

FEBRUARY, 2021

BUDGET EDITION

TAX Bulletin

★ ★ VOLUME - 81 ★ ★



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

www.icmai.in

Headquarters: CMA Bhawan, 12 Sudder Street, Kolkata - 700016

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MISSION STATEMENT

“The CMA Professionals would ethically drive enterprises globally by creating value to stakeholders in the socio-economic context through competencies drawn from the integration of strategy, management and accounting.”

VISION STATEMENT

“The Institute of Cost Accountants of India would be the preferred source of resources and professionals for the financial leadership of enterprises globally.”

Objectives of Taxation Committees:

1. Preparation of Suggestions and Analysis of various Tax matters for best Management Practices and for the professional development of the members of the Institute in the field of Taxation.
2. Conducting webinars, seminars and conferences etc. on various taxation related matters as per relevance to the profession and use by various stakeholders.
3. Submit representations to the Ministry from time to time for the betterment and financial inclusion of the Economy.
4. Evaluating opportunities for CMAs to make way for further development and sustenance of the opportunities.
5. Conducting and monitoring of Certificate Courses on Direct and Indirect Tax for members, practitioners and stake holders and also Crash Courses on GST for Colleges and Universities.

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CMA Rakesh Bhalla
Chairman, Direct Taxation Committee



CMA Chittaranjan Chattopadhyay
Chairman, Indirect Taxation Committee

FROM THE DESK OF CHAIRMAN

Dear Friends and Professional Colleagues,

Greetings from the Tax Research Department!!!

Hon'ble Finance Minister Smt. Nirmala Sitharaman has presented the Union Budget 2021-22 in the Parliament. This year's Budget lays focus on the steps for reviving the economy which included Health and Wellbeing, Physical and Financial Capital and Infrastructure, Inclusive Development for Aspirational India, Reinvigorating Human Capital, Innovation and R&D, and "Minimum Government, Maximum Governance". Several regulations around the securities market are proposed to be merged as a single code. It was also announced that India's fiscal deficit is set to jump to 9.5 per cent of Gross Domestic Product in 2020-21 as per Revised Estimates. This is sharply higher than 3.5 per cent of GDP that was projected in the Budget Estimates. A slump in government revenues amid the Covid-19 pandemic has led to a sharp rise in deficit and market borrowing. We are optimistic that the steps taken by the Government in relieving the economy would be beneficial.

It gives us pleasure to inform that The Webint Session on **Anti-dumping – An Insight** held on 21st January, 2021 had been a grand success. The session was graced by luminaries like:

- Shri Mithileshwar Thakur, Additional Director General – DGTR, Ministry of Commerce and Industry, Government of India
- CMA B B Goyal, Former Addl. Chief Adviser (Cost) Ministry of Finance, Government of India
- Shri Sanjeev Nandwani, Former Additional DGFT and Development Commissioner-SEZ's
- CMA M K Anand, Director General, Forum for Trade Remedies and
- CMA A K Gupta, Founder and Managing Director, TPM

It was an interactive and enriching session and members were highly benefitted. Webinars were also conducted on the topics like Transfer Pricing and Corporate Tax Planning perspective.

Regular activities like publishing of Tax Bulletins, conduct of classes on Direct and Indirect Tax, updation of Taxation portal are being done seamlessly.

The President of the Institute met Shri Novel Roy, IRS, Deputy Secretary - Central Board of Direct Taxes along with CMA Chittaranjan Chattopadhyay, Chairman Indirect Taxation Committee & Banking, Financial Services & Insurance Committee and CMA Mrityunjay Acharjee on 27th January, 2021 to discuss about scope and opportunities for CMAs in the area of Transfer Pricing and International Taxation.

The department forwarded representation letter for the 2nd time to state GST Commissionerates to include the Cost Accountants as members in the state GST Grievance Redressal Committees. It was sent to state capitals like Kolkata, Delhi, Chennai, Mumbai, Agartala, Ahmedabad, Bhopal, Dehradun, Goa, Jammu, Lucknow, Patna, Jaipur, Raipur, Ranchi and Trivandrum.

Efforts are on to disseminate knowledge to the stake holders on various areas of Taxation and exploring areas of opportunities to showcase the expertise of the Cost Accountants within the ambit of various statute of both Direct and Indirect Taxation.

Feedback is solicited from our readers for any improvement that may be made in the Bulletin.

Jai Hind.

Warm Regards



(Rakesh Bhalla)

CMA Rakesh Bhalla
8th February 2021



CMA Chittaranjan Chattopadhyay
8th February 2021

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Articles on the Topics of Direct and Indirect Taxation are invited from readers and authors. Along with the article please share a recent passport-sized photograph, a brief profile and the contact details. The articles should be the author's own original.
Please send the articles to

trd@icmai.in /trd.ad1@icmai.in



BUDGET 2021-22

Sanjeev Nandwani

Former Additional DGFT and Development Commissioner-SEZ's

As promised by Finance Minister Shri Nirmala Sitharaman, this is truly a budget of a lifetime. It has taken acute care on all aspects of the economy and laid down the path for achieving the 5 trillion-dollar economy and position India as a global leader

Focus on six pillars to revive the economy, as announced by the FM:

- Health and Wellbeing
- Physical and Financial Capital and Infrastructure
- Inclusive Development for Aspirational India
- Reinvigorating Human Capital
- Innovation and R&D
- Minimum Government and Maximum Governance

CUSTOMS

A. Bill of Entry Requirements

- Bill of Entry is to be filed one day prior to the arrival of conveyance
- Earlier provision states that the Bill of entry was to be presented within 30 days before the expected arrival of vessel
- It shall not be later than by the end of day on which goods have arrived in India
- Different time limit in specific instances can be set-up by the Board
- The Importer and CHA have to gear up to meet the time-lines

B. AIDC – a new provision

Agriculture Infrastructure and Development Cess (AIDC) for financing improvement in Agriculture, Infrastructure/other development expenditure has been introduced with an aim to finance agriculture Infrastructure and development, as follows:

- with effect from 2.2.2021
- to be levied as and additional levy on the CIF value of imported goods
- SWS would be levied on AIDC (exempted on Gold and Silver)
- Imports under FTA, EOU, Advance Authorization Schemes exempted from AIDC
- It has been imposed on Petrol/Diesel at Rs 2.5/4 per litre respectively

C. Social Welfare Surcharge (SWS) amendments

The amendments in Social Welfare Charge are proposed as follows:

- SWS @ of 3% on Gold and Silver revoked; they would attract surcharge at the normal rate, only on value plus basic customs duty
- SWS on Marble and Travertine/Block of Marbles (251511/251512) revoked
- SWS on the value of AIDC imposed on gold and silver exempted

D. Common Customs Electronic-Portal

A “Common Customs Electronic Portal” has been introduced similar to the GST regime. This endeavours to:

- Facilitate registration and filing of documents like the Bill of entry, Shipping bills, Duty-payment etc.
- Empower the Authorised officer to amend documents electronically with safeguards
- Enable the importers and exporters also to carry out specified amendments
- Post notices, orders, summons etc. on the portal itself

E. Anti-Dumping & Countervailing Duty Amendments

- Time-limit for has been limited to five years for imposition of ADD/CVD as against for a fixed period of five years
- Final findings on ADD/CVD are to be issued by Designated authority at least three months prior to expiry of ADD/CVD under review
- ADD/CVD in respect of circumvention cases can be Imposed retroactively wef date of initiation of anti-circumvention investigation
- Anti-absorption provisions introduced for specific cases
- ADD/CVD not applicable to SEZ/100% EOU units, unless the end-products are sold in the Domestic Tariff Area
- Temporarily revocation of ADD/CVD shall not exceed one year at a time
- Procedural and technical amendments for causing investigation into cases of imports in increased quantity causing injury to domestic market have been incorporated

F. ADD and CVD on Primary Infrastructure Item - Steel

- ADD revoked on import of Cold-Rolled Flat products of stainless steel
 - width 600mm to 1250 mm
 - non *bona-fide* usage
 - originating in or exported from PR China, Korea RP, European Union, South Africa, Taiwan, USA
- ADD revoked on import on following products for a short-time period (02.02.2021 to 30.09.2021)
 - Straight Length Bars and Rods of Alloy-steel originating/exported from PR China
 - High Speed Steel of Non-Cobalt Grade originating/exported from Brazil or PR China
 - Flat rolled product of steel, plated or coated with Alloy originating/ exported from PR China, Korea and Vietnam

G. Customs (IGCR) Rules, 2017 - amendments thereof

Customs IGCR Rules introduced in June, 2017 (Import of Goods at Concessional Rate of Duty) has been amended as follows:

- Materials (excepting gold, jewellery and other precious metals) imported under IGCR Rules permitted to be sent to job-worker under prescribed procedure
- 100% out-sourcing for manufacture of goods permitted on job work
- Importer permitted to clear imported capital goods on payment of differential duty and interest on depreciated value
- Depreciation norms as applied to EOU's would be applicable

H. Important Amendments

- Two-years' time-period prescribed for completion of inquiry/investigation culminating into the issuance of Notice
 - This will start from the initiation of Audit/Search/Seizure/Summons
 - Extendable by one year by Commissioner/Principal Commissioner
 - On production of sufficient cause
 - Stay-period excluded for issue of SCN

- New conditional exemption notifications will be valid for two years
 - Ending 31st March from the date notified
 - Existing conditional exemption shall be valid up to 31st March, 2023
- Cases involving input tax credit under GST being claimed on basis of fraudulent invoices and utilised for the payment of integrated tax on exports will attract penalty,
 - Up to five times the amount of refund to be levied under Customs
 - This penalty will be in addition to penalty imposed under GST
- Jurisdictional Commissioner (Appeals) empowered to certify the correctness of the inventory of gold seized
- Power to confiscate any goods entered for exports for which wrongful claim of remission/refund of any duty/tax levy under Customs Act, 1962/other laws has been granted
- **‘Turant Customs’** is being introduced for faceless, paperless, and contactless Customs measures
- Items on which Customs Duty Rates are revised:
 - Reduced duty on copper scrap from 5% to 2.5%
 - Basic and Special additional excise duty on petrol and high-speed diesel oil (both branded and unbranded) is reduced
 - Increased duty on solar inverters from 5% to 20%
 - Raised duty on solar lanterns from 5% to 15%
 - New tariff items under 24041100 and 240419 00 have been inserted in accordance with upcoming HS 2022 nomenclature
 - NCCD (National Calamity Contingent Duty) of 25% is prescribed on these tariff items with effect from 1st January 2022
 - Customs duty increased on cotton, silks, alcohol, etc.

I. Withdrawal of Exemption notifications:

- Customs duty exemptions that have been rescinded are as follows:
 - 1/2011-Customs of 6.1.2011 - exemption to all items of machinery, instruments, appliances, components or auxiliary equipment for initial setting up of solar power generation project or facility
 - 34/2017-Customs of 30.6.2017 - exemption to tags or labels (whether made of paper, cloth, or plastic), or printed bags (whether made of polyethylene, polypropylene, PVC, high molecular or high density polyethylene) imported for fixing on articles for export or for the packaging of such articles
 - 75/2017-Customs of 13.9.2017 - exemption for goods imported for organizing FIFA Under-17 World Cup, 2017
- Sunset clause is introduced for all existing conditional exemptions which shall be valid till 31 March 2023, unless withdrawn earlier

Central Excise

J. Important Central Excise amendments

- An Agriculture Infrastructure and Development Cess (AIDC) as an additional duty of excise has been proposed on Petrol and High speed diesel
- However, the Basic Excise Duty (BED) and Special Additional Excise Duty (SAED) on Petrol and High-speed diesel is reduced and the consumer will have no additional burden on account of imposition of AIDC

GST

K. GSTR-1 needs to be filed to avail ITC

Amendment of Section 16 of the CGST Act

- Section 16 of the CGST Act deals with the eligibility and conditions for claiming ITC (Input tax credit)
- This section 16 has been amended to allow taxpayers' to claim input tax credit based on GSTR-2A/2B statements

- Henceforth, input tax credit on invoices or debit notes is available only when the supplier has furnished the details of such invoice or debit note in the statement of outward supplies
- It is mandatory to communicate this information to the recipient of such invoice
- New provision: A new condition has been inserted in the Act for claiming ITC wherein details of invoices should now be uploaded by the suppliers in GSTR-1 and ITC is to be availed only once GSTR-1 is filed
- Earlier provision: ITC was restricted to 105% of the eligible credit indicated in GSTR-2A as per return filed by supplier in form GSTR-1

L. Interest on tax liability

There is a provision for interest @18% on delay in remittance of tax beyond due date. It has now been made amply clear that the interest is payable on Net Tax Liability (Tax liability after adjusting the Input Tax Credit) and not the Gross Tax liability (total output tax) and that it shall be applicable retrospectively.

M. Attachment of Bank Account

- Section 83(1) now empowers the Commissioner to provisionally attach the properties (including bank account) upon like provisional assessment, scrutiny of returns, inspection of goods in movement, tax collected but not paid to Government, etc.

N. Pre-deposit of 25% of penalty amount to contest Appeal

- As per a new proviso to Section 107, no appeal can be filed before the Appellate authority against order passed on seizure of goods unless a penalty of 25% is paid

O. Release of Seized goods

- The penalty amount for or release of goods/vehicle in case of default of E-way bill, has been increased from 100% to 200% of the tax amount
- A time-line of seven days for issue of Notice has been introduced
- In the event of detention of vehicle release can be obtained by the transporter on payment of penalty as follows:
 - 200% of tax payable if owner of the goods comes forward for payment
 - 50% of the value of goods in case the owner of the goods does not come forward
 - Rs 1 lakhs, whichever is lower

P. Zero Rated Transactions

- Supplies towards authorized operations in SEZ

Supplies to SEZ Developer or Unit was treated as zero rated supply and now supplies made only for authorized operations shall be considered as zero rated

- Payment to be received within time-limits prescribed for export of Goods

Payment must be received within the time-period prescribed, failing which there will be a recovery along with interest. However, the notification is awaited

Q. Reconciliation Statement and GST Audit

- Requirement of getting books audited under GST has been done away with
- Provision for self-certified reconciliation of Annual Return with Audited Financial Statements introduced
- Commissioner may exempt a class of taxpayers from the requirement of filing the annual returns

R. Supplies between a Company and its Member

- Supply includes transaction between persons and its members
- As per a new provision the definition of 'Supply' has been broadened to include transactions between a Person (other than individual) and its members for cash, deferred payment etc. and taxed accordingly
- It is now evident that the scope of 'Supply' includes transactions between the member and its company
- However, GST shall be applicable on such transactions

S. Miscellaneous Provisions:

- Seizure and confiscation of goods in transit is now a separate proceeding
- It is no longer a part of section 74
- Section 74 deals with cases of
 - Non-payment of taxes
 - Short-payment of taxes involving fraud or suppression of facts
- Hence, the entire proceeding is different from Recovery of Tax
- Self-assessed tax now includes invoices declared in GSTR-1 even if tax has not been paid on such invoices in GSTR-3B
- Jurisdictional Commissioner is now empowered to call for information from **any person** as against the earlier provision to call only the **concerned person**
- An opportunity of being heard to the **concerned person** is being provided for using the information obtained under sections 150/151 for any proceedings
- Jurisdictional Commissioner will be able to exercise powers under section 151 to call for information

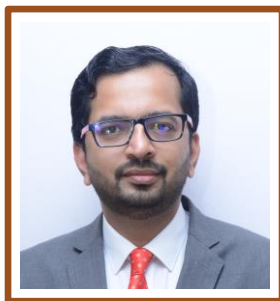
Central Sales Tax

T. CST Amendments

- Under section 8 of Central Sales Tax Act, 1956, Form "C" can be issued only in cases where the Registered person:
 - Resells the goods so procured
 - Utilises the same in manufacture, processing and sale of only those goods currently covered under CST
- Goods covered under CST include:
 - Petroleum Crude
 - High Speed Diesel
 - Petrol
 - Natural Gas
 - Aviation Turbine Fuel
 - Alcohol for Human Consumption

Important Government Statements:

1. MACRO-ECONOMIC FRAMEWORK STATEMENT 2021-22
available at: <https://www.indiabudget.gov.in/doc/frbm1.pdf>
2. Relevant Notifications are available at:
<https://www.indiabudget.gov.in/doc/cen/explanatorynote.pdf>
3. The sources referred to are primarily from the Government Budget site and speech of the Hon'ble Finance Minister. However, various sites available in the public domain have also been referred to



GST- ON BEAT, OFF-BEAT AND BACK BEAT

GST ON RESIDENTIAL WELFARE ASSOCIATION, FOLLOWING ADVANCED RULING: TO BE OR NOT TO BE?

CMA (Dr.) Ashish P. Thatte

Council Member, The Institute of Cost Accountants of India

During Lock-down we have realized that rules must be followed to avoid infection. Anyhow its rule of life that Rule should be followed written or otherwise. However time comes when you get confused what is to be followed? Without guessing further let's understand the Advance Ruling Pronounced in the year 2019; the case law is for **Prestige South Ridge Apartment Owner's Association**. Firstly we will see what is decided in the case.

The applicant [Apartment Owners Association] is engaged in providing maintenance or repair of the common area of the apartments and surrounding area viz. corridors, pathways, gardens, clubhouse, swimming pool, lifts, etc. It also provides lighting in common area, undertakes periodic upkeep of equipment, etc. in the play area, etc. It collects monthly subscription as maintenance charges.

It sought advance ruling in respect of the following questions:

1. Whether the activity of procuring goods and services from third parties for upkeep and maintenance of apartments and collecting the monies from its members to pay third party vendors is an activity liable to GST.
2. If liable to GST, whether the exemption Entry No. 77 of Notification No. 12/2017 - Central Tax (Rate), dated 28-6-2017 apply for maintenance charges collected from members.
3. If exemption is available, whether it is available on per member basis or per flat basis, as some members could have more than one flat.
4. Whether the exemption as per Entry No. 77 of Notification No. 12/2017 - Central Tax (Rate), dated 28-6-2017 is a standard exemption that can be claimed irrespective of amount collected towards maintenance, i.e., if maintenance charges from a member for a month is Rs. 10,000, whether Rs. 10,000 liable to GST or Rs. 2,500 (Rs. 10,000 - 7,500) liable to GST.
5. Whether the electricity charges paid to BESCOM (electricity supply authority) for the power consumed towards common facilities and separately recovered from members liable to GST.-
6. Whether the corpus/sinking fund collected from members liable to GST. - **Critical Point**

We will see this judgement and commentary point by point.

- (1) Whether the activity of procuring goods and services from third parties for upkeep and maintenance of apartments and collecting the money from its members to pay third party vendors is an activity liable to GST.- *As observed in various cases that repairs and upkeep of common area which belong to all Apartment Owners is performed by Apartment hence its business services and must fall under ambit of GST. Section 7 (1) of the CGST Act deals with scope of supply and stipulates various other forms of Supply. It is observed that Association of Persons has a legal existence and is different from its members. Also term Business includes the provision, by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members. From the above its amply clear that Activities of Apartment Owner/ Co-operative Societies are included in the ambit of GST.*
- (2) If liable to GST, whether the exemption Entry No. 77 of Notification No. 12/2017 - Central Tax (Rate), dated 28-6-2017 apply for maintenance charges collected from members.- *The applicant is a non-profit organisation and is registered under the Karnataka Apartment Owners Association Act,*

1972, The applicant provides services only to its members and collects the share of contribution or reimbursement of charges, The recipients of services provided by the applicant are its own members i.e. members of a residential complex. In view of the above, the exemption under entry number 77 of Notification No. 12/2017 - Central Tax (Rate), dated 28.06.2017 as amended by Notification No. 2/2018 - Central Tax (Rate), dated 25.01.2018 is available for an amount, up to Rs. 7,500/- per month per member, collected for sourcing of goods or services from a third person for common use of the members

- (3) If exemption is available, whether it is available on per member basis or per flat basis, as some members could have more than one flat: - Circular No. 109/28/2019- GST dated 22.07.2019 wherein the similar case is disclosed. From the paragraph in this Circular the above question is answer directly. As per general business sense, a person who owns two or more residential apartments in a housing society or a residential complex shall normally be a member of the RWA for each residential apartment owned by him separately. The ceiling of Rs. 7500/- per month per member shall be applied separately for each residential apartment owned by him. For example, if a person owns two residential apartments in a residential complex and pays Rs. 15000/- per month as maintenance charges towards maintenance of each apartment to the RWA (Rs. 7500/- per month in respect of each residential apartment), the exemption from GST shall be available to each apartment.
- (4) Whether the exemption as per Entry No. 77 of Notification No. 12/2017 - Central Tax (Rate), dated 28-6-2017 is a standard exemption that can be claimed irrespective of amount collected towards maintenance, i.e., if maintenance charges from a member for a month is Rs. 10,000, whether Rs. 10,000 liable to GST or Rs. 2,500 (Rs. 10,000 - 7,500) liable to GST. : - In the same above mentioned circular this point is covered in paragraph 5 very clearly. The exemption from GST on maintenance charges charged by a RWA from residents is available only if such charges do not exceed Rs. 7500/- per month per member. In case the charges exceed Rs. 7500/- per month per member, the entire amount is taxable. For example, if the maintenance charges are Rs. 9000/- per month per member, GST @18% shall be payable on the entire amount of Rs. 9000/- and not on [Rs. 9000 - Rs. 7500] = Rs. 1500/- . From the discussion it is clear that entire amount is getting chargeable to GST. However Department should seriously consider this clause in future for giving exemption of Rs. 7500 from amount if charged higher.
- (5) Whether the electricity charges paid to BESCO (electricity supply authority) for the power consumed towards common facilities and separately recovered from members liable to GST: - There is difference between paid on behalf of someone and paid as common charges. Like mainly Property Taxes are charged to Apartment Owners for their own residence/ flat and also for common areas. The point here is when RWA/ CHS acts as agent to collect taxes charges on behalf of any agency then it should not be charged to GST or not even to be added in the limit of Rs. 7500. But when any common charges are recovered from owners then they should be considered as upkeep and maintenance of common area. Hence Electricity charges which might have been shown separately may have to be added in Maintenance charges. After adding the same exemption limits or taxability may be calculated. In this specific case RWA/CHA has also given their sample invoice for the consideration for advance ruling.
- (6) Whether the corpus/sinking fund collected from members liable to GST:- This is the case wherein some difference of opinion can be identified. If we refer FAQ bearing F No. 332/04/2017- TRU having subject FAQ on levy of GST on supply of services to the cooperative society Answer to Question No. 1 has the following statement **‘3.Sinking fund, repairs & maintenance fund, car parking charges, Non- occupancy charges or simple interest for late payment, attract GST, as these charges are collected by the RWA/Co-operative Society for supply of services meant for its members.’** Whereas the advance ruling has the following comments ‘

11.9. The sixth question is related to applicability of tax on the Corpus/Sinking Fund. The applicant collecting the amounts towards corpus/sinking fund for future supply of services meant for its members. It is a fact that the corpus fund or sinking fund is mandatory under the Bye-laws of the Co-operative Societies/Resident Welfare Associations and is in the nature of a deposit towards unforeseen events or planned events. Clause (31) of section 2 of the CGST Act, 2017 defines the term "consideration" which is as under:

‘(31) "Consideration" in relation to the supply of goods or services or both includes —

(a) Any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;'

The proviso to the above clause states that the deposit given in respect of a future supply shall not be considered as payment made for such supply until the supplier applies such deposit as consideration. In the instant case the corpus/sinking fund so collected is the amount collected towards the future supply of service and accordingly gets applied as consideration towards supply of services only at the time of actual supply of services. Therefore the amounts collected towards Corpus/Sinking Fund do not form part of consideration towards supply of services at the time of collection and hence is are not liable to GST, at the time of collection. However the amounts so utilized for provision of service are liable to tax at the time of actual supply of service.

From the above paragraphs in FAQ and decision of Advance Ruling are totally different and while choosing one has to understand that Advance Ruling is for specific case whereas FAQs are for all in general. Hence according to me FAQ should prevail. There is another reason that GST to be charged as and when it is collected as it will be included in overall limit of 7500 (5000 earlier) also while charging GST at the time of usage means huge amount may be charged as Sinking fund is utilized for major repairs, demolition etc.

Advance Ruling authority is not an adjudicating authority. The definition of “Adjudicating Authority” as defined in Section 2 (4) of CGST ACT, 2017 excludes Advance Ruling Authority (Both the Authority for Advance Ruling and the Appellate Authority for Advance Ruling). Advance Ruling will be binding only on the applicant who has sought for advance ruling. Advance ruling will be binding only on the concerned officer or the jurisdictional officer in respect of the applicant.

References:

[2019] 110 taxmann.com 235 (AAR - KARNATAKA)/[2019] 30 GSTL 107 (AAR - KARNATAKA).



ANALYSIS ON GST PROPOSALS IN FINANCE BILL 2021

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Finance Bill, 2021 – The GST perspective?

Key Amendments in CGST Act, 2017 vide Finance Bill, 2021

Sr. No.	Section No.	Type of Amendment	Existing Provisions	Proposed Amendment	Author's Comment
1	Section 7(1)(aa)	Inserted	N/A	Insertion: (aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration. Explanation.—For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;”	The Apex Court in the case of Calcutta Club under the erstwhile Service tax regime held that there cannot be the sale of goods or provision of services between the unincorporated private clubs/ associations and its members owing to the principle of mutuality which treats such clubs/ associations and its members as the same person. Stress: The entry has been made under section 7 and under schedule I, thus it can be argued that one person cannot give a consideration to one oneself. The explanation acknowledges the fact that the supply between the member and the club are effectively the same person. This concept has been introduced without amending the CoI, as the CoI does not provide for any deeming fiction for the term 'Supply', unlike 46th CoI Amendment.
2	Section 16(2)(aa)	Inserted	N/A	(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;	As per 29th GST council meeting, it was already in place to introduce ITC availment with GSTR 1 linkage. [Refer Para 4.11] Whether the provision as introduced is prospective or retrospective, is yet to be clarified.
3	Section 35(5)	Omitted	(5) Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 and such other	N/A	Keeping emotions aside for a moment, additional tax and interest collected through GSTR 9 – Rs. 3176 crore and 575.76 crore respectively, whereas additional tax and interest collected through GSTR 9C – Rs. 392 crore and Rs. 81.16 crore respectively. (source: GST Council meeting)

			documents in such form and manner as may be prescribed		minutes). If we talk about figures, then what value addition did Audit bring to the table of the Government is to be thought about, apart from negative feedback and extension of time limit of 2017-18 by 7 times?
4	Section 44	Substituted	Provided that nothing contained in this sub-section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities (1) Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year: Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual return for such class of registered persons as may be specified therein: Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner. (2) Every registered person who is required to get his accounts audited in accordance with the provisions of sub-section (5) of section 35 shall furnish, electronically, the annual return under sub-section (1) along with a copy of the audited annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year with the audited annual financial statement, and such other particulars as may be prescribed. Explanation.- For the purposes of this section, it is hereby declared that the annual return for the period from the 1st July, 2017 to the 31st March, 2018 shall be furnished on or before the 31st January, 2020 and the annual return for the period from the 1st April, 2018 to the 31st March, 2019 shall be furnished on or	Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person shall furnish an annual return which may include a self-certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed: Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return under this section: Provided further that nothing contained in this section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.”.	The responsibility of reconciliation has been shifted from the auditor to the Tax Payer. This proposition is good for professionals because now it is the duty and responsibility of tax payer to reconcile and furnish and not the responsibility of the auditor anymore, if we keep aside the negative traits of ‘revenue loss’ or ‘loss of brand image of the professionals’

			before the 31st December, 2020.		
5	50(1) proviso	Substituted	Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.	Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be payable on that portion of the tax which is paid debiting the electronic cash ledger.	The existing proviso was inserted from 01.08.2019, can it be substituted retrospectively from 01.07.2017? Taxpayers who have already paid interest on gross value in previous instances should opt for refund once the provision is made effective.
6	Section 74 Explanation – 1(ii)	Substituted	(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.	(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122 and 125 are deemed to be concluded.	Section 129 & 130 have been given a separate identity and and its relation with Section 74 has been omitted. In other words, penal consequences under section 129 & 130 would need to be dealt with separately.
7	Section 75(12)	Inserted	N/A	Explanation.--For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.	The Hon'ble Madhya Pradesh HC in the case of Kabeer Realty Private Limited, upheld the action of the department of initiating recovery without determining tax under section 73 or 74 as the tax was duly declared and accepted by taxpayer in its GSTR 1.
8	Section 83(1)	Substituted	Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.	Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.	Chapter – XII : Assessment Chapter – XIV: Inspection, Search, Seizure & Arrest Chapter – XV: Demand & Recovery Stress: No mechanism to provide provisional attachment in respect of persons mentioned above.
9	Section 107(6)	Inserted	NA	Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty- five per cent. of the penalty has been paid by the appellant.	The pre-deposit prior to the amendment was only 10% of Tax Liability in case of dispute which is now proposed to be 25% of the penalty amount in case of detention and seizure of conveyance and goods during transit. However, no mention of pre-deposit in case of second appeal is made.
10	Section 129(1)(i) (a)(b)	Substituted	(a) on payment of the applicable tax and penalty equal to one hundred per cent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent of the value of	(a) on payment of penalty equal to two hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees,	Prior to amendment, liable to pay 200% (Tax + Penalty) and now after amendment also, liable to pay 200%. Prior to amendment: 1+1 = 2 After amendment: 2 x 1 = 2

			goods or twenty five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty; (b) on payment of the applicable tax and penalty equal to the fifty per cent of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;	whichever is less, where the owner of the goods comes forward for payment of such penalty; (b) on payment of penalty equal to fifty per cent. of the value of the goods or two hundred per cent. of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;	
11	Section 151	Substituted	(1) The Commissioner may, if he considers that it is necessary so to do, by notification, direct that statistics may be collected relating to any matter dealt with by or in connection with this Act. (2) Upon such notification being issued, the Commissioner, or any person authorised by him in this behalf, may call upon the concerned persons to furnish such information or returns, in such form and manner as may be prescribed, relating to any matter in respect of which statistics is to be collected.	The Commissioner or an officer authorised by him may, by an order, direct any person to furnish information relating to any matter dealt with in connection with this Act, within such time, in such form, and in such manner, as may be specified therein.	It is pertinent to note that, information can be sought from any person, whether employee, consultant, auditor, director, and the list goes on. To a certain extent it takes the colour of summon proceedings.

Key Amendment in IGST Act, 2017 vide Finance Bill, 2021

Sr. No.	Section No.	Type of Amendment	Existing Provisions	Proposed Amendment	Author's Comment
1	Section 16 (3)	Substituted	(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:-- (a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or (b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.	(3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed: Provided that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in such manner as	Prior to the amendment, the exporters were having two options: (i) to export with payment of IGST and claim refund thereof; or (ii) to export without payment of Tax under LUT and claim refund thereof. After the amendment, export could be made only under LUT i.e without payment of tax, except for notified class of persons/goods/services. Thus, this amendment has taken away the refund on capital goods when made under LUT. Moreover, Rule 96B now has a statutory underlying provision.

				may be prescribed (4) The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify-- (i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid; (ii) a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.”.	
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AMENDMENTS TO PROVISIONS OF INCOME ESCAPING ASSESSMENT & SEARCH ASSESSMENTS WITH REVISED TIME FOR ISSUE OF NOTICE – UNION BUDGET 2021

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Under the Act, the provisions related to income escaping assessment provide that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may assess or reassess or re-compute the total income for such year under section 147 of the Act by issuing a notice under section 148 of the Act. However, such reopening is subject to the time limits prescribed in section 149 of the Act.

In cases where search is initiated u/s 132 of the Act or books of account, other documents or any assets are requisitioned under section 132A of the Act, assessment is made in the case of the assessee, or any other person, in accordance with the special provisions of sections 153A, 153B, 153C and 153D, of the Act that deal specifically with such cases. These provisions were introduced by the Finance Act, 2003 to replace the block assessment under Chapter XIV-B of the Act. This was done due to failure of block assessment in its objective of early resolution of search assessments. Also, the procedural issues related to block assessment were proving to be highly litigation-prone. However, the experience with this procedure has been no different. Like the provisions for block assessment, these provisions have also resulted in a number of litigations.

Due to advancement of technology, the department is now collecting all relevant information related to transactions of taxpayers from third parties under section 285BA of the Act (statement of financial transaction or reportable account). Similarly, information is also received from other law enforcement agencies. This information is also shared with the taxpayer through Annual Information Statement under section 285BB of the Act. Department uses this information to verify the information declared by a taxpayer in the return and to detect non-filers or those who have not disclosed the correct amount of total income. Therefore, assessment or reassessment or re-computation of income escaping assessment, to a large extent, is information-driven.

In view of above, there is a need to completely reform the system of assessment or reassessment or re-computation of income escaping assessment and the assessment of search related cases.

The Bill proposes a completely new procedure of assessment of such cases. It is expected that the new system would result in less litigation and would provide ease of doing business to taxpayers as there is a reduction in time limit by which a notice for assessment or reassessment or re-computation can be issued. The salient features of new procedure are as under:-

- (i) The provisions of section 153A and section 153C, of the Act are proposed to be made applicable to only search initiated under section 132 of the Act or books of accounts, other documents or any assets requisitioned under section 132A of the Act, on or before 31st March 2021.
- (ii) Assessments or reassessments or in re-computation in cases where search is initiated under section 132 or requisition is made under 132A, after 31st March 2021, shall be under the new procedure.
- (iii) Section 147 proposes to allow the Assessing Officer to assess or reassess or re-compute any income escaping assessment for any assessment year (called relevant assessment year).
- (iv) Before such assessment or reassessment or re-computation, a notice is required to be issued under section 148 of the Act, which can be issued only when there is information with the

Assessing officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year. Prior approval of specified authority is also required to be obtained before issuance of such notice by the Assessing Officer.

- (iv) It is proposed to provide that any information which has been flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board shall be considered as information which suggests that the income chargeable to tax has escaped assessment. The flagging would largely be done by the computer based system.
- (v) Further, a final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been in accordance with the provisions of the Act shall also be considered as information which suggests that the income chargeable to tax has escaped assessment.
- (vi) Further, in search, survey or requisition cases initiated or made or conducted, on or after 1st April, 2021, it shall be deemed that the Assessing officer has information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or requisition is made or any material is seized or requisitioned or survey is conducted.
- (vii) **New Section 148A of the Act proposes** that before issuance of notice the Assessing Officer shall conduct enquiries, if required, and provide an opportunity of being heard to the assessee. After considering his reply, the Assessing Office shall decide, by passing an order, whether it is a fit case for issue of notice under section 148 and serve a copy of such order along with such notice on the assessee. The Assessing Officer shall before conducting any such enquiries or providing opportunity to the assessee or passing such order obtain the approval of specified authority. However, this procedure of enquiry, providing opportunity and passing order, before issuing notice under section 148 of the Act, shall not be applicable in search or requisition cases.
- (viii) The time limitation for issuance of notice under section 148 of the Act is proposed to be provided in section 149 of the Act and is as below:
 - in normal cases, no notice shall be issued if three years have elapsed from the end of the relevant assessment year. Notice beyond the period of three years from the end of the relevant assessment year can be taken only in a few specific cases.
 - in specific cases where the Assessing Officer has in his possession evidence which reveal that the income escaping assessment, represented in the form of asset, amounts to or is likely to amount to fifty lakh rupees or more, notice can be issued beyond the period of three year but not beyond the period of ten years from the end of the relevant assessment year;
 - Another restriction has been provided that the notice under section 148 of the Act cannot be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit prescribed under the provisions of clause (b), as they stood immediately before the proposed amendment.
 - Since the assessment or reassessment or re-computation in search or requisition cases (where such search or requisition is initiated or made on or before 31st March 2021) are to be carried out as per the provision of section 153A, 153B, 153C and 153D of the Act, the aforesaid time limitation shall not apply to such cases.
 - It is also proposed that for the purposes of computing the period of limitation for issue of section 148 notice, the time or extended time allowed to the assessee in providing opportunity of being heard or period during which such proceedings before issuance of notice under section 148 are stayed by an order or injunction of any court, shall be excluded. If after excluding such period, time available to the Assessing Officer for passing order, about fitness of a case for issue of 148 notice, is less than seven days, the remaining

time shall be extended to seven days.

Note: The time limit to re-open income tax assessment cases has been reduced to 3 years from 6 years. Also, in case of serious tax evasion, the assessment can be reopened until 10 years, only when concealment of income is more than 50 lakh.

- (k) The specified authority for approving enquiries, providing opportunity, passing order under section 148A of the Act and for issuance of notice under section 148 of the Act are proposed to be —
- (a) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;
 - (b) Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year.
- (x) Once assessment or reassessment or re-computation has started the Assessing officer is proposed to be empowered (as at present) to assess or reassess the income in respect of any issue which has escaped assessment and which comes to his notice subsequently in the course of the proceeding under this procedure notwithstanding that the procedure prescribed in section 148A was not followed before issuing such notice for such income.

These amendments will take effect from 1st April, 2021.

Text of the Relevant Clause of the [Finance Bill 2021](#) is reproduced below:

1. Clause 35 of the Bill seeks to amend section 147 of the Income-tax Act relating to income escaping assessment.

It is proposed to substitute the said section so as to provide that if any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing officer may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for such assessment year.

This amendment will take effect from 1st April, 2021.

2. Clause 36 of the Bill seeks to amend section 148 of the Income-tax Act relating to issue of notice where income has escaped assessment.

It is proposed to substitute the said section so as to provide that before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice along with a copy of order passed under clause (d) of section 148A, requiring him to furnish within such period, as may be specified in such notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139, provided that no notice under the said section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and prior approval of the specified authority to issue such notice has been obtained by the Assessing Officer. The proposed Explanation 1 to the said section provides for the purposes of the said section and section 148A, that information which suggests that the income chargeable to tax has escaped assessment means any information flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time or any final objection raised by

the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act. The proposed Explanation 2 provides that where (i) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April, 2021, in the case of the assessee; or (ii) survey is conducted under section 133A in the case of the assessee; or (iii) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or (iv) the Assessing officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee, the Assessing officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person. The proposed Explanation 3 provides that the "specified authority" shall mean the specified authority referred to in section 151.

This amendment will take effect from 1st April, 2021.

3. Clause 37 of the Bill seeks to insert a new section 148A in the Income-tax Act relating to Conducting inquiry, providing opportunity before issue of notice under section 148.

It is proposed to insert a new section 148A, which seeks to provide that the Assessing Officer shall, before issuing any notice under section 148, – (a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that income chargeable to tax has escaped assessment; (b) provide an opportunity of being heard to the assessee, with the prior approval of specified authority, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a); (c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b); and (d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires, provided that the provisions of this sub-section shall not apply in a case, where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of the assessee on or after the 1st day of April, 2021 or the Assessing officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under section 132 or requisitioned under section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or the Assessing officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relates to, the assessee. Explanation 3 to the said section provides that "Specified authority" shall mean specified authority referred to in section 151.

This amendment will take effect from 1st April, 2021.

4. Clause 38 of the Bill seeks to amend section 149 of the Income-tax Act relating to time limit for notice.

It is proposed to substitute the said section so as to provide that no notice under section 148 shall be issued for the relevant assessment year – (a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b); (b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of accounts or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that

year. Provided that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit prescribed under the provisions of clause (b), as they stood immediately before the commencement of the Finance Act, 2021. Further, the provisions of this section shall not apply to cases where a notice under section 153A or section 153C read with section 153A is required to be issued in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A on or before the 31st day of March, 2021 and for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice under clause (b) of section 148A; or the period during which the proceeding under section 148A is stayed by an order or injunction of any court shall be excluded and also where immediately after the exclusion of such period, the period of limitation available to the Assessing Officer for passing an order under clause (d) of section 148A is less than seven days, such remaining period shall be extended to seven days and the period of limitation in sub-section (1) shall be deemed to be extended accordingly.

This amendment will take effect from 1st April, 2021.

5. Clause 39 of the Bill seeks to substitute of a new section for section 151 relating to sanction for issue of notice.

It is proposed to substitute the said section so as to provide that for the purpose of section 148, specified authority shall be (i) Principal Commissioner of Income-tax or Principal Director of Income-tax or Commissioner of Income-tax or Director of Income-tax, if three years or less than three years have elapsed from the end of the relevant assessment year; (ii) Principal Chief Commissioner of Income-tax or Principal Director General of Income-tax, or where there is no Principal Chief Commissioner of Income-tax or Principal Director General of Income-tax, Chief Commissioner of Income-tax or Director General of Income-tax, if more than three years have elapsed from the end of the relevant assessment year.

This amendment will take effect from 1st April, 2021.

6. Clause 40 of the Bill seeks to amend section 151A of the Income-tax Act relating to faceless assessment of income escaping assessment.

It is proposed to amend the said section so as to provide that conducting of enquiries or issuing show-cause notice or passing order under section 148A (before issuance of notice under section 148) in the scheme to be notified as specified under the said section.

This amendment will take effect from 1st April, 2021.

7. Clause 42 of the Bill seeks to amend section 153A of the Income-tax Act relating to assessment in case of search or requisition.

It is proposed to amend the said section so as to provide that the search or requisition shall only apply where search or requisition is made on or before 31st March, 2021. Consequently, assessments under section 153A and 153C shall not be made in respect of a search or requisition made on or after 1st April, 2021.

This amendment will take effect from 1st April, 2021.

8. Clause 43 of the Bill seeks to amend section 153C of the Income-tax Act relating to assessment of income of any other person.

It is proposed to amend the said section so as to insert sub-section (3) therein to provide that nothing contained in the said section shall apply in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A on or after 1st day of April, 2021.

This amendment will take effect from 1st April, 2021.



A BRIEF ABOUT PROPOSALS FOR CHARITABLE TRUSTS AND INSTITUTIONS – UNION BUDGET 2021

CMA Ajith Sivasdas

B Com, ACMA, ACA, Adv Dip MA, CIMA (UK)

Charity is a human instinct that drives man to think favourably of others and do them good. In our country the benevolent role played by charitable and religious trusts has historical background and their existence has originated from the basic cultural traits peculiar to us.

The Direct Taxes Enquiry Committee, in its final report published in December, 1971, had observed that "by tradition, private philanthropy in our country has been playing a very special and prominent role in enriching our cultural heritage and in catering to the education, medical, socio-economic and religious needs of our people. In so doing, it has supplemented the work of a Welfare State, and the State, in turn has recognized its contribution by giving generous tax treatment to the donations of Micro, Small and medium philanthropic institutions and also to the income thereof applied for public, religious or charitable purposes."

The law of taxation of charitable trusts and institutions is highly complex and has always been the subject matter of frequent amendments due to the fact that the medium of charitable institutions is widely perceived as a handy tool for tax planning. Recently the law relating to taxation of educational institutions and hospitals has undergone drastic changes and the Government is keen to bring all the charitable institutions claiming exemption of their income under the Income-tax Act into tighter scrutiny in the coming years.

Due to their distinct organisation and objective entire income of such charitable or religious trusts are taxed as per the provisions of section 11-13 of the Income Tax Act, 1961, which provides for various tax benefits to them.

Proposals in Union Budget 2021.

There are plethora of amendments regarding the provisions for charitable trusts in recent budgets and this year's is also not an exemption to this. The cardinal error of our times is to mistake amendment for improvement and change for progress. The extract of Finance Bill 2021 regarding the proposed changes for charitable trusts are as follows:

In section 11 of the Income-tax Act, with effect from the 1st day of April, 2022,--

(a) in sub-section (1),--

(i) in clause (d), for the word "institution", the words, brackets and figures "institution, subject to the condition that such voluntary contributions are invested or deposited in one or more of the forms or modes specified in sub-section (5) maintained specifically for such corpus" shall be substituted;

(ii) after Explanation 3, the following Explanations shall be inserted, namely:--

"Explanation 4.--For the purposes of determining the amount of application under clause (a) or clause

(b),-- (i) application for charitable or religious purposes from the corpus as referred to in clause (d) of this subsection, shall not be treated as application of income for charitable or religious purposes:

Provided that the amount not so treated as application, or part thereof, shall be treated as application for charitable or religious purposes in the previous year in which the amount, or part thereof, is invested or deposited back, into one or more of the forms or modes specified in sub-section (5) maintained specifically for such corpus, from the income of that year and to the extent of such investment or deposit; and

(ii) application for charitable or religious purposes, from any loan or borrowing, shall not be treated as application of income for charitable or religious purposes: Provided that the amount not so treated as application, or part thereof, shall be treated as application for charitable or religious purposes in the previous

year in which the loan or borrowing, or part thereof, is repaid from the income of that year and to the extent of such repayment.

Explanation 5.—For the purposes of this sub-section, it is hereby clarified that the calculation of income required to be applied or accumulated during the previous year shall be made without any set off or deduction or allowance of any excess application of any of the year preceding the previous year.”; (b) in sub-section (2), in the Explanation, after the figures and letters “12AA”, the words, figures and letters “or section 12AB” shall be inserted; (c) in sub-section (3), in clause (d), after the figures and letters “12AA”, the words, figures and letters “or section 12AB” shall be inserted.

Primarily related to the treatment of the corpus donation in the hands of the trust. Next is related to the treatment of Expenditure incurred out of borrowed funds. Final one is related to treatment of excess application of earlier years for adjustment in subsequent years.

A. Corpus Donations:

Trusts registered u/s 12AB are not allowed to accumulate more than 15% of their income (or in specific cases, accumulate to specific purpose up to 5 years) from the voluntary contributions other than corpus donations referred above in terms of Section 119 (1)(b) read with clause (2) of explanation-1 to Section 11.

As far as corpus donation is concerned, presently corpus donations received by trusts, institutions funds etc. is subject to the tax treatment as under:

1. a) Explanation to third proviso to Section 10(23C) provides that income of the fund or trust or institution or any university or any other educational institution or any hospital or other medical institution, shall not include income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus.

b) Section 11(1)(d) provides that voluntary contributions made with specific direction that they shall form part of the corpus of the trust or institution shall not be included in the total income of the trust or institution.

Though corpus donation is exempt, Trusts were eligible to claim it as part of the mandatory 85% application from income other than such corpus. Such treatment was effectively resulting in double deduction in the hands of the trusts. In order to ensure that there is no double claim by charitable institution while calculating application or accumulation, following amendments are proposed by way of insertion of sub clause(a) to explanation 2 to section 10(23C) and sub clause (a) or clause (b) of section 11:

2. Voluntary contributions made with a specific direction that it shall form part of Corpus are required to be invested or deposited in one or more of the forms or modes specified in sub section(5) maintained specifically for such corpus.
3. Application for charitable or religious purpose from the corpus as referred to in clause (d) of this subsection, shall not be treated as application of income for charitable or religious purposes. However, the amount not so treated as application, or part thereof, will be treated as application for charitable or religious purposes in the previous year in which the amount, or part thereof, is invested or deposited back, in to one or more of the forms or modes specified in sub section (5) maintained specifically for such corpus, from the income of that year and to the extent of such investment or deposit.

The modes in which income shall be accumulated for specific purpose are:

- Investment in government saving certificate/UTI
- Deposit in post office savings bank/scheduled bank.
- Investment in immovable property.
- Deposit with or investment in bonds of a public co. having main object of providing long term finance for urban infrastructure/industrial development/ residential house, in India
- Investment in Company debentures fully and unconditionally guaranteed by Central or State Government
- Investment or deposit in public sector company

B. Application in form of revenue/ capital expenditure out of Loans & borrowed funds:

There are instances where charitable activity is carried out by borrowed funds. At the first instance, when the expenses were incurred the benefit of application of income is taken by the trust. Few trusts were also taking further deduction at the time of repayment of the loan. Effectively, few trusts were claiming dual deduction in such cases. The matter was full of litigation and disputes which is now put to an end by Budget – 2021 wherein amendments are proposed by way of insertion of sub clause(b) to explanation 2 to section 10(23C) and sub clause (ii) to explanation 4 to section 11 for the purposes of determining the amount of application under clause (a) or clause (b) of section 11 which provides as under:

“Application from loans and borrowings shall not be considered as application for charitable or religious purposes for the purposes of third proviso of clause (23C) and clause (a) and (b) of Section 11. However, when loan or borrowing is repaid from the income of the previous year, such repayment shall be allowed as application in the previous year in which it is repaid to the extent of such repayment”

C. Adjustment of Previous years Excess Application against current years income:

“In order to provide certainty, it is proposed to clarify that charitable trusts shall not be permitted to claim carry forward of loss. However, the loan repayment and replenishment of corpus shall be allowed as application,” the Finance Minister, Nirmala Sitharaman in the budget speech said.

The Honourable Judiciary have already verdict that the trusts are eligible to set off excess application of earlier years against income of subsequent years. The issue already settled by the judiciary has been nullified by the proposals in Finance Bill 2021 by introducing new explanation -2 to Section 10(23C) and explanation – 5 to Section 11 as under:

1. For the computation of income required to be applied or accumulated during the previous year no set off or deduction or allowance of any excess application, of any of the year preceding the previous year shall be allowed.
2. This amendment have overruled the decision of Supreme Court in the case of CIT vs. Rajasthan and Gujarat Foundation,(2018) 300 CTR where in it was held that the deficit arising out excess of expenditure over income during the earlier previous year can be set off against the surplus income over expenditure relating to subsequent year.

Beneficial Amendment

The finance bill read as follows:

in clause (23C),-- (I) in sub-clause (iiia), for the words “receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed”, the words “receipts of the person from such university or universities or educational institution or educational institutions do not exceed five crore rupees” shall be substituted; (II) in sub-clause (iiiae),-- (A) for the words “receipts of such hospital or institution do not exceed the amount of annual receipts as may be prescribed; or”, the words “receipts of the person from such hospital or hospitals or institution or institutions do not exceed five crore rupees.” shall be substituted;

The prescribed limit for exemption to any person on behalf of university or educational institution/ hospital has been enhanced. The exemption is available to the referred entities if their annual receipt does not exceed the prescribed amount of Rupees One Crore. It is proposed to increase the prescribed limit from One Crore to five crore.

Conclusion

In the budget memorandum the proposed amendments relating to charitable trusts have been mentioned as ***Rationalisation of the provision of Charitable Trust and Institutions to eliminate possibility of double deduction while calculating application or accumulation.*** And there by the proposed amendment may check the evasion of taxes and malpractices by mis utilising the provisions. Since the tax concessions afforded to these institutions involve a sacrifice of public revenues, it became imperative to ensure that tax privileges are not abused and they are enjoyed only by those charitable and religious institutions, which deserve them.



BOLD STEP TOWARDS 5 TRILLION ECONOMY

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As promised by Finance Minister Shri Nirmala Sitharaman, this is truly a budget of a lifetime. It has taken acute care on all aspects of the economy and laid down the path for achieving the 5 trillion-dollar economy and position India as a global leader.

The budget has addressed the key economic and citizens requirement in a 6-pillar approach apart from increasing the ease of doing business with minimal compliance cost. Though it has not reduced the direct taxes, it has ensured that the people's incomes are generated by way of industrial activity and the farmers' income through various measures.

The budget laid stress on the focus area for bring back the economy on the trajectory path by classifying into different buckets

- Health and Wellbeing
- Physical and Financial Capital and Infrastructure
- Inclusive Development for Aspirational India
- Reinvigorating Human Capital
- Innovation and R&D
- Minimum Government, Maximum Governance

In the current pandemic like situation, the focus should be on health and wellbeing. The budget lays stress on this by allocating Rs 64,810 crores for the next 6 years, apart from the setting up of 9 Bio-Safety Level III laboratories and 4 regional National Institutes for Virology. More funds have been allocated for Nutrition as part of Mission Poshan 2.0 to be implanted in 112 aspirational districts. Setting up of 17,788 rural and 11,024 urban Health and Wellness Centres. The measures announced in the health and well-being is a two-pronged approach as it addresses the need of the research and improving immunity.

The budget laid down more focus on the capital expenditure, which is the need for the hour like allocation of funds for the development of roads and highway a staggering amount of Rs 1,08,230 & for railways Rs 1,07,100. Asset creation will always lead to more industrial activity, which will lead to more employment generation. The Government has addressed both the concerns in one go while channelizing the funds in the right direction. This reiterates the Government version of Jaan Hi to Jahan Hai, as the early lockdowns have helped in gearing up the medical infra and stop the spreading of the contagious disease and save human lives.

MSMEs are the backbone of the economy along with the agriculture sector. These two sectors are also well addressed, as the budget has announced a slew of measures for them, like increasing the import duties on products like steel screws, nuts, etc., to play a level playing field. The allocation to the MSMEs has been doubled and it is Rs 15,700 crores. Manufacturing is given a big flip in the budget as the Government has allocated Rs 1.97 lac crores for Production Linked Incentive for next 5 years. The Government has advocated about the doubling of the farmers' income of the farmers by 2022, and in that direction, the MSP outlay. To bring better realization to the farmers more than 1000 mandis will be integrated with e-NAM to bring in more transparency.

India can be another Silicon valley due to the younger workforce and talent. To encourage more start-ups, capital gains exemption on investment and tax holiday has been increased by a year to 31st March

2022. FinTech has played a key role during the pandemic, like increasing digital payments, processing, and disbursing business and personal loans. To provide a boost to the same, a world-class FinTech hub is being set up in the GIFT-IFSC.

An increase in ease of doing business attracts the much-required funds from foreign countries, and in that direction, the compliances have been relaxed. Various measures have been introduced like Faceless Income Tax Appellate Tribunals, Setting up of Dispute Resolution Committees, reduction of the time limit of re-opening of assessments from 6 years to 3 years and to be allowed only if there is evidence only undisclosed income is above Rs 50 lacs, increase the Income Tax Audit threshold from Rs 5 crores to Rs 10 crores if the entities are taking up to 95% of the transactions digitally. The Government has adopted the Carrot and Stick Theory for the trade and industry, one is by easing the compliances but at the same time coming harsh on the errant corporates like disallowing the employee contribution if they same is not deposited in time or provisional attachment of property if fake invoice transactions are more than Rs 2 crores.

The last pillar is Minimum Government, Maximum Governance and it is very apt as it ensures that ease of doing business. To attract foreign capital to meet our ambitious growth targets ease of doing business is the key. To promote the spirit of entrepreneurship and encourage more start-ups, the provisions of the Small Company has been relaxed by increasing the turnover to Rs 20 crores from Rs 2 Crores and the paid up capital to Rs 2 cores. Apart from this the provisions of the One Person Company has been also relaxed, Some of the other measures on the compliances front are

Goods & Service Tax

- Input Tax credit would be available only when the supplier would
- provide the details in its GSTR 1.
- Mandatory requirement of getting accounts audited and reconciled by CA/CMA has been removed.
- Retrospective amendment to charge interest on Net Cash Liability.
- Zero rate the supply of goods or services to a SEZ developer or a SEZ unit only when the said supply is for authorized operations
- Restrict the zero-rated supply on payment of integrated tax only to a notified class of taxpayers or notified supplies of goods or services and
- Link the foreign exchange remittance in case of export of goods with refund

Income Tax

- Senior citizens over 75 years age are exempted from filing of Income Tax Returns
- Time limit for sending the intimation from 1 year to 9 months (Section 143(1))
- Time limit for issue of notice from 6 months to 3 months (Section 143(2))
- Time limit for reopening of assessment from 6 years to 3 years except serious fraud cases. (Section 149)
- Tax Audit Limit Increased from 5 Crores to 10 Crores for assesses having 95% or more digital Transactions.
- Discontinuation of Income Tax settlement commission
- Advance tax liability on dividend only after declaration of dividend
- Affordable Housing Projects-Additional Interest deduction (80EEA) & Tax Holiday (80IBA) extended till 31.03.2022
- Income tax return will have pre filled data of Dividend, interest income, salary etc.
- Late deposit of PF employee contribution not allowed as deduction.
- No TDS on dividend income credited or paid to person as may be notified by the Central Government
- Interest on Provident Fund above 2.5 Lacs per year to be taxable u/s 10(11) & 10(12)
- In case of Non-Filers of ITR, assessee should deduct TDS at the rate higher of twice the rate or 5%

- Exemption u/s 10(10D) shall not apply to ULIP issued after 01.02.2021 if premium exceeds 2.5 Lacs per year
- Deprecation will not be allowed in case of Goodwill whether self-generated or acquired.

Corporate Law

- No restrictions on One Person Companies
- NRIs allowed to setup One Person Companies
- Decriminalisation of LLP Act, 2008
- Rationalization of Tribunals
- Launching MCA Version 3.0 – e-Scrutiny, e-adjudication and, Compliance management to be simplified.

The budget has focused in all aspects of the economic development in a balanced manner with the given conditions even though the fiscal deficit is pegged at 9.5% of GDP. The main reason for the Fiscal deficit increase is a whopping increase of 34% in the capital expenditure for 2020-21 and would reduce the fiscal deficit below 4.5 of the GDP by 2025-26. Overall, the budget has given a candy to all the citizens of the countries and has put the stock market on fire, as the BSE has gone up by 4k points and it will put the economy on the trajectory path. There is pie for the practising Cost Accountants also as the thrust has been laid on manufacturing and we as Cost Accountants can help in the nation building in the cost optimization for making our products competitive in the global market. As a Management Accountant we can help the new entities from preparation of the Detailed Project Reports to setting up of process and assisting them in the Go To Market Strategy.

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BUDGETARY ANALYSIS FOR 2021-22 ON MSME SECTOR

Team TRD

Micro, Small and Medium Enterprises (MSME) sector is one of the essential part and parcel for achieving socio-economic growth in India.

In the Union Budget 2021-22 on 1st February 2021 Hon'ble Finance Minister, Mrs Nirmala Sitharaman has announced multiple proposals for **MSMEs** to increase push towards **Atmanirbhar Bharat (self-reliant India)** by promoting domestic enterprises.

The vision of the Union Budget 2021-22 is to extend the goal of Atmanirbhar Bharat by increasing self-reliance and India's ability to become a global manufacturing hub across sectors.



Key Highlights Announcement on MSME Sectors in Union Budget 2021-22

Increase in Budgetary Outlay for MSME Sector

Rs. 15700 crores allocated to MSME- Double time allotment in this budget to MSME than previous year

Rs. 10000 crore corpus for provision of guarantee for borrowings

Rationalisation and Reduction of custom duties on various items as well as raw materials to boost up MSMEs

Provisions for Credit Guarantee Scheme for Subordinate Debt to MSMEs and Fund of Funds to provide financial succour and accessibility to MSMEs

Regulatory Initiatives Announced for MSME Sectors in Union Budget 2021-22

Proposal of creation of Asset Reconstruction Company Limited (ARCs) and Asset Management Company (AMCs) for enabling the banks to focus on the actual viability of MSME projects

Threshold Limit for Tax Audit enhanced from Rs.5 crore to Rs. 10 crore [where 95% of payments are digitised] to provide relief from compliance burden to a large section of MSMEs.

Time limit for re-opening cases has been proposed to reduce to 3 years except serious tax evasion cases (above Rs 50 Lakh) to bring down litigation.

Set up of Dispute Resolution Committee for taxpayers with taxable income up to Rs. 50 lakh and disputed income up to Rs. 10 lakh has been proposed to reduce existing litigation and prevent new disputes by settling the issue at the initial stage.

Changes to the Companies Act, 2013 to help MSMEs

1. A revised definition of Small Companies under Companies Act, 2013 has been declared by increasing their thresholds for

- Paid-up capital from "not exceeding Rs 50 Lakh" to "not exceeding Rs. 2 Crore"
- Turnover from "not exceeding Rs. 2 Crore" to "not exceeding Rs. 20 Crore".

2. Incentivizing the incorporation of one-person companies ('OPC') by

- Allow OPC to go without restrictions on turnover and capital.
- OPCs can convert to any other entity.
- Reducing the residency limit for an Indian citizen to set up an OPC from 182 days to 120 days.
- (d) NRIs can incorporate OPCs.

For Infrastructural development of MSMEs F.M has announced several measures

Funding will be increased for the **National Infrastructure Pipeline** to implement the following actions:

- Creation of institutional structures;
- Promotion of asset monetization, and
- Enhancing the share of capital expenditure in central and state budgets.

Last but not least, Micro, small and medium Enterprises (MSMEs) are the growth accelerators of the Indian economy, However, skilled and trained manpower is one of the main pillar for sustained growth in long run for any industry. In this connection F.M has announced realignment of National Apprenticeship Training Scheme (NATS) for providing post education apprenticeship, training of graduates and diploma holders in Engineering which will increase employability boost up MSMEs and Start Ups and elevate Indian Economy to become global.

ANALYSIS OF SECTION 194Q--PROPOSED IN BUDGET 2021-22

Team TRD

Whether TCS u/s 206C (1H) of Income Tax is to be collected on sales of goods above 50 lakhs as amended by Budget 2020 or TDS u/s 194Q is to be deducted by the buyer as proposed in Budget 2021?

As per Budget 2021, New Section 194Q has been proposed to be inserted which reads as under: -

'194Q. (1) Any person, being a buyer who is responsible for paying any sum to any resident (hereafter in this section referred to as the seller) for purchase of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year, shall, at the time of credit of such sum to the account of the seller or at the time of payment thereof by any mode, whichever is earlier, deduct an amount equal to 0.1 per cent. of such sum exceeding fifty lakh rupees as income-tax.

Explanation. For the purposes of this sub-section, "buyer" means a person whose total sales, gross receipts or turnover from the business carried on by him exceed Rs. 10 crores during the financial year immediately preceding the financial year in which the purchase of goods is carried out, not being a person, as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

(2) Where any sum referred to in sub-section (1) is credited to any account, whether called "suspense account" or by any other name, in the books of account of the person **liable to pay such income**, such credit of income shall be deemed to be the credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

(3) If any difficulty arises in giving effect to the provisions of this section, the Board may, with the previous approval of the Central Government, issue guidelines for the purpose of removing the difficulty.

(4) Every guideline issued by the Board under sub-section (3) shall, as soon as may be after it is issued, be laid before each House of Parliament, and shall be binding on the income tax authorities and the person liable to deduct tax.

This section is similar to section 206C(1H) which is applicable for collection of tax at source. The features of the proposed provisions are listed below:

Rate of TDS under section 194Q

- i. Buyer of all goods will be liable to deduct tax at source
 - @ 0.1% of sale consideration
 - exceeding INR 50 Lakhs in a Financial Year
- ii. Tax to be deducted @ 5%
 - if the seller does not provide PAN/Aadhar(as per Memorandum explaining the provisions in the Finance Bill, 2021).

Turnover for applicability of section 194Q

TDS obligation will be on buyers

who have gross receipts/turnover exceeding INR 10 Crores in preceding financial year

Conditions for applicability of section 194Q

- i. TDS obligation will arise
 - if the payment is made to a resident seller
- ii. No requirement of TDS u/s 194-Q on a transaction:
 - if TDS is deductible under any other provision or
 - TCS is collectible under section 206C [excluding 206C(1H)]

- iii. On a given transaction
 - either TDS u/s 194Q will apply
 - or
 - TCS u/s 206C(1H) will apply

Both TDS u/s 194Q and TCS u/s 206C(1H) will not apply on the same transaction
- iv. In case of potential overlap between the two provisions
 - TDS u/s 194Q will apply
 - and
 - TCS u/s 206C(1H) will not apply

Date of Applicability-

This provision will be applicable with effect from 1st July 2021.

Time Limit for deduction of TDS under section 194Q-

Tax to be deducted at the earliest of the following dates:

- time of credit of such sum to the account of the seller
- or
- time of payment

In case Seller provided PAN card details, Rate will be 0.1% otherwise it will be deducted @5 % as per Sec206 AA (as per Memorandum explaining the provisions in the Finance Bill, 2021).

However, section 206C (1H) which is already part of Income Tax Act which deals which TCS on sales of goods above 50 lakhs @ 0.1% casts responsibility of seller of goods to collect TCS at the time of collection above 50 lakhs.

Section 206C(1H) reads as under: -

Section 206 C (1H) Every person, being a seller, who receives any amount as consideration for sale of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year, other than the goods being exported out of India or goods covered in sub-section (1) or sub-section (1F) or sub-section (1G) shall, at the time of receipt of such amount, collect from the buyer, a sum equal to 0.1 per cent of the sale consideration exceeding fifty lakh rupees as income-tax:

Provided that if the buyer has not provided the Permanent Account Number or the Aadhar number to the seller, then the provisions of clause (ii) of sub-section (1) of section 206CC shall be read as if for the words "five per cent", the words "one per cent" had been substituted:

Provided further that the provisions of this sub-section shall not apply, if the buyer is liable to deduct tax at source under any other provision of this Act on the goods purchased by him from the seller and has deducted such amount.

Post budget 2021 since now there will be two sections which will deals on same transaction of sales/purchase above 50 lakhs from party whose turnover in P.Y exceeds Rs 10 crore

- (1) TDS u/s 194Q to deduct TDS of 0.10% on purchase above 50 lakhs
- (2) TCS u/s 206C (1H) to collect TCS @ 0.10% on sales above 50 lakh

The confusion is whether TCS u/s 206C (1H) of Income Tax Act is to be collected on sales of goods above 50 lakh or TDS u/s 194Q is to be deducted by the buyer?

It is proposed to provide that the provisions of section 194Q shall not apply to,-

- (i) a transaction on which tax is deductible under any provision of the Act; and
- (ii) a transaction, on which tax is collectible under the provisions of section 206C other than transaction to which sub-section (1H) of section 206C applies.

This means if on a transaction a TDS or tax collection at source (TCS) is required to be carried out under any other provision, then it would not be subjected to TDS under this section. In the Memorandum explaining the provisions in the Finance Bill, 2021 it is clarified that if on a transaction TCS is required under section 206C(1H) as well as TDS under section 194Q, then in respect of that transaction only TDS under section 194Q shall only be carried out.

Illustration: -

Turnover of Seller (in crore)	Turnover of Buyer (in crore)	Amt. recd. or paid for sale or purchase of Goods in previous year (in lakhs)	Taxable amt.	Whether PAN is available	TDS or TCS	Liabe Person	Applicable Section	Excluded Section	Explanation
11	9	55	5	Buyers PAN available	TCS @0.1%	Seller	206C(1H)	194Q	Buyer Turnover less than 10 Cr.
11	9	55	5	Buyers PAN not available	TCS @5%	Seller	206C(1H)	194Q	Buyer Turnover less than 10 Cr.
9	11	55	5	Sellers PAN available	TDS @ 0.1%	Buyer	194Q	206C(1H)	Sellers Turnover less than 10 Cr
9	11	55	5	Sellers PAN not available	TDS @ 5%	Buyer	194Q and 206AA	206C(1H)	Sellers Turnover less than 10 Cr and PAN not available
11	11	55	5	Sellers PAN available	TDS @ 0.1%	Buyer	194Q	206C(1H)	Exclusion Provided under Sec 206C(1H)
11	11	55	5	Sellers PAN not available	TDS @ 5%	Buyer	194Q and 206AA	206C(1H)	Exclusion Provided under Sec 206C(1H)

Comparison of Sec 194Q and 206C(1H) of Income Tax Act, 1961

Particulars	194Q	206C(1H)
Purpose	Tax to be <i>DEDUCTED</i>	Tax to be <i>COLLECTED</i>
Applicable to	Buyer/Purchaser	Seller
With effect from	01/07/2021	01/10/2020
When Deducted or collected	Payment or credit, whichever is earlier	At the time of receipt
Advances	TDS shall be deducted on advance payments made	TCS shall be collected on advance receipts
Rate of TDS/TCS	0.1%	0.1% (0.075% for FY 2020-21)
PAN not available	5%	1%
Triggering point	Turnover/Gross Receipts/Sales from the business of BUYER should exceed Rs.10cr during previous year (Excluding GST) Purchase of goods of aggregate value exceeding Rs.50Lakhs in P.Y. (The value of goods includes GST)	Turnover/Gross Receipts/Sales from the business of SELLER should exceed Rs.10cr during previous year (Excluding GST) Sale consideration received exceeds Rs.50Lakhs in P.Y. (The value of goods includes GST)
Exclusions	Yet to be notified by government	If Buyer is- Importer of goods Central/State Government, Local Authority An embassy, High Commission, legation, commission, consulate and trade representation of a foreign state.
When to deposit/collect	Tax so deducted shall be deposited with government by 7th day of subsequent month	Tax so collected shall be deposited with government by 7th day of subsequent month
Quarterly statement to be filed	26Q	27EQ
Certificate to be issued to seller/buyer	FORM 16A	FORM 27D

RECENT UPDATES IN DIRECT AND INDIRECT TAX

Team TRD

Direct Tax

CBDT issues notification for extension of due date till 28th February 2021 for filing DTVSV Forms under DTVSV Act 2020

For more details, please follow-

https://www.incometaxindiaefiling.gov.in/eFiling/Portal/StaticPDF/DTVSV_Extension.pdf

Indirect Tax

Module wise new functionalities deployed on the GST Portal for taxpayers by CBIC

For more details, please follow-

<https://www.gst.gov.in/newsandupdates/read/444>

CBIC has facilitated Auto-population of e-invoice details into GSTR-1

For more details, please follow-

<https://www.gst.gov.in/newsandupdates/read/445>

TAX UPDATES, NOTIFICATIONS AND CIRCULARS

INDIRECT TAX

CUSTOMS

Tariff Notification

Notification No. 01/2021- Customs **Dated – 28th January, 2021**

Seeks to confirm the provisional Bilateral Safeguard measure on imports of " Polybutadiene Rubber excluding titanium and lithium grades " originating in Korea RP and imported under the India-Korea Comprehensive Economic Partnership Agreement, and to further amend notification no. 152/2009 dated 31.12.2009 to modify the rate of duty of customs on said imports, on recommendation of final findings of Directorate General of Trade Remedies under India-Korea Comprehensive Economic Partnership Agreement (Bilateral Safeguard Measures) Rules, 2017

Central Government, has confirmed the provisional bilateral safeguard measure imposed with effect from the 13th July, 2020 and has made the following further amendments in the notification No.152/2009-Customs which was issued on 31st December, 2009.

In this notification, In the Table, against serial number 342B, for the entry in column (3), the entries "All goods other than those mentioned against serial number 342A or 342C", shall be substituted and after serial number 342B and the entries relating thereto, the following serial numbers and entries shall be inserted.

(1)	(2)	(3)	(4)
"342C.	400220	Polybutadiene Rubber excluding titanium and lithium grades	7.50";

For more details, please follow: <https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-tarr2021/cs01-2021.pdf>

Non-Tariff Notification

Notification No. 04/2021-Customs (NT) **Dated – 15th January, 2021**

Tariff Notification in respect of Fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Silver

CBIC has made the following amendments in the notification No. 36/2001-Customs (N.T.) issued on 3rd August, 2001. In this notification the following shall be substituted in TABLE-1, TABLE-2 and TABLE-3

TABLE - 1

Sl. No	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$ Per Metric Tonne)
(1)	(2)	(3)	(4)
1	1511 10 00	Crude Palm Oil	1049
2	1511 90 10	RBD Palm Oil	1061

3	1511 90 90	Others – Palm Oil	1055
4	1511 10 00	Crude Palmolein	1064
5	1511 90 20	RBD Palmolein	1067
6	1511 90 90	Others – Palmolein	1066
7	1507 10 00	Crude Soya bean Oil	1165
8	7404 00 22	Brass Scrap (all grades)	4714
9	1207 91 00	Poppy seeds	3623

TABLE - 2

Sl No.	Chapter/ heading/ sub- heading/tariff item	Description of goods	Tariff value (US \$)
(1)	(2)	(3)	(4)
1	71 or 98	Gold, in any form, in respect of which the benefit of entries at serial number 356 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	593 per 10 grams
2	71 or 98	Silver, in any form, in respect of which the benefit of entries at serial number 357 of the Notification No. 50	814 per kilogram
3	71	(i) Silver, in any form, other than medallions and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under sub-heading 7106 92; (ii) Medallions and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under sub-heading 7106 92, other than imports of such goods through post, courier or baggage. Explanation. - For the purposes of this entry, silver in any form shall not include foreign currency coins, jewellery made of silver or articles made of silver.	848 per kilogram
4	71	(i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units; (ii) Gold coins having gold content not below 99.5% and gold findings, other than imports of such goods through post, courier or baggage. Explanation. - For the purposes of this entry, "gold findings" means a small component such as hook, clasp, clamp, pin, catch, screw back used to hold the whole or a part of a piece of Jewellery in place.	593 per 10 grams

TABLE - 3

Sl. No.	Chapter/ heading/ sub- heading/tariff item	Description of goods	Tariff value (US \$ Per Metric Tonne)
(1)	(2)	(3)	(4)
1	080280	Areca nuts	3695

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfnns-2021/cs-nt2021/csnt04T-2021.pdf>

Notification No. 05/2021-Customs (NT)**Dated – 21st January, 2021****Exchange rate Notification**

CBIC has determined the rate of exchange of conversion of each of the foreign currencies into Indian currency or vice versa which is specified in Schedule I and Schedule II and has effected from 22nd January, 2021.

SCHEDULE-I

Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
	For Imported Goods	For Exported Goods
Australian Dollar	58.00	55.60
Bahraini Dinar	199.80	187.50
Canadian Dollar	58.90	56.80
Chinese Yuan	11.45	11.10
EURO	90.15	86.95
US Dollar	73.85	72.10

SCHEDULE-II

Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
	For Imported Goods	For Exported Goods
Japanese Yen	71.85	69.20
Korean Won	6.85	6.45

For more details, please follow: <https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-nt2021/csnt05T-2021.pdf>

Notification No. 08/2021-Customs (NT)**Dated – 29th January, 2021****Tariff Notification in respect of Fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seed, Areca nut, Gold & Silver**

CBIC has made the following amendments in the notification No. 36/2001-Customs (N.T.) which was issued on 3rd August, 2001. In this notification the following shall be substituted in TABLE-1, TABLE-2 and TABLE-3

TABLE - 1

Sl. No	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$ Per Metric Tonne)
(1)	(2)	(3)	(4)
1	1511 10 00	Crude Palm Oil	1013
2	1511 90 10	RBD Palm Oil	1038
3	1511 90 90	Others – Palm Oil	1026
4	1511 10 00	Crude Palmolein	1044
5	1511 90 20	RBD Palmolein	1047
6	1511 90 90	Others – Palmolein	1046
7	1507 10 00	Crude Soya bean Oil	1127
8	7404 00 22	Brass Scrap (all grades)	4598
9	1207 91 00	Poppy seeds	3623

TABLE - 2

Sl No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$)
(1)	(2)	(3)	(4)
1	71 or 98	Gold, in any form, in respect of which the benefit of entries at serial number 356 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	597 per 10 grams
2	71 or 98	Silver, in any form, in respect of which the benefit of entries at serial number 357 of the Notification No. 50	812 per kilogram
3	71	(i) Silver, in any form, other than medallions and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under sub-heading 7106 92; (ii) Medallions and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under sub-heading 7106 92, other than imports of such goods through post, courier or baggage. Explanation. - For the purposes of this entry, silver in any form shall not include foreign currency coins, jewellery made of silver or articles made of silver.	812 per kilogram
4	71	(i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units; (ii) Gold coins having gold content not below 99.5% and gold findings, other than imports of such goods through post, courier or baggage. Explanation. - For the purposes of this entry, "gold findings" means a small component such as hook, clasp, clamp, pin, catch, screw back used to hold the whole or a part of a piece of Jewellery in place.	597 per 10 grams

TABLE - 3

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$ Per Metric Tonne)
(1)	(2)	(3)	(4)
1	080280	Areca nuts	3695

For more details, please follow: <https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-nt2021/csnt08-2021.pdf>

ANTI-DUMPING DUTY

Notification No. 02/2021-Customs (ADD)

Dated – 28th January, 2020

Seeks to further amend notification No. 3/2018-Customs (ADD) dated 23rd Jan, 2018 to amend the name of Producer.

Central Government has made the amendment in the notification No. 3/2018- Customs (ADD) which was issued on 23rd January, 2018, in this notification, the words "Hanwha Chemical Corporation", the

words “Hanwha Solutions Corporation” shall be substituted against serial number 7, in column (6) in the TABLE.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-add2021/csadd02-2021.pdf>

Notification No. 03/2021-Customs (ADD)

Dated – 28th January, 2020

Seeks to further amend notification No. 27/2016-Customs (ADD) dated 23rd Jun, 2016 to amend the name of Producer and Exporter

Central Government made the amendments in the No. 27/2016-Customs (ADD), which was issued on 23rd June, 2016.

In this said notification, in column (6) and (7) against serial number 1 of the Table the words “Hanwha Chemical Corporation”, the words “Hanwha Solutions Corporation” shall be substituted.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-add2021/csadd03-2021.pdf>

Notification No. 04/2021-Customs (ADD)

Dated – 30th January, 2020

Seeks to impose anti dumping duty on import of ADD on imports of "Steering Knuckles meant for heavy and medium commercial vehicles" originating in or exported from China PR, for a period of thirty months from the date of its publication.

Central Government, after considering the final findings of the designated authority, has imposed on the anti dumping duty on specified goods on specified column of the table.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-add2021/csadd04-2021.pdf>

DIRECT TAX

Circular No. 1/2021

Dated – 15th January, 2021

Amount of remuneration prescribed under section 9A(3)(m) of the Income-tax Act, 1961

Board, in exercise of powers conferred under section 119 of the Act, has decided to provide that for the financial years 2019-20 and 2020- 21 in cases where the remuneration paid to the fund manager is lower than the amount of remuneration prescribed under sub-rule (12) of rule 10V of the Rules, but is at arm's length, it shall be sufficient compliance to clause (m) of sub-section (3) of section 9A of the Act. It is also stated that the remuneration to be paid to the fund manager, for the financial year 2021-22, shall be in accordance with sub-rule (12) of rule 10V of the Rules and the application for lower remuneration in terms of 2nd proviso for this year, if any, may be filed not later than 1st February, 2021.

For more details, please follow:

https://www.incometaxindia.gov.in/communications/circular/circular_1_2021.pdf

PRESS RELEASE

DIRECT TAX

Income Tax Department conducts searches in Kolkata

15th January, 2021

The Income Tax Department carried out search and survey operations on 13.01.2021 on persons / entities engaged in the business of hotels, real estate, automobile, financing and wholesale trading of fruits etc. at Kolkata.

The cases were developed on the basis of available data in the departmental database, analysis of their financial statements, market intelligence and discreet field enquiries.

The search and seizure operation has resulted in unearthing of incriminating documents of undisclosed cash sales and claim of bogus expenses. During the course of search operation, incriminating documents have been found which revealed sale of shares of unlisted companies through layering to bring back unaccounted cash in the books of account in the form of unsecured loan / share capital. Round tripping of unaccounted wealth through professional help has also been detected. Evidences of booking bogus loss on sale of penny stocks, advancing of unaccounted cash loan and earning of unaccounted commission / brokerage / interest were also detected.

So far, concealment of income amounting to more than Rs. 450 crore has been detected. The assessee has made an admission of undisclosed income amounting to Rs. 105 crore. The search action has resulted in seizure of unaccounted cash of Rs.1.58 crore.

Further investigations are in progress.

Income Tax Department conducts searches in Jaipur

21st January, 2021

The Income Tax Department carried out search and survey operations on 19.01.2021 in Jaipur on three groups, involving one jeweller and two real-estate colonizers and developers. Co-ordinated search operation was conducted at 20 premises and survey was conducted at 11 premises.

One of the groups is a prominent builder, developer and colonizer in Jaipur. During the search, a plethora of incriminating documents and digital data in the form of unaccounted receipts, unexplained development expenses, unexplained assets, cash loans & advances, on-money receipts were found and seized. The highlight of the search was that the complete details of unaccounted transactions of the last 6-7 years of this group maintained in several registers, slip pads, day to day kacchi cash book, expense sheets and diaries hidden in the basement were unearthed and seized from the main business premises. Total unaccounted transactions amounting to Rs. 650 crore have been detected, so far in this group.

The second group is a multi-venture activity group engaged in the business of precious and semi-precious stones, jewellery, antiques, handicrafts, carpets, textiles etc. During the course of search operation, a concealed cavity was detected by the concerted efforts of the team at the main business premises of the assessee. The entire detail of unaccounted manufacturing activity of gold and silver ornaments for the last 6 years was found from the said cavity. It is pertinent to note that this manufacturing activity has never been reported in any of the Returns of Income filed by the group. Documents relating to Benami property amounting to Rs. 15 crore were also found from the secret chamber.

Though the assessee had denied maintenance of any stock register, the same was unearthed from the secret cavity. The alpha-numeric secret code mentioned on each item had the actual sale price

embedded in it and the team is working on cracking the code. Two hard-disks and pen-drive were also found from the secret cavity containing details of various items in coded form, alongwith the photographs of the items. The concealed incriminating data maintained by the assessee in Jewels Prime Software has been retrieved by the search team. A perusal of these incriminating documents / data and the regular books of account revealed that the assessee hadbeen suppressing the sales consideration ranging from 100% to 150% on the items sold to foreign tourists.

The Jeweller group had also advanced unaccounted cash loans to various persons amounting to Rs. 122.67 crore and is also earning unaccounted interest on the same. The group had also introduced it's unaccounted cash income through the bank accounts of their employees and karigars. To sum up, total unaccounted transactions amounting to Rs. 525 crore have been detected, so far, in the group.

The third group is a renowned builder and developer of Jaipur engaged in the development of Commercial Centres, Farm Houses, Townships and Residential enclaves. The search operation has revealed that the assessee group had taken over a real-estate project at the Airport Plaza by showing an investment of Rs. 1 lakh only in the books of account whereas, the WIP pertaining to the project, reflected in the balance sheet was found to be about Rs. 133 crore. The search also revealed that substantial income from various affordable housing schemes run by the assessee had not been disclosed in the returns of income, the complete documents of which were seized from the searched premises. The group had also advanced unaccounted cash loans to various persons amounting to Rs. 19 crore and is also earning unaccounted interest on the same. Thus, total unaccounted transactions amounting to Rs.225 crore have been detected, so far.

In all, unaccounted & unrecorded transactions exceeding Rs. 1400 crore have been unearthed due to the search & seizure operation conducted on these 3 groups.

The search operations are still continuing and further investigations are under progress.

Income Tax Department conducts searches in Pune

21stJanuary, 2021

The Income Tax Department carried out search and survey operations on 12.01.2021 in the cases of leading builders located in Borivali-Mira Road-Bhayander Area of Thane.

The search action has resulted in seizure of unaccounted cash of Rs. 10.16 crore. Total unaccounted income of earlier years detected during the search operation is Rs. 520.56 crore including the cash seized. The unaccounted income inter alia includes on-money on sale of land and flats; accommodation entries of non-genuine unsecured loans routed through certain shell/paper companies; unaccounted cash receipts in the nature of capital introduction/cash loan; unaccounted cash expenses etc.

Further, the unrecognized sales revenue of Rs. 514.84 crore for FY 2019-20 has been accepted by the group during the search action. Accordingly, the group has agreed to pay Self-Assessment Tax on the same.

Lockers found during the course of search operation are yet to be operated. Further investigations are in progress.

JUDGEMENTS

INDIRECT TAX

18% GST on making Bullet Proof Bodybuilding on Motor Vehicles having Tarpaulin cover in Cargo Compartment: AAR

Fact of the Case

- The applicant, M/s Jeet & Jeet Glass and Chemicals Pvt. Ltd. is engaged in the manufacture of Bullet proof glass, bulletproof Vehicles, Lectern, etc in their factory. Besides, the applicant is also undertaking to armor by bodybuilding on the chassis of vehicles supplied by the customers mainly the army/police, etc. using bullet-proof steel and glass.
- The vehicles of 2.5Ton or higher capacity owned by the customer (army/police) are supplied to the applicant and these vehicles have either metal (partial or full) or partially metal and partially Tarpaulin covered cargo compartments.

The applicant sought the advance ruling on the issue in respect of the classification of activity of making bullet proof body building on motor vehicles as goods or services or both.

Decision of the Case

- The Coram ruled that the activity carried out by the applicant by making bullet proof body building in addition to fixing bullet proof windshield glass, bullet proofing of engine and fuel tank) on the motor vehicles (2.5 Ton capacity) of Chapter heading 87 of the Customs Tariff Act, 1975, supplied by the customer (i.e. free supply) having Tarpaulin cover in the cargo compartment, is a supply of Service attracting GST 18%.

The Rajasthan Authority of Advance Ruling (AAR) ruled that 18% GST is applicable on the activity carried out by making bullet proof body building on motor vehicles having Tarpaulin cover in the cargo compartment.

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Activities of Supply, Installation, Operation, Maintenance of Greenfield Public Street Lighting System not classifiable as Works Contract Services, rules AAR

Fact of the Case

- The applicant, M/s Pinnacles Lighting Project Private Limited is engaged in the business of executing street lighting projects.
- The Government of Odisha, through the Housing and Urban Development Department, the Urban Infrastructure Development Fund and the Directorate of Municipal Administration has decided to develop an energy efficient street lighting system covering new and upcoming road stretches in Greenfield areas across 113 Urban Local Bodies (ULBs), including in the cities of Cuttack, Berhampur, Rourkela, Sambalpur and Bhubaneswar, on a Public Private Partnership basis.
- It has been submitted that for such installation, the Applicant is entitled to receive a consideration, in the form of Capital Subsidy, being 90% of the total capital expenditure incurred by the Applicant in supplying, installing and commissioning of the equipment. The balance 10% of the total capital expenditure along-with Operating & Management fees is receivable as 'Annuity fees', and is recovered by the Applicant by raising quarterly invoices on the ULBs. After the Greenfield Public Street Lighting System has been commissioned, the Applicant is required to undertake the Operation and Maintenance of the system till the end of the term of the Agreement.

The applicant sought advanced ruling on the issue whether the activities of supply installation, operation and maintenance of Greenfield Public Street Lighting System (GPSLS) carried out by the Applicant is classifiable as a supply of Works Contract Services.

Decision of the Case

- The Coram ruled that the primary activity of the applicant is 'supply of goods' and not 'supply of services'. Further, the said activity performed by the applicant is not related to the immovable property at any point of the time and hence the said activity does not qualify to be a works contract.

The Orissa Authority of Advance Ruling (AAR) ruled that the activities of supply, installation, operation, maintenance of Greenfield Public Street Lighting System not classifiable as Works Contract Services.

Capital Subsidy received on 90% of Project Capital Expenditure liable to GST: AAR
Fact of the Case

- The applicant, M/s Surya Roshni LED Lighting Project Limited is engaged in the business of executing Greenfield street lighting projects.
- The Government of Odisha, through the Housing and Urban Development Department, the Urban Infrastructure Development Fund, and the Directorate of Municipal Administration has decided to develop an energy-efficient street lighting system covering new and upcoming road stretches in Greenfield areas across 21 Urban Local Bodies (ULBs), including in the cities of Balasore, Bhadrak, Jajpur, Baripada on a Public-Private Partnership basis.
- The Applicant is entitled to receive a consideration, in the form of Capital Subsidy, being 90% of the total capital expenditure incurred by the Applicant in supplying, installing and commissioning of the equipment. The balance 10% of the total capital expenditure along-with O&M fees is receivable as 'Annuity fees', and is recovered by the Applicant by raising quarterly invoices on the ULBs. After the Greenfield Public Street Lighting System has been commissioned, the Applicant is required to undertake the Operation and Maintenance of the system till the end of the term of the Agreement.

The applicant sought the advance ruling on the issue whether Capital Subsidy (90 percent of Project Capital Expenditure) received by the Applicant as per SIOM Agreement and Escrow Agreement from Odisha Government/ULBs for the Green Field Public Street Lighting System in the State of Odisha is not liable to GST and if liable to GST, then at what rate of GST.

The other issue was raised in respect of the GST rate for the balance 10% of the Project Capital Expenditure and O&M Fees received as Annuity Fee over the period of 7 years by the Applicant as per SIOM Agreement considering the Sl. No. 3(vi) of the notification No. 11/2017 Central Tax (Rate), dated June 28, 2017 as amended by Notification No. 31/2017 Central Tax (Rate), dated October 13, 2017 and corresponding notifications of Odisha State Tax Rate as amended.

Decision of the Case

- The Coram ruled that Capital Subsidy (90 percent of Project Capital Expenditure) received by the Applicant is liable to GST. The GST will have to be paid on the goods at

the appropriate rate after classification under the appropriate heading.

- The AAR further ruled that the supply being undertaken or proposed to be undertaken by the applicant would qualify to be a supply of 'composite supply' in terms of the definition under Section 2(119) of the Central Goods and Services Tax Act, 2017, where the principal supply is the supply of goods and is not the supply of service'.
- Therefore, the question of the applicability of the concessional rate of tax in terms of Notification No. 11/2017-Central Tax (Rate), dated June 28, 2017, and as amended does not arise. The GST will have to be paid on the goods at the appropriate rate after classification under the appropriate heading.

The Orissa Authority of Advance Ruling (AAR), ruled that the Capital Subsidy received on 90% of Project Capital Expenditure is liable to Goods and Service Tax (GST).

18% GST on Work Contract for Supply, Erection, Testing, commissioning of materials for providing Rural Electricity Infrastructure: AAAR

Fact of the Case

- The Applicant, ARG Electricals Pvt. Ltd. has received work orders from Ajmer Vidyut Vitran Nigam Limited (AVVNL) through a tender process.
- The work orders are awarded to them through a tender and scope of work is described in respective work orders as submitted with application.
- The two work orders as awarded through the tenders are "Supply of material/equipment for providing of Rural Electricity Infrastructure for Household electrification in selected blocks under Rajiv Gandhi Grameen Vidyutikaran Yojana scheme on turnkey basis", and Erection, testing and commissioning supplied material/equipment for Rural Electricity Infrastructure for Household electrification in selected blocks under Rajiv Gandhi Grameen Vidyutikaran Yojana scheme on turnkey basis", the two work orders separately describes each activity to be carried out to complete the work and also rate for each activity is separately mentioned, by adding amount of each activity total cost is derived.

The applicant sought the advance ruling on the issues whether the contract entered into with

AWNl as per the work orders combine of supply, erection, testing and commissioning of materials/equipment for providing rural electricity infrastructure qualifies as a supply for work contract under Section 2(119) of CGST Act.

It was further asked whether such supply, erection, testing and commissioning of materials/equipment for providing rural electricity infrastructure made to AWNL would be taxable at the rate of 12% in terms of Sr. No. 3(vi)(a) of the Notification No. 11/2017- Central Tax (Rate) dated June 28, 2017 as amended w. e. f. January 25, 2018.

Decision of the Case

The AAR ruled that The work undertaken by the applicant as per Contract RGGVY/TN-13 entered between the applicant and AWNL along with two Work Orders viz. (a) Supply of Materials/Equipments and (b) Erection, Testing and Commissioning of Materials/Equipments (supplied in first work order) in building of rural electricity infrastructure is a Composite supply of Works Contract.

- *"The work undertaken by the applicant as per Contract RGGVY/TN-13 (encompassing both work orders) is a Composite supply of Works Contract and is not covered under Entry No. 3(vi)(a) of the Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 (as amended) as consequently are not eligible to be taxed at lower rate of 12% (SGST 6% and CGST 6%) and hence are liable to be taxed at the rate of 18% (CGST 9% and SGST 9%)," the AAR added.*

However, the applicant was not satisfied with the ruling of the lower authority and appealed against the order before the Appellate Authority of Advance Ruling.

The Coram while upholding the ruling of the lower authority held that the work contract undertaken by the applicant is predominantly used for or incidental to the main activity of AVVNL i.e. transmission (sale) of electricity.

The Rajasthan Authority of Advance Ruling (AAAR) while upholding the lower authority's order ruled that 18% GST on work contract for supply, erection, testing, and commissioning of materials for providing rural electricity infrastructure.

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28% GST on Metal Nuts as it is a part of Motor Vehicle: AAAR

Fact of the Case

- The applicant, A Raymond Fasteners India Pvt. Ltd. has its production plant in Pune (Chakan) and is engaged in the manufacture of, amongst others, industrial clip fasteners and prototyping assembly systems, which are primarily used in automobiles. The procurement structure followed by the Applicant chiefly involves importation of various products (inputs and packaging materials) from various sources/ nations, which are then used in the manufacture and subsequent sale of final products.

The applicant sought an advance ruling in respect of the classification of Metal Nuts with metrical threading, Metal Nuts without metrical threading, and Metal Spring Nuts. The AAR did not answer the question on the classification of imported goods since the same is out of the purview of Section 95 of CGST Act.

Decision of the Case

- The AAR said that in this case, the jurisdictional office has raised the issue of classification of imported goods not being covered for the purposes of the ruling by this authority, the applicant has further, in their additional submissions contended that the same products are also supplied locally, out of manufacturing, by them. However, they have not supported their new contentions with any material evidence on record.
- However, the AAAR while allowing the department's appeal held that the impugned goods, i.e. Metal Nuts with metrical threading, Metal Nuts without metrical threading, and Metal Spring Nuts will be considered as parts of motor vehicles falling under Chapter Heading from 87.01 to 87.05, and accordingly will merit classification under the Tariff Item 8708 99 00, as purposed by the Appellant.

The Maharashtra Appellate Authority of Advance Ruling (AAAR) while quashing the AAR's ruling held that 28% GST on metal nuts as it is a part of motor vehicles.

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DIRECT TAX

Relief to Hindustan Coca Cola: ITAT deletes additions of Rs. 20.89 Lakhs on account of passing of the expiry date of product

Fact of the Case

- The assessee, Hindustan Coca Cola is a company engaged in the business of trading of non-alcoholic beverages. It filed its return of income declaring a loss of Rs. 25,80,27,830.
- The assessee stated that approximately 10000 cases were pulled back by the assessee from the market in view of the exceptional quality issues. The assessee submitted that the quality issue is the pull back of inventory from the market on account of expiry of the products.
- The assessee submitted that there is a life span of the beverages and beyond that it cannot be consumed and therefore, it has to be pulled back from the market. The AO did not believe in the assessee and held that there is no evidence with the risk of stock being on the assessee.
- The CIT(A) relying on his own decision for AY 2008-09 allowed 70% of such claims and confirmed the disallowance to the extent of 30%.

Decision of the Case

- The ITAT did not find any justification to restrict allowance of such claims to the extent of 70%. Accordingly, the ITAT held that it should be allowed in its entirety. Such loss is neither stated to be contingent or non-existent.
- Therefore, the ITAT reversed the order of the Id CIT (A) and directed the Id AO to delete the additions/ disallowances of Rs. 20,89,501 being lost on account of passing of the expiry date of the product.

Cash Medical Benefit to LIC Employees does not attract TDS: ITAT grants relief to LIC

Fact of the Case

- In the present case LIC is the assessee
- The Assessing Officer observed that the assessee has not deducted TDS under section 192, in respect of cash medical benefit paid to its employees, payment made to Chinnu Graphics, payment to Kulkarni Services, payments to Sodexo SVC India Pvt.Ltd., payment made to HP India Sales Pvt.Ltd., and EMDC Projects.

- According to him, the cash medical benefit paid to employees was considered as exempt under section 10 of the Act in respect of cash Medical Benefit. It was observed that the amount received as fixed allowance is fully taxable in the hands of employee as perquisite.
- The Tribunal noted that the amounts paid as medical benefits in the nature of perquisite falling within the definition given under section 17 (2) (iv) Proviso (v) of the Act. A perusal of section 192 of the Act, indicates that the person responsible for paying any income chargeable under the head "Salaries" shall be liable to deduct tax at source at the time of payment on an estimate basis.

Decision of the Case

- The two-member bench observed that In this situation, the stand of the assessee that the Cash medical benefit were only reimbursement of the expenditure incurred by the employees, and as such they could not form part of their income.
- Therefore, the belief of the assessee on that point was bona fide. Since the estimate made by the assessee has been held to be honest and bona fide, the assessee could not be treated as "assessee in default," the Tribunal added.

Relief to RayBan: ITAT deletes adjustments made by TPO on account of ALP of AMP expenses

Fact of the Case

- In the present case M/S Ray Ban Sun Optics India Ltd. Is the assessee
- The appellant, M/s. Ray Ban Sun Optics India Ltd. is engaged in manufacturing and distribution of Ray-Ban brand sunglasses and prescription frames in India and to carry out the manufacturing operation.
- The assessee imported certain raw material and components from Luxottica Group entities for manufacturing of finished sunglasses in India. The assessee also imported finished Ray Ban branded sunglasses and other luxury brand sunglasses from Luxottica Group entities for sale to independent third party dealers/distributors in India.
- The TPO noticed that huge expenditure has been made by the taxpayer towards AMP in brand building and marketing of Rayban products in India for which it sought to be

compensated with a minimum certain amount.

- The TPO proceeded to conclude that since the taxpayer has not been able to produce any agreement for the relevant previous year as claimed for before the Tribunal, there is no change in the facts and law regarding the issue and ratified upward adjustment of Rs.4.21 crores made by the TPO vide order to the income of the taxpayer.

Decision of the Case

- The Coram consisting of R.K.Panda and Kuldeep Singh held that the ALP of an international transaction involving AMP expenses, the adjustment made by the TPO/DRP/AO is not sustainable in the eyes of law.
- The Income Tax Appellate Tribunal (ITAT), Delhi Bench in relief to Ray-Ban deleted the adjustments made by the Transfer Pricing Officer (TPO) on account of Arm's Length Price (ALP) of Advertisement, Marketing, and Promotion Expenses (AMP) expenses.

Mere low declaration of Income by Creditors is no ground to make the addition in respect of Unexplained Cash Credit

Fact of the Case

- In the present case M/s. Carissa Investment is the applicant
- The applicant is engaged in the business of Investment and Trading in Shares. The A.O. noted that assessee-company has taken loan from 11 parties in assessment year under appeal.
- The AO issued notices under section 133(6) of the Income Tax Act to all the parties requiring them to furnish copy of the bank statements, PAN etc. The assessee-company submitted a copy of the ledger account, confirmations by the parties along with their ITR and other details before AO.
- The AO without making further enquiry considered them as unexplained credits and made the addition in respect of both the creditors.
- On the other hand, authority relied upon others of the authorities below and submitted that assessee did not prove creditworthiness and genuineness of the transaction in the matter.

Decision of the Case

- The coram consists of O.P. Kant and Bhavnesh Saini while allowing the appeal in favour of the assessee noted that the assessee-company has been able to prove that both the creditors have availability of sufficient funds to give loan to the assessee-company in assessment year under appeal.
- The ITAT noted that since the AO accepted the creditworthiness and genuineness of the transaction with the same creditors in subsequent assessment year as well, it's stand proved on record that there were no justification for the authorities below to make any addition against the assessee-company.

ITAT allows 60% Depreciation on Xerox Machine

Fact of the Case

- In the present case Dimple Vishal Agrawal is the assessee
- The assessee, has filed her return of income declaring total income at Rs.8,80,560. The case of the assessee was selected for scrutiny assessment and notice under section 143(2) was issued and served upon the assessee.
- On scrutiny of the accounts, it revealed to the AO that the assessee has claimed depreciation at the rate of 60% whereas in his opinion depreciation at the rate of 15% is available on these printers, xerox-machine, etc.
- In this way, the AO has disallowed a sum of Rs.7,40,297. However, on appeal, the CIT(A) confirmed the disallowance on the Xerox machine.
- The sole grievance of the assessee is that the CIT(A) has erred in confirming the allowance depreciation at the rate of 15% as against 60% claimed by the assessee on the xerox machine.

Decision of the Case

- The coram consisting of Rajpal Yadav held the assessee is entitled to depreciation at the rate of 60% of this alleged xerox machine on the grounds that the CIT(A) failed to comprehend the true nature of this asset.
- It has been treated as a photo-state machine without going through the literature of the machine supplied by the manufacturer. According to the manual, it is a multi-functional printer. Its feature to make a photo-state of a paper is an added activity.

TAX COMPLIANCE CALENDAR AT A GLANCE

GST CALENDAR

Due Date for GSTR-3B			
State	Turnover in Preceding F.Y.	Month	Due Date
For All State	Turnover is more than Rs. 5 Crore	January, 2021	20 th February, 2021
Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, Daman & Diu and Dadra & Nagar Haveli, Puducherry, Andaman and Nicobar Islands, Lakshadweep	Turnover is upto Rs. 5 Crore	January, 2021	22 nd February, 2021
Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand, Odisha, Jammu and Kashmir, Ladakh, Chandigarh, Delhi	Turnover is upto Rs. 5 Crore	January, 2021	24 th February, 2021

Due Date		
Form	For month/Quarter	Date
GSTR-1	Monthly	
	January	11 th February, 2021
	Quarterly	
	Jan to March	13 th April, 2021

Composition Scheme Due Dates		
From	Description	Date
CMP - 08	Return for Composite Supplier	
	Jan to March 2021	18 th April, 2021

Others Returns		
From	Description	Due Date
GSRT- 5 & 5A	Filed by Non-resident taxable person and OIDAR respectively	
	January 2021	20 th February, 2021
GSTR - 6	For input Services Distributor who are required to furnish details of invoice on which credit has been received	
	January 2021	13 th February, 2021
GSTR - 7	Filed by person required to deduct TDS under GST	
	January, 2021	10 th February, 2021
GSTR - 8	E-commerce operator who are required to deduct TDS	
	January, 2021	10 th February, 2021

Annual Return		
From	Description	Due Date for F.Y. 2019-20
GSRT-9	Annual Return	28 th February, 2021
GSTR - 9C	Reconciliation Statement & Certificate	28 th February, 2021

DIRECT TAX CALENDAR – FEBRUARY, 2021

07.02.2021

- ❖ Due date for deposit of Tax deducted/collected for the month of January, 2021. However, all the sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan

14.02.2021

- Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB & 194M in the month of December, 2020

15.02.2021

- Due date for filing of return of income for the assessment year 2020-21 if the assessee is (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) partner of a firm whose accounts are required to be audited or (d) required to submit a report under section 92E pertaining to international or specified domestic transaction(s)
Note: The due date for submission of return of income for the Assessment Year 2020-21 has been further extended to February 15, 2021 vide Press Release, dated 30-12-2020.
- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of January, 2021 has been paid without the production of a challan
- Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending December 31, 2020.

COURSES OFFERED BY TAX RESEARCH DEPARTMENT

Eligibility criterion for admission in TRD Courses

- The members of the Institute of Cost Accountants of India
- Other Professionals (CS, CA, MBA, M.Com, Lawyers)
- Executives from Industries and Tax Practitioners
- Students who are either CMA qualified or CMA pursuing

EXISTING COURSES

CERTIFICATE COURSE ON TDS

Course Fee - Rs. 10,000 + 18% GST
20% Discount for Members, CMA Final Passed Candidates and CMA Final pursuing Students

Exam Fees - Rs. 1, 000 + 18% GST
Duration – 30 Hours
Mode of Class – Online

CERTIFICATE COURSE ON INCOME TAX RETURN FILLING

Course Fee - Rs. 10,000 + 18% GST
20% Discount for Members, CMA Final Passed Candidates and CMA Final pursuing Students

Exam Fees - Rs. 1, 000 + 18% GST
Duration – 30 Hours
Mode of Class – Online

CERTIFICATE COURSE ON GST

Course Fee - Rs. 10,000 + 18% GST
20% Discount for Members, CMA Final Passed Candidates and CMA Final pursuing Students

Exam Fees - Rs. 1, 000 + 18% GST
Duration – 72 Hours
Mode of Class – Online

* *Special Discount for Corporate*

ADVANCED CERTIFICATE COURSE ON GST

Course Fee - Rs. 14,000 + 18% GST
20% Discount for Members, CMA Final Passed Candidates and CMA Final pursuing Students

Exam Fees - Rs. 1, 000 + 18% GST
Duration – 40 Hours
Mode of Class – Online

CRASH COURSE ON GST FOR COLLEGE AND UNIVERSITY

Batch Size – 50 (Minimum)

Eligibility criterion - B.COM/B.B.A pursuing or completed
M.COM/M.B.A pursuing or completed

Course Fee - Rs. 1,000 + 18% GST
Exam Fees - Rs. 200 + 18% GST
Course Duration - 32 Hours

NEW COURSES

ADVANCED COURSE ON GST AUDIT AND ASSESSMENT PROCEDURE

Course Fee - Rs. 12,000 +18% GST [Including Exam Fee]
Duration – 30 Hours
Mode of Class – Online

ADVANCED COURSE ON INCOME TAX ASSESSMENT AND APPEAL

Course Fee - Rs. 12,000 +18% GST [Including Exam Fee]
Duration – 30 Hours
Mode of Class – Online

For enquiry about courses, mail at – trd@icmai.in

E-PUBLICATIONS OF TAX RESEARCH DEPARTMENT

Impact of GST on Real Estate	Handbook on GST on Service Sector
Insight into Customs - Procedure & Practice	Handbook on Works Contract
Input Tax Credit & In depth Discussion	Handbook on Impact of GST on MSME Sector
Exemptions under the Income Tax Act, 1961	Insight into Assessment including E-Assessment
Taxation on Co-operative Sector	Impact on GST on Education Sector
Guidance Note on GST Annual Return & Audit	Addendum_Guidance Note on GST Annual Return & Audit
Sabka Vishwas-Legacy Dispute Resolution Scheme 2019	An insight to the Direct Tax- Vivad se Vishwas Scheme 2020
Guidance Note on Anti Profiteering	International Taxation and Transfer Pricing
Advance Rulings in GST	Handbook on E-Way Bill
Handbook on Special Economic Zone and Export Oriented Units	Taxation on Works Contract

For E-Publications, Please visit Taxation Portal -
<https://icmai.in/TaxationPortal/>

TAXATION COMMITTEES - PLAN OF ACTION

Proposed Action Plan:

1. Successful conduct of Certificate Course on GST.
2. Publication and Circulation of Tax bulletin (both in electronic and printed formats) for the awareness and knowledge updation of stakeholders, members, traders, Chambers of Commerce, Universities.
3. Publication of Handbooks on Taxation related topics helping stakeholders in their job deliberations.
4. Carry out webinars for the Capacity building of Members - Trainers in the locality to facilitate the traders/ registered dealers.
5. Conducting Seminars and workshops on industry specific issues, in association with the Trade associations/ Traders/ Chamber of commerce in different location on practical issues/aspects associated with GST.
6. Tendering representation to the Government on practical difficulties faced by the stakeholders in Taxation related matters.
7. Updating Government about the steps taken by the Institute in removing the practical difficulties in implementing various Tax Laws including GST.
8. Facilitating general public other than members through GST Help-Desk opened at Head quarter of the Institute and other places of country.
9. Introducing advance level courses for the professionals on GST and Income Tax.
10. Extending Crash Courses on Taxation to Corporates, Universities, Trade Associations etc.

Disclaimer:

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