about processing their statement on equalisation levy have been extended by two months to the end of June. These extensions come as a relief measure primarily for the tax officials.

The CBDT said notifications extending these due dates will be issued soon. The deadlines were earlier extended from March end to April end.

CBDT said the move to extend certain timelines comes on the back of representations from industry, consultants and other stakeholders.

Karishma Phatarphekar, Deloitte India, said, "While it's a welcome move that no additional amount payable under the VSV has been extended to June 30, it would have been good if they would have also extended the filing deadline beyond March 31 for this category to May 31 so that more taxpayers could avail of the scheme.

"The government can also consider enhancing the scope of the scheme to cover taxpayers whose appeals are pending beyond January 31, 2020."

Narayan Jain, chairman of the representation committee of Direct Taxes Professionals Association, said: "Only extension of date for payment under VSV is helpful to the assessee. However, the date for filing the declaration under VSV should have also been extended in the national interest and to minimise litigations."

He said the other four extensions should be revisited by the finance ministry.

The extension of due date comes at a time businesses, professional services firms and the tax authorities are grappling with a manpower shortage. Businesses are also expecting extension of due dates for filing GST returns.

DATE EXTENDED

- Payment under the Vivad Se Vishwas scheme
- Due date for issuance of notice for reopening of cases where income has escaped assessment
- Intimation of processing of equalisation levy
- Time for passing an order based on the direction of a dispute resolution panel

The Sanmarg Hindi Daily, Prabhat Khabar, Vishwamitra, Rajasthan Patrika, Chhapte Chhapte & other media have carried news of extension of date for payment under Vivad Se Vishwas Scheme also incorporating views of Narayan Jain, Chairman, Representation Committee, DTPA and CA NK Goyal, President DTPA. Extension for completing assessments, reassessments, Issue of Notice under sec 148 etc. should be reviewed and rolled back.

DIRECT TAXES PROFESSIONALS' ASSOCIATION

Income Tax Building, 3, Govt. Place West, Ground Floor, Kolkata 700001 Ph - 033-22420638

Ref.No.DTPA/Rep/20-21/19 Date:13th April, 2021

The Ld. Revenue Secretary,
Ministry of Finance,
Government of India,
North Block,
New Delhi-110001.

Respected Sir,

Sub: Representation with regard to disposal of appeals before the Commissioner of Income tax (Appeals), continuation of physical hearings in ITAT and otherIssues.

1. **Faceless appeals need to be expedited**: As your honour is aware that the system of faceless appeals has been introduced for appeals before **Commissioner of Income tax (Appeals)** since September, 2020. However Faceless appeals need to be expedited further. In fact, the appeals filed as back as in the year 2015 and onwards have not been disposed of though many of these involve huge demand.

2. **Passing of Orders in Faceless appeals, where appellant has made representation:**Some faceless appeals were fixed for hearing from the month of December 2020, and the appellants duly submitted their papers and representation, but the appealsare not being disposed of.

3. **Physical appeals in matters where Survey, Search or transfer pricing issues are involved:**It is also brought to your kind notice that as per Instruction of the CBDT, the appeals from the orders of the Assessing Officersin case of search assessments and transfer pricing matters are heard in physical mode. Most of the appeals before the said appellate authorities are pending for more than 5-6 years. The pendency is piling up and addedwith new appeals being filed because of the time barring assessment now being completed by the faceless assessing officers. Huge demand is locked in such appeals since questions both of fact as well as law are involved in most of these appeals. It may not be humanly possible for the appellate authority to dispose of such hugependency. This requires appointment of more appellate authorities to dispose of appeals which are being filed from the orders involving Search and Survey or transfer pricing cases. It is advisable that the Government should expedite the disposal so that the issues are settled in a judicious manner and the tax is finally determined.

4. **Vivad Se Vishwas**: Our Association members played an active role in filing declaration under VSV Scheme by their clients. The tax has been [paid as per Form No. 3 issued by the CIT and Form 4 filed. Now the issuance of Form 5 needs to be expedited.

5. **Appeal before ITAT andPosting of adequate Members in ITAT**: We humbly suggest that the practice of physical hearing by Income Tax Appellate Tribunal should be allowed to continue for another 3 years in

the interest of justice and for allowing proper opportunity of hearing before the Bench of ITAT and proper adjudication. It may be reviewed on experience with regard to functioning of faceless appeals by CIT (A). We also urge for Posting of adequate Members in ITAT as there is considerable vacancies.

6. **Matters related to Assessing Officers:**

a) **Rectification, giving appeal effects or issuing refund by A.O**.: We would like to bring to your notice that the other work assigned to the Assessing Officers being rectification, giving appeal effects or issuing refund is held up for one reason or the other. It needs to be expedited.

b) **Notices for outstanding demand**: On the other hand, notices for outstanding demand are being issued by the Assessing Officers. It is happening even in some cases where the assessee has deposited 20 per cent of tax as per CBDT Instruction dated 31st July, 2017. The CBDT should issue necessary instruction to stop such issue of notices particularly if 20 per cent of demand has been paid as per Instruction of the Board.

We hope your honour will kindly look into the above serious issues, so that the appeals are disposed of as quickly as possible.

Yours Faithfully,

Thanking you,

Yours faithfully,

CA N K Goyal	**Adv Narayan Jain**	**CA Sunil Surana**
President	**Chairman- Representation Committee**	**Chairman, ITATRepresentation**

CC to:

1 Sri Anurag Singh Thakur
The Hon'ble Minister of State for Finance

2 Shri P.C. Mody,
Chairman, Central Board of Direct Taxes

With request for appropriate action to mitigate the difficulties.

DIRECT TAXES PROFESSIONALS' ASSOCIATION

Income Tax Building, 3, Govt. Place West, Ground Floor, Kolkata 700001 Ph - 033-22420638

Ref. No. DTPA/Rep/20-21/19 Date: 13th April, 2021

Sri Anurag Singh Thakur
The Hon'ble Minister of State for Finance
Ministry of Finance,
Government of India,
North Block,
New Delhi-110001.

Respected Sir,

Sub: Representation with regard to disposal of appeals before the Commissioner of Income tax (Appeals), continuation of physical hearings in ITAT and otherIssues.

1. **Faceless appeals need to be expedited**: As your honour is aware that the system of faceless appeals has been introduced for appeals before **Commissioner of Income tax (Appeals)** since September, 2020. However Faceless appeals need to be expedited further. In fact, the appeals filed as back as in the year 2015 and onwards have not been disposed of though many of these involve huge demand.

2. **Passing of Orders in Faceless appeals, where appellant has made representation:** Some faceless appeals were fixed for hearing from the month of December 2020, and the appellants duly submitted their papers and representation, but the appeals are not being disposed of.

3. **Physical appeals in matters where Survey, Search or transfer pricing issues are involved:** It is also brought to your kind notice that as per Instruction of the CBDT, the appeals from the orders of the Assessing Officers in case of search assessments and transfer pricing matters are heard in physical mode. Most of the appeals before the said appellate authorities are pending for more than 5-6 years. The pendency is piling up and added with new appeals being filed because of the time barring assessment now being completed by the faceless assessing officers. Huge demand is locked in such appeals since questions both of fact as well as law are involved in most of these appeals. It may not be humanly possible for the appellate authority to dispose of such huge pendency. This requires appointment of more appellate authorities to dispose of appeals which are being filed from the orders involving Search and Survey or transfer pricing cases. It is advisable that the Government should expedite the disposal so that the issues are settled in a judicious manner and the tax is finally determined.

4. **Vivad Se Vishwas**: Our Association members played an active role in filing declaration under VSV Scheme by their clients. The tax has been [paid as per Form No. 3 issued by the CIT and Form 4 filed. Now the issuance of Form 5 needs to be expedited.

5. **Appeal before ITAT andPosting of adequate Members in ITAT**: We humbly suggest that the practice of physical hearing by Income Tax Appellate Tribunal should be allowed to continue for another 3 years in the interest of justice and for allowing proper opportunity of hearing before the Bench of ITAT and proper adjudication. It may be reviewed on experience with regard to functioning of faceless appeals by CIT (A). We also urge for Posting of adequate Members in ITAT as there is considerable vacancies.

6. **Matters related to Assessing Officers:**

a) **Rectification, giving appeal effects or issuing refund by A.O**.: We would like to bring to your notice that the other work assigned to the Assessing Officers being rectification, giving appeal effects or issuing refund is held up for one reason or the other. It needs to be expedited.

b) **Notices for outstanding demand**: On the other hand, notices for outstanding demand are being issued by the Assessing Officers. It is happening even in some cases where the assessee has deposited 20 per cent of tax as per CBDT Instruction dated 31st July, 2017. The CBDT should issue necessary instruction to stop such issue of notices particularly if 20 per cent of demand has been paid as per Instruction of the Board.

We hope your honour will kindly look into the above serious issues, so that the appeals are disposed of as quickly as possible.

Yours Faithfully,

Thanking you,

Yours faithfully,

CA N K Goyal	Adv Narayan Jain	CA Sunil Surana
President	Chairman- Representation Committee	Chairman, ITATRepresentation

CC to:

1 The Ld. Revenue Secretary,
Ministry of Finance,
Government of India,
North Block,
New Delhi-110001.

2 Shri P.C. Mody,
Chairman, Central Board of Direct Taxes
With request for appropriate action to mitigate the difficulties.

DIRECT TAXES PROFESSIONALS' ASSOCIATION

Income Tax Building, 3, Govt. Place West, Ground Floor, Kolkata 700001 Ph - 033-22420638

Ref. No. DTPA/Rep/20-21/19 Date: 13th April, 2021

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With request for appropriate action to mitigate the difficulties.

DIRECT TAXES PROFESSIONALS' ASSOCIATION

Income Tax Building, 3, Govt. Place West, Ground Floor, Kolkata 700001 Ph - 033-22420638

Ref. No. DTPA/Rep/20-21/20 Date: 19th April, 2021

To,
Shri P. C. Mody,
Chairman, Central Board of Direct Taxes
Government of India,
North Block,
New Delhi - 110001

Respected Sir,

Sub**: Representation with regard to application of old tax rates due to filing form 10 IC after submitting ITR but before due date filing ITR as per provisions of section 115BAA**

Section 115BAA was inserted in the Income Tax Act,1961 to give benefit of a reduced corporate tax rate for the domestic companies. Section 115BAA states that domestic companies have the option to pay Tax at a rate of 22% plus Surcharge of 10% and Cess of 4%. The Effective Tax rate being 25.17% from the FY 2019-20 (AY 2020-21) and onwards if such domestic companies adhere to certain conditions specified.

As per sub-section 5 of section 115BAA, such companies had to exercise this option of being taxed under the section 115BAA **on or before the due date of filing income tax returns** i.e usually 30th September of the assessment year. For the AY 2020-21, the due date was extended to 15th February 2021. Another condition is that the company opts for section 115BAA in a particular financial year, it cannot be withdrawn subsequently.The option should be in Form 10-IC, as notified by the CBDT. The form should be submitted online under a digital signature or under an electronic verification code. Therefore, It is clear from provision of section 115BAA that Form 10-IC hasto be filed before due date and not before filing the Return of Income.

In line with the provisions announced, many assessee submitted Form 10-IC after filing the Return but before the due date of filing Return. Now while processing the returns, CPC is charging tax rate @25% +

4% Cess instead of 22%+10% surcharge +4% cess and it appears that they are not considering the filing Form 10-IC after the filing of Returns.

Under this situation most of the Assessees are hit by this delay in submitting Form 10IC, which in fact is not a delay as per the provisions of the section.

May we therefore request you to issue **necessary clarification on this issue** and even if the spirit be to file form before the ITR , we request you to relax the situation at least for AY 2020-21 so that there is no default on a mass level .

Yours Faithfully,

Thanking you,

Yours faithfully,

CA N K Goyal
President

Adv Narayan Jain
Chairman- Representation Committee

CC to:

1 **Mrs. NirmalaSitharaman,**
Hon'ble Finance Minister,
Ministry of Finance,
Government of India,

2 **Shri Anurag Singh Thakur**
The Hon'ble Minister of State for Finance

DIRECT TAXES PROFESSIONALS' ASSOCIATION

Income Tax Building, 3, Govt. Place West, Ground Floor, Kolkata 700001 Ph - 033-22420638

Ref. No. DTPA/Rep/20-21/20 Date: 19th April, 2021

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Government of India,
North Block, New Delhi 110 001
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CA N K Goyal
President

Adv Narayan Jain
Chairman- Representation Committee

CC to:

1 Shri Anurag Singh Thakur
The Hon'ble Minister of State for Finance

2 Shri P. C. Mody,
Chairman, Central Board of Direct Taxes
Government of India

DIRECT TAXES PROFESSIONALS' ASSOCIATION

Income Tax Building, 3, Govt. Place West, Ground Floor, Kolkata 700001 Ph - 033-22420638

Ref. No. DTPA/Rep/20-21/20 Date: 19th April, 2021

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The Hon'ble Minister of State for Finance
Ministry of Finance,
Government of India,
North Block, New Delhi 110 001

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CA N K Goyal
President

Adv Narayan Jain
Chairman- Representation Committee

CC to:

1 Mrs. NirmalaSitharaman,
Hon'ble Finance Minister
Ministry of Finance

2 Shri P. C. Mody,
Chairman, Central Board of Direct Taxes
Government of India

DIRECT TAXES PROFESSIONALS' ASSOCIATION

Income Tax Building, 3, Govt. Place West, Ground Floor, Kolkata 700001 Ph - 033-22420638

Ref. No. DTPA/Rep/20-21/21 Date: 22nd April, 2021

To,
Shri P. C. Mody,
Chairman, Central Board of Direct Taxes
Government of India,
North Block,
New Delhi - 110001

Respected Sir,

Sub: Clarifications needed for compliance of New provisions for Registration/ Re-registration of Charitable Trusts or other Institutions under Income tax Act, 1961

We most humbly draw your Honour's kind attention to the following in respect of captioned subject :

1. The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 has inserted, w.e.f. 01.04.2021, certain new provisions for registration/re-registration of various types of charitable trusts and institutions under the Income tax Act, 1961. Such new provisions provide for various time limits within which such organizations shall have to apply for registration/re-registration.

   a) One such time limit has been provided for residuary cases of different sections vide clause iv) of first proviso to section 10(23C), clause vi) of section 12A(1)(ac) and clause (iv) of first proviso to section 80G(5) of said Act which reads **'at least one month prior to the commencement of the previous year relevant to the assessment year from which the said approval is sought'**. The implication of this prescribed time limit can be explained hereunder.

   b) Suppose, a charitable trust is created on 1st May 2021 and it wants to get the benefit of approval u/s 12AB from asst. yr. 2022-23 (Previous year 1st May 2021 to 31st March 2022). In the given facts, how the subject trust can apply for approval before 30th April, 2021 i.e. at least one month prior to 1st May, 2021 (the date of commencement of previous year) when it was not even in existence before 1st May, 2021.

   c) Surely, this cannot be the intention of the lawmakers and therefore, we earnestly request your honour to **kindly issue suitable but urgent clarifications in this regard and make the**

subject provisions practically workable. A suggested amendment/relaxation in this regard may **be to allow the subject applications 'within Two months of the commencement of the previous year relevant to assessment year from which the said approval is sought'**.

2. Clauses 4c and 4d of new Form No. 10A and Form 10AB ask for registration number or incorporation number of the applicant trust/institution and the authority granting such registration/incorporation. **But in case of charitable trusts specially of the State of West Bengal where there is no Public Charity Act as such, there is no scope of having any registration or incorporation no. of such trust.** Even registration of deed under Registration Act, 1908 is necessary only when trust is settled by transfer of any immovable property valuing more than Rs.100/-. **In West Bengal a Society can be registered under the West Bengal Societies Registration Act, 1961.**

Accordingly, your honour may kindly provide suitable and urgent clarification in the matter of filling up item No. 4c and 4d of new Form 10A and Form 10AB in case of charitable trusts as referred above.

Hoping for urgent consideration by your honour.

Yours faithfully,

For DIRECT TAXES PROFESSIONALS' ASSOCIATION

CA N K Goyal
President

Adv Narayan Jain
Chairman- Representation Committee

CC to:

1 Mrs. NirmalaSitharaman,
Hon'ble Finance Minister
Ministry of Finance

2 Shri P. C. Mody,
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Government of India

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Ministry of Finance,
Government of India,
North Block,
New Delhi - 110001

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2. Clauses 4c and 4d of new Form No. 10A and Form 10AB ask for registration number or incorporation number of the applicant trust/institution and the authority granting such registration/incorporation. **But in case of charitable trusts specially of the State of West Bengal where there is no Public Charity Act as such, there is no scope of having any registration or incorporation no. of such trust.** Even registration of deed under Registration Act, 1908 is necessary only when trust is settled by transfer of any immovable property valuing more than Rs.100/-. **In West Bengal a Society can be registered under the West Bengal Societies Registration Act, 1961.**

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Hoping for urgent consideration by your honour.

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For DIRECT TAXES PROFESSIONALS' ASSOCIATION

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Adv Narayan Jain
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C C To:

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CA N K Goyal
President

Adv Narayan Jain
Chairman- Representation Committee

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New Delhi-110001

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Ref. No. DTPA/Rep/20-21/22 Date: 23rd April, 2021

To,
Mrs. Nirmala Sitharaman,
Hon'ble Finance Minister,
Ministry of Finance,
Government of India,
North Block,
New Delhi-110001

Respected Madam,

Sub: Suggestion for extending date of payment of tax/ amount under Vivad Se Vishwas Scheme (VSV) in view of Rising cases of Corona due to 2nd Wave seriously effecting business activities and other issues

We most humbly draw your Honour's kind attention to the following in respect of VSV :

1. **The date prescribed for payment of the amount (without extra amount of about 10 per cent) is prescribed s 30th April, 2021. However due to 2nd Wave of Corona since beginning of this month, the business activities are seriously affected and there is hardly any funds available. Corona 2nd Wave is likely to continue for another 3 to 4 months.**

2. **We therefore humbly Suggest for extending date of payment of tax/ amount under Vivad Se Vishwas Scheme (VSV), (without extra amount of about 10 per cent) in view of continuance of Rising cases of Corona due to 2nd Wave seriously effecting business activities Accordingly, your honour may kindly extend the date for payment till 31st July, 20211 without any extra payment, under VSV.**

3. **In some of the cases it is seen that the option for filing withdrawal of appeal before CIT(Appeals) is not there in the efiling portal. Without filing the said letter the assessees are unable to file Form-4.**

4. **Similarly, due to COVID 19 there is considerable delay in withdrawal of appeal before Hon'ble High Courts. Without withdrawal of appeal the assessees are unable to file Form-4.**

5. **If your honour feel appropriate in National Interest the date for filing of Declaration under VSV Scheme may also be extended at least till 30th June, 2021.**

Hoping for urgent consideration by your honour.
Yours faithfully,

For DIRECT TAXES PROFESSIONALS' ASSOCIATION

CA N K Goyal
President

Adv Narayan Jain
Chairman- Representation Committee

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To,
Shri P. C. Mody,
Chairman, Central Board of Direct Taxes
Ministry of Finance,
Government of India,
North Block,
New Delhi-110001

Respected Sir,

Sub: Suggestion for extending date of payment of tax/ amount under Vivad Se Vishwas Scheme (VSV) in view of Rising cases of Corona due to 2nd Wave seriously effecting business activities and other issues

We most humbly draw your Honour's kind attention to the following in respect of VSV :

1. **The date prescribed for payment of the amount (without extra amount of about 10 per cent) is prescribed s 30th April, 2021. However due to 2nd Wave of Corona since beginning of this month, the business activities are seriously affected and there is hardly any funds available. Corona 2nd Wave is likely to continue for another 3 to 4 months.**

2. **We therefore humbly Suggest for extending date of payment of tax/ amount under Vivad Se Vishwas Scheme (VSV), (without extra amount of about 10 per cent) in view of continuance of Rising cases of Corona due to 2nd Wave seriously effecting business activities Accordingly, your honour may kindly extend the date for payment till 31st July, 20211 without any extra payment, under VSV.**

3. **In some of the cases it is seen that the option for filing withdrawal of appeal before CIT(Appeals) is not there in the efiling portal. Without filing the said letter the assessees are unable to file Form-4.**

4. **Similarly, due to COVID 19 there is considerable delay in withdrawal of appeal before Hon'ble High Courts. Without withdrawal of appeal the assessees are unable to file Form-4.**

5. **If your honour feel appropriate in National Interest the date for filing of Declaration under VSV Scheme may also be extended at least till 30th June, 2021.**

Hoping for urgent consideration by your honour.
Yours faithfully,

For DIRECT TAXES PROFESSIONALS' ASSOCIATION

CA N K Goyal
President

Adv Narayan Jain
Chairman- Representation Committee

C C To:

1 **Mrs. Nirmala Sitharaman,**
Hon'ble Finance Minister,
Ministry of Finance,
Government of India,
North Block
New Delhi-110001

2 **Sri Anurag Singh Thakur**
The Hon'ble Minister of State for Finance
Government of India,
North Block,
New Delhi - 110001

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Compliance Calendar for April 2021

Statute	Due dates	Compliance Period	Details
Income Tax Act, 1961	7th April,2021	Mar-21	TDS/TCS Deposit
	14th April, 2021	Feb-21	Issue of TDS Certificate for tax deducted under Section u/s 194-IA / u/s 194-IB / u/s 194 M
	15th April, 2021	Quarter ending 31st March,2021	Quarterly statement in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for quarter ending March, 2021
	15th April, 2021	Mar-21	Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of March, 2021
	30th April, 2021	Mar-21	Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of March, 2021
	30th April, 2021	Mar-21	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA / u/s 194-IB / u/s 194 M
	30th April, 2021	Mar-21	Due date for deposit of Tax deducted by an assessee other than an office of the Government
	30th April, 2021	1st Oct,2020 to 31st Mar, 21	Due date for e-filing of a declaration in Form No. 61 containing particulars of Form No. 60 received during the period
	30th April, 2021	Quarter ending 31st March,2021	Due date for uploading declarations received from recipients in Form. 15G/15H during the quarter
	30th April, 2021	Quarter ending 31st March,2021	Due date for deposit of TDS for the period January 2021 to March 2021 when Assessing Officer has permitted quarterly deposit of TDS under section 192, 194A, 194D or 194H
	30th April, 2021		Vivaad Se Vishwaas Scheme due date for Payment of Taxes.

Statute	Due dates	Compliance Period	Return	Turnover
GST	10th April 2021	Mar-21	GSTR-7	TDS
	10th April 2021	Mar-21	GSTR-8	TCS
	11th April 2021	Mar-21	GSTR-1	Above 1.5 Cr. or not under QRMP
	13th April 2021	Quarter ending 31st March,2021	GSTR-1	Opted for QRMP
	13th April 2021	Mar-21	GSTR-6	Details of ITC received and distributed by ISD
	13th April 2021	Mar-21	GSTR-2B	Auto generated ITC statement
	18th April 2021	Quarter ending 31st March,2021	CMP-08	Due date for opting for composition scheme for the quarter
	20th April 2021	Mar-21	GSTR-3B	The due date for GSTR-3B having an Annual Turnover of more than 5 Crores
	20th April 2021	Mar-21	GSTR-5 and 5A	Non-Residents and OIDAR Service Providers
	22nd April 2021	Quarter ending 31st March,2021	GSTR-3B	For States-I with Turnover upto 5 Crores
	24th April 2021	Quarter ending 31st March,2021	GSTR-3B	For States-II with Turnover upto 5 Crores
	30th April, 2021			

*State I includes Taxpayers whose principal place of business is in Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep

**State II includes Taxpayers whose principal place of business is inHimachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi

Statute	Due dates	Compliance Period	Details
Companies Act, 2013	30th April, 2021	Half-yearly ending 31st March,2021	Form MSME (outstanding payments to MSME's) Half-yearly return with the registrar for outstanding payments to Micro or Small Enterprises.

Statute	Due dates	Compliance Period	Details
ESI, PF & Prof. Tax	30th April, 2021	Mar-21	Professional Tax Payment
	15th April, 2021	Mar-21	PF Payment
	15th April, 2021	Mar-21	ESIC Payment

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DTPA News Links

The DTPA News has been carried extensively in media. More than 25 newspapers (both English and Hindi), TV News websites and other websites across the nation. Some Links are here. We are thankful to all of them.

DTPA news items were also well covered by Sanmarg, Prabhat khabar, Rajasthan Patrika, Vishwamitra, Sahajsatta, Chhapte Chhapte, Yuva Shakti and other media. Our thanks & gratitude to all media

https://www.business-standard.com/article/economy-policy/direct-tax-practitioners-seek-extension-of-sebi-settlement-scheme-till-mar-120102601429_1.html

Direct tax practitioners seek extension of Sebi settlement ...
www.business-standard.com › Economy & Policy › News

Direct Tax Practitioners Seek Extension Of Sebi Settlement ...
www.ndtv.com › Home › Tax

Direct tax practitioners seek extension of Sebi settlement ...
timesofindia.indiatimes.com › ... › India Business News

Direct tax practitioners seek extension of SEBI settlement ...
www.outlookindia.com › newsscroll › direct-tax-practit...

Direct tax practitioners seek extension of SEBI settlement ...
www.theweek.in › 2020/10/26 › ccm2-biz-dtpa

Plea for extension of date for SEBI Settlement Scheme
taxguru.in › sebi › plea-extension-date-sebi-settlement-s...

SEBI extends SEBI Settlement Scheme 2020 till 31.12.2020
taxguru.in › sebi › sebi-extends-sebi-settlement-scheme...

Direct Tax Practitioners Seek Extension Of Sebi Settlement ...
newzzhub.com › Buisness news

Direct Tax Practitioners Search Extension Of Sebi Settlement ...
www.todaymynews.in › 2020 › October › 27

Direct Tax Practitioners Seek Extension Of Sebi Settlement ...
newsdeal.in › Business

Stock options settlement plan extended - Telegraph India
www.telegraphindia.com › business › cid
https://www.telegraphindia.com/business/stock-options-settlement-plan-extended/cid/1796256

Direct tax practitioners want extension of SEBI settlement ...
indianlekhak.com › direct-tax-practitioners-want-extens...

Direct Tax Practitioners Seek Extension Of Sebi Settlement ...
www.pehalnews.in › direct-tax-practitioners-seek-exten...

Direct tax practitioners seek extension of Sebi settlement ...
littleposts.in › Economy

Direct Tax Practitioners Seek To Extend Sebi Settlement ...
www.thebharatexpressnews.com › Business

Latest News | Direct Tax Practitioners Seek Extension of SEBI ...
www.latestly.com › Agency News

ITR Date Extension News

Extension of Tax Audit and ITR Due dates is a welcome Move
taxguru.in › income-tax › extension-tax-audit-itr-due-d...

Extend Tax Audit/TP Audit/ITR due date of AY 2020-21
taxguru.in › income-tax › extend-tax-audit-tp-audit-itr-...

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DTPA "Representation Committee" has been formed to prepare and send representations to Government on various issues including Income Tax, Corporate Law, GST, SEBI, RBI matters.

It constitutes of :

Adv Narayan Jain, Chairman

Adv SM Surana, Advisor

CS Mamta Binani, Co-Chairperson

CA Arun Agarwal, Co-Chairman

CA Barkha Agarwal, Convenor

Other Members :

CA Debasish Mitra

CA KP Khandelwal

CA Indu Chatrath

Adv RD Kakra

Adv Paras Kochar

CA Sunil Surana

CA Vikas Parakh

CA Ruby Bhalotia

Ex officio :

CA Narendra Goyal, President

Adv Kamal Kr Jain, Sr VP

CA Rajesh Agarwal, Secretary

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