JULY 2021

NewsBites

Fortieth Edition

Greetings!

We are delighted to present our news bite for the month of July 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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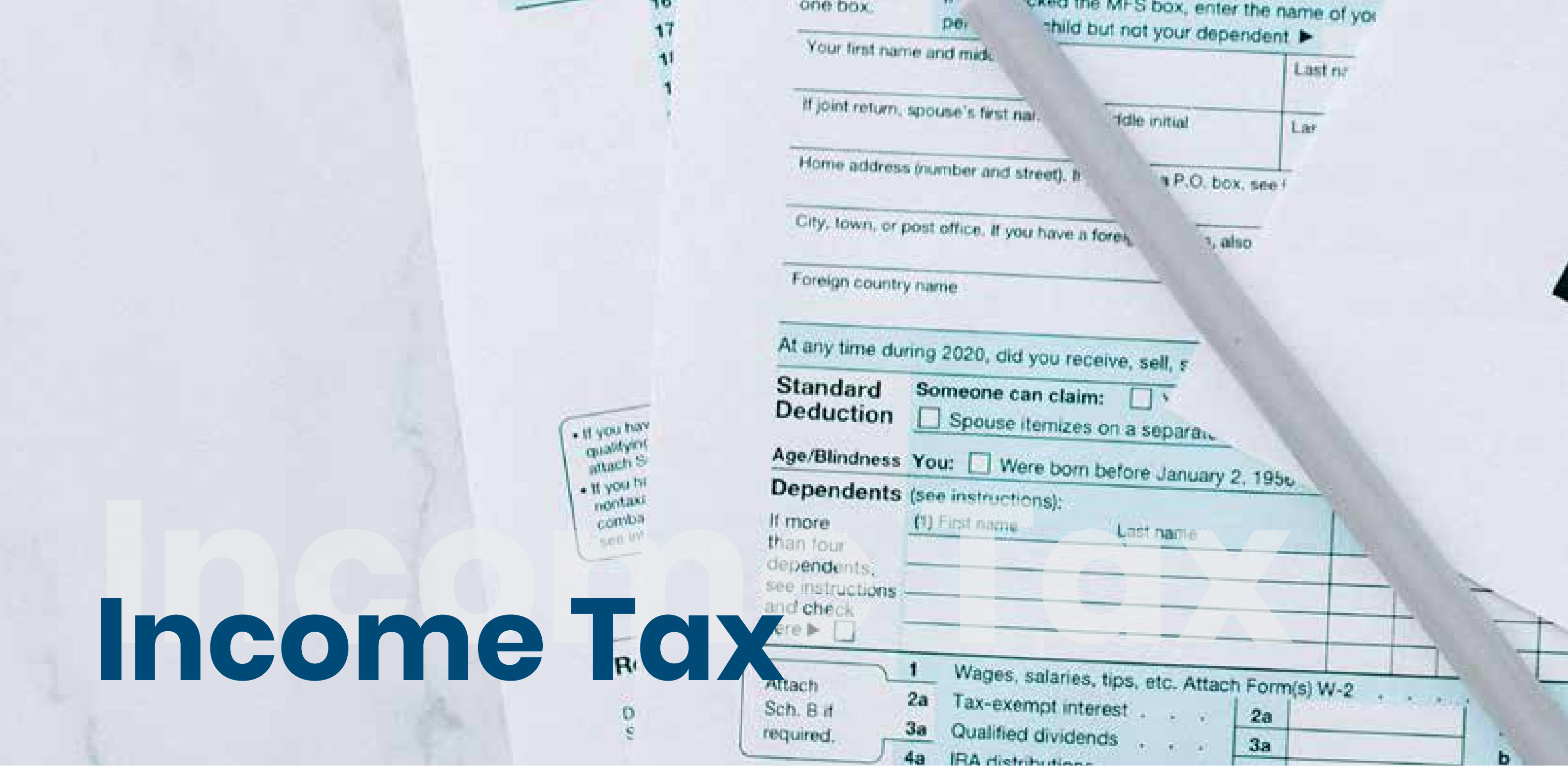

Income Tax

Indian Government quashes retrospective tax introduced in 2012:

India's retrospective tax was introduced in 2012 and made any capital gains resulting from the transfer of shares from a foreign entity whose assets were located in India taxable from 1962.

The issue of taxability of gains arising from the transfer of assets located in India through the transfer of the shares of a foreign company (indirect transfer of Indian assets) was a subject matter of litigation. The Supreme Court in 2012 had given a verdict that gains arising from indirect transfer of Indian assets are not taxable under the extant provisions of the Act.

However, this retrospective amendment and consequent tax demand on companies including Crain Energy Plc and Vodafone Group of UK continued to displease new investors. A total of ₹8,100 crore was collected using the retrospective tax legislation. Of this, ₹7,900 crore was from Cairn Energy alone.

The finance ministry now proposes to withdraw the infamous retrospective tax bill with the introduction to the Indian Parliament of the Taxation Laws (Amendment) Bill 2021. The Bill proposes to amend the Income-tax Act, 1961 so as to provide that no tax demand shall be raised in future on the basis of the said retrospective amendment for any indirect transfer of Indian assets if the transaction was undertaken before 28th May, 2012 (i.e., the date on which the Finance Bill, 2012 received the assent of the President).

It is further proposed to provide that the demand raised for indirect transfer of Indian assets made before 28th May, 2012 shall be nullified on fulfilment of specified conditions such as withdrawal or furnishing of undertaking for withdrawal of pending litigation and furnishing of an undertaking to the effect that no claim for cost, damages, interest, etc., shall be filed. It is also proposed to refund the amount paid in these cases without any interest thereon.

This bold measure of the Indian government will definitely go a long way in assuring the investor community about the predictability in the Indian tax regime.

Extension of time lines for electronic filing of various forms under the Income Tax Act, 1961:

The Central Board of Direct Taxes (CBDT), in exercise of its powers under Section 119 of the Act, extends the due dates for electronic filing of such forms as under:

1. The **quarterly statement in Form No. 15CC** to be furnished by authorized dealer in **respect of remittances made for the quarter ending on 30th June, 2021** required to be furnished on or before 15the July, 2021 under Rule 37BB of the Rules, earlier extended to 31st July, 2021 vide Circular No. 12 of 2021 dated 25.06.2021, **may now be filed on or before 31st August, 2021.**
2. The **Equalization Levy Statement in Form No. 1 for the Financial Year 2020-21,** which was required to be filed on or before 30th June, 2021, earlier extended to 31st July, 2021 vide Circular No. 12 of 2021 dated 25.06.2021, **may now be filed on or before 31st August, 2021.**
3. The **Statement of Income paid or credited by an investment fund to its unit holder in Form NO. 64D for the Previous Year 2020-21**, required to be furnished on or before 15th June, 2021 under Rule 12CB of the Rules, earlier extended to 15th July, 2021 vide Circular No. 12 of 2021 dated 25.06.2021, **may now be furnished on or before 15th September, 2021.**

4. The **Statement of Income paid or credited by an investment fund to its unit in Form No. 64C for the Previous Year 2020-21**, required to be furnished on or before 30th June, 2021 under Rule 12CB of the Rules, earlier extended to 31st July, 2021 vide Circular No. 12 of 2021 dated 25.06.2021, **may now be furnished on or before 30th September, 2021.**

Further CBDT has also extended due dates for following as the utility for filling certain forms was not available:

1. **Intimation to be made by a Pension Fund in respect of each investment made by it in India in Form No. 10BBB for the quarter ending on 30th June, 2021**, required to be furnished on or before 31st July, 2021 under Rule 2DB of the Rules, **may now be furnished on or before 30th September, 2021.**
2. **Intimation to be made by Sovereign Wealth Fund in respect of investment made by it in India in Form II SWF for the quarter ending on 30th June, 2021**, required to be furnished on or before 31st July, 2021 as per Circular No. 15 of 2020 dated 22.07.2020, **may now be furnished on or before 30th September, 2021.**

Supreme court (SC) judgment in case of Commissioner of Income Tax (Exemptions), Kolkata v. Batanagar Education Research Trust [2021] 129 taxmann.com 30 (SC):

Facts of the case:

- The Trust was registered under section 12AA of the Act vide order dated 6-8-2010 and was also accorded approval under section 80G(vi) of the Act
- In a survey conducted on an entity named School of Human Genetics and Population Health, Kolkata under section 133A of the Act, it was prima facie observed that the Trust was not carrying out its activities in accordance with the objects of the Trust. A show cause notice was, therefore, issued by the CIT on 4-12-2015
- In answer to the questionnaire issued by the Department, managing trustee have given answers which includes confirmation about non genuine donations, acceptance of accommodation entries ,donation received was returned back to the donators and booking these payments as capital expenditure
- On the basis of the material on record, the CIT invoked the provisions of Section 12AA(3) of the Act and cancelled the registration granted under section 12AA of the Act . Consequently, the approval granted to the Trust under section 80G of the Act was also cancelled.
- The matter was carried in appeal by the Trust by filing Income Tax Appeal before the Tribunal and the appeals preferred by the Trust were dismissed.
- The Trust being aggrieved, filed Income-tax Appeal before the High Court and following questions were framed as substantial questions of law:

1. Whether the Tribunal and the Commissioner of Income-tax (Exemptions) were right in law in directing the cancellation of registration of the Appellant granted under section 12AA to the Appellant Trust on the ground that the Trust had received bogus donation.
2. Whether statement recorded during survey under section 133A of the Act has any probative or evidentiary value?

Income Tax

- After considering rival submissions, the High Court allowed the appeal with following observations:

On the basis of the evidence and the authorities cited before the adjudicating bodies below, we say that the respondent revenue has not been able to establish the case so as to warrant cancellation of the registration of the appellant trust under section 12AA(3) of the Act. The respondent also has not been able to prove any complicity of the appellant trust in any illegal, immoral or irregular activity of the donors.

The order of cancellation of the registration of the trust is set aside. The respondent is directed to restore its registration within three weeks of communication of this order. However, this will not bar any action against the appellant in respect of any future activities.

SC Judgment:

SC observed that answers given by managing trustee also show that donations were received by way of cheques out of which substantial money was ploughed back or returned to the donors in cash. The facts thus clearly show that those were bogus donations and that the registration conferred upon it under sections 12AA and 80G of the Act was completely being misused by the Trust. An entity which is misusing the status conferred upon it by Section 12AA of the Act is not entitled to retain and enjoy said status. The authorities were therefore, right and justified in cancelling the registration under sections 12AA and 80G of the Act.

The SC observed that High Court completely erred in entertaining the appeal under Section 260A of the Act. It did not even attempt to deal with the answers to the questions as aforesaid and whether the conclusions drawn by the CIT and the Tribunal were in any way incorrect or invalid.

Goods & Services Tax

Exemption from filing GST annual return for FY 2020-21 for taxpayers having turnover up to 2 crores:

CBIC vide notification 31/2021 dated 30-07-2021 as per recommendation of the Council exempts the registered person whose aggregate turnover in the financial year 2020-21 is up to two crore rupees, from filing annual return for the said financial year.

This notification shall come into force from the 1st day of August 2021.

No requirement of Audited Financials & Reconciliation Statement in GST; Self Certified Reconciliation to be submitted in GSTR-9C:

CBIC vide notification 29/2021 dated 30-07-2021, has clarified that there is no requirement of Audited Financials & Reconciliation Statement in GST and Self Certified Reconciliation to be submitted in GSTR-9C form.

Hence with effect from 1st August 2021 registered person need not get his books of accounts audited by a Chartered Accountant or a Cost Accountant and consequently there is no requirement of submitting reconciliation statement in the Form GSTR-9C.

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Companies Act

Companies Act

MCA further amends the Incorporation rules:

MCA vide notification dated July 22, 2021, further amends the Companies (Incorporation) Rules, 2014 which shall come into force with effect from September 01, 2021 which is as follows:

1. A new Rule 33A has been inserted which specifies the allotment of new name to the existing company.
2. In case a company fails to change its name in accordance with the directions issued by the Government under section 16(1) of the Act within a period of three months from the date of issue of direction, then the letters "ORDNC (which is an abbreviation of the words "Order of Regional Director Not Complied"), the year of passing of the direction, the serial number and the existing Corporate Identity Number (CIN) of the company shall become the new name of the company.
3. Further the Registrar shall accordingly make the entry of the new name in the register of companies and issue a fresh certificate of incorporation in Form No. INC-11C.

MCA further decriminalized various provisions in LLP Act:

For ease of doing business as well as to encourage startups ecosystem, the Government has approved amendments to the Limited Liability Partnership (LLP) Act to decriminalize 12 offences under the law.

With the proposed amendments, the total number of penal provisions under the LLP Act will be reduced to 22, compoundable offences will be 7, non-compoundable offences will be 3 and the number of defaults to be dealt under the In-House Adjudication Mechanism (IAM) will be only 12.

Further a new definition for small LLPs will also be introduced under the amended Act.

Retail and wholesale trades also included as MSMEs:

Ministry of Micro, Small and Medium Enterprises (MSME) has announced revised guidelines which states retail and wholesale trades will now be allowed to register on Udyam Registration Portal.

However, benefits of Retail and Wholesale trade MSMEs are to be restricted to Priority Sector Lending only.

Accordingly, the list of eligible additional activities included are as follows: NIC Code 45 - Wholesale and retail trade and repair of motor vehicle and motorcycles, NIC Code 46 - Wholesale trade except of motor vehicles and motor cycles and NIC Code 47 - Retail Trade Except of Motor Vehicles and motorcycles.

image: Freepik.com

Government Scheme Updates

Benefits for obtaining MSMEs Registration in India:

The Indian government has always been in favour of providing benefits to **Micro, small and medium enterprises (MSMEs)**. There are many advantages of obtaining MSME registration in India, which can be only availed if the business had registered itself as an MSME/ SSI under MSME Act. The following are a few advantages or obtaining MSME registration in India:

1. Bank Loans (Collateral Free)

The Government of India has made collateral-free credit available to all small and micro business sectors. This initiative guarantees funds to micro and small sector enterprises. Under this scheme, both the old as well as the new enterprises can claim the benefits. A trust named The Credit Guarantee Trust Fund Scheme was introduced by the GOI (Government of India), SIDBI (Small Industries Development Bank of India) and the Ministry of Micro, Small and Medium Enterprise to make sure this scheme is implemented (Credit Guarantee Scheme) for all Micro and Small Enterprise.

2. Subsidy on Patent Registration

50% subsidy is given to the Enterprise that has the certificate of registration granted by MSME. This subsidy can be availed for patent registration by giving application to respective ministry.

3. Interest Rate Exemption

Businesses or enterprises registered under MSME can avail a benefit of 1% on the Overdraft as mentioned in a scheme that differs from bank to bank.

4. Industrial Promotion Subsidy Eligibility

Enterprises registered under MSME are also eligible for a subsidy for Industrial Promotion as suggested by the Government.

5. Protection against Payments (Delayed Payments)

At times, the buyers of services or products from the MSME's or SSIs intend to delay the payment. The Ministry of Micro, Small and Medium Enterprise lend a helping hand to such enterprises by giving them the right to collect interest on the payments that are delayed from the buyer's side. The settlement of such disputes must be done in minimum time through conciliation and arbitration.

In case, if any MSME registered enterprise supplies any goods or services to a buyer then the buyer is required to make the payment on or before the agreed date of payment or within 15 days from the day they had accepted the goods and services from MSME or SCI registered business (if there is no mention of the date of payment).

If the buyer delays the payment for more than 45 days after accepting the products or services, then the buyer has to pay compound interest along with interests (monthly) on the amount that was agreed to be paid. The interest rate is three times the rate that is notified by the Reserve Bank of India.

6. Fewer Electricity Bills

This concession is available to all the Enterprises that have the MSME Registration Certificate by providing an application to the department of the electricity along with the certificate of registration by MSME.

7. ISO Certification Charges Reimbursement

The registered MSME enterprises can claim the reimbursement of the expenses that were spent for the ISO certification.

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