

A Monthly E-Newsletter

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# The Bottom Line

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## KEY METRICS

### Indices

BSE SENSEX	52,587	0.07%	▲
NSE NIFTY50	15,763	0.09%	▲
NASDAQ Composite	14,673	0.99%	▲
NIKKEI 225	27,284	-5.24%	▼

### Currency

USD/INR	74.34	-0.06%	▼
EURO/INR	88.24	0.14%	▲
GBP/INR	103.34	-0.54%	▲
JPY/INR	0.68	-0.82%	▼

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



# DIRECT TAX

## Notifications/Circulars

### India joins OECD/ G20 inclusive framework on BEPS

India has joined the OECD/G20 inclusive framework on BEPS. They have agreed upon a statement on two-pillar solution to address the tax challenges arising from the digitalization of the economy. Pillar 1 is based on re-allocation of taxing rights and Pillar 2 focuses on global anti-base erosion mechanism.

*Ministry of Finance Press Release dated July 02, 2021*

### Manual filing of Forms 15CA/15CB further extended

In view of the difficulties reported in electronic filing on the new tax e-portal, option of manual filing of Forms 15CA/15CB in respect of foreign remittances has been further extended till August 15, 2021.

*CBDT Press Release dated July 20, 2021*

## Judicial Rulings

### Opportunity of personal hearing is a statutory right under faceless regime

The Hon'ble Court observed that even under the faceless regime of assessments, the assessee has a statutory right to personal hearing under the Income Tax Act, 1961. The Court further observed that several requests had been made for personal hearing, none of which were dealt with by the Revenue. Accordingly the failure to accord a personal hearing was fatal and impugned assessment order was set aside.

*Balraj Hire Purchase Pvt Ltd v. National Faceless Assessment Centre (Delhi High Court)*

### Assessment order set aside for violating the provisions of law

Assessment order set aside, holding that the same was passed without issuing show cause notice cum draft assessment order to the assessee, which is in violation of Section 144B and principles of natural justice.

*Toplight Corporate Management Pvt Ltd v. National Faceless Assessment Centre (Delhi High Court)*

### Fresh claim warranted under reopening assessment

In the instant case, assessee previously filed ROI declaring an income of about INR 40 crores. However in response to notice u/s 148, ROI was filed declaring a reduced income of about INR 32 crores. The reduction of

INR 8 crores was not allowed by the Revenue holding that reassessment proceedings are for the benefit of Revenue and not for the assessee. The Hon'ble Court held that: (a) where previously, there is no assessment order and the return was only processed u/s 143(1), assessee can lodge a fresh claim in the return of income filed in response to notice u/s 148; (b) even if there was an assessment made previously, with the issue of notice u/s 148, the original assessment proceeding gets effaced and the Assessing Officer was required to consider the proceeding de novo.

*The Karnataka State Co-Operative Apex Bank Ltd v. The Deputy Commissioner of Income Tax (Karnataka High Court)*

India joins OECD/ G20 inclusive framework on BEPS

Opportunity of personal hearing is a statutory right even under faceless regime

New claim made in ROI filed in response to notice u/s 148 is valid



# INDIRECT TAX

## Notifications/Circulars

### Annual Return & self-certified Reconciliation Statement

Notifications have been issued to provide for filing of Annual Return (GSTR-9) and self-certified Reconciliation Statement (GSTR-9C) for FY 2020-21. The format for GSTR-9 remains largely the same and only a few changes have been made to provide for amendments / additions / ITC reversed and reclaimed during the period April 2021 to September 2021 in relation for FY 2020-21. GSTR-9C will now have to be certified by the management instead of an independent GST Auditor. Further, registered taxpayers having aggregate turnover up to INR 20 million in FY 2020-21 have been exempted from filing the Annual Return GSTR-9 for FY 2020-21.

*Notification no. 29, 30 and 31/2021-Central Tax, all dated July 30, 2021*

## Judicial Rulings

### Intermediary services

Support services are being provided to its foreign holding company in relation to procurement of various services and goods from the local manufacturers and service providers in India. It was held that these services are in the nature of facilitating the supply of goods and services and become intermediary services. Further, it is not necessary that a commission payment is always involved in an intermediary scenario. Even in case of cost plus mark-up billing, a particular transaction can fall under the ambit of intermediary services.

*M/s Airbus Group India Private Limited (AAR Karnataka)*

In another case, the issue under consideration was whether services in the nature of mere identification of customers and connecting them with supplier would make such services fall under the mischief of intermediary services. It was ruled that the services provided are inextricably linked to the main supply of goods. The service provider can neither change the value of the goods nor hold title to such goods at any point during the entire transaction. As such, it is nothing but arranging or facilitating sales of goods and shall be intermediary services.

*Teretex Trading Pvt Ltd (AAR West Bengal)*

### Transfer of right in goods

Instruments were installed without direct consideration at the premises of unrelated hospitals for their use. However, there was a minimum purchase obligation of products in relation to use of said instruments. This obligation shall be regarded as consideration and hence, the transfer of right to use the goods without transfer of title thereof, shall be taxable under GST as supply of services.

*M/s Abbott Healthcare Pvt Ltd (AAR Kerala)*

### Refund on account of revised return under Service Tax

In case of any increase in CENVAT credit balance on account of revised return filed under Service Tax, the assessee shall be allowed to file cash refund under the Section 142(9)(b) of the CGST Act. Also, the time limit for filing refund application shall be as provided under the GST laws. The department was directed to grant refund to the assessee.

*M/s Punjab National Bank (CESTAT Bangalore)*

Notifications issued for self-certified reconciliation statement in lieu of GST audit

AARs continue to rule in favour of revenue in case of intermediary services

Refund on account of revised return under Service Tax, permitted

### Search and Seizure

The power to conduct search and seizure is an intrusive power, which needs to be wielded with utmost care and caution. The legislature has, therefore, consciously ring-fenced this power by inserting the controlling provision i.e. 'reason to believe' in the Section 67 of the CGST Act. The belief of the department, on the basis of which search and seizure proceeding can be initiated, should be on the basis of some actionable material that they had an opportunity to peruse.

*M/s R J Trading Co. (Delhi High Court)*

### Reimbursement of post-sale discount

The principal supplier gives post sale discounts to its dealers or customers through its distributors which may or may not be known or quantified at the time of supply. These are decided by the principal supplier in terms of the agreement. These discounts are given by the distributor and then recovered from the principal supplier by way of commercial or financial credit notes issued by the principal supplier. It was held that reimbursement of such discounts constitutes consideration and is to be taxed as part of the supply made to the customers.

*M/s Santhosh Distributors (Kerala AAAR)*

# CORPORATE & ALLIED LAWS

## Notifications

### Strict measures on failure to change the name of the Company

In case of failure to change the name of the company on account of rectification or new name within 3 months from the date of order of Company, the words “ORDNC” (“Order of Regional Director Not Complied”), shall become the new name of the company followed by year of the passing of the order, serial number and the CIN of the Company, until any further act or deed by the Company. Accordingly, a fresh certificate of incorporation shall be issued to the Company.

*Notification No. G.S.R. 503Company/MCA/dated July 27, 2021*

### Factoring Regulation (Amendment) Bill, 2021

Factoring Regulation (Amendment) Bill, 2021 has been passed to help MSME sector to avail easy working capital. The key highlights are:

- Amendment in the MSME definition to make them consistent with international definitions
- Relaxation to NBFCs’ Factoring threshold levels
- Trade receivables to be filed with the Central Registry by TreDS
- RBI to be the regulating authority.

*News/economic times/ MSME sector*

### Inclusion of retail and wholesale trades under MSMEs

The Ministry of MSME has decided to include retail and wholesale trades under MSMEs and allow them to be registered on “Udyam” registration portal with certain restrictions.

*Office memorandum/ RBI/ MSME / dated July 7, 2021*

### RBI increases threshold for loans granted by banks to related parties

The threshold of INR 2.50 million stands revised to INR 50 million for loans granted by banks to the relatives or interested parties of the Chairman/ Managing Directors (including directors of Scheduled Company-operative Banks, directors of subsidiaries/trustees of mutual funds/venture capital funds) within the same bank or any to other banks.

*Circular No. 33/RBI/2021-22/dated July 23, 2021*

Strict measures on failure to change the name of the Company within prescribed timelines

Factoring Regulation (Amendment) Bill, 2021 passed to boost MSME sector

Inclusion of retail and wholesale trades under MSMEs



## CFO WATCH

Guidance Note released on Accounting for Derivative Contracts

COVID-19 vaccination spend is eligible CSR activity

### ICAI releases Guidance Note on Accounting for Derivative Contracts

The objective of any Guidance Note is to provide guidance on recognition, measurement, presentation, and disclosure for derivative contracts so as to bring uniformity in their accounting and presentation in the financial statements. This Guidance Note, however, does not cover foreign exchange forward contracts which are within the scope of AS-11. The ongoing reform in IBORs, will impact the way financial information is accounted for in the financial statements. Therefore, Guidance Note has been revised primarily to address replacement issues relating to hedge accounting arising from Interest Rate Benchmark Reforms.

### COVID-19 vaccination spend is eligible CSR activity

MCA has issued clarification that spending of CSR funds for COVID-19 vaccination for persons other than the employees and their families is an eligible CSR activity.



## MERGERS & ACQUISITIONS

New tax provisions for depreciation on Goodwill to impact valuations

Recording goodwill in the books of account pursuant to acquisition or reorganization of business and claim of depreciation thereon has been a much-debated issue under the Indian tax laws. The Hon'ble Supreme Court's decision in the case of Smifs Securities Ltd. allowed for depreciation on purchased goodwill. However, whether goodwill can be said to have been acquired or the buyer is entitled to record goodwill in its books of account in a particular situation is still riddled with controversy. Also, the way other assets and liabilities of such business are valued has a direct impact on the amount of goodwill which is often disputed by the tax department.

The government has recently brought a significant amendment in Section 32 of the Income Tax Act, 1961 as outlined in Section 8 of the Finance Act 2021. The amendment excludes goodwill of a business or profession from the scope of intangible assets on which depreciation can be claimed. This will impact the valuation for mergers and acquisitions 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. Apart from the loss of potential depreciation on goodwill going forward, the new provisions require the taxpayers to pay taxes on excess depreciation claimed in the past on such goodwill by deeming the same as short-term capital gains in certain defined cases.

While the amendment is prospective, it may also impact past transactions involving huge amounts of goodwill as is the case with many recent deals in sectors like technology, pharmaceuticals where significant premium was paid by buyers and may have been allocated to goodwill as is a common practice. Therefore, companies with significant un-depreciated goodwill will need to immediately quantify the tax impact and pay necessary taxes. Also, the possibility of recording other intangibles like patents, trademarks, customer relationships, etc. and allowability of depreciation on the same may be carefully assessed.

Source- CBDT, *Internationaltaxreview*



# IN THE NEWS



## Webinars

### Fraud Risk Management

July 23, 2021

*Speakers:* Parveen Kumar, National Head, Assurance and Gaurav Bhatia, Associate Director, Assurance

We organized a select interactive client clinic discussing the various aspects of fraud, issues leading up to it, implications, scenarios and methods of preventing such risks. The speakers brought out case studies based on their own experience of identifying, dealing with and preventing such frauds from recurring.

### Other Webinars

#### Corporate Governance Symposium Series 1 – Effective Audit Committee - July 14, 2021

*Speaker:* Parveen Kumar, National Head, Assurance

ASSOCHAM invited Parveen to be a part of their panel on emerging trends and challenges of audit committees. The discussion looked at key issues like audit committee

effectiveness in response to COVID-19, their role in accounting fraud prevention and balancing core responsibilities with emerging priorities.

#### Key Changes in CARO 2020 & Schedule III to the Companies Act - Impact on the Financial Statements of FY 2021-22 - July 20, 2021

*Speaker:* GN Ramaswami, Partner, Assurance and Vinay K S, Partner, Assurance

Organised by the Indo-German Chamber of Commerce, this webinar highlighted the key changes announced in the Companies Auditors' Report Order (CARO), 2020 and Schedule III to the Companies Act, 2013 and deliberated on the practical implications of these on financial statements.

## Articles

#### Tax Withholding on Buying Goods - Section 194Q - July 5, 2021

*Author:* Pankaj Aneja, Executive Partner, Taxation

This article aims to capture the key elements of the newly enacted provisions of section 194Q under the Income Tax Act, 1961 with effect from July 1, 2021.

#### M&A – Taxing Earn-out Consideration - July 27, 2021

*Author:* Sunil Arora, Partner, Taxation and Mayank Sharma, Deputy Manager, Taxation

Published in Taxmann, this article highlights issues of taxing the earn-out consideration and whether it should be taxed as salary or capital gains.



# GLOSSARY



## AS

Accounting Standard

## BEPS

Base Erosion Profit Shifting

## CGST Act

Central Goods & Services Act, 2017

## CIN

Corporate Identification Number

## CSR

Corporate Social Responsibility

## ECL

Electronic Credit Ledger

## FY

Financial Year

## IBOR

Interbank offered rate

## ICAI

Institute of Chartered Accountants of India

## ITC

Input Tax Credit

## MCA

Ministry of Corporate Affairs

## MSME

Micro, Small and Medium Enterprise

## NBFC

Non-Banking Financial Company

## OECD

Organisation for Economic Co-operation and Development

## RBI

Reserve Bank of India

## ROC

Registrar of Companies

## ROI

Return of Income

## TReDS

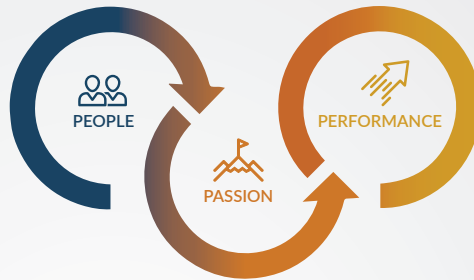
Trade Receivables Discounting System



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