

NewsBites

Forty-Fourth Edition

Greetings!

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

Rolling out of new Annual Information System (AIS) by Income Tax Department:

The Income Tax Department had rolled out a new Annual Information System (AIS), a comprehensive statement containing details of all the financial transactions undertaken during a financial year and are at present available with the Income Tax Department, even broader than Form 26AS.

At present, Form 26AS is detailed by the Tax Department, which is a consolidated annual tax statement that includes information on tax deducted/collected at source, advance tax, and self-assessment that is available on the Income-Tax website against a taxpayer's Permanent Account Number (PAN). The revised Annual Information Statement (AIS) includes additional categories of information of interest, dividend, securities transactions, mutual fund transactions, and remittances from abroad, along with information on many other transactions that are at present available with the Income Tax Department.

Salient Features of AIS:

- Includes new information-Interest, dividend, securities transactions, mutual fund transactions, foreign remittance information etc.
- Summary of information and generation of a simplified Taxpayer Information Summary (TIS) for ease of filing return (pre-filing will be enabled in a phased manner).
- Taxpayer will be able to submit online feedback on the information displayed in AIS and also download information in PDF, JSON, CSV file formats.
- AIS Utility will enable taxpayer to view AIS and upload feedback in offline manner.
- Ease of reporting errors in AIS through feedback mechanism.

Accessing AIS on Portal:

Step 1: Login to the Income Tax e-filing Website by using the URL <https://www.incometax.gov.in/>.

Step 2: Click on "Annual Information Statement (AIS)" under "Services" tab from the e-filing portal after successful login on e-filing portal.

Step 3: Navigate to AIS Homepage. View Taxpayer Information summary (TIS) and Annual Information Statement (AIS)

Step 4: Select the relevant FY and click on AIS tile to view the Annual Information Statement.

Under the AIS option on the Income tax portal, there are two tabs – Annual Information statement (AIS) and Taxpayer Information Summary (TIS).

Annual Information System (AIS)	Taxpayer Information Summary (TIS)
Provides comprehensive view of information: a. TDS/TCS b. Bank Interest, Dividend c. Mutual Fund Transaction d. Foreign Remittances	Provides aggregated view of TDS, TCS, Mutual Fund Transaction
AIS provides more information than Form 26AS. However, Form 26AS will continue to be available until the new AIS is validated and completely operational.	It will help the taxpayer in filing tax returns.



Information on AIS:

AIS is divided into two parts:

Part A: contains general information such as PAN, masked Aadhaar number, name of taxpayer, date of birth etc.

Part B: The following information is provided in Part B:

Particulars	Type of Information Available
TDS/TCS Information	<ul style="list-style-type: none"> - Information Code - Description - Information Value
SFT Information	<ul style="list-style-type: none"> - Information (SFT) Code - Description - Information Value
Payment of Taxes	<ul style="list-style-type: none"> - Advance Tax paid - Self-Assessment Tax Paid
Demand and Refund	<ul style="list-style-type: none"> - Assessment Year - Amount of Demand Raised - Amount of Refund Initiated
Other Information	<ul style="list-style-type: none"> - Interest on Refund - Outward Foreign Remittance - Purchase of foreign Currency

Note:

- In case there is variation between the TDS/TCS information relating to tax payment as shown in the AIS on Compliance Portal and Form 26AS on TRACES, then the taxpayer can rely on the information present on the TRACES portal for filing of ITR and other tax compliance purposes
- If the taxpayer feels that the information is incorrect, relates to another person/year, is a duplicate etc., a facility has been provided to submit feedback online. Feedback can also be furnished by submitting multiple information in bulk. An AIS Utility has also been provided for taxpayers to view AIS and upload feedback in offline manner. The reported value and value after feedback will be shown separately in the AIS. In case the information is modified/denied, the information source may be contacted for confirmation.

No ITR for specified senior citizens:

Through Finance Act, 2021, a new section 194P has been inserted in the Income-tax Act, 1961 to provide that in case of senior citizens above the age of 75 years having only pension income and interest income from the account(s) maintained with the bank in which they receive such pension, they do not need to file an ITR.



Gujarat High Court held Assessing Officer to allow TDS credit to employee even if TDS isn't deposited by Employer:

High court of Gujarat in recent ruling in Case of Kartik Vijaysinh Sonavane (Petitioner) Vs Deputy Commissioner Of Income-tax (Respondent) held that TDS credit to employee needs to be allowed even if TDS isn't deposited by Employer. Following is the summary of facts & conclusion of the case.

Facts

- The petitioner-assessee is a pilot by profession and was an employee of M/s. Kingfisher Airlines. Deducted the Tax Deducted at Source (TDS' hereinafter) to the tune of Rs. 7,20,100/- for the Assessment Year 2009-10 and Rs. 8,70,757/- for the Assessment Year 2011-12 in case of the petitioner.
- The amount since had not been deposited by the Airlines in the Central Government Account, the credit when claimed by the petitioner, the same was obviously not given by the respondent on the ground that amount of TDS deducted was not deposited by employer and petitioner-assessee failed to submit Form 16 in respect of the same and the demand had been raised with interest.
- The petitioner-assessee filed rectification applications u/s 154 and asked for cancellation of demand. These were ignored and recovery notice was issued to petitioner-assessee by respondent Income-Tax Department
- Hence, this writ petition under article 226

Held

- The Department is precluded from denying the benefit of the tax deducted at source by the employer during the relevant financial years to the petitioner.
- The credit of the tax shall be given to the petitioner and if in the interregnum any recovery or adjustment is made by the respondent, the petitioner shall be entitled to the refund of the same, with the statutory interest, within eight (8) weeks from the date of receipt of copy of this order.

Bombay HC quashes faceless assessment order as draft assessment order wasn't served upon assessee:

High court of Bombay in recent ruling in Case of Golden Tobacco Ltd. Vs National faceless assessment center quashes faceless assessment order as draft assessment order wasn't served upon assessee. Following is the summary of facts & conclusion of the case.

Facts

- Procedure for Faceless Assessment laid down by section 144B is mandatory in view of section 144B(9) and non-compliance with the mandatory procedure renders the assessment order passed under Faceless Assessment Scheme non-est and liable to quashed and remanded to the Authority for fresh adjudication in accordance with the mandatory procedure.
- Under the Faceless Assessment Scheme where it is not disputed that the draft assessment order proposes variations that are prejudicial to the assessee and it is



also not disputed that the draft assessment order was not served on the assessee, the impugned assessment order passed under Faceless Assessment Scheme is non-est and the impugned order of assessment and consequent notice of demand cannot be sustained and deserve to be quashed and matter is to be remanded to the Authority for fresh adjudication in accordance with the procedure mandated by section 144B

Held

- Reading of sub-section 9 of Section 144B clarifies that the procedure laid down under section 144B about breach of principles of natural justice is mandatory as sub-section 9 provides for consequences of rendering assessment in case of breach of procedure laid down in said Section.
- The Faceless Assessment Scheme brings greater flexibility for taxpayers, which may save the substantial time of assesseees in the tax office. The object of the Faceless Assessment Scheme is to impart 'greater efficiency, transparency and accountability'. It is also for 'improvement in quality of assessment'.
- Under Section 144B(1)(xvi)(b), if there is going to be a variation prejudicial to the assessee, a draft assessment order which is a show cause notice has to be served on the assessee to provide him an opportunity to show cause why proposed adverse variations issued to the assessee. Admittedly, as per the Department's Affidavit in Reply, it has not been done in this instant case.
- In the result, the impugned assessment Order passed under Section 143(3) read with Section 144 of the Income Tax Act, 1961 and notice of demand dated 26-4-2021 under Section 156 of the said Act are quashed and set aside.





Goods & Services Tax

Refund can't be denied even if investigation is pending against the assessee: Bombay HC

Bombay HC in Case of Evertime Overseas (P.) Ltd. v. Union of India 2021 held that Refund can't be denied even if investigation is pending against the assessee. Following are the facts & judgment of the case:

Facts:

- The petitioner claimed that he is entitled to refund under the provisions of section 16 of the Integrated Goods and Services Tax Act, 2017 (hereafter "the IGST Act" for short). It is the case of learned counsel that in respect of the goods that have been supplied, the petitioner is entitled to claim the refund under sub-section 3(b) of section 16 of the said Act. It is submitted that the claim for refund is not being processed by respondent no. 4 on the ground that the investigation is pending against the petitioner.
- The petitioner invited our attention to the provisions of sub-section 10 of section 54 of the Central Goods and Services Tax Act, 2017 (hereafter "the CGST Act" for short). Sub-section 10 of section 54 of the CGST Act reads thus:-

"(10) Where any refund is due under sub-section (3) to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may-

(a) Withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;

(b) Deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law."

- Learned counsel submits that in the teeth of the provisions of sub-section 10 of section 54 of the CGST Act, the action on the part of the respondents refusing to process the refund on the ground that the investigation is pending is untenable. Our attention is invited to one such application made on May 18, 2021 which is at page 92 of the petition seeking release of the outstanding amount of drawback and IGST refund.
- learned counsel appearing on behalf of the respondent Nos. 2 to 4 submitted that the department is justified in not processing the application on the count of a pending investigation to secure the interest of the revenue.
- HC held that having regard to the facts of the present case, it would be appropriate if the claim for the refund is processed by the respondents in accordance with law. We find that there is no order or decision on record on the application claiming refund. In this view of the matter, it would be appropriate to direct the respondent to process the application made by the petitioner for refund and pass a reasoned order upon hearing the petitioner. The claim for refund be decided as expeditiously as possible on its own merits and preferably within a period of eight weeks from today.

Authority for advance ruling held that land sold without any development by way of erecting civil structure or a building or a complex is exempt from GST:

- TIF Integrated Industrial Parks Pvt. Ltd., (TIFIIP P Ltd., 'applicant' for short), i.e., the applicant has stated that it is a company formed by industrialists as required by the Telangana State Industrial Infrastructure Corporation Limited (TSIIC) as a special purpose vehicle (SPV) representing the member industrialists with an objective of providing industrial infrastructure by development of land acquired by TSIIC. It is informed by the applicant that TSIIC issued final allotment letter conforming allotment of 377 acres of land for a cost of Rs. 55.11 Cr. on Vijayawada Highway to setup an Industrial Corridor on 16-5-2018. A sale agreement was executed between applicant and TSIIC on 23-6-2018. It is informed by the applicant that a sale deed will be executed with TSIIC upon completion of development of internal infrastructure. Similarly the applicant is authorized in turn to sell to individual industrialists after each of his allottee commences commercial operation by executing individual sale deeds.
- If the applicant sells the land after developing by way of erecting a civil structure or a building or a complex then such supply is liable to tax under CGST/SGST Acts. However, if land is sold without any development involving any civil structure or building or complex

such supply falls under paragraph 5 of schedule III to Section 7(2) of CGST Act, 2017 and hence is exempt from tax.

- If the applicant executes works contracts involving transfer of property in goods for a consideration under an agreement of contract such consideration will be liable to tax. However if these elements are missing in execution of a construction it shall not be liable to tax.



Companies Act

MCA has removed disqualification status on Director Identification Number (DINs):

As per the Companies Act, directors are disqualified for a period of five years, if they are part of a company that defaulted on filing financial statements or annual returns for three years or has failed to repay the deposits accepted by it or pay interest on it.

The disqualification also covers directors of companies that defaulted on redeeming any debentures on the due date or pay the interest due on it or pay any dividend declared. These directors cannot be re-appointed as a director of that company or in any other company for five years from the date of the default.

MCA has issued a public notice to notify that the Director Identification Numbers (DINs) of Directors found to be disqualified have been de-flagged since the restriction was for five years. MCA had flagged the DINs of Directors found to be disqualified under sub-section 2(a) of section 164 of the Companies Act, 2013 w.e.f. 1st November 2016 for a period of five years. All these Directors are now free to take up fresh assignments.

IEPF Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2021:

MCA vide notification dated November 09, 2021, amends the existing Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016.

Through this notification, the base limit of ₹2 lakhs is increased to ₹5 lakhs for various document submission related purposes.

Now, in case of loss of securities held in physical mode, the shareholder can submit a self-attested copy of FIR/ Police Complaint instead of a notarized copy. In the existing provisions, it was required to submit Surety Affidavit of value equal to market value that of shares as on date of execution but with the advent of this amendment, the Surety Affidavit needs not to be of the afore-mentioned value.

Further earlier, it was required to give an advertisement in at least one English language national daily newspaper having nationwide circulation and in one regional language daily newspaper published in the place of the registered office of the company, if the market value of the shares was greater than ₹10,000, which is now increased to ₹5 lakhs. This amendment is for the benefit of small shareholders.

To ease out the entire process of claim, many issues are resolved and altered to provide clarity and ease to the stakeholders which include a Documentary requirement for securities held in physical mode and the word, "nominee" is now replaced with the word, "claimant".

Further, a copy of the death certificate of the security holder attested by the claimant would now be a sufficient document.



RBI issued revised Interest Rate on Deposits dealing with the Foreign Currency (Non-resident) Accounts (Banks) Scheme [FCNR(B)]:

RBI in view of the impending discontinuance of LIBOR as a benchmark rate has decided to permit banks to offer interest rates on Foreign Currency (Non-resident) Accounts (Banks) Scheme (FCNR) deposits using widely accepted 'Overnight Alternative Reference Rate (ARR) for the respective currency' with upward revision in the interest rates ceiling by 50 bps.

RBI has amended Section 19(d) to provide that the Interest on floating rate deposits shall be paid within the ceiling of swap rates for the respective currency/ maturity and in case of fixed-rate deposits, interest shall be paid within the ceiling of Overnight Alternative Reference Rate for the respective currency/ maturity.

The Overnight Alternative Reference Rate for the respective currency /SWAP rates as on the last working day of the preceding month shall form the base for fixing ceiling rates for the interest rates offered effectively in the following month.



Government Scheme Updates

Industry News:

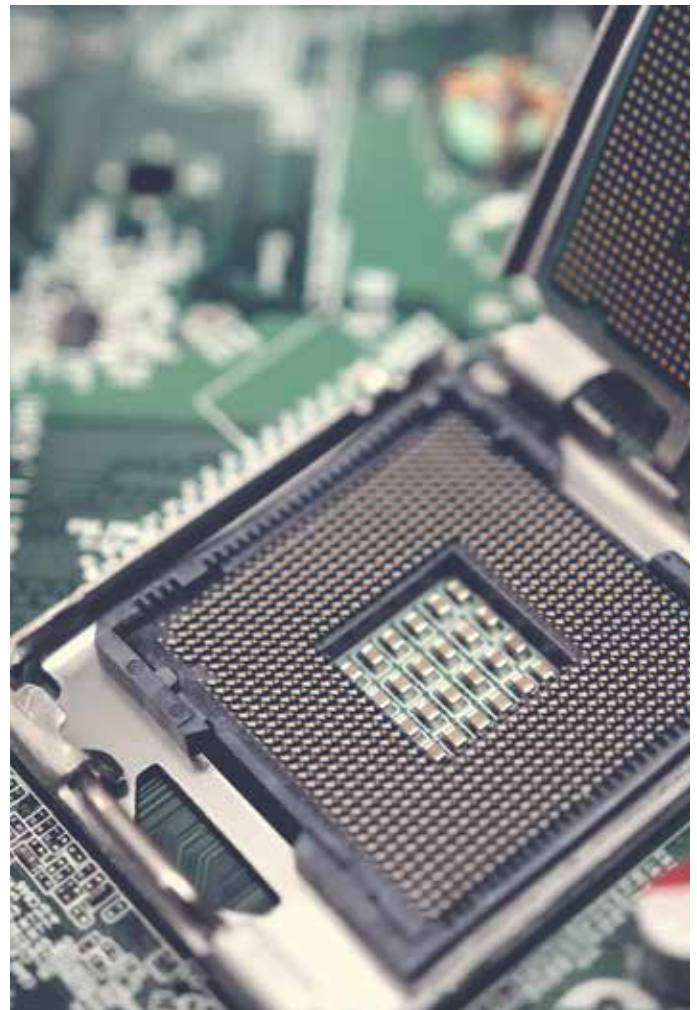
Maharashtra extends Electronic Policy tenure by 2 years

The Maharashtra Government at its Cabinet meeting decided to increase the Maharashtra Electronic Policy tenure by two years and also extend its scope. The policy, which was issued in 2016 expires on April 10, 2021, therefore it was decided to extend it till March 31, 2023.

The Cabinet has also decided to align the policy with center's Scheme for Promotion of Manufacturing of Electronic Components and Semiconductors (SPECs).

The definition of FAB was also expanded and it will include components such as compound semiconductors, silicon photonics devices, and integrated circuits.

A committee will also be set up under the leadership of Maharashtra's Principal Secretary (Industry). It will reconsider those projects, which were not sanctioned under the SPECs scheme. It will also study ways to increase employment in the state by attracting investment in nine types of electronics sub-components. It will create an eco-system for manufacturing electronic components, semiconductors and displays.



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