

2018  
2019  
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2023

A Monthly E-Newsletter

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January 2021

# The Bottom Line

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## KEY METRICS

### Indices

BSE SENSEX	44,150	47,751	8.16%	▲
NSE NIFTY50	12,969	13,982	7.81%	▲
NASDAQ Composite	12,199	12,888	5.65%	▲
NIKKEI 225	26,434	27,444	3.82%	▲

### Currency

USD/INR	73.99	73.04	1.29%	▲
EURO/INR	88.26	89.20	-1.07%	▼
GBP/INR	98.56	99.86	-1.32%	▼
JPY/INR	0.715	0.71	-1.04%	▲

Note: The month-on-month movement as on December 31, 2020 is represented in percentages  
Source: Yahoo Finance, Investing.com



# DIRECT TAX

## Notifications/Circulars

### Due dates for filing return of income extended

The timeline for furnishing income tax returns, reports/certifications etc. in respect of FY ending March 31, 2020 has been extended for the third time this year. Now, non-auditable tax returns can be filed by January 10, 2021 while the auditable ones by February 15, 2021. In respect of tax audits and Transfer Pricing certification, the due date for filing is January 15, 2021. Also, settlement under the Vivad Se Vishwas Scheme can now be availed until January 31, 2021.

*Press release dated December 30, 2020*

## Judicial Rulings

### Cairn wins arbitration in International Court

The PCA at The Hague has ruled in favour of Cairn with respect to Indian government's retrospective tax claim stemming from an internal reorganisation of their India business in 2006-07. Under the restructuring, shares of Cairn India Holdings were transferred to Cairn India by Cairn UK. This gave rise to different interpretations on whether the UK based company made capital gains, preceding an IPO of shares by Cairn India.

In its ruling, the PCA has maintained that the retrospective claim of taxes by the Indian government is a tax-related investment dispute which falls under the jurisdiction of India-UK Bilateral Investment Treaty and has viewed

such demand in breach of fair treatment under the said Treaty.

*Cairn Energy Plc, December 23, 2020 (Permanent Court of Arbitration)*

### Share valuation method cannot be changed

The Court opined that valuation has to be done as per the prescribed method. If a particular method has been chosen by the taxpayer, the tax officer must confine to the same method of valuation. There is no provision under law that enables the tax officer to change the method of valuation and thus, the choice of method adopted by the taxpayer cannot be disturbed.

*TSI Yatra Pvt. Ltd [TS-669-ITAT-2020(DEL)]*

Due dates for filing of  
Income Tax Returns  
extended further

Cairn wins arbitration in  
International Court

Share valuation method  
cannot be changed





# INDIRECT TAX

## Notifications/Circulars

### Due date of Annual Return for financial year 2019-20 extended

The due date for Annual return in form GSTR-9 for the financial 2019-20 has been extended from December 31, 2020 to February 28, 2021.

*Notification No. 95/2020-Central Tax dated December 30, 2020*

### CGST Rules amended

- i. Cancellation of registration: Registration is now liable to be cancelled even for cases where Input Tax Credit (ITC) has been availed in violation of Section 16 of CGST Act or where GSTR-1 shows revenue in excess of that disclosed in GSTR-3B for same period.
- ii. Suspension of registration: Suspension of registration can be done even without providing a reasonable opportunity of being heard.
- iii. Restriction on unmatched ITC: The restriction of availing only 10 per cent of eligible credit as reflected in GSTR-2A has been reduced to 5 per cent w.e.f. January 1, 2021.
- iv. Restriction on availment of ITC: New rule 86B added w.e.f. January 1, 2021 to provide additional conditions for claim of ITC:
  - a. If taxable value of supply in a month exceeds INR 5 million, then ITC can be utilised against tax liability only to the extent of 99 per cent of such liability. Balance 1 per cent will need to be paid in cash. For this purpose, the supply shall not include exempt and zero rated supplies.
  - b. The above restriction will not apply in specified conditions which include:

- The taxpayer or specified persons have paid income tax exceeding INR 0.1 million in each of the two previous financial years.
- The taxpayer has received refund of more than INR 0.1 million in preceding financial year on account of unutilised ITC.
- The taxpayer has paid the tax liability in cash in excess of 1 per cent during the period from beginning of financial year till current month in the aggregate
- The taxpayer is a government department, PSU, local authority or a statutory body

*Notification No. 94/2020-Central Tax dated December 22, 2020*

### Waiver from disclosure of UIN on invoices

Requirement of disclosing UIN on invoices issued by suppliers to foreign diplomatic missions, embassies and specialized agencies of the UNO has been waived for the period April 2020 to March 2021. For the purposes of obtaining refund, copies of such invoices are to be attested by the authorized representative of the UIN entity.

*Circular No.144/14/2020-GST dated December 15, 2020*

## Court Cases/Advance Rulings

### Recovery towards transport facility provided to employees is taxable

Transport facility provided by employer to employees, either free of cost or with nominal charges, shall be taxable under GST. The same shall not be treated as part of services provided by employees to their employers.

*M/s Beumer India Private Limited (AAR Haryana)*

**GSTR-9 for FY 2019-20 to be filed by February 28, 2021**

**Significant changes made in CGST Rules**

**AAR rules that recovery towards transport facility provided to employees is taxable**

### Rectification of GSTR-3B of previous periods

Decision of Delhi High Court allowing petitioner to rectify GSTR-3B for previous periods to claim refund of excess tax paid, by removing restriction imposed by Para 4 of Circular No. 26/ 26/2017-GST dated December 29, 2017, has been stayed by the Supreme Court.

*Union of India v. Bharti Airtel Ltd & others (Supreme Court of India)*

### Foreign company liable for GST registration

Where a foreign company maintains suitable structures in terms of human and technical resources at the project site in India, the location of supplier shall be such fixed establishment/ project office and registration must be obtained by the foreign company from such fixed establishment.

*M/s Tokyo Electric Power (AAR Odisha)*

### ITC on goods distributed free of cost

Where the goods are distributed to franchisees, ITC shall be allowed as the said distribution amounts to supply to related parties which is chargeable to GST. Where the goods are distributed to retailers which are not related parties, ITC shall not be allowed, as such transaction does not come under the scope of supply and no GST is payable on it.

*M/s Page Industries (AAR Karnataka)*

# CORPORATE & ALLIED LAWS

## Notifications

### Relaxations in holding BM's and EGM's

Companies can now conduct their Board Meeting or Extra Ordinary General Meeting through VC's or OAVM until June 30, 2021.

*General Circular No. 39/2020/MCA/ dated December 31, 2020*

### Relaxation in timelines to qualify under Independent Directors Databank

Timelines to qualify the online proficiency test for individuals under Independent Directors Databank is extended from a period of 1 to 2 years from the date of inclusion of name in databank.

Exemption has also been given from qualifying the proficiency test for individuals who have held position as director or key managerial personnel in a listed public company or unlisted public company having a paid-up share capital of INR 100 million or more or in any other specified companies for more than a period of three years.

*Notification No. G.S.R. – 774(E)/ MCA/dated December 18, 2020*

### Extensions in timelines for reservation of names under Spice+

Extension has been provided for reservation of name in certain cases for a period upto forty or sixty days. Such extension shall be granted on payment of nominal additional fees before the expiry period as specified in the Companies (Incorporation) Third Amendment Rules, 2020.

*Notification No. G.S.R. – 795(E) 2020/MCA/dated December 24, 2020*

### Facilitation of export of goods and services by RBI

To further enhance the ease of doing business it has been decided to delegate more powers to the Authorised Dealer Category – I banks (AD banks) in the following areas:

- To regularise cases of dispatch of shipping documents by the exporter direct to the consignee or his agent
- Write-off of unrealized export bills
- Set-off of export receivables against import payables
- Refund of export proceeds on account of poor quality.

*Notification No. 21/77/ RBI/dated December 04, 2020*

Extension to hold Board and Shareholders meetings through VC's

Relaxation in timelines to qualify under Independent Directors Databank

Initiatives by RBI to facilitate external trade





## CFO WATCH

### CARO 2020 applicability deferred by one year

#### MCA defers applicability of CARO 2020

Reporting under CARO 2020 was earlier from financial year starting on or after April 1, 2020. This has now been extended by one year and reporting shall be required for financial years commencing on or after April 1, 2021.

#### Government plans to extend IBC suspension till March 31, 2021

The government has decided to extend the suspension of IBC till March 31, 2021 to help businesses cope with the difficulties posed by the pandemic.



## MERGERS & ACQUISITIONS

### Quick guide series – Growth finance for mature companies

Large companies at a mature stage of operation often struggle with fund raise, as options become limited due to shrinking growth rates. Some funding and growth options which can be explored by such companies are as follows:

#### Strategic investment:

Strategic investment from same or a complementary business is the most obvious choice to procure growth funding in a matured business. Sale to a strategic player is also a common way to take an exit from such business. A strategic investor will not only bring in capital but also technology or access to new markets in case of international partners. Some key things to note here are:

- Strategic investors mostly prefer majority stake to protect technology and option to buy balance stake in future
- Valuations are not just based on proven track record but potential synergies
- Strategic investors are relatively more involved in day-to-day affairs of the company vis-a-vis a Private Equity investor

#### IPO:

Depending on size and nature of business, public markets are very commonly used source of funding and are also used to give exits to financial investors inducted during growth stage. Points to note here are as follows:

- Success of an IPO is significantly dependent on market sentiments at the time of listing
- IPO brings in increased regulatory compliances and intensive public scrutiny
- It is a relatively expensive process when compared to financial and strategic fund raise

#### International capital and debt markets:

With global banks and merchant bankers well established in India, companies can now explore various options to raise capital from international markets. Some of these options are as follows:

- American Depositary Receipts (ADR's) – these are depository receipts representing securities of a foreign company traded in US financial markets. An Indian company issuing ADRs thus gets access to the US financial markets
- Global Depositary Receipts (GDR's) - a GDR, similar to an ADR, is an instrument representing shares in a foreign company. This helps an Indian company to raise funds in foreign currency which can be listed and traded on a foreign stock exchange.
- Foreign Currency Convertible Bonds (FCCB's) - these are equity-linked debt securities that are issued in a currency other than the issuer's home currency. It is a hybrid instrument that may allow regular interest payments on the principal for a pre-defined term and offer an option to convert to equity after a specified period as per the conversion rate specific to such bond.

## IN THE NEWS



### **CARO and E-invoicing -**

December 18, 2020

*Speakers:* Sounder Rajan, Associate Director, Assurance and Santhosh Kumar, Senior Manager, Accounting & Business Support, covered the latest developments in CARO and E-invoicing in a client clinic

### **CII 7th Banking and Finance Summit 2020 -**

December 18, 2020

Parveen Kumar, National Head, Assurance, was invited by CII Northern Region to speak on a panel discussion on “Building a Resilient Banking Sector in India”. He spoke about the risks and regulatory issues facing the Indian banking sector and his thoughts on the resilience of the sector.

### **Articles of Interest**

#### **New Labour Laws - a painful proposition for India Inc? –**

December 14, 2020

*Author:* Himanshu Srivastava, Partner, Business Advisory Services

Published on ETCFO, this covered the impact of the latest reforms

in labour laws, recently enacted by the Indian Government. 44 Central labour laws have now been merged into 4 specific codes, where the term “worker” has now been defined, contract labour is restricted from core activities, the threshold for Government approval in cases of layoffs, closures etc has been increased and direction for negotiations and time limits for resolving labour disputes have been laid down.

### **CARO 2020: What deferment of new stricter rules means for CFOs, auditors -**

December 22, 2020

*Author:* Keyur Dave, Practice Head, Mumbai

Published on ETCFO, this article looked at the implications of both, the additional disclosures required under CARO 2020 as well as what it's deferment meant for various stakeholders including CFOs, auditors and investors.





# GLOSSARY



## AAR

Authority for  
Advance Ruling

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## CGST Act

Central Goods and  
Services Tax Act,  
2017

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## CGST Rules

Central Goods and  
Services Tax Rules,  
2017

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## CARO 2020

Companies  
Auditor's Report  
Order, 2020

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## FY

Financial Year

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## GST

Goods and Services  
Tax

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## GSTIN

GST Identification  
Number

## ITAT

Income Tax  
Appellate Authority

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## IPO

Initial Public  
Offering

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## ITC

Input Tax Credit

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## IBC

Insolvency and  
Bankruptcy Code,  
2016

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## IGST

Integrated Goods  
and Services Tax

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## MCA

Ministry of  
Corporate Affairs

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## OAVM

Other Audio-Visual  
Means

## PCA

Permanent Court of  
Arbitration

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## RBI

Reserve Bank of  
India

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## SPICE+

Simplified Proforma  
for Incorporating  
Company  
Electronically

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## UIN

Unique Identity  
Number

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## UK

United Kingdom

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## UNO

United Nations  
Organization

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## VC

Video Conferencing

“ We value your feedback. Please  
send us your comments and  
suggestions at [editorial@asa.in](mailto:editorial@asa.in) ”

# ABOUT US

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*Disclaimer: We have taken all steps to ensure that the information in this document has been obtained from reliable sources and is accurate. However, this document is not intended to give legal, tax, accounting or other professional guidance. We recommend appropriate advice be taken prior to initiating action on specific issues.*

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