

**R.C.JAIN AND ASSOCIATES LLP**

**NEWSLETTER**

**SEPTEMBER**

**2021**

*Every drop of water is Important in our  
life whether it falls from  
Sky or from Eye.*

*CA Gaurav Sanghavi.*



# INDEX

1. Income Tax	3
2. Case Law	7
3. GST	11
4. RBI	26
5. Corporate Law	30
6. Hunaar Haat	32
7. Shining Star	33

## EDITORIAL TEAM

### CHIEF EDITOR

CA R. C. Jain

### EDITOR

CA Gaurav Sanghavi

### MEMBERS

Ankit Shah

Devika Gangapuram

Akanksha Ghuge

Piyush Motwani

Pooja Thopate

Tuba Momin

### SUPPORT TEAM

Ulhas Jain

CA Meera Joisher

Mangesh Kolekar

The contents provided in this newsletter are for information purpose only and are intended, but not promised or guaranteed, to be correct, complete and up-to-date. The firm hereby disclaims any and all liability to any person for any loss or damage caused by errors or omissions, whether such errors or omissions result from negligence, accident or any other cause.

## **DIRECT TAX**

### **Income Tax**

#### **Notification No. 110/2021/F. No. 275/27/2021-IT(B)**

The Central Government notified that **No deduction of tax** shall be made on the following payment under section 194A of the said Act, namely payment in the nature of interest, other than interest on securities, made by a scheduled bank (hereinafter the “payer”) located in a specified area, to a member of Scheduled Tribe (hereinafter the “receiver”) residing in any specified area, as referred to in clause (26) of section 10 of the said Act.

#### **Conditions:**

- (i) the payer satisfies itself that the receiver is a member of Scheduled Tribe residing in any specified area, and the payment as referred above is accruing or arising to the receiver during the previous year relevant for the assessment year in which the payment is made, by obtaining necessary documentary evidences in support of the same;
- (ii) the payer reports the above payment in the statements of deduction of tax as referred to in subsection (3) of section 200 of the said Act;
- (iii) the payment made or aggregate of payments made during the previous year does not exceed **Twenty lakh rupees**.

**Explanation -** For the purposes of this notification, the expression “scheduled bank” shall have the same meaning as assigned to it in section 2 of the Reserve Bank of India Act, 1934.

#### **Notification No. 112/2021/F. No. 370142/39/2021-TPL**

The Central Government hereby specifies the pension fund, namely, the 276522 Ontario Limited, (hereinafter referred to as - the assessee) as the specified person for the purposes of the said clause in respect of the eligible investment made by it in India on or after the date of publication of this notification in the Official Gazette but on or before the 31st day of March, 2024 (hereinafter referred to as —said investments<sup>1</sup>) subject to the fulfilment of the following conditions, namely:-

1. The assessee shall file return of income, for all the relevant previous years falling within the period beginning from the date in which the said investment has been made and ending on the date on which such investment is liquidated, on or before the due date specified for furnishing the return of income under section 139 (1).

## **DIRECT TAX**

2. The assessee shall furnish along with such return a certificate in Form No. 10BBC in respect of compliance to the provisions of clause (23FE) of section 10 of the Act, during the financial year, from an accountant as defined in the Explanation below sub-section (2) of section 288, as per the provisions of clause (vi) of rule 2DB of the Income –tax Rules, 1962;
3. The assessee shall intimate the details in respect of each investment made by it in India during the quarter within one month from the end of the quarter in Form No. 10BBB, as per the provisions of clause (v) of rule 2DB of the Income-tax Rules, 1962;
4. The assessee shall maintain a segmented account of income and expenditure in respect of such investment which qualifies for exemption under clause (23FE) of section 10 of the Act;
5. The assessee shall continue to be regulated under the law of the Government of Canada;
6. The assessee shall be responsible for administering or investing the assets for meeting the statutory obligations and defined contributions of one or more funds or plans established for providing retirement, social security, employment, disability, death benefits or any similar compensation to the participants or beneficiaries of such funds or plans, as the case may be;
7. Not more than ten per cent. of the total value of the assets administered or invested by the assessee are allowed for the purpose other than the purpose listed at clause (vi) provided such assets are wholly owned directly or indirectly by the Government of Canada and such assets vest in the Government of Canada upon dissolution;
8. The earnings and assets of the assessee should be used only for meeting statutory obligations and defined contributions for participants or beneficiaries of funds or plans referred to in clause (vi) and no portion of the earnings or assets of the pension fund inures any benefit to any other private person; barring any payment made to creditors or depositors for loan or borrowing [as defined in sub-clause (b) of clause (ii) of Explanation 2 to clause (23FE) of section 10 of the Act] taken for the purposes other than for making investment in India;

## **DIRECT TAX**

9. The earning from assets referred to in clause (vii) may be used for purpose other than the purpose listed as in clause (viii) provided that the said earnings are credited either to the account of Government of Canada or any other account designated by such Government so that no portion of the earnings inures any benefit to any private person;
  10. The assessee shall not have any loans or borrowings [as defined in sub-clause (b) of clause (ii) of Explanation 2 to clause (23FE) of section 10 of the Act], directly or indirectly, for the purposes of making investment in India;
  11. The assessee shall not participate in the day to day operations of investee [as defined in clause (i) of Explanation 2 to clause (23FE) of section 10 of the Act] but the monitoring mechanism to protect the investment with the investee including the right to appoint directors or executive director shall not be considered as participation in the day to day operations of the investee.
2. Violation of any of the conditions as stipulated in the clause (23FE) of section 10 of the Act and this notification shall render the assessee ineligible for the tax exemption.
3. This notification shall come into force from the date of its publication in the Official Gazette.

### **Notification No. 115/2021/F. No. 300196/9/2021-ITA-I**

As per section 10(46), any specified income arising to any notified body/authority/Board/ Trust/Commission (or a class thereof) which has been established or constituted by or under a Central, State or Provincial Act, or has been constituted by the Government or a State Government with the object of regulating or administering any activity for the benefit of the general public and is not engaged in any commercial activity and is notified by the Central Government in the Official Gazette for the purposes of this clause is exempt from tax.

Central Government notifies 'Gujarat Electricity Regulatory Commission', Gandhinagar (PAN AAAAG0638C) a commission established by the state government of Gujarat, in respect of the following specified income arising to the Commission, namely:-

- (a) Annual license fee;
- (b) Petition fee; and

## **DIRECT TAX**

- (c) Interest earned on fixed/term deposits and savings account with nationalized banks/state sponsored financial institutions.

This notification shall be effective subject to the conditions that Gujarat Electricity Regulatory Commission, Gandhinagar,-

- (a) shall not engage in any commercial activity;
- (b) activities and the nature of the specified income shall remain unchanged throughout the financial years;
- (c) shall file return of income in accordance with the provision of clause (g) of sub-section (4C) of section 139 of the Income-tax Act, 1961; and
- (d) shall file the Audit report along with the Return, duly verified by the accountant as provided in explanation to section 288(2) of the Income-tax Act, 1961 along with a certificate from the chartered accountant that the above conditions are satisfied.
- (e) This notification shall apply with respect to the financial years 2021-2022, 2022-2023, 2023-2024, 2024-2025 and 2025-2026.

*-Compiled by Pooja Thopate*

**Case Laws:**

**1) Issue Involved:**

Whether matter omitted in CIT(A) order can be considered by tribunal(ITAT) ?

- **Relevant Case Law -In the ITAT (Mumbai), in case of ACIT vs Sachin R Tendulkar (2021)**

**GIST OF THE CASE**

1. CIT(A) erred in not adjudicating ground no.2 of the appeal relating to addition made on account of deemed rental income of Rs. 3,36,000/- (Rs. 4,80,000 - 30% standard deduction) in respect of the vacant flat situated at Sapphire Park, Balewadi, Pune. Appellant submit that since the ground of appeal was common for the assessment years 2013-14 & 2014-15, the CIT(A) passed a combined/single order for the both the assessment years. While the CIT(A) allowed the said ground of appeal for the income tax assessment year 2013-14 following the ITAT decision in the Appellant's own case for the income tax assessment year 2012-13, he did not adjudicate the ground of appeal for the income tax assessment year 2014-15. The Appellant therefore prays that following the ITAT decision in his own case for the assessment year 2012-13, the ACIT be directed to delete the addition of Rs. 3,36,000/- made by him.
2. The CIT(A) erred in not adjudicating the ground no.3 of the appeal relating to charging of interest of Rs. 1,22,146/- under section 234A of the Act in computing the tax demand. The Appellant denies his liability to the charge of interest and submits that since the Return of Income for the above assessment year has been filed within the due date, the ACIT ought not to have charged interest under section 234A of the Act. The Appellant has made an application for rectification under section 154 to the ACIT and if the same is rectified before the hearing of the appeal, the Appellant craves leave to withdraw the said ground of appeal.
3. The CIT(A) erred in not adjudicating the ground no.4 of the appeal relating to granting short credit for TDS aggregating to Rs. 11,23,599/-. In computing the tax demand, the ACIT had granted credit for TDS aggregating to Rs. 5,18,51,414/- as against the Appellant's claim of Rs. 5,29,75,013/- thereby granting short credit to

## **DIRECT TAX**

the extent of Rs. 11,23,599/-. The Appellant submits that he is entitled to full credit of TDS as claimed in the Return of Income and the ACIT ought not to have

restricted the same to Rs. 5,18,51,414/-. The Appellant therefore prays that the ACIT be directed to allow balance credit of Rs. 11,23,599/-. The Appellant has made an application for rectification under section 154 to the ACIT and if the same is rectified before the hearing of the appeal, the Appellant craves leave to withdraw the said ground of appeal.

### **HELD :-**

1. Brief facts of the case are that in this case Ld.CIT(A) has passed a combined order for AY 2013-14 and 2014-15. However in the order Ld.CIT(A) has only dealt with AY 2013-14 and has failed to mention/adjudicate issues raised in AY 2014-15. Against this assessee has filed appeal. The contention of the Ld. Counsel of the assessee is that there were similar issues raised in AY 2013-14 and 2014-15, while Ld.CIT(A) has adjudicated AY 2013-14, he has omitted to mention/adjudicate AY 2014-15. Ld. DR fairly agreed that Ld.CIT(A) has omitted to adjudicate AY 2014-15. However, Ld. DR pointed out that assessee has mentioned that assessee has filed rectification application u/s. 154 before the Ld.CIT(A). However, Ld. Counsel of the assessee stated that considerable time has elapsed and Ld.CIT(A) has not passed any order u/s. 154. Upon careful consideration, we note that it is evident that Ld.CIT(A) has failed to adjudicate issues raised for AY 2014-15. Hence, in the interest of justice, we remit the issue to the file of Ld.CIT(A) to pass a speaking order on the issues related to this appeal, which were raised before him but have not been adjudicated by him. Needless to add, assessee should be granted adequate opportunity of being heard. In the result, appeal by the assessee stands allowed
2. Where grounds of appeal were common for AY 2013-14 and 2014-15 and Commissioner (Appeals) has passed a combined order for both assessment years, however in order Commissioner (Appeals) has only dealt with AY 2013-14 and has omitted to mention/adjudicate issues raised in AY 2014-15, matter was to be remanded back to file of Commissioner (Appeals) to pass a speaking order on issues, which were raised before him but have not been adjudicated by him.



**2) Issue Involved:**

Whether Long term Capital Gain on Sale of Property can be set off against Long term capital Loss on Sale of Shares?

➤ **Relevant Case Laws: Michael E Desa V/s. Income Tax Officer International Taxation**

**GIST OF THE CASE**

1. The assessee is a non-resident Indian now fiscally domiciled in the United States. The assessee has sold a property, of which he was 50% co-owner, and reported an earning of long term capital gain of Rs. 95,12,556. The quantification of this gain is not in dispute. The assessee also reported a long term capital loss of Rs. 1,11,87,578 on sale of certain shares in VCAM Investment Managers Pvt Ltd (VCAM). The Assessing Officer probed this transaction in detail, and the information was requisitioned even from the purchaser of these shares- Kevin Saldhana. These shares were held by the assessee since 3rd April 2007 *i.e.* when the said company VCAM was incorporated, and were purchased by Kevin Saldhana for Rs. 2,95,445 on 25th March 2010- even though the payment was stated to be made for Rs. 3,00,000. The Assessing Officer took note of this discrepancy and treated this as evidence of lack of bonafides.
2. The Assessing Officer noted that the assessee knew Saldhana for over 10 years and had close business connections with him. It was then noted that under sections 23 and 24 of the Indian Contract Act, 1872, when the object is to defeat any provisions of law, and when consideration is of such nature that, if permitted, it would defeat the provisions of any law, the contract will be void. It was noted that the transaction is only to nullify the levy of long term capital gains. It was thus observed that the sale contract for the sale of shares is vitiated in law. He also noted that Saldhana was one of the directors of the company, and he had every reason to know that the company is worthless, and, in these circumstances, the purchase of shares was motivated for tax benefits to the assessee rather than any material gains to Saldhanas.
3. The Assessing Officer as well as CIT (Appeal) observed that "the transfer of shares by the assessee to Mr Saldhana is preconceived, preordained and fabricated for

## **DIRECT TAX**

extra commercial considerations, and a device to generate artificial and incorrect long term capital loss in the hands of the assessee". Thus both of them rejected this long term capital loss.

### **HELD :-**

Where assessee, NRI, sold a property and earned capital gain and also reported a long-term capital loss on sale of certain shares in company (VCAM) and Assessing Officer was of view that long-term capital loss on account of equity shares of company (VCAM) appears to be prima facie fictitious and not entitled to be adjusted against any taxable income, since ownership is transferred, consideration is paid and transaction is complete, benefit of this long-term capital loss could not be denied to assessee only on ground that if assessee had not taken these proactive measures, he would have paid more taxes Considering the facts of the case and considering the nature of document produced by the assessee before the court and considering the entire pith and substance of the documents, court held that, the assessee gets the relief accordingly, and thus, Assessing Officer is directed to allow set-off of this long-term capital loss on sale of shares in VCAM against long-term capital gains on sale of property.

*-Compiled by Ankit Shah & Tuba Momin*

**GST****Notifications****Notification No 35/2021-Central Tax, Dated 24th September, 2021**

The Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:

➤ **Furnishing of Bank Account Details:-**

After a certificate of registration in FORMGST REG-06 has been made available on the common portal and a Goods and Services Tax Identification Number has been assigned, the registered person, except those who have been granted registration under rule 12 or, as the case may be rule 16, shall as soon as may be, but not later than forty five days from the date of grant of registration or the date on which the return required under section 39 is due to be furnished, whichever is earlier, furnish information with respect to details of bank account **which is in name of the registered person and obtained on Permanent Account Number of the registered person**, or any other information, as may be required on the common portal in order to comply with any other provision.

Provided that in case of a proprietorship concern, the Permanent Account Number of the proprietor shall also be linked with the Aadhaar number of the proprietor.

➤ **Aadhaar authentication for registered person: -**

The registered person, other than a person notified under sub-section (6D) of section 25, who has been issued a certificate of registration under rule 10 shall, undergo authentication of the Aadhaar number of the proprietor, in the case of proprietorship firm, or of any partner, in the case of a partnership firm, or of the karta, in the case of a Hindu undivided family, or of the Managing Director or any whole time Director, in the case of a company, or of any of the Members of the Managing Committee of an Association of persons or body of individuals or a Society, or of the Trustee in the Board of Trustees, in the case of a Trust and of the authorized signatory, in order to be eligible for the purposes as specified in column (2) of the Table below:

## INDIRECT TAX

Sr No.	Particulars
1	For filing of application for revocation of cancellation of registration in FORM GST REG-21 under Rule 23.
2	For filing of refund application in FORM RFD-01 under rule 89.
3	For refund under rule 96 of the integrated tax paid on goods exported out of India.

Provided that if Aadhaar number has not been assigned to the person required to undergo authentication of the Aadhaar number, such person shall her/his Aadhaar Enrolment ID slip; and Bank passbook with photograph or Voter identity card or Passport or Driving license. Provided further that such person shall undergo the authentication of Aadhaar number within a period of thirty days of the allotment of the Aadhaar number.

➤ **Conditions and restrictions in respect of inputs and capital goods sent to the job Worker:-**

As per rule 45, in sub-rule (3), with effect from the 1st day of October, 2021, the details of challans in respect of goods dispatched to a job worker or received from a job worker during a **specified period** shall be included in FORM GST ITC-04 furnished for that period on or before the twenty-fifth day of the month succeeding the the said period.

For the purposes of this sub-rule, the expression “**specified period**” shall mean.-

- the period of six consecutive months commencing on the 1st day of April and the 1st day of October in respect of a principal whose aggregate turnover during the immediately preceding financial year exceeds five crore rupees; and
- a financial year in any other case

➤ **Form and manner of furnishing details of outward supplies:-**

With effect from the **1st day of January, 2022** as per Rule 59, A registered person shall not be allowed to furnish FORM GSTR-1, if he has not filled FORM GSTR-3B for preceding month.

## **INDIRECT TAX**

➤ **Application for refund of tax, interest, penalty, fees or any other amount:-**

As per rule 89 of the CGST rules, any person, claiming refund under section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in **FORM GST RFD-01** through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

Provided that the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of two years from the date on which this sub-rule comes into force.

➤ **Refund of integrated tax paid on goods exported out of India:-**

As per rule 96 of the CGST rules, also with other clause, the following clause shall be inserted - the applicant has undergone Aadhaar authentication in the manner provided in rule 10B.

**Notification No. 06/2021- Central Tax (Rate)**

The Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby notifies that the central tax, on the intra-State supply of services of description as specified in column (3) of the Table below, falling under Chapter, Section or Heading of scheme of classification of services as specified in column (2), shall be levied at the rate as specified in the corresponding entry in column (4), subject to the conditions as specified in the corresponding entry in column (5) of the said Table:-

**INDIRECT TAX**

Sr. No.	Chapter,Section or Heading	Description of Service	Rate (per cent.)	Condition
26	Heading 9988	Services by way of job work in relation to manufacture of alcoholic liquor for human consumption	9	-
34	Heading 9996	Services by way of admission to; (a) theme parks, water parks and any other place having joy rides, merry-go rounds, go carting, or (b) ballet, - other than any place covered by (iia) below	9	-
		(iia) Services by way of admission to (a) casinos or race clubs or any place having casinos or race clubs or (b) sporting events like Indian Premier League.	14	-

**Notification No. 10/2021-Central Tax (Rate), Dated 30th September, 2021**

On recommendations of the Council, The Central Government hereby makes the further amendments, w.e.f 1st October 2021, in the notification No.4/2017- Central Tax (Rate), dated 28<sup>th</sup> June 2017.

The supply of goods specified in column (3) of the Table below and falling under the corresponding entry in column (2) of the table, made by the person as specified in column (4), in respect of which the central tax shall be paid on reverse charge basis by the recipient of the intra-state supply of such goods specified in column (5) and all the provisions of the said Act shall apply to such recipient, namely:-

## **INDIRECT TAX**

S.No.	Tariff item, sub-heading, heading or Chapter	Description of supply of Goods	Supplier of goods	Recipient of supply
3A.	33012400, 33012510, 33012520, 33012530, 33012540	Following essential oils other than those of citrus fruit namely: a) Of peppermint (Menthapiperita); b) Of other mints : Spearmint oil (exmenthaspicata), Water mint-oil (exmentha aquatic), Horsemint oil (exmenthasylvestries), Bergament oil (ex-mentha citrate).	Any Unregisterd Person	Any Registered Person."

### **Circulars**

#### **Circular No. 158/14/2021-GST, Dated the 6th September, 2021**

This circular is issued by the Central Government in respect of clarification regarding extension of time limit to apply for revocation of cancellation of registration in view of Notification No. 34/2021-Central Tax dated 29th August, 2021 - Reg.

- It is clarified that the date for filing application for revocation of cancellation of registration in all cases, where registration has been cancelled under clause (b) - change in the constitution of the business; or clause (c) - the taxable person, other than the person registered under Section 25 (3) is no longer liable to be registered under section 22 or section 24 of section 29(2) of CGST Act, 2017 and where the due date of filing of application for revocation of cancellation of registration falls between 01-03-2020 to 31-08-2021, is extended to 30-09-2021, **irrespective of the status of such applications.**

## INDIRECT TAX

- The benefit of notification would also be applicable in those cases where the application for revocation of cancellation of registration is either pending with the proper officer / appellate authority or has already been rejected by the proper officer / appellate authority.

As explained in this para, the said notification would be applicable in the following manner:

**(i) application for revocation of cancellation of registration has not been filed by the taxpayer-** In such cases, the applications for revocation can be filed upto the extended timelines as provided vide the said notification. Such cases also cover those instances where an appeal was filed against order of cancellation of registration and the appeal had been rejected.

**(ii) application for revocation of cancellation of registration has already been filed and which are pending with the proper officer-** In such cases, the officer shall process the application for revocation considering the extended timelines as provided vide the said notification.

**(iii) application for revocation of cancellation of registration was filed, but was rejected by the proper officer and taxpayer has not filed any appeal against the rejection** -In such cases, taxpayer may file a fresh application for revocation and the officer shall process the application for revocation considering the extended timelines as provided vide the said notification.

**(iv) application for revocation of cancellation of registration was filed, the proper officer rejected the application and appeal against the rejection order is pending before appellate authority-** In such cases, appellate authorities shall take the cognizance of the said notification for extension of timelines while deciding the appeal.

**(v) application for revocation of cancellation of registration was filed, the proper officer rejected the application and the appeal has been decided against the taxpayer-** In such cases, taxpayer may file a fresh application for revocation and the officer shall process the application for revocation considering the extended timelines as provided vide the said notification.



➤ It is further clarified that:

- (i) Where the 30 days' time limit falls between 01-03-2020 to 31-12-2020, there is no provision available to extend the said time period of 30 days under section 30 of the CGST Act. For such cases, the time limit for application stands extended up to 30.09.2021 only; and
- (ii) Where the time period of 30 days since cancellation of registration has not lapsed as on 01-01-2021 or where the registration has been cancelled on or after 01-01-2021, the time limit for applying for revocation of cancellation of registration shall stand extended as follows:
  - (a) Where the time period of 90 days (initial 30 days and extension of 30+30 days) since cancellation of registration has elapsed by 31.08.2021, the time limit to apply for revocation stands extended upto 30-09-2021, without any further extension of time.
  - (b) Where the time period of 60 days (and not 90 days) since cancellation of registration has elapsed by 31.08.2021, the time limit to apply stands extended up to 30.09.2021, with the extension of timelines by another 30 days beyond 30.09.2021 by the Commissioner, on being satisfied.
  - (c) Where the time period of 30 days (and not 60 days or 90 days) since cancellation of registration has elapsed by 31.08.2021, the time limit to apply for revocation stands extended upto 30.09.2021, with the extension of timelines by another 30 days beyond 30.09.2021 by the Joint Additional Commissioner and another 30 days by the Commissioner, on being satisfied, as per section 30(1) of the CGST Act.

**Circular No. 159/15/2021-GST, Dated 20th September, 2021**

This circular is issued by the Central Government in respect of clarification on doubts related to scope of “Intermediary”–reg.

- I. ‘Intermediary’ has been defined in the section 2(13) of the IGST Act, 2017 as under–  
“Intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.

## INDIRECT TAX

- II. The concept of 'intermediary' was borrowed in GST from the Service Tax Regime. There is broadly no change in the scope of intermediary services except addition of supply of securities in the definition of intermediary in the GST Law vis-à-vis the Service Tax regime.
- III. The concept of intermediary services, as defined above, requires some basic prerequisites, which are discussed below:
  1. The arrangement requires a minimum of three parties, two of them transacting in the supply of goods or services or securities (the main supply) and one arranging or facilitating (the ancillary supply) the said main supply.
  2. Two distinct supplies:
    - a. Main supply- between the two principals, which can be a supply of goods or services or securities;
    - b. Ancillary supply- which is the service of facilitating or arranging the main supply between the two principals.
  3. Intermediary service provider should have the character of an agent, broker or any other similar person.
  4. Does not include a person who supplies such goods or services or both or securities on his own account.
  5. Sub-contracting for a service is not an intermediary service.

Eg:- For instance, 'A' and 'B' have entered into a contract as per which 'A' needs to provide a service of, say, Annual Maintenance of tools and machinery to 'B'. 'A' subcontracts a part or whole of it to 'C'. Accordingly, 'C' provides the service of annual maintenance to 'A' as part of such sub-contract, by providing annual maintenance of tools and machinery to the customer of 'A', i.e. to 'B' on behalf of 'A'. Though 'C' is dealing with the customer of 'A', but 'C' is providing main supply of Annual Maintenance Service to 'A' on his own account, i.e. on principal to principal basis. In this case, 'A' is providing supply of Annual Maintenance Service to 'B', whereas 'C' is supplying the same service to 'A'. Thus, supply of service by 'C' in this case will not be considered as an intermediary.
  6. The specific provision of place of supply of 'intermediary services' under section 13 of the IGST Act shall be invoked only when either the location of supplier of intermediary services or location of the recipient of intermediary services is outside India.

Applying the abovementioned guiding principles, the issue of intermediary services is clarified through the following illustrations:

**Illustration 1**

'A' is a manufacturer and supplier of a machine. 'C' helps 'A' in selling the machine by identifying client 'B' who wants to purchase this machine and helps in finalizing the contract of supply of machine by 'A' to 'B'. 'C' charges 'A' for his services of locating 'B' and helping in finalizing the sale of machine between 'A' and 'B', for which 'C' invoices 'A' and is paid by 'A' for the same. While 'A' and 'B' are involved in the main supply of the machinery, 'C', is facilitating the supply of machine between 'A' and 'B'. In this arrangement, 'C' is providing the ancillary supply of arranging or facilitating the 'main supply' of machinery between 'A' and 'B' and therefore, 'C' is an intermediary and is providing intermediary service to 'A'.

**Illustration 2**

'A' is a software company which develops software for the clients as per their requirement. 'A' has a contract with 'B' for providing some customized software for its business operations. 'A' outsources the task of design and development of a particular module of the software to 'C', for which "C" may have to interact with 'B', to know their specific requirements. In this case, 'C' is providing main supply of service of design and development of software to 'A', and thus, 'C' is not an intermediary in this case.

**Illustration 3**

An insurance company 'P', located outside India, requires to process insurance claims of its clients in respect of the insurance service being provided by 'P' to the clients. For processing insurance claims, 'P' decides to outsource this work to some other firm. For this purpose, he approaches 'Q', located in India, for arranging insurance claims processing service from other service providers in India. 'Q' contacts 'R', who is in business of providing such insurance claims processing service, and arranges supply of insurance claims processing service by 'R' to 'P'. 'Q' charges P a commission or service charge of 1% of the contract value of insurance claims processing service provided by 'R' to 'P'. In such a case, main supply of insurance claims processing service is between 'P' and 'R', while 'Q' is merely arranging or facilitating the supply of services between 'P' and 'R', and not himself providing the main supply of services. Accordingly, in this case, 'Q' acts as an intermediary as per definition of sub-section (13) of section 2 of the IGST Act.

**Illustration 4**

'A' is a manufacturer and supplier of computers based in USA and supplies its goods all over the world. As a part of this supply, 'A' is also required to provide customer care service to its customers to address their queries and complains related to the said supply of computers. 'A' decides to outsource the task of providing customer care services to a BPO firm, 'B'. 'B' provides customer care service to 'A' by interacting with the customers of 'A' and addressing / processing their queries / complains. 'B' charges 'A' for this service. 'B' is involved in supply of main service 'customer care service' to 'A', and therefore, 'B' is not an intermediary.

The illustrations are also generic in nature and should not be interpreted to mean that the service categories mentioned therein are inherently either intermediary services or otherwise. Whether or not, a specific service would fall under intermediary services within the meaning of sub-section (13) of section 2 of the IGST Act, would depend upon the facts of the specific case. While examining the facts of the case and the terms of contract, the basic characteristics of intermediary services, should be kept in consideration.

**Circular No. 160/16/2021-GST, dated the 20th September, 2021**

This circular is issued by the Central Government regarding various representations received from taxpayers and other stakeholders seeking clarification in respect of certain issues pertaining to GST laws.

**ISSUE 1:-**

Which of the following dates are relevant to determine the 'financial year' for the purpose of section 16(4):

- (a) date of issuance of debit note, or
- (b) date of issuance of underlying invoice

**Clarification:-**

w.e.f. 01.01.2021, in case of debit notes, the date of issuance of debit note (not the date of underlying invoice) shall determine the relevant financial year for the purpose of section 16(4) of the CGST Act.

**ISSUE 2:-**

Whether any availment of input tax credit, on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, will be governed by the provisions of the amended section 16(4), or the amended provision will be applicable only in respect of the debit notes issued after 01.01.2021?

**Clarification:-**

The availment of ITC on debit notes in respect of amended provision shall be applicable from 01.01.2021. Accordingly, for availment of ITC on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, the eligibility for availment of ITC will be governed by the amended provision of section 16(4), whereas any ITC availed prior to 01.01.2021, in respect of debit notes, shall be governed under the provisions of section 16(4), as it existed before the said amendment on 01.01.2021.

**Illustration 1**

A debit note dated 07.07.2021 is issued in respect of the original invoice dated 16.03.2021. As the invoice pertains to F.Y. 2020- 21, the relevant financial year for availment of ITC in respect of the said invoice in terms of section 16(4) of the CGST shall be 2020-21. However, as the debit note has been issued in FY 2021-22, the relevant financial year for availment of ITC in respect of the said debit note shall be 2021-22 in terms of amended provision of section 16(4) of the CGST Act.

**Illustration 2.**

A debit note has been issued on 10.11.2020 in respect an invoice dated 15.07.2019. As per amended provision of section 16(4), the relevant financial year for availment of input tax credit on the said debit note, on or after 01.01.2021, will be FY 2020-21 and accordingly, the registered person can avail ITC on the same till due date of furnishing of FORM GSTR-3B for the month of September, 2021 or furnishing of the annual return for FY 2020-21, whichever is earlier.

**ISSUE 3:-**

Whether carrying physical copy of invoice is compulsory during movement of goods in cases where suppliers have issued invoices in the manner prescribed under rule 48 (4) of the CGST Rules, 2017 (i.e. in cases of e-invoice)?

**Clarification:-**

A combined reading of rules 138A (1) and 138A (2) of CGST Rules, 2017 clearly indicates that there is no compulsory requirement to carry physical copy of tax invoice during movement of goods in cases where suppliers have issued invoices in the manner prescribed under rule 48 (4) of the CGST Rules, 2017 (i.e. in cases of e-invoice).

**ISSUE 4:-**

Whether the second proviso to section 54(3) of CGST / SGST Act, prohibiting refund of unutilized ITC is applicable in case of exports of goods which are having NIL rate of export duty.

**Clarification:-**

Accordingly, it is clarified that only those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered under the restriction imposed under section 54(3) from availment of refund of accumulated ITC. Goods, which are not subject to any export duty, would not be covered by the restriction imposed under the first proviso to section 54(3) of the CGST Act for the purpose of availment of refund of accumulated ITC.

**Circular No. 161/17/2021-GST, Dated 20th September, 2021**

This circular is issued by the Central Government in respect of clarification relating to export of services-condition (v) of section 2(6) of the IGST Act 2017-reg.

**Issue-**

Whether the supply of service by a subsidiary/ sister concern/ group concern, etc. of a foreign company in India, which is incorporated under the laws in India, to the foreign company incorporated under laws of a country outside India, will hit by condition (v) of section 2(6) of IGST Act.

**Clarification -**

- A Company incorporated in India and body corporate incorporated by or under the laws of a country outside India, which is also referred to as foreign company under Companies Act, are separate persons under CGST Act, and thus are separate legal entities. Accordingly, these two separate persons would not be considered as “merely establishments of a distinct person in accordance with Explanation 1 in section 8”.
- Therefore, supply of services by a subsidiary/ sister concern/ group concern, etc. of a foreign company, which is incorporated in India under the Companies Act, 2013, to the establishments of the said foreign company located outside India (incorporated outside India), would not be barred by the condition (v) of the sub-section (6) of the section 2 of the IGST Act 2017 for being considered as export of services.
- Similarly, the supply from a company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India, would not be treated as supply to merely establishments of distinct person, and therefore would qualify as ‘export of services’, subject to fulfilment of other conditions as provided under section 2(6) of IGST Act.

**Circular No. 162/18/2021-GST, Dated 25<sup>th</sup> September, 2021**

This circular is issued by the Central Government in respect of Clarification regarding refund of tax specified in section 77(1) of the CGST Act and section 19(1) of the IGST Act - Reg.

**Interpretation of the term “subsequently held”**

- The term “subsequently held” in section 77 of **CGST Act, 2017** or under section 19 of **IGST Act, 2017** covers both the cases where the inter-State or intra-State supply made by a taxpayer,
  - a) Is either subsequently found by taxpayer himself as intra-State or inter-State respectively
  - b) Where the inter-State or intra-State supply made by a taxpayer is subsequently found/ held as intra-State or inter-State respectively by the tax officer in any proceeding.

## INDIRECT TAX

- Accordingly, refund claim under the said sections can be claimed by the taxpayer in both the above-mentioned situations, provided the taxpayer pays the required amount of tax in the correct head.
- It further clarifies that the refund under section 77 of CGST Act/ Section 19 of IGST Act, 2017 can be claimed before the expiry of two years from the date of payment of tax under the correct head.
- However, in cases, where the taxpayer has made the payment in the correct head before the date of issuance of notification No.35/2021-Central Tax dated 24.09.2021, the refund application can be filed before the expiry of two years from the date of issuance of the said notification. i.e. from 24.09. 2021.

### Illustrations

A taxpayer “A” has issued the invoice charging CGST and SGST on a transaction and accordingly paid the applicable tax (CGST and SGST) in the return for March, 2018 tax period. The following scenarios are explained here under

Sr.No.	Cases	Last date for filing the refund claim
1.	Having realized on his own that the said transaction is an inter-State supply, “A” paid IGST in respect of the said transaction on 10.05.2021.	Since “A” has paid the tax in the correct head before issuance of notification No. 35/2021-Central Tax, dated 24.09.2021, the last date for filing refund application in FORM GST RFD-01 would be 23.09.23 (two years from date of notification)
2.	Having realized on his own that the said transaction is an inter-State supply, “A” paid IGST in respect of the said transaction on 10.11.2021 i.e. after issuance of notification No. 35/2021-Central Tax dated 24.09.2021	Since “A” has paid the correct tax on 10.11.2021, in terms of rule 89 (1A) of the CGST Rules, the last date for filing refund application in FORM GST RFD-01 would be 09.11.2023. (two years from the date of payment of tax under the correct head, i.e. integrated tax)
3.	Proper officer or adjudication authority or appellate authority of “A” has held the transaction as an inter-State supply and	Since “A” has paid the tax in the correct head before issuance of notification No. 35/2021-Central Tax, dated 24.09.2021, the last date for filing



	accordingly, "A" has paid the IGST in respect of the said transaction on 10.05.2019	refund application in FORM GST RFD-01 would be 23.09.23 (two years from date of notification)
4.	Proper officer or adjudication authority or appellate authority of "A" has held the transaction as an inter-State supply and accordingly, "A" has paid the IGST in respect of the said transaction on 10.11.2022 i.e. after issuance of notification No. 35/2021-Central Tax dated 24.09.2021	Since "A" has paid the correct tax on 10.11.2022, in terms of rule 89 (1A) of the CGST Rules, the last date for filing refund application in FORM GST RFD-01 would be 09.11.2024 (two years from the date of payment of tax under the correct head, i.e. integrated tax)

*~ Compiled by Akanksha Ghuge*

**RBI**1) **RBI/2021-22/96****CO. DPSS.POLC.No. S-516/02-14-003/2021-22****Tokenisation - Card Transactions: Permitting Card-On-File Tokenisation (CoFT) Services**

This is with reference to the circular DPSS.CO.PD No.1463/02.14.003/2018-19 dated January 8, 2019 on “**Tokenisation - Card transactions**”, permitting authorised card networks to offer card tokenisation services subject to the conditions listed therein. Initially this was limited to mobile phones and tablets, this facility was subsequently extended to laptops, desktops, wearables (wrist watches, bands, etc.), Internet of Things (IoT) devices, etc.,

Reference is also invited to the circulars DPSS.CO.PD.No.1810/02.14.008/2019-20 dated March 17, 2020 (as updated from time to time) and CO.DPSS.POLC.No.S33/02-14-008/2020-2021 dated March 31, 2021 on “**Guidelines on Regulation of Payment Aggregators and Payment Gateways**”, advising that neither the authorised Payment Aggregators (PAs) nor the merchants on-boarded by them shall store customer card credentials [also known as Card-on-File (CoF)].

On a review of the tokenisation framework and **to enable cardholders to benefit from the security of tokenised card** transactions as also the convenience of CoF, it has been decided to effect the following enhancements:

1. Extend the device-based tokenisation framework
2. Permit card issuers to offer card tokenisation services as Token Service Providers (TSPs).
3. The facility of tokenisation shall be offered by the TSPs only for the cards issued by / affiliated to them.
4. The ability to tokenise and de-tokenise card data shall be with the same TSP
5. Tokenisation of card data shall be done with explicit customer consent requiring Additional Factor of Authentication (AFA) validation by card issuer.
6. Additional requirements relating to CoFT are listed in the Annex.

2) **RBI/2021-22/97**  
**DOR.CRE.REC.47/21.01.003/2021-22**

**Large Exposures Framework – Credit Risk Mitigation (CRM) for offsetting – non-centrally cleared derivative transactions of foreign bank branches in India with their Head Office**

Please refer to circular No.DBR.No.BP.BC.43/21.01.003/2018-19 dated June 03, 2019 on Large Exposures Framework (LEF).

- a. An advice is been conveyed from RBI to the Indian branches of foreign banks **that they shall be permitted to reckon cash/unencumbered approved securities, the source of which is interest-free funds** from Head Office or remittable surplus retained in Indian books (reserves), held with RBI under 11(2)(b)(i) of the Banking Regulation Act,1949 ('BR Act') as Credit Risk Management, for offsetting the gross exposure of the foreign bank branches in India to the Head Office (including overseas branches) for the calculation of LEF limit, subject to the following conditions:
  - i. The amount so held shall be over and above the other regulatory and statutory requirements and shall be certified by the statutory auditors.
  - ii. **The amount so held shall not be included in regulatory capital.** (i.e., no double counting of the fund placed under Section 11(2) as both capital and CRM). Accordingly, while assessing the capital adequacy of a bank, the amount will form part of regulatory adjustments made to Common Equity Tier Capital.
  - iii. **The bank shall furnish an undertaking as on March 31 every year** to the Department of Supervision (DoS), RBI that the balance reckoned as CRM for the purpose will be maintained on a continuous basis.
  - iv. The CRM shall be compliant with the principles/conditions prescribed in paragraph 7 in the Master Circular – Basel III Capital Regulations dated July 1, 2015 as amended from time to time.

- a) The amount held under section 11(2)(b)(i) of the BR Act and earmarked as **CRM shall be disclosed by way of a note in Schedule 1:** Capital to the Balance Sheet as given below:  
“An amount of ₹... (previous year: ₹.... ) out of the amount held as deposit under Section 11(2) of the Banking Regulation Act, 1949 has been designated as credit risk mitigation (CRM) for offsetting of non-centrally cleared derivative exposures to Head Office (including overseas branches), and is not reckoned for regulatory capital and any other statutory requirements.”
- b) **Excess amount over and above the CRM requirements shall be permitted to be withdrawn subject to certification by the Statutory Auditor and approval of the DoS, RBI.** It may be noted that the onus of compliance with the LEF limit at all times shall be on the bank.
- c) It has been decided to permit foreign banks **to exclude derivative contracts executed prior to April 1, 2019** while computing the derivative exposures on their Head Office.

3) **RBI/2021-22/98**

**DOR.AML.REC 48/14.01.001/2021-22**

**Application for Aadhaar e-KYC Authentication Licence**

In terms of Section 11A of the PML Act, 2002, entities other than banking companies may, by notification of the Central Government, be permitted to carry out authentication of client's Aadhaar number using e-KYC facility provided by the Unique Identification Authority of India (UIDAI). Such notification shall be issued only after consultation with UIDAI and the appropriate regulator.

A detailed procedure for processing of applications under the aforementioned Section for use of Aadhaar authentication services by entities other than banking companies has been provided by the Department of Revenue, Ministry of Finance vide their circular dated May 9, 2019.

Accordingly, Non-Banking Finance Companies (NBFCs), Payment System Providers and Payment System Participants desirous of obtaining Aadhaar Authentication License - KYC User Agency (KUA) License or sub-KUA License (to perform authentication through a

KUA), issued by the UIDAI, may submit their application to this Department for onward submission to UIDAI.

**4) RBI/2021-2022/101**

**A.P. (DIR Series) Circular No.13**

**Use of any Alternative reference rate in place of LIBOR for interest payable in respect of export / import transactions**

In the Principal Regulations, in Regulation 15, in sub-regulation 1, for clause (ii), the following shall be substituted, namely: -

The rate of interest, if any, payable on the advance payment shall not exceed 100 basis points above the London Inter-Bank Offered Rate (LIBOR) or other applicable benchmark as may be directed by the Reserve Bank.

*~ Compiled by Piyush Motwani*

**1. Extension of time for holding of Annual General Meeting (AGM) for the financial year ended 31.03.2021 in terms of third proviso to section 96(1) of Companies Act, 2013 (the Act).**

In terms of power vested with the undersigned under the third proviso to sub-section (1) of the section 96 of the Act hereby extend the time to hold the AGM for other than the first AGM for the financial year ended on 31.03.2021 for companies within the jurisdiction of this office, which are unable to hold their AGM for such period within the due date of holding the AGM by a period of Two months from the due date by which the AGM ought to have been held in accordance with the provisions of sub-section (1) to section 96 of the Act, without requiring the companies to file applications for seeking such extension by filling the prescribed FORM.GNL-1.

**Explanation 1:** It is hereby clarified that extension is granted under this order shall also order the:

1. Pending applications filed in form GNL-1 for the extension of AGM for the financial year ended on 31.03.2021, which are not yet approved.

2. Applications filed in Form GNL-1 for the extension of AGM for the financial year ended on 31.03.2021, which were rejected.

3. Applications filed in Form GNL-1 for the extension of AGM for the financial year ended on 31.03.2021, where the extension approved was for a period less than Two months.

**Explanation 2:** It is also clarified that extension granted under this order shall not cover the applications filed in GNL-1 for the extension of AGM for the financial year ended on 31.03.2021, where the extension approved was for a period of more than two months.

**2. Extension for filing Cost Audit Report**

According to Rule 5 of the Companies (Cost Records and Audit) Rules, 2014, the cost auditor shall submit the Cost Audit Report in e-form CRA - 3 to the Board of Directors by 30<sup>th</sup> September, 2021 for the F.Y. 2020-21.

However, due to extra-ordinary disruption caused by the pandemic, the MCA has relaxed the above timeline by one month.

Thus, a cost auditor may submit the Cost Audit Report to the Board by 31<sup>st</sup> October, 2021.

Also, the Company shall file the Cost Audit Report to the Central Government in e-form CRA - 4 within 30 days of the receipt of the Cost Audit Report.

However, if any extension is availed by the company then the report is to be filed as per the timelines prescribed for filing of Annual Financial Statements i.e. within 30 days of AGM.

### **3. Electronic Gold Receipts**

SEBI has approved the framework for a gold exchange as well as for vault managers. This approval paves the way for gold exchanges to be set up for trading in 'Electronic Gold Receipt' (EGR).

It is an electronic receipt representing gold issued in exchange of physical gold (similar to equity shares), deposited with vault manager (like a depository participant), and this receipts can then be traded in the stock exchange.

EGRs will be notified as 'Securities' under the SCRA, 1956.

Stock Exchanges will be allowed to provide separate platform for EGRs trading.

Such Gold Exchange would provide transparent price discovery, investment liquidity and assurance in the quality of Gold.

*-Compiled by Devika Gangapuram*

## #HUNAAR HAAT

“Each person’s life is like a mandala a vast, limitless circle. We stand in the center of our own circle, and everything we see, hear and think forms the mandala of our life”

*Presenting you all a Portrait made by Pooja Thopate.....*





**#Shining Stars**

**“Be the change that you wish to see in the world.”**



**(Samiksha Jain Daughter of Mr. Ratneshchand Jain has  
cleared her UPSC Exam with a 333<sup>rd</sup> Rank  
out of 761 students.)**

**#Shining Stars**

**“Work hard in silence, and let the success be the noise.”**



**(The success of R C Jain & Associates LLP – CA's & CS's Factory.)**

Allow us to tell you more!



**R.C. JAIN & ASSOCIATES LLP**  
**Chartered Accountants**  
Website: [www.rcjainca.com](http://www.rcjainca.com)

**Head Office:**  
**Mumbai -**

622-624, The Corporate Centre,  
Nirmal Lifestyles, L.B.S. Marg,  
Mulund (W),  
Mumbai – 400080.  
Email: [info@rcjainca.com](mailto:info@rcjainca.com)  
Phone: **25628290/91/ 67700107**

**Branch Offices:**  
**Bhopal -**

M-272, Near Arya Samaj Bhawan,  
Gautam Nagar, Bhopal,  
Madhya Pradesh– 462 023  
Email: [hmjainca@rediffmail.com](mailto:hmjainca@rediffmail.com)  
Phone: **0755-2600646**

**Aurangabad -**

Su-Shobha, Plot No.7,  
Mitranagar, Behind Akashwani,  
Near Maratha Darbar Hotel,  
Aurangabad - 431001.  
Email: [sskasliwal@gmail.com](mailto:sskasliwal@gmail.com)  
Phone: **0240-2357556**

**Ahmedabad-**

D-305, Riverside Park Society,  
Opp. Shantabaug Society,  
Near APMC Market, Vasna  
Ahmedabad- 380007  
Email: [cajigna.nanda@gmail.com](mailto:cajigna.nanda@gmail.com)  
Phone: **7069086399**

