

NewsBites

Thirty Fifth Edition

Greetings!

We are delighted to present our news bite for the month of February 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,
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Chartered Accountants

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Income Tax

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Supreme Court (SC) ruling: Payments to non-resident firms for software not taxable as royalty

Background:

As per section 195 of Income tax Act there is obligation on Assessee to deduct the tax at source for payment in the nature of royalty to Non resident.

The income tax department termed payments made to non-residents for software purchase as royalty. The rationale for this stance has been that when software is sold, the incorporated programme is licensed to the end user. The income tax department has also contended that since the Indian entity is granted the rights to exploit the software copyright, the payments for such purchases amount to royalty income for the seller.

The companies, on the other hand, emphasized that these transactions were in the nature of sale and no part of copyright was transacted since the non-resident continued to have proprietary rights in the software.

The dispute began after the Karnataka high court in 2011 decided in favour of the tax department, holding that payments to non-resident firms for purchase of software should be treated as royalty, obligating the resident companies to deduct TDS at the time of credit of such sum or at the time of payment, whichever is earlier.

However, other high courts and the income tax tribunal took divergent views, calling upon the SC to examine the question of law and settle it.

SC Judgment:

The SC bench held that the amount paid by the Indian companies to the foreign software suppliers did not amount to royalty, as a result of which, there was no liability to deduct TDS. It underlined that the sales did not attract the rigours of the Copyright Act because no

right to reproduce was given to the resident firms and, hence, such payments could not come under the ambit of “royalty”.

The bench clarified that the ruling will apply to all instances of software purchases directly by an Indian end-user from a foreign supplier or manufacturer, when the resident Indian companies act as distributors or resellers for other residents; or when a foreign distributor resells to Indian users and the software is installed on the device by a foreign supplier for Indian residents.

This means tax liability of foreign software seller without a permanent establishment in India would reduce to the 2% equalization levy introduced via Finance Act 2020, from the 10% royalty tax, which the Indian buyer has hitherto been liable to withhold.

Impact:

The ruling will lower the cost of software purchases for Indian firms as the overseas sellers may choose to lower prices, taking advantage of the tax relief.

CBDT extends timelines to impose penalty & concluding assessments/reassessment for specified period:

The Central Board of Direct Taxes (CBDT) has partially amended the provisions of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 to provide relaxation in deadlines for imposing penalty, completion of assessments and taking action under Benami Act. It has been provided that due date for completion of assessment/reassessment, if getting expire on 31-03-2021, shall be extended to **30-04-2021**. In all other case, time limit shall be stand extended to **30-09-2021**.

Goods

Goods & Services Tax

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Due date to file GSTR-9 & GSTR-9C for F.Y. 2019-20 is further extended:

The government has extended the deadline for filing annual goods and service tax (GST) return (GSTR-9) and reconciliation statements (GSTR 9C) for FY02019-20 till 31st Mar 2021, from existing date of February 28.

GST Updates for February 2021:

1. Section 16 amended to allow taxpayers' claim of input tax credit based on GSTR-2A and 2B. Henceforth, ITC on invoices and debit notes may be availed only when the details of such invoice or debit note have 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.
2. GST audit requirement by specific professionals such as CAs and CMAs has been removed from the GST law. Section 35 and 44 have been amended in this regard. As per the amendment, only GSTR-9 annual returns on a self-certification basis need to be filed on the GST portal by taxpayers, completely removing the requirement for GSTR-9C, i.e. the reconciliation statement.
3. Section 50 of the CGST Act is being amended to provide for a retrospective charge of interest on net cash liability, with effect from 1st July 2017. Earlier charge of interest used to be on Gross basis.
4. section 7 of the CGST Act was amended to include a new clause under the definition of supply. Activities or transactions involving the supply of goods or services by any person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration falls under supply and will be liable to tax. Earlier, this supply would have been considered as only supply of goods under schedule II. So, the scope is expanded now for levy.

THE COMPANIES ACT, 2013

Relaxation for Listed companies– Central Government defines companies not covered under Listed companies:

Central Government vide notification dated February 19, 2021 makes following additions of rules to further amend the Companies (Specification of definitions details) Rules, 2014 as follows:

- (a) Public companies which have not listed their equity shares on a recognized stock exchange but have listed their – (i) non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or (ii) non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or (iii) both categories of (i) and (ii) above.
- (b) Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008;
- (c) Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Act.”

Process defined for conversion of One Person Company into a Public company or a Private company: Companies (Incorporation) Second Amendment Rules, 2021

Central Government makes the following Order dated February 01, 2021 to further amend the Companies (Incorporation) Second Amendment Rules, 2021 regarding Conversion of One Person Company into a Public company or a Private company which shall come into effect from April 01, 2021. Procedure for conversion is as follows:

1. The One Person company shall alter its memorandum and articles by passing a resolution in accordance with subsection (3) of section 122 of the Act to give effect to the conversion and to make necessary changes incidental thereto.
2. A One Person company may be converted into a Private or Public Company, other than a company registered under section 8 of the Act, after increasing the minimum number of members and directors to two or seven members and two or three directors, as the case may be, and maintaining the minimum paid-up capital as per the requirements of the Act for such class of company and by making due compliance of section 18 of the Act for conversion.
3. The company shall file an application in e-Form No.INC-6 for its conversion into Private or Public Company, other than under section 8 of the Act, along



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with fees as provided in the Companies (Registration offices and fees) Rules, 2014 by attaching documents, namely:

- (a) Altered MOA and AOA;
 - (b) copy of resolution;
 - (c) the list of proposed members and its directors along with consent;
 - (d) list of creditors; and
 - (e) the latest audited balance sheet and profit and loss account.
4. On being satisfied that the requirements stated herein have been complied with, the Registrar shall approve the form and issue the Certificate.

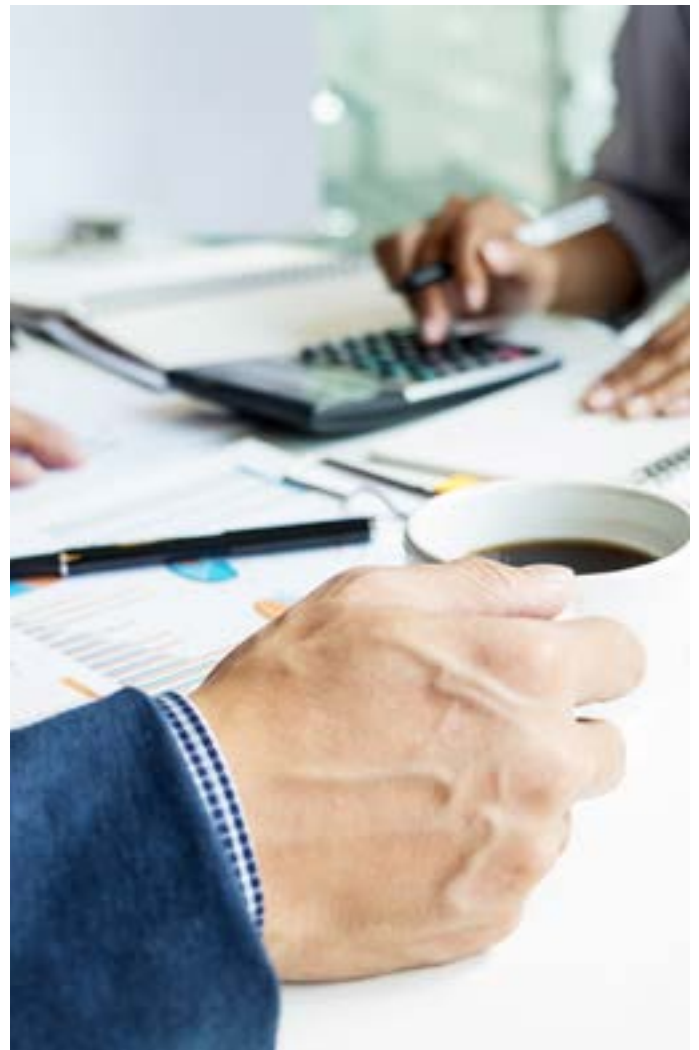


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GOVERNMENT SCHEME UPDATES

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Industry News:

Subsidy for D+ Zone for manufacturing and food processing units in Maharashtra:

The Subsidy available for manufacturing units & food processing units located in D+ zone under package scheme of incentive – 2019 is 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 MSME's

Taluka / Area Classification	Maximum Ceiling of basket of incentives as % of FCI	Eligibility Period (Years)
D+	60%	10

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 MSMEs in “D+” Zone

- Industrial Promotion Subsidy – 100% SGST refund for new/expansion units.
- Interest subsidy for new unit – Interest rate @ 5% P.A. or electricity paid during the year whichever is low.
- Electricity duty exemption for new unit – eligible new unit will be exempted from payment of Electricity Duty during applicable eligibility period.
- Power tariff subsidy –Rs.1 or Rs. 0.50 per unit for 3 years only for new unit.

Areas covered under “D+” Zone

District	Location
Palghar	Jawhar, Mokhada, Talasari, Wada, Vikramgad
Raigad	Poladpur, Mhasala, Tala
Ratnagiri	Guhagar, Dapoli, Lanja, Mandangad, Rajapur, Sangameshwar
Sindhudurg	Kankavli, Kudal, Sawantwadi, Malvan, Deogad, Vaibhavwadi, Doda Marg
Pune	Velhe
Solapur	Barshi, Akkalkot, Solapur (South), Mohol, Mangalwedhe, Sangole, Karmala, Madha
Satara	Wai, Man, Patan, Jaoli
Sangli	Tasgaon, Khanapur, Atapadi, Jat, Kavathe, Mahaankal, Walwa, Shirala, Kadegaon, Palus
Kolhapur	Kagal, Gadhinglaj, Chandgad, Ajra, Bhudargad, Radhanagari, Bavada, Shahuwad
Nasik	Velhe
Ahmednagar	Barshi, Akkalkot, Solapur (South), Mohol, Mangalwedhe, Sangole, Karmala, Madha
Dhule	Sakri, Shirpur, Shindkheda
Nandurbar	Nandurbar, Nawapur, Shahade, Talode, Akrani, Akkalkuva
Jalgaon	Chopada, Raver, Edalabad, Bhusawal, Jamner, Pachora, Bhadgaon, Parola, Erandol, Bodwad



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District	Location
Aurangabad	Khuldabad, Kannad, Soegaon, Sillod, Paithan, Gangapur, Vaijapur, Phulambri
Jalna	Jalna, Ambad, Jafferabad, Partur, Bhokardan, Badnapur, Ghangsavangi, Mantha
Beed	Beed, Georai, Majalgaon, Ambejogai, Kaij, Patoda, Ashti, Pharur, Parli, Wadavani, Shirur Kasar
Osmanabad	Osmanabad, Kalamb, Omerga, Tuljapur, Paranda, Bhum, Washi, Lohara
Parbhani	Parbhani, Jintur, Selu, Gangakhed, Pathri, Palam, Purna, Manawat, Sonpeth
Latur	Latur, Ahmedpur, Udgir, Nilanga, Ausa, Chakur, Deoni, Shirur, Anantpal, Jalkot, Renapur
Nanded	Nanded, Bhokar, Hadgaon, Kinwat, Biloli, Deglur, Mukhed, Kandhar, Loha, Mudkhed, Ardhapur, Naigaon, Dharmabad, Himayatnagar, Umari, Mahur
Amravati	Amravati, Achalpur, Bhatkuli, Nandgaon, Khandeshwar, Chandur, Bazar, Morshi, Warud, Chandur Rly., Teosa, Daryapur, Anjangaon, Surji, Chikhaldara, Dharni, Dhamangaon Rly.
Akola	Akola, Barshitakli, Akot, Telhara, Balapur, Patur, Murtijapur
Washim	Washim, Malegaon, Risod, Manglurpir, Manora, Karanja

District	Location
Buldhana	Buldhana, Chikhali, Shegaon, Deulgaon Raja, Malkapur, Motala, Nandura, Jalgaon, Jamod, Sangrampur, Khamgaon, Mehkar, Sindakhed-Raja, Lonar
Yavatmal	Yavatmal, Babhulgaon, Kalamb, Kelapur, Ralegaon, Ghatanji, Wani, Maregaon, Pusad, Mahagaon, Umarched, Darwaha, Ner, Digras, Arni, Zari-Jamdi
Nagpur	Nagpur (R), Kamptee, Hingana, Katol Narkhed, Savner, Kalmeshwar, Ramtek, Parseoni, Mauda, Umred, Bhiwapur, Kuhi
Bhandara	Bhandara, Pauni, Tumsar, Mohadi, Sakoli, Lakhandur, Lakhani,
Gondia	Gondia, Goregaon, Tirora, Arjuni, Morgaon, Deori, Sadakarjuni, Amgaon, Salekasa
Wardha	Wardha, Deoli, Seloo, Arvi, Karanja, Ashti, Hinganghat, Samudrapur
Chandrapur	Chandrapur, Gondpipri, Mul, Warora Chimur, Bhadravati, Brahmapuri, Sindewahi, Nagbhid, Rajura, Korpana, Sawali, Pobhurna, Ballarpur, Jiwati

Classification of PMR / Outside PMR as on 1st April, 2019 and shall be valid for 2019 Policy Period.

@: Within Pune Metropolitan Region (PMR),

\$: Outside Pune Metropolitan Region (PMR)

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