

A Monthly E-Newsletter

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The Bottom Line

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KEY METRICS

Indices

BSE SENSEX	59,307	0.31%	▲
NSE NIFTY50	17,672	0.30%	▲
NASDAQ Composite	15,498	7.27%	▲
NIKKEI 225	28,893	-1.90%	▼

Currency

USD/INR	74.92	-1.01%	▼
EURO/INR	86.61	-0.84%	▼
GBP/INR	102.57	-2.66%	▼
JPY/INR	0.66	1.20%	▲

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



DIRECT TAX

Notifications/Circulars

Rules notified for indirect transfer of Indian assets

The Rules provide that tax demand raised on the basis of any offshore indirect transfer of Indian assets undertaken before May 28, 2012 shall be nullified on fulfillment of certain specified conditions such as withdrawal of litigation etc. The amount paid or collected in this case shall be refunded, without any interest on fulfillment of the said conditions.

Notification No. 118/2021 dated October 01, 2021

Minimum global tax rate agreed by 136 countries including India

136 countries of the OECD/G20 inclusive framework on BEPS have agreed that multinational enterprise(s) would be subject to a minimum 15 per cent tax rate effective from 2023. The agreement would reallocate certain taxing rights from home countries to the jurisdictions where the multinational enterprise has business activities and earns profit regardless whether they have a physical presence there or not.

OECD Statement dated October 08, 2021

Reporting in Form 26AS widened further

Information relating to foreign remittance, interest on income tax refund, off-market transactions, dividends received etc. to be uploaded in Form 26AS on electronic filing portal within three months from the end of the month in which the information is received.

Order F.No.225/155/2020/ITA-II dated October 26, 2021

Judicial Rulings

Assessment order passed without considering assessee's replies set aside

The Court set aside the assessment order, passed without considering assessee's request for personal hearing and objections/reply in response to the show cause notice cum draft assessment order. The assessment order passed was verbatim same as draft assessment order and demonstrated that the reply/explanation provided by the assessee has not been considered at all.

Mantra Industries Ltd. v. National Faceless Assessment Centre (Bombay High Court)

Assessee eligible for FTC in India relating to exempt income under section 10A under India – Japan DTAA

In the instant case, the question for consideration before the Court was whether assessee, whose income is exempt under section 10A, is eligible for FTC or not. Considering the facts of the case, the Court held that merely because exemption has been granted, it cannot be postulated that the assessee is not liable to tax. The said exemption granted under the statute has the effect of suspending the collection of income tax for a period of 10 years and stands revoked after such period. Accordingly, assessee is eligible for claiming FTC

on the entire amount of tax withheld in Japan.

Canon India Pvt. Ltd. v. National Faceless Assessment Centre (Delhi ITAT)

Lower tax withholding rate applicable on dividend receivable by Dutch Company

Assessee filed an application for lower withholding tax rate of 5 percent on dividends. The India-Netherlands DTAA prescribed a withholding rate of 10 percent. However, India's DTAA's with other OECD members viz. Slovenia / Lithuania / Colombia provided for lower withholding rate of 5 percent on dividend income. It was held that due to the MFN clause, the lower rate shall also be applicable to any dividend income covered under the India-Netherlands DTAA.

Deccan Holdings BV v. Income Tax Officer (Delhi High Court)

Rules notified for indirect transfer of Indian assets

Minimum global tax rate agreed by 136 countries including India

Assessment order passed without considering assessee's replies set aside



INDIRECT TAX

Judicial Rulings

ITC on sale promotion rewards

Promotional rewards in the nature of international travel, gold vouchers, television, air coolers etc. were offered to retailers based on sales made by them. Held that such rewards are to be used by the retailers for their personal consumption. ITC on these rewards shall not be permitted.

M/s GRB Dairy Foods Pvt Ltd (AAR Tamil Nadu)

Items under schemes are not gifts

Under the sales promotion scheme, various items are offered at discounted / nominal prices to the retailers. Separate invoices for such items are issued wherein prices for each item are mentioned separately. These would also be a separate taxable supply even though made at nominal sale price. Input tax credit shall be available as such items cannot be treated as 'gifts'. Further, the supply shall not be considered as 'mixed supply' as separate prices are mentioned on the invoice.

M/s Kanahiya Realty Pvt Ltd (AAR West Bengal)

Recovery from employees for canteen supplies

The appellant, without keeping any margin, collects employee's portion of amount and pays the consolidated amount, including its own share to the canteen service provider. Therefore, no supply of goods or services has been made against the collected amount. Accordingly, the said recovery shall not be taxable under GST.

M/s Amneal Pharmaceuticals Pvt Ltd (AAAR Gujarat)

Cancellation of GST registration

There is no provision under GST that enables the cancellation of registration of purchasing dealer for any fraud committed by the selling dealer. Further, to attribute fraud by purchasing dealer, the Department would have to satisfy a high threshold of showing that the purchaser indulged in transactions with the full knowledge that the selling dealer was non-existent. As the department failed to prove the aforesaid fact, therefore, the impugned order of cancellation was set aside.

M/s Bright Star Plastic Industries (Orissa High Court)

Pre-deposit for filing GST appeals

The payment of pre-deposit required for filing appeal has to be made in cash. It cannot be made by debiting amount from the Electronic Credit Ledger (ECL) as it is not 'output tax' as defined under Section 2(82) of the CGST Act.

M/s Jyoti Construction (Orissa High Court)

Refund of ITC by SEZ unit

SEZ unit shall be eligible to file refund application where the unit has erroneously remitted tax on its inward supplies. The contention of the department that the refund can only be filed by the person supplying goods/services to SEZ unit is not tenable.

M/s Platinum Holdings Pvt Ltd (Madras High Court)

SCN cannot be vague

The department has issued an SCN without stating the contraventions committed by the petitioner. In

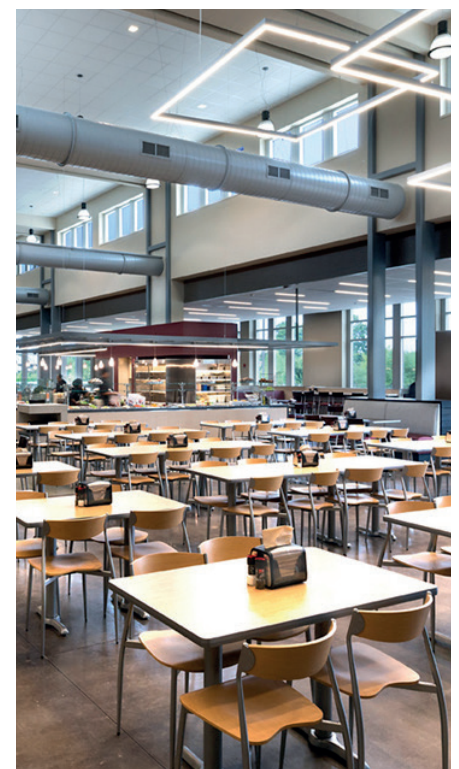
Pre-deposit for filing of appeal cannot be made out of ITC

SCN cannot be vague

Recovery from employees for canteen facility is not a supply

absence of clear charges which the person so alleged is required to answer, the taxpayer is bound to be denied proper opportunity to defend itself and hence it would entail violation of principal of natural justice.

M/s Nkas Services Private Limited (Jharkhand High Court)



CORPORATE & ALLIED LAWS

Circulars / Notifications

Further extension in timelines to file Cost Audit Report

Timelines for issue of Cost Audit Report by the Auditor to the Board shall stand further extended upto November 30, 2021 against the initial timelines of October 31, 2021. Such report can be filed with Registrar of Companies in Form CRA-4 within 30 days from the receipt of the report from Auditors.

Circular No. 18/2021/MCA/dated October 29, 2021

Waiver of additional fees on specified forms for Companies

No additional fees shall be levied on Financial Statements and Annual Returns (Form MGT-7, MGT-7A, AOC-4, AOC-4 (CFS), AOC-4XBRL, AOC-4 Non XBRL) upto December 31, 2021 for the FY 2020-21.

Circular No. 17/2021/MCA/dated October 29, 2021

Waiver of additional fees on specified forms for LLP

No additional fees shall be levied on the Statement of Accounts and Solvency (Form 8) filed by the LLP's upto December 30, 2021 for the FY 2020-21

Circular No. 17/2021/MCA/dated October 29, 2021

Change in export policy of SCOMET items

Export Policy on SCOMET items for supplies or exports from DTA to SEZ/EOU and outside the country have been amended with major amendments as reflected below:

- No export authorization is required for such supply of

SCOMET items from DTA to SEZ/EOU

- All supplies will be duly reported to Development Commissioner of respective SEZ/EOU.
- Annual Report of supply from DTA to SEZ/EOU shall also be reported to SCOMET section DGFT.

Source: Notice No. 32/2015-20/DGFT/ dated October 29, 2021

Waiver of additional fees on specified forms of Companies and LLP's

Change in export policy of SCOMET items



CFO WATCH

Tax audit utility form enabled for fiscal year 2020 and 2021

New norms proposed by SEBI for ESG Mutual Fund investments

Tax audit utility form enabled for fiscal year 2020 and 2021

The Income Tax department has enabled the tax audit utility form on its portal for FY 2019-20 and 2020-21. The last date for filing the tax audit report for the FY 2020-21 is January 15, 2022. Companies can also file the revised tax audit report for FY 19-20, if required.

SEBI proposes new norms for ESG investments by Mutual Funds

SEBI has proposed to revise the investment norms for mutual fund schemes that invest as per the ESG criteria. The markets regulator has proposed that from October 1, 2022, AMCs should only invest in securities with BRSR disclosures. Schemes which invest in overseas securities, could choose any global equivalent of the BRSR specified by the Association of Mutual Funds in India. The existing investments in the schemes for which there are no BRSR disclosures, would be exempted from new norms by SEBI until September 30, 2023.



MERGERS & ACQUISITIONS

Emerging framework for SPACs in India

The concept of SPAC has been making headlines with global SPAC IPO receipts crossing USD 100 Bn and many Indian companies contemplating an overseas SPAC listing after the successful listing of ReNew Power on NASDAQ. SPAC is a shell company backed by sponsors to raise capital via an IPO to acquire a private business through a business combination. While the global interest for SPACs has increased considerably, especially in matured jurisdictions like USA, the framework is only starting to develop in India. Earlier this year, SEBI instituted a committee of experts to assess the viability and associated risks of such structures in India. Later, IFSCA, a unified authority for the development and regulation of financial products, financial services and financial institutions in IFSCs in India passed the International Financial Services Centres Authority (Issuance and Listing of Securities) Regulations, 2021, bringing the concept of SPACs to IFSCs in India.

The new regulations provide detailed guidelines for the listing of SPACs and acquisition of targets by SPAC. The IFSCA Regulations regulate the sponsor, SPAC transactions, business combinations, fund management or merchant banking activities. The introduction of IFSCA Regulations may be helpful to ready the domestic market for such structures and reinvent the path of investment. However, there is a need for amendments in existing provisions of the Companies Act, SEBI (ICDR) Regulations, etc. to be in line with these regulations for operability of such structures. Further, sponsors and shareholders will be required to be cautious of capital gains that may arise on the swap or transfer of shares of SPAC.



IN THE NEWS



Webinar for clients

Production Linked Incentive ('PLI') Scheme and its overview

October 7, 2021

Speaker: Himanshu Srivastava, Partner, Business Advisory Services

A session was hosted for MUFG where Himanshu gave an overview of PLI and benefits available under this scheme.

An overview of PLI Scheme for Japanese companies

October 26, 2021

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

Organized a session for our Japanese clients where Himanshu gave an overview of PLI and covered the incentives available for Japanese corporates looking to expand their manufacturing into India.

Other Webinars

UKIBC Q&A - October 14, 2021

Speaker: Ajay Sethi, Managing Partner

The UK India Business Council invited Ajay to a short Q&A session on key issues that UK SMEs need to consider when investing in India.

Key NFRA observations in its Audit Quality Review Reports

October 30, 2021

Speaker: D Ramprasad, Practice Head, Bengaluru

Ramprasad was invited by Taxmann to discuss the key NFRA observations in Audit Quality Review reports.



Articles

Global Minimum Tax: Antidote for Race to the Bottom

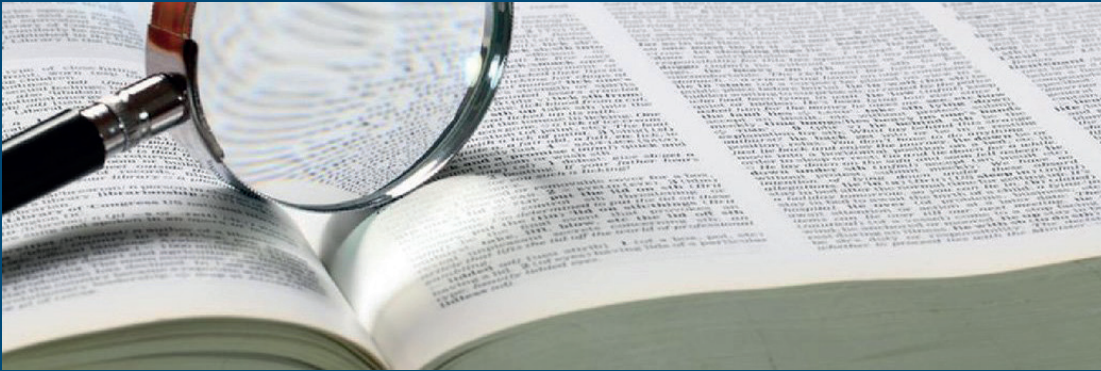
October 23, 2021

Authors: Sunil Arora, Partner - Taxation and Ameet Baid, Senior Manager, Taxation

ETCFO published this article where the authors discuss the importance of global minimum tax for India and its impact on multinationals and international business.



GLOSSARY



AMC

Asset Management Company

DTAA

Double Taxation Avoidance Agreement

IFSCA

International Financial Services Centre Authority

OECD

Organisation for Economic Co-operation and Development

SEBI

Securities and Exchange Board of India

BEPS

Base Erosion and Profit Shifting

EOU

Export Oriented Unit

IPO

Initial Public Offer

SEZ

Special Economic Zone

BRSR

Business Responsibility and Sustainability Report

ESG

Environmental, Social and Governance

ITAT

Income Tax Appellate Tribunal

SCN

Show Cause Notice

SPAC

Special Purpose Acquisition Company

Bn

Billion

FTC

Foreign Tax Credit

ITC

Input Tax Credit

SCOMET

Special Chemicals, Organism, Materials, Equipment and Technologies

DGFT

Directorate General of Foreign Trade

FY

Financial Year

LLP

Limited Liability Partnership

DTA

Domestic Tariff Area

ICDR

Issue of Capital and Disclosure Requirements

MFN

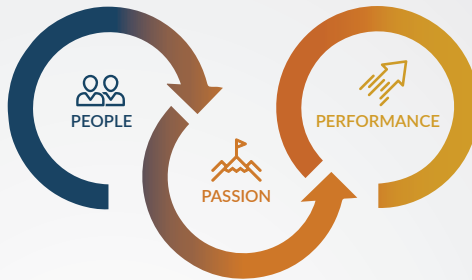
Most Favoured Nation



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ABOUT US

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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.



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30 YEARS OF EXPERIENCE	

DIRECTOR 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



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