



A Monthly E-Newsletter

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# The Bottom Line

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## KEY METRICS

### Indices

BSE SENSEX	55,566	-2.62%	▼
NSE NIFTY50	16,585	-3.03%	▼
NASDAQ Composite	12,081	-2.05%	▼
NIKKEI 225	27,280	1.61%	▲

### Currency

USD/INR	77.57	-1.37%	▼
EURO/INR	83.26	-3.18%	▼
GBP/INR	97.74	-1.61%	▼
JPY/INR	0.60	-2.29%	▼

Note: The month-on-month movement as on May 31, 2022 is represented in percentages  
Source: Yahoo Finance, Investing.com



# DIRECT TAX

## Notifications/Circulars

### **CBDT issues instructions for implementing SC ruling on validity of re-assessment notices**

CBDT has issued instructions for uniform implementation of the SC ruling in the case of Ashish Agarwal deeming the extended re-assessment notices as valid show cause notices under the Income Tax Act, 1961. It clarified that the SC ruling will apply to all the reassessment notices issued between April to June 2021 following the old regime of reassessment, whether or not such notices were challenged before any court of law. It further lays down the procedure required to be followed by the AO to comply with the said ruling.

*Instruction No. 01 dated May 11, 2022*

### **PAN and Aadhaar mandatory in case of cash deposits or withdrawals above INR 2 million**

CBDT has notified that it is mandatory for every person to quote his/her PAN or Aadhaar number, for withdrawing or depositing cash aggregating to more than INR 2 million from the bank accounts, including co-operative banks and post offices, in any financial year. These rules shall also apply during the opening of a current account.

*Notification No. 53 dated May 10, 2022*

## Judicial Rulings

### **Reassessment notices issued under the old law deemed to be valid show cause notices under the new law**

In a landmark judgment, Hon'ble Apex court has confirmed the

validity of reassessment notices issued by the AO under the provision of old law, beyond the prescribed timelines, deeming them to be valid show cause notices issued u/s 148A(b) of the new law, citing that 'Revenue cannot be made remediless and the object and purpose of reassessment proceedings cannot be frustrated. There appears to be a genuine non-application of the amendments as the Revenue may have been under a bonafide belief that the amendments may not yet be enforced'. This was against the judgements passed by various High Courts in favour of the assessee and led to the quashing of more than 9000 writ petitions. It directed the AO to follow the procedure specified u/s 148A(b) of the Act and held that all the defenses available to assessee and rights available to the AO under the new law shall continue to be available.

*Ashish Agarwal v. UOI & Ors. (Supreme Court of India)*

### **AO to not presume that the concept of 'beneficial owner' is inbuilt in Article 13**

Where AO declined the capital gains exemption to the assessee under Article 13(4) of India-Mauritius DTAA by lifting the corporate veil and holding that the beneficial owners of shares were in Cayman Islands, the ITAT held that in the absence of specific provision, the concept of beneficial ownership cannot be assumed and directed the AO to re-decide whether the concept of 'beneficial ownership' is inbuilt

CBDT issues instructions for implementing SC ruling on validity of re-assessment notices

PAN and Aadhaar mandatory in case of cash deposits or withdrawals above INR 2 million

Reimbursement of salary of expat employees is not taxable as FTS

in Article 13 and, if so, what are the connotations of 'beneficial ownership' in this context.

*Blackstone FP Capital Partners Mauritius V Limited v. DCIT (Mumbai ITAT)*

### **Reimbursement of salary of expat employees is not taxable as FTS**

Bangalore ITAT, based on various rulings and Article 15 of OECD Model Commentary, held that since seconded employees are regarded as employees of the assessee in India, reimbursement of salary expense (on which TDS has also been deducted u/s 192) to overseas entity cannot be regarded as FTS and thus, assessee cannot be held to be assessee in default.

*Goldman Sachs Services Pvt. Ltd v. DCIT (Bangalore ITAT)*



# INDIRECT TAX

## Circulars / Notifications

### Extension of return filing dates

Due to technical issues at the GST portal, the due date of filing GSTR-3B returns for the month of April 2022 has been extended till May 24, 2022. Taxpayers opting for QRMP scheme may make payment in challan PMT-06 till May 27, 2022.

*Notification No. 05/2022 and 06/2022-Central Tax dated May 17, 2022*

### Recovery of tax during search, inspection or investigation

Recovery of taxes can be made only after following due legal process of issuance of notice and subsequent confirmation of demand by issuance of order. Therefore, there may not arise any situation where the recovery of tax due has to be made by the tax officer from the taxpayer during the course of search, inspection or investigation. However, the taxpayer can make the payment voluntarily through Form DRC-03.

*Instruction No. 01/2022-23 (GST - Investigation) dated May 25, 2022*

## Judicial Rulings

### Service tax applicable on reimbursement of salaries of seconded expats

The Apex Court has held that where an overseas group company is sending its employees on secondment to its Indian subsidiary / group company, it is taxable in India under the erstwhile Service Tax as "supply of manpower". Tax is to be paid by the Indian company on reverse charge basis on the amount paid by it to the overseas

group company on the debit note towards the salaries / other amounts paid to the seconded employee overseas. It is important to note that the Apex Court has taken this view even though the seconded employees work under the direction and control of the Indian company and the fact that they are retained on the payroll of the overseas group company only for social security purposes of that country.

*M/s Northern Operating Systems Pvt Ltd (Supreme Court of India)*

### Levy of IGST on ocean freight

While importing goods, the importer is liable to pay IGST on composite supply comprising of supply of goods and supply of services of transportation, insurance etc. in a CIF contract. Therefore, a separate levy on reverse charge for the supply of services shall be in violation of Section 8 of the CGST Act. Hence, the levy of IGST on ocean freight on CIF contracts is ultra vires the levy provisions of IGST Act.

*M/s Mohit Minerals Pvt Ltd (Supreme Court of India)*

### Supply of software

The software supplied by the applicant is a pre-developed or pre-designed software and made available through the use of encryption keys. Hence, it qualifies all the conditions that are required to be covered under the definition of goods.

*M/s Keysight Technologies India Pvt Ltd (Karnataka AAR)*

### Transfer as a going concern

The applicant intends to sell part of its business unit as a whole, with

Instructions issued for recovery of tax during search, inspection or investigation

Service tax applicable on reimbursement of salaries of seconded expats

No levy of IGST on ocean freight separately in CIF contracts

all assets and liabilities to the purchaser. The transfer shall be regarded as a supply of services and it shall be eligible for exemption only if the business unit has been transferred as a going concern. To qualify as a going concern, the business must not have intention or necessity of liquidation or of curtailing materially the scale of the operations.

*M/s Cosmic Ferro Alloys Ltd (West Bengal AAR)*

### Sales target incentive received by resellers

The distributors import the products of Intel and the reseller buys it from them. The resellers receive incentive on achieving their sales targets directly from Intel. It was held that such incentive shall be a supply and cannot be termed as trade discount since the amount is not received from the distributor. Further, as there is no supply by Intel to the reseller, the incentive cannot again be considered as trade discount.

*M/s MEK Peripherals India Pvt Ltd (Maharashtra AAR)*

# CORPORATE & ALLIED LAWS

## Circulars / Notifications

### Relaxation in paying additional fees in case of delay in filing Annual Return form by LLPs

In view of transition from Version - 2 of MCA-21 to Version - 3 and to promote compliance on part of LLP's, the LLP's are now permitted to file e-Form 11 (Annual Return) for the FY 2021-22 without paying additional fees up to June 30, 2022.

*General Circular No. 04/2022 dated May 27, 2022*

### Extension for holding General Meetings (AGM/EGM)

The companies are now permitted to conduct their AGM/EGM's through Video Conference or Other Audio Visuals Means up to December 31, 2022. It is further clarified

that this circular shall not be construed as conferring any extension of time for holding of AGM's under the Companies Act, 2013.

*General Circular No. 02/2022 and 03/2022 dated May 05, 2022*

### Declaration to be inserted in Share Transfer Deed

The Companies (Share Capital and Debentures) Rules, 2014 have been amended to provide for insertion of the following declaration in the Share Transfer Deed (Form SH-4):

- Transferee is not required to obtain the Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 prior to transfer of shares; or

- Transferee is required to obtain the Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 prior to transfer of shares and the same has been obtained and is enclosed herewith.

*Notification dated May 04, 2022*

Relaxation in paying additional fees in case of delay in filing Annual Return form by LLPs

Extension for holding General Meetings (AGM/EGM)

Declaration to be inserted in Share Transfer Deed



## CFO WATCH

Advisory committee set up by SEBI on ESG matters

Guidelines for NBFCs on compensation to KMP and senior management

### SEBI constitutes an advisory committee on ESG related matters

SEBI has constituted a committee for advising on ESG related matters in the securities market. The terms of reference of the committee shall include enhancement of Business Responsibility and Sustainability Reporting, ESG ratings and ESG investing.

### RBI issues guidelines pertaining to compensation of KMP and senior management in NBFCs

RBI has issued guidelines on compensation of KMP and senior management in NBFCs. These provide broad guidance to NBFCs and their NRCs in formulating their compensation policy. All statutory mandates and rules issued under the guidelines need to be complied with while framing the compensation policy. The guidelines shall come into effect from April 01, 2023.

### SEBI reduces timelines for listing of units of REITs and InvITs

Aiming to streamline the process of public issue of units of REITs and InvITs, SEBI has reduced the time taken for allotment and listing of their units after the closure of issue to six working days as against the present requirement of twelve working days. The provisions of the circular to be applicable to the public issues which open on or after June 01, 2022.



## MERGERS & ACQUISITIONS

No income tax on consideration withdrawn by buyer from an escrow account

In the M&A scenario today, hold-back mechanism is a key provision that is heavily negotiated. Usually, a hold-back provision is used in an M&A transaction whereby a portion of the purchase price is withheld by the buyer or is parked under an escrow account. Such amount is released by the buyer upon fulfilment of agreed upon conditions or seller's obligation towards any contingency that may arise during the agreed hold-back period. There has been a lot of ambiguity around taxation of such hold-back consideration as well as other forms of deferred consideration and earnouts, especially with respect to nature of such income, year of taxability and consequences in case such hold-back is not received by the seller.

Among such tax issues, the Bombay High Court by a recent judgement in the case of Dinesh Vazirani has held that the amount of hold-back consideration under an escrow which is forfeited or withdrawn by the buyer as per the terms agreed under the Share Purchase Agreement is not taxable in the hands of the seller. While the impact of such ruling will need to be assessed in context to the terms of each transaction, it provides an important perspective on taxability of such consideration. Further, the High Court has also ruled that the tax authorities recompute the tax and refund any excess tax paid by the assessee who had offered the entire sale consideration including the hold-back amount as income to be taxed. This gives an important direction in case of escrow and holdback provisions where release of part of consideration may happen after the due date for filing the tax return for the year in which the transaction is signed and executed. The ruling does not address the aspect of timing of taxability which remains open for analysis, interpretation.

# IN THE NEWS



## Seminars

### Virtual CPE Meeting on Agreeing the Terms of Audit Engagements

- May 01, 2022

*Speaker:* Rahis Saifi, Senior Manager, Assurance

Rahis was invited to be a panelist at a virtual CPE meeting organized by ICAI on 'Agreeing the Terms of Audit Engagements (SA210), Initial Audit Engagements – Opening Balances (SA510) and Subsequent Events (SA560)'.

### Financial Professional and Legal Services Sector Advocacy Group Meeting - May 03, 2022

*Speaker:* Kim Collaco, Executive Director, International Affairs

Kim was invited by the UK India Business Council for the first Financial Professional and Legal Services Sector Advocacy Group Meeting, focusing on sustainable finance. The discussion was around existing policy, regulatory landscape, and developments in sustainable finance in India.

### Refresher Course on 360° of Annual Report - May 24, 2022

*Speaker:* GN Ramaswami, Partner, Assurance

Ramaswami presented a paper on AS 3 and AS 22, on "Understanding deferred tax liability, Cash Flow Statement and MAT Computation" for the Refresher Course on 360° of Annual Report organized by the Corporate Laws and Corporate Governance Committee and hosted by the Vijaywada Branch of SIRC of ICAI.

## Article

### Overview of the Indian Economy - May 30, 2022

*Author:* Himanshu Srivastava, Partner, Business Advisory Services

Published in Business Guide Israel - India 2022, the article looked at the Indian economy's resilient comeback against the last two years of global pandemic. In the article, Himanshu looked at the impact of Economic

Stimulus, Balance of Payment, Fiscal Deficit and Sectoral Impact on supply side while covering growth outlook for FY 2022-23.



# GLOSSARY



## AGM

Annual General Meeting

## AO

Assessing Officer

## AY

Assessment Year

## CBDT

Central Board of Direct Taxes

## CGST Act

Central Goods & Services Tax Act, 2017

## CIF

Cost, Insurance, Freight

## DTAA

Double Taxation Avoidance Agreement

## EGM

Extra-ordinary General Meeting

## ESG

Environmental, Social and Governance

## FTS

Fees for Technical Services

## FY

Financial Year

## ICAI

Institute of Chartered Accountants of India

## IGST

Integrated Goods & Services Tax

## InvIT

Infrastructure Investment Trust

## ITAT

Income Tax Appellate Tribunal

## KMP

Key Management Personnel

## LLP

Limited Liability Partnership

## M&A

Mergers & Acquisitions

## NBFC

Non-Banking Financial Company

## NRC

Nomination and Remuneration Committee

## OECD

Organisation for Economic Co-operation and Development

## PAN

Permanent Account Number

## QRMP

Quarterly Return Monthly Payment

## RBI

Reserve Bank of India

## REIT

Real Estate Investment Trust

## SC

Supreme Court of India

## SEBI

Securities and Exchange Board of India

## TDS

Tax Deducted at Source

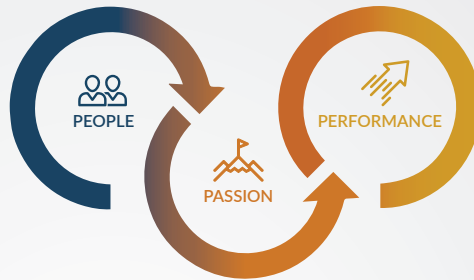
## VC

Venture Capital

“ We value your feedback. Please send us your comments and suggestions at [editorial@asa.in](mailto:editorial@asa.in) ”

# ABOUT US

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