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Tax Deductions for COVID-19 Medical Treatment

We, as honest taxpayers, were regular in paying our taxes for the nation, only expecting a safe & secure environment for our family provided by the administration. Ideally, we could expect some relief from the Government during emergencies, one of many reasons for us to pay exchequers promptly.

Recently, there were initial missteps in the handling of the COVID-19 spread in the country. This led to millions of peoples falling ill, and lakhs of people even losing their lives. We also witnessed a deficit in the Government's ability to provide beds, oxygen, and the necessary medication. Most people had to fend for themselves, bearing medical expenses for hospital admissions, medicines & various pathological tests. The strain of isolation at home with family members for 2-3 would have also impacted the normal ability to receive fair earnings.

Keeping the public's plight in mind, it would be ideal for the Government to consider tax rebates on costs incurred for COVID-19 treatment. Providing it for taxpayers and their family members would be seen as a genuine gesture towards ensuring the citizens' wellbeing.

Tax incentives towards the treatment of COVID-19 would be a massive plus for taxpayers as a worthy option to consider. Further, for taxpayers who have lost their livelihood during this pandemic, exchequers, during these challenging times, could provide cash assistance until they can revive their source of livelihood.

By providing timely assistance, government administrators & exchequers would be seen as revenue collection agents and as a caring partner of taxpayers.

I hope these recommendations are viable options for the Government to consider.

Evaluating Need for GST on COVID-19 Medication

Most developed nations are providing necessary assistance to citizens during this pandemic via medical aid free of cost during these challenging times. For now, this scenario may seem unlikely for Indians. Due to alleged inappropriate usage of political power & influence, the country faces a shortage of oxygen, hospital beds, life-saving drugs, etc. Currently, even RT-PCR tests are a challenge for sick patients. It takes 2-3 days for their tests and another 4-5 days for the results of these reports. For severe cases, this waiting period may prove to be fatal. Thus, there is a situation of national emergency where we can see the country's medical infrastructure strained. Insurance companies also currently deny reimbursement of medical expenses incurred for home isolation, making things challenging. Therefore, the citizens of this country need to arrange most means of treatment on their own and may also face the challenge of no income due to lockdowns.

Additionally, the public is still being charged GST for the purchasing of necessary medicines. This could be a financial burden, especially if large families need to seek treatment. The rise in infections across the country would invariably increase GST collections on COVID-19 medication.

The government must introspect and identify how to overcome any shortcomings while also exploring the possibility of not charging GST on COVID-19 medicines. This will provide financial assistance to families currently recovering from the pandemic.

Challenges of CSR Trusts During Pandemic

As a member of my company's CSR trust, the primary purpose we embrace is serving society. During this pandemic, I am also working to help people in need. However, while performing my duty, I noticed a few challenges, which are mentioned below:

- There is a considerable demand for oxygen concentrators and other medical equipment during this pandemic. The purchase of this equipment involves a GST of 12% on the final price. This GST on critical equipment reduces the purchasing ability of people in need. In my view, GST on COVID-19 life-saving equipment is necessary.
- There is a shortage of medical equipment in the country, requiring them to be imported from other countries. I am capable of funding the purchase of such equipment to deliver the same to India. However, there is no additional support for customs formalities, including payment of custom duty. This hampers the ability to help.
- I have witnessed families losing family members acting as a source of income. To support them financially, I am keen on providing one-time financial assistance to them. However, the revelation of recipients having to pay income tax on such aid is something that I feel should be waived.
- With my limited resources, I am trying my best to serve the underprivileged during this pandemic. The news that I must apply for new registration with several documents for the Income Tax department before June 30, 2021, is a new challenge. The lockdown in the country also provides challenges.

Just like me, other CSR trusts must be facing similar challenges. The government must appreciate the importance of CSR trusts during this pandemic. The removal of such obstacles for CSR trusts would make our efforts seamless and timely for society's benefit.

Legal Maxims in GST.

Legal Maxims simple meaning is legal phrase and in Latin language, these are used to interpret or explain a legal principle. Though there are plenty of legal maxims, here are 5 commonly used Legal Maxims with meaning & application in GST

1. **Non-obstante**

Means 'Notwithstanding', used for overruling sections
Provision of blocked credit [Section 17(5)] is a non-obstante clause

2. **Modus Operandi**

Refers to specific mode of operation
Normally, used to describe the method of working of fictitious firms

3. **Mutatis Mutandis**

Means making necessary changes without affecting the main point
Provision of refund, audit, ITC, etc., from the CGST Act are applicable under the IGST Act as well [Section 20]

4. **Quid Pro Quo**

Favor granted in return for something
Generally, used in the context of supply being made in exchange of consideration

5. **Audi Alteram Partem**

Means other side be heard as well; indicates principles of natural justice
'Opportunity of being heard' given to person before passing an order

The Mockery of ease of doing business

The Chief policymakers of the country are making a sound that they implementing policies to do ease of doing business in the country but we find every time the bureaucrats who draft these policies are actually making a mockery of the term ease of doing business. This statement becomes more true when we can see the hardship to the business by the following change in TDS rules from July 2021.

Every business required to deduct correct TDS on their payment as default in TDS deduction will have the number of penal consequences like disallowance of expenses on which TDS not deducted, payment of tax, interest & penalty and prosecution also. Further incorrect TDS deduction reporting will also question by stakeholders to the trustees who are running the business.

The government now introducing the following new rules in the TDS with effect from July 1, 2021.

01. Deduct TDS at a double rate for non-filers vendors.
02. Deduct TDS at 20% in case vendor PAN not linked with Aadhar
03. Deduct TDS @ 01.% for purchase of goods or vendor will collect TCS.

No doubt the above new rules will increase the tax collection of the government, but the policymakers had not to think about how business can implement these changes.

Let us discuss the challenges of new rules one by one. Companies have been asked to deduct TDS at the double rate for vendors who had not to file their income tax return for two years. Now there is no way companies can verify whether their vendors had files income tax return or not. The companies now sending emails to all their vendors and asking their vendors to provide evidence that they had filed their income tax return for the last two years and this process of collecting information going to be repeated every year. Further companies also required to inform their customer that they had filed their income tax return and hence do not charge double the rate of TDS. The FM should explain to the companies how the new rule match with the vision of government - ease of doing business.

The individual vendors whose PAN were not linked with Aadhar will be inoperative and hence it as good as there is no PAN. An individual may be a vendor, shareholder or employee of the company and companies required to deduct TDS while making payment to him. Now if the individual PAN gets inoperative due to non linking with Aadhar, then the company have to deduct TDS at a 20% or higher rate whichever is applicable. Companies here also have to know knowledge how to validate the PAN of an individual and again FM should explain the captioned question.

Continuing with the mockery, there is a new section, where TDS has been introduced on goods. Further, in case the company not required to deduct TDS, the vendor will collect TCX from their customer. The government must take note that software engineers across the globe failed to include this new rule into the ERP and now the whole process became manual which will be prone to error and as mentioned above, companies require to face penal consequences as they were not able to implement successfully the captioned new changes in the TDS rules.

The government has all the rights to collect taxes and increase their revenue but they should burden the companies with compliances that are difficult to comply with. Hope the government look into your request and came with policies that really make it easy of doing business in the country.

Extension of Important Income tax due dates.

Given below the summary of the extension provided by CBDT.

SN	Compliance	Actual due date	Extended due date.	
			Circular No. 9 dated May 20, 2021.	Press Release dated June 25, 2021
1	Statement of Financial Transactions	May 31, 2021	June 30, 2021	July 31, 2021
2	E TDS return	May 31, 2021	June 30, 2021	July 15, 2021
3	Issuance for Form 16	June 15, 2021	July 15, 2021.	July 31, 2021
4	Income tax return – non audit case	July 31, 2021	Sep 30, 2021	
5	Submission of tax audit report	Sep 30, 2021	Oct 31, 2021	
6	Furnishing of TP report - Form 3CEB	Oct 31, 2021	Nov 30,2021	
7	Income tax return – audit case non TP	Oct 31, 2021	Nov 30,2021	
8	Income tax return – audit case with TP	Nov 30,2021	Dec 31, 2021	
9	Belated/ Revised return	Dec 31, 2021	Jan 31, 2022	
10	Objection to DRP u/s 144C	June 01, 2021	NA	Aug 31, 2021
11	Filing of Form 10A by Charitable Trust	June 30, 2021	NA	Aug 31, 2021
12	Linking of Aadhar with PAN	June 30, 2021	NA	Sep 30, 2021
13	Assessment & Penalty order	June 30, 2021	NA	Sep 30, 2021

Which tax deadlines not extended

The CBDT vide circular no. 9 dated May 20, 2021, extended the number of Income tax due dates for the financial year 2021 to provide some relief to the taxpayer during the second wave of covid and lockdown in the country. However, we find that following CBDT has not extended the due dates for the following compliances and this will continue the hardship to the taxpayer.

01. Payment of TDS for the month ended May 2021 - The due date is still June 7, 2021, and for taxpayer find difficult to pay TDS in the present lockdown scenario
02. Payment of the first quarter of advance tax is due on June 15, 2021, and for this also CBDT not extended the date which continues the hardship to the taxpayer.
03. The due date of TDS return has been extended by one month but not for TCS return. For this, the due date is still May 31, 2021, & June 30, 2021, respectively.
04. There is no extension of payment of self-assessment tax over Rs. 1 Lakh. The due date for the same is still July 31, 2021.
05. No extension of applicability of new section 206AB & section 194Q which are effective from July 1, 2021.
06. No extension of due dates of filing appeal before CIT-A and ITAT.
07. Also in respect of GST return, there is no extension of the due date towards payment of tax and filing of returns. The CBIC only waive the late fees till May and also reduced the rate of interest for delayed payment from 18% to 9%.

Thus, the tax department has not provided complete relief to the taxpayer during this hard time and hence it is very important to aware of which due dates were not extended.

GST Council Meeting Key decisions

COVID Equipments

- As a COVID-19 relief measure, specified COVID-19 related goods such as **medical oxygen, oxygen concentrators and other oxygen storage and transportation equipment, certain diagnostic markers test kits** and COVID-19 vaccines, etc., have been **recommended for full exemption from IGST**, even if imported on payment basis, for donating to the government or on recommendation of state authority to any relief agency. This exemption shall be **valid upto 31.08.2021**. Hitherto, IGST exemption was applicable only when these goods were imported “free of cost” for free distribution. The same will also be extended till 31.8.2021. It may be mentioned that these goods are already exempted from Basic Customs duty.

Other Goods/Services

- Leviability of IGST on repair value of goods re-imported after repairs;
- GST rate of 12% to apply on parts of sprinklers/ drip irrigation systems falling under tariff heading 8424 (nozzle/laterals) to apply even if these goods are sold separately

Education Sector

- **Services supplied to an educational institution** including anganwadi (which provide pre-school education also), by way of serving of food including mid- day meals under any midday meals scheme, sponsored by Government is **exempt from levy of GST irrespective of funding of such supplies** from government grants or corporate donations.
- Services provided by way of examination including entrance examination, where **fee is charged for such examinations**, by National Board of Examination (NBE), or similar Central or State Educational Boards, and input services relating thereto are **exempt from GST**.

Government Sector

- **Service by way of milling of wheat/paddy into flour/rice** to Government/Local Authority etc. for **distribution of such flour or rice under PDS is exempt from GST if the value of goods in such composite supply does not exceed 25%**. Otherwise, such services would attract GST at the rate of 5% if supplied to any person registered in GST.
- Services supplied to a Government Entity by way of construction of a **rope-way** attract GST at the rate of 18%.
- Services supplied by Govt. to its undertaking/PSU by way of **guaranteeing loans** taken by such Entity from banks and financial institutions is exempt from GST.

Real Estate

- Landowner promoters could utilize credit of GST charged to them by developer promoters in respect of such apartments that are subsequently sold by the land promotor and on which GST is paid. The **developer promotor shall be allowed to pay GST relating to such apartments any time before or at the time of issuance of completion certificate**.
- GST is payable on **annuity payments received as deferred payment for construction of road**. Benefit of the exemption is for such annuities which are paid for the service by way of access to a road or a bridge.

Maintenance, Repair, Overhaul (MRO)

- To extend the same dispensation as provided to MRO units of aviation sector to MRO units of ships/vessels to provide level playing field to domestic shipping MROs vis a vis foreign MROs and accordingly,-
 - GST on MRO services in respect of ships/vessels shall be reduced to 5% (from 18%);
 - PoS of B2B supply of MRO Services in respect of ships/ vessels would be location of recipient of service

GST Revised Due date Chart.

Tax Period	Return Form	Class of Tax Payers	Due Date	Late Fee Waived Till Date	Interest Rate	
					Nil Rate Till Date	9% Till Date
March 21	CMP-08	Composition Dealers	8-04-2021	8-04-2021	03-05-2021	17-06-2021
March 21	GSTR-3B	AATO > Rs.5Crore	20-04-2021	05-05-2021	20-04-2021	05-05-2021
March 21	GSTR-3B	AATO Up to Rs.5 Crore	20-04-2021	09-06-2021	05-05-2021	09-06-2021
March 21	GSTR-3B	QRMP (Group A)	22-04-2021	21-06-2021	07-05-2021	21-06-2021
March 21	GSTR-3B	QRMP (Group B)	24-04-2021	23-06-2021	09-05-2021	23-06-2021
April 21	GSTR-3B	AATO > Rs.5 Crore	20-05-2021	04-06-2021	20-05-2021	04-06-2021
April 21	GSTR-3B	AATO Up to Rs.5 Crore	20-05-2021	04-07-2021	04-06-2021	04-07-2021
April 21	GST PMT-06	QRMP	25-05-2021	NA	09-06-2021	09-07-2021
April 21	GSTR-1	Non-QRMP	26-05-2021	26-05-2021	NA	NA
April 21	IFF (Optional)	QRMP	28-05-2021	28-05-2021	NA	NA
May 21	GSTR-3B	AATO > Rs.5Crore	20-06-2021	05-07-2021	20-06-2021	05-07-2021
May 21	GSTR-3B	AATO Up to Rs.5 Crore	20-06-2021	20-07-2021	05-07-2021	20-07-2021
May 21	GST PMT-06	QRMP	25-06-2021	NA	10-07-2021	25-07-2021
May 21	GSTR-1	Non-QRMP	26-06-2021	26-06-2021	NA	NA
May 21	IFF (Optional)	QRMP	28-06-2021	28-06-2021	NA	NA
June 21	GSTR-1	Non-QRMP	11-07-2021	11-07-2021	NA	NA
June 21	GSTR-1	QRMP	18-07-2021	18-07-2021	NA	NA
June 21	CMP-08	Composition Dealers	18-07-2021	18-07-2021	18-07-2021	NA
June 21	GSTR-3B	AATO > Rs.5Crore	20-07-2021	20-07-2021	20-07-2021	NA
June 21	GSTR-3B	AATO Up to Rs.5 Crore	20-07-2021	20-07-2021	20-07-2021	NA
June 21	GSTR-3B	QRMP (Group A)	22-07-2021	22-07-2021	22-07-2021	NA
June 21	GSTR-3B	QRMP (Group B)	24-07-2021	24-07-2021	24-07-2021	NA
F.Y.2020-21	GSTR-4	Composition Dealers	31-07-2021	31-07-2021	NA	NA

Late Fee capping for future returns (applicable prospectively)

Particulars	Late Fee Upper Limit
Taxpayers having NIL liability in GSTR-3B or NIL outward supplies in GSTR-1 Composition taxpayers having NIL liability in GSTR-4	Rs. 500/-
Taxpayers having annual aggregate turnover in PY upto 1.5 cr for GSTR-3B & GSTR-1 Composition taxpayers other than NIL liability in GSTR-4	Rs. 2000/-
Taxpayers having annual aggregate turnover in PY between 1.5 cr to 5 cr for GSTR-3B & GSTR-1	Rs. 5,000/-
Taxpayers having annual aggregate turnover in PY above 5 cr for GSTR-3B & GSTR-1	Rs. 10,000/-
TDS return in GSTR-7	Rs. 50 per day upto maximum Rs. 2,000/-

Amnesty Scheme for Late Fee on past GSTR-3B Returns*

Particulars	Lat Fee Upper Limit
Taxpayers who did not have any liability for tax period July, 2017 to April 2021	Rs. 500/- per return
Other Taxpayers for tax period July, 2017 to April, 2021	Rs. 1,000/- per return
*Reduced rate for late fee would apply if GSTR-3B returns for these tax periods are furnished between 1 st June 2021 to 31 st August 2021	

Relaxation in reconciliation of Input Tax Credit ('ITC')

Cumulative application of rule 36(4) i.e. reconciliation with GSTR-2A for availing ITC for tax periods April, May and June, 2021 in the return for the period June, 2021

Companies can now file GST returns using EVC (OTP based signature)

Allowing filing of returns by companies using Electronic Verification Code (EVC), instead of DigitalSignature Certificate (DSC) till 31st August 2021.

Annual GST Audit

- **Annual Return (GSTR-9)** for FY 2020-21 to continue to be optional for Small Taxpayers having turnover upto 2 cr;
- **Reconciliation Statement (GSTR-9C)** for the FY 2020-21 will be required to be filled by taxpayers having turnover above 5Cr;
- **GST Audit** in GSTR-9 and GSTR-9C to be filed for GST Audit of FY 2020-21. Self certification shall apply FY 2020-21 GST Audit also. Instead of CA certification, self certification can be done.

Notify provision for interest on cash component only w.r.e.f. July 1, 2017

- Retrospective amendment in Section 50 of CGST Act w.e.f. July 1, 2021 providing for payment of interest on net cash basis, to be notified at the earliest.

Extension of statutory time limit for other compliances

Time limit for completion of various actions by any authority or by any person under the Central Goods and Services Tax Act, 2017 ('the CGST Act'), which falls during the period April 15, 2021 to June 29, 2021 extended upto June 30, 2021 subject to specified conditions.*

Extension of time not applicable on:

- (i) Issuance of Tax Invoice;
- (ii) GSTR-1 & GSTR-3B Returns;
- (iii) E-way Bills; etc.

Refund Order Extension: Time limit for issuance of refund order during the period the period April 15, 2021 to the May 30, 2021 extended to fifteen days after receipt of reply to the notice from the registered person or May 31, 2021, whichever is later.

*Wherever the timelines for actions has been extended by Hon'ble Supreme Court, the same would apply.

Amendments for Reconstitution of Partnership Firm in Budget 2021.

Section 9B

A new section 9B which was not proposed while presenting the Finance Bill 2021 on 1st Feb 2021 has been added during the passage of the bill in the parliament. The aim is to plug the loophole on tax leakage arising from the reconstitution of the firm or AOP.

1. Following event (Specified event) took place in the Partnership firm/AOP/BOI (FIRM)
 - a) Dissolution
 - b) Change in Profit Sharing ratio
 - c) Retirement of Partner
 - d) New Person is admitted as a partner in FIRM
2. Partner/Member (specified person) of Firm, AOP or BOI received Capital asset or stock in trade from FIRM in connection with specified Event.
3. If the above conditions are satisfied, then FIRM is deemed to have transferred such capital Asset or stock in trade to specified Person
4. There arise Profit or gains on such transfer to be computed based on Sales consideration (Stock in trade or Capital Asset) to be taken at FMV of the asset on the date of transfer.
5. Such Profit or gains shall be chargeable to tax in the hands of FIRM under the hands of PGBP or Capital gains, following the provision of Act,
6. If any difficulty arises in giving effect to the provision of section 9B, CBDT is empowered to issue guidelines for removing the difficulty.

Section 45(4)

1. Section override Section 45(1)
2. There is either change in profit sharing ratio, retirement, or admission (Reconstitution) of Partner in FIRM (Dissolution not Covered)
3. Partner receives Capital asset or Money from FIRM in connection with re-constitution.
4. On receipt of capital Asset or money, Profit & gains arises to such partner.
5. Such Profit & gain
 - a) Shall be chargeable to Income Tax under the head “ Capital gains” and
 - b) Shall be deemed to be the income of the FIRM in the previous year in which money or capital asset is received by the partner.
6. Profit & Gains will be computed as under:
 - a) Money received + FMV of Capital Asset Received less Balance in capital Account of such partner at the time of reconstitution (without taking into account the increase in the capital account of the specified person due to revaluation of any asset or due to self-generated goodwill or any other self-generated asset.)
 - b) If the above working results in a negative amount, then gain shall be considered as ZERO

Amendment in section 48

1. In calculating capital gain u/s 45(1) according to section 9B, the Capital gain will be computed as under:-
 - a) FMV of Capital Asset transferred to Partner
 - b) Less: Cost/Indexed cost of Acquisition/Improvement
 - c) Less: Capital gain chargeable to tax u/s 45(4) on the transfer of Capital Asset to Partner

Taxability – Summary

Group	Transaction	Section 45(4)	Section 9B
Reconstitution of the firm (Change in PSR, Admission or Retirement of Partner)	Receipt of Money by Partner	Taxability will be computed	No Taxability
	Receipt of Capital Asset (from the firm's perspective) by Partner	Taxability will be first computed	Then, taxability will be computed in pursuance of section 9B under section 45(1) & 48
	Receipt of Stock in Trade	No Taxability	Taxability will be computed in pursuance of section 9B, as per provisions applicable for PGBP
Dissolution of FIRM	Receipt of Money	NOT Applicable	Not taxable
	Receipt of Capital Asset		Taxability will be computed in pursuance of section 9B under section 45(1).
	Receipt of Stock in Trade		Taxability will be computed in pursuance of section 9B, as per provisions applicable for PGBP

The above provision can be illustrated with Example

A. Transfer of Capital Asset on the retirement of Partner

1. There are 3 partners (A, B & C) each having a Capital of Rs. 3 lacs on 31-03-2021
2. There are 3 capital assets X- Rs. 4 lacs, Y-Rs. 4 lacs, and Z – Rs. 1 lacs. All Assets acquired on 01-04-2017
3. A retires and he was given Asset Z, having FMV of Rs. 10 lacs

Tax Implications

i)	Taxability U/s 45(4) – {FMV of Asset- Capital Balance} – Rs. 7 lacs (10-3).	
ii)	Taxability according to section 9B and will be taxable u/s 45(1)	
	FMV of Capital Asset	Rs. 10,00,000
Less: Indexed Cost of Acquisition		Rs. 1,10,661 (1,00,000 x
301/272) Less: Capital u/s 45(4)		Rs. 7,00,000
	Long Term Capital Gain	Rs. 1,89,339

B. Transfer of Stock in trade on the retirement of Partner

1. There are 3 partners (A,B & C) each having a Capital of Rs. 3 lacs as on 31-03-2021.
2. A retires and he was given stock in trade (Book value – Rs. 2 lacs), having FMV of Rs. 10 lacs

Tax Implications

i)	Taxability according to section 9B and will be taxable u/s 28 FMV of Stock	
	in Trade	Rs. 10,00,000
Less: Book value		Rs. 2,00,000
	PGBP	Rs. 8,00,000

Unresolved Issues

1. Nature of Capital gain (Long term and Short term) u/s 45(4)
 - a) Section 45(4) is a departure from Normal Capital Gain taxation rules. A capital gain arises on transfer of Capital Asset
 - b) U/s 45(4), receipt of money or Capital Asset (FMV) by the partner above balance in his capital Account, is chargeable to tax under the capital gains and such capital gains though accrue to partner, but same is taxable in the hands of FIRM. Law does not deem any transfer of Capital Asset u/s 45(4) and gain arising in pursuant thereto.
 - c) In the absence of transfer of capital assets, there cannot be Short term or long-term capital gain, as the same is dependent upon the holding period of a capital asset before its transfer.
 - d) Thus Section envisage special capital gain and following implication draw from thereupon
 - i) The setting of bough forward loss - If Partner has bought forward Long term Loss under the head Capital gain, whether it can be set-off against the special capital

gains. Long-term capital loss can be set-off against Long term capital gain only. In the absence of the essence of special capital gain, this point needs clarification.

- ii) Place of Accrual of Capital Gains- Capital gain on transfer of Capital Asset situated in India is deemed as accruing or arising in India u/s 9. In the case of special capital gain, there is no transfer of Capital gain. In the absence of specific provision, as regard place of accrual of special capital gain, the taxability of same in the hands of Non-resident is questionable.

2. The implication of Double taxation in the hands of FIRM

- a) Under Section 45(4), money paid to a retiring partner above balance in his account is deemed as Capital gain. The excess amount, generally, represents unrealized appreciation in the value of the Firm's asset as on the date of retirement.
- b) Though unrealized gain is made taxable in the hands of FIRM, there is no corresponding provision for the increase in the value of the asset in the hands of FIRM
- c) Explained as under:-
 - i) Suppose there are 3 partners (A, B, C), each having the capital balance of Rs. 2 lacs and C retires.
 - ii) One capital Asset (X) (book value – Rs. 3 lacs) is having a market value of Rs. 12 lacs. C will be credited with his share of appreciation – Rs. 3 lacs (9 lacs x 1/3)
 - iii) C capital account stands at Rs. 5 lacs (2+3) and Rs. 3 lacs is profit accruing to C and will be made taxable in the hands of FIRM as a capital gain.
 - iv) Suppose immediately after C's retirement, FIRM sold capital asset (X) at Rs. 12 lacs and made capital gain (STCG) of Rs 9 lacs (12-3). But out of Rs. 9 lacs, Rs. 3 lacs has already been taxable in the hands of FIRM on C's retirement and the same is again made taxable on the actual capital gain.
 - v) There needs to be provision for enhancement in the COST OF ACQUISITION of capital assets, whose unrealized gain is being made taxable in the hands of retiring partners earlier.

3. The implication of Double Taxation in the hands of retiring partner

- a) Under Section 9B, on receipt of capital asset by retiring partner, taxability is cast on the FIRM based on FMV of Capital Asset. But there is no corresponding provision for the Cost of Acquisition (COA) to be taken as FMV, in the hands of the retiring partner
- b) Explained as under
 - a) Suppose C, having the Capital balance of Rs. 2 lacs, was given Capital Asset (book value- Rs. 3 lacs) having FMV at Rs. 9 lacs
 - b) The FIRM will be made taxable on an aggregate of capital gain (9B+45(4)) of Rs. 7 lacs (1+6).
 - c) The partner has been given Capital Asset at Rs. 3 lacs, but firm is being made taxable based on FMV of capital Asset i.e Rs. 9 lacs

- d) As per the existing provision of section 48, COA in the hands of the partner will be taken at Rs. 5 lacs, which should have been Rs. 9 lacs.
- e) Thus in the absence of explicit provision u/s 55 for FMV being COA in the hands of retiring partner, there will be double taxation, when he will sell such asset in the future.

4. Complexity in Computation Mechanism.

- a) Under new taxability provision, Capital gain on transfer of Capital Asset to retiring partner is first computed u/s 45(4) and then same is allowed as deduction while computing Capital gain envisaged in section 9B
- b) If retiring Partner is given both money and Capital asset on retirement, then there is no provision to determine the capital gain accruing on the transfer of Capital Asset.
- c) Explained as under
 - i) Suppose Partner C (having Capital Balance – Rs. 2 lacs) retires. He is given money of Rs. 3 lacs and Capital Asset (book value- Rs. 4 lacs) – Rs. 10 lacs (FMV)
 - ii) The Taxable Capital under section 45(4) and 9B will be worked out as under:-

Particulars	Section 45(4)	Section 9B
Money Paid to Partner	3,00,000	
FMV of Capital Assets	10,00,000	
Less: Balance in Capital Account	2,00,000	
Capital Gain u/s 45(4)	11,00,000	
FMV of Capital Asset		10,00,000
Less; Book Value of Capital Asset		4,00,000
Less: Capital Gain on transfer of Capital Asset made taxable u/s 45(4). It Cannot be worked out, since capital gains u/s 45(4) have been worked out based on aggregate Consideration comprising payment of money and FMV of Asset. There is no provision to work out capital gain u/s 45(4) proportionate to receipt of capital asset by Partner		????????

5. Deemed transfer u/s 9B- Weakness in Strengthening taxability
 - a) Section 9B provides that if there is the dissolution of firm or reconstitution in the firm, receipt of a capital asset or stock in trade is DEEMED as transfer and gain arising in pursuant thereto will be taxable under the head Capital gains or PGBP. Same hold u/s 45(4).
 - b) It implies that if the partner receives capital asset or stock in trade during tenure of partnership or without there being reconstitution in FIRM, then such transaction will not be considered as transfer, as u/s 9B deeming transfer arising on dissolution or reconstitution of FIRM only.
 - c) This aspect could render entire taxability u/s 9B & 45(4) ineffectual, explained as under
 - i) Suppose there are 3 partners, each having a Capital balance of Rs. 2 lacs. Asset (Book value- Rs. 6 lacs) of the firm has a market value of Rs. 27 lacs.
 - ii) The firm carried out revaluation of Assets and credited the revaluation gain of Rs. 21 lacs, in equal proportion (7 lacs each). Now the capital balance of each partner stands at Rs. 9 lacs (2+7).
 - iii) Suppose C receives an asset of Rs 9 lacs (FMV) against his capital balance. There will not be any taxability either u/s 9B or Section 45(4), as C has not retired
 - iv) Suppose after 1 year of this transaction, C retires. Now on this retirement, there is no taxability, as no capital asset is being transferred on retirement, which has already been done earlier during C tenure as Partner
 - d) This loophole needs to be curbed to strengthen the revised taxability u/s 9B and 45(4).

6. Whether deemed Transfer u/s 9B is specific or General
 - a) Section 9B provides receipt of Capital Asset or stock in trade by Partner on reconstitution or dissolution of the firm as Transfer
 - b) The point of consideration is whether such transaction is transferred for computing taxable income as envisaged in section 9B ONLY or it is transferred for all other intent under Act, enunciated as under
 - i) If there is a transfer of Immovable property above Rs. 50 lacs to partner on retirement, whether the partner will be required to deduct TDS u/s 194IB?
 - ii) If the FMV of Capital Asset transfer on retirement is less than FMV envisaged u/s 56(2)(x), whether the partner will also be taxable u/s 56(2)(x) for excess of FMV u/s 56(2)(x) and section 9B.

7. FMV of Stock in Trade u/s 9B- Whether treated as Turnover ??
 - a) Under Section 9B, receipt of stock in trade on the retirement of a partner is treated as Transfer of stock in trade, and the firm is being taxable based on FMV of stock in trade.
 - b) Question for consideration is, whether such transfer of stock in trade at FMV, is treated as TURNOVER, as many provision under the Act is contingent upon the level of turnover, explained as under:-
 - i) Tax Audit is dependent upon Turnover
 - ii) TDS u/s 194Q is dependent upon Turnover
 - iii) TCS u/s 206C is also partly dependent upon Turnover

Can Tribunal grant Stay of Demand Beyond 365 Days

The legislatures first time recognize the power of the Tribunal to stay demand legislature by insertion of Section 253 (7) which provided for levy of fees on application for stay of demand. Prior to this insertion, the power of the Appellate Tribunal to grant stay was held to be incidental or ancillary to its appellate jurisdiction. Stay was granted in most deserving and appropriate cases where the tribunal was satisfied that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the recovery proceedings to continue during the pendency of the appeal.

Thereafter, two provisos were inserted in sub section 254(2A) by Finance Act, 2001, which provided that where stay is granted in any proceedings, the Appellate Tribunal shall dispose of the appeal within a period of 180 days from the date of such order. Further, if such appeal is not so disposed of within the period of 180 days the stay order shall stand vacated after the expiry of the said period.

These two provisos were substituted with three provisos by Finance Act, 2007, which gave the Tribunal the power to extend the stay up to 365 days provided the delay in disposal of appeal was not attributable to assessee and the appeal is disposed of within the extended period. Third proviso provided that if such appeal is not so disposed of within the extended period of 365 days the stay order shall stand vacated after the expiry of the said period.

At this stage, the question arose whether the third proviso has curtailed the powers of the Tribunal to grant the stay beyond 365 days, even if the delay in disposal of appeal was not attributable to the assessee.

Hon'ble Bombay High Court in *Narang Overseas (P.) Ltd. v. Income-tax Appellate Tribunal* 165 Taxmann 557 read down the third proviso of Section 254(2A) of the Act as amended by the 2007 Act which purported to curtail the power of the Tribunal to grant or continue an order of stay beyond the prescribed period where the appeal was not disposed of within such period, in cases where the delay in disposal of the appeal was in no way attributable to the assessee. Thus, there would be power in the Tribunal to extend the period of stay on good cause being shown and on the Tribunal being satisfied that the matter could not be heard and disposed of for reasons not attributable to the assessee.

To overrule the judgment in *Narang Overseas (P.) Ltd.*'s case (supra), third proviso was substituted by Finance Act, 2008 and the substituted provision provided that the stay cannot be granted beyond 365 days even if the delay in disposal of the appeal is not attributable to the assessee.

The substituted provision came up for consideration before Hon'ble Delhi High Court in *CIT v. Maruti Suzuki (India) Ltd.* 44 Taxmann 166 and court, without examining the constitutional validity of third proviso, held that Tribunal does not have power to grant stay beyond 365 days, but assessee can file writ petition in the High Court for stay and the High Court has the power and jurisdiction to grant stay and issue directions to the tribunal as may be required including granting stay of recovery.

The constitutional validity of the third proviso was examined by Hon'ble Delhi High Court in the case of *Pepsi Foods (P.) Ltd. v. Asstt. CIT* 57 Taxmann 337 where the phrase, "even if the delay in disposing of the appeal is not attributable to the assessee" was struck down by court on the ground being violative of the non-discrimination clause of Article 14 of the Constitution of India.

The first proviso was again amended by Finance Act, 2020 with effect from 1-4-2020 to provide that Tribunal can grant stay subject to the condition that the assessee deposits not less than 20% of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act or

furnishes security of equal amount in respect thereof. Thus, the tribunal can no longer grant stay for entire disputed amount. Assessee will have to approach High Court under Article 226 of the Constitution of India if they wish to have stay for entire disputed amount.

The second proviso was also amended by Finance Act, 2020 with effect from 1-4-2020. The proviso has now been negatively worded and, also substituting the word 'may' with 'shall'. By this substitution, the power of the tribunal has been curtailed and inherent power of granting the stay beyond 365 days even in deserving cases has been taken away. This amendment has been done to overrule various rulings which provided that extension beyond 365 days can be granted if the delay is not attributable to the assessee.

Striking down of the third proviso by Hon'ble Delhi High Court in the case of Pepsi Foods (P.) Ltd.(supra) was subject matter of challenge before Hon'ble Supreme Court in Dy. CIT v. Pepsi Foods Ltd. 126 Taxmann 169 and the court decided on 6-4-2021 that the third proviso to Section 254 (2A) of the Income-tax Act will now be read without the word "even" and the words "is not" after the words "delay in disposing of the appeal". Any order of stay shall stand vacated after the expiry of the period or periods mentioned in the Section only if the delay in disposing of the appeal is attributable to the assessee. Thus, the ratio decidendi of the Hon'ble Delhi High Court has now been affirmed by the Hon'ble Supreme Court.

Striking down of third proviso by Hon'ble Delhi High Court had limited applicability due to its decision being binding only on the lower authorities falling under its jurisdiction. However, the judgement of Hon'ble Supreme Court has brought a great relief to the sincere taxpayers in whose case the extension beyond 365 days can now be granted by tribunals itself and they need not approach high courts.

Conclusion:

By restricting the stay period to 365 days for all assessee, un-equals have been treated equally. Assessee who, after having obtained stay orders and by their conduct delay the appeal proceedings, have been treated in the same manner in which assessee, who have not, in any way, delayed the proceedings in the appeal. The two classes of assessee are distinct and cannot be treated equally.

Filing writ petition with High Court for grant of stay would have not only led to multiplicity of proceedings before the High Court but also had increased the litigation cost for assessee.

Restriction on the stay period so that appeals are heard expeditiously and that assessee do not misuse the stay orders granted in their favour by adopting delaying tactics was not at all achieved by these provisos. By these provisos' assessee were being punished for matters which may be completely beyond their control. Indeed, there can be numerous reasons and causes where appeals may not get finally decided within 365 days and extension beyond prescribed period was imperative.

TDS disallowance for Trust.

Section 40(a) not applicable in case of charitable trust or institution

The question for consideration is as to whether the provisions of Section 40(a)(ia) is applicable for computing the income chargeable under the head “Profits and gains of business or profession” or computation of income under any other heads of income also.

Section 40 clearly stipulates that “Notwithstanding anything to the contrary in Sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head “Profits and gains of business or profession”.

Hence it is evident that the provisions of Section 40(a)(ia) is applicable while computing income chargeable under the head “Profits and gains of business or profession” and it is not applicable to any other heads of income.

In the case of Mrs. Sushila Mallick vs. ITO reported in 19 taxmann.com 233, the Hon’ble Lucknow ITAT has held that the brokerage had been paid on account of sale of the properties, the income of which had been shown under the head ‘short-term capital gain’. The selling of properties was not the business of the assessee and, as such, the amount involved in the transaction relating to the selling of properties was not the part of turnover of the assessee. In view of same the Hon’ble ITAT held that in facts of the case the provisions of Section 40(a)(ia) of the Act is not applicable. This decision was affirmed by the Hon’ble Allahabad High court in the case of CIT Vs. Sushila Mallick (2013) 36 taxmann.com 537 (All).

In the case of Mahatma Gandhi Seva Mandir vs. DDIT (Exemp) reported in (2012) 21 taxmann. com 321 the Hon’ble ITAT Mumbai has held that the exception in Section 40 is carved out, only for the purpose of Section 28 and not for computing the exemption of income of a charitable trust under Section 11.

The disallowance made under Section 40(a) will only go to enhance the business profit of an assessee whose income is assessable under Section 28 and not otherwise.

Hence, provisions of Section 40(a) are not applicable in case of charitable trust or institution where income and expenditure are computed in terms of Section 11.

GST on Crypto currency

The taxable event in GST is the supply of goods or services or both. Goods refer to all types of movable property, including actionable claim, growing crops, grass, and things attached to the land that are agreed to be severed before supply or under a contract of supply. Excludes securities and money.

“Services” means anything other than goods, money, and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Crypto currency typically does not exist in physical form (like paper money) and is typically not issued by a central authority. So Basically, Crypto currency is not Money. Hence it would be covered under GST. Buying and selling of crypto currencies may be considered under the category of supply of goods.

Guidelines and FAQs About E-Filing applications before a Bench of Income Tax Appellate Tribunal

1. E-Filing is the process of electronic online filing of appeals and applications before a Bench of Income Tax Appellate Tribunal. An Assessee or Assessing Officer or any other person, who is entitled to file an appeal, cross objection or application before the Tribunal u/s. 253 of Income Tax Act, 1961, can file the same through e-Filing Portal. This provision will apply to appeals under other enactments mutatis mutandis.
2. Once an e-filed appeal / cross objection / application is physically presented in the office of the Tribunal, the Registry will verify the documents uploaded in the E-Filing Portal with the ones submitted physically. After scrutiny in all respects, the Registry will accept the E-Filing.
3. It is clarified that the date of presentation of appeal physically in terms of Rule 6 & 7 of Appellate Tribunal Rules or respective acts shall be reckoned for all purposes of limitation.
4. Permanent Account Number (or TAN as the case may be) of the assessee, Mobile Number and E-Mail Id are the key identifiers in the E-Filing Portal. Therefore, having a PAN/TAN, valid Mobile Number and E-Mail IDs are pre-requisites for using this Portal.

Frequently Asked Questions (FAQs)

Q 1: What is e-Filing?

Ans: The process of electronically filing appeals and applications under Income Tax Act, 1961 and other enactments through the internet is known as e-Filing.

Q 2: Who can e-File?

Ans: An Assessee or Assessing Officer or any other person, who is entitled to file an appeal, cross objection or application before the Tribunal u/s. 253 of Income Tax Act, 1961 or relevant sections of other enactments, may file the same through e-Filing Portal.

Q 3: Is e-Filing a substitute for normal filing?

Ans: No. e-Filing is an enabling system. As of now, presentation of physical appeal is mandatory even after e-Filing. After e-Filing of an appeal, physical documents along with all enclosures shall be presented before the Tribunal within the time limit prescribed under relevant Act.

Q 4: What are the pre-requisites for e-Filing?

Ans: Permanent Account Number (PAN) / Tax Deduction Account Number (TAN), E-Mail ID and Mobile Number of the Appellant are the prerequisites for e-Filing.

Q 5: What type of cases can I file using E-Filing Portal?

Ans: Appeals, Cross Objections, Stay Applications or Miscellaneous Applications can be filed using E-Filing Portal.

Q 6: Can the appellant pay the Tribunal Fee through the E-Filing Portal?

Ans: No, there is no option for online payment in E-filing. Appellant is required only to enter the details of appeal fee paid in the e-Filing Portal.

Q 6: What will be the date of filing of appeal if I prefer to e-file an appeal?

Ans: The date on which you will present the physical appeal along with all enclosures before the Tribunal will be treated as date of filing of the appeal and limitation shall be calculated with reference to the said date.

Q 7: It is more than 60 days after I have received the order of the CIT(A). I want to file an appeal against the order. But I am already delayed. Can I use E-Filing Portal to file such appeal?

Ans: Yes. Even if you have delayed in filing an appeal before the Tribunal, you can still use E-Filing Portal to file such appeal. However, the date on which you will file the physical appeal along with all enclosures before the concerned Bench will be treated as date of filing of the appeal and limitation shall be calculated with reference to the said date.

Q 8: What is Appeal Sub Type?

Ans: Appeal Sub Type defines the category of appeal based on the section under which the appealed order was passed; and the section under which the original / base order of the assessing officer, as the case may be, was passed. Selection of proper Appeal Sub Type is necessary for identifying the documents to be uploaded and the fee payable.

Q 9: What to do if my appeal sub-type is not available in the list of Appeal Sub Types?

Ans: Please write to itcell.ho@itat.nic.in along with relevant documents so that the Appeal Sub Type can be added to the list as soon as possible.

Q 10: What is Assessee Location? How is it different from City?

Ans: Location of the assessee and department is the city / town / village in which they are located, which can be same as City in the address. However, when address of communication is different from the assessee's own address, then Location differs from City.

Q 11: What is the limit (no. of words) for typing in Grounds of Appeal column?

Ans: Maximum limit for each Ground of Appeal is 1000 characters. In case, your grounds of appeal cannot be given in the specified limit, you may simply write 'Separately Enclosed' in the ground of appeal and upload the manually prepared Grounds of Appeal as an enclosure.

Q 12: Is my memorandum of appeal automatically generated or should I prepare manually?

Ans: Memorandum of Appeal (Form 36), Cross Objection (Form 36A) and Stay Application under Income Tax Act, 1961 are automatically generated by the Portal. However, Miscellaneous application, being descriptive in nature, shall be manually prepared by the appellant. Further, memoranda of appeal under other enactments are to be prepared manually by the appellant.

Q 13: What are the documents needed to be uploaded at the time of Filing?

Ans: Different documents are to be uploaded for different type of appeals. An exhaustive list of documents to be uploaded can be seen here. All documents required to be filed along with an appeal should be scanned in Black & White PDF format in 150 DPI Resolution. Also ensure that the filenames of the document contain only 'a-z', 'A-Z', '0-9', '_', '.' characters. File name with any other characters is not allowed. The Maximum file size allowed for an enclosure is 10 Mb.

Q 14: What to do if my appeal enclosure is more than 10 Mb in size?

Ans: It is possible that an enclosure is more than 10 Mb in size. In that case, after e-filing followed by physical submission of the appeal before the concerned Bench, the appellant shall send the scanned copy to the email address of the respective Bench along with complete details of the appeal and enclosure.

Q 15: I started e-Filing an appeal and at the time of uploading the documents my internet disconnected. Do I have to re-enter all the appeal form data when I come back to the Portal?

Ans: In case you were filing an appeal (and not a CO, SA or MA) and the same is without enclosures, E-Filing Portal will verify your identity particulars and let you complete the pending E-Filing. However, this is not possible in the case of a CO, SA or MA.

Q 16: I have e-Filed an appeal. In how many days do I have to submit the physical document before the respective Bench?

Ans: You have to submit the physical appeal along with all enclosures within the time limit prescribed under the relevant Act from the date of receipt of the order appealed against. Failing this, the appeal will be treated as time-barred.

Q 17: I have e-Filed an appeal, but not yet presented before the Tribunal. I found that some of the information I have given is wrong. What should I do?

Ans: You can simply ignore the already e-Filed appeal and proceed to file a fresh appeal. However, please ensure to submit the correctly e-Filed appeal before the Tribunal.

Q 18: I have e-Filed an appeal. However, I failed to upload some mandatory documents. What should I do?

Ans: You can upload the missing mandatory and optional documents using E-Filing Dashboard after physical submission of the e-Filed appeal before the respective Bench of the Tribunal. However, an enclosure already uploaded cannot be changed using the Dashboard.

Q 19: I have e-Filed an appeal. How can I know the status of my e-Filing?

Ans: Yes. Click on Know Your e-Filing status menu and input the PAN Number, E-Mail Id and Acknowledgement Number, and submit. System will verify the input details and show the e-Filing status.

Q 20: What to do if I forget my E-Filing Username?

Ans: Forgot Username? Please follow the link on the login page. Provide the details asked for and submit your request. An SMS mentioning your Username will be sent to your mobile number.

Q 21: I am filing an early hearing petition and the appeal was never posted earlier. What should be the Date of Hearing?

Ans: If your appeal has not been fixed before the Bench yet and if you wish to file an early hearing petition, you can leave the Date of Hearing column blank.

Q 22: My appeal was posted for hearing numerous times. What should be the Date of Hearing?

Ans: One has to give the date of next hearing of the appeal in which he is filing the E-Petition for consolidation. If no next date is given, mention last date of hearing.

CBDT amends quarterly TDS/TCS statements to expand scope of reporting to payments exempt from TDS/TCS

This Flash News summarizes Notification No. 71/2021 dated 8 June 2021 (Notification) issued by the Central Board of Direct Taxes[1] (CBDT) to amend the Income Tax Rules[2] and Forms[3] pertaining to submission of quarterly statements regarding tax deduction at source (TDS) and tax collection at source (TCS).

The amendments expand the scope of reporting to payments exempt from TDS/TCS and also carry out changes consequential to amendments made to statutory provisions of the Income Tax Act. The changes are listed in the table below:

Form	Additional reporting requirements
26Q—Quarterly statement of TDS	<p>Payments to residents which are exempt from withholding:</p> <ul style="list-style-type: none"> • Payment of income arising from “zero-coupon bond” issued on or after 01 June 2005 by an infrastructure capital company or an infrastructure capital fund or infrastructure debt funds or public sector company or scheduled bank • Payment of dividend income to business trusts, being Real Estate Investment Trusts (ReIT) and Infrastructure Investment Trusts (InvIT) • Payment of dividend, which is exempt from TDS by notification issued by the central government • Payment made for purchase of goods exempt from withholding under Section 194Q, being subject to TDS/TCS obligation under other provisions (except TCS on sale of goods under Section 206C(1H)) <p>Consequential amendment to report cases where taxes have been deducted at higher rates on account of non-filing of return of income by payee</p>
27EQ—Quarterly statement of TCS	<p>Consequential amendment to report cases where taxes have been collected at higher rates on account of non-filing of return of income by payer</p>
27Q—Quarterly statement of TDS in respect of payments made to non-residents	<p>Payments which are exempt from withholding:</p> <ul style="list-style-type: none"> • Income in respect of securities to specified fund (set up in International Financial Services Centre) exempt from tax under Section 10(4D) • Capital gains income payable to foreign institutional investors (FIIs)
26A – Certificate by a chartered accountant	<p>Consequential amendment to cover non-resident payees (in addition to resident payees) as per amendment to Section 201(1), in terms of which payer can be relieved from TDS default if payee has filed return and paid taxes</p>

Comments

The expansion of reporting to payments exempt from TDS/TCS may enable the tax department to populate the relevant information in pre-filled income tax returns to be made available to all taxpayers and facilitate taxpayers to report the correct taxable/exempt incomes in their returns.

GST Council decides to reduce tax rates on items related to Covid relief

This Tax Alert summarizes a recent press release¹ issued by the Ministry of Finance. The 44th meeting of Goods and Services Tax (GST) Council was held on 12 June 2021.

The Council has decided to reduce GST rates on the following items being used in Covid-19 relief and management. The said reduction shall remain in force till 30 September 2021.

Particulars	Earlier rate	Revised rate
Tocilizumab and Amphotericin B	5%	Nil
Anti-Coagulants like Heparin and Remdesivir	12%	5%
Any other drug recommended by Ministry of Health and Family Welfare and Dept. of Pharma for Covid treatment	Applicable rate	5%
Oxygen, Oxygen generation equipment and related medical devices	12%	5%
Testing Kits and Machines	12%	5%
Pulse Oximeters, incl personal imports thereof	12%	5%
Hand Sanitizer, Temperature check equipment, Gas/Electric/other furnaces for crematorium, including their installation, etc.	18%	5%
Ambulances	28%	12%

Income Tax on winnings from online games U/S 115BB:

1. Sec 115BB of the Income Tax Act levies tax on winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting. So online games would be either categorised as 'game of any sort' or gambling and thus taxable U/S 115BB.
2. Such income is taxed on a gross basis at 30% plus applicable surcharge and cess.
3. As per Sec 58(4), no deduction of expenses incurred to earn such an income is allowed. Even deductions U/S 80 shall not be allowed.
4. Gaming Operator have to deduct 30% TDS on winnings exceeding Rs. 10,000/- (As per Section 194B of the Income Tax Act)

Direct Tax News

- ITR Forms for AY 2021-22 notified by CBDT
- CBDT notifies rules and forms for tax registrations of trusts/institutions
- CBDT introduces changes in Master file and CbCR rules effective April 1, 2021 and increase the threshold limit to Rs. 64 Bn.
- CBDT further extends timeline for completion of proceedings under Income Tax Laws and payment of amount determined under DTVSV, 2020
- SC further extends period of limitation in respect of judicial and other proceedings
- CBDT notifies Rule 44DA and FORM No. 34BB for Exercise of option to withdraw pending application under sub-section (1) of section 245M of the Income-tax Act, 1961.
- Following dates were extended by CBDT
 01. Filing of appeal before CIT-A or DRP last date will be April 1, 2021 or May 31, 2021, whichever is later. Date for DRP further extended till August 31, 2021.
 02. Filing of return u/s 148 or 139(4) due date extended from March 31, 2021 to May 31, 2021.
 03. Certain TDS provisions which are applicable only to Individuals like section 194-IA, 194-IB & 194M due date extended to May 31, 2021 from April 30, 2021
- CBDT notifies rules, form and procedure for withdrawal of pending application before Settlement Commission
- CBT has notified today the thresholds for Significant economic presence of a non-resident in India as mentioned under several explanations in section 9 of the Indian Income-tax Act. INR 2 crores as a limit for aggregate payments and 3 Lakhs as a limit for no. of users.
- CBDT allows Hospitals and other medical centers to accept cash more than 2 Lakhs subject payer provide PAN card during the period Apr 1, 2021 to May 31, 2021.
- CBDT has eased the requirement of obtaining PAN by non-resident for investing in Category -III AIF and certain listed securities in IFSC.
- CBDT issues rule prescribing methodology for determining fair market value of undertaking transferred under a slump sale
- CBDT grants further extension for filing of appeal before Commissioner of Income-tax (Appeal) in line with the Supreme Court directives
- CBDT issued 988 pages of instructions to file simple income tax return of AY 2021-22.
- CBDT allowed manual filing form 15CA- 15CB.
- CII index for FY 2021-22 is 317 .
- CBDT issues functionality to verify whether the Vendors have filed tax return for compliance of Section 206AB and Section 206CCA. As per circular no 11 issued , the deductor can verify from income tax portal about its vendor's status of filing tax return in preceding 2 years. Further it has been clarified that preceding 2 previous years for FY 2021-22 shall mean FY 2018-19 and FY 2019-20. The name of specified persons who have not filed tax returns uploaded at the beginning of the year by CBDT will be valid for the entire FY as no further addition will be made to this list . However deletion will be done by CBDT in case any specified person in the list files its tax return

Indirect Tax News.

- CBIC notifies ICEGATE as Common Customs Electronic Portal and relaxes timelines for filing Bill of Entry
- CBIC notifies Regulations for verification of identity of importer, exporter and customs broker
- CBIC allows a Company registered under GST to furnish return in FORM GSTR-3B and details of outward supplies in FORM GSTR-1 or using invoice furnishing facility, (IFF) verified through electronic verification code (EVC) during the period April 27 to May 31, 2021; Issues CGST (2nd Amendment) Rules, 2021
- DGFT had extended the validity of RCMC till September 30, 2021 which expired on March 31, 2021.
- Customs: Special refund and drawback disposal drive from 15 May 2021 to 31 May 2021
- The GST Network (GSTN) has issued a new clarification on 12th April 2021 over the HSN code reporting. Specific HSN codes are not made available in the HSN master or not being accepted on e-invoice and e-way bill portals. The release clarified that the notifications on the mandatory HSN code reporting being Central Tax Notification no. 78/2020 was the minimum requirement on the invoice. In other words, the taxpayers must declare at least four digits or six digits of the HSN code mandatorily depending upon the turnover category they fall into and the type of invoice.
- The CBIC has allowed all taxpayers (including a Company taxpayers) to verify their GST returns filed up to 31st May 2021 using an Electronic Verification Code (EVC).
- GST refund: date of filing of the refund claim in GST RFD 01 till the date of communication of the deficiencies in FORM GST RFD 03 shall be excluded from the period of two years. Thus, if the deficiency memo has been issued even after the expiry of two years, it cannot be treated as time barred.

Trade News

- The validity of Foreign Trade Policy and Handbook of Procedures (HBP) was earlier extended by one year from 31 March 2020 to 31 March 2021. Vide recent notification and public notice, the validity of FTP and HBP is further extended by six months i.e. from 31 March 2021 to 30 September 2021. Consequently, the benefits under various export promotion schemes will be continued for another six months.

■ Mandatory audit trail extended to 1st April 2022.

- The International Financial Services Centres Authority (IFSCA) has issued the International Financial Services Centres Authority (Finance Company) Regulations, 2021 (Regulations) dated 25 March 2021 to provide a framework for finance companies in an International Financial Services Centre (IFSC) in India. The Regulations are aimed at providing a competitive regulatory environment to non-banking financial institutions to complement the role of banking in providing finance, innovative products and services from the IFSC. The Regulations have come into force from 25 March 2021.

- Government of India, in consultation with Reserve Bank of India, has decided to issue Sovereign Gold Bonds. The Sovereign Gold Bonds will be issued in six tranches from May 2021 to September 2021: Ministry of Finance.

- Employees State Insurance Corporation has extended relief in depositing ESIC Contribution for the Month of April 21 due to pandemic of Second wave of Corona to maintain the cash flow. As per the notification dated 12/05/2021, relaxation has been given to all establishments to file and remit the ESIC contribution for the month of April 21 upto 15th June 2021, instead of 15th May 2021.

- The Central Government vide gazette notification dated April 29, 2021, released an amendment in the Employees' Deposit-Linked Insurance Scheme, 1976, which is to be called the Employees' Deposit-Linked Insurance (Amendment) Scheme, 2021. Vide this amendment, the EDLI benefits enhanced as under:

*EDLI Benefits & Calculation

- In case of the death of the insured person/employee, the death benefit lump-sum is paid to the registered nominee mentioned in the document.

-The death benefit pay-out to be given to the nominee will be calculated as under

i. {Average Monthly remuneration/salary of the insured Employee for the last 12 months (limited to INR 15,000/- p.m.) x 45} + Bonus Amount (INR.1,75,000)

ii. The maximum amount to be paid under EDLI scheme is capped at INR. 7,00,000.

iii. The minimum insurance compensation is INR 2,50,000

- Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India, Friday notified the production Linked Incentive (PLI) Scheme for White Goods (Air Conditioners and LED Lights) manufacturers in India. The objective of the scheme is to create complete component ecosystem in India and make India an integral part of the global supply chains. With due consultations with industry and other stakeholders, DPIIT issued detailed Scheme Guidelines for effective operation and smooth implementation of the Scheme. The Scheme is expected to attract global investments, enhance manufacturing and generate large-scale employment opportunities.

The PLI Scheme will be implemented within the overall financial limits of Rs. 6,238 Crores (Six thousand two hundred thirty-eight Crore) over a period of 5 years during FY 2021-22 to FY 2028-29. Eligible Investment made in terms of Scheme guidelines, on April 1, 2021 or thereafter, shall be reckoned for considering the incentive under the Scheme.

Direct Tax Judgments

- ❖ Jaipur ITAT held that amount of grant/subsidy was not to be reduced from the actual cost of assets for computing depreciation
- ❖ Delhi ITAT held that the disallowance u/s 14A gets restricted to the extent of exempt income, even if the provisions of the section are attracted
- ❖ The AO mechanically applying Rule 8D is not the mandate of the law in view of Section 14A(2) :ITAT Delhi
- ❖ Ahmedabad Tribunal rules that angel tax provisions are not applicable when shares are issued pursuant to a scheme of amalgamation, especially when the same are issued at par value
- ❖ Legislature could have easily included reference in Section 40(a) to prohibit deduction of amounts paid towards education cess :ITAT Pune
- ❖ Delhi HC applies 5% withholding tax under India-Netherlands DTAA on dividend income pursuant to Most-Favored-Nation clause
- ❖ ITAT Delhi held that Circulars cannot be treated as amendments which generally have a prospective effect unless specified as retrospective.
- ❖ ITAT Mumbai held that the amount for sale of specialized software and maintenance cannot be held as being in the nature of “royalty” under India-US tax treaty
- ❖ The Supreme court in the case of Reliance Energy Limited which was dealing with a situation where the amount of deduction u/s 80IA was more than the amount of income from business or profession which was included in the Gross total income and as such the revenue contended that following Section 80AB the deduction was to be restricted to the amount of income of the nature of business or profession which was included in the Gross total income. However the Apex court upon reading of Section 80IA(5), its own judgement in the case of Synco Industries , Canara workshop Private limited dismissed the appeal of the department
- ❖ The Bangalore ITAT in the case of Yokogawa India held that allow foreign tax credit as business expenditure in case credit of same not provided.
- ❖ Kolkata Tribunal applies beneficial tax treaty rate on dividend income for dividend distribution tax
- ❖ The Bombay high court held that income tax (I-T) officers cannot adjust the refunds due to taxpayers against outstanding demands in excess of the limits laid down in instructions, circulars and guidelines issued by the Central Board of Direct Taxes (CBDT)
- ❖ Addition made merely on the basis of audit objection by the Departmental Officer in reassessment proceedings is not tenable by law. :ITAT Ahmedabad

- ❖ Karnataka High court in the case of Puma India held that commission paid by assessee-company to its overseas Associated Enterprise (non-resident agent) for placing orders with manufacturers outside India not liable to TDS under section 195 as no income by way of commission arose or accrued in India to non-resident agents as services were rendered or utilized outside India and commission was also paid outside India. Thus, no taxing event having taken place within territories of India.
- ❖ Madras HC set aside the order passed under faceless assessment scheme as assessee provided inadequate time for response. - *Magick Woods Exports Private Limited vs ACIT(NeAC)* (Writ Petition No 10693 of 2021)
- ❖ Mumbai ITAT reconfirms in the case of UHDE INDIA PVT LTD that CESS is allowable as expenditure u/s 37(1).
- ❖ Mumbai bench of ITAT recently dealt with allowability (capital or revenue) of payment made by Unilever group company to Lakme group company whereby it is agreed that Lakme would not engage in direct marketing/selling of the product in retail market for a period of 10 years. Assessee's contention :- Arrangement is made to augment profitability as it would reduce promotion expense and therefore expenditure is in revenue field. -Lakme has not given up right of manufacture. ITAT relied heavily on *Empire Jute Co. Ltd. v. CIT(SC)* observed that there may be instances where expenditure results in obtaining an enduring benefit but it is still a revenue expenditure. The SC held that it is not every kind of enduring benefit will make the expenditure a capital in nature. The court ruled, as evident from the extract of the order reproduced here below (in comment), while applying the test of enduring benefit, nature of the benefit, in commercial sense, is to be looked at and only if benefit is in a capital field, expenditure is to be disallowed. ITAT ruled in favour of assessee.
- ❖ AAR in the case of CTBI Pvt Ltd held that reimbursement of social security, insurance, and other costs not taxable as Fees for Technical Services
- ❖ Mumbai ITAT held that the benchmarking of the intra-group services received by the assessee by applying TNM method could not have been faulted with
- ❖ Mumbai ITAT held that the onus is on the Revenue to demonstrate that a Permanent Establishment of a foreign enterprise exists in India
- ❖ ITAT Delhi in the case of *Bharat Rasayan limited* held that The word 'Cess' cannot be considered a part of tax and will not be disallowed u/s 40(a)(ii).
- ❖ ITAT Jaipur held that claims for any bad debt in any previous year, shall be admissible under section 36(1)(vii) of the Income Tax Act 1961.
- ❖ ITAT Pune held that once the income is not chargeable in India, there is no liability of TDS as per the provisions of Section 195
- ❖ Bombay High Court holds that tax authorities can adjust refunds against outstanding demands only in accordance with the instructions/ guidelines issued by the CBDT

Indirect Tax Judgments.

- ❖ Bangalore CESTAT in the case of Ace creative learning held that no reversal of CENVAT credit on redemption of mutual funds under Service tax
 - ❖ HC holds ITC cannot be denied to the buyer in absence of any proceedings against the defaulting sellers
 - ❖ Gujarat AAR held that there should be nexus between ITC and output tax.
 - ❖ Karnataka AAR in the case of Bowring Institute held that GST not leviable on subscription/infrastructure development fee collected from members
 - ❖ Delhi High Court issues notice in writ petition challenging constitutional validity of Section 16(2)(c) of the CGST Act 2017 as well as Rule 36(4) and Rule 86A(1)(b) of the CGST Rules.
 - ❖ Calcutta High Court, in a matter has stayed the summons and proceedings thereunder initiated by the State GST authorities when the proceedings on the same subject matter were pending before the Central GST authorities in the matter of Raj Metal Industries & Anr. Vs. Union of India & Ors (W.P.A. 1629 OF 2021) vide order dated 24.3.2021. It was held that the summons issued by the State GST is, prima facie, in violation of Section 6(2)(b) of the WBGST Act. The order also took note of D.O.F. No.CBEC/20/43/01/2017-GST (Pt.) dated 5.10.2018 issued by the Central Board of Indirect Taxes and Customs.
 - ❖ Madras HC holds trade discount received under dealership agreement is not subject to Service tax
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International Tax News

- ❖ UAE Cabinet Ministry has amended certain penalties of “Cabinet Resolution No. (40) of 2017 on Administrative Penalties for Violations of Tax Laws in the UAE”. Further the much-awaited Amnesty scheme has also been introduced for giving relief to taxpayers.
- ❖ The Australian government’s 2021–2022 budget, released May 11, announces plans to encourage research through a new patent box regime and other measures and to provide broader business investment support
- ❖ the European Commission proposed regulations that would enable it to scrutinize and potentially block acquisitions of EU-based companies by companies that benefit from certain preferential foreign tax treatments
- ❖ Finnish court decisions on tax neutral mergers with US companies may have positive implications for shareholders in other EU states
- ❖ G7 agrees to a minimum tax rate of 15%:
 1. The G-7 consisting a group of advanced countries- Canada, France, Germany, Italy, Japan, the United Kingdom, and the U.S, agreed to a global minimum tax of 15% at their meeting in London.
 2. This will enable the Europeans to increase the tax rate of tech companies having headquarters in US but significant operations in Europe. It will also enable countries to levy taxes on the overseas earnings of firms headquartered in tax havens.
 3. Negotiators hope to advance progress toward a binding agreement at a meeting of leaders of the Group of 20 in Italy in July.
 4. Not all European countries agree. Ireland which has attracted giants such as Apple, Google and Facebook, says that it would not increase its tax rate of 12.5%.
Flip side: G-7 countries all already have corporate tax rates above 15 %. The question is if others will follow suit.