

A Monthly E-Newsletter

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KEY METRICS

Indices

BSE SENSEX	49,509	0.83%	▲
NSE NIFTY50	14,691	1.11%	▲
NASDAQ Composite	13,247	0.41%	▲
NIKKEI 225	29,179	0.73%	▲

Currency

USD/INR	73.14	1.06%	▲
EURO/INR	85.78	3.89%	▲
GBP/INR	100.78	2.15%	▲
JPY/INR	0.66	4.84%	▲

Note: The month-on-month movement as on March 31, 2021 is represented in percentages
Source: Yahoo Finance, Investing.com



DIRECT TAX

Notifications/Circulars

Timelines deferred/ extended

- Requirement for furnishing GST & GAAR details in Tax Audit Report in Form 3CD has been further deferred till March 31, 2022.
- Mandatory linking of Aadhaar with PAN further extended to June 30, 2021.
- Due dates for issuance of notice u/s 148, passing order u/s 144C pursuant to directions of DRP and processing of Equalisation Levy statements extended to April 30, 2021.

Circular No. 05/2021 and Notification No. 20/2021- CBDT, dated March 25, 2021 and March 31, 2021

Form notified for making application u/s 195 for lower / nil tax withholding

No specific format was prescribed for making appropriate application u/s 195(2) in respect of levy of TDS on payments to be made to a NR. The deductor had to make a physical application to the AO for determination of the amount chargeable to tax.

Now, Form 15E has been notified to make such application for lower/nil withholding. This form can be filed electronically w.e.f. April 1, 2021.

Notification No. 18/2021- CBDT, dated March 16, 2021

Potential cases for reassessment selection

Various categories of cases to be considered as 'potential cases' u/s 148 for AY 2013-14 to AY 2017-18 have been listed. Separate instructions for cases pertaining to International Taxation charges have been issued.

Instruction F No.225/40/2021/ITA-II, dated March 04, March 15, March 26 and March 27, 2021

Judicial Rulings

Sum received by NR for sale of computer software not taxable as royalty

The Hon'ble SC in a landmark judgement has settled the prolonged litigation on taxability of payment for software, whether taxable as royalty or business profits. The Court

held that any sum paid by resident end users/distributors to NR computer software manufacturers/suppliers, as consideration for the resale or use of computer software would not typically be classified as royalty under the tax treaties. Rather, they are in the nature of business profits which are not taxable in India, if the NR does not have a permanent establishment in India.

Engineering Analysis Centre of Excellence (P.) Ltd. [TS-106-SC-2021]

Education cess deductible as revenue expense

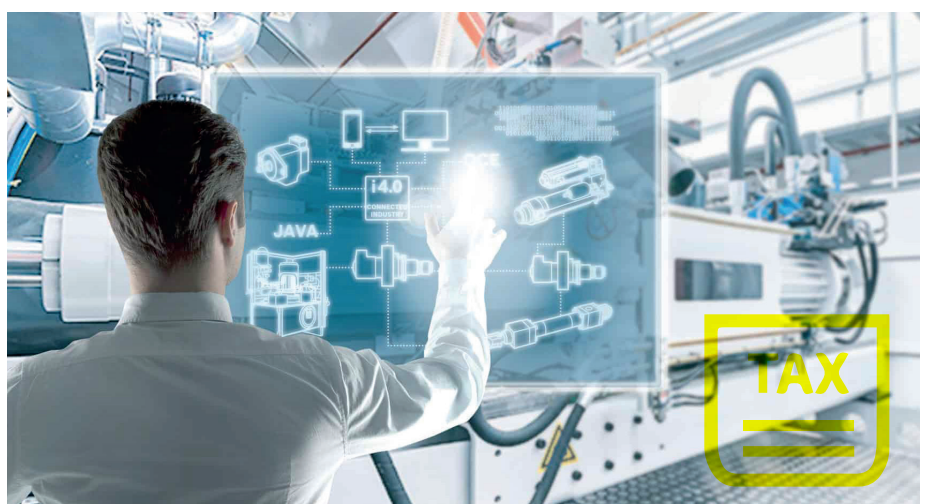
The Tribunal observed that Section 40(a)(ii) of the Income Tax Act, 1961, does not specifically disallow "Cess", nor does the definition of "Tax" specify "Cess" as Tax. Accordingly, the Court held that Cess cannot be treated as Tax for the purpose of Section 40(a)(ii) of the Act. In pursuance of same, Education Cess paid was allowed as deduction.

Gloster Ltd. v. ACIT ([2021] 125 taxmann.com 223 (Kolkata - Tribunal)

Form notified for making application u/s 195 for lower / nil tax withholding

Sum received by NR for sale of computer software not taxable as royalty

Education cess deductible as revenue expense



INDIRECT TAX

Notifications/Circulars

QR code on B2C e-invoices

Taxpayers having aggregate turnover exceeding INR 500 crores during any financial year from 2017-18 onwards, are required to have a QR code on all B2C e-invoices issued by them. They were provided with a relaxation till March 31, 2021 from any penalty if such e-invoice did not contain the QR code. Now this relaxation has been further extended till June 30, 2021.

Notification No. 06/2021-Central tax dated March 30, 2021

E-invoicing applicability widened

With effect from April 01, 2021, e-invoicing shall be applicable for taxpayers with aggregate turnover exceeding INR 500 million in any preceding financial year from 2017-18 onwards.

- QR code shall not be required on export invoices.
- QR code shall contain various details including supplier GSTIN, supplier UPI ID, Payee's Bank A/c number, IFSC, invoice number, date and total value along with GST amount and breakup of type of tax.

Notification No. 05/2021-Central Tax dated March 08, 2021

Court Cases/Advance Rulings

Taxability of gift vouchers

Voucher per-se is neither goods nor services. It is a means of payment of consideration for a future supply. The supply associated with the voucher shall be classifiable

according to the nature of goods or services supplied. The time of supply of such vouchers shall be the date of issue of the voucher and the tax rate shall be that as applicable to the goods.

M/s Kalyan Jewellers India Ltd (AAAR Tamil Nadu)

No GST on salary paid to expat employee

Services provided by expat employees to the project office shall constitute 'services by an employee to the employer in the course of or in relation to his employment'. Accordingly, no GST shall be levied on the salary paid to the expat employees even though such salary is reflected in the books of account of the project office.

M/s Hitachi Power Europe GmbH (AAR Uttar Pradesh)

Transition credit availability

A registered taxpayer cannot be denied the benefit of input tax credit because of a technical glitch on the GST portal. Direction has been issued to department for accepting the physical hard copy from the petitioner if it is not possible to do so electronically.

M/s INM Technologies Pvt Ltd. v The Union of India and others (Karnataka High Court)

ITC in respect of CSR expenses

CSR expenses which are required to be spent by companies under the Companies Act, 2013 shall qualify as expense incurred in the course or furtherance of business. Accordingly, the same shall be eligible for ITC.

M/s Dwarikesh Sugar Industries Limited (AAR Uttar Pradesh)

E-invoicing now applicable to taxpayers having aggregate turnover exceeding INR 500 million

Notice of cancellation of registration cannot be vague and imprecise

ITC available in respect of CSR expenses

Recovery from employees

Providing subsidized shared transport facility to employees in terms of employment contract through third party vendors would not be construed as "supply of service" by the company to its employees. Hence, recovery for transport facility from employees shall not be liable to GST.

M/s North Shore Technologies Private Limited (AAR Uttar Pradesh)

Cancellation of GST registration

Notice of cancellation of registration should not be vague and imprecise. It should clearly specify the reason for cancellation. As the impugned order does not specify any reason for cancellation, therefore, the same has been quashed. Accordingly, direction issued to department for unblocking the petitioner's GST account.

M/s Dayamay Enterprise v State of Tripura (Tripura High Court)

CORPORATE & ALLIED LAWS

Notifications

Amendments in the Companies (Management and Administration) Rules, 2021

MCA has notified new annual return e-form MGT-7A replacing earlier e-Form MGT-7 for OPC's and Small Companies. All such companies shall be required to file their annual return in new form from FY 2020-21 onwards.

Notification No. G.S.R. – 159(E)/MCA/dated March 05, 2021

Reserve Bank of India

Framework for registering e-mandates for recurring online transactions using cards / wallets / Unified Payments Interface was put in place to ensure that changing payment needs of customers were accommodated by adequately balancing safety, security and convenience of such transactions. Timelines for migration to such framework for stakeholders has now been extended from March 31, 2021 to September 30, 2021.

Press Release: 118/20-21/RBI/dated March 31, 2021

New annual return e-form MGT-7A for OPC's and Small Companies notified

Timeline for migration to framework for registering e-mandates for recurring online transactions, extended

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2021

- As per new clause 12 A, creditor shall update its claim as and when the claim is satisfied, partly or fully, from any source in any manner, after the insolvency commencement date.
- Form CIRP 7 shall be filed for specified activities within stipulated timelines by IRP or RP. Such form shall be filed every 30 days, until the said activities remain incomplete. These are:
 - » Default in issuance of Information Memorandum
 - » Default in issuance of Request for Resolution Plan (RFRP)
 - » Default in completion of CIRP
 - » Default in public announcement
 - » Default in appointment of RP

Notification No. REG070/IBBI/dated March 15, 2021



CFO WATCH

Additional disclosures in financial statements due to amendment in Schedule III of the Companies Act, 2013

MCA issues notification to use accounting software for recording of audit trail from April 01, 2022

Amendments in Schedule III of the Companies Act, 2013

MCA amended Schedule III of the Companies Act, 2013, increasing stringency in compliances for corporates and adding numerous additional disclosures in financial statements with effect from April 01, 2021. These include details of benami property, crypto currency or virtual currency, undisclosed income in tax assessments, ageing schedules of trade receivables and payables, relationship with struck-off companies, additional CSR related disclosures etc.

MCA mandates use of accounting software for recording audit trail from April 01, 2022

With effect from April 01, 2022, every company shall use such accounting software for maintaining books of accounts which shall have a feature of recording audit trail of every transaction. The software should be capable of creating an audit log of each change made in the books of account along with the date when such changes were made. Further, such software must ensure that this audit trail cannot be disabled.

MERGERS & ACQUISITIONS

India's steps to strengthen mechanism for international commercial arbitration

The Arbitration and Conciliation (Amendment) Act, 2021, was notified on March 11, 2021. This indicates India's continued efforts to be a preferred destination for international commercial arbitration, which is a commonly used ADR mechanism for commercial disputes including those arising from M&A, foreign investments, etc.

The amendment has two primary changes. First, the Court is now empowered to grant an unconditional stay on the enforcement of arbitral award if it is prima facie satisfied that the arbitration agreement or the contract that is the basis of the award or the making of the award was induced or effected by fraud or corruption. This is a retrospective amendment in Section 36, effective from October 23, 2015.

The second change relates to provision of accreditation of arbitrators u/s 43 (J) and omission of Eighth Schedule. The Eighth Schedule detailed an exhaustive list of qualifications for arbitrators including a limitation on foreign qualified lawyers to act as arbitrators in India. Such amendment is made to attract eminent international arbitrators and position India as a hub for international arbitration. However, the regulations u/s 43(J) are yet to be defined.

While the changes are well-intended, they are ambiguous about certain aspects like definition of 'fraud' and 'corruption'. Additionally, the retrospective nature of amended Section 36 might increase delays and litigation.

Source: The Hindu Business Line, Lexology



IN THE NEWS



Webinars for clients

The Points of Labour Codes 2020 (Industrial Relations Code and Social Security Code) -

March 2, 2021

Speakers: Himanshu Srivastava - Business Advisory Services

A webinar in Nihongo covering the impact of two new labour codes namely the Industrial Relations Code and the Social Security Code on Japanese companies in India.

Decoding Labour Codes 2020 and its impact on Business -

March 23, 2021

Speakers: Himanshu Srivastava - Business Advisory Services

Himanshu was invited by the World Trade Centre to speak about the implications of the new labour codes on employers and employees. The new rules would be effective soon and are expected to make significant changes to regulation of Labour and the employer-employee relationship. This webinar delved into the impact of these codes in various scenarios.

Published Articles and quotes by our Partners

GST Audit Abolition: An onerous onus on CFOs -

March 12, 2021

Quoted: Sundeep Gupta – Accounting & Business Support and Indirect Tax

Interviewed by ETCFO, Sundeep spoke about the likely impact of the proposed amendment of shifting the onus from the auditor to the CFO.

GST reality: Only 50% taxpayers file annual return for FY 18-19

March 15, 2021

Quoted: Sundeep Gupta Accounting & Business Support and Indirect Tax

In this article by ETCFO investigating the low rate of GST tax filing among taxpayers, Sundeep elucidated his views on the possible reasons behind the delay in filing the annual return and the challenges facing taxpayers trying to complete filing of correct returns within the deadline.

Taxsutra Eye Share: Sections 206AB and 206CCA – Thorn in the Flesh for Taxpayers

March 29, 2021

Author: Karthik S S - Taxation

In an article published by Taxsutra, Karthik shared some issues and probable solution to the Finance Act, 2021, which proposed insertion of two new sections, viz. 206AB and 206CCA, with effect from July 1, 2021.



GLOSSARY



AAR

Authority for
Advance Ruling

AAAR

Appellate Authority
for Advance Ruling

ACIT

Assistant
Commissioner of
Income Tax

ADR

Alternate Dispute
Resolution

AO

Assessing Officer

AY

Assessment Year

B2C

Business to
Consumer

CBDT

Central Board of
Direct Taxes

CFO

Chief Financial
Officer

CIRP

Corporate
Insolvency
Resolution Process

CSR

Corporate Social
Responsibility

DRP

Dispute Resolution
Panel

FY

Financial Year

GAAR

General Anti-
Avoidance Rule

GST

Goods and Services
Tax

IRP

Insolvency
Resolution
Professional

ITC

Input Tax Credit

M&A

Mergers and
Acquisition

MCA

Ministry of
Corporate Affairs

NR

Non-Resident

OPC

One Person
Company

PAN

Permanent Account
Number

QR Code

Quick Response
Code

RP

Resolution
Professional

SC

Supreme Court

TDS

Tax Deducted at
Source

u/s

Under section

w.e.f

With effect from



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