

Nucleus ADVISORS

RoundUp

December 2021 | F&A | Volume XVI



Welcome to our
monthly newsletter

We bring you a concise and noteworthy regulatory developments in Income Tax, Goods & Services Tax, Companies Act during December 2021. We had tried to cover all important updates occurred during December 2021 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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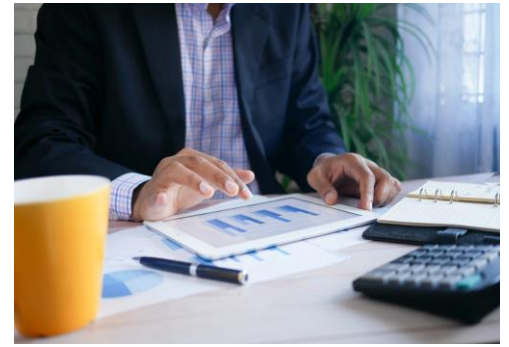
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Why this Volume of Newsletter is important for reader?

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

- ✓ LIC's Jeevan Akshay VII Plan notified as specified plan for Section 80C(2)(xii)
- ✓ Conditions notified for exemption of income accrued by non-resident as a result of transfer of non-deliverable forward contracts
- ✓ Rules & Form notified to Compute Exempt Income of Specified Fund u/s Section 10(23FF)
- ✓ Form No. 56FF to be furnished along with ITR for claiming Deduction u/s 10A(1B)(b)
- ✓ ITR Verification timeline extended upto February 28, 2022 for AY 2020-21
- ✓ Judicial Updates

GST Updates

- ✓ GST on service supplied by restaurants through e-commerce operators (ECOs) read with Section 9(5) :- Circular No. 167 / 23 /2021 - GST of CGST Act
- ✓ Mechanism for filing of refund claim by the taxpayers registered in erstwhile Union Territory of Daman & Diu for period prior to merger with U.T. of Dadra & Nagar Haveli :- Circular No. 168 / 24 /2021 - GST
- ✓ Aadhaar Authentication made mandatory:- Notification No. 38/2021 - Central Tax
- ✓ Central Tax Amendment in Finance Act 2021 which has come into effect from January 01, 2022 - Notification No. 39/2021.
- ✓ Notification No. 40/2021 - Central Tax

MCA Updates

- ✓ Clarification of holding of AGM through Visual means for Financial year ending on March 31, 2021
- ✓ MCA has issued the clarifications on passing of resolutions through Electronic means
- ✓ Holding of AGM through Video Conference or other Audio Visual means for Financial year 2021-2022
- ✓ Relaxation on levy of additional fees in filing of eForms



DIRECT TAX UPDATES

CBDT notifies LIC's Jeevan Akshay VII Plan notified as specified plan for Section 80C(2)(xii):- Notification No. 134/2021

CBDT notifies LIC's Jeevan Akshay VII Plan (Annuity Plan as filed with IRDAI) as specified plan for the purposes of Section 80C(2)(xii) of the Income-tax Act, 1961 for AY 2021-22 and subsequent years.

Conditions notified for exemption of income accrued by non-resident as a result of transfer of non-deliverable forward contracts: - Notification No. 136/2021

The non-residents typically hedge their exposure to Indian Rupee (emanating from investments / income receivable from India) by entering into non-deliverable forward (NDF) contracts with banks outside India. With a view to incentivize execution of such NDF contracts in India, the Finance Act, 2021 introduced Section 10(4E) that provides an exemption for the income earned by a non-resident from transfer of NDF contracts entered into with an offshore banking unit located in IFSC subject to fulfillment of the following conditions:

- I. the NDF contract is entered into by the non-resident with an offshore banking unit of an International Financial Services Centre which holds a valid certificate of registration granted under International Financial Services Centres Authority (Banking) Regulations, 2020 by the International Financial Services Centres Authority; and
- II. such contract is not entered into by the non-resident through or on behalf of its permanent establishment in India.

Rules & Form notified to Compute Exempt Income of Specified Fund u/s Section 10(23FF): - Notification No. 138/2021

Any income of the nature of capital gains, arising or received by a non-resident, which is on account of transfer of share of a company resident in India by the resultant fund and such shares were transferred from the original fund to the resultant fund in relocation, if capital gains on such shares were not chargeable to tax had that relocation not taken place, will be exempt u/s 10(23FF).

Rule 2DD has been notified to compute such exempt income. Form 10-II and CA Certificate in Form 10-IJ has also been notified to claim the exemption.

Form No. 56FF to be furnished along with ITR for claiming Deduction u/s 10A(1B)(b) :- Notification No. 140/2021

The notification shall come into force retrospectively from 29th July, 2021. Rule 130 was brought into force from July 29, 2021 where reference to rule 16DD in sub-rule (1) thereof and Form 56FF in sub-rule (2) thereof were inadvertently mentioned. The intention of the Board is to continue with the rule 16DD and Form 56FF. Hence, it is proposed to give retrospective effect to maintain continuity.

In the Income-tax Rules, 1962, Rule 16DD shall be inserted which reads as, “the particulars, which are required to be furnished by the assessee along with the return of income under clause (b) of sub-section (1B) of section 10A shall be in Form No. 56FF.

Form No. 56FF shall be in respect of Particulars to be furnished u/s 10A(1B)(b) which shall include Details of SEZ Reinvestment Allowance Reserve Account, and Details of new plant/machinery purchased out of amounts withdrawn from SEZ Reinvestment Allowance Reserve Account.

ITR Verification timeline extended upto February 28, 2022 for AY 2020-21

Onetime opportunity has been provided to the Taxpayers whose ITR has been filed but is pending for e-verification (using EVC/ OTP) or submission of ITR-V, in respect of AY 2020-21. Such returns can now be verified upto February 28, 2022, as against the original requirement of verification within 120 days from the date of e-filing of the return.

Last step in the process of e-filing of ITR is the ‘Verification of Return’, completion of which is most crucial, as the return filed by an Individual is treated as ‘Defective’ or ‘Invalid’, if it’s not verified within 120 days from the date of filing thereof.

Judicial Updates

Unexplained investment in India by non-resident from income earned outside India, not taxable in India u/s 69

Case	ITO v. Rajeev Suresh Ghai
Decision	Income Tax Appellate Tribunal “I” Bench, Mumbai
In favour of	Assessee

- Assessee is a non-resident Indian settled in the UAE for the last three decades. Revenue, based on Investigation Wing’s report, found that during the financial year relevant to AY 2010-11, the Assessee paid cash aggregating to Rs 2.50 Cr. to one Ahuja Builders and received Rs.4.47 Lacs in cash and also interest on the amounts paid. Assessee was subjected to scrutiny assessment and added Rs.2.50 Cr. u/s 69 as unexplained investment and Rs.4.47 Lacs as interest on loan u/s 68.
- CIT(A) deleted the addition on the basis that the Assessee was a tax resident of the UAE and since the income under Sections 68 or 69 can only be covered under Article 22 of the India-UAE DTAA i.e., Other Income, it cannot be taxed in India.

- On Revenue's appeal, ITAT observed that the basic nature of transaction is that the Assessee paid some unaccounted monies to a builder which were brought to tax by a legal fiction whereby the trigger for taxability was unexplained investment in the immovable property. Thus, noted that it is no one's case that the income arose in India but the case is that the income was invested in India whereas the Assessee has been a tax resident in the UAE all along with no economic activities in India, therefore held that the unexplained investments which are inherently in the nature of the application of income rather than earning of income, cannot be taxed in India under Article 22(1).
- Further held that Article 23(1) that deals with the taxation of the capital would also not apply in the present case since what is sought to be taxed is unexplained investment in an immovable property and not capital represented by an immoveable property.

Read Full Judgement: [ITO v. Rajeev Suresh Ghai](#)

Our Take: The Tribunal has dealt with a significant issue regarding the prominence of DTAA over the domestic tax laws and held that classification of income and its taxation is inherent part of the treaty law, and a sum cannot be subjected to tax unless it is an income falling within the treaty provisions.

GST UPDATES

GST on service supplied by restaurants through e-commerce operators (ECOs) read with Section 9(5) :- Circular No. 167 / 23 /2021 - GST of CGST Act

Clarifications are as follows:

1. The ECOs (E-Com Operators) will no longer be required to collect TCS and file GSTR 8 in respect of restaurant services.
2. There would be no mandatory requirement of taking separate registration.
3. ECOs will be liable to pay GST on any restaurant service supplied through them including by an unregistered person.
4. Aggregate turnover shall be calculated as per the provisions of section 2(6) i.e. all taxable supplies, exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number.
5. ECO would be eligible to ITC as before. Accordingly, it is clarified that ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST. It may also be noted that on restaurant service, ECO shall pay the entire GST liability in cash (No ITC could be utilised for payment of GST on restaurant service supplied through ECO).
6. The liability of payment of tax by ECO shall be discharged in cash.
7. On such supplies (other than restaurant services made through ECO) GST will continue to be billed, collected and deposited in the same manner as is being done at present. ECO will deposit TCS on such supplies.
8. Considering that liability to pay GST on supplies other than 'restaurant service' through the ECO, and other compliances under the Act, including issuance of invoice to customer, continues to lie with the respective suppliers (and ECOs being liable only to collect tax at source (TCS) on such supplies), it is advisable that ECO raises separate bill on restaurant service in such cases where ECO provides other supplies to a customer under the same order.
9. The invoice in respect of restaurant service supplied through ECO will be issued by ECO.

10. Registered persons supplying restaurant services through ECOs will report such supplies of restaurant services made through ECOs in Table 8 of GSTR-1 and Table 3.1 (c) of GSTR-3B, for the time being.

Mechanism for filing of refund claim by the taxpayers registered in erstwhile Union Territory of Daman & Diu for period prior to merger with U.T. of Dadra & Nagar Haveli :- Circular No. 168 / 24 /2021 - GST

Procedure for filing of refund claim:

1. The application for refund shall be filed under 'Any other' category on the GST portal using their new GSTIN.
2. In the Remarks column of the application, the applicant needs to enter the category in which the refund application otherwise would have been filed.
3. The application shall be accompanied by all the supporting documents which otherwise are required to be submitted with the refund claim.
4. At this stage, the applicant is not required to make any debit from the electronic credit ledger.
5. On receipt of the claim, the proper officer shall calculate the admissible refund amount as per law.
6. Further, upon scrutiny of the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the applicant, in writing, if required, to debit the said amount from the electronic credit ledger through FORM GST DRC-03.
7. Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in FORM GST RFD-06 and the payment order in FORM GST RFD-05.
8. For the categories of refund where debit of ITC is not required, the applicant may apply for refund under the category "Any other" mentioning the reasons in the Remarks column. Such application shall also be accompanied by all the supporting documents which are otherwise required to be submitted along with the refund claim.

Notification No. 40/2021 - Central Tax

In the Central Goods and Services Tax Rules, 2017, –

1. Under rule 36, for sub-rule (4):

Now, no input tax credit shall be availed by a registered person in respect of invoices or debit notes unless

(a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility (Quarterly filers)

(b) the details of such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under sub-rule (7) of rule 60

2. Under rule 80: The due date for filing Annual Return under form GSTR9 and Reconciliation Statement has been extended to February 28, 2022

3. In rule 95, this shall come into effect from April 1, 2021

where Unique Identity Number (UIN for foreign diplomatic missions and embassies) of the applicant is not mentioned in a tax invoice, the refund of tax paid by the applicant on such invoice shall be available only if the copy of the invoice, duly attested by the authorized representative of the applicant, is submitted along with the refund application in FORM GST RFD-10

4. In rule 142, which has come into effect from Jan 1, 2022: Under the Demand and Recovery, now the assessee has to pay tax along with the interest and penalty within 7days (instead of 14 days) detention or seizure of the goods and conveyance.

5. Recovery of penalty by sale of goods or conveyance detained or seized in transit.--Rule 144A has come into effect from January 1, 2022 -

1. Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty within 15 days from the date of receipt of the copy of the order passed the proper officer shall proceed for sale or disposal of the goods or conveyance so detained or seized
2. In case of perishable goods such time period can be reduced by the proper officer
3. The said goods or conveyance shall be sold through a process of auction, including e-auction
4. The officer may specify the amount of pre-bid deposit to make the bidders eligible to participate in the auction
5. The proper officer shall issue a notice to the successful bidder in FORM GST DRC-11 requiring him to make the payment within a period of 15 days from the date of auction
6. On payment of the full bid amount, the proper officer shall transfer the possession and ownership of the said goods or conveyance to the successful bidder and issue a certificate in FORM GST DRC-12.
7. The proper officer shall cancel the process and proceed for re-auction where no bid is received or the auction is considered to be non-competitive due to lack of adequate participation or due to low bids.

6. for rule 154, the following rule shall be substituted with effect from January 1, 2022

Disposal of proceeds of sale of goods or conveyance and movable or immovable property.-

1. The amounts so realised from the sale of goods or conveyance, movable or immovable property, for the recovery of dues from a defaulter or for recovery of penalty payable shall -
 - (a) first, be appropriated against the administrative cost of the recovery process
 - (b) next, be appropriated against the amount to be recovered or to the payment of the penalty
 - (c) next, be appropriated against any other amount due from the defaulter under the Act or the Integrated Goods and Services Tax Act, 2017 or the Union Territory Goods and Services Tax Act, 2017 or any of the State Goods and Services Tax Act, 2017 and the rules made thereunder.
 - (d) the balance, if any, shall be credited to
 - i. the electronic cash ledger in case the person is registered
 - ii. the bank account in case the person is not required to be registered
2. where it is not possible to pay the balance such balance of sale proceeds shall be deposited with the Fund.

Central Tax Amendment in Finance Act 2021 which has come into effect from January 01, 2022 - Notification No. 39/2021

From January 1, 2022: the provisions of following sections of Finance Act 2021 have become effective:

108 : Amendment of section 7 (Scope of Supply) - the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

109: Amendment of section 16 (Eligibility and conditions for taking input tax credit) - In no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless the supplier has filed return u/s 37 i.e. GSTR1

114: Amendment of section 75 (General provisions relating to determination of tax) - "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37 i.e.

GSTR1, but not included in the return furnished under section 39 i.e. GSTR3B, implying GSTR1 shall be considered for determination of self-assessed tax even if there is some clerical error while filing GSTR1.

115: Amendment of section 83 (Provisional attachment to protect revenue in certain cases) - the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified.

116: Amendment of section 107 (Appeals to Appellate Authority) - no appeal shall be filed against an order u/s 129(3) i.e. Detention, seizure and release of goods and conveyances in transit, unless a sum equal to 25% of the penalty has been paid by the appellant.

117: Amendment of section 129 (Detention, seizure and release of goods and conveyances in transit)

118: Amendment of section 130 (Confiscation of goods or conveyances and levy of penalty) - penalty imposed is changed to 100% of the tax payable

Addhaar Authentication made mandatory:- Notification No. 38/2021 - Central Tax

From January 1, 2022 Central Government has made Aadhaar Authentication mandatory for persons who has been issued a certificate of registration under GS.

MCA UPDATES

Clarification of holding of AGM through Visual means for Financial year ending on March 31,2021-

MCA has decided to allow the companies whose AGMs are due in the Year 2021, to conduct their AGMs on or before June 30, 2022 through Video Conference (VC) or other Audio Visual Means (OAVM).

It is further clarified that this Circular shall not be construed as conferring any extension of time for holding of AGMs by the companies under the Companies Act, 2013 (the Act) and the companies which have not adhered to the relevant timelines shall be liable to legal action under the appropriate provisions of the Act.

MCA has issued the clarifications on passing of resolutions through Electronic means-

The Ministry has come up with the relaxations for the provisions under the Companies Act 2013 to allow respective companies to pass ordinary and special resolutions regarding the urgent matters in lieu of the difficulties faced by the stakeholders due to amid COVID-19 outbreak.

It has been decided to allow companies to conduct their EGMs through Video Conference (VC) or Other Audio-Visual Means till (OAVM) or transact items through postal ballot till June 30, 2022.

Holding of AGM through Video Conference or other Audio Visual means for Financial year 2021-2022-

MCA has provided more leeway for companies in terms of holding their Annual General Meetings in virtual mode. The relaxation will be applicable for companies planning to hold their Annual General Meetings (AGMs) next year for the financial year 2021-22.

It is clarified that the Companies proposing to hold their AGMs in 2022 for the financial year ended/ending any time before/on March 31, 2022 have been allowed to conduct the same through the virtual mode till June 30, 2022.

The companies can conduct their AGMs through video conference (VC) or other audio-visual means (OAVM). MCA has further clarified that the circular should not be construed as conferring any extension of time for holding AGMs by the companies under the Companies Act, 2013.

Relaxation on levy of additional fees in filing of eForms

Ministry of Corporate Affairs (MCA) vide its General Circular no. 22/2021 dated December 29, 2021, keeping in view various requests received from stakeholders regarding relaxation of levy of additional fees, has further decided that no additional fees shall be levied up to February 15, 2022 for filing of eForms-

1. AOC-4,
2. AOC-4 (CFS),
3. AOC-4 XBRL,
4. AOC-4 Non-XBRL

Further, no additional fees shall be levied up to February 28, 2022 for eForms-

1. MGT-7
2. MGT-7



COMPLIANCE CALENDAR

Direct Taxes

January 07, 2022

- Due date for deposit of tax deducted/collected for the month of December 2021. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan

January 07, 2022

- Due date for deposit of TDS for the period October 2021 to December 2021 when Assessing Officer has permitted quarterly deposit of TDS under section 192, section 194A, section 194D or section 194H

January 14, 2022

- Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB & 194M in the month of November, 2021

January 15, 2022

- Due date for filing of audit report under section 44AB for the assessment year 2021-22 in the case of a corporate-assessee or non-corporate assessee
- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of December, 2021 has been paid without the production of a challan
- Due date for furnishing of Form 15G/15H declarations received during the quarter ending December, 2022

January 30, 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 December, 2021

January 31, 2022

- Due date for furnishing Quarterly statement of TDS for the quarter ending December 31, 2021
- Due date for filing of audit report under section 44AB for the assessment year 2021-22 in the case of an assessee who is also required to submit a report pertaining to international or specified domestic transactions under section 92E

Indirect Taxes

January 10, 2022

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

January 11, 2022

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

January 13, 2022

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

January 18, 2022

- Due date for CMP-08

January 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).

January 22, 2022

- Due date for filing of GSTR 3B as per QRMP scheme (For group A States)

January 24, 2022

- Due date for filing of GSTR 3B as per QRMP scheme (For group B States)

January 25, 2022

- Due date for GST Challan Payment if no sufficient ITC for December 2021 (for all Quarterly Filers)



Do You Know?

The gross GST revenue collected in the month of December 2021 is Rs 1,29,780 crore, of which CGST is Rs 22,578 crore, SGST is Rs 28,658 crore, IGST is Rs 69,155 crore (including Rs 37,527 crore collected on import of goods) and cess is Rs 9,389 crore (including Rs 614 crore collected on import of goods)

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ABOUT US

Nucleus AAR Advisors LLP is an Investment Banking and Risk Advisory Firm providing specialized services in the field of Startup Advisory, M&A Advisory, International Taxation, Audit & Assurance. We partner with entrepreneurs in their critical decision making by providing them various analysis customized as per their requirement. We also help in the effective implementation of decisions and its subsequent monitoring as well.

Team Nucleus is comprised of people from Big4s and reputed consulting firms with combined experience of 30+ years. Team is distinguished by their functional and technical expertise combined with their hands-on experience, thereby ensuring that our clients receive the most professional



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