



A Monthly E-Newsletter

Vol 02 Issue 02

February 2021

The Bottom Line

WHAT'S INSIDE

Direct Taxes **2**

Indirect Taxes **3**

Corporate & Allied Laws **4**

CFO Watch **5**

M&A **5**

In the News **6**

Glossary **7**

About Us **8**

KEY METRICS

Indices

BSE SENSEX	46,286	-3.07%	▼
NSE NIFTY50	13,635	-2.48%	▼
NASDAQ Composite	13,071	1.42%	▲
NIKKEI 225	27,663	0.80%	▲

Currency

USD/INR	72.88	0.22%	▲
EURO/INR	88.44	0.85%	▲
GBP/INR	99.83	0.03%	▲
JPY/INR	0.70	1.58%	▲

Note: The month-on-month movement as on January 29, 2021 is represented in percentages
Source: Yahoo Finance, Investing.com



DIRECT TAX

Notifications/Circulars

Penalty Assessment made Faceless

Effective January 12, 2021, the penalty assessments shall take place in a faceless manner. This is in line with the revenue's initiative to shift all assessment and appellate matters to the faceless platform. International tax and withholding tax assessments and penalty matters continue to be dealt in a physical manner.

Notification No. 03/2021- CBDT dated January 12, 2021

Updated guidance from OECD to deal with COVID-19 impact on PE, POEM, Dual Residency etc.

Following an initial advisory in April 2020, the OECD has issued an updated guidance on measures to deal with COVID-19 related tax situations on individuals and employers that are inadvertently leading to creation of a PE, residency under POEM, dual residency,

payroll taxes and such consequences. The revenue authorities in India are contemplating to issue similar guidelines in due course.

https://www.oecd-ilibrary.org/social-issues-migration-health/updated-guidance-on-tax-treaties-and-the-impact-of-the-covid-19-pandemic_df42be07-en and <https://www.financialexpress.com/money/finmin-to-clarify-on-residency-status-of-nris-stranded-in-india-this-fiscal-due-to-covid-19/2187959/>

Judicial Rulings

AO to assign reason for denial of exemption from tax withholding

Where the AO disagrees with the taxpayer's request for an exemption from tax withholding under section 197, he shall do so through a speaking, reasoned order.

[2021] 123 taxmann.com 289 (Bombay)

Enhancement in Safe Harbour on Stamp Duty Valuation to apply retrospectively

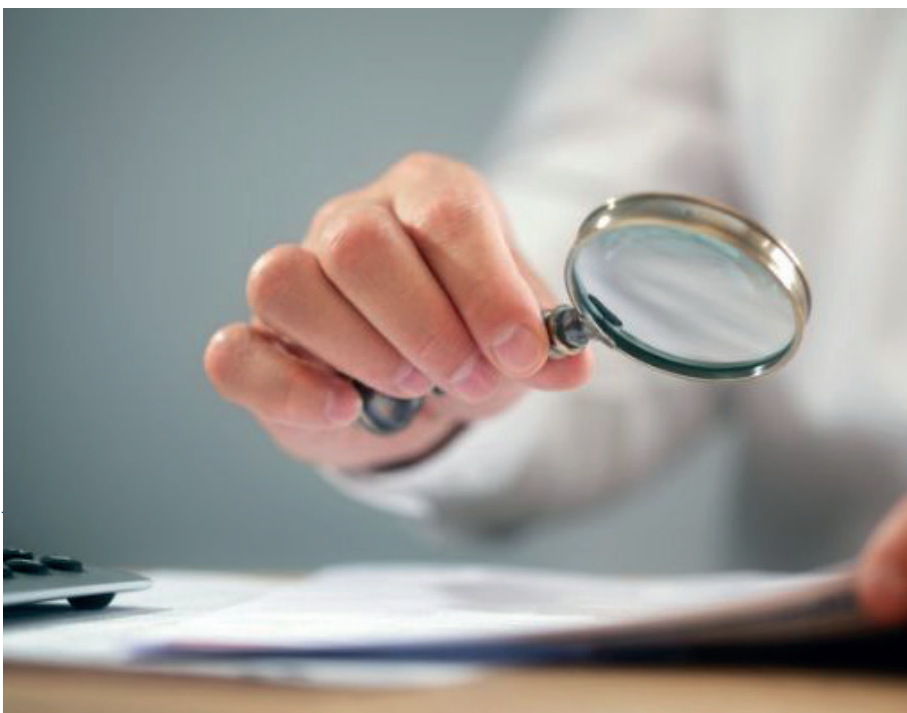
The Finance Act 2020 had enhanced the capital gains safe harbour threshold i.e. acceptable variance between stamp duty valuation and the sale consideration of immovable property, from 5 to 10 per cent. A question was raised before the ITAT Mumbai seeking whether such amendment applied prospectively or retrospectively. The ITAT has held that since the amendment is curative in nature, it should apply retrospectively.

Maria Fernandes Cheryl v. Income Tax Officer, (International Taxation) (ITAT Mumbai)

Penalty Assessment made Faceless

E-portal for reporting tax evasion, Benami properties and foreign undisclosed assets

Enhancement in Safe Harbour on Stamp Duty Valuation to apply retrospectively



INDIRECT TAX

Notifications/Circulars

CGST Rules amended

- i. Filing of GSTR-1 to be blocked if GSTR-3B not filed for immediately preceding two consecutive months.
- ii. For quarterly taxpayers, GSTR-1 and invoice furnishing facility to be blocked if GSTR-3B has not been filed for the preceding tax period.
- iii. A taxpayer restricted from using his electronic credit ledger to discharge his tax liability in excess of 99 per cent under Rule 86B of the CGST Rules, shall not be allowed to file GSTR-1 unless GSTR-3B for the preceding tax period has been filed.

Notification No. 01/2021-Central Tax dated January 01, 2021

Court Cases/Advance Rulings

Taxability of Merchant Trade transactions

In case of a trader located in India buying from overseas and selling overseas, the goods do not cross Indian customs and supply of these goods does not qualify as export of goods. The place of supply being outside India, such merchant trade shall be taxable as an inter-state supply. However, by virtue of

Schedule III, Entry No. 7, no GST is leviable on such type of transactions, with effect from February 1, 2019.

M/s SPX Flow Technology (India) Pvt Ltd (AAR Gujarat)

Recovery of Notice pay from employees

Notice pay can be regarded as a consideration to the employer for “tolerating the act” of the employee, to not serve the notice period required as per contractual obligation. Accordingly, such notice pay recovery shall be covered under Schedule II to CGST Act as a supply of service and taxed under GST.

M/s Amneal Pharmaceuticals Pvt Ltd (AAR Gujarat)

Recovery towards canteen food from employees

The recovery made from employees’ salary towards canteen food provided to them will amount to supply and the recovery will be consideration for such supply. Accordingly, such recoveries will be taxable under GST.

M/s Amneal Pharmaceuticals Pvt Ltd (AAR Gujarat)

LO exempt from registration under GST

Reimbursement claimed by LO from their head office does not fall within the purview of supply of service. Since an LO does not undertake any

Merchant trade transactions not subject to GST from February 1, 2019

Notice pay recovery from employees is taxable

ITC not available on goods distributed at promotional events

taxable supply, it is not required to get registered under GST.

M/s Wilhelm Fricke Se (AAR Haryana)

No ITC for goods distributed free of cost

Goods distributed at promotional events shall be regarded as gifts and not eligible for ITC due to express disallowance under Section 17(5) of the CGST Act.

M/s BMW India Pvt Ltd (AAR Haryana)

Penalty cannot be levied for non-cancellation of e-way bill

Rule 138(9) of CGST Rules does not prescribe that the dealer must necessarily cancel the e-way bill if no transportation of the goods is made within 24 hours of its generation. Hence no penalty can be levied.

M/s Anandeshwar Traders v State of UP (Allahabad High Court)



CORPORATE & ALLIED LAWS

Notifications

Companies (Corporate Social Responsibility Policy), Amendment Rules, 2021

CSR Amendment Rules, 2021 effective from January 22, 2021, provides for major amendments:

- Form CSR-1 to be filed electronically with Central Government by entities which intend to undertake any CSR activity with effect from April 01, 2021.
- Any excess spending beyond 2 per cent of the average net profit of the previous three financial years on the CSR activity can be set-off against the CSR mandates of the immediate succeeding three financial years subject to conditions.
- Impact assessment by independent agency on specified CSR projects for companies having spending obligations of INR 100 million or more in the three immediately preceding financial years.

Notification No. G.S.R. – 40(E)/MCA/dated January 22, 2021

Insolvency and Bankruptcy Code, 2016

NCLAT Chennai Bench starts operating through virtual mode with effect from January 25, 2021. Henceforth, filing of appeals against orders of NCLT having jurisdiction of States of Karnataka, Tamil Nadu, Kerala, Andhra Pradesh and Telangana and Union Territories of Lakshadweep and Puducherry shall be through Chennai Bench in virtual mode.

Notification No. – 025/2021/IBBI / dated January 23, 2021

CSR Amendment Rules, 2021 notified

NCLAT Chennai Bench to operate through virtual mode



CFO WATCH

India's new Foreign Trade Policy 2021-2026 to be effective from April 01, 2021

New Foreign Trade Policy 2021-2026 announced

The Union Ministry of Commerce and Industry announced that the new Foreign Trade Policy 2021-2026 which is under consideration by Parliamentary Consultative Committee of the Ministry of Commerce and Industry, will come into effect on April 01, 2021. The policy will be implemented for five years and will endeavor to make India a leader in international trade.

COVID vaccination programme to be considered as an eligible CSR activity

As per the MCA notification, spending of CSR funds by the corporates for carrying out awareness campaigns/ programmes or public outreach campaigns on COVID-19 vaccination is an eligible CSR activity under Schedule VII of the Companies Act, 2013.



MERGERS & ACQUISITIONS

Budget 2021: Potential impact on M&A activities

While the Budget 2021 is being hailed as proactive and bold, it is a mixed bag as far as M&A is concerned. Some of the key proposals in the budget and their potential impact on M&A activity in India are:

- **Increased transaction cost as Goodwill considered a non-depreciable asset**

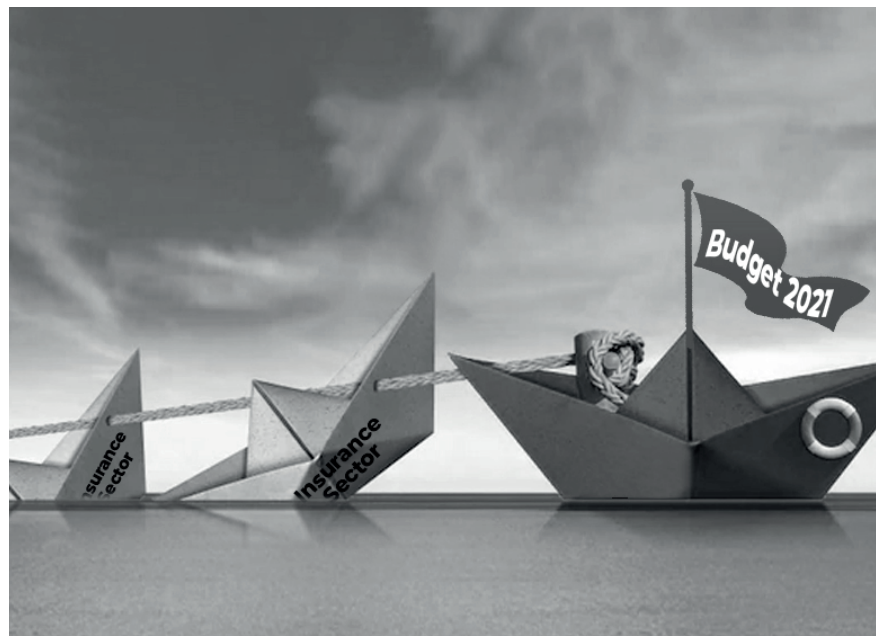
The budget has proposed that goodwill of a business or profession will not be considered as a depreciable asset and there would not be any depreciation on the same in any situation. This will impact the valuation and negotiations for ongoing and future transactions as it increases the transaction cost for the buyer due to non-availability of depreciation on goodwill and decreases the negotiation power of the seller. This will also impact past transactions where goodwill has not been fully depreciated as it may increase tax liability and thus impact the EPS.

- **Impact on tax indemnities due to revised time limits for reopening assessments**

The time limit for reopening of income tax assessments has been reduced to 3 years from 6 years. However, for serious fraud cases where concealment of income is INR 50 lakhs or more, the time limit has been increased to 10 years. This would impact the time period for tax indemnities obtained during any M&A transaction.

- **Boost in FDI for insurance sector expected**

The proposed change will now allow foreign companies to own up to 74 per cent in insurance companies in India as against the earlier restriction of up to 49 per cent. This is expected to boost M&A activity in this sector.



IN THE NEWS



Webinars

Labour Codes 2020 -

January 15, 2021

Speakers: Himanshu Srivastava, Partner, Business Advisory Services and Kazuharu Kono, Advisor

The webinar was organized for Japanese clients where Himanshu went into detail about recent reforms in labour laws and their impact on Japanese companies operating in India.

Other Webinars

Indian Accounting Standards

(Ind AS) - January 9, 2021

Speakers: Parveen Kumar, National Head, Assurance

At a webinar organized by the Institute of Chartered Accountants of India (ICAI), Parveen spoke about Indian Accounting Standard 19 - Employee Benefits.

Digital CXO Virtual Board Room Session - January 13, 2021

Speakers: Ajay Sethi, Managing Partner

At this Virtual Boardroom Session organized by Dun & Bradstreet India, Ajay was part of the discussion on Modernizing Business Communication through Cloud Telephony. He spoke about the challenge of remote working, available cloud telephony solutions and how business leaders were tackling these challenges.

Insolvency regimes: Challenges, Developments and Opportunities - A cross border view between UK and India - January 20, 2021

Speakers: Himanshu Srivastava, Partner, Business Advisory Services

In the virtual panel discussion organized by Charles Russell Speechlys in the UK, Himanshu spoke about impact of COVID-19 on the Insolvency and Bankruptcy Code and the challenges posed by the Indian insolvency regime and industry expectations from the same.

Published Articles

Key Takeaways from Labour Codes 2020 - January 4, 2021

Author: Himanshu Srivastava, Partner, Business Advisory Services

Published by Taxsutra on their portal Law Street Journal this article covered details about the Labour Law reforms and their impact on corporates in India.



GLOSSARY



AAR

Authority for Advance Ruling

AO

Assessing Officer

CBDT

Central Board of Direct Taxes

CGST Act

Central Goods and Services Tax Act, 2017

CGST Rules

Central Goods and Services Tax Rules, 2017

COVID

Coronavirus Disease

CSR

Corporate Social Responsibility

EPS

Earnings per share

FDI

Foreign Direct Investment

GST

Goods and Services Tax

ITAT

Income Tax Appellate Authority

ITC

Input Tax Credit

LO

Liaison Office

MCA

Ministry of Corporate Affairs

NCLAT

National Company Law Appellate Tribunal

NCLT

National Company Law Tribunal

OECD

Organization for Economic Co-operation and Development

PE

Permanent Establishment

POEM

Place of Effective Management

“ We value your feedback. Please send us your comments and suggestions at editorial@asa.in ”

ABOUT US

A full services firm of corporate strategists, auditors, tax advisory experts and financial and marketing analysts.

SERVICES

- Accounting and Business Support
- Assurance
- Business Advisory
- Taxation
- Transaction Advisory

Well structured teams with domain specialization are guided by leaders who possess expertise and experience and are present PAN India to ensure excellent client service.

Our strengths are our people, processes and professionalism.



ASA & ASSOCIATES LLP



New Delhi (Head Office)

Aurobindo Tower
81/1 Third Floor Adchini
Aurobindo Marg
New Delhi 110 017 INDIA
T +91 11 4100 9999

Ahmedabad

306 - B, Pinnacle Business Park
Corporate Road, Prahlad Nagar
Ahmedabad, 380 015 INDIA
T + 91 79 4891 5409

Bengaluru

Level - 2, Park Square
No.150, 36th Cross
Jayanagar 7th Block
Bengaluru 560 082 INDIA
T +91 80 4151 0751

Chennai

Unit No. 709 & 710,
7th Floor 'Beta Wing'
Raheja Towers, New Number 177
Anna Salai, Chennai 600 002 INDIA
T +91 44 4904 8200

Gurgaon

Times Square Fourth Floor
Block B, Sushant Lok 1
Gurgaon 122 002 INDIA
T +91 124 4333 100

Hyderabad

Ammaram Unnathasan Reddy Tower
H No 1-11- 301/3 Ground Floor
Gagan Vihar Begumpet
Hyderabad 500 016 INDIA
T +91 40 2776 0423

Kochi

Pioneer Tower
207-208 Second Floor
Marine Drive
Kochi 682 031 INDIA
T +91 484 410 9999

Mumbai

Lotus Corporate Park
D-401, CTS No.185/A
Graham Firth Compound
Western Express Highway
Goregaon (East)
Mumbai 400 063 INDIA
T +91 22 4921 4000

National Affiliates

Chandigarh, Kolkata, Pune,
Visakhapatnam, Nepal

www.asa.in

700 in-house PROFESSIONALS	6000 CLIENTS
60+ LOCATIONS	32 PARTNERS & DIRECTORS
	29 YEARS OF EXPERIENCE

PARTNER LED OFFICES IN 8 KEY LOCATIONS ACROSS INDIA

18 INDIAN LOCATIONS AND 6 FOREIGN DESKS COMBINED WITH INTERNATIONAL AFFILIATIONS ENSURES GLOBAL STANDARDS WITH REGIONAL EXPERTISE



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.