C.V.O.CA'S

FOR MEMBERS / SUBSCRIBERS / VOL. 24 - NO. 9 - APRIL 2021

NEWS & VIEWS

From President's Desk...

Dear Professional Colleagues and Readers,

Holi, An Auspicious day for all Indians around the world was celebrated with great zeal this year despite certain restriction orders laid by the government. The festival not only energizes you physically but also fills your soul with colours and happiness.

Coronavirus cases in the country are rising at a rate not seen since May last year, indicating that India's second wave may be worse than the first wave despite the ongoing vaccination drive. Five states Maharashtra, Punjab, Karnataka, Chhattisgarh and Gujarat have reported a surge in new infections. Maharashtra government has extended the Covid-19 guidelines till 15 April following a steep increase in confirmed cases from various parts of the state. The financial capital of the country Mumbai has been reporting more than 6000 cases daily for the last week. In order to check the spread, Government has declared a night curfew across the state, including Mumbai, from 28th March, under its 'Mission Begin Again' program.Government has expanded the prioritized age group to include all persons aged 45 years and above for COVID-19 vaccination from April 1. Getting a COVID-19 vaccine can keep you away from contracting the disease by creating an antibody response in your body without your having to become infected with the novel coronavirus. Hence all those eligible should get vaccinated on priority basis.

The Lok Sabha has passed the Finance Bill, 2021 on March 23, 2021. The Bill presented originally in the Lok Sabha on February 01, 2021 has not been passed in its original shape,127 changes have been made in the Finance Bill, 2021 as passed by the Lok Sabha. One of the most significant changes is in respect of the rise in limit for tax exemption on interest earned on provident fund contribution by employees to Rs 5 lakh per annum in specified cases as against Rs 2.5 lakh proposed in the Budget.

Events in Retrospect

Capital Market committee had organised an online Technical Analysis and Price Action Course for its Members as well as non-members.With the help of Technical Analysis, you know exactly when to time your action.The event saw an overwhelming response wherein more than 40 participants took benefit of the Technical Analysis course.

Students committee organised an online webinar on Basics of FEMA covering topics of Current Account and Capital Account Transactions and Residential Status. The webinar gave insight to students in field of practice having good scope of specialisation. The session along with the Power point presentation was well appreciated by students.

The 90-day Fitness challenge League (FCL) came to an end on 7thMarch. More than 375 participants had enrolled for the FCL under 17 Teams.Fithet Team were declared as winners of the league. The event motivated people to work more on their fitness.

In the Last, I would just like to quote, "The positive thinker sees the invisible, feels the intangible and achieves the impossible."

Thank you all..... Always in Gratitude

CA Jigar Ratilal Gogri

CHALLENGE TO CHANGE!!!

April 1, 2021

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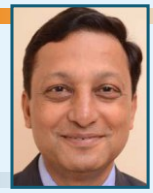
FROM THE DESK OF CHAIRMAN

ASSOCIATION



CA Ketan Nanji Gada

A RESPONSIBLE LIFE

We are responsible for our lives, well being and actions in all areas of our life. It is noticed that we may operate self responsibly in one context and passively in another. For example, we may be self responsible financially but dependent emotionally. We may be proactive when working for self but reactive and non accountable when working for else.

We need to be self responsible in each of the following areas of life:

1. I am responsible for the level of consciousness I bring to my activities.

When I am working on a project, listening to a lecture, playing with my child, talking with spouse, reading my performance review, driving my car, I need to do the activities consciously , giving 100% to the occasion.

2. I am responsible for my choices, decisions and actions.

I am the cause of my all choices, decision and actions. When I do so knowing my responsibility, I am more likely to proceed wisely and appropriately than if I make myself obvious of my role as source. When I accept responsibility, I am far more likely to choose, decide and act in ways that will not later cause embarrassment, shame or regret.

3. I am responsible for fulfillment of my desire.

One common cause of frustration and unhappiness is one's fantasy of rescuer who will someday materialize and solve his problems and fulfill wishes. No one is coming to save me; no one is coming to make life right for me; no one is coming to solve my problems. If I don't do something, nothing is going to get better. The great advantage of fully accepting this is that it puts power back in our own hands. We are free to act. As long as I am overpowering others, I am disempowering myself. In my avoidance of self responsibility, I am condemn my self to passivity and helplessness.

4. I am responsible for how prioritize my time.

Our choices and decisions determine whether the disposition of our time and energy reflects our professed values or is incongruent with them. If we are clear in our understanding that how we prioritize time is our choice and responsibility, then we are most likely to address and correct contradictions than if we tell ourselves that we are somehow victims of circumstances.

5. I am responsible for how I deal with people.

Whether I choose to say or do, I am author of my behavior. I am responsible for how I speak and how I listen. I am responsible for the rationality and Irrationality of dealing with others. I am responsible for the respect or disrespect towards others, for the fairness or unfairness, for the kindness or unkindness, for the generosity or meanness. Whether I keep my promises or break them, it is my decision.

6. I am responsible for what I do about my feelings and emotions.

If we are educated to understand or manage to learn our own, that we are responsible for actions we take on the basis of our feelings, the chances that we will be less impulsive and more thoughtful about our behavior. But we operate on the implicit premise that whatever impulse hits us must be followed, if we believe that feelings are to be obeyed without judgment, than we become reckless drivers through our existence.

7. I am responsible for my happiness.

If we take the position that our happiness is primarily in our own hands, we give ourselves enormous power. We are not waiting for events or other people to make us happy. We are not trapped by blame or self pity. We are free to look at the options available in any situation and respond in the wisest way. If something is wrong our response would be what can I do? What are the possibilities?

In taking responsibility for our own existence we implicitly recognize that other human beings are not our servants and do not exist for other human beings as means to our ends, just as we are not means to their ends. Morally and rationally, we are obliged to respect one another's right to self interest.

(Adapted from book of Dr. Nathaniel Branden (Ph.D.) – Taking Responsibility)

Thank you all..... Always in Gratitude

CA Ketan Nanji Gada

EVENTS IN RETROSPECT

Day & Date	Committee	Program Name	Speaker	Attendance / Views
Thursday, March 18, 2021	Students Committee	Basics of FEMA	CA Viral Satra, Partner at Shah & Modi Chartered Accountants	42 participants on Zoom
Saturday, March 13 to Sunday March 28, 2021	Capital Markets Committee	Technical Analysis and Price Action Course in Capital Markets	Faculty - CS Keyur Furia, Full Time Technical Trader and Mentor	41 participants on Zoom
Sunday, February 28, 2021	YIMEC Committee	Nutrition and its Stories	Urmi Hariya, Nutritionist and Dietician	90 participants on Zoom
December, 14, 2020 to March 7, 2021	YIMEC Committee	Fitness Challenge League – 90 days	In association with Fitket App	340 participants

TWO SWORDS CANNOT FIT INTO THE SAME SHEATH

Compiled by:
CA Nirali Sanjay Gada

Recently, basis the decision formed by the 3-Judge Bench of the Hon'ble Supreme Courtdated 09.03.2021 in Civil Appeal No. 1827 of 2018 in the case of M/s Canon India Private Limited vs Commissioner of Customs, CBIC has issued instruction[1] with respect to Show Cause Notices (SCNs) issued by the Addl. Director-General, DRI (ADG).

The specified instruction directs that presently and until further directions, all SCNs issued by DRI may be kept pending since the implications of the specified judgement are under examination by the board.Additionally, it directs that all fresh SCNs u/s 28, in respect of cases presently being investigated by DRI are required to be issued by jurisdictional Commissionerates from where imports have taken place.

What is the judgement:

The Hon`ble Apex Court has ruled that the Additional Director General (ADG) of Directorate of Revenue Intelligence (DRI) is not the proper officer to issue Show Cause Notice (SCN). The Apex Court has concluded that the entire proceeding in the present case initiated by ADG (DRI) by issuing SCN, as invalid and without any authority of law. The Apex Court has accordingly set aside the subject SCN.

What all are the basis forming the Judgement?

- **Section 28(4) of the Customs Act 1962:**

  Referring to the provisions of Section 28(4), the Court observed that the obvious intention of the legislature was to confer the power to recover such duties not on any proper officer but only on 'the proper officer'.

- **DRI officer not even a proper officer under Section 28:**

  The Supreme Court held that Additional Director General of the DRI who was appointed as an officer of Customs under the Notification dated 7 March 2002, was not entrusted with the functions under Section 28 as a proper officer under the Customs Act.

- **Usage of "the" instead of "any":**

  If the intention was to give the authority to any proper officer, the Parliament would have used the word "any" instead of the word "the", which is the definite article as it refers to a particular person or thing.

- **No inherent power to review in any authority:**

  The Court noted that no fiscal statute was shown where the power to re-open assessment or recover duties which have escaped assessment was conferred on an officer other than the officer of the rank of the officer who initially took the decision to assess the goods.

- **Unruly operation of statue:**

  Two officers, who belong to different departments, cannot exercise their powers in the same case. Where one officer has exercised his power of assessment, the power to order re-assessment must also be exercised by the same officer or his successor and not by another officer of another department. If such a situation is allowed, it would result into an anarchical operation of statute.

- **Faulty reliance on Notification No. 40/2012-Cus. (N.T.)**

  Court noted that the notification was issued under Section 2(34) of the Customs Act which merely defines a 'proper officer' and does not confer any powers on any authority to entrust any functions to officers. Further, it suggested that if it was intended that officers of the DRI should be entrusted with functions of the Customs officers, it was imperative that the Central Government should have done so in exercise of its power under Section 6 of the Customs Act, 1962.

- **Reliance on judgement in case of Sayed Ali:**

  The Court relied on **CC v. Sayed Ali [2011 (265) E.L.T. 17 (S.C.)],** wherein it was held that a SCN issued by an officer who is not a "proper officer" in terms of Section 2(34) of the Act is illegal and without authority of law. A customs officer assigned with the specific functions of assessment and re-assessment of duty is competent to issue a notice under Section 28 of the Act.

After-effect of the judgement:

An immediate impact of the above judgement could be a sudden surge in numbers of writ petitions by the taxpayers to quash the SCNs issued by DRI in similar circumstances.

Keeping in view the judgement formed by the ApexSupreme Court in the instance case, the proceedings under GST Law may also be looked uponwhere DGGSTI would raise any inquiries / Notices since the provisions of GST Law are similarly worded.

Having said above, by bringing the above instruction, CBIC has clearly expressed its intent of announcing series of amendments in customs Law to correct the very substance on which above decision has been formed. Till then, let us witness the fate of DRI investigation.

BUDGET 2021 AXES TAX DEPRECIATION ON GOODWILL

Compiled by:

CA Kintan Narendra Maru

Until 2019, the Finance Bill as introduced on the budget day would get enacted as The Finance Act except for changes on account of disputed matters, relief measures, certain omissions and inadvertent errors. However final version of Finance Bill 2020 & 2021 had 104 and 127 amendments respectively. In this article, an attempt has been made to elaborate on amendments proposed in Lok Sabha pertaining to Goodwill exclusion from W.D.V of Block of Assets.

Background

- The Supreme Court (SC), in a landmark decision in 2012 in the case of SMIFS Securities Limited (CIT vs. SMIFS Securities Ltd. [2012] 348 ITR 302 (SC)) put debate to rest and held that that 'goodwill' is an intangible asset in the nature of business or commercial right akin to other intangibles mentioned in the Income Tax Act, 1961 and that it should be eligible for depreciation.
- Depreciation is an allowance under Section 32(1) of the Income-tax Act which is computed as per the written-down value (WDV) method on basis of the relevant block of assets.
- **As per Section 43(6)(c) of Income Tax Act, 1961, Written Down Value of a 'Block of Asset' is computed as follows:-**

Intangible Assets
Rate of Dep - 25%

	Particulars	Amount
	Opening WDV of Block of Assets	XXX
Add:	Actual Cost of Asset Acquired during the Previous Year	XXX
Less:	Money payable in respect of any asset, sold, destroyed discarded, or demolished during the previous year together with the scrap value, if any	(XXX)
	Closing WDV of Block of Assets	**XXX**

Amendments Proposed by the Finance Bill, 2021

- Goodwill depends upon how the Business is run;thus, it may appreciate or may remain stagnant over the future course of business.Thus, there may not be a justification of depreciation on Goodwill as compared to other Intangible and Tangible Assets.
- Therefore, the Finance Bill, 2021 proposed that goodwill of a business or profession will not be considered as a depreciable asset and there would not be any depreciation on goodwill of a business or profession in any situation with below mentioned amendments in various sections of Income Tax Act, 1961.

Sr. No.	Section	Proposed Amendment
1	2(11)	Proposed that Block of Asset shall not include Goodwill of a business or profession
2	32(1)(ii)	Proposed that Goodwill of a Business or Profession shall not be eligible for Depreciation.
3	Expl. 3	Proposed that Goodwill of a Business or Profession shall not be treated as an Intangible Asset.
4	50(2)	Proposed that in a case where goodwill of a business or profession forms part of a block of asset for the assessment year beginning on April 1, 2020 and depreciation thereon has been obtained by the assessee under the Act, the written down value of that block of asset and short term capital gain, if any, shall be determined in such manner as may be prescribed
5	55	Proposed that where the capital asset, being goodwill of a business or profession, in respect of which a deduction on account of depreciation under section 32(1) has been obtained by the assessee in any previous year preceding the previous year relevant to the assessment year commencing on or after April 1, 2021, the provisions of sub-clauses (i) and (ii) shall apply with the modification that the total amount of depreciation obtained by the assessee under Section 32(1) before the assessment year commencing on the April 1, 2021 shall be reduced from the amount of purchase price.

Ambiguity in the Finance Bill, 2021

- The Finance Bill introduced during the Budget sought to amend above sections but consequent amendments in Section 43(6)(c) of Income Tax Act, 1961 were missing.
- Thus, the questions arose what would happen to the amount of goodwill which formed part of an existing block of assets. Once an asset forms part of the 'block of assets', it loses its identity and deprecation is allowed on the whole block of asset. So, if an assessee has a block of intangible assets and in any previous year he has acquired the goodwill, which formed part of such block of assets, then how the depreciation shall be allowed on such block of assets.

Illumination by the Finance Bill, 2021 (Lok Sabha)

- The Finance Bill, 2021 as passed by the Lok Sabha proposes to make necessary amendments to Section 43(6)(c) to provide that WDV of block of assets shall be reduced by the actual cost of goodwill falling within such block of assets.
- However, the actual cost of goodwill shall be first decreased by the:

a) Amount of depreciation actually allowed to the assesse for such goodwill before the Assessment Year 1988-89, and

b) Amount of depreciation that would have been allowable to the assesse from the Assessment Year 1988-89 as if the goodwill was the only asset in the relevant block of assets.

- It should be noted that while computing the WDV for the assessment year 2021-22, if the depreciation was claimed on the goodwill forming part of the block of assets in the immediately preceding previous year, the amount of reduction calculated above shall not exceed the WDV of the block of assets.

Illustration

XYZ Limited is running a manufacturing business. On April 10, 2018; it acquired the following intangible assets in an M&A transaction:

(a) Goodwill worth Rs. 100 crores;

(b) Trademarks worth Rs. 50 crores; and

(c) Licenses and franchise agreement worth Rs. 50 crores.

Compute the WDV of the block of intangible assets of XYZ Ltd. as on March 31, 2021 in the following two situations:

Situation 1 - In April 2019, XYZ Ltd. sold the trademarks in Rs. 40 crores.

Situation 2 - In April 2019, XYZ Ltd. sold the trademarks in Rs. 80 crores.

Computation of WDV as on March 31, 2021 **(In Crores)**

Particulars	Situation 1	Situation 2
Previous Year 2018-19		
Intangible assets acquired on April 10, 2018		
Goodwill	100.00	100.00
Trademark	50.00	50.00
Software	50.00	50.00
Block of intangible assets [A]	**200.00**	**200.00**
Less: Depreciation [B = A * 25%]	(50.00)	(50.00)
WDV as on March 31, 2019 [C = A-B]	**150.00**	**150.00**
Previous Year 2019-20		
Opening WDV [C]	150.00	150.00
Less: Intangible assets sold during year [D]	(40.00)	(80.00)
Less: Depreciation [E = (C - D) * 25%]	(27.50)	(17.50)
WDV as on March 31, 2020 [F = C – D – E]	**82.50**	**52.50**

Particulars	Situation 1	Situation 2
Previous Year 2020-21		
Opening WDV [F]	82.50	52.50
Adjustment on account of goodwill		
Less: Actual cost of goodwill included in block of assets as reduced	(56.25)	(52.50)
by the previous years' depreciation [G]		(Note)
Cost of Goodwill - 100.00		
Less: Dep on Goodwill		
P.Y . 2018-19 [100*25%] - (25.00)		
P.Y . 2019-20 [(100-25)*25%] - (18.75)		
56.25		
Less: Depreciation [H = (F - G) * 25%]	(6.56)	-
WDV of block of intangible assets as on March 31, 2021	**19.69**	**52.50**

Note: If the goodwill forms part of block of assets on which deprecation is claimed in previous year 2019-20 then the 'amount of reduction' on account of such goodwill shall not exceed the WDV assuming that the goodwill is the only asset in that block. As in the situation 2, the 'amount of reduction' is calculated at Rs. 56.25 which exceeds the WDV of Rs. 52.50, the reduction of WDV on account of goodwill shall be restricted to Rs. 52.50.

Conclusion

- The proposed amendments would override Decisions of Supreme Court which will strip the benefit derived by Assesse of claiming Depreciation on Goodwill Asset till now.
- Companies who would have entered into Scheme of restructuring and Amalgamation would be dissented with the said Amendment as it would be increase their Tax Liability thereby affecting Cash flows.

Challenges

- It is pertinent for Business to relook into the positions taken by them in their Books to avoid Litigation.
- Further Department may now further contend other Intangibles on par with Goodwill and deny benefit of Goodwill.

Impact of Existing Litigation pertaining to the Past Years

- Whether the Department can take a stand that the assesses must not be allowed depreciation on goodwill for previous years which is in litigation, by applying the new amendments?
- It can be inferred from the Memorandum explaining the Finance Bill, 2021 that the said amendments will take effect fromApril 1, 2021 and will accordingly apply to the assessment years 2021-22 and subsequent assessment years.
- Therefore, this being a substantive amendment, it would not be possible to deny the assesses the benefit of depreciation on goodwill for the periods prior to AY 2021-22 by applying the new amendments.

References

- *Finance Bill, 2021* • *Memorandum to Finance Bill 2020-21* • *Amendment to Finance Bill 2021 (Lok Sabha)*
- *www.taxmann.com*

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FACELESS ASSESSMENT - AMENDMENT, PRACTICAL ASPECTS AND CHALLENGES.

Compiled by:

CA Shreya Kirti Nagda

This Covid-19 pandemic has given acceleration to digital communication across the globe. We have accepted the faceless communications in our daily routine, now Indian Revenue has been agile to keep up this change. Faceless Assessment Scheme is going to bring the major change to our Tax administration. Adding it to the list of Structural Reforms, Hon'ble Prime Minister, Shri Narendra Modi, launched the platform for "Transparent Taxation - Honouring the Honest" in August 2020. Government has launched such a major change so swiftly and at the same time caution has been placed on making the direct tax administration 'seamless', 'painless', and 'faceless'. As we are all aware that motto behind this scheme is to remove the physical interface between the taxpayers and the revenue so as to bring the greater transparency. Earlier, entire assessment procedure was based on the judgment of the one person, Assessing Officer. He was the only karta dharta for us. Considering the nature of the scheme, it appears that this issue has been properly addressed. The assessments will now be taken care of by a dedicated assessment unit, in contrast to the Assessing officer as was the case in traditional assessments. Further, the procedure offers the opportunity for review of the assessment order at various stages. It is indeed a path- breaking reform.

Background :

Finance Act, 2018, introduced us with faceless assessment by inserting section 143(3A), section 143(3B), section 143(3C) and the Faceless Assessment Scheme, [earlier "E-Assessment" Scheme] was introduced vide Notification No. S.O. 2745(E), dated 12th September 2019, and amended by Notification No. S.O. 2745 (E), dated 13th August 2020. Thereafter, The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, amended the Income-tax Act, 1961 (ITA) by inserting new provisions to incorporate the Faceless Assessment Scheme within the ITA. Section 143(3D) is inserted with effect from 1st April 2021, stating that the provisions of sections 143(3A)/(3B) shall not be applicable in case of assessments made on or after 1st April 2021. A new section 144B is inserted, to take effect from 1st April 2021. Thereafter, on 17.02.2021, The Faceless Assessment (1stAmendment) Scheme, 2021 is notified vide Notification No. S.O. 741(E) [NO. 6/2021/F. NO. 370149/154/2019-TPL] to bring the provisions of Faceless Assessment Scheme, 2019 at par with provisions of Section 144B of the Income-tax Act, 1961.

Highlights of the Notification No. S.O. 741(E) [NO. 6/2021/F. NO. 370149/154/2019-TPL] :

- The amendment scheme is named as Faceless Assessment (1stAmendment) Scheme, 2021 (FAS 2021)
- Issues for selection of case for audit : The requirement to specify the issues for selection of the case for audit in the notice to a taxpayer, has been done away with.
- Definition of eligible assessee inserted
- Definition of Dispute Resolution Panel inserted
- The Scheme provides an option for eligible taxpayers to approach the DRP after passing of draft assessment orders under the FAS 2019
- It also amends para 11 of the Faceless Assessment Scheme, 2019 relating to personal appearance in the Centres or Units.

Practical Aspects of scheme including revised procedure :

For the purpose of this scheme, the Board to set up following centres and units :

1. National e-Assessment Centre (NeAC) : It will act as Central Cell between Taxpayer and Income Tax Department.
2. Regional e-Assessment Centre (ReAC) : It shall comprise of Assessment unit, Verification unit, Technical unit, and Review unit.
3. Assessment Unit (AU) : It shall perform function of making assessment including identification of issues, seeking information, analyzing the material to frame draft assessment order.
4. Verification Unit : It shall perform functions of verification which includes enquiry, cross verification, examination of books of accounts, examination of witness, and recording of statements, and such other function as may be required for the purpose of verification.
5. Technical Unit : To perform the function of providing technical assistance which includes any assistance or advice on legal, accounting, forensic, information technology, valuation, transfer pricing, data analytics, management or any other technical matter which may be required in a particular case or a class of cases.
6. Review Unit : To Review of Draft Assessment Order – Whether material evidence brought on record, points of facts and law incorporated, Whether issues on which addition/disallowance should be made have been discussed in draft order, application of judicial decisions considered, arithmetic correctness etc.

All the communications among these units or with the assessee or any person shall be through National e-Assessment centre only.

Steps involved in Faceless Assessments :

1. NeAC shall serve a notice on the assessee u/s 143(2).
2. Assessee is required to file a response within 15 days from the date of receipt of the notice.
3. In cases where a notice has already been issued by the Assessing Officer (AO) either u/s 143(2)/142(1)/148 etc., the NeAC to intimate the assessee that assessment shall be completed under this Scheme (for the existing cases/as well as other exceptional cases)
4. Through an automated allocation system, NeAC shall assign the case selected to a specific assessment unit in any Regional e-Assessment Centre.
5. Assessment unit shall make a request to NeAC for
   a) obtaining further information, documents or evidence from the assessee or any other person,
   b) conducting of certain enquiry or verification by the verification unit
   c) seeking technical assistance from the technical unit
6. In cases where the AU approaches the NeAC as stated in 5(a) above, NeAC shall issue appropriate notice or requisition of any information sought, either to the assessee or any other person for obtaining the information, documents or evidence. The assessee or any other person, as the case maybe, shall file his response to the notice referred to above within the time specified therein or extended time as allowed.

7. In case where AU has made verification request, the NeAC shall assign it to Verification Unit in any one ReAC through an automated allotment system. Same way, if AU has asked for technical assistance, the NeAC will assign it to a Technical Unit in any one ReAC through an automated allotment system.

8. The Report of the Verification Unit and/ or the Technical unit to be sent to the Assessment unit.

9. Where assessee fails to reply to the notice, NeAC shall serve upon him SCN u/s 144 giving him an opportunity specifying the date and time in the notice.
   - Now assessee is required to file his response within the specified time
   - If the assessee fails to reply, the NeAC shall intimate the AU of such failure.

10. Draft assessment order shall be made by the AU:
   - after taking into account all the relevant material available on the record
   - In case of failure on the part of the assessee to reply - make in writing, a draft assessment order to the best of its judgment.
   - Either accepting the income, or sum payable by, or sum refundable to, the assessee as per his return or modifying the said income or sum
   - send a copy of such order to NeAC

11. Assessment unit shall provide details of penalty proceedings to be initiated, if any, at the time of making the draft assessment order while making the draft assessment order.

12. NeAC shall examine the draft assessment order in accordance with the risk management strategy specified by the Board, including by way of an automated examination tool. On such examination, the NeAC may decide to:
   - finalize the assessment as per the draft assessment order and serve a copy of the order along with notice initiating penalty and notice of demand (if no variation proposed) or
   - In case any variation prejudicial to the interest of assessee is proposed, then issue SCN to assessee or
   - Assign such draft order to one review unit of REAC for review

13. If the draft assessment order is referred to the Review Unit, it shall Conduct a review and
   - either concur with Draft order and intimate the same to NeAC
   - or Suggest variation and send to NeAC

14. If no suggestions are proposed by the Review Unit, then the NAC shall–
   - Finalize the assessment as per the draft assessment order and serve a copy of the order along with notice initiating penalty and notice of demand or
   - If variation is proposed originally, then issue a show-cause notice to assessee.

15. After receiving suggestions for variation from the review unit, assign the case to AU, other than the AU which had prepared original draft assessment order through an automated allocation system.

16. Such AU after considering the variations, send the final draft assessment order to NeAC.

17. On receipt of this draft order - NeAC shall either finalize the order or any variation there, then issue SCN.

18. Assessee to response to such SCN on or before the date and time specified therein or as extended by NeAC.

19. In cases where no reply has been received to SCN issued to the assessee, the NeAC shall finalize the draft assessment order and issue notice of demand/penalty. In cases where reply received – send the response received to the concerned AU.

20. The AU shall consider the response and send the revised draft order to the NeAC.

21. On receipt of the revised draft assessment order, the NeAC shall finalize the assessment in cases where no variation prejudicial to the interest of the assessee has been proposed. In cases where variation is proposed – issue SCN to the assessee (2nd SCN) (as compared to the original order). The response furnished by the assessee shall be dealt with the manner as stated above.

22. On receipt of the draft assessment order or final draft assessment order or revised assessment order, the assessee shall file his acceptance of the variations with the NeAC within a period specified u/s 144C(2).

23. The NeAC shall upon receipt of acceptance or if no objection received within prescribed time limit, finalize the assessment within the time allowed and serve a copy of such order and notice for initiating penalty proceedings, if any, along with demand notice or refund due on the basis of assessment.

24. In case the assessee files any objections with the Dispute Resolution Panel, the DRP will issue directions under provisions of section 144(5) to the NeAC, which will forward the same to the concerned AU.

25. The AU to prepare a draft assessment order in conformity with the directions received from the DRP and send a copy of the same to the NeAC.

26. The NeAC shall finalize the assessment within the time allowed u/s 114C(13) and serve a copy of the order and the notice for initiating penalty proceedings, if any, along with the demand notice on the basis of such assessment.

27. After completion of the assessment, the NeAC shall transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case, for such action as may be required under ITA.

Other Practical Aspects :

- <u>No personal appearance in the centres or units :</u>

1. The assessee is not entitled to the right of a personal hearing and has to request for the same to the Chief Commissioner or the Director General at the Regional e-Assessment centres.

2. Where such personal hearing has been approved by the chief Commissioner or the Director General, such hearing shall be conducted exclusively through Video conferencing, including use of any telecommunication application software which supports video telephony.

- <u>Penalty proceedings for non compliance :</u>

1. Any unit may, in the course of assessment proceedings, send recommendation for issuance of penalty under chapter XXI of the act for non compliance of any notice, direction or order issued under this scheme, to NeAC.

2. NeAC on receipt of such recommendation, server a SCN on the assessee or any other person as the case may be, calling upon him to show cause why penalty should not be imposed on him.

3. The response submitted by assessee, NeAC to submit it to respective AU.

4. After considering the said response, said unit, may make a draft order of penalty and send a copy to NeAC or drop the penalty after recording reason and intimate to NeAC.

5. NeAC to levy penalty as per the said draft order of penalty and server a copy of the same along with demand notice on assessee or other person as the case may be, and thereafter transfer electronic record of penalty proceedings to Assessing Officer having jurisdiction over the said case.

- Exchange of communication by electronic mode :

  All the communications between NeAC and assessee, or his AR or any other person shall be via electronic mode only.

  And all the internal communication between NeAC , ReAC, or various units shall be via electronic mode only.

- Authentication of electronic record :

  1. NeAC to authenticate electronic record via affixing its digital signature
  2. And Assessee to authenticate via affixing digital signature or via EVC.

- Delivery of Electronic record :

  1. Every notice or order or any electronic communication to be delivered the addressee, being the assessee, by way of -
     a. Placing an authenticated copy thereof in the assessee's registered account; or,
     b. Sending an authenticated copy to registered email address of assessee or his authorized representative; or
     c. uploading an authenticated copy on the assessee's Mobile App. and followed by real time alert.
  2. The assessee shall file his response through his registered account, and the response shall be deemed to be authenticated when acknowledgement is received by NeAC.

Coming times and Challenges in front of us :

First of all, let us accept that Faceless Assessments has come and it is real. There is no going back on this. It is not old wine in a new bottle. The new system is paradigm shift from old system. The Faceless Assessment Scheme and the Faceless Appeal Scheme (faceless scheme) are arguably the biggest tax reforms that have been witnessed by the Income-tax Act, 1961, in recent times. This throws up completely new challenge before the professionals. And are we prepared for it?

A. Writing skills : We need to understand here that , earlier we had option to submit written submission as well as making officer understand with face to face communication. Now, there is no such option available. We'll have to rely on our written communication only. Proving or justifying or expressing our point through written communication is going to be a task. We shall Ensure that our office has excellent skillsets for effective written communication on technical matters. Writing skills were never tested so much as it would be tested now. The representation side of practice was pre-dominant relying on the oral representation skills and at times networking skills. Nothing of this sort would work. This is single most important challenge. This can have an impact on retaining the clients also.

B. Electronic equipments : We must try to go paperless as to save our time in future. We shall have enough and updated scanners as required. We should have more of VC equipped rooms for effectively doing the e-hearings. Each of the offices would have more than 1 simultaneous hearings or appeals going on and in such a scenario, having only 1 place from where the E-hearings could be done would be inadequate.

C. Data uploading : Scanning the each document to compressing it is going eat a lot of time followed by the gathering data and saving in the formats. Above all this dealing with the given size limit is also an obstacle. We shall try to make our office paperless as much as possible. And developing a process so as to make the whole process very smooth

D. Geographical location : Physical location of the professional would become completely irrelevant. Geographical location of client, AO, etc. would become totally irrelevant. This would therefore mean that the client would be able to source the services of a representative from anywhere. Assessee will be able to hire professionals from anywhere. It can be major threat as well as a great opportunity

E. Personal Hearings & Natural Justice : The Faceless Assessment Scheme provides limited opportunity of personal hearing. As it has been left on the discretion of the Chief Commissioner or the Director-General of Income Tax, who may or may not entertain appellant's request for virtual hearing. A right to fair hearing in terms of natural justice includes giving every possible opportunity toa person to present his/her case. In view of this, every person should be given broad opportunity to present the case. Faceless assessment will narrow down the opportunity only to written communication. The written responses lack oral communication's spontaneity. Written communication cannot be immediately adjusted to meet the authority's needs, clarify a question or respond to a rebuttal. Personal hearing enables the authority concerned to watch the demeanor of the witnesses and clear up its doubts during the course of the arguments. This is a real challenge in front of us

F. Non receipt of notice : In certain cases, assesses are not well-versed with technology and do not get email alert nor they check email on regular basis. or they might have changed email id due to some reason. The scheme however provides for a system of phone messages which is likely to be started which will help in avoiding missed notices.

G. Time Consuming : There are many level of assessment procedure. This can lead to substantial time delays and issues of co-ordination. If at every stage team approach is adopted, then decision making could be an issue.

Conclusion :

Whenever a new system is introduced, it is in human nature to oppose to it at start. But we must remember that only thing which has been constant is the change! For long term gain, we'll have to go through short term pain. We as a partner in nation building must positively accept these major changes and contribute to our hon'ble prime minister Shri Narendra Modi's dream of corruption free India.

COMPANIES (CSR POLICY) AMENDMENT RULES, 2021: STRUCTURING CORPORATE RESPONSIBILITY

Compiled by:

CS Feni Jay Shah

Introduction

The amendment brought in the provisions of section 135 of Companies Act, 2013 dealing with Corporate Social Responsibility ("CSR"), which was pending for want of respective amendment in the Rules, has been made **effective from January 22, 2021** along with amendment in the CSR Policy Rules, 2021.

Further, the amendment in the Rules are not just limited to the changes made in the section, rather, it extends to make substantial changes in the implementation of the entire CSR activity. New concepts have also been introduced in the Rules like registering of implementing agencies by filing e-form CSR-1 with the MCA, CFO certificate, mandatory impact assessment.

With the coming into force of this amendment, the penal provisions for non-compliance CSR provisions have also come into force, changing the very nature of the CSR provisions. Earlier if the CSR amount was unspent, Company just had to give reasons in Board report and could easily escape from complying or spending any amount. However the new amendment has made it mandatory for the Companies to spend the required amount on CSR activities.

In this write up, we discuss the impact of the significant changes made in the CSR Rules by the MCA and key changes introduced by way of ammendment.

ACTIVITIES NOT COVERED UNDER CSR:

The following activities are **excluded** from the list of CSR activities:-

(a) Activities undertaken in normal course of business;

Exclusion for three year till FY 2022-23, in case companies do expense for R&D activity of vaccine/ drugs/ medical devices related to covid-19, to such companies which are engaged in R&D activity of new vaccine, drugs and medical devices in their normal course of business. This exclusion will be allowed only in case the companies are doing such R&D in collaboration with organisations as mentioned in item (ix) of schedule VII and disclose the same in their board's report.

(b) Activity undertaken outside India

Exclusion: training of Indian sports personnel representing any State at a national level or India at the International level.

(c) Contribution of any amount to any political party under section 182 of the Act.

(d) Activities benefitting employees of the company (Apprentice engaged under the Apprentices Act 1961 are not covered under the definition of an employee)

(e) The activities supported by the companies on a sponsorship basis for deriving marketing benefits for its products or services;

(f) Activities carried out for fulfilling statutory obligations

CSR POLICY

The Companies need to amend the existing CSR policy to incorporate the approach and direction of Board along with guiding principles for selection, implementation and monitoring of the CSR activities undertaken by the companies and the annual action plan. As per the amendment, the committee is required to draw a detailed annual action plan to undertake CSR program.

CSR COMMITTEE RELAXATION:

Where the amount to be spent by a company **does not exceed fifty lakh rupees,** the requirement for the constitution of the CSR Committee **shall not be applicable** and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.

ONGOING PROJECTS:

An attempt to define Ongoing Projects is definitely a welcome step.

The term 'Ongoing Project', means a multi-year project undertaken by a company in fulfilment of its CSR obligation the maximum allowed duration of which is four years (three years excluding the year of commencement as mentioned in the New Rules).

The definition of ongoing projects have been defined in the Rules. As per the definition:

1. The ongoing project can be a program of maximum 4 years (including the first year of commencement); –

While the timeline of 4 years at one go has been provided, but ambiguity remains with respect to Projects the implementation of which goes beyond the stipulated time period of 4 years.

Monitoring of Ongoing Projects: In case of ongoing project, the Board of a Company shall monitor the implementation of the project with reference to the approved timelines and year-wise allocation and shall be competent to make modifications, if any, for smooth implementation of the project within the overall permissible time period.

MODES OF IMPLEMENTING CSR ACTIVITIES:

- Established by the company either singly or jointly with other company – Section 8 company, registered public trust, registered public society (not private), registered under section 12A and 80G of the Income Tax Act, 1961;
- Established by the Government – Section 8 company, registered trust (here both public and private), registered public society;
- Established under an Act of Parliament or State Legislature – any entity;
- Established by anyone – Section 8 company, registered public trust, registered public society (not private), registered under section 12A and 80G of the Income Tax Act, 1961; having track record of atleast three years in undertaking similar activities.

On and from April 1, 2021, companies can undertake CSR activity only through implementing agencies which are registered with MCA.Registration has to be done by filing e-form CSR-1 with MCA, post which the implementing agencies will receive a unique CSR Registration Number. This e-form has to be verified by a practicing CA/ CS/ CWA.

On the SUBMISSION of the Form CSR-1 on the portal, a unique CSR Registration Number shall be generated by the system automatically.

ROLE OF INTERNATIONAL ORGANISATION

The Rules prescribe that companies may engage international organisations for designing, monitoring and evaluation of the CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR. This provision, is directory and not mandatory.

CSR SPENDING AND UNSPENT AMOUNT:

The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least 2%. of the average net profits of the company made during the three immediately preceding financial years, or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years.

The company shall give **preference to the local area** and areas around it where it operates, for spending the amount earmarked for CSR activities.

If the **company fails to spend such amount**, in addition to giving the reason in Directors report the Company will have to **transfer** such unspent amount **to a Fund** specified in Schedule VII, **within a period of six months** of the expiry of the financial years.

IF THE UNSPENT AMOUNTS RELATES TO THE ONGOING PROJECTS,

(i) Such amount shall be transferred within a period of thirty days from the end of the financial year to a special account to be called the Unspent Corporate Social Responsibility Account.

(ii) Such amount shall be spent towards CSR within a period of three financial years from the date of such transfer.

(iii) If the Company fails to do so, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.

SET OFF ANY EXCESS AMOUNT SPENT

The New Rules also allow a company to set off any excess amount spent by it in relation to its CSR requirements up to immediate succeeding three financial years subject to the following:-

1. The excess amount for set off shall not include the surplus arising out of CSR activities in pursuance of sub-rule (2); and
2. The Board shall pass a resolution to that effect.

Incorporation of such a provision is appreciated as it gives the companies the option of using the excess funds spent in previous years to meet their future obligations.

CREATION OR ACQUISITION OF A CAPITAL ASSET

Under the New Rules, a company is further allowed to spend the CSR amount for creation or acquisition of a capital asset held by: (a) company established under section 8 of the Act, a registered public trust or a registered society, having charitable objects and CSR Registration Number; (b) beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or (c) a public authority.

The idea is to not limit CSR amount to revenue expenses and instead use it to create capital assets that would yield future economic benefits.

ADMINISTRATIVE OVERHEADS

The board shall ensure that the **administrative overheads shall not exceed five percent** of the total CSR expenditure of the company for the financial year.

Administrative overheads means the expenses incurred by the company for general management and administration of CSR functions in the company

Administrative overhead shall not include the expenses directly incurred for the designing, implementation, monitoring, and evaluation of a particular CSR project or program.

SURPLUS ARISES OUT OF CSR ACTIVITIES:

Any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred **to the Unspent CSR Account** and spent in pursuance of CSR policy and annual action plan of the company or **transfer such surplus amount to a Fund** specified in Schedule VII, **within a period of six months of the expiry of the financial year.**

UTILIZATION OF FUND:

The Board of a company shall satisfy itself that the funds disbursed to the entities for CSR have been utilized for the purposes and in the manner as approved by it and the **Chief Financial Officer or the person responsible for financial management shall certify to the effect**. This makes the role of monitoring all the more crucial. This clause makes the CFO apparently responsible for the entire CSR provision without him being part of the CSR committee or the board of directors.

MANDATORY CSR IMPACT ASSESSMENT

Companies having minimum 10 cr of average CSR obligation in last 3 years shall have to undertake mandatory impact assessmentthrough an independent agency of their CSR projects. . I the report of such assessment is required to be formed a part of the annual report.

A Company undertaking impact assessment is allowed to book the expenditure towards Corporate Social Responsibility for that financial year not exceeding five percent of the total CSR expenditure or fifty lakh rupees, whichever is less.

DISPLAY OF CSR ACTIVITIES ON ITS WEBSITE:

The Board of Directors of the Company shall mandatorily disclose the composition of the CSR Committee, and CSR Policy and Projects approved by the Board on their website, if any, for public access.

PENALTY FOR NON-COMPLIANCE:

Company:- The company shall be liable to a penalty of **twice the amount** required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or **one crore rupees, whichever is less**.

Officer of the Company: Every officer of the company who is in default shall be liable to a penalty of **one-tenth of the amount** required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or **two lakh rupees, whichever is less.**

CONCLUSION:

In any case, the intention of government seems to be loud and clear that gone are those days when the companies used to take the CSR provisions lightly by putting cliché explanations in the annual report for unspent amount on CSR activity. One cannot ignore that, as per CARO-2020, the auditor is also required to comment on the CSR provisions specifically with respect to the amount unspent and whether transferred to the unspent account.

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OPERATING LEVERAGE – A DOUBLE-EDGED SWORD...

Compiled by:

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Ever thought, why are commodity stocks (eg: steel sector) doing so well? What if all of a sudden, the companies that we're invested in start generating higher topline (with no growth capex), how much wealth would it create for its shareholders? Well, it turns out, it's not as easy as it looks. Why? The answer to it is Operating Leverage.

What is Operating Leverage?

Operating Leverage (OL) measures change in operating profit with change in topline. OL explains how risky, volatile and swinging can a company's operating profit can be.

Changes in topline can happen for two reasons:

a. Change in sales price or/and

b. Change in sales quantity

What is Degree of Operating Leverage?

The Degree of Operating Leverage (DOL) is a method used to quantify a company's operating risk. DOL ranges from -1 to 1. This risk is nothing but change in operating profit arisingdue to:

a. Change in topline and

b. Contribution ratio (sales – variable costs)

This assumes the fact that fixed costs are constant for any number of units sold.

How does DOL affect operating profit?

Like discussed above, change in topline can happen for two reasons:

A. Change in sales price:

The delta in operating profit (also called as DOL) due to change in salesprice is -1 or +1, which means entire change in topline due to change in sales price is captured in the operating profit.

Let's assume Company A is operating in commodity business (say a steel sector).

Company A

Base Case

Particulars	Qty Sold	Sales Price	Value
Sales	1,00,000	30	30,00,000
Variable cost	1,00,000	20	20,00,000
Contribution			10,00,000
Fixed cost			2,50,000
Operating Profit			7,50,000

Scenario 1

Increase in Sales Price by 10%

Particulars	Qty Sold	Sales Price	Value
Sales	1,00,000	33	33,00,000
Variable cost	1,00,000	20	20,00,000
Contribution			13,00,000
Fixed cost			2,50,000
Operating Profit			10,50,000

$$\text{DOL} = \frac{\text{Change in Operating Profit}}{\text{Change in Topline}}$$

$$\text{DOL} = \frac{3,00,000}{3,00,000} = 1.00$$

You can corelate this with steel companies selling at 54000/tonnetoday v/s selling at 38000/tonne six months back. Entire incremental 16000/tonne (sales) gets directly added to the profitability, everything else remaining the same, due to DOL being 1.

B. Change in sales quantity:

The delta in operating profit (DOL) due to change in sales quantity depends upon the contribution ratio, which means entire change in topline due to change in sales quantity is captured in the operating income to the extent of contribution ratio.

Let's assume Company B is operating in FMCG business (say selling toothpaste).

Company B

Base Case

Particulars	Qty Sold	Sales Price	Value
Sales	1,00,000	30	30,00,000
Variable cost	1,00,000	20	20,00,000
Contribution			10,00,000
Fixed cost			2,50,000
Operating Profit			7,50,000

Scenario 2

Increase in Sales Qty by 10%

Particulars	Qty Sold	Sales Price	Value
Sales	1,10,000	30	33,00,000
Variable cost	1,10,000	20	22,00,000
Contribution			11,00,000
Fixed cost			2,50,000
Operating Profit			8,50,000

$$DOL = \frac{\text{Change in Operating Profit}}{\text{Change in Topline}}$$

$$DOL = \frac{1,00,000}{3,00,000} = 0.33$$

You can corelate this with a company increasing utilization levels up from say a 70% to 80%. Entire incremental sales DOESNOT get added to the profitability, due to DOL being less than 1.

From the above two scenarios we can conclude that higher DOL exists for scenario 1 due to change in sales price.

Now let us compare a scenario of two companies operating in the same sector (having same contribution ratio), but having a different fixed cost structure.

Let's assume Company C and Company D are operating in commodity business (say a steel sector).

Company C

Base Case

Particulars	Qty Sold	Sales Price	Value
Sales	1,00,000	30	30,00,000
Variable cost	1,00,000	20	20,00,000
Contribution			10,00,000
Fixed cost			2,50,000
Operating Profit			7,50,000

Scenario 3

Increase in Sales Price by 10%

Particulars	Qty Sold	Sales Price	Value
Sales	1,00,000	33	33,00,000
Variable cost	1,00,000	20	20,00,000
Contribution			13,00,000
Fixed cost			2,50,000
Operating Profit			10,50,000

OL = Topline / Operating Profit

OL = 30,00,000 / 7,50,000 = 4.00

DOL = Change in Operating Profit / Change in Topline

DOL = 3,00,000 / 3,00,000 = 1.00

% change in profits = 10,50,000 / 7,50,000 = 40.00%

Company D

Base Case

Particulars	Qty Sold	Sales Price	Value
Sales	1,00,000	30	30,00,000
Variable cost	1,00,000	20	20,00,000
Contribution			10,00,000
Fixed cost			7,50,000
Operating Profit			2,50,000

Scenario 4

Increase in Sales Price by 10%

Particulars	Qty Sold	Sales Price	Value
Sales	1,00,000	33	33,00,000
Variable cost	1,00,000	20	20,00,000
Contribution			13,00,000
Fixed cost			7,50,000
Operating Profit			5,50,000

OL = Topline / Operating Profit

OL = 30,00,000 / 2,50,000 = 12.00

DOL = Change in Operating Profit / Change in Topline

DOL = 3,00,000 / 3,00,000 = 1.00

% change in profits = 5,50,000 / 2,50,000 = 120.00%

DOL is same (due to similar contribution ratio), but % change in profits is more for the company having higher fixed costs implying that recovery in profits in absolute terms is the same, but relatively it's much more for Company D as compared to Company C.

Let's assume Company E and Company F are operating in FMCG business (say selling toothpaste).

Company E

Base Case

Particulars	Qty Sold	Sales Price	Value
Sales	1,00,000	30	30,00,000
Variable cost	1,00,000	20	20,00,000
Contribution			10,00,000
Fixed cost			2,50,000
Operating Profit			7,50,000

Scenario 5

Increase in Sales Qty by 10%

Particulars	Qty Sold	Sales Price	Value
Sales	1,10,000	30	33,00,000
Variable cost	1,10,000	20	22,00,000
Contribution			11,00,000
Fixed cost			2,50,000
Operating Profit			8,50,000

OL = Topline / Operating Profit

OL = 30,00,000 / 7,50,000 = 4.00

DOL = Change in Operating Profit / Change in Topline

DOL = 1,00,000 / 3,00,000 = 0.33

% change in profits = 8,50,000 / 7,50,000 = 13.33%

Company F

Base Case

Particulars	Qty Sold	Sales Price	Value
Sales	1,00,000	30	30,00,000
Variable cost	1,00,000	20	20,00,000
Contribution			10,00,000
Fixed cost			7,50,000
Operating Profit			2,50,000

Scenario 6

Increase in Sales Qty by 10%

Particulars	Qty Sold	Sales Price	Value
Sales	1,10,000	30	33,00,000
Variable cost	1,10,000	20	22,00,000
Contribution			11,00,000
Fixed cost			7,50,000
Operating Profit			3,50,000

OL = Topline / Operating Profit

OL = 30,00,000 / 2,50,000 = 12.00

DOL = Change in Operating Profit / Change in Topline

DOL = 1,00,000 / 3,00,000 = 0.33

% change in profits = 3,50,000 / 2,50,000 = 40.00%

DOL is same (due to similar contribution ratio), but % change in profits is more for the company having higher fixed costs implying that recovery in profits in absolute terms is the same, but relatively it's much more for Company E as compared to Company F.

This change in **improvement** of profits looks bigger and better due to impact of OL.This % improvement looks bigger for Company D as compared to Company F, due to higher DOL.In other words, companies with higher DOL and higher fixed costs show drastic movements (eg: SAIL).

In good times, OL can supercharge profit growth. In bad times, it can crush profits. Even a rough idea of a company's operating leverage can tell you a lot about a company's prospects.

Higher DOL with higher fixed cost structure is the most lethal combination of Operating Leverage.

How to take benefit and find opportunities in OL as an investment theme?

- DOL ranges from -1 to +1 and the sensitivity of the earning are higher near both the ends of the range.
- To take benefit of +1 DOL, it is important to remain invested at or near the bottom of the cycle, from where the entire upcycle can be ridden.
  - These opportunities exist massively in commodity markets which are cyclical in nature
  - Being cognizant of "point in cycle" helps youposition well.
- Cost sheet with higher fixed cost (Company D &Company F) will be extremely volatile and may results in higher delta in stock price movements too.
- Look for companies with low-capacity utilizations, where capex is already doneand volumes are yet to come in. Market should not be pricing in these volumes when you are buying it.
- Valuations of investments at the start of the uptick of the earnings is dirt cheap and hence OL massively increases earnings and hence increases valuation multiple too. Reverse is true, when timed wrong.
- OL can be your best friend if played well.

How to avoid a trap in OL?

- Firstly, knowledge about knowing that your investments have OL, is a half battle won.
- It is important to NOT ride the journey with -1 DOL. This will just more than halve your investment in no time .
- Without any scope of a material change in sales quantity (ignoring any scope of change in sales price too), it brings a lot of risk into buying a "VALUE TRAP" investment if timed badly.
- Ability to imagine a reversal of earnings cycle.
- Being cautious about momentum or chasing the sector when its already heated up.
- OL can be your worst enemy if NOT played well.

How will OL fare with any other normal investment?

- OL is a play within company's existing set up; while your other investments will most probably be growth stories, requiring companies to scale up.
- OL bring a lot of volatility with poor earnings visibility and hence poor valuations.
- OL plays may not be big multi-baggers, they WILL have limitations at some point in time.
- If timed well, OL can be a low-risk high return investment
- OL requires you to TIME the markets; while other growth investment stories don't require this skill.
- Capability to handle and manage volatility is the key skill set to play OL.

In the entire discussion above, we have excluded change in variable costs which also is a part of the concept of OL. This is just to make our discussion little easier to understand. Because many businesses do have variable costs swinging up and down from 10% to 200%, which brings out more volatility and highly poor earnings visibility and hence more challenging to analyze.

With all said and done, can we find an opportunity in the markets by our understanding of OL? Yes, why not! But remember one thing, as we titled it, OL is a double-edged sword. **Use it to your favor and don't let it kill you.**

CURRENTIST

Compiled by:
CA Henik Dilip Shah

INDIA'S TRYST WITH RETROSPECTION

Finance Act 2012 provided more clarification on taxation of capital asset transfer and amended Sections 9 and 195 of the Income Tax Act, 1962, retrospectively from AY 1962-63. Memorandum to the Finance Bill of 2012 explained the need for this amendment. "Certain judicial pronouncements have created doubts about the scope and purpose of sections 9 and 195. Further, there are certain issues in respect of income deemed to accrue or arise where there are conflicting decisions of various judicial authorities. Therefore, there is a need to provide clarificatory retrospective amendment to restate the legislative intent in respect of scope and applicability of section 9 and 195 and also to make other clarificatory amendments for providing certainty in law."

The impugned judicial pronouncement was the infamous Hutch-Vodafone case. Let's understand in brief.

Hutchison Essar Ltd. (HEL) was an Indian Company which was a joint venture of Hutchison group and Essar group. 51.95% of shares of HEL directly and 15.05% of shares indirectly (i.e. through subsidiaries) were owned by a company named CGP Investments Ltd. (CGPIL), registered in the Cayman Islands.

100% of CGPIL's shares were owned by Hutchison Telecommunication International Ltd.(HTIL), registered in Hong Kong. Vodafone International Holdings B.V., registered in Netherland, purchased 100% shares in CGPIL from HTIL (Apparently, it was just one share in number). On the face of it, a Netherland based company was buying another company based in Cayman Islands. However the underlying asset was obviously the Indian business.

Indian Income Tax Department claimed HTIL was liable to pay tax on the capital gains accrued on such transfer and that Vodafone was liable to deduct tax at source on payment made to HTIL.

India retrospectively amended the IT Act to tax Hutch-Vodafone and likewise capital gain transactions.

Although the Bombay High court ruled in favour of the IT department, the Supreme Court reversed the decision of the High court. It held that an Indian assessing officer has no jurisdiction to tax a transaction happening outside India wherein the transfer happens of asset— shares of a foreign company by another foreign company. (Ignoring the underlying asset i.e. Indian business).

Snubbing its own Supreme Court, showing the world who is actually "Supreme" is in India, then Finance Minister, Bharat Ratna (Late) Pranab Mukherjee made the retrospective amendment. He in his memoir "The Coalition Years" justified this move. "Just because some foreign investors choose to structure their investments through tax havens, they should not, as a matter of policy, get away without paying any taxes. What foreign investors need is certainty in tax laws and not a tax-free environment, which no emerging economy can afford. I was convinced that this certainty of payment of taxes needed to be embedded in our tax policy."

"This retrospective arrangement was not merely to check the erosion of revenues in present cases, but also to prevent the outgo of revenues in old cases. As the Finance Minister, I was convinced of my duty to protect the interest of the country from the revenue point of view."[1]

("Prevent the outgo of revenue in old cases." The actual reason why any government would take up such a step.)

After amendment, it was now within IT department's jurisdiction to tax the transaction, proceedings begin again (2013). Vodafone sought for settlement of this case, but the committee set up failed to resolve. It later (2014) served Arbitration notice to India under India-Netherland Investment Treaty. In 2015, honourable Prime Minister of India made a public statement in London that India will not resort to retrospective taxation, highlighting the need for a clear tax regime.[2]

However, in early 2016, IT department issued a fresh demand of around Rs. 22,000 crores. Vodafone then pursued its international arbitration seriously and ultimately in September 2020, India lost the case at the Permanent Court of Arbitration located at The Hague.Why and how did it actually lose? We shall come to it after discussing another related case.

Cairn India Holdings, registered in Cayman Island was a fully owned subsidiary of Cairn UK Holdings which in turn is a fully owned subsidiary of Cairn Energy based in Scotland, UK. A new company was formed in 2006 with name Cairn India and Cairn UK Holdings transferred all its shares of Cairn India Holdings to this new company in consideration of 69% shares of this Cairn India.

So now, in effect, Cairn Energy, through Cairn UK Holdings, held 69% in Cairn India (and balance through other subsidiaries) before the IPO.

Similar to Vodafone case, in 2014, tax demand was raised for capital gains earned on this transfer. The company claimed it to be an internal transfer/ group structuring and no real capital gain had accrued. The case of valuation of the capital gain is still pending (2021) with Delhi High court and Cairn had lost at ITAT level. However, in 2011, almost all of Cairn UK Holdings' stake was sold to Vedanta Ltd. except for some around 10% which wasn't transferred and which the Indian tax authorities later attached. The attached shares, were then sold in 2018 (pending valuation at Delhi HC) to recover the tax demand.

Cairn too tried for an out-of-court settlement with India, which didn't work. Later, Cairn also initiated arbitration proceedings in 2015 under India-UK Investment treaty and in December 2020, India lost that case too at the same Permanent Court of Arbitration.

International court has ruled against India as this retrospection violates fair and equitable treatment of foreign companies.

Prima facie, both the above cases relate to tax disputes and have got nothing to do with "investment". India claimed (and correctly so) that taxation of any transaction is India's internal matter and that international arbitration courts do not have any jurisdiction over Indian tax disputes. It is India's sovereign right to impose taxes on transactions involving Indian companies or assets, and anything relating to it would be deliberated in Indian courts or at the Parliament, not internationally. Any investment treaty is for protection and facilitation of investment only and not for taxation.

What has been held by the international court is that there is a difference between tax dispute and tax related investment dispute. Cairn falls in the second category as there is an Indian company (Cairn India) involved. This view was held so strongly that even the India-nominatedjudge (total three— one nominated by Cairn and another neutral) at The Hague voted against India, in favour of Cairn. Further, retrospective taxation has made

the Permanent Court of Arbitration alsosay that the principle of "fair and equitable treatment" as covered under both the treaties has been violated by India.This is also why India has been asked to pay Vodafone around Rs. 85 crores and Cairn India around Rs. 10,570 crores (high amount for recovering the value of shares sold by IT dept.).Considering that only around 1.5 crore Indians actually pay Income Tax (as per one of PM's speech in February 2020),[3]liability comes to around Rs. 7,100 per person.

India should go for further appeal at Singapore's International Court. It may use the Singapore Supreme Court's verdict in case of "Swissbourgh Diamond Mines Ltd. and Ors. vs. The Kingdom of Lesotho". Lesotho is a landlocked country encircled by South Africa. Without going into the details of the case, Lesotho was found violating the principle of "fair and equitable treatment". However, the appeal was dismissedciting jurisdictional constraints of the Permanent Court of Arbitration (in effect favouring Lesotho).[4][5] Let's see does that court rule in favour of India or not.

Amount payable by India to Vodafone & Cairn will burden the tax-payers by Rs. 7,100 per person.

Point to ponder:

On one hand settlement attempts initiated by foreign companies failed and on the other hand India is losing cases internationally. What would India's position be if it loses at Singapore too? Would India's tryst with retrospection stillbe justifiable?

Think over it. Think different!

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Compiled by:
CS Keyur Jitendra Furia

DOUBLE TOP PATTERN (M SHAPE STRUCTURE)

Double top patterns are important technical trading structures to learn and integrate into a trader's arsenal. Double tops can enhance technical analysis when trading both Index or stocks, making the pattern highly versatile in nature.

A double top is an extremely bearish technical reversal pattern that forms after an asset reaches a high price two consecutive times with a moderate decline between the two highs. It is confirmed once the asset's price falls below a support level equal to the low between the two prior highs. The double top pattern entails two high points within a market which signifies an impending bearish reversal signal. A measured decline in price will occur between the two high points, showing some resistance at the price highs. After retracing a portion of the first peak, the market rallies back towards the high of the first peak however, strength in the market is decreasing and is unable to sustain a break above the first peak.

How to Identify Double Top Pattern on Chart?

1. Identify the two distinct peaks of similar width and height
2. Distance between peaks should not be too small - time frame dependent
3. Confirm neckline/support price level
4. Use technical indicators to support double top bearish signal, such as moving averages and oscillators

How to Trade with Double Top ?

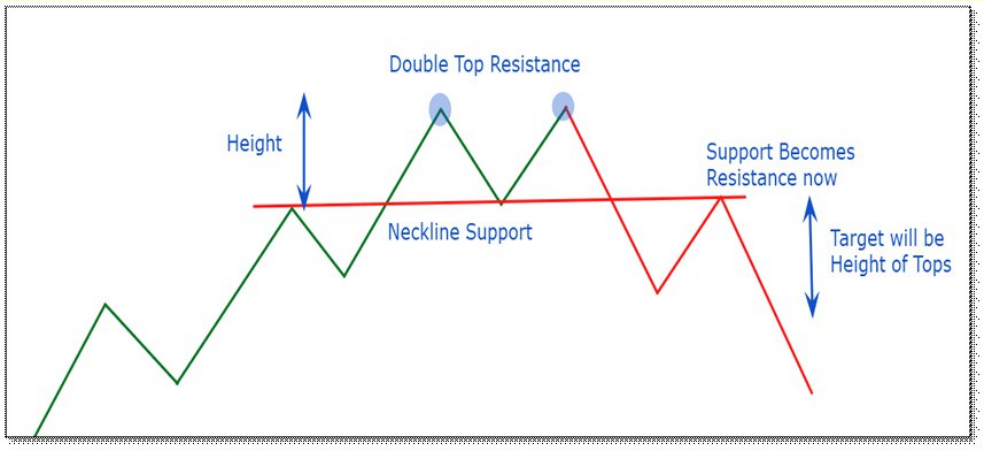
1. Firstly, one should see the market phase whether it is up or down. As the double top is formed at the end of an uptrend, the prior trend should be an uptrend.
2. Traders should spot if two rounding tops are forming and also note the size of the tops.

3. Traders should only enter the short position when the price break out from the support level or the neckline. In this case, the stop loss should be placed at the second top of the pattern. The price target should be equal to the distance between the neckline and the tops.

What is difference Between a Double Top and a Failed Double Top ?

There is indeed a significant difference between a double top and one that has failed. A real double top is an extremely bearish technical pattern which can lead to an extremely sharp decline in a stock or asset. However, it is essential to be patient and identify the critical support level to confirm a double top's identity. Basing a double top solely on the formation of two consecutive peaks could lead to a false reading and cause an early exit from a position.

A double top has an 'M' shape and indicates a bearish reversal in trend.



Key Points to remember:

- A double top is a bearish reversal chart pattern that is formed after an uptrend.
- A double bottom is a bullish reversal chart pattern that is formed after the downtrend.
- Traders should always use double top chart patternwith other indicators like Volumes, RSI, moving averages etc for confirming the reversal before taking a position.

INDUSTRY NINJA

TODAY WE ARE RICH - BY: TIM SANDERS

Compiled by:

CA Meet Rameshchandra Gada

This book, "Today we are Rich" sets out seven principles Tim Sanders learned, taught by his Grandma, Billye, that brought him back on track and to where he is now and he shares these principles with us.

Principle 1: Feed Your Mind Good Stuff

First principle is to treat our minds like a machine. When we put poor fuel in a car, we don't get the performance we desire, if any. But if we give it high octane, we get the power. Feed your mind the same way. As Sanders says, when you ingest a piece of information, your mind goes to work, chewing on it, digesting it, and then converting it into a thought. When good stuff goes into your mind, good thoughts emerge. Tim suggests our thoughts also have an impact on our physical health. Our subconscious converts a negative thought into fear and stress and our body produces cortisol, the stress hormone. Over time, production of this hormone can lead to heart disease and digestive issues. What should we do? Like a food diet plan we need to monitor what we ingest. So, for a few weeks we should log everything we are reading, listening to, or watching.

Record the source, the author and the tone of everything we take into our mind and note how much time we spent on it. We should also do this for people we spend time with. After some time, circle all the negative or useless information and influences you've "consumed" and highlight all the positive or helpful ones.Too many circles? Like bad foods we need cut these out and take in more of the positives that remain.

Tim tells us to read newspapers with a style that matches our output and objectives. Most important, he tells us to find and read good books. And don't stop there. Rather than listening to "junk" radio on your drive to work, take in a good audio book and make your drive a learning experience.

Principle 2: Move the Conversation Forward

Tim suggests that much of our life is spent in conversations with others. If the conversations move forward, we progress. When they go sideways things get confusing and if they go backward you can guess what happens. Panic and negativity. He suggests we need to pull the information from our conversations into focus and to frame it in one of four ways:

- Good—either good for us or our interests;
- Neutral—having no direct effect on us or our interests;
- Action—information we need to respond to;
- Bad—information that has a negative effect on us or our interests.

Tim tells us to keep good information at the front of our mind. Not only for us to be able to take direct advantage but to use as a spirit. For neutral throw it away. It doesn't add any value. For negative recognize emotion that goes with it and learn from the experience. Of course, for those that are actionable just do it!We are reminded of the time tested piece of personal productivity advice never to touch a piece of paper on your desk more than twice.

Tim tells us the same principle should be applied to information taken in. We need to move the conversation forward and at the same time be positive.Tim tells us the key to positive conversations is to project our confident outlook by selecting the right words in the proper tone of voice.

We need to eliminate "weak" words and phrases from our personal vocabulary. And one of the most positive words we can use is yes. It evokes agreement and support as do its variants: certainly, absolutely, exactly and definitely.

Principle 3: Exercise Your Gratitude Muscle

Tim believes the difference between a grateful person and an ungrateful person lies in their perception: One sees a life of beauty; the other sees a life of lack. So how do we know when we should feel grateful? Easy. Anytime someone or something gives you a positive thought. Anytime someone or something makes us feel good.

Change our daily routine. Shop at different stores. Change the way to work. Shake things up at work too. Begin meetings at work with a statement of gratitude to the others involved, especially if we've been working together for some time.

We can use social media to do this as well, dedicating our status updates to thanking others for their contributions. If we have a grateful mind-set, we can turn our have-to's into get-to's. Many people complain because they "have to go to work today," millions of unemployed people would be grateful for a job—any job—to get to.

Principle 4: Give to Be Rich

Tim suggests giving is a wonder drug. Nothing can withstand its healing powers. Giving requires a focus on other people's needs, as well as on our own assets. This redirects our minds toward strengths and away from weaknesses. When we give to others, we receive a go" as well. When we are burned out or down, a little time spent helping others can often lift us backup

When we need a break, Tim recommends a giving break instead. Help an associate, and he promises the next day we'll have plenty of renewed energy to get back on top. But give for giving's sake. Tim warns us when we give and expect a return, we are an investor.

When we give and expect public recognition in return, we are a self-promoter. When we give only for the love of giving, we are generous. We shouldn't screen potential recipients for their usefulness; we should examine ourselves to see whether we can be useful to them.

Principle 5: Prepare Yourself

Abraham Lincoln is credited as having said, "If I only had an hour to chop down a tree, I would spend the first forty-five minutes sharpening my axe." Tim Sanders says, like a newly sharpened axe, knowledge has the cut-through power to quickly move you from opportunity to achievement.

So how do we acquire knowledge? Tim's tells us to get smart we'll have to read more than we ever thought we would. We'll need to think about what we've read and digest it into nuggets of insight. We should read books that apply in the space we are in, the people, places, and things that occupy the industry we work or the role you have in life. As we read books, we should take notes as if we were still in college. We should carry books with us everywhere we go.

The second way, Tim recommends to get smart is to network, join forces with others to multiply our knowledge base. We should talk about the books we are reading, and share data we've discovered. Turn average water-cooler conversations into think tanks. Create lists of books we recommend for others.Tim's third approach is what he calls "mentoring."

This is the act of being a mentor to another person and having a mentor of our own at the same time. We can always learn by teaching. A mentee often brings real-world feedback or extra resources we didn't already have. So, get mentoring to grow.

Principle 6: Balance Your Confidence

Tim believes confidence is never about us alone. Total confidence requires a belief in ourselves, other people in our life, and in something greater than ourselves. When we possess all three of these beliefs, we'll have a balanced confidence—something that can sustain us through uncertainties and difficulties.

Confidence in Self

Confident people have a sense of self-efficacy a belief that they are competent enough to successfully complete the task at hand. When we see ourselves as up for the challenge, we gain the faith and endurance to complete it. We have a self-image, whether or not we are aware of it. Others may attempt to dictate how we see ourselves, but in the end it's our call. It's up to us whether we live up to our potential.

Confidence in Others

Confidence in others requires a high level of trust - willing to let go of our control of a situation. To be more confident in another person, we need to make a conscious decision to be objective about how we picture him or her in your mind. When we believe in our team, our confidence soars, even when we experience personal setbacks. With our team members, we are not alone. And as our confidence in our team increases, we can delegate some authority, defer some tasks, and then let go.

Confidence in Your Faith

Essentially, when it comes to business, good things happen to good people, and bad things happen to bad companies. There is a guiding order to the way the world works. So, if we are running a business or selling a product and we are creating a worthy service or product, we should have faith that in the long run the market will reward our efforts. So how can we detect our higher purpose?

Tim tells us the best way is to start with our gifts: talents, tendencies, abilities, natural skills, or instincts. Everyone has a go", something they can contribute. We need to ask ourselves, why do we do this? How does this affect others? When we are faithful to a purpose, we'll have a sense of personal integrity. We'll feel connected to something greater than ourselves, and through that connection, we'll feel more powerful.

Principle 7: Promise Made, Promise Kept

Tim's final principle is to keep our promises. Fulfil our commitments. Each time we do, we'll feel a sense of personal victory. Finishing, especially in the face of adversity, gives a boost to our self-image and expands our limits of possibility. Tim advises if we make commitments and later break them, we confuse others about the kind of person we are.

The reason many promises aren't kept is that they are treated as idle conversation. Most of the promises we don't keep are broken out of a lack of persistence on our part. They are abandoned because of their unforeseen difficulty. So, when we reach the emotional quit point, we should grit our teeth and go one step further, one more attempt, one more day.

As a rule, it's a good idea never to offer a promise as a first response to a problem. Instead, we should ask a few questions to better our understanding of the situation before we act. And when we think we can't deliver, we should say no every time, clearly spelling out why. A few final tips from Tim: once we make a promise, we should document it.

Otherwise, it can slip between the cracks. We need to be clear about the time frame for delivery, and set realistic expectations. Start planning as soon as we confirm our promise and put the delivery deadline on our calendar. Finally, deliver the product of the promise directly to its intended recipient.

If we are willing to keep our word, no matter how futile it might seem or how difficult it may be, we will win friend and influence people. We will convince the skeptics and convert our detractors into our cheerleaders. Nice Smart People Succeed.

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BRIEF UPDATE ON SEBI AND CORPORATE LAW

CA IP Neha Rajen Gada CA IP Rajen Hemchand Gada

SEBI

A. REGULATIONS

1. Securities and Exchange Board of India (Research Analysts) (Amendment) Regulations, 2021

[Issued by the Securities and Exchange Board of India vide NotificationNo. SEBI/LAD-NRO/GN/2021/09dated March 16, 2021]

SEBI has expanded the scope of list of qualifications and certification requirement. Now a person who has gained a professional qualification by completing a Post Graduate Program in the Securities Market (Research Analysis) from NISM of a duration not less than one year shall also be considered under eligibility criteria.

2. Securities and Exchange Board of India (Portfolio Managers) (Amendment) Regulations, 2021

[Issued by the Securities and Exchange Board of India vide NotificationNo. SEBI/LAD-NRO/GN/2021/10dated March 16, 2021]

SEBI has now made NISM certification requirements mandatory for portfolio Managers in addition to the existing minimum qualifications and experience criteria.

3. Securities and Exchange Board of India (Investment Advisers) (Second Amendment) Regulations, 2021

[Issued by the Securities and Exchange Board of India vide NotificationNo. SEBI/LAD-NRO/GN/2021/11dated March 16, 2021]

SEBI has expanded the scope of list of qualifications and certification requirement. Now a person who has gained a professional qualification by completing a Post Graduate Program in the Securities Market (Investment Advisory) from NISM of a duration not less than one year shall also be considered under eligibility criteria.

B. CIRCULARS

1. Extension of facility for conducting meeting(s) of unitholders of REITs and InvITs through Video Conferencing (VC) or through other audio-visual means (OAVM)

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/DDHS/DDHS/CIR/P/2021/21dated February 26, 2021]

SEBI has extended the facility to conduct meetings of unitholders, through VC or OAVM for REITs/InvITs, as under:

(a) Annualmeetingsofunitholderswhich becomes due in the calendar year 2021 to be conducted till December 31, 2021; and

(b) For meetings other than annual meeting of unitholders till June 30, 2021.

2. Circular on Mutual Funds

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/ Df2/CIR/P/2021/024 dated March 04, 2021]

Based on the amendments carried out to the Mutual fund Regulations, SEBI has issued this circular covering various aspects like gross exposure limits, investment pattern, procedure for change in control of AMC, Go Green Initiatives, filing of AIR by Mutual funds, etc.

3. Circular on Guidelines for votes cast by Mutual Funds

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/IMD/DF4/CIR/P/2021/29 dated March 05, 2021]

With effect from April 01, 2021, SEBI has made it compulsory for Mutual Funds to cast vote of following matter:

(a) Corporate governance matters, including changes in the state of incorporation. merger and other corporate restructuring, and anti-takeover provisions;

(b) Changes to capital structure, including increases and decreases of capital and preferred stock issuances;

(c) Stock option plans and othermanagement compensation issues;

(d) Social and corporate responsibility issues;

(e) Appointment and Removal of Directors; and

(f) Any other issue that may affect the interest of the shareholders in general and interest of the unit-holders in particular; and

(g) Related party transactions of the investee companies(excluding own group companies).

With effect from April 01, 2022, Mutual funds are compulsorily supposed to vote on matters not listed above.

SEBI has laid down the methodology of voting by Mutual fund managers in this regard.

4. Amendments to provisions in SEBI Circular dated September 16, 2016 on Unique Client Code (UCC) and mandatory requirement of Permanent Account Number (PAN)

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/CDMRD/DNP/CIR/P/2021/30 dated March 08, 2021]

Pursuant to the announcement of instant PAN facility in Union Budget 2020, Income Tax Department has launched the facility of e-PAN which is generated instantly through Aadhaar based e-KYC. As such, SEBI has laid down the pointers for requirement of Pan and e-PAN for members of exchanges having commodity derivatives segment and their members dealing in commodity derivatives.

5. Rollout of Legal Entity Template

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MIRSD/DOP/CIR/P/2021/31 dated March 10, 2021]

Forms for Non-Individual i.e. Legal Entity have been released for KYC updating of client KYC on CRKYC portal. These will be effective from April 01, 2021.

6. Rollout of Legal Entity Template

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/MIRSD/DOP/CIR/P/2021/31 dated March 10, 2021]

Forms for Non-Individual i.e. Legal Entity have been released for KYC updating of client KYC on CRKYC portal. These will be effective from April 01, 2021.

7. Streamlining the process of IPOs with UPI in ASBA and redressal of investors grievances

[Issued by the Securities and Exchange Board of India vide Circular No. SEBI/HO/CFD/DIL2/CIR/P/2021/2480/1/M dated March 16, 2021]

SEBI has issued this circular to streamline the process of IPO wherein the mode of payment opted is UPI in ASBA. There have been numerous complaints. Hence, with the streamlining of process investors would hopefully be saved of procedural pain and financial loss.

CORPORATE LAW

A. Rules

1. Companies (Incorporation) Third Amendment Rules, 2021

[Issued by Ministry of Corporate Affairs vide Notification No. G.S.R. 158(E) dated March 05, 2021]

MCA has added the option for Aadhar authentication option in Form INC-35 AGILE-PRO,part of SPICe+.

2. Companies (Management and Administration) Amendment Rules, 2021

[Issued by Ministry of Corporate Affairs vide Notification No. G.S.R. 159(E) dated March 05, 2021]

The Central Government has notified the provision of Section 32 and 40 of Companies (Amendment) Act, 2020 (29 of 2020) to be effective from March 18, 2021. These section deal remuneration to Independent director even in case the Company has no or inadequate profits.

B. NOTIFICATIONS

1. Commencement notification dt 05.03.2021

[Issued by Ministry of Corporate Affairs vide Notification No. 10665(E) dated March 05, 2021]

The Central Government has notified the provision of Section 23(i) of Companies (Amendment) Act, 2017 (1 of 2018) to be effective from March 05, 2021. These section deal remuneration to Independent director even in case the Company has no or inadequate profits.

2. Commencement notification dt 05.03.2021

[Issued by Ministry of Corporate Affairs vide Notification No. 1255(E) dated March 18, 2021]

The Central Government has notified the provision of Section 32 and 40 of Companies (Amendment) Act, 2020 (29 of 2020) to be effective from March 18, 2021. These section deal remuneration to Independent director even in case the Company has no or inadequate profits.

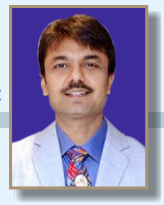
3. Amendment to Schedule V of the Companies Act, 2013

[Issued by Ministry of Corporate Affairs vide Notification No. 1256(E) dated March 18, 2021]

The Central Government has amended PART II "REMUNERATION" of Schedule V to Companies Act, 2013. Reference to "Other Directors' has been inserted in various clauses. Further, Table (A) has been substituted with the following:

	(1)	(2)	(3)
Sl.No.	**Where the effective capital (in rupees) is**	**Limit of yearly remuneration payable shall not exceed (in Rupess) in case of a managerial person**	**Limit of yearly remuneration payable shall not exceed (in rupees) in case of other director**
(i)	Negative or less than 5 crores.than 100 crores.	60 lakhs	60 lakhs
(ii)	5 crores and above but less than 100 crores.	84 lakhs	84 lakhs
(iii)	100 crores and above but less than 250 crores.	120 lakhs	120 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:]

FEMA UPDATES

Compiled by:


CA Manoj Chunilal Shah CA Viral Vinod Satra

Remittances to International Financial Services Centres (IFSCs) in India under Liberalized Remittance Scheme (LRS)

A.P. (DIR Series) Circular No. 11 dated February 16, 2021

With a view to deepen the financial markets in IFSCs and provide opportunities to resident individuals to diversify their portfolio, it has been decided to allow resident individuals to make remittances under LRS to IFSCs in India, subject to following conditions:

i. The remittance shall be made only for making investments in IFSCs in securities, other than those issued by entities/companies resident (outside IFSC) in India.

ii. Resident individuals may also open a non interest bearing Foreign Currency Account (FCA) in IFSCs, for making above permissible investments under LRS. Any funds lying idle in the account for a period up to 15 days from date of its receipt into account shall be immediately repatriated to domestic INR account of investor in India.

iii. Resident individuals shall not settle any domestic transactions with other residents through these FCAs held in IFSCs.

AD Banks shall ensure compliance including reporting requirements under the scheme.

If any person resident in India (PRI) outside IFSC, enters into any transaction with any person / entity in IFSC shall only be governed by rules/ regulation notified by RBI or GoI under FEMA, 1999. Further, compounding of any contravention of FEMA provision by such PRI shall be dealt with by RBI in accordance with the extant instructions/provisions on compounding of contraventions under FEMA.

Investment by Foreign Portfolio Investors (FPIs) in Defaulted Bonds - Relaxations

A.P. (DIR Series) Circular No. 12 dated February 26, 2021

Currently, FPI investments in corporate bonds are subject to a minimum residual maturity requirement provided under paragraph 4(b)(ii) of A. P. (DIR Series) Circular No. 31 dated 15th June 2018. Also, investor-wise limit has been prescribed under paragraph 4(f)(i) of the said circular.

However, FPI investments in security receipts and debt instruments issued by Asset Reconstruction Companies and debt instruments issued by an entity under the Corporate Insolvency Resolution Process as per the resolution plan approved by the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016 are exempt from these requirements.

It has now been decided to exempt investments by FPI in NCDs/bonds which are under default, either fully or partly, in the repayment of principal on maturity or principal instalment in the case of amortising bond from the aforesaid requirements.

FAQs on Compounding of Contraventions

The FAQs for Compounding of Contraventions under FEMA 1999 have been updated recently by Reserve Bank of India.

Following FAQs have been deleted –

Question No. 9 - What action is taken by the Reserve Bank on receipt of the application?

Question No. 11 - Who should classify the contravention as technical, material or sensitive?

Question No. 12 - When can a contravention be classified as technical?

Question No. 16 - Are Compounding orders made public?

Answers of following FAQs have been amended –

Question – Where should one apply for Compounding?

Question – What is criteria for calculation of Compounding amount?

The link for latest FAQs is –

https://rbi.org.in/scripts/FS_FAQs.aspx?Id=80&fn=5

Summary Information on few Compounding Orders issued after 1st March 2020

Sr. No.	Party Name	Nature of Contravention	Date of Order	Compounding Fees (Rs.)
1.	RICS India Private Limited	Contravention u/s 10(6) of FEMA for use of foreign exchange for purpose other than for which it was acquired or non surrender of foreign exchange or using it for purposes which is not permissible.	05-02-2021	6,89,838
2.	Accumetric Asia Pacific Limited	Regulation 6(i) of FEMA Notification 22 – undertaking activity by branch or a liaison office in India which are not permitted by RBI or not prescribed in Schedule I or Schedule II.	13-08-2020	6,19,256

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RERA UPDATES

Compiled by:

CA Ashwin Bhawanji Shah

Gujarat High Court - Whether Gujarat Real Estate Regulatory Authority is a person eligible to file 2nd Appeal before High Court?

Gujarat Real Estate Regulatory Authority Vs Satyam Infracon

Issues:

- Whether Hon'ble RERA Authority can challenge a decision of the Appellate Tribunal before the High Court under Section 58 of the RERA, 2016.
- Whether, Hon'ble RERA Authority falls under the definition of "Person" as defined under section 2(zg).

Relevant Provisions:

Section 58:- Appeal to High Court

"58(1) Any person aggrieved by any decision or order of theAppellate Tribunal, may, file an appeal to the High Court, withina period of sixty days from the date of communication of thedecision or order of the Appellate Tribunal, to him, on any oneor more of the grounds specified in section 100 of the Code ofCivil Procedure, 1908 (5 of 1908):

2(I) Authority

"Authority" means the Real Estate Regulatory Authority established under sub-section (1) of section 20.

2(o) :- Company

"company" means a company incorporated and registered under theCompanies Act, 2013 and includes,

(i) a corporation established by or under any Central Act or State Act;
(ii) a development authority or any public authority established by theGovernment in this behalf under any law for the time being in force

2(p) :-Competent Authority

"competent authority" means the local authority or any authority created or established under any law for the time being in force by the appropriate Government which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property.

2(zg) Person :-

"Person" includes,—

(i) an individual;

(ii) a Hindu undivided family;

(iii) **a company;**

(iv) a firm under the Indian Partnership Act, 1932 or the Limited Liability Partnership Act, 2008, as the case may be;

(v) **a competent authority;**

(vi) an association of persons or a body of individuals whether incorporated or not;

(vii) a co-operative society registered under any law relating to co-operative societies;

(viii) any such other entity as the appropriate Government may, by notification, specify in this behalf

Fact of the Case:

- Gujrat Real Estate Regulatory Authority has rejected the RERA registration application by raising the questions regarding authenticity and legality of the plans approved by the competent Authority.
- Hon'ble Chairman Gujarat Real Estate regu latory Authority has suggested to clarify/modify

the planning of the project for which development permission was granted by the competent Authority.

- The Gujarat Real Estate regulatory Authority rejected the application and directed the Surat Municipal Corporation to stay the construction work and re-verify the modified development permission granted to the developer being a promoter.

- Aggrieved with the order for rejection of registration application, promoter filed and appeal before the Appellate Tribunal.

- The Hon'ble Appellate Tribunal sough final report from the municipal corporation regarding the validity of the development permission and as per the report of municipal corporation the development permission was granted as per the applicable rules and regulations.

- On the basis of submission made by the Promoter and the Report of Municipal Corporation, Hon'ble Appellate Tribunal observed that RERA Authority has no jurisdiction to direct the municipal corporation to stay the construction and re-verify the development permission and accordingly order was passed by the Hon'ble Appellate Tribunal that RERA Authority shall grant the registration to the promoter and municipal corporation will vacate the stay on construction.

- Aggrieved with the Order, RERA Authority filed an appeal before the Hon'ble High Court challenging the order passed by the Hon'ble Appellate Tribunal.

- In the said Appeal,Promoter raised the Preliminary Objection that the scheme of the RERA Act does not envisage the Authority being empowered or authorized to prefer an appeal before the High Court against a decision passed by the Appellate Tribunal.

- In the objection, promoter contented that as per provision of the Section 58 of the RERA any aggrieved person can file the appeal before the Hon'ble High Court and **RERA Authority is not the person as per provision of Section 2(zg)**.

- Further, it is stated by the Promoter that the Authority and the competent Authority are different and it is submitted that in the definition of person includes a competent authority, but does not include "Authority".

Observation of Hon'ble Gujarat High Court :-

- Hon'ble High Court observed that word 'Person' as defined in Section 2(zg) of the Act does not directly refer to the 'Authority' as person.

- However reading of Section 2(o) of the Act, a completely different meaning can be culled out inasmuch as the Section 2(zg)(iii) states that the word 'Person' also includes 'a company'.

- In definition of the word "company" at Section 2(o) of the Act in addition to a company incorporated and registered under the Companies Act, 2013, the words "a development authority or any public authority established by the Government in this behalf" is also included.

Conclusion :

- Undoubtedly the Real Estate Regulatory Authority is a public authority established by the Government under the Real Estate (Regulation and Development) Act, 2016.

- Once the RERA Authority is made the party by the Promoter in the 1st Appeal filed before the Appellate Tribunal than, RERA Authority can also file 2nd Appeal before the Hon'ble High Court if it is aggrieved.

- The Authority would be included in the definition of 'Person' on a conjoint reading of section2(zg) and 2(o) of the Act.

The Authority falling within the definition of the word 'Person' is therefore empowered to challenge a decision of the Appellate Tribunal before the High Court under Section 58 of the Act.

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DIRECT TAXES LAW UPDATE

Compiled by:

CA Haresh Padamshi Kenia

- **Computation methodology prescribed - Tax on income out of excess employer contribution to specified funds – Section 17(2)(viia) of the Act**

NOTIFICATION G.S.R. 155(E) [NO. 11/2021/F. NO. 370142/52/2020-TPL], DATED 5-3-2021

The Central Board of Direct Taxes vide Notification G.S.R. 155[E] dated 05.03.2021, in exercise of the powers conferred by Section 17 (2) (viia) read with section 295 of the Income-tax Act , gives the Income-tax (1st Amendment) Rules, 2021. It amends the income tax rules by insertion of new Rule 3B. It come into force from the 1st day of April, 2021.

The new rule 3B Inserted as under –

"3B. Annual accretion referred to in the sub-clause (viia) of clause (2) of section 17 of the Act. — For the purposes of sub-clause (viia) of clause (2) of section 17 of the Act, annual accretion by way of interest, dividend or any other amount of similar nature during the previous year (hereinafter in this rule referred to as the current previous year) to balance to the credit of the fund or scheme referred to in sub-clause (vii) of clause (2) of section 17 of the Act shall be the amount or aggregate of amounts computed in accordance with the following formula, namely:—

TP= (PC/2)*R + (PC1+ TP1)*R

Where,

TP= Taxable perquisite under sub-clause (viia) of clause (2) of section 17 of the Act for the current previous year;

TP_1 = Aggregate of taxable perquisite under sub-clause (viia) of clause (2) of section 17 of the Act for the previous year or years commencing on or after 1st day April, 2020 other than the current previous year (See Note);

PC= Amount or aggregate of amounts of principal contribution made by the employer in excess of Rs. 7.5 lakh to the specified fund or scheme during the previous year;

PC_1= Amount or aggregate of amounts of principal contribution made by the employer in excess of Rs. 7.5 lakh to the specified fund or scheme for the previous year or years commencing on or after 1st day April, 2020 other than the current previous year (See Note);

R= I/Favg ;

I=Amount or aggregate of amounts of income accrued during the current previous year in the specified fund or scheme account;

Favg = (Amount or aggregate of amounts of balance to the credit of the specified fund or scheme on the first day of the current previous Year + Amount or aggregate of amounts of balance to the credit of the specified fund or scheme on the last day of the current previous year)/2.

Explanation. — For the purposes of this rule, "specified fund or scheme" shall mean a fund or scheme referred to in sub-clause (vii) of clause (2) of section 17 of the Act.

Note: Where the amount or aggregate of amounts of TP1 and PC1 exceeds the amount or aggregate of amounts of balance to the credit of the specified fund or scheme on the first day of the current previous year, then the amount in excess of the amount or aggregate of amounts of the said balance shall be ignored for the purpose of computing the amount or aggregate of amounts of TP_1 and PC_1.".

- **Extension of Various limitation dates relating to assessments, reassessments, imposition of penalty etc.**

Notification no. 10/2021 in S.O. 966 (E) dated 27/02/2021

Section 3 (1) the Taxation and other laws (Relaxation and Amendment of Certain Provisions) Act 2020 had extended various dates to 31 march 2021 which were falling between the period of 20 march 2020 to 31 December 2020.

CBDT vide notification no 10 / 2021 dated 27.02.2021 further extends various limitation dates.

a) Date for passing of assessment or reassessment orders under the IT Act, that are getting time barred on 31st March, 2021 due to extension of limitation date by the notification dt 31st December, 2020 has been extended to 30th April, 2021.

b) Date for passing assessment or reassessment orders (not covered by (a) above), that are getting time barred on 31st March, 2021, as per time limit specified in section 153 / 153B of the Income-tax Act, has been extended by 6 months i.e. to 30th September, 2021.

c) Date for passing of penalty orders extended to 30th June, 2021. Date for issue of notice & passing of orders by Adjudicating Authority under the Benami Act extended to 30th September, 2021.

- **RESIDENTIAL STATUS Section 6 - RESIDENTIAL STATUS OF CERTAIN INDIVIDUALS UNDER THE ACT**

CIRCULAR NO. 2 OF 2021 [F. NO. 370142/18/2020-TPL], DATED 3-3-2021

Due to the declaration of the lockdown and suspension of international flights owing to the outbreak of COVID-19, many NRIs had to prolong their stay in India.Consequently, their stay has exceeded beyond the period of their visit and thus they may be regarded as resident/not ordinarily resident. The Central Board of Direct Taxes (CBDT) has recently issued CIRCULAR NO. 2 OF 2021 [F. NO. 370142/18/2020-TPL], DATED 3-3-2021 to provide relaxation in the methodology of computing the 'number of days' of stay in India for the purpose of section 6 of the IT Act

The Central Board of Direct Taxes (CBDT) has received various representations requesting for relaxation in the determination of residential status for the previous year 2020-21 from individuals who had come on a visit to India during the previous year 2019-20 and intended to leave India but could not do so due to the suspension of international flights. The matter has been examined by the Board and following facts have emerged and same is discussed at length in the aforesaid circular.

- Short stay will not result in Indian residency
- Possibilities of dual non-residency in case of general relaxation
- Tie breaker rule as per Double Taxation Avoidance Agreement (DTAA):
- Employment income taxable only subject to conditions as per DTAA:
- Credit for the taxes paid in other country:
- International Experience

The CBDT also discussed that OECD as well as most of the countries have clarified that in view of the provisions of the domestic income tax law read with the DTAAs, there does not appear a possibility of the double taxation of the income for PY 2020-21. It was clarified that the possibility of double taxation does not exist as per the provisions of the Income-tax Act, 1961 read with the DTAAs. However, in order to understand the possible situations in which a particular taxpayer is facing double taxation due to the forced stay in India, it would be in the fitness of things to obtain relevant information from such individuals. After understanding the possible situations of double taxation, the Board shall examine that, -(i) whether any relaxation is required to be provided in this

matter; and (ii) if required, then whether general relaxation can be provided for a class of individuals or specific relaxation is required to be provided in individual cases.The circular also provides that if any individual is facing double taxation even after taking into account the relief provided by the relevant Double Taxation Avoidance Agreement (DTAA), he/she may furnish the specified information by 31st March, 2021. The information has to be submitted in Form –NR and is to be submitted electronically to the Principal Chief Commissioner of Income-tax (International Taxation)

Reader may refer to full text of the Circular

- **INCOME ESCAPING ASSESSMENT- Section 148 - INSTRUCTION REGARDING SELECTION OF CASES**

INSTRUCTION F. NO. 225/40/2021/ITA-II, DATED 4-3-2021

1. The Central Board of Direct Taxes, in exercise of its powers under section 119 of the Income-tax Act, 1961 , with an objective of streamlining the process of selection of cases for issue of notices under section 148 of the Act, hereby directs that the following categories of cases be considered as 'potential cases' for taking action under section 148 of the Act by 31.03.2021 for the A.Y 2013-14 to A.Y 2017-18 by the Jurisdictional Assessing Officer (JAO):

i. Cases where there are Audit Objections (Revenue/Internal) which require action under section 148 of the Act;

ii. Cases of information from any other Government Agency/Law Enforcement Agency which require action under section 148 of the Act;

iii. Potential cases including:—

(a) Reports of Directorate of Income-tax(Investigation),

(b) Reports of Directorate of Intelligence & Criminal Investigation,

(c) Cases from Non-Filer Management System(NMS) & other cases as flagged by the Directorate of Income-tax (Systems) as per risk profiling;iv. Cases where information arising out of field survey action, requiring action under section 148 of the Act.v. Cases of information received from any Income-tax authority requiring action under section 148 of the Act with the approval of Chief Commissioner of Income Tax concerned.

2. No other category of cases, except the above, shall be considered for taking action under section 148 of the Act by the JAO.

3. It is clarified that action under section 148 of the Act shall be taken by the Assessing Officer in respect of the above categories of cases after forming a reasonable belief that income chargeable to tax has escaped assessment and 'reasons to believe' shall be recorded and required sanction as per section 151 of the Act shall be obtained before issuing notice under section 148 of the Act.

4. These instructions shall not be applicable to the Central charges and International Taxation charges for which separate instructions are being issued

- **Deadline for filing under VsV extended to March 31**

The CBDT vide notification no 09/2021 in S.O. 964(E) dated 26/02/2021 extended the deadline for filing declarations and making payment under direct tax dispute resolution scheme Vivad Se Vishwas (VsV) till March 31 and April 30 respectively. As per a CBDT's notification, the date for payment of tax without additional interest under VSV changed to April 30, 2021.

- **INCOME OF FOREIGN INSTITUTIONAL INVESTORS FROM SECURITIES OR CAPITAL GAINS ARISING FROM THEIR TRANSFER - TAXABILITY OF - CLARIFICA-**

TION ON CONTINUATION OF CONCESSIONAL RATE OF TAX ON CERTAIN INTEREST INCOME ON FPIs – Section 115AD r.w.s.194-LD

PRESS RELEASE, DATED 17-3-2021

Section 115AD of the Income-tax Act, 1961 (the 'Act') inter alia contains provisions for taxation of income of FPIs. Proviso to section 115AD(1)(i) provides that the tax shall be chargeable at the concessional rate of 5% on interest income referred to in section 194-LD.

There are reports in certain section of media that the said concessional tax rate of 5% has been withdrawn. It is hereby clarified 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 194-LD of the Act.

- **Statement of financial transaction containing information relating to capital gains on transfer of listed securities or units of Mutual Funds, dividend income, and interest income shall be furnished by specified persons**

- **Notification no 16/2021 dated 12 March 2021**

The Central Board of Direct Taxes vide notification no 16/2021 dated 12 march 2021, In exercise of the powers conferred by section 285BA read with section 295 of the Income- tax Act, 1961, gives the Income-tax (4th Amendment) Rules, 2021.

CBDT notifies, a statement of financial transaction containing information relating to capital gains on transfer of listed securities or units of Mutual Funds, dividend income, and interest income shall be furnished by specified persons at such frequency, and in such manner, as may be specified by the Principal Director General of Income Tax

It amends Rule 114E and inserts new sub rule 5A. The nature of Transactions and specified person are given below

Sl.No.	Nature of transaction	Class of person (reporting person)
(1)	(2)	(3)
	Capital gains on transfer of listed securities or units of Mutual Funds	(i) Recognised Stock Exchange; (ii) depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996); (iii) Recognised Clearing Corporation; (iv) Registrar to an issue and share transfer agent registered under sub- section (1) section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992).
2.	Dividend income	A company
3.	Interest income	(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); (ii) Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898 (6 of 1898). (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.

Readers are requested to refer to full text of notification

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GST UPDATES

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NOTIFICATIONS - CENTRAL TAX:

- **Notification No. 03/2021 - Central Tax dated 23rd February, 2021.**

  Authentication of aadhar number u/s 25(6B) or (6C) for application of registration shall not be applicable to a person who is not a citizen of India, a department or establishment of the Central Government or State government, a local authority, a statutory body, a public sector undertaking, any specialized agency of the United Nations Organization or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries.

- **Notification No. 04/2021 - Central Tax dated 28th February, 2021.**

  The notification Seeks to extend the time limit for furnishing of the annual return specified under section 44 of CGST Act, 2017 for the financial year 2019-20 till 31.03.2021.

- **Notification No. 05/2021 - Central Tax dated 8th March, 2021.**

  Vide notification number 13/2020 - Central Tax dated 21st March, 2020provision relating to E invoicing is made operation with effect from 01/10/2020. Vide this notification it is made applicable to a registered person whose aggregate turnover in respect of supply of goods or services or both or for exports in any preceding financial year from 2017-18 onwards exceeds 50 crore rupees. It is applicable from 01/04/2021.

CIRCULARS - CGST:

- **Circular No. 145/01/2021 - GST- dated 11th February, 2021**

  Vide Notification No. 94/2020 - Central Tax dated 22nd December, 2020,Rule 21A (2A)was amended with effect from 22/12/2020 so as to provide that where there is significant difference between GSTR 3B vs GSTR 1 vs GSTR 1 filed by his suppliers then his registration shall be suspended and the said person shall be intimated in FORM GST REG-31, electronically, on the common portal, or by sending a communication to his e-mail highlighting the said differences and anomalies and asking him to explain, within a period of thirty days, as to why his registration shall not be cancelled.This Circular provides Standard Operating Procedure (SOP) for implementation of the provision of suspension of registrations under Rule 21A(2A).

- **Circular No. 146/02/2021 - GST- dated 23rd February, 2021**

  The Circular in detail gives clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of notification 14/2020- Central Tax dated 21st March, 2020.

- **Circular No. 147/03/2021 - GST- dated 12th March, 2021**

  The Circular has further given in detail Clarification on refund related issues.

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