



Vishnu Daya & Co LLP

Chartered Accountants

Newsletter

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September 2020

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# Indirect Taxes

# GST Circulars and Notifications

## Relaxation given for issue of E Invoice

Amendment made to provide for 30 days time from the date of issuance of the invoice to obtain IRN in cases where the E Invoice provisions are applicable. If the IRN is not obtained within the 30 days, the invoice shall not be valid.

*Notification No. 73/2020-Central Tax dated 30.09.2020*

*Note: As per the requirement, the E Invoice provisions shall be effective from 01.10.2020. However, for the benefit of the tax payers who are not yet ready, 30 days time is given for the generation of the E Invoice. It is to be noted that the generation of the E Invoice shall apply for all the invoices that are raised on or after 01.10.2020 for the notified persons and the transactions.*

## Amendments made to GST Rules

The following amendments made to the GST Rules:

- Invoice contents given under Rule 46 amended to include QR Code containing IRN as one of the contents.
- A proviso inserted under Rule 48 (4) to empower the Commissioner to exempt the person or class of registered persons from the issuance of invoice under this sub-rule for a specified period, subject to such conditions and restrictions as may be specified in the said notification.
- Amendment made to the E Way Bill provisions to allow the production of QR Code having embedded IRN instead of the physical copy of the tax invoice for verification.

*Notification No. 72/2020-Central Tax dated 30.09.2020*

# GST Circulars and Notifications

## Extension made to the date of implementation of the Dynamic QR Code for B2C invoices till 01.12.2020

Amendment made to Dynamic QR code requirement to clarify that the provisions shall apply for a registered person whose turnover exceeded Rs. 500 crores in **any preceding financial year** from 2017-18 onwards.

Further, the date for implementation of Dynamic QR Code deferred till 01.12.2020.

*Notification No. 71/2020-Central Tax dated 30.09.2020*

## Turnover requirement for E Invoice clarified

Amendment made to Notification No 13/2020 C.T. to clarify that the E Invoice provisions shall apply for a registered person whose turnover exceeded Rs. 500 crores in **any preceding financial year** from 2017-18 onwards.

It is also clarified that the E Invoice requirement shall apply for the exports as well.

*Notification No. 70/2020-Central Tax dated 30.09.2020*

## Due date for filing the GST Annual Return and Form GSTR9C extended to 31.10.2020

The due date for filing annual return and filing Form GSTR9C for the year 2018-19 has been extended from 30.09.2020 to 31.10.2020.

*Notification No. 69/2020-Central Tax dated 30.09.2020*

# GST Circulars and Notifications

## ➤ Waiver / reduction in late fee for not furnishing FORM GSTR-10

Late fee payable in excess of Rs.250 shall stand fully waived for the registered persons who fail to furnish the return in FORM GSTR-10 by the due date but furnishes the said return between the period from 22<sup>nd</sup> day of September, 2020 to 31<sup>st</sup> day of December, 2020.

*Notification No. 68/2020-Central Tax dated 21.09.2020*

## ➤ Waiver / reduction in late fee for not furnishing FORM GSTR-4 for 2017-18 and 2018-19

Late fee payable in excess of Rs.250 shall stand fully waived where tax payable is NIL for persons who failed to furnish GSTR-4 for 'quarters July 2017 to March 2020' by due date but furnish said return between September 22, 2020 to October 31, 2020.

*Notification No. 67/2020-Central Tax dated 21.09.2020*

## ➤ One time extension for the time limit provided under Section 31(7) of the CGST Act 2017 till 31.10.2020

One time extension is given for issuing invoices in case of goods being sent or taken out of India on approval for sale or return, which falls between March 20, 2020 to October 30, 2020 to October 31, 2020.

*Notification No. 66/2020-Central Tax dated 21.09.2020*

*Note: As per section 31 (7), in the case of goods sent on approval basis, the invoice should be raised within 6 months from the date of removal of the goods.*

# GST Circulars and Notifications

## CBIC extends GST exemption on Ocean/Air freight for export consignments by Shipping Lines/Airlines based in India till Sep 30, 2021

CBIC issues notification extending CGST exemption on services by way of transportation of goods by air or by sea from customs station of clearance in India to a place outside India, by one year i.e. upto September 30, 2021.

*Notification No. 04/2020- Central Tax (Rate) dated 30.09.2020.*

## Finance Ministry issues administrative instructions w.r.t recovery of interest on net-cash tax liability from July 01, 2017

FinMin issues administrative instructions for recovery of interest on net cash liability w.e.f. July 1, 2017. Explains that same has been issued to address apprehensions of taxpayers that Notification No. 63/2020-Central Tax dated August 25, 2020 is contrary to Council's recommendation made during its 39<sup>th</sup> meeting & to implement the decision in true spirit and at the same time working within the present legal framework.

Accordingly, decides that

- (i) For period July 01, 2017 to August 31, 2020, field formations may be instructed to recover interest only on net cash tax liability (i.e. that portion of the tax that has been paid by debiting the electronic cash ledger or is payable through cash ledger); and
- (ii) Wherever SCNs have been issued on gross tax payable, the same maybe kept in Call Book till the retrospective amendment in section 50 of the CGST Act is carried out.

# GST Circulars and Notifications

## Updates on the GST portal changes

- Subsequent to the release of Form GSTR2B, the GSTN has released an offline matching tool for the reconciliation between GSTR2B and the purchase register. Also, the GSTN has issued FAQ about the usage of the matching tool. The detailed FAQ can be accessed from through the below link:

<https://www.gst.gov.in/newsandupdates/read/403>

- GSTN enables delinking of Credit Note/Debit Note from invoice for returns/refunds. GSTN enables delinking of Credit Note/Debit Note from invoice while reporting a Credit Note or Debit Note in Form GSTR-1 or Form GSTR-6 or filing refund; Provides facilities to taxpayers on GST portal to (i) report single credit note or debit note issued in respect of multiple invoices in their Form GSTR-1 or Form GSTR-6, (ii) choose the note supply type as regular, SEZ, Export, to identify the table to which such credit or debit note pertains, (iii) indicate POS against each note to identify the supply type i.e. inter-state or intra-state, (iv) Debit & Credit Notes can be declared with tax amount, but without any taxable value also; States that similar changes have been made while reporting amendments to credit note or debit note and corresponding changes have been also made in refund module.



# Central Excise Circulars and Notifications

## CBIC notifies extension in the time limit under Central Excise, Service Tax, and Customs for the completion or compliance

CBIC extends the time limit for compliance under the Central Excise, Service Tax and Customs for various activities falling due up to 30<sup>th</sup> December 2020 to 31<sup>st</sup> December 2020. The due date extension is applicable in respect of the following:

- (a) completion of any proceeding or issuance of any order, notice, intimation, notification or sanction or approval, by whatever name called, by any authority, commission, tribunal, by whatever name called; or
- (b) filing of any appeal, reply or application or furnishing of any report, document, return or statement, by whatever name called,

# Recent Judicial Pronouncements

## Allows Britannia's plea for refund of unutilized ITC distributed by ISD to SEZ

**Facts:** Assessee, being SEZ unit making zero rated supplies under the GST, was unable to utilize the credit of the ITC of IGST from its ISD which remained unutilized in its Electronic Credit Ledger (ECL), filed an application for refund claim in Form GST RFD-01A, which was rejected.

**Held:** Assessee is entitled to refund as there is no specific supplier who can claim the refund under the provisions of the CGST Act/Rules as ITC is distributed by ISD; Rejects Revenue's contention that Assessee not being a supplier wouldn't be entitled to file refund application in view of the provision of section 54 of the CGST Act read with Rule 89, perceiving that ISD is an office of the supplier of goods and services which receives tax invoices issued u/s 31 towards the receipt of input services and issues a prescribed document for the purpose of distributing the credit therefore, it is not possible for a supplier of goods and services to file a refund application.

*M/s Britannia Industries Ltd Vs Union of India 2020-TIOL-1495-HC-AHM-GST*

# Recent Judicial Pronouncements

## ➤ Mere renting of vehicle as sub-contractor to Transporter doesn't amount to GTA service, upholds AAR

**Facts:** Applicant issues consignment notes during execution of the service of transportation of goods and has opted for 5% GST payable by the recipient under reverse charge. Sometimes, applicant functions as a mere transporter of goods for which consignment note is issued by some other party which acts as GTA for that transaction. applicant wishes to know whether he can also act as a GTA in terms of 20/2017-CTR and issue consignment note and charge GST @12% on forward charge basis.

**Held:** Appellant is simply hiring out their transport vehicles to M/s POSCO ISDC P Ltd. for a consideration, hence their services would be classified under heading 9966 of 11/2017-CTR being the description 'rental services of transport vehicles'. It is M/s POSCO ISDC P. Ltd. which is acting as a Goods Transport Agency (GTA) in the contract and not the appellant

*M/s Liberty Translines 2020-TIOL-55-AAAR-GST*

# Recent Judicial Pronouncements

## Deduction of 'actual land-value' from 'transaction-value' not allowed to builder/developer

**Facts:** Applicant sought an advance ruling on the issue that in the case of construction of residential/commercial complex, the builder charges an amount which is inclusive of land or undivided share of land. As per Not No. 11/2017-CT (Rate) and 08/2017-I.T (Rate) both dated 28.06.2017 the land value is deemed to be one third (33.33%) of the total amount (i.e. value including land value) and GST is payable on balance amount. But in applicant's case the value of Land is clearly ascertainable. In that case actual cost of Land can be deducted for the for the purpose of arriving at the taxable value of supply?

**Held:** Even if the value of Land is clearly ascertainable, actual cost of Land cannot be deducted for the purpose of arriving at the taxable value of supply. Land value is deemed to be one third (33.33%) of the total amount (i.e. value including land value) and GST is payable on balance amount in terms of Not No. 11/2017-CT (Rate) and 08/2017-I.T (Rate). Reliance on Rule 18(A) (A) of the erstwhile Gujarat Value Added Tax Rules, 2006 is not warranted in the instant case since the Value Added Tax Act is no more in existence.

*M/s Karma Buildcon 2020-TIOL-243-AAR-GST*

# Recent Judicial Pronouncements

➤ **The sale of Antivirus Software or updates thereof is sale of goods and that the activity does not attract levy of service tax under ITSS**

**Facts:** The assessee is engaged in software development and supporting services. During investigation, it was noticed that the assessee developed Anti-Virus Software for their own use and market the same under their own brand name "K7-Toral Security". It appeared to department that the assessee is not merely selling software to clients but allows them to use the software temporarily. They have neither paid the Central Excise duty nor have they paid any Service Tax on such activities under "Information Technology Software Services" (ITSS). SCNs were issued proposing to demand Service Tax along with interest and penalty.

**Held:** the sale of Antivirus Software or updates thereof is sale of goods and that the activity does not attract levy of service tax under ITSS. Further, assessee has discharged VAT on the amounts received by sale of Anti-virus software. VAT and Service Tax are mutually exclusive. Demand of service tax on the very same amount is against the settled position of law. Following the said decision, the demand cannot sustain.

*M/s K7 Computing Pvt Ltd 2020-TIOL-1453-CESTAT-MAD*

# Recent Judicial Pronouncements

## Service Tax demand on expat salary post July 1, 2012 under reverse charge mechanism – matter referred to larger bench

**Facts:** The Service Tax department demanded the Service Tax on the payment made to the parent company for the expats.

**Held:** Technical Member views that the agreement and documents signified that the Expats were providing services and receiving consideration and that mere deduction of TDS does not imply the existence of an employer employee relationship; Further, Technical Member observes that services provided by Expats cannot be considered to be provided by the employee to the employer, to be covered under the exclusion clause 'b' in Section 65 B (44) of Finance Act, 1994 as amended from July 01, 2012; However, the Judicial Member disagrees while highlighting that even after the negative regime, co-ordinate bench in the case of Mikuni Motors Pvt Ltd and Yamaha Motor Pvt. Ltd. had held that services in question are not liable to service tax; Judicial Member states that since Technical member has not distinguished the facts of the present case with these decisions, it cannot take contradictory views in view of Bombay HC decision in Mercedes Benz India Pvt Ltd. Accordingly, the matter has been referred to the larger bench for the decision.

*M/s Canon India Pvt Ltd Vs Commissioner, Goods and Service Tax, Gurgaon-i 2020-TIOL-1356-CESTAT-CHD*



# Foreign Trade Policy

# Foreign Trade Policy Updates

## Govt. announces withdrawal of MEIS Scheme

- DGFT notifies withdrawal of MEIS Scheme for exports made w.e.f. January 1, 2021.
- Caps export incentives thereby imposing a limit under MEIS for exports made in the period September 01, 2020 to December 31, 2020 so that the total reward which can be claimed by an IEC holder does not exceed the ceiling of Rs. 2 Cr.
- Clarifies that it has also been notified that any IEC holder who has not made any exports for a period of one year preceding September 01, .2020 or any new IECs obtained on or after the date of publication of this Notification would not be eligible for submitting any claim under MEIS.
- Clarifies further, that the aforesaid ceiling will be subject to further downward revision to ensure that the total claim under MEIS for the period (01.09.2020 to 31.12.2020) does not exceed the prescribed allocation by the Government, which is Rs. 5,000 Cr.; Inserts two new paragraphs (3.04A and 3.04B) amending [FTP 2015-2020](#).

*Notification No. 30/2015-2020 dated September 01, 2020*





# Direct Taxes

# Direct Tax Circulars and Notifications

## CBDT issues guidelines on applicability of TDS on E-commerce operators u/s. 194-O & TCS on sale of goods u/s. 206C(1H)

CBDT issues guidelines on applicability of TDS on E-commerce operators u/s. 194-O & TCS on sale of goods u/s. 206C(1H) applicable w.e.f. October 1st; Clarifies on calculation of threshold, applicability on payment gateways, adjustment for sale return, discounts or indirect taxes and other issues.

[Click here](#) to download the Summary of the changes and [click here](#) to download for the Note on TCS on sale of goods.

[Click here](#) to read and download the CBDT circular 17/2020

## CBDT clarifies doubts arising from media reports on TCS applicability u/s. 206C(1H)

CBDT issues several clarifications on doubts arising on account of new TCS provisions u/s. 206C(1H). Makes it clear that “this TCS shall be applicable only on the amount received on or after 1st October, 2020.”

With respect to certain media reports that every transaction will attract this TCS, CBDT clarifies that “TCS shall be applicable only on the receipt exceeding Rs. 50 lakh by a seller from a particular buyer in a financial year, this TCS is made applicable to only those sellers whose business turnover exceeds Rs. 10 crore.”

Further, CBDT clarifies that “TCS is not an additional tax but is in the nature of advance income-tax/TDS for which the buyer would get the credit against his actual income tax liability and if the amount of TCS is more than his tax liability, the buyer would be entitled for refund of the excess amount along with interest.”

[Click here](#) to read and download the CBDT press release.

# Direct Tax Circulars and Notifications

## CBDT further extends belated /revised return filing due-date for AY 2019-20 till November 30<sup>th</sup>

CBDT further extends belated /revised return filing due-date for AY 2019-20 from September 30<sup>th</sup> to November 30<sup>th</sup>.

[Click here](#) to read and download the CBDT order u/s. 119.

## CBDT amends Rule 29B, allows foreign 'insurers' to apply for 'tax non-deduction' certificate u/s. 195(3)

CBDT amends Rule 29B, dealing with application for certificate u/s. 195(3), authorising receipt of interest and other sums without deduction of tax. While Rule 29B allows foreign banks to make such application, amended Rule 29B now allows an "Insurer", as defined under Sec.2(9)(d) of Insurance Act 1939 (4 of 1938), to make an application u/s.195(3) for non-deduction of tax. Introduces consequential amendment in Form 15C for making application u/s.195(3) by foreign insurers.

[Click here](#) to read and download CBDT Notification No.75/2020.

## CBDT notifies Faceless Appeal Scheme, 2020 effective immediately

Hon'ble PM on 13<sup>th</sup> August, 2020 while launching the Faceless Assessment and Taxpayers' Charter as part of "Transparent Taxation - Honouring the Honest" platform, had also announced launching of Faceless Appeals on 25<sup>th</sup> September 2020. The Faceless Appeal Scheme, notified last week by the CBDT, is set to replace the traditional 'hearing' of appeals.

[Click here](#) to read and download the CBDT notification 76 and 77 of 2020.

# Direct Tax Circulars and Notifications

## CBDT notifies Faceless Appeal Scheme, 2020 effective immediately

CBDT issues Press Release launching the Faceless Income Tax Appeals, i.e., on the birth anniversary of Pt. Deen Dayal Upadhyay. States that all Income Tax appeals except appeals relating to serious frauds, major tax evasion, sensitive & search matters, International tax and Black Money Act will be covered under the Faceless Appeals. The entire process of appeals i.e., from e-allocation of income tax appeal, e-communication of notice/ questionnaire, e-verification/e-enquiry to e-hearing and finally e-communication of the appellate order, will be online, dispensing with the need for any physical interface between the appellant or their counsels and the Department.

[Click here](#) to download the Key Highlights of the Faceless Appeal Scheme

[Click here](#) to read the CBDT Press Release.

## CBDT clarifies on scrip-wise reporting requirement for capital gains in IT-return

CBDT clarifies there is no requirement of scrip wise reporting for day trading and short-term sale or purchase of listed shares.

States that “The scrip wise details in the return of income for AY 2020-21 is required to be filled up only for the reporting of the long-term capital gains for these shares/units which are eligible for the benefit of grandfathering”

...contd...

# Direct Tax Circulars and Notifications

## CBDT clarifies on scrip-wise reporting requirement for capital gains in IT-return

...contd...

Explains that as the grandfathering is to be allowed by comparing different values (such as cost, sale price and market price as on 31.01.2018) for each shares/units, there is a need to capture the scrip wise details for computing capital gains of these shares/units.

Further, elaborates that “If scrip wise long-term gain is available, it can be cross verified by the Department electronically with stock exchange, brokerage companies, etc and there will be no need to subject these income tax returns to further audits or scrutiny”.

Concludes that “the main intent behind requiring scrip wise detail is to facilitate the taxpayer in correctly computing the long-term capital gains on these shares/units”, adds that requirement to provide scrip wise information in the income tax return is not unique to India but prevalent internationally as well.

[Click here](#) to read and download the CBDT press release.

# Direct Tax Rulings

## ➤ Additional Floor Space Index (FSI) eligible for depreciation at rate applicable to buildings and not intangibles

Bombay HC holds payment for additional FSI eligible for depreciation at the rate applicable to the building i.e., 10% and not 25% as applicable to an intangible right u/s. 32(1)(ii). Assessee had acquired certain rights in the form of additional FSI subject to payment of premium, capitalised the same and claimed depreciation on the same at 25% claiming it to be a business/commercial right.

Revenue claimed before the HC that grant of additional FSI is not in the nature of any kind of assets until and unless the additional flooring/building is constructed, therefore, not eligible for depreciation. AO rejected depreciation claim holding that additional FSI gets converted into asset only as and when additional floors or additional building is constructed and thus, can only be included in the value of the building block as and when the same is utilized.

HC upholds ITAT's observation (upholding CIT(A)'s decision) that FSI is only related to giving of the right to construct additional floor to the assessee which enhances the value or cost of the existing asset/ building and that the amount spent is for the purpose of business and is of enduring nature.

Further, rejecting assessee's contention that the additional FSI is a business or commercial right falling within the realm and scope of intangible asset within the meaning of sec. 32(1)(ii), ITAT had held that additional FSI "...strictly pertains to addition to the building and therefore depreciation allowable would be at the rate applicable to the building and not for some kind of intangible right under section 32(1) (ii)".

[Click here](#) to download the copy of the Judgement.

# Direct Tax Rulings

➤ **Allows Sec. 54F benefit for investment in residential property, subsequent use for non-residential purpose- irrelevant**

Madras HC dismisses Revenue's appeal, upholds ITAT order allowing capital gains exemption benefit u/s. 54F to assessee-individual with respect to investment made in the residential portion of the property during AY 2011-12, despite assessee subsequently let out the property for running a restaurant and further it had shown it as a commercial property in his wealth tax assessments.

HC remarks that "There are several instances where residential properties are put to use for non-residential purposes and this cannot be a test to decide the nature of the property under the provisions of the Income Tax Act, especially, in assessee's case, where the letting out of the property for non-residential purpose was much after the purchase on 03.02.2011 and the lease agreement was on 21.03.2011."

Further remarks that "So far as the Wealth-Tax assessment is concerned, it may be true that in the assessment, the property is shown as commercial complex, as on the relevant date, 31.03.2011, the property was leased out for commercial purpose."

[Click here](#) to download the copy of Judgement.

# Direct Tax Rulings

## ➤ Advance received upon entering into development agreement, but returned subsequently - not IFOS

Madras HC upholds ITAT order, holds that advance received by assessee in subject AY 2007-08 pursuant to entering into development agreement [DA] and which was returned in 2015 upon cancellation of DA, not taxable as income from other sources.

Assessee [land-owner] entered into DA with developer in March, 2007, pursuant to which the physical possession of the property was given and Rs. 9 cr. was received by assessee, however, subsequently the DA was cancelled and the amount received was treated by AO as windfall gain and was taxed as 'income from other sources' for subject AY 2007-08 because the advance was returned to the developer only in March, 2015.

Refers to the meaning of 'windfall gain', DA terms, MOU, HC observes that the amount of Rs. 9 Cr. was paid as advance which “was to be adjusted / appropriated against the revenue share of the assessee.”

Further, HC observes that the DA was in force till February, 2015 and only in March, 2015 it was returned back to the developer, remarks that even when the AO completed assessment u/s. 147 vide order dated March, 2015, the DA was not rescinded.

[Click here](#) to download the copy of the Judgement.



# Direct Tax Rulings

➤ **Mere use of 'rupee' in Sec.40A (3) does not debar its applicability to cash-spent in foreign currency**

Mumbai ITAT upholds Sec.40A(3) disallowance with respect to exhibition charges incurred in foreign currency by assessee-firm during AY 2014-15, holds that “merely because the expression “rupee” has been mentioned in section 40A(3) of the Act, it would not debar applicability of the provision to the expenditure incurred in cash in foreign currency.” AO had disallowed Rs.31.52 lakh since the assessee has incurred expenses in cash exceeding the amount of Rs.20,000 in a day.

Rejects assessee's submission that the provisions of section 40A(3) would not be applicable to the expenditure incurred in cash in foreign currency as it refers to expenditure incurred in rupees and not in foreign currency, states that “The mention of the word “rupee” in section 40A(3) cannot be interpreted in a limited or narrow sense to mean only cash expenditure incurred in rupee.”

Explains that cash expenditure may be incurred in various countries having different currencies and thus it would not have been possible for the legislature to mention the currency of all the countries in the world in section 40A(3), opines that the provision has to be interpreted in a manner to mean cash expenditure equivalent to more than Rs. 20,000 in a day.

States that “If the aforesaid contention of the assessee is accepted, it will create an anomalous situation, as, an assessee incurring cash expenditure in India exceeding Rs.20,000 will face the rigors of section 40A(3), whereas, another assessee incurring unlimited cash expenditure abroad in foreign currency would go scot free.”

As regards assessee's contention that the provisions of the Act would not be applicable to expenditure incurred abroad, ITAT notes that the expenditure was booked in India and that too in rupee terms, thus holds that “Therefore, the Assessing Officer has all the powers to examine the allowability of such expenditure under the provisions of the Act”.

[Click here](#) to read facts, analysis and the copy of judgement.

# Direct Tax Rulings

➤ **Date of agreement to sell, not sale deed relevant for determining period of holding; Allows LTCG claim.**

Kolkata ITAT allows assessee's claim of long term capital gains from sale of immovable property during AY 2014-15, holds that the date of acquisition is 08.11.2009 i.e., the date of entering into agreement for sale and not 30.05.2011 i.e., date of registration of the sale deed as held by AO. Observes that “transfer of immovable property would be considered as a combined act of agreement to sale and sale deed as a single transaction of transfer with effect from the date on which such transaction was intended and conceived by the parties to the transaction”.

Relies on SC decision in case of Shri Sanjeev Lal wherein it was held that agreement for sale conveys the intention and willingness of the parties to perform the contract and sale deed is an extension of the agreement for sale.

Explains that once, the sale deed is executed in pursuance to agreement to sale and all the conditions u/s 2(47) are satisfied, it would constitute transfer and would be effective from the date of agreement to sale itself.

Remarks accordingly, that “It is not a case of transfer based only on unregistered documents but in this case the parties have executed sale deed in performance of the agreement.”.

Refers to CBDT Circular No.672 which clarified that allottee get a title to the property on the issue of the allotment letter and the payment of instalment and taking possession is only a follow up action.

Accordingly, concludes that “Since the right in the flat was acquired at the time of booking on 08.11.2009, accordingly the right in the property was held for more than three years before its transfer on 23.11.2013 and therefore, capital gains were, in the nature of Long term capital gains”.

[Click here](#) to download the copy of Judgement.

# Direct Tax Rulings

## Vodafone wins international arbitration case under India-Netherlands BIPA

Vodafone wins international arbitration case pertaining to 'indirect transfer' tax dispute under India-Netherlands BIPA.

Pursuant to retrospective amendments to Sec. 9 of the Income-tax Act vide Finance Act, 2012, tax liability was re-fastened on Claimant - Vodafone International Holdings BV [VIHBV, a Netherlands based co.] in respect of acquisition of stake in Hutchison Essar Limited in 2007 for its failure to deduct TDS on capital gains.

Aggrieved by the imposition of tax, VIHBV invoked the arbitration clause under the India-Netherlands BIPA.

Arbitral Tribunal rules that India's conduct “in respect of the imposition on the Claimant of an asserted liability to tax notwithstanding the Supreme Court judgement is in breach of the guarantee of fair and equitable treatment laid down in Article 4(1) of the Agreement, as is the imposition of interest on the sums in question and the imposition of penalties for non-payment of the sums in question..”

Arbitral Tribunal holds that the Claimant is entitled, in respect of its investments in mobile telecommunications in India, to the protection of the guarantee of fair and equitable treatment laid down in Article 4(1) of the Agreement and that “the breach of the same entails the obligation on respondent [I.e. India] to cease the conduct in question, any failure to comply with which will engage its international responsibility”. Directs India to reimburse to the claimant legal representation and assistance cost.

[Click here](#) to read Govt. of India press release.



# Corporate & Other Laws

# MCA Updates

## MCA: Extends time for companies to conduct Board Meetings through VC, till December 31

- MCA extends the period upto which companies can conduct their Board Meetings through video conferencing or other audio visual means, from September 20 to December 31, 2020;
- Separately, vide amendment to the Companies (Appointment and Qualification of Directors) Rules, 2014, allows Independent Directors until December 31, 2020, to apply online for inclusion of their name in the databank maintained by the Indian Institute of Corporate Affairs, as against earlier due date of September 30;
- Amendments introduced in continuation of extensions announced earlier for compliance relaxations: MCA

## MCA extends Companies Fresh Start Scheme, 2020, other Schemes to December 31, owing to COVID-19

- MCA extends CFSS, 2020, LLP Settlement Scheme, 2020, and Scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act, till December 31, 2020;
- The time for conducting EGMs through Video Conference or Other Audio Visual Means also stands extended till December 31;
- Move comes in the wake of the large scale disruption caused by the COVID-19 pandemic, and in order to provide companies greater ease of doing business: MCA

[http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.30\\_28092020.pdf](http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.30_28092020.pdf)

# MCA Updates

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[http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.30\\_28092020.pdf](http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.30_28092020.pdf)

# MCA Updates

## President assents to Companies Act Amendments for decriminalizing certain offences

- President of India assents to the Companies (Amendment) Act, 2020, which inter alia provides for decriminalization of certain offences, in addition to those decriminalized earlier;
- The Act amends Sec. 135 of the Companies Act, 2013, to provide that – (i) for CSR offences, every officer of a company in default, be made liable to a monetary penalty, (ii) the requirement of constitution of CSR Committee shall not be applicable, in case the amount required to be spent on CSR does not exceed Rs. 50 lakh;
- Further allows eligible companies u/s 135 to set off any amount spent in excess of their CSR spending obligation in a particular FY towards such obligation in subsequent FYs; Inserts a new Sec. 418A in the Companies Act, in order to provide for the constitution of Benches of NCLAT to hear appeals against any direction, decision or order referred to in Sec. 53A of the Competition Act, 2002 and u/s 61 of IBC, and related provisions; Stipulates that even in case a company has none or inadequate profits in an FY, any non-executive Director of such company, including an independent Directors shall be paid remuneration, in accordance with Schedule V of the Act,
- Lastly the Amendment Act empowers Central Govt. to allow certain classes of public companies to list classes of securities (as may be prescribed) in foreign jurisdictions.

[http://www.mca.gov.in/Ministry/pdf/AmendmentAct\\_29092020.pdf](http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf)

# MCA Updates

## MCA issues 50 FAQs on CFSS and LLP Modified Settlement Scheme, 2020

- MCA issues a set of 50 FAQs on the Companies Fresh Start Scheme, 2020 and LLP Modified Settlement Scheme, 2020; Inter alia clarifies that the CFSS is applicable to Foreign Cos. as well as Foreign Cos.' subsidiaries registered in India;
- Specifies that struck-off cos. have to first approach NCLT for revival and mandates filing of a copy order of NCLT approving such revival, in Form No. INC-28, in order to avail the benefit of CFSS;
- Further makes it manifest that for Form MGT-14 filed beyond 300 days, condonation is required, however, AoC-4 for the past year(s) can be filed without any condonation; As to whether a company whose Director has been disqualified can use this scheme, MCA highlights that, "...the CFSS 2020 is applicable for defaulting companies to file the belated documents and does not extend to curing the disqualification of Directors.": MCA

## MCA: Amends acceptance of deposits rules, provides reliefs to start-ups

MCA notifies amendment to Companies (Acceptance of Deposits) Rules, 2014, inter alia provides that deposit shall not include an amount of Rs. 25 lakh or more received by a start-up company, by way of a convertible note (convertible into equity shares or repayable within a period not exceeding 10 years from the date of issue) in a single tranche, from a person; Further provides that the maximum limit in respect of deposits to be accepted from members shall not apply to a private company which is a start-up for 10 years (earlier, 5 years): MCA [http://www.mca.gov.in/Ministry/pdf/Rule\\_25092020.pdf](http://www.mca.gov.in/Ministry/pdf/Rule_25092020.pdf)



# MCA Updates

## MCA: DPIIT to provide 50% concession in statutory fees for filing trademarks

- In a written reply to the Lok Sabha, Union Minister for Commerce and Industry, Shri. Piyush Goyal apprises that the DPIIT, in order to facilitate trademarks for Startups, provides 50% concession in statutory fees for filing trademarks applications;
- States that under the startup facilitation scheme, a list of facilitators is provided at Trade Marks Offices' website whose services may be availed by the startups for application for registration of trademark and the professional charges of such facilitators is reimbursed by the Govt.;
- Further, detailing the process of how a Trademark application is processed, specifies that the registration certificate for trademark is normally granted to the applicant within 7 months from the date of filing of application;
- Also apprises that internal guidelines are issued from time to time for quick disposal of applications, and, if any deliberate dereliction of duty is found on the part of any officer, appropriate action is taken: MCA

[http://www.mca.gov.in/Ministry/pdf/Rule\\_25092020.pdf](http://www.mca.gov.in/Ministry/pdf/Rule_25092020.pdf)

# MCA Updates

## MCA : Extends last date for filing Form CRA-4, relaxes additional fees

- MCA relaxes additional fees and extends the last date for filing Form CRA-4 (Cost Audit Report), in view of the extraordinary disruption caused due to COVID-19 pandemic;
- Allows cost auditors to submit their report for FY 2019-20 to the Board of Directors of Companies by November 30, 2020, and clarifies that the same shall not be viewed as a violation of Rule 6(5) of Companies (Cost Records and Audit) Rules, 2014, which stipulates a deadline of 180 days from FY closure for the submission;
- Specifies that however, if a company has availed extension of time for holding AGM, then the e-form may be filed within the timeline provided under the proviso to Rule 6(6) of the said Rules, i.e. within resultant extended period of filing financial statements u/s 137 of Companies Act, 2013: MCA

[http://www.mca.gov.in/Ministry/pdf/circular\\_10092020.pdf](http://www.mca.gov.in/Ministry/pdf/circular_10092020.pdf)

[http://www.mca.gov.in/Ministry/pdf/Rule\\_25092020.pdf](http://www.mca.gov.in/Ministry/pdf/Rule_25092020.pdf)

# MCA Updates

## RoCs issue orders extending time for holding FY20 AGM by 3 months

- RoCs of various states, including Karnataka has issued orders extending the time to hold AGM (other than the first AGM) for FY ended on March 31, 2020 for companies within their respective jurisdictions, which are unable to hold their AGM for such period within the due date, by a period of 3 months, without requiring the companies to file applications seeking such extension by filing Form GNL-1;
- Apprises that the aforesaid extension has been granted considering representations received from companies, industry bodies and professional institutes pointing out that several companies are finding it difficult to hold their AGM for the said FY due to the unprecedented situation created by the COVID-19 pandemic;
- Clarifies that the extension granted under these orders shall also cover all pending applications filed in Form No. GNL-1 for extension of AGM for said FY, which are yet to be approved or were rejected, where approval for extension of AGM upto 3 months from due date shall be deemed to have been granted without any further action on the company's part.

[http://www.mca.gov.in/Ministry/pdf/Rule\\_25092020.pdf](http://www.mca.gov.in/Ministry/pdf/Rule_25092020.pdf)

# Foreign Contribution Regulation Act

## Parliament passes FCRA Amendment Bill 2020, to increase accountability in foreign contribution utilization:

- Parliament passes the Foreign Contribution (Regulation) Amendment Bill, 2020 which inter alia provides for reduction in administrative expenses of any NGO receiving foreign funding, from 50% to 20% of annual funds to ensure spending on their main objectives;
- With a view to streamline the provisions of the Foreign Contribution (Regulation) Act, 2010 ('FCRA') by strengthening the compliance mechanism, enhancing transparency and accountability in receipt and utilisation of foreign contribution, the Bill adds public servants (as defined under IPC) to the list of people who are prohibited from accepting any foreign contribution;
- Further, the Bill proposes to – (i) amend Sec. 7 of FCRA to prohibit the transfer of foreign contribution to any other person, (ii) empower Central Govt. to require any person seeking prior permission, registration or renewal of registration to provide the Aadhaar number of all its office bearers, directors or key functionaries, as an identification document; Also inserts a new Sec. 14A to FCRA to provide that Govt. may permit any person to surrender their registration certain, if, after an inquiry, it is satisfied that such person has not contravened any provisions of FCRA, and the management of foreign contribution and asset, if any, created out of such contribution has been vested in the authority prescribed by the Govt.;
- Lastly, the Bill specifies that foreign contribution must be received only in an account designated by the bank as "FCRA Account" which shall be opened by him for the purpose of remittances of foreign contribution in such branch of the State Bank of India at New Delhi, as notified by Central Govt. and no funds other than foreign contribution should be received or deposited in this account.

# RBI Updates

## Resolution Framework for COVID-19-related Stress – Financial Parameters

The Reserve Bank had accordingly set up an Expert Committee with Shri K. V. Kamath as the Chairperson, as announced in the press release dated August 7, 2020. The Expert Committee has since submitted its recommendations to the Reserve Bank on September 4, 2020, which have been broadly accepted by the Reserve Bank.

Accordingly, all lending institutions shall mandatorily consider the following key ratios while finalizing the resolution plans in respect of eligible borrowers under Part B of the Annex to the Resolution Framework:

Key Ratio	Definition
Total Outside Liabilities / Adjusted Tangible Net Worth (TOL/ATNW)	Addition of long-term debt, short term debt, current liabilities and provisions along with deferred tax liability divided by tangible net worth net of the investments and loans in the group and outside entities.
Total Debt / EBITDA	Addition of short term and long-term debt divided by addition of profit before tax, interest and finance charges along with depreciation and amortisation.
Current Ratio	Current assets divided by current liabilities
Debt Service Coverage Ratio (DSCR)	For the relevant year addition of net cash accruals along with interest and finance charges divided by addition of current portion of long term debt with interest and finance charges.
Average Debt Service Coverage Ratio (ADSCR)	Over the period of the loan addition of net cash accruals along with interest and finance charges divided by addition of current portion of long term debt with interest and finance charges.

..contd..

# RBI Updates

## Resolution Framework for COVID-19-related Stress – Financial Parameters

..contd..

The ratios prescribed in paragraph 4 are intended as floors or ceilings, as the case may be, but the resolution plans shall take into account the pre-Covid-19 operating and financial performance of the borrower and impact of Covid-19 on its operating and financial performance at the time of finalising the resolution plan, to assess the cashflows in subsequent years, while stipulating appropriate ratios in each case.

The compliance in regard to meeting the agreed ratios must be monitored as financial covenants on an ongoing basis, and during subsequent credit reviews. Any such breach not rectified within a reasonable period, in terms of the loan contract, will be considered as financial difficulty.

[Click here](#) to download the RBI Notification dated 07<sup>th</sup> September 2020.

## Long Form Audit Report (LFAR) - Review

Keeping in view the large scale changes in the size, complexities, business model and risks in the banking operations, a review of the LFAR formats, in consultation with the stakeholders, including the Institute of Chartered Accountants of India (ICAI), was undertaken and it has been decided to make the following changes.

..contd..

# RBI Updates

## Long Form Audit Report (LFAR) - Review

..contd..

The format of LFAR, as mentioned below, have been revised:

- a. [Annex I](#) for Statutory Central Auditors (SCA)
- b. [Annex II](#) for Branch Auditors
- c. An Appendix as part of Annex II for the specialized branches and
- d. [Annex III](#) on Large / Irregular / Critical accounts for branch auditors.

The revised formats are enclosed. The revised LFAR formats are required to be put into operation for the period covering FY 2020-21 and onwards. The mandate and scope of the audit will be as per this format and if the SCA feels the need of any material additions, etc., this may be done by giving specific justification by the SCA and with the prior intimation of the bank's Audit Committee of Board (ACB).

[Click here](#) to download the RBI Notification dated 05<sup>th</sup> September 2020.



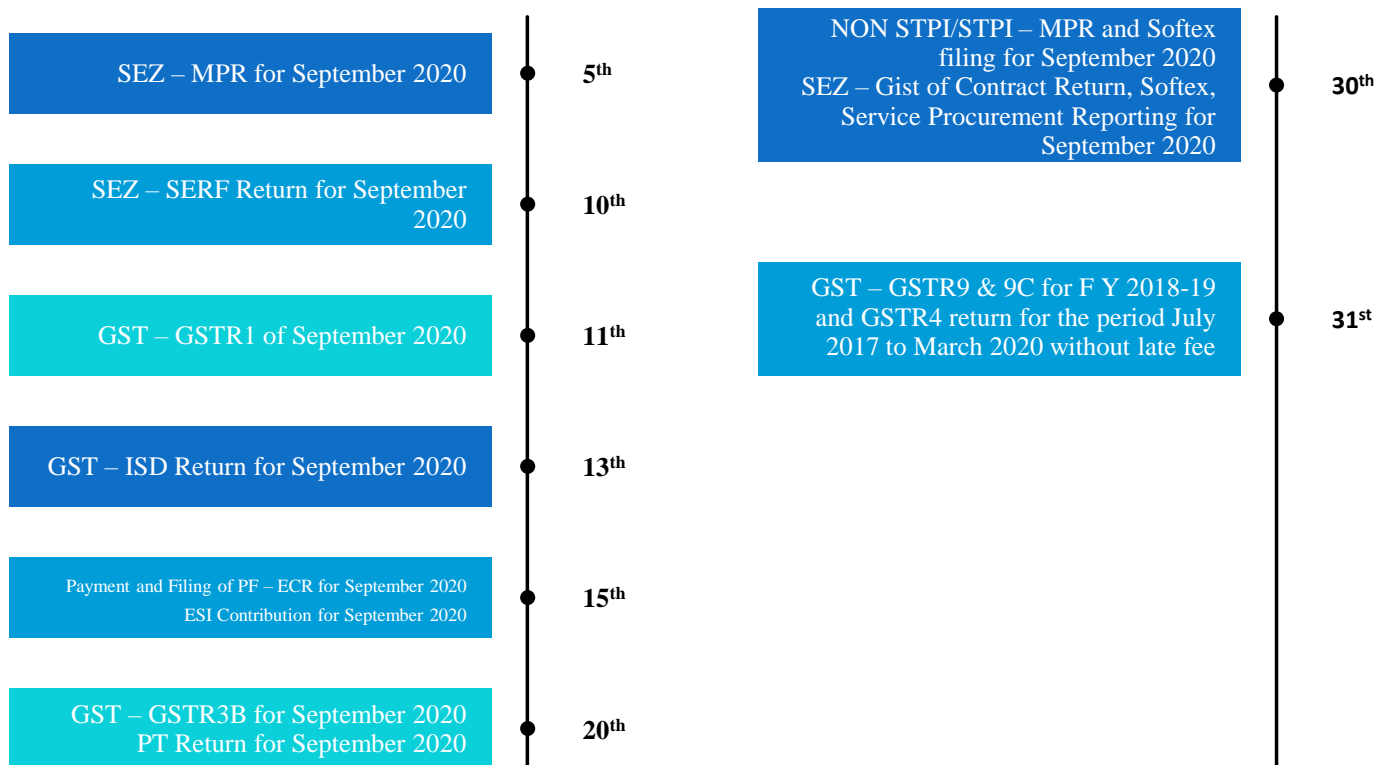
# Due Dates



# Due dates in October 2020 – GST, STPI, SEZ, PF, ESI

## OCTOBER 2020

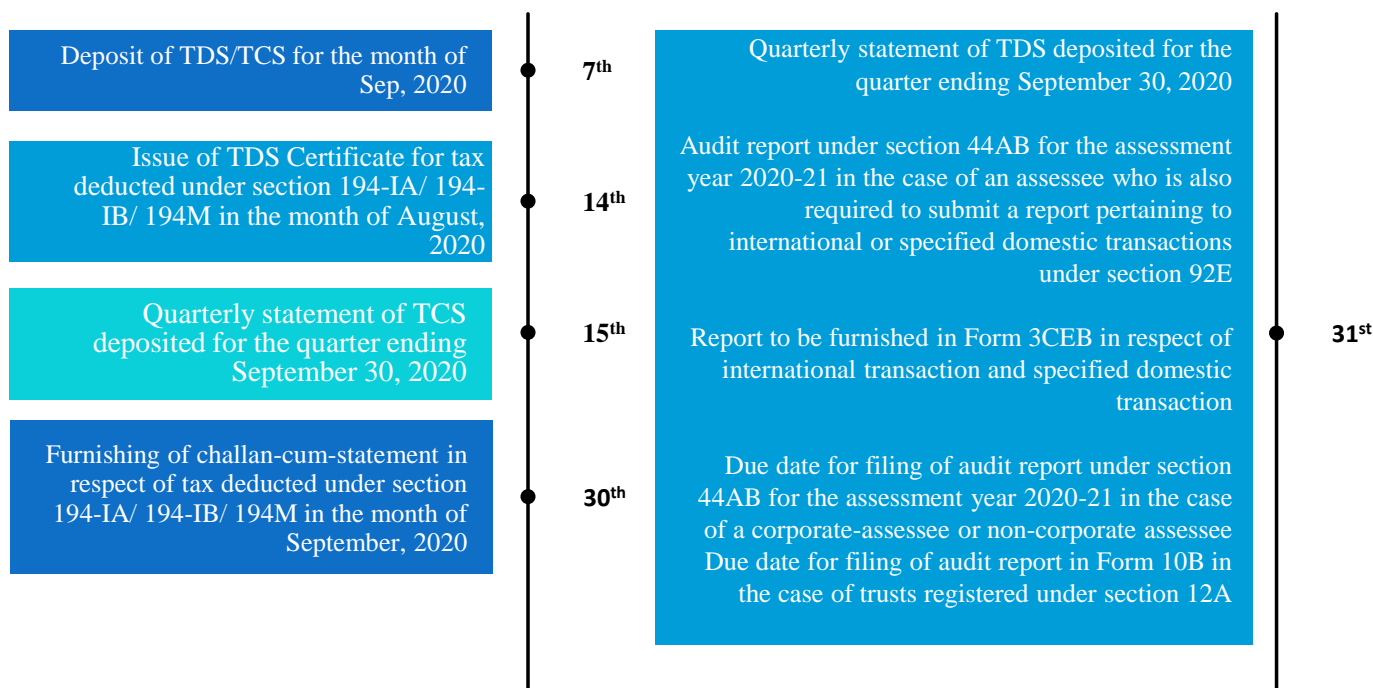
Week	S	M	T	W	T	F	S
40	27	28	29	30	1	2	3
41	4	5	6	7	8	9	10
42	11	12	13	14	15	16	17
43	18	19	20	21	22	23	24
44	25	26	27	28	29	30	31
45	1	2	3	4	5	6	7



# Due dates in October 2020 – Direct Taxes

## OCTOBER 2020

Week	S	M	T	W	T	F	S
40	27	28	29	30	1	2	3
41	4	5	6	7	8	9	10
42	11	12	13	14	15	16	17
43	18	19	20	21	22	23	24
44	25	26	27	28	29	30	31
45	1	2	3	4	5	6	7





# Contact Us

## About Us

Vishnu Daya & Co LLP is a Professional Services Firm under which dedicated professionals have developed core competence in the field of audit, financial consulting services, financial advisory, risk management, direct and indirect taxation services to the clients.

Started in the year 1994 as audit firm in Bangalore with an ambition to provide services in the area of accountancy and audit, our legacy of vast experience and exposures to different types of industries made us rapidly adaptable to the changing needs of the time and technology by not only increasing our ranges of services but also by increasing quality of service. With diversification, our professional practice is not only limited to Bangalore but has crossed over to the other parts of India with a motto to provide "One Stop Solutions" to all our clients.



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