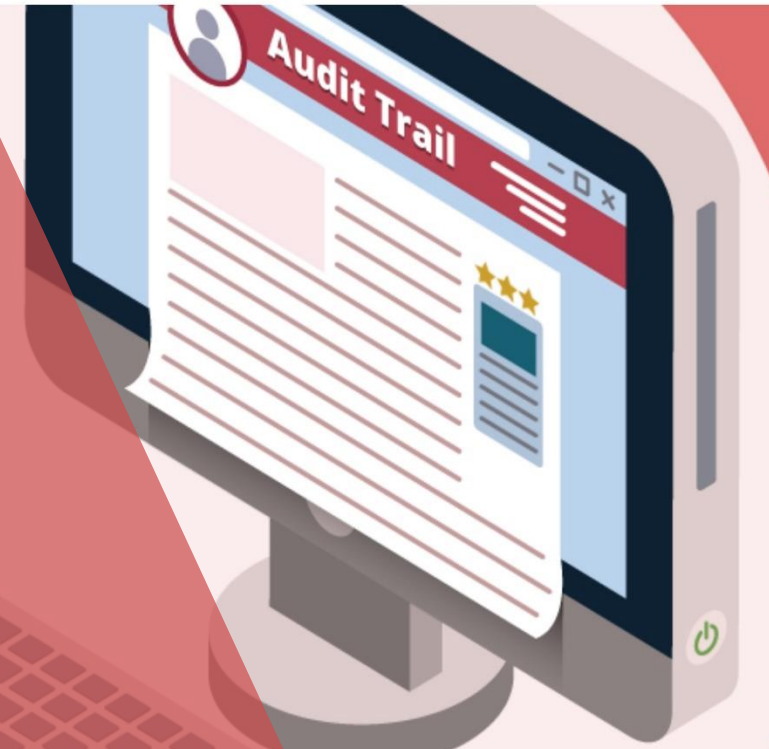


KMS Updates

BUDGET ACT, 2021

**NEWSLETTER
MARCH 2021**

**KHANDHAR MEHTA & SHAH
CHARTERED ACCOUNTANTS**



Direct Tax

VARIOUS EXTENDED DUE DATES

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CLAUSE 30C AND 44 IN TAX AUDIT

CONCESSIONAL RATE OF TAX ON INTEREST INCOME OF FPIs

CLARIFICATION FOR PRESCRIBED IT AUTHORITY U/S 143(2)

AMENDMENT IN FORM 12BA, 16 AND 24Q

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AMENDMENT UNDER SCHEDULE V OF COMPANIES ACT, 2013

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REPORTING U/S 285BA

Particulars	Extended Date	Further Extended Date
Time limit for linking of Aadhar Number with PAN as per section 139AA	31/03/2021	30/06/2021
Time limit for issuance of notice under section 148 as specified in section 149 or sanction under section 151 of the IT Act	31/03/2021	30/04/2021
Time limit for passing of order under section 144C for direction issued by Dispute Resolution Panel	31/03/2021	30/04/2021
Time limit for processing of statement equalisation levy	31/03/2021	30/04/2021

Source: https://www.incometaxindia.gov.in/communications/notification/notification_20_2021.pdf

EXTENDED DUE DATES

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FINANCE ACT

REPORTING U/S 285BA

- ▶ It is clarified that if the assessment order framed in the case of a taxpayer u/s 143(3)/144 of the IT Act based on the search executed in some other taxpayer case, it is to be considered as search case under vivad se vishwas. For the purpose of vivad se vishwas scheme, “search case” means an assessment or reassessment made under section 143(3)/ 144/ 147/ 153A/ 153C/ 158BC of the Income-tax Act in the case of a person referred to in section 153A or section 153C or section 158BC or section 158BD of the Income-tax Act based on search initiated under section 132, or requisition made under section 132A of the Income-tax Act.

Source: https://www.incometaxindia.gov.in/communications/circular/circular_4_2021.pdf

EXTENSION OF CLAUSE 30C AND 44 OF IN FORM 3CD OF TAX AUDIT REPORT

- ▶ CBDT has deferred the applicability of reporting under clause 30C of Impermissible avoidance arrangement for invoking GAAR provisions and reporting under clause 44 - breakup of total expenditure of registered or unregistered entity under GST in the Tax Audit Report till 31st March 2022 in view of the prevailing situation due to COVID-19 pandemic across the country.

Source: https://www.incometaxindia.gov.in/communications/circular/circular_no_5_2021.pdf

CLARIFICATION ON CONCESSIONAL RATE OF TAX ON INTEREST INCOME OF THE FPIs

- ▶ There are reports in certain section of media that the concessional rate of tax of 5% has been withdrawn. It is therefore clarified by CBDT that there is no change in the said proviso even after amendment of section 115AD vide Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 and the concessional rate of tax of 5% shall continue to be applicable for interest income referred to in section 194LD of the Act.

Source:

https://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/923/PressRelease_Continuation_of_concessional_rate_of_tax_18_3_21.pdf

EXTENDED DUE DATES

CLARIFICATIONS AND
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REPORTING U/S 285BA

- ▶ CBDT authorizes the Assistant Commissioner of Income Tax/ Deputy Commissioner of Income Tax (NaFAC) having headquarters at Delhi to act as the prescribed income tax authority for the purpose of section 143(2) of the Act, in respect of returns furnished under section 139 or in response to a notice issued under section 142(1) or section 148(1) of the Act, for the purpose of issuance of notice under section 143(2).

Source: https://www.incometaxindia.gov.in/communications/notification/notification_25_2021.pdf

AMENDMENT IN FORM 12BA, 16 AND 24Q TO INCORPORATE CHANGES RELATED TO FINANCE ACT

- ▶ The CBDT has amended Form 12BA, Form 16 and Form 24Q vide Income-tax (3rd Amendment) Rules, 2021. The Finance Act, 2020 has brought concessional tax regime for individual taxpayers. Further, Section 17(2) was amended to tax contribution made in excess of Rs. 7.50 lakh in hand of employees. The consequential changes related to the amendments have been incorporated in the forms now.

Source : https://www.incometaxindia.gov.in/communications/notification/notification_15_2021.pdf

INSERTION OF RULE 29BA – PAYMENTS TO NON-RESIDENTS

- ▶ CBDT has notified Rule 29BA for making an application for grant of certificate determining appropriate proportion of sum chargeable to tax in case of payment made to non-residents under sub-section (2) and (7) of Sec. 195, w.e.f. April 1, 2021. The Application by a person for determination of appropriate proportion of sum chargeable in the case of non-resident recipient under sub-section (2) or sub-section (7) of section 195 shall be made in Form 15E electronically.

Source: https://www.incometaxindia.gov.in/communications/notification/notification_18_2021.pdf

EXTENDED DUE DATES

CLARIFICATIONS AND AMENDMENTS

AMENDMENT IN FINANCE ACT

REPORTING U/S 285BA

Sr. No.	Nature of Transaction	Class of Reporting Person
1.	Capital gains on transfer of listed securities or units of Mutual Funds	<p>(i) Recognised Stock Exchange;</p> <p>(ii) depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996);</p> <p>(iii) Recognised Clearing Corporation;</p> <p>(iv) Registrar to an issue and share transfer agent registered under subsection (1) section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992).</p>
2.	Dividend Income	A company
3.	Interest Income	<p>(i) A banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act);</p> <p>(ii) Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898 (6 of 1898).</p> <p>(iii) Non-banking financial company which holds a certificate of registration under section 45-IA of the Reserve Bank of India Act, 1934 (2 of 1934), to hold or accept deposit from public.</p>

Source: https://www.incometaxindia.gov.in/communications/notification/notification_16_2021.pdf

- ▶ MCA notifies that the Central Government hereby establishes a Central Scrutiny Centre (CSC) for carrying out scrutiny of Straight Through Processes (STP) e-forms filed by the companies under the Act and the rules made there under.
- ▶ The CSC shall carry out scrutiny of the aforesaid forms and forward findings thereon, wherever required, to the concerned jurisdictional Registrar of Companies for further necessary action under the provisions of the Act and the rules made thereunder.

Source: http://www.mca.gov.in/Ministry/pdf/AccountsAmendmentRules_24032021.pdf

USE OF ACCOUNTING SOFTWARE HAVING AUDIT TRAIL

- ▶ According to the proviso inserted in Rule 3(1), every company from the financial year commencing on or after 01.04.2022, shall use only such Accounting Software which have feature of recording audit trail of each transaction, creating the edit log of changes made in the books of accounts along with the date of change & ensuring that the audit trail cannot be disabled.

Source: http://mca.gov.in/Ministry/pdf/AccountsAmendmentRules_24032021.pdf

Source: http://www.mca.gov.in/Ministry/pdf/AccountsAmendmentRules_01042021.pdf

INSERTION OF SEPARATE ANNUAL RETURN FOR ONE PERSON COMPANIES AND SMALL COMPANIES

- ▶ According to the amendment in Rule 11(1), of Companies (Management and Administration) Rules, 2014, Every company shall file its annual return in Form No.MGT-7 except One Person Company (OPC) and Small Company. One Person Company and Small Company shall file annual return from the financial year 2020-2021 onwards in Form No.MGT-7A.

Source: http://www.mca.gov.in/Ministry/pdf/CompaniesMgmtAdminAmndtRules_11032021.pdf

- ▶ According to the recent amendment by Central government, in Section I, II and II of Part II of Schedule V of Companies Act, 2013 after the word “managerial person” the word “or other director” shall be inserted, and as per the explanation inserted in the same schedule, the “other director” shall mean a non-executive director or an independent director.

	(1)	(2)	(3)
Sr. No.	Where the effective capital (in rupees) is	Limit of yearly remuneration payable shall not exceed in case of a managerial person	Limit of yearly remuneration payable shall not exceed in case of other director
(i)	Negative or less than 5 crores	60 lakhs	12 Lakhs
(ii)	5 crores and above but less than 100 crores.	84 Lakhs	17 Lakhs
(iii)	100 crores and above but less than 250 crores.	120 Lakhs	24 Lakhs
(iv)	250 crores and above.	120 lakhs plus 0.01% of the effective capital in excess of Rs.250 crores	24 Lakhs plus 0.01% of the effective capital in excess of Rs.250 crores

OTHER MATTERS TO BE INCLUDED IN AUDITORS REPORT

- ▶ According to the provisions of Rule 11 of the Companies (Audit and Auditors) Rules, 2014, MCA in their recent circular has included few other matters as point (e) (f) and (g) to be included in auditor’s report.

Source: http://www.mca.gov.in/Ministry/pdf/AuditAuditorsAmendmentRules_24032021.pdf

- ▶ The Central Government has made certain amendments in Schedule III with effect from 1st April, 2021, as per the amendments many new disclosure has been mandatory - few summarized below:
1. Disclosure of Shareholding of Promoters
 2. Trade Payables ageing schedule with age 1 year, 1 to 2 years, 2 to 3 years & more than 3 years
 3. Reconciliation of the gross and net carrying amounts of each class of assets
 4. Trade Receivables ageing schedule with age 1 year, 1 to 2 years, 2 to 3 years & more than 3 years
 5. Detailed disclosure regarding title deeds of Immovable Property not held in name of the Company
 6. Disclosure regarding revaluation & CWIP ageing
 7. Loans or Advances granted to promoters, directors, KMPs and the related parties
 8. Details of Benami Property held
 9. Reconciliation and reasons of material discrepancies, in quarterly statements submitted to bank and books of accounts.
 10. Disclosure where a company is a declared wilful defaulter by any bank or financial Institution
 11. Relationship with Struck off Companies
 12. Pending registration of charges or satisfaction with Registrar of Companies
 13. Compliance with number of layers of companies
 14. Disclosure of 11 Ratios
 15. Compliance with approved Scheme(s) of Arrangements
 16. Utilisation of Borrowed funds and share premium
 17. Details of transaction not recorded in the books that has been surrendered or disclosed as income in the tax assessments
 18. Disclosure regarding Corporate Social Responsibility
 19. Details of Crypto Currency or Virtual Currency

Source: http://www.mca.gov.in/Ministry/pdf/ScheduleIIIAmendmentNotification_24032021.pdf

CLARIFICATION - REFUND
RELATED MATTERSAMENDMENT IN
FINANCE ACT

OTHER AMENDMENTS

Recently, to address certain ambiguities in GST Refund, CBIC issued a Circular No. 147/03/2021 – GST dated 12.03.2021 and salient features of the circular are explained as under:

REFUND ON ACCOUNT OF SUPPLIES TO SEZ

- ▶ Refund on account of supplies made to SEZ unit or developer can be claimed in Form RFD-01 only when the said supply has been disclosed under Table 3.1(b) of GSTR-3B i.e., under the head “zero rated supplies” for the relevant period. However, relaxation was provided to the taxpayers who has inadvertently filed the said figure under table 3.1(a) of GSTR-3B for the period 01.07.2017 to 30.06.2019. Now, the said relaxation has been extended for the errors done during the tax period from 01.07.2017 to 31.03.2021.

REFUND ON ACCOUNT OF DEEMED EXPORT

- ▶ In Circular No. 125/44/2019 – GST dated 18.11.2019, condition was placed on the recipient of deemed export to provide undertaking that he has not availed ITC in respect of the invoices for which refund is claimed. However, when said person navigates on the portal for filing of refund claim, ITC is required to be off set for the purpose of filing of refund application. Due to this recipient of deemed export was unable to make refund application on the portal.
- ▶ To remove such difficulty, the text of undertaking has been changed to enable the taxpayer to claim the refund as recipient of deemed exports.

CLARIFICATION - REFUND RELATED MATTERS

AMENDMENT IN FINANCE ACT

OTHER AMENDMENTS

CALCULATION OF ADJUSTED TOTAL TURNOVER

- ▶ Definition of “Turnover of zero-rated supply of goods” was amended vide Notification No. 16/2020 – CT wherein value of turnover of zero-rated supply of goods was restricted up to 1.5 times of the value of like goods domestically supplied by the same or, similarly placed, supplier. However, similar amendment was not carried out in definition of “Adjusted Total Turnover” and hence there was anomaly in formula for refund calculation u/r 89(4) of the CGST Rules, 2017.
- ▶ Now, it is clarified in this circular that while calculating Adjusted Total Turnover also, the amount of zero-rated supply of goods shall be considered as per the revised definition. Such calculation can be understood by way of an illustration as under:

Example: A supplier is manufacturing only one type of goods and is supplying the same goods in both domestic market and overseas. During the relevant period of refund, the details of his inward supply and outward supply details are shown in the table below:

Outward Supply	Value Per Unit	No. of Unit Supplied	Turnover	Turnover as per amended Definition
Local	200	5	1000	1000
Export	350	5	1750	1500(1.5*5*200)
Total			2750	2500

Particulars	Amount
Net ITC	270
Turnover of zero-rated supply of goods	1500
Adjusted Total Turnover [1000 + 2500]	2500
Admissible Refund Amount	Rs. 162 [1500*270/2500]

Source: https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_Refund_147.pdf

- ▶ Amendments in GST Law introduced vide Finance Bill 2021 has received the assent of President. However, all these **amendments will be applicable only when notifications are issued**. The summary of the said amendments are as under:

Sr.	Section of CGST Act, 2017	Brief of Proposed Amendments applicable w.e.f date to be notified
1.	Section 16 (2) (aa)	New Condition is proposed to be inserted to provide that ITC can be availed only when such details are uploaded by supplier in GSTR-1 and auto-populated in Form GSTR-2A / GSTR-2B of recipient.
2.	Section 35 (5) & Section 44	GST Audit reconciliation statement in Form GSTR9-C is not required to be certified by CA / ICWA. Taxpayer will have to file Annual return (Form GSTR-9) and Reconciliation statement (Form GSTR-9C) on self certification basis.
3.	Section 74	For seizure and confiscation of goods and conveyances in transit u/s 129 and u/s 130 of CGST Act; a separate proceeding from recovery of Tax.
4.	Section 75 (12)	An explanation is being inserted to clarify that "self-assessed tax" shall also include the tax payable on outward supplies shown in Form GSTR-1 but not shown in the Form GSTR-3B.
5.	Section 83 (1)	Provisional attachment shall remain valid for the entire period starting from the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV till the expiry of a period of one year from the date of order made thereunder.
6.	Section 107 (6)	Where appeal is required to be filed u/s 107 against an order u/s 129 (3), pre-deposit equal to 25% of the penalty is proposed to be paid.
7.	Section 129 & Section 130	To delink the proceedings from each other and amendment in quantum of specified amount payable for releasing detained or seized goods / conveyance.
8.	Section 151 & Section 168	The said section empowers the Jurisdictional Commissioner to call for information from any person relating to any matter dealt with in connection with the Act. It has been proposed to grant wider powers to the Jurisdictional Commissioner.

CLARIFICATION -
REFUND RELATED
MATTERS

AMENDMENT IN FINANCE
ACT

OTHER AMENDMENTS

Sr. No.	Section of CGST Act, 2017	Brief of Proposed Amendments applicable w.e.f date to be notified
9.	Section 152	No information obtained under Sec: 150 and Sec: 151 shall be used for the purposes of any proceedings under the Act without giving an opportunity of being heard to the person concerned.
10.	Section 7 (1) (aa)	W.e.f. 01.07.2017 , goods or services supplied by a Club or Association to its members or vice-versa for consideration shall be liable to GST @ 18%. [Insertion of new entry to be made applicable retrospectively w.e.f 01.07.2017]
11.	Section 50 (1)	To charge interest on net GST liability paid in cash w.e.f. 01.07.2017 except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period. [Amendment applicable retrospectively w.e.f 01.07.2017]

Sr.	Section of IGST Act, 2017	Brief of Proposed Amendments applicable w.e.f date to be notified
1.	Section 16	<ul style="list-style-type: none"> Supply to SEZ developer/unit shall be treated as "Zero Rated Supply" only when made for <u>"Authorized Operations"</u>. Zero rated supply with payment of IGST would <u>ONLY</u> be allowed to specified category of taxpayers as may be notified by Government In case of export of goods with payment of IGST, consideration must be received in convertible foreign exchange within timeframe permitted under FEMA, 1999. In case of non-fulfillment of said condition, refund claimed needs to be paid back with interest as per Section 50 <u>within 30 days of time limit as per FEMA.</u>

CLARIFICATION -
REFUND RELATED
MATTERS

AMENDMENT IN
FINANCE ACT

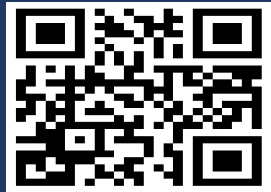
OTHER AMENDMENTS

Sr. No.	Notification No	Amendments / Explanation		
1.	Notification no. 05/2021 – CT dated 08.03.2021 (Revised limit for E-invoicing)	W.E.F. 01-04-2021 , E-Invoicing is mandatory for taxpayers having Aggregate Turnover of more than Rs. 50 Crores in any financial year from 2017-18, 2018-19 2019-20 or 2020-21. The earlier limit was Rs. 100 Crores which has been now revised to Rs. 50 Crores from 01-04-2021.		
2.	Notification no. 06/2021 – Central Tax dated 30.03.2021 (QR code requirement)	<p>W.E.F 01-10-2020, Dynamic Quick Response (QR) code was mandatory on the invoices issued to an unregistered person by a registered person (B2C) having aggregate turnover of more than Rs. 500 Crores in any financial year from 2017-18, 2018-19 2019-20 or 2020-21. However, vide Notification No. 89/2020 - CT, penalty on account of noncompliance of the said provisions for the period up to 31-03-2021 was waived.</p> <p>Now, benefit of Notification No. 89/2020 – CT has been extended from 31-03-2021 to 30-06-2021 and hence penalty on account of noncompliance of the provisions of QR Code on B2C Invoice has been waived till 30-06-2021.</p>		
3.	Notification no. 78/2020 – Central Tax dated 15.10.2020 (HSN Disclosure requirement on invoice)	Turnover criteria	Supply Type	Number of Digits of HSN
		Aggregate Annual Turnover is more than Rs. 5 Crore during the FY 2020-21	B2B	Mandatory to mention 6-digit HSN Code
			B2C	
		Aggregate Annual Turnover is up to Rs. 5 Crore during the FY 2020-21	B2B	Mandatory to mention 4-digit HSN Code
B2C	Optional to mention 4-digit HSN Code			
4.	Requirement to take Letter of Undertaking (LUT) for the F.Y. 2021-22	Facility for obtaining Letter of Undertaking (LUT) for the F.Y. 2021-22 has been started on GSTN portal. Registered taxable person engaged in Zero Rated Supply without payment of Tax (i.e. Exports and SEZ supply) for the FY 2021-22, can make an application for taking LUT on GSTN portal.		
5.	Notification no. 90/2020 – Central Tax dated 01.12.2020 (HSN Disclosure in case of specified cases)	8-Digit HSN Code has been made mandatory for list of 49 items falling under Chapter Heading 28,29,38,39. Registered person engaged in supply of such listed 49 items will be required to mention 8-digit HSN Code on Tax invoice issued w.e.f. 01-04-2021 .		

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