

NewsBites

Fiftieth Edition

50TH

EDITION
NEWSLETTER

Greetings!

We are delighted to present our news bite for the month of May 2022. 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

CBDT reported the highest net direct tax collection in FY 2021-22:

The net direct tax (Income Tax and corporate Tax) collection reached the highest level of Rs. 14.09 Lakh crore in the FY 2021-22 against Rs. 9.45 lakh crore collections in FY 2020-21.

The net direct tax collection has increased by 49.02 per cent during financial year 2021-22, while it has registered a growth of 34.16 per cent in FY 2021-22 over the collections of 2019-20 when the net collection was Rs. 10.50 Lakh crore, and a growth of 23.90 per cent over 2018-19 when the net collection was Rs. 11.38 Lakh crore.

During the last financial year, 2.43 crore refunds were issued compared to 2.37 crore in 2020-21 amounting to Rs. 2,24,814 crore. This includes 2.01 crore refunds of AY 2021-22 itself due to faster processing of returns.

More than 7.14 crore Income Tax Returns (ITRs) were filed for AY 2021-22 as on March 31, 2022 on the new e-filing portal, compared to 6.97 crore ITRs filed for AY 2020-21 till May 31, 2021 (extended last date of the preceding year) representing an increase of 2.4 per cent.

Ready to pay higher TDS, TCS from the 1st April 2022, if Income Tax return for FY 2020-21 not filed:

The law for higher TDS, TCS in case of not filing ITR was announced in Budget 2021 and amended in Budget 2022. If an individual has not file ITR for FY 2020-21, then higher TDS will be applicable on certain incomes such as interest, dividend etc. from April 1, 2022.

The government has amended the law wherein not filing ITR for one year and having TDS exceeding Rs. 50,000 in the previous FY will lead to deduction of TDS, TCS at a higher rate. The higher TDS, TCS rate will be applicable

on specified sources of income such as interest income from recurring deposits, fixed deposits, dividend income, annuity payments etc.

Rate for higher TDS/TCS

As per the Income-tax Act, 1961, the TDS, TCS will be deducted at the rate which is highest of the following:

- a. Twice the rate specified in the relevant provision of the Act; or
- b. Twice the rate or rates in force; or
- c. The rate of five per cent

It is important to note that higher TDS, TCS provision will not be applicable on the TDS rates applicable to salary, provident fund, cash withdrawals from bank account etc.

CBDT issues guidelines for compulsory selection of returns for complete scrutiny during the FY 2022-23:

CBDT has given parameters for compulsory selection of returns for complete scrutiny during FY 2022-23 to the all-Pr. Chief Commissioners/ Chief Commissioners and all Director general and Pr. Director general of Income Tax:

1. Cases pertaining to survey u/s 133A of the Income-tax Act, 1961 (Act)
2. Cases pertaining to Search and Seizure
3. Cases in which notices u/s 142(1) of the Act, calling for return, have been issued & no returns have been furnished
4. Cases in which notices u/s 148 of the Act have been issued for income escaping assessment.
5. Cases related to registration/ approval under various sections of the Act, such as 12A, 35(i)(ii)/ (tia)/ (iii), 10 (23C), etc. (where registration have not been granted



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- or have been cancelled/withdrawn by the competent Authority, yet the assessee has been found to be claiming tax exemption/deduction in the return.)
6. Cases involving addition in an earlier assessment year(s) on a recurring issue of law or fact and/or law and fact
 7. Cases related to specific information regarding tax-evasion provided by provided by any law-enforcement agency, (Investigation Wing! Intelligence! Regulatory Authority Agency, etc)

As per the amendments brought by Finance Act 2021, the time limit for service of notice u/s 143(2) of the Act has been reduced to three months from end of the Financial Year in which the return is filed. Therefore, selection of cases and transfer of cases, wherein assessments have to be completed in faceless manner, to NaFAC shall be completed positively by 31.05.2022. In cases selected for compulsory scrutiny, service of notice u/s 143(2) of the Act shall be completed by 30.06.2022.

Revised instruction for constitution and functioning of Local committees to deal with taxpayers Grievances from High-Pitched Scrutiny assessment:

Taking into consideration the changes in organizational set-up subsequent to launch of Faceless assessment regime, the CBDT issues the following instructions:

1. Constitution of local committees: Required to be constituted in each Pr. CCIT region across the country. The local committee shall consist of 3 members of Pr. CIT/CIT rank.
2. Jurisdiction of Local Committees: The jurisdiction of the local committee consists the region of Pr. CCIT. These committees will also handle the grievances pertaining to central charges located under the

territorial jurisdiction of the Pr. CCIT concerned.

3. Receipt of Grievances: Grievances related to faceless assessment regime will be received by NaFAC through dedicated e mail Id-samadhan.faceless.assessment@incometax.gov.in. It will be forwarded then to the local committee.

Grievances related to Non faceless assessment regime will be received by the office of Pr. CCIT concerned, physically or through mail.

4. Action to be taken by the local committee on grievances petitions: The local committee may call for the relevant assessment records to peruse from the CIT. It may take inputs from Directorate of system (ITBA/e-filing / CPC-ITR, CPC-TDS etc.)
5. Follow up action by Pr. CCIT.: On receipt of the report of local committee, Pr. CCIT concerned may take suitable action in respect of cases where assessment was found to be high-pitched by the local committee.
6. Monitoring the functioning of local committee: The Pr. CCIT concerned shall review the work of the local committee on a monthly basis.

Himachal Pradesh State government notifies the legislators will have to pay their own Income Tax from this year:

The state government was under public pressure to abolish the practice of having the State pays the MLA's income tax, a public interest petition for this was also filled in the Himachal Pradesh high court. By this ordinance, the state govt. has amended the provisions of payment of Income tax on the salaries and allowances of ministers, speaker, deputy speaker and MLA's.

All the legislators will have to pay the income tax from their pocket from the 1st April. For the last five decades, their income tax was being paid from the treasury.



Income Tax

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High Court held that AO can't assess any other income if issue on which reassessment notice was issued resulted in no escaped income:

HIGH COURT OF BOMBAY
Yashoda Shivappa Nagangoudar
v.
Income-tax Officer*

Facts of the case

Assessing Officer issued a reopening notice against assessee on ground that assessee had not filed return of income though she had deposited a cash of Rs. 13.40 lakhs in her bank account - Assessee filed its objections to notice stating that she had deposited cash of only Rs. 18,000 and bank had incorrectly reported cash deposit amount of Rs. 13.40 lakhs - Assessing Officer accepted same - However, Assessing Officer continued reassessment proceedings in respect of a different issue of deposit/credit of Rs. 18.81 lakhs to assessee's account other than in form of cash which was not mentioned in reopening notice issued against assessee - Whether since Assessing Officer had issued a reopening notice based on incorrect facts and same was accepted by him in order disposing off objections of assessee, entire basis on which jurisdiction was assumed under section 147 failed and, therefore, impugned reopening notice was to be quashed -

Held

It was held that reassessment proceedings on different issue of deposit of different amount was unjustified and same was also to be quashed.

Order passed by AO without acknowledging assessee's reply to notice is violation of principles of natural justice: HC

HIGH COURT OF RAJASTHAN
Rati Ram Bambilwal
v.
National Faceless Assessment Centre, Delhi*

Facts of the case

Where Assessing Officer completed assessment under section 143(3) and thereafter he issued notice under section 148 to reopen such assessment and since assessee did not reply to notice Assessing Officer issued a final notice under section 144 and assessee filed reply to such notice within time permitted and despite this assessment which was carried out through faceless assessment system did not acknowledge such reply and Assessing Officer proceeded to complete assessment by making certain addition, order of assessment suffered from violation of principles of natural justice.

Held

When it comes to the clear cut case of breach of principles of natural justice and denial of fair hearing, this self-imposed restriction is not applied. Under the circumstances the impugned order of assessment dated 15-9-2021 is set aside.

The petition is disposed of accordingly.

Goods & Services Tax

No Late fees for filing of GSTR 4 of FY 2021-22 till 30th June 2022:

GSTR 4 - GSTR-4 is a return that must be filed by the taxpayers opting for Composition Scheme on an annual basis.

In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the said notification, after the fifth proviso, the following proviso shall be inserted, namely:

“Provided also that the late fee payable for delay in furnishing of FORM GSTR-4 for the Financial Year 2021-22 under section 47 of the said Act shall stand waived for the period from the 1st day of May, 2022 till the 30th day of June, 2022.”

Gujarat High Court sets aside IGST on Ocean Freights:

Facts of the case

In all the captioned writ-applications, the writ-applicants have challenged the levy of the IGST on the estimated component of the Ocean Freight paid for the transportation of the goods by the foreign seller as sought to be levied and collected from the writ-applicants as the importer of the goods.

The Central Government has notified that the IGST at the rate of 5% will be leviable on the service of transport of goods in a vessel including the services provided or agreed to be provided by a person located in a non-taxable territory to a person located in a non-taxable territory by way of transportation of goods by a vessel

from a place outside India up to the customs stations of clearance in India.

The Central Government, thereafter, issued the Notification No.10 of 2017 – Integrated Tax (Rate) dated 28th June 2017, by which the Central Government has notified that for the said category of service provided in the taxable territory shall be the recipient of service

Held

In the case of Mohit Minerals Pvt. Ltd. Vs Union of India, Gujarat High Court has sets aside IGST on Ocean Freight and held that no tax is leviable under the IGST Act, 2007, on the ocean freight for the services provided by a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India and the levy and collection of tax of such ocean freight.

Companies Act, 2013

MCA extends timelines for certain compliances:

1. LLPs can file their Annual Returns (Form 11) without any additional fee up to 30.06.2022:

Considering the difficulties faced after transition from Version-2 of MCA-21 to version-3, the MCA has extended timelines for filing of the Annual Return (Form 11) for the Financial Year 2021-22 by LLPs without paying additional fee from 30th May 2022 till 30th June 2022. Section 35 of LLP Act read with rule 25(1) of LLP Rules, 2009 requires every LLP to file an annual return with the Registrar in Form 11 within 60 days of closure of financial year.

2. Relaxation in paying additional fees in case of delay in filing all the event-based e-forms by LLP's:

Considering the difficulties faced after transition from Version-2 of MCA-21 to version-3, the MCA has extended timelines for filing all the event-based e-forms by LLP's, due date of which are falling between February 25, 2022 to May 31, 2022, without paying additional fee up to 30th June 2022.

3. Relaxation in filing Form CSR-2 for FY 2020-21:

MCA has once again extended the due date of filing Form CSR-2 for the financial year 2020-2021 till June 30, 2022.

Streamlining the process of rights issue:

1. SEBI vide Circular No. SEBI/HO/CFD/DIL2/CIR/P/2020/13, dated January 22, 2020, had stipulated procedures streamlining the Rights Issue process.

2. In respect of the aforesaid circular, it deal with the requirement regarding minimum time period between closure of trading in Right Entitlements on stock exchange platform and closure of the rights issue, which requires trading in REs on the secondary market platform of stock exchanges commence along with the opening of the rights issue and has to be closed at least four days prior to the closure of the rights issue.

3. SEBI received market representation that in case there are trading holidays between last date of REs trading date and issue closure, provision of minimum gap of four days may not always ensure that there are adequate days for settlement, as minimum 2 working days are required for settlement of REs traded on last day of REs trading window (REs traded on exchange platform have T+2 rolling settlement). It was further represented that there should be a minimum gap of three working days considering two days for settlement and one additional day for investor to make application in Rights Issue.

4. Applicability of this Circular: This circular shall be applicable for all rights issues and fast track rights issue with immediate effect.

5. All entities involved in the Rights Issue process are advised to take necessary steps to ensure compliance with this circular.

6. The recognized stock exchanges are directed to bring the provisions of this circular to the notice of the listed companies and also to disseminate the same on their website



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Case study relating to the procedure of conducting board meetings under the provisions of the Companies Act 2013:

Parties:

D.J Shah Investment Finance Private Limited

v/s

Registrar of Companies

Facts of the case:

The regulators during their procedural scrutiny observed from the documents filed by D.J Shah Investment Finance Private Limited at the MCA portal – from the annual report submitted by the company in form MGT-7, that the company's board meetings were held as listed below during the financial year 2017-18 (financial year ending as on 31/3/2018)

S.No.	Board Meeting	Remarks
1st meeting	Held on 30th June 2017	
2nd meeting	Held on 15th July 2017	The gap between these two meeting was found more than 120 days i.e.150 days.
3rd meeting	Held on 12th December 2017	
4th meeting	Held on 24th March 2018	

Conclusion by the regulators:

From the above details, the regulators concluded that the company /Directors have violated the provisions of section 173 Ofthe Companies Act, 2013 read with Companies (Meeting of Board and its powers) Rules, 2014 in conducting the board meetings.

The order passed by the Registrar of Companies:

The Registrar of Companies imposed a penalty on company and its directors as per the table below for

violation of section 450 of the Companies Act2013 by passing the adjudication order. The order also stated that the ROC is of the opinion that penalty is commensurate with the for esaid failure committed by the company and its directors.

1. Non-compliance reg. gap between Board Meetings more than 120 days during the financial year 2017-18.

Particulars	Company /directors	Penalty Rs.	Penalty continuing failures	Total Penalty Rs.	Maximum Penalty Rs.
Non-compliance reg. Gap between Board Meetings more than 120 days	Company	10,000	30 days * 1000 = 30000	40,000	40,000
	Director	10,000	30 days * 1000 = 30000	40,000	40,000
	Director	10,000	30 days * 1000 = 30000	40,000	40,000
	Director	10,000	30 days * 1000 = 30000	40,000	40,000
Total				1,60,000	1,60,000

Conclusion

From the above decided case, one can come to an conclusion, even though the a minimum number of 4 meetings of the company is conducted every year, it is mandatory that the meetings are to be conducted in such a manner that not more than 120 days shall intervene between two consecutive meetings of the board as required under the provisions of the Companies Act 2013.

It again goes to say that the company and its directors are to be very careful and ensure the absolute compliance called for under the provisions of the Companies Act 2013, failing which the regulators could take action against the company attracting fine and penalty and also spending considerable time on the matter to be resolved.



Government Scheme Updates

Industry News:

Subsidy for MSME Unit in A Zone:

The followings incentives shall be admissible to the Expansion Projects of MSMEs so as to promote quality competitiveness, Zero Defect Zero Effect (ZED scheme), Research & Development, technology up-gradation, water & energy conservation, cleaner production measures and credit rating 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

A. Expansion projects of MSMEs will be eligible for following Incentives:

- I. 5% subsidy only on additional capital equipment acquired for Technology Up-gradation, subject to a maximum of Rs. 25 Lakh.
- II. 75 % subsidy on the expenses incurred on quality certification limited to Rs. 1 Lakh.
- III. 25% subsidy on additional capital equipment acquired for cleaner production measures, limited to Rs. 5 Lakhs.

- IV. 75 % subsidy on the expenses incurred on patent registration limited to Rs.10 Lakh for the National patents and Rs. 20 Lakh for the International patents.
- V. 75% of cost of water audit limited to Rs. 1.00 Lakh.
- VI. 75% of cost of energy audit limited to Rs. 2.00 Lakh.
- VII. 50% of the cost of Capital Equipment under the measures to conserve/recycle water, limited to Rs. 5 Lakh.
- VIII. 50% of the cost of additional Capital Equipment for improving energy Efficiency, limited to Rs. 5 Lakh.

B. Incentives for Credit Rating of MSMEs, 75% of the cost of carrying out Credit Rating by Small Industries Development Bank of India/ Government accredited Credit Rating Agency, limited to Rs. 40,000.

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