



Welcome to our
monthly newsletter

We bring you a concise and noteworthy regulatory developments in Income Tax, Goods & Services Tax, Companies Act during February 2022. We had tried to cover all important updates occurred during February 2022 in this volume of newsletter. The sole purpose of this circulation is to update finance professionals and business owners on direct & indirect taxes and other compliances. Feedbacks are welcome at info@nucleusadvisors.in.



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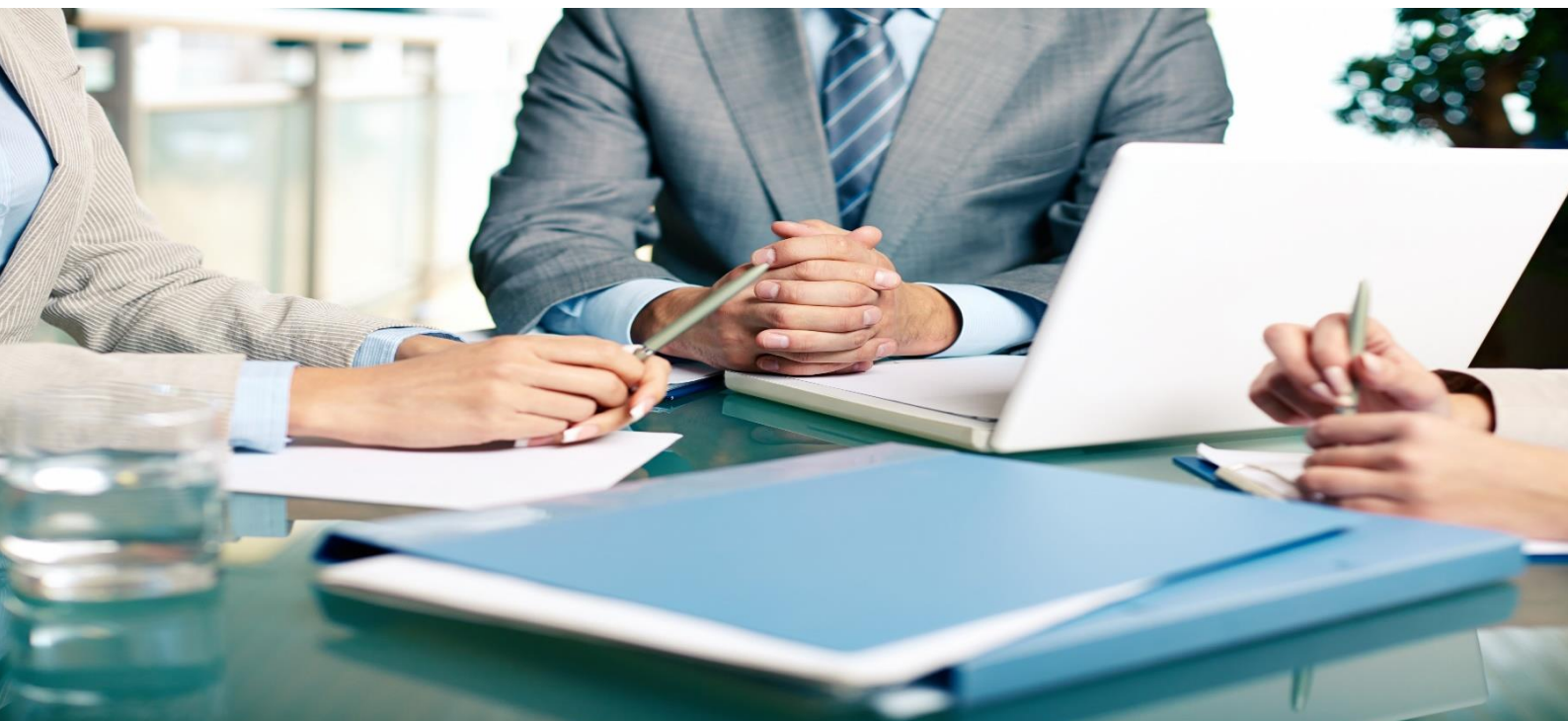
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Compliance Calendar



Why this Volume of Newsletter is important for reader?

Through the series of this newsletter, we aim at covering all relevant Income Tax, Goods & Service Tax, MCA, Audit & Assurance notification, circulars and case laws which may directly or indirectly impact our readers. At Nucleus, it is our utmost priority to help our readers to be informed with respect to the changes in relevant laws for a smoother compliance.



NEWSLETTER HIGHLIGHTS

Direct Tax Updates

- CBDT provides restrictive interpretation of Most-favored-nations (MFN) clause
- Judicial Updates

GST Updates

- E-invoicing for Taxpayers having Aggregate Turnover Exceeding INR 20 Cr.: - Notification No. 01/2022 - Central Tax.
- Kerala Flood Cess 2019-20 & 2020-21 & Annual Return Form KFC-A1
- New Functionalities added to GST Portal for the month of February 2022.
- Judicial Updates- Assistant Commissioner (ST) Vs Satyam Shivam Papers Pvt. Ltd.

MCA Updates

- Relaxation on filing of various forms for the Financial year ending March 31, 2021
- New Form CSR-2 on MCA
- Limited Liability Partnership (Amendment) Rules, 2022
- MCA V3 Portal upgradation for LLPs
- MCA issued a Public notice related to Service Request



DIRECT TAX UPDATES

CBDT provides restrictive interpretation of Most-favored-nations (MFN) clause

The CBDT has issued the Circular clarifying the applicability of MFN clause of Indian Double Taxation Avoidance Agreements (DTAAs or treaties) with OECD member states (or countries).

The Circular provides that benefit of lower rate and restricted scope under MFN clause will be extended only when all the below conditions are satisfied cumulatively:

- India's DTAA with the country which has beneficial lower rate or restricted scope (referred as the third State) is entered into after the signature/entry into force, depending on language of MFN Clause, of India's DTAA.
- The third State has to be an OECD member at the time of signing its treaty with India.
- India limits its taxing rights in relation to rate or scope of taxation in its treaty with the third State.
- India issues a separate notification under the Income Tax Laws (ITL) for importing the favorable benefits of third State treaty into the original treaty.

Further, the above Circular will not be applicable in case of taxpayers who have received a favorable decision by any court on the applicability of MFN clause.

Judicial Updates

Sum paid for defending & settling patent infringement suit is a revenue expenditure: vide order dated January 07, 2022

Case	DCIT v. Omni Active Health Technologies Ltd
Decision	Income Tax Appellate Tribunal "F" Bench, Mumbai
In favor of	Assessee

- Assessee was engaged in the business of healthcare & nutraceuticals products & claimed INR 8.73 Cr. as revenue expenditure for AY 2011-12 which included INR 6.39 Cr. paid to a US-based law firm for defending the Assessee in a patent infringement suit and INR 1.32 Cr for its settlement.
- Revenue disallowed Assessee's claim by observing that it gave the benefit of Revenue disallowed Assessee's claim by observing that it gave the benefit of CIT(A) ordered in favour of assessee.
- On Revenue's appeal, ITAT observed that any expenditure incurred by the Assessee for protection of IPR rights & for normal maintenance of its intellectual property are revenue expenditure & while rejecting revenue's contention held that the increase in the sales resulting into the higher profit could not be the reasons to hold the expenditure to be of capital nature & further remarked that the better protection of the intellectual property rights of the property would naturally result into higher profits & turnover.

Over Take: -

The Tribunal has delivered a significant judgement whereby amount paid for settlement of patent infringement suits have been treated as revenue expenditure. It need to be appreciated that incurrence of specified expenditure has not resulted in any new asset or enduring benefit and it has only protected the legal right of the assessee.

E-invoicing for Taxpayers having Aggregate Turnover Exceeding INR 20 Cr.: - Notification No. 01/2022 - Central Tax

CBIC has made E-invoice under GST mandatory for registered persons having aggregate turnover above INR 20 crore in any of the previous years from 2017-18 till 2021-22 with effect from April 01, 2022. i.e. The existing limit of INR 50 crores has been reduced to INR 20 crores.

Kerala Flood Cess 2019-20 & 2020-21 & Annual Return Form KFC-A1

The taxpayers were facing some technical issue as a result whereof, the annual Kerala Flood Cess Return for the period 2019-20 and 2020-21 could not be furnished in time. The electronic system for the filing of Kerala Flood Cess return has now been developed and is made available for the public.

The commissioner of State Tax extended the due date for filing annual Kerala Flood Cess return in Form KFC-A1 for the year 2019-20 and 2020-21 to the March 15, 2022.

New Functionalities added to GST Portal for the month of February 2022

Various new functionalities are implemented on the GST Portal, from time to time, for GST stakeholders. These functionalities for this month are regarding the following modules such as Registration, Returns, Payment, and Refund.

The following are the functionalities regarding different modules:

Registration:

1. Aadhaar authentication made mandatory for filing of Revocation application in Form REG-21 by Normal Taxpayers.
2. Existing taxpayers, as well as persons/entities applying for new registration, are now mandatorily required to provide Aadhaar enrolment ID no. for e-KYC verification.
3. Now, an appropriate alert will be displayed in the Returns Module to the taxpayers whenever the status of the taxpayer or taxpayer category is changed.
4. Filing of application for revocation of cancellation of registration in Form REG-21 by Taxpayers.
 - a) Earlier the taxpayers can file an application for revocation of cancellation of registration within 30 calendar days from the date on which the Cancellation Order was passed.
 - b) The amended provisions provide for the extension of the time limit. The taxpayers will now be able to file revocation applications even after 30 calendar days (but within 90 calendar days) from the date on which Cancellation Order was passed.

Returns:

1. Reduction in the frequency of filing of statements in Form ITC-04, based on aggregate turnover

Turnover up to 5cr.	Yearly filing of ITC 04
Turnover more than 5cr.	Half-Yearly filing of ITC 04

2. Enhancements in Search HSN functionality.

3. W.e.f. January 01, 2022, GSTR-1/IFF filing for a particular period will now be allowed for normal taxpayers only if the taxpayers have filed the return in FORM GSTR-3B for the preceding tax period.

Refund:

1. Several messages displayed to the taxpayer in the “Track Application Status” utility for Refund applications have been modified.

2. Aadhaar authentication made mandatory for filing of refund of IGST paid on export of goods and filing of refund application in Form RFD-01 in other cases.

Payments:

Out of the erstwhile 25 banks authorized for GST payments, 08 banks have merged with other banks, and, therefore, deleted from payment gateway of GST portal. Only the remaining 17 Agency banks are now available to the taxpayers for making GST-related payments.

Judicial Updates- Assistant Commissioner (ST) Vs Satyam Shivam Papers Pvt. Ltd.

The Hon’ble Supreme Court had, in the matter of Assistant Commissioner (ST) Vs Satyam Shivam Papers Pvt. Ltd., held that penalty can be levied only if there is an intention to evade tax by the person selling the goods. It has been held that the GST department has to prove that the business enterprise that has generated the E-way bill had a mala fide intention to evade tax if there is any mistake in the E-way bill. If the GST Department is able to prove the mala fide intention to evade tax by the business enterprise then only the GST Department can levy a penalty. If the GST Department fails to prove the intention to evade tax by the enterprise, then a penalty cannot be levied on the business enterprise for any error in the E-way bill.

Facts of the Case:

This petition was filed by the Revenue Department (“the Petitioner”), being aggrieved of the judgment passed by the Hon’ble Telangana High Court in Satyam Shivam Papers Pvt. Ltd. v. Assistant Commissioner ST & Ors. dated June 2, 2021. Wherein the court held that the allegation of the petitioner that respondent was evading tax because the e-way bill was expired a day earlier was baseless and there is no intent of tax evasion from the side of the respondent. Court has also compelled the petitioner to pay INR 69,000 as a cost for blatant abuse of power in keeping the goods for 16 days in the relative’s house and not in the safe house provided for these matters by treating the validity of expiry as amounting to tax evasion.

Issue:

Whether there involves a question of law in the matter as contended by the Petitioner I.e. Revenue Department?

Judgment of the Case:

The High court had made below arguments and the Supreme court agreed on the same:

- There was no material before the Department to come to the conclusion that there was evasion of tax by the taxpayer merely on account of lapsing of time mentioned in the e-way bill. The Department does not provide any evidence that there was an attempt to sell the goods to somebody else post the date of e-way bill. On account of non-extension of the validity of the e-way bill by

petitioner or the auto trolley driver, no presumption can be drawn that there was an intention to evade tax.

- Considered that the allegations, had not only been baseless but even the intent behind the proceedings against the taxpayer i.e. M/S Satyam Shivam Papers Pvt. Ltd. was also questionable.
- The High Court had set aside the levy of tax and penalty of INR 69,000 and imposed costs of INR 10,000 payable by the petitioner (Revenue Department) within four weeks.
- Further, on the amount of costs, the Supreme court Bench opined that it was rather on the lower side considering the overall conduct of the respondent and the corresponding harassment faced by the writ petitioner. Accordingly, the Bench imposed a further sum of INR 59,000 on the appellant-respondent toward costs, to be paid to the taxpayer over and above the sum of INR 10,000 already awarded by the High Court.

Relaxation on filing of various forms for the Financial year ending March 31, 2021

- It was mandated by DGFT that all IEC holders have to ensure that details in their IEC are updated electronically every year during the April-June period (for which no user charges were to be borne by the IEC holder).
- The Forms MGT-7/MGT 7A can be filed till March 31,2022 for the financial year ended on March 31,2021 without any additional fees.
- The Forms AOC-4, AOC-4 XBRL, AOC-4 NON-XBRL, AOC-4 (CFS) can be filed till March 15,2022 for the financial year ended on March 31, 2021.
- This decision has been taken keeping in view various requests received from stakeholders regarding relaxation of levy of additional fees for annual financial statement/return filings required to be done for the financial year ended on March 31,2021.
- During the said extended period, only normal fees shall be payable for the filing of the aforementioned e-forms.

New Form CSR-2 on MCA

- A new e-Form CSR-2 has been introduced through this Amendment Rules. As per the notification, every company with CSR responsibility shall furnish a report on Corporate Social Responsibility in Form CSR-2 to the Registrar for the preceding financial year (2020-2021) and onwards as an addendum to Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be.
- For the preceding financial year (2020-2021), Form CSR-2 shall be filed separately on or before March 31, 2022, after filing Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be.
- Further, Form CSR-2 (Report on Corporate Social Responsibility) notified vide Companies (Accounts) Amendment Rules, 2022 dated 11th February 2022 is also made available for filing purposes under MCA Services -Company services-CSR-2.

Limited Liability Partnership (Amendment) Rules, 2022

- The amendment states that a limited liability partnership or a company or a proprietor of a registered trademark under the Trade Marks Act, 1999 already has a name or trademark which is similar to or which too nearly resembles the name or new name of a limited liability partnership incorporated subsequently, may apply to the Regional Director in Form 23 to give a direction to that limited liability partnership incorporated subsequently to change its name or new name, as the case may be.
- Provided that an application of the proprietor of the registered trademark shall be maintainable within a period of three years from the date of incorporation or registration or change of name of limited liability partnership under the Act.
- Further, a new Rule 19A which deals with the allotment of the new name to an existing LLP has been notified.
- In case a Limited Liability Partnership fails to change its name or new name, as the case may be, within a period of three months from the date of issue of such direction, the letters "ORDNC" (Order of Regional Director Not Complied), the year of the passing of the direction, the serial number and the existing LLPIN of the LLP shall become the new name of the LLP without any further act or deed by the LLP.

- A new Rule 37A provides for the adjudication of LLP penalties wherein the Central Government can appoint any officer not below the rank of Registrar as adjudicating officers for adjudicating penalty under the LLP Act.
- The adjudicating officer can pass an order of penalty against an LLP after sending notice and hearing the concerned person of the LLP. The adjudicating officer will send the order copy to the partner/designated partner of the LLP and the regional director. The LLP must pay the penalty only through the MCA portal.
- The LLP can file an appeal within 60 days of passing the order by the adjudicating officer in form 33 - LLP ADJ setting forth the appeal grounds with the Regional Director.
- MCA has also notified the Form 16A - Certificate of Incorporation under change of name due to Order of Regional Director not being complied and Form 33 - LLP ADJ - Memorandum of Appeal, through the Limited Liability Partnership (Amendment) Rules, 2022.
- Applicable fee for LLP Registration:-

(a) Limited Liability Partnership whose contribution does not exceed INR 1 lakh	INR 500/-
(b) Limited Liability Partnership whose contribution exceeds INR 1 lakh but does not exceed INR 5 lakhs	INR 2000/-
(c) Limited Liability Partnership whose contribution exceeds INR 5 lakhs but does not exceed INR. 10 lakhs	INR 4000/-
(d) Limited Liability Partnership whose contribution exceeds INR 10 lakhs but does not exceed INR 25 lakhs	INR 5,000/-
(e) Limited Liability Partnership whose contribution exceeds INR 25 lakhs but does not exceed INR 1 Crore	INR 10,000/-
(f) Limited Liability Partnership whose contribution exceeds INR 1 Crore	INR 25000/-

- Applicable fee for LLP Forms:-

(a) Limited Liability Partnership whose contribution does not exceed INR 1 lakh	INR 50/-
(b) Limited Liability Partnership whose contribution exceeds INR 1 lakh but does not exceed INR 5 lakhs	INR 100/-
(c) Limited Liability Partnership whose contribution exceeds INR 5 lakhs but does not exceed INR 10 lakh	INR 150/-
(d) Limited Liability Partnership whose contribution exceeds INR 10 lakhs but does not exceed INR 25 lakhs	INR 200/-
(e) Limited Liability Partnership whose contribution exceeds INR 25 lakhs but does not exceed INR 1 Crore	INR 400/-
(f) Limited Liability Partnership whose contribution exceeds INR 1 Crore	INR 600/-

➤ Fee for filing appointment of Partner: -

(a) Small LLP	INR 50/-
(b) For other than Small LLP	INR 150/-

➤ Fee for Conversion of Firm into LLP

Application	Small LLPs (in rupees)	Other than Small LLPs (in rupees)
For reservation of name under section 16 of the Act	INR 200	INR 200
For direction to change the name under section 17 of the Act	INR 5000	INR 5000
For striking off the name of defunct Limited Liability Partnership under rule 37	INR 500	INR 500

➤ Additional fee applicable for delay in filing of LLP forms

Period of delays	Small LLPs	Other than Small LLPs
Upto 15 days	One Time	One time
More than 15 days and Upto 30 days	2 times of normal filing fees	4 times of normal filing fees
More than 30 days and Upto 60 days	4 times of normal filing fees	8 times of normal filing fees
More than 60 days and Upto 90 days	6 times of normal filing fees	12 times of normal filing fees
More than 90 days and upto 180 day	10 times of normal filing fees	20 times of normal filing fees
More than 180 days and upto 360 days	15 times of normal filing fees	30 times of normal filing fees
Beyond 360 days	25 times of normal filing fees for forms other than Form 8 and Form 11. For Form 8 and Form 11, 15 times normal filing fees plus INR 10 per day for everyday delay beyond 360 days	50 times of normal filing fees for forms other than Form 8 and Form 11. For Form 8 and Form 11, 30 times normal filing fees plus INR 20 per day for everyday delay beyond 360 days.

➤ Definition of SMALL LLP

“Small Limited Liability Partnership” means a limited liability partnership—

- i. the contribution of which, does not exceed twenty-five lakh rupees (INR 25,00,000/-) or such higher amount, not exceeding five crore rupees, as may be prescribed; and
- ii. the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed forty lakh rupees (INR 40,00,000/-) or such higher

amount, not exceeding fifty crore rupees, as may be prescribed; or (iii) which meets such other requirements as may be prescribed and fulfils such terms and conditions as may be prescribed.

MCA V3 Portal upgradation for LLPs

- All the LLP e-filing services are being upgraded and migrated to the MCA V3 portal. However, all the other services will continue to exist at the MCA V2 portal.
- MCA is launching this new application (v3) for e-filing by LLPs on the MCA21 portal to improve the delivery of LLP services.
- All LLP filings shall be web-based from March 06,2022 and onwards.
- These FAQs covers issues relating to Login Module, LLPs, LLP Forms/ Layouts, DSC, Payments (Types/ Modes)/ NTRP Portal/ Process/ Status Tracking, etc.
- MCA21 V3.0 will reduce the requirements of attachments, make the forms web-based and strengthen the pre-fill mechanism.

MCA issued a Public notice related to Service Request Number

- All the stakeholders are hereby informed that the Registrar of Companies and the Regional Directors of the Ministry of Corporate Affairs at all locations have been directed by the Ministry to enter all cases of complaints against the Companies and the LLPs, Inspections, Inquiries, Investigations and Prosecutions in the MCA Electronic registry i.e., MCA21 before issuing any letter, notice, order etc.
- Thereafter, a Service Request Number (SRN) is generated. They have also been directed to mention such SRN mandatorily in all such communications to Companies, LLPs, their officers, auditors, etc., on all communications.
- Therefore, all stakeholders are advised to treat any such communication received without SRN as unauthorised which need not be responded to further by the recipient.
- Any instance of such communication received without mentioning SRN may be brought to the notice of the Office of the Director General of Corporate Officer (DGCoA) at email dgcoa@mca.gov.in along with the copy of the communication.



COMPLIANCE CALANDER

Direct Taxes

March 02, 2022

- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB, 194M in the month of January, 2022

March 07, 2022

- Due date for deposit of Tax deducted/collected for the month of February, 2022.

March 15, 2022

- Fourth instalment of advance tax for the assessment year 2022-23.
- Due date for payment of whole amount of advance tax in respect of assessment year 2022-23 for assessee covered under presumptive scheme of section 44AD / 44ADA
- Due date for filing of return of income for the assessment year 2021-22. If assessee is required to get his account audited u/s 44AB or he is required to submit a report under section 92E.

March 17, 2022

- Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB & 194M in the month of January, 2022

March 30, 2022

- Due date for furnishing of challan -cum-statement in respect of tax deducted u/s 194-IA, 194-IB & 194M in the month of February, 2022

Indirect Taxes

March 10, 2022

- Due date for filing of GSTR 7 (Tax Deductor) and GSTR 8 (Tax Collector)

March 11, 2022

- Due date for filing of GSTR 1 for Regular Taxpayers.

March 13, 2022

- Due date for GSTR-1 for QRMP, IFF
- Due date for filing of GSTR-6

March 20, 2022

- Due date for filing of GSTR 3B (Regular Tax Payer)
- Due date for filing of GSTR 5 (Non-Resident Taxable Person).
- Due date for filing of GSTR 5A (Non-Resident OIDAR Service Provider).

March 25, 2022

- Due date for filing of GSTR 3B as per QRMP scheme (For group A States)
- Due date for GST Challan Payment if no sufficient ITC (for all Quarterly Filers)



Do You Know?

The government has proposed that transfer of any virtual/cryptocurrency asset will be taxed at 30%. No deduction except cost of acquisition will be allowed and no loss in transaction will be allowed to be carried forward. TDS will be imposed on payments for the transfer of crypto assets at a rate of 1% for transactions over a certain threshold. Furthermore, gifts of crypto assets will be taxed in the recipient's hands.

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ABOUT US

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