



A Monthly E-Newsletter

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September 2021

The Bottom Line

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KEY METRICS

Indices

BSE SENSEX	57,552	9.44%	▲
NSE NIFTY50	17,132	8.69%	▲
NASDAQ Composite	15,259	4.00%	▲
NIKKEI 225	28,090	2.95%	▲

Currency

USD/INR	72.95	1.87%	▲
EURO/INR	86.13	2.39%	▲
GBP/INR	100.33	2.91%	▲
JPY/INR	0.66	2.12%	▲

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



DIRECT TAX

Notifications/Circulars

Extension of various limitation periods

Owing to difficulties reported by taxpayers in electronic filing of various forms, certain due dates have been extended. The key extensions are:

Particulars	Extended Due Date
Equalization Levy Statement in Form No. 1	December 31, 2021
Form No. 15CC for uploading declarations received by recipients in Form No. 15G/15H - For quarter ending 30th June - For quarter ending 30th September	November 30, 2021 December 31, 2021
Forms 3CEAC, 3CEAD and 3CEAE pertaining to CbC reporting	December 31, 2021
Last date for payment (without any additional amount) under VsV Act	September 30, 2021

Circular No. 16/2021 and Press Release dated August 29, 2021

Retrospective provision of 'indirect transfer' withdrawn

The Government has withdrawn the retrospective amendment of 'indirect transfer' provision in the Income Tax Act, 1961. The amendment was originally introduced by Finance Act 2012. The indirect transfer provision shall now apply prospectively only on transaction of transfer of Indian assets undertaken on or after May 28, 2012. To implement the amendment, draft rules have also been prepared which specify the conditions to be fulfilled and the process to be followed. Suggestions/

comments are invited from all the stakeholders by September 4, 2021.

The Taxation Laws (Amendment) Bill, 2021 and Press Release dated August 28, 2021

New Rule notified for computation of MAT relief in secondary adjustment / Advance Pricing Adjustment cases

CBDT has notified new Rule 10RB providing a formula based approach for computation of tax relief when there is an increase in book profits due to Advance Pricing Adjustment / secondary adjustments. Form No. 3CEEA is also notified (to be filed electronically) for claiming such relief.

Notification No. 92/2021 dated August 10, 2021

Judicial Rulings

Payments for online advertising, marketing and IT infrastructure facilities to non-resident entities not taxable as royalty

The Hon'ble Tribunal observed that where non-resident entities only allow the taxpayer to use their facilities for the purpose of creating advertisement content and payments made are only for using the IT infrastructure facilities provided by it, non-resident entities do not give any specific license for use or right of any of the facilities including software. Hence, the question of transferring the copyright over those facilities does not arise at all. Accordingly, the payments made to such non-resident entities do not fall within the meaning of 'royalty' as defined in the relevant tax treaties. Consequently, there is no

requirement to deduct tax at source from those payments u/s 195.

Urban Ladder Home Décor Solutions Pvt Ltd v ACIT (International Taxation) (Bangalore ITAT)

Delay in furnishing a TRC cannot be a ground to reject a tax treaty benefit

In the present case while dealing with the issue of eligibility of Indo-US tax treaty, Hon'ble Tribunal held that there was no justification by lower authorities in declining the applicability of the special rate prescribed under the tax treaty where the taxpayer had filed the TRC and Form 10F after the conclusion of the assessment. Detailed and justifiable reasons were given by the taxpayer for not filing the TRC during the course of assessment proceedings and filing it as additional evidence during appeal therefore, the treaty benefits should not be denied.

Haresh C Sheth v Income Tax Officer (Mumbai ITAT)

Withholding refund without giving any clear reason is not justified

Section 241A empowers the Income-tax authority to withhold refund in case granting refund adversely affects the revenue. In the instant case, refund was withheld by the tax officer on the ground that the case of the assessee has been selected for limited scrutiny and till the finalization of assessment the refund was to be withheld. In these circumstances, the Hon'ble Court held that reasons cited by the tax officer for withholding refund is not in consonance with the legislative intent.

Cooner Institute of Health Care and Research Centre Pvt Ltd v Income Tax Officer (Delhi High Court)

INDIRECT TAX

Judicial Rulings

Tax demanded before issue of SCN

Department cannot draw any conclusion on the basis of an incomplete investigation. Without there being a determination of liability in an enquiry, no demand letter for reversal of input tax credit or payment of liability can be issued. Therefore, the department action is wholly arbitrary and without jurisdiction.

M/s Deem Distributors Pvt Ltd (Telangana High Court)

Recovery from employees towards subsidized food

Lunch and refreshment is provided to employees at a subsidized rates. Employees pay the subsidized rate directly to the canteen contractor. Balance amount is paid by the company to the contractor. Such activity will not amount to supply and not liable to tax.

M/s Dakshina Kannada Co-Op. Milk Products Union Ltd (AAR Karnataka)

In another case, it was similarly held that the canteen charges borne by the employees in part, collected by company and paid to canteen service provider shall not be subject to GST.

M/s Tata Motors Ltd (AAR Gujarat)

Transfer as a 'going concern'

Transfer of business assets, without the transfer of related liabilities, existing and arising in future out of any past activity, shall not be considered as transfer of business as a going concern. Accordingly, it is taxable under GST.

M/s SCV Sky Vision (AAR Andhra Pradesh)

Apportionment of ITC on demerger

The ITC is to be apportioned between the demerged entities on the basis of ratio of value of assets transferred to such entities. The value of all assets shall be taken even if any particular asset is outside the purview of GST.

M/s IBM India Pvt Ltd (AAR Karnataka)

ITC on leasehold land

GST paid on land taken on lease for construction of a manufacturing plant shall not be permitted, even if it is used in course or furtherance of business.

M/s Inox Air Products Pvt Ltd (AAR Tamil Nadu)

Taxability of e-vouchers

Under the GST Act, goods can be tangible or intangible. The test to determine whether property is goods is whether the said item is capable of abstraction, consumption & use and whether it can be transmitted, transferred, delivered, stored, possessed etc. Therefore, if a particular e-voucher has all the aforesaid capabilities then it can be covered under goods, though it is intangible.

M/s Premier Sales Promotion Pvt Ltd (AAR Karnataka)

Supply of services by HO to LO

Services provided by HO to LO in relation to IT and human resource support as well as management guidance shall fall under the ambit of import of services. However, these services shall not be taxable under

Tax demand before issue of SCN is arbitrary

AARs hold that recovery from employees for subsidized food is not taxable

Transfer of assets and not of liabilities is not transfer as a 'going concern'

GST, as they are not imported in the course or furtherance of business.

M/s World Economic Forum, Indian Liaison office (AAR Maharashtra)



CORPORATE & ALLIED LAWS

Notifications

Exemptions from online proficiency test for registration under Independent Directors Databank

Requirement to pass online proficiency self-assessment test for registration under Independent Directors Databank shall not apply to the following individuals who are or have been, for at least ten years

- an advocate of a court; or
- in practice as a chartered accountant, cost accountant or company secretary

Notification No. G.S.R. 579(E)/ Company/MCA/dated August 19, 2021

Relaxations to Foreign Companies and Companies incorporated outside India

Provisions in relation to offering for subscription in the securities and requirements related to the prospectus along with all matters incidental thereto shall not apply to

- Foreign Companies and
- Companies incorporated or to be incorporated outside India, with or without a place of business in India

in the International Financial Services Centres (IFSCs) set up under Section 18 of the Special Economic Zones Act, 2005

Notification No. S.O 3156(E)/ Company/MCA/dated August 05, 2021

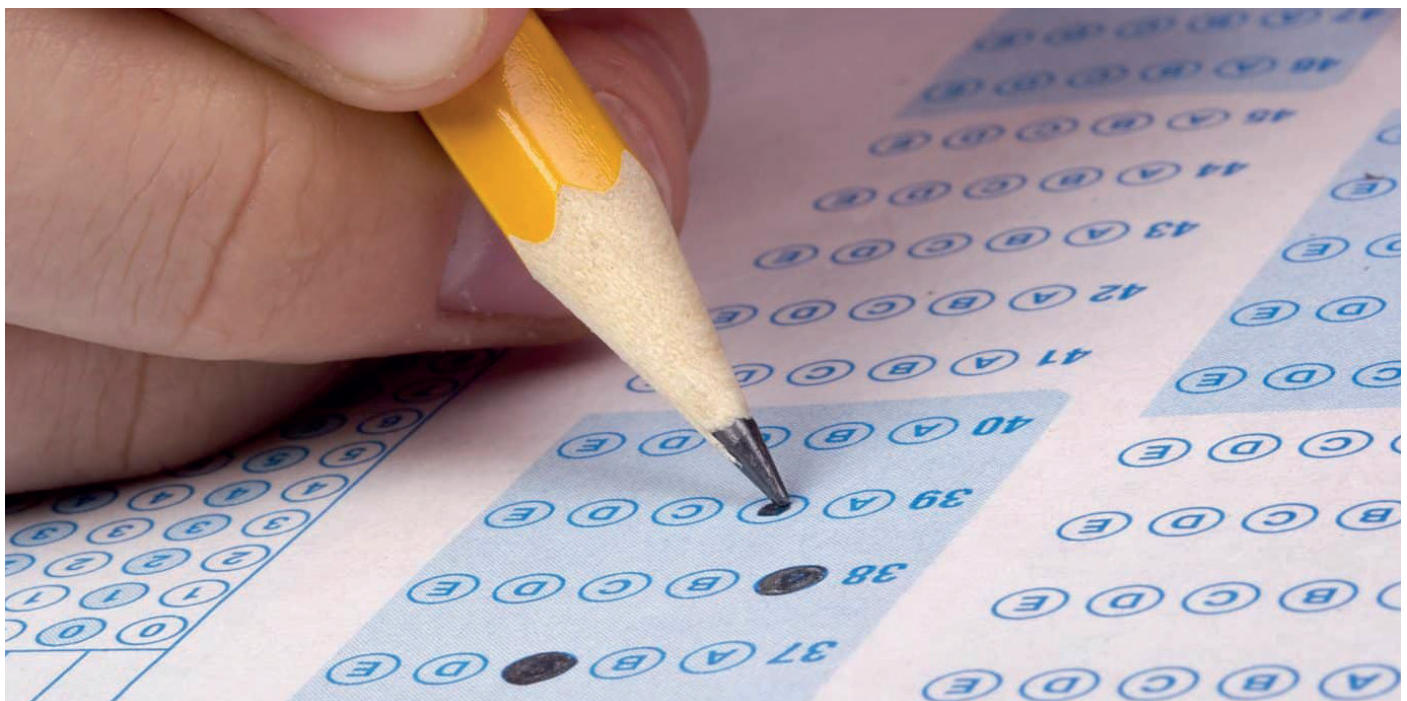
Master Directions on Prepaid Payment Instruments

Reserve Bank of India has issued Master Directions on Prepaid Payment Instruments, 2021. This shall apply to all Prepaid Payment Instrument Issuers and System Participants. Such instruments are issued by entities to individuals or organizations who then use them for purchase of goods and services, remittance facilities etc., against the value stored therein.

Circular No. 82/RBI/2021-22/dated August 27, 2021

Exemptions from online proficiency test Independent Directors

Relaxations for Foreign Companies and Companies incorporated outside India



CFO WATCH

Decriminalization of specified offences under LLP Act

FAQs issued on CSR

Decriminalization of specified offences under LLP Act

Various offences under the LLP Act have now been decriminalized. They will be treated as civil defaults. The LLP (Amendment) Act, 2021 has also changed the nature of punishment for these offences. Further, it also defines a small LLP, provides for appointment of certain adjudicating officers and establishment of special courts.

MCA issues FAQs on CSR provisions

Set of FAQs along with response of the Ministry are issued for better understanding and facilitating effective implementation of CSR. These FAQs cover CSR related issues like applicability, framework, allowable expenditure, treatment of unspent CSR amount, reporting, disclosure etc.



MERGERS & ACQUISITIONS

The curious case of Killer Acquisitions

Globally, competition and antitrust authorities are grappling with issues where a dominant firm tries to remain perpetually dominant by acquiring any new entrant with novel ideas and products, thereby eliminating any potential competition at nascency. In the realm of antitrust law, such practice is referred as 'Killer Acquisition'. This is a common strategy in the technology and pharmaceutical industry.

The US Federal Trade Commission ("FTC") recently sued Facebook for alleged maintenance of its monopoly position by acquisition of emerging companies with the intention to quash future competition. Similar assessments are seen in case of multiple acquisitions by Google, Microsoft, Amazon, etc. Transactions indicative of killer acquisitions in India include the acquisition of Uber Eats by Zomato, TaxiForSure by Ola Cabs and the recent acquisition spree by Edtech giant Byjus. In most cases, these acquisitions not only kill the competition but also the product, hence it is detrimental to both market and consumers.

The Competition Act, 2002 embodies the antitrust prosecution and merger regulation in India. Under this Act, the Competition Commission of India (CCI) has the power to investigate anti-competitive agreements and instances of abuse of dominance. It also requires that mergers which exceed a certain threshold of combined assets/turnover should be notified to the CCI. Following this, the CCI examines the merger and may approve the acquisition unconditionally or provide a conditional approval. Acquisitions in the technology space may not involve a huge asset base or may involve firms offering services for free or with insignificant revenue. Similarly, in the pharmaceutical sector value is based on potential demand and revenue from a new drug/ formulation and not physical assets. This makes the current regulations ineffective to curb killer acquisitions as they remain unreported and escape scrutiny under the current regime.

Globally, various competition authorities are mulling over changes in legal frameworks to facilitate the use of different techniques for analyzing such killer acquisitions. In India, the Competition Law Review Committee recommended the need to introduce deal value or transaction value thresholds to capture such unique transactions in India. The European Union recently issued the New Merger Control Policy which allows referrals to the European Commission with respect to any deal, regardless of whether the national filings might be required or not to identify any adverse impact on competition. Similar measures in the Indian merger control regime may be considered to make the Indian competition regulations better equipped to deal with killer acquisitions.

IN THE NEWS



Webinars

Setting-up Factory in India: procedure, opportunities and challenges, impact of COVID-19

August 26, 2021

Speakers: Himanshu Srivastava, Partner, Business Advisory and Kazuharo Kono, Advisor

Organized for Japanese companies interested in setting up in India, Himanshu spoke about procedures, opportunities and challenges while setting up a factory in India.

CARO 2020 and Changes in Schedule III, Companies Act 2013

August 30, 2021

Speakers: D K Giridharan, Partner, Assurance and V Sivaraman, Associate Director, Assurance.

D K Giridharan spoke about changes in the Schedule III of the Companies Act 2013 while Sivaraman discussed the applicability of The Companies (Auditor's Report) Order, 2020 (CARO 2020) to various entities and the summary of key changes / amendments in CARO 2020 when compared to CARO 2016.

Other Webinars

Networking & Multi-Disciplinary Partnership (MDP) as per new ICAI Regulations - August 11, 2021

Speaker: Ajay Sethi, Managing Partner and Sanjiv Kumar Chaudhary, Advisor

Invited by Northern India Regional

Council of ICAI, Ajay and Sanjiv talked about the new MDP and Networking Guidelines for professionals.

Transfer Pricing – Impact of COVID Part I & II -

August 19 and 24, 2021

Speaker: Sunil Arora, Partner - Taxation and Karthik SS, Associate Director - Taxation

In our two-part series organized with Indo German Chamber of Commerce, Sunil and Karthik shared insights on impact of COVID on Transfer Pricing and understanding issues related to defending Transfer Pricing.

Corporate Governance Symposium Series 2 – Effective Risk Management Committee -

August 26, 2021

Speaker: Parveen Kumar, National Head, Assurance

Parveen was invited by ASSOCHAM to be a part of panel discussion on challenges in mitigating fraud risk from CFOs' perspective.

Overview, Financial Reporting and Audit Considerations for SPAC

Listings - August 21, 2021

Speaker: Keyur Dave, Practice Head, Mumbai

Keyur gave a detailed overview of Special Purpose Acquisition Companies (SPAC) at a session organized by HR Sutra.

Articles

Faceless Assessments: Season I - Sweet or Bitter? - August 6, 2021

Author: Bikramjit Singh Bedi, Partner; Jyoti Gupta, Senior Manager and Pragya Bansal, Assistant Manager, Taxation

This article was published by Taxsutra where the authors discussed about faceless assessments.

How can India Inc gain incentives from SEZ Units - August 9, 2021

Author: Himanshu Srivastava, Partner and Shyam Ramakrishnan, Senior Manager, Business Advisory

Published in ETCFO, this article covered various incentives available for SEZ units in India.

RoDTEP Scheme – A Snapshot - August 23, 2021

Author: Sundeep Gupta, Partner and Jayashree SK, Associate Director, Accounting & Business Support and Indirect Tax

In this article, the authors shared a snapshot on Remission of Duties and Taxes on Exported Products (RoDTEP) Scheme that was published by Taxsutra.

ICAI Guidance Note on “Audit of Investments” - August 25, 2021

Author: G N Ramaswami, Partner, Assurance

In this article published by Taxsutra, the author summarized the guidance note on Audit of Investments.

GLOSSARY

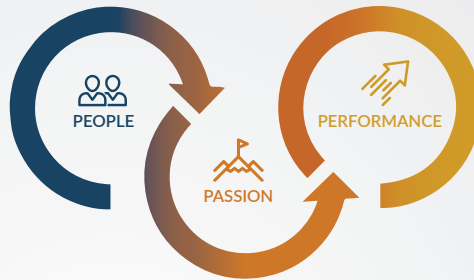


AS Accounting Standard	CIN Corporate Identification Number	ICAI Institute of Chartered Accountants of India	NBFC Non-Banking Financial Company	TRC Tax Residency Certificate
ACIT Assistant Commissioner of Income Tax	CSR Corporate Social Responsibility	IT Information Technology	OECD Organisation for Economic Co-operation and Development	VsV Act Vivad se Vishwas Act, 2020
BEPS Base Erosion Profit Shifting	ECL Electronic Credit Ledger	ITAT Income Tax Appellate Tribunal	RBI Reserve Bank of India	
CbC Country by Country	FAQ Frequently Asked Questions	ITC Input Tax Credit	ROI Return of Income	
CBDT Central Board of Direct Taxes	FTC Federal Trade Commission	LLP Act Limited Liability Partnership Act, 2008	SCN Show Cause Notice	
CCI Competition Commission of India	FY Financial Year	MAT Minimum Alternate Tax		
CGST Act Central Goods & Services Act, 2017	HO Head Office	MCA Ministry of Corporate Affairs		
	LO Liaison Office	MSME Micro, Small and Medium Enterprise		

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ABOUT US

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