

NewsBites

Forty-Fifth Edition

Greetings!

We are delighted to present our news bite for the month of December 2021. This News Bites intends to give an overview of what is happening in the sphere of direct and indirect taxation, company law, government incentives, FEMA and other regulatory laws.

We hope you find this useful. For any feedback you can reach to us at info@sanca.in.

Best Regards,
S A N & CO.
Chartered Accountants

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Income Tax

New Faceless appeal scheme 2021:

Faceless appeal scheme:

The Central Board of Direct Taxes (CBDT) has notified the Faceless Appeal Scheme 2021, effective from 28-12-2021. **The new scheme is notified in supersession of the earlier Faceless Appeal Scheme, 2020.**

Key changes in the new Faceless Appeal Scheme:

- Compulsory to **allow a personal hearing** if requested.
- There is **no concept of a draft order** in the new appeal scheme. The Commissioner (Appeals) shall prepare an appeal order and send it to **National Faceless Appeal Centre (NFAC)** after signing the same digitally. After that, the NFAC shall communicate such order to the appellant.
- In the new scheme, the board has removed Regional Faceless Appeal Centre's. Now, an appeal is directly assigned to the Commissioner (Appeals) of a specific Appeal Unit.
- In new scheme the National Faceless Appeal Centre (NFAC) shall assign the appeal directly to a Commissioner (Appeals) of the appeal unit
- Under the Faceless Appeal Scheme, 2021, the appeal unit shall have one Commissioner (Appeals) and other income-tax authority/staff to assist him.
- No need to send a recommendation to NFAC to initiate penalty proceedings.
- In the new appeal scheme, the same Commissioner (Appeals) who has completed the appeal proceedings is authorized to conduct penalty proceedings.

- Under the new Faceless Appeal Scheme, all the orders (appeal order, penalty order, or rectification order) shall be signed digitally by the Commissioner (Appeals) before sending to National Faceless Appeal Centre.
- The CBDT has renamed the National e-Assessment Centre to National Faceless Assessment Centre.

High court of Bombay held TDS obligations u/s 194H arises only when assessee makes payment or give credit to payee a/c:

High court of Bombay in recent ruling in Case of Super Religare Laboratories Ltd (Respondent) Vs. Commissioner of Income-tax (Petitioner) TDS obligations u/s 194H arises only when assessee makes payment or give credit to payee a/c. Following is the summary of facts & conclusion of the case.

Facts

- Assessee-company was engaged in providing laboratory and testing services to customers through its own and through third party collection centres - It allowed certain discount to these collection centres - Assessing Officer held that such discount allowed by assessee to collection centres was in nature of commission and assessee was obligated under section 194H to deduct tax at source on same .
- It was noted that provision of section 194H to deduct tax was applicable only to a person who was responsible for paying, at time of credit to account of payee or at

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time of payment - Whether, since assessee did not perform any act of paying but was only receiving payments from these collection centres, there was no obligation on assessee-company to deduct tax at source under section 194H on discount so allowed.

Held

- TDS obligations u/s 194H arises only when assessee makes payment or give credit to payee a/c , so there was no obligation on assessee-company to deduct tax at source under section 194H on discount so allowed.





Goods & Services Tax

Following are updates and changes in GST with effect from 1st January 2022:

1. The officer can issue notice under Section 74 to multiple persons for tax short paid or excess ITC claims by fraud. Now, it is amended that the officer can confiscate and seize goods or vehicles even after concluding proceedings against all persons liable to pay specific or general penalties.
2. **ITC claims will be allowed only if it appears in GSTR-2B** as per Section 16(2)(aa). So, the taxpayers can no longer claim 5% provisional ITC under the CGST Rule 36(4) and ensure every ITC value claimed was reflected in GSTR-2B.
3. **The taxpayers cannot file GSTR-1 if the previous period's GSTR-3B was not filed.**
4. The GST officers can initiate recovery **proceedings without any show-cause notice against taxpayers who under-report sales in GSTR-3B compared to GSTR-1, under Section 75(12).**
5. All the e-commerce aggregators into food delivery services or cloud kitchens under Section 9(5) will be liable to pay tax on services provided through them. However, restaurants with accommodation with a tariff per unit of more than Rs. 7,500 per day are kept out of the scope.
6. The scope of passenger transport motor vehicles is expanded to include service rendered through omnibus and any other motor vehicle, but not just radio taxi or cab under Section 9(5).

GSTR 2A removed from GST portal For month January 2022 and onwards:

GSTR-2A has been removed from the GST Portal for the month of January 2022 and onwards, only GSTR-2B shall be available.

GSTR-2A till December 2021 shall be available. Vide Notification No. 40/2021-Central Tax dated 29th December, 2021

Form GSTR-2A is a system generated Statement of Inward Supplies for a recipient.

Now only ITC will be allowed to take only if that inputs are Reflected in GSTR 2B. Now no Inputs can be taken which are not reflected in GST 2B. Now GSTR 2B will prevail Over GSTR 2A. GSTR 2B is generated on 14th of Every Month. As GSTR 1 is filled on 11th of every month and 13th is monthly IFF date.

Mandatory Aadhaar authentication for registered person:

The Central Government vide Notification No. 38/2021-CT dated 21.12.2021 has notified January 1, 2022 as the implementation date for Rule 10B of CGST Rules, 2017.

In the said rule, it is mandatory for the registered person to undergo Aadhaar authentication for the below purposes,

1. Filing of application for revocation of cancellation of registration in FORM GST REG-21 under Rule 23 of CGST Rules, 2017



2. Filing of refund application in FORM RFD-01 under Rule 89 of CGST Rules, 2017
3. Refund of the IGST paid on goods exported out of India under Rule 96 of CGST Rules, 2017.

The taxable person, who have not yet authenticated their Aadhaar, may like to go through this authentication process before filing the above two applications and enabling GST system to validate and transmit the IGST refund data from GST system to ICEGATE system.

If Aadhaar number has not been assigned to the concern person for Aadhaar authentication as specified above, such person may undergo e-KYC verification by furnishing the following:

- a. She/he will feed Aadhaar Enrolment ID and upload the acknowledgement; and
- b. She/he shall also upload any one of the following documents:
 - i. Bank passbook with photograph; or
 - ii. Voter identity card issued by the Election Commission of India; or
 - iii. Passport; or
 - iv. Driving license issued by the Licensing Authority under the Motor Vehicles Act, 1988 (59 of 1988);

Provided further that such person shall undergo the Aadhaar authentication within a period of thirty days from allotment of the Aadhaar number.





Companies Act, 2013

Relaxation in levy of additional fees on various annual filing forms

MCA vide General Circular No. 22/2021 dated 29th December 2021, has decided that **no additional fees shall be levied** on filing of below mentioned e-forms for the Financial Year 2020-21:

- o Up to 15-02-2022 for the filing of e-forms AOC-4, AOC-4 (CFS), AOC-4 (XBRL), AOC-4 Non-XBRL;
- o Up to 28-02-2022 for the filing of e-form MGT-7 / MGT-7A.

Further during the said period, only normal fees shall be payable for the filing of the aforementioned e-forms.

RBI has notified the Introduction of Legal Entity Identifier for Cross-Border Transaction:

In order to further harness the benefits of legal entity identifier (LEI), RBI has decided that AD Category I banks, with effect from October 1, 2022, shall obtain the LEI number from the resident entities (non-individuals) undertaking capital or current account transactions of ₹50 crores and above (per transaction) under FEMA, 1999.

The Legal Entity Identifier (LEI) is a 20-digit number used to uniquely identify parties to financial transactions worldwide to improve the quality and accuracy of financial data systems.

LEI has been introduced by the Reserve Bank in a phased manner for participants in the over-the-counter (OTC) derivative, non-derivative markets, large corporate borrowers and large value transactions in centralised payment systems.

Further, AD Category I banks may encourage concerned entities to voluntarily furnish LEI while undertaking transactions even before October 1, 2022. Once an entity has obtained an LEI number, it must be reported in all transactions of that entity, irrespective of transaction size.

RBI clarification on Acquisition/ Transfer of Immovable Property in India by Overseas Citizen of India (OCIs):

RBI through press release **2021-2022/1439 dated 29-12-2021 clarified** NRIs/OCIs are governed by provisions of FEMA 1999 and do not require prior approval of RBI for acquisition and transfer of immovable property in India, other than agricultural land/ farm house/ plantation property, as per the terms and conditions laid down in Chapter IX of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, dated October 17, 2019 (as amended from time to time), issued under Section 46 of FEMA 1999.

Government Scheme Updates

Industry News:

Subsidy for Large Scale Industries in D+ Zone:

The Subsidy available for manufacturing units & food processing units for Large Scale Industries under package scheme of incentive – 2019 are as follows:

Coverage under the PSI – 2019

- Manufacturing Enterprises
- IT Manufacturing Units registered with DIC/MIDC/STPI
- Bio-Technology Manufacturing Units
- Mechanized Food / Agro Processing Industries

Quantum of Incentives for LSI Projects

Taluka / Area Classification	Minimum Qualifying Fixed Capital Investment (INR crore)	Minimum Direct Employment (Number of people)	Maximum Ceiling of basket as % of FCI	Incentive period in years
D+	150	400	70%	7

- Large Scale projects based on employment criteria shall be required to maintain the qualifying direct employment (on the roll and in premises of the eligible Unit) throughout the year and 80% of such employees should be local persons.
- If the employment criteria are not maintained in any month of the year for which Industrial Promotion Subsidy is claimed, then Industrial Promotion Subsidy shall not be admissible for such year.

- Minimum Direct Employment should be created within a period of two years from the date of commencement of commercial production.

Additional subsidy for food / Agro processing units:

- 20% over and above the limits mentioned above
- two more years of eligibility to avail the incentives

Basket of Incentives for LSI Projects:

- Industrial Promotion Subsidy – 50% of Gross SGST refund for new/expansion units.
- Stamp Duty Exemption for Land & Term Loan: New Units as well as Units undertaking Expansion / Diversification will be exempted from payment of Stamp duty during the Investment period.
- Electricity duty exemption for new unit – All Eligible New Units will be exempted from payment of Electricity Duty during applicable eligibility period.

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