



**February - 2021**

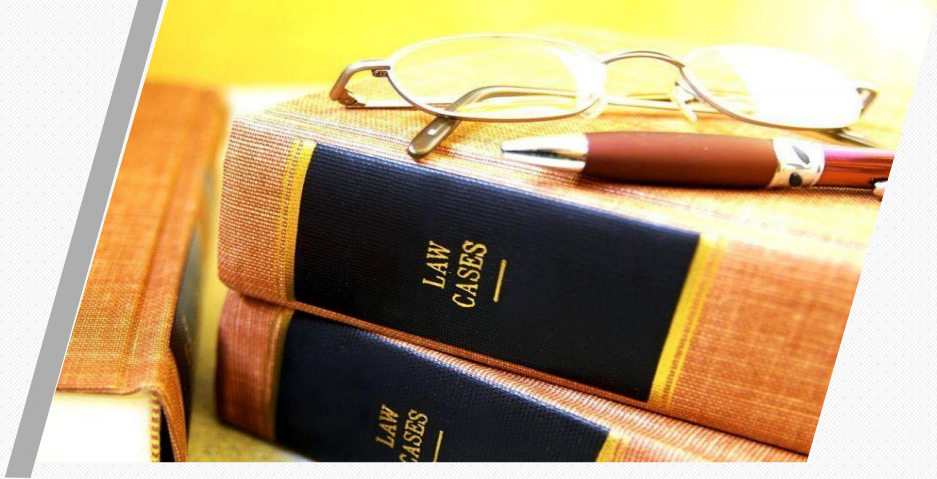
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# Direct Tax

## Case Laws



### Case Law 1:

**Where assessee Jhansi Development Authority was an extended arm of the UP State and discharging its statutory functions under the authority of the UP Act under which it was created; it couldn't be said that assessee was engaged in commercial activities by virtue of Section 2(15) of the Income-tax Act, 1961**

Jhansi Development Authority ('Assessee') is a body corporate constituted under Uttar Pradesh Urban Planning & Development Act, 1973 ('UP Act' or 'State Act'). The activities of the assessee consist of acquiring the land from the farmers, converting the land use, plotting the land, selling the land to coloniser and developer for construction activities. The assessee was discharging the statutory functions under the authority of the UP Act under which it was created.

The ITAT held in the favour of assessee. The Tribunal discussed the following two aspects in the Order:

**(a) Discharging of duties by the State cannot be termed as an activity in the nature of trade, commercial or business**

The Tribunal held that the assessee is the extended arm of the UP State and is discharging its statutory functions within the four corners of the State Act. All the activities were done by the assessee pursuant to the fulfilment of

its primary objects of its creation under the UP Act and for the purposes of advancement of public benefit.

The assessee cannot be equated with the private entrepreneur or coloniser or club or Association, as it is a State under Article 12 of the Constitution of India and has duties, towards all the citizens and resident of the area irrespective of caste, creed, religion, sex etc. The charging of cess or fees by the assessee is only an incidental activity to the main and primary activities of the assessee, i.e., development for the benefit of general public. Moreover, charging of fees, cess, etc. by the assessee for its activities were duly authorised by the Act and Rules framed under the law.

Thus, discharging of duties by the State or by the State functioning cannot be termed as an activity which is trade, commercial or business.

**(b) Such development activities do not fall in the last limb of Section 2(15)**

The Proviso to Section 2(15) is applicable if the assessee is involved into trade, commerce or business not in any other case. As the activities of the assessee were driven by its obligation under the Act, which were neither trade nor commerce nor business and the charging of fees is only an

# Direct Tax : Case Laws

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incidental element for fulfilment of its obligation under the Act, the Proviso to Section 2(15) shall not be applicable.

**Jhansi Development Authority v Deputy Commissioner of Income Tax, Circle-4, Agra [IT Appeals No. 256 and 355(Agra), dated January 13, 2021]**

## Case Law 2:

**Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in cancelling the assessment? Whether, on the facts and in the circumstances of the case, the regular assessment for the assessment year 1970-71 is invalid under law?**

The respondent is a public limited company. We are concerned with the assessment year 1970-71. The respondent/assessee paid Rs. 14,65,810 to the non-resident company in the year ending March 31, 1970, for the technical services rendered. The Income-tax Officer treated the assessee as the agent of the non-resident company and held that 75 per cent of the said sum should be treated as the income of the non-resident company arising in India. He further held that the assessee has agreed to make the payment "net". The income accruing to the non-resident company was computed on "tax on tax basis". He determined the total income at Rs. 21,98,716. In appeal, the Appellate Assistant Commissioner cancelled the order of assessment based on its earlier order. In second appeal by the Revenue held that no assessment could be made on the assessee treating it as the agent of the non-resident company. The order of the Appellate Assistant Commissioner was affirmed. It is, thereafter, at the instance of the Revenue that the two question of law formulated

hereinabove have been referred for the decision of this court.

The earlier orders of the Appellate Tribunal considered the matter at length and declined to answer the questions referred to this court, which centred round the applicability or otherwise of section 163 of the Income-tax Act, 1961. This court held that the Tribunal did not consider the question whether the assessee had any business connection with the non-resident so as to treat him as an agent of the non-resident under section 163 of the Income-tax Act. It was further held that, only on deciding this issue, the question whether the orders passed by the Income-tax Officer under section 163 and the assessments could be sustained will arise. The questions referred to this court were not answered, but the Income-tax Appellate Tribunal was directed to dispose of the appeal afresh. The above decision of this court in Income-tax Reference No. 92 of 1982 between the same parties. The judgement is dated March 2, 1987.

Following the earlier Bench decisions of this court, we decline to answer the questions referred to this court by the Income-tax Appellate Tribunal in its statement of the case dated October 20, 1989. But, at the same time, we direct the Income-tax Appellate Tribunal to restore the appeal to file and decide the matter afresh for the assessment year 1970-71, bearing in mind the earlier decision on the subject in CIT v. Fertilisers and Chemicals (Travancore) Ltd. [1987] 166 ITR 823 (Ker). The reference is disposed of as above.

**Commissioner of Income Tax v Fact Ltd. [IT Reference No. 41 of 1990, dated July 09, 1993]**



# Direct Tax : Case Laws

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## Case Law 3:

**Where assessee had been granted stay of 80 per cent disputed demand subject to payment of 20 per cent demand, in view of fact that there had been attachment of bank account, attachment already resorted to would be limited to 20 per cent of demand.**

The petitioner submits that as against the assessment order at Annexure-B, an appeal has been filed before the Commissioner of Income-tax (Appeals).

It is further submitted that the petitioner had filed an application for stay and had sought for interim relief and the Assessing Officer as per the order at Annexure-X has ordered that there would be stay of 80% of the disputed demand till disposal of the appeal, subject to payment of Rs. 61,17,317/- (20% of the demand) on or before 7-2-2020.

It is the contention of learned counsel for the petitioner that subsequent to the order at Annexure-X, the petitioner has approached the Principal Commissioner of Income-tax on 7-2-2020 and had sought for stay of recovery of demand including the direction of Assessing Officer directing the petitioner to deposit Rs. 61,17,317/- of the demand. The petitioner has furnished copy of the detailed representation made to the Principal Commissioner of Income-tax detailing various contentions, justifying stay of recovery of demand and making out a case that the demand is high pitched and has also contended that the assessment order has disallowed expenditure of Rs. 6,53,34,735/- as allowable under section 37(1) of the Income-tax Act, 1961, as the said amount was already declared as income during the assessment year 2012-2013.

Various other contentions have also been raised. It is further contended that when the application for stay is taken up for consideration by the Assessing Officer, the Assessing Officer should pass an order after due application of mind and that subsequently after the application for stay is disposed off, the petitioner has an opportunity of approaching the Principal Commissioner of Income-tax in light of the Circular bearing No. 1914, further amended on 25-1-2017, 29-2-2016 and 31-7-2017 and despite representation there is no consideration by the Principal Commissioner of Income Tax.

The petitioner to be present before the Principal Commissioner of Income-tax on 5-3-2020 at 11.30 a.m. and the request of petitioner as contained in the representation dated 7-2-2020 would be disposed of in light of the observations made above. In light of the submission that there has been attachment of bank account and in light of the direction being passed, the attachment already resorted to would be limited to Rs. 61,17,317/-. However, in light of the attachment being restricted to Rs. 61,17,317/-, the Principal Commissioner of Income-tax to dispose of the representation of the petitioner within a period not later than one week from the date of appearance of the petitioner as noticed above. All contentions of parties are kept open. It is made clear that if the Principal Commissioner of Income-tax does not decide the matter within a period of one week as stipulated, the attachment would automatically stand vacated. This petition is accordingly disposed off.

**Monarch v Income-Tax Officer [Writ Petition No. 4952 of 2020 (T-IT), dated March 04, 2020]**

# Direct Tax Notifications

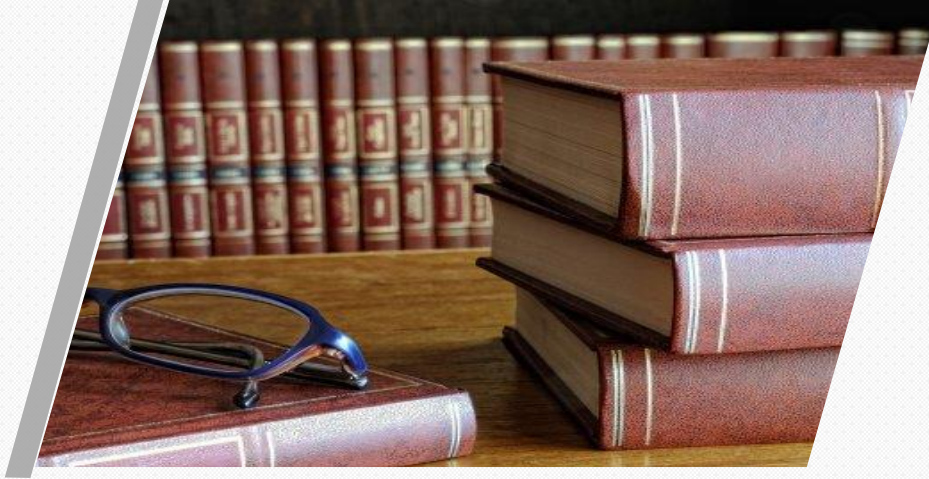


## 1. Introduction of a new scheme

In exercise of the powers conferred by sub-section (2A) of section 274 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby introduces a scheme called “The Faceless Penalty Scheme, 2021”. It shall come into force on the date of its publication in the Official Gazette.

[https://www.incometaxindia.gov.in/communications/notification/notification\\_no\\_2\\_2021.pdf](https://www.incometaxindia.gov.in/communications/notification/notification_no_2_2021.pdf)

# Indirect Tax : Case Laws



## Case Law 1:

### **Intermediary liable to payment of CGST and SGST on services provided to Foreign Entities.**

The applicant is engaged in the agency business of weaving machineries wherein it is acting as an agent of foreign entities, supplying such machineries directly to the end customer and the company is getting commission for being an intermediary, thereby creating Principal-Agent relationship. The applicant sought an Advance Ruling on whether IGST or CGST and SGST is applicable on the said transaction.

The applicant in its submission furnished the copy of the agency agreement held between the applicant and the manufacturer/seller of textile sizing/warping equipment M/s. Ukil Machinery Co., Ltd., Republic of Korea, Korea (hereinafter referred to as "Company"). Briefly, salient features of the agreement are reproduced below: -

- The "Company" agrees to employ said "Agent" as its exclusive sales agent for the sizing/warping machinery and/or components and supplies for the territory of India.
- Commission on sales of equipment are to be paid by the "Company" to the "Agent" as such as accounts are collected. The commission on the sales of equipment shall be the only

compensation of any nature whatsoever due from the "Company" to the "Agent"

- All sales by "Agent" for the account of the "Company" shall be conducted in such prices, terms and conditions as are specified by the "Company" from time to time.
- All orders shall be subject to the "Company's" confirmation. "Agent" shall not make or modify any contract on the Company's behalf.
- "Agent" shall thoroughly, energetically and regularly represent the "Company" by circularizing, correspondence and personal calls on prospective customers for the company's products in the territory allotted to him.
- "Agent" acknowledges the "Company's" ownership of all trademarks, trade names and patents associated with the "Company's" equipment.

Based on the submission of the applicant, the ruling authority observed that the services provided by the applicant are in the nature of services of commission agents or commodity brokers who negotiate between buyers and sellers as a facilitator for the supply of goods for which they are paid a fee or commission.

Considering the definition of the term



# Indirect Tax : Case Laws

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'Intermediary' in Section 2(13) of IGST Act 2017 (hereinafter referred to as "the said act"), the ruling authority found that the applicant is covered by the said definition of an intermediary. The foremost reason behind such conclusion was that the applicant is acting as an agent and facilitating the sale of machinery by their foreign principals to the Indian parties. For providing such service to the foreign principal the applicant is receiving the commission.

Further, the type of GST i.e. CGST and SGST or IGST to be paid is dependent on type of supply of goods or services i.e. intra-state or inter-state and on place of supply of such goods or services. Since the recipient of service in the instant case is located outside India, the ruling authority considered it necessary to refer Section 13 of the said act for determining place of supply of services. In the instant case the services supplied by the applicant i.e. 'intermediary services' finds a mention in Section 13(8)(b) of the said act which clearly mentions that the place of supply in respect of intermediary services shall be the location of the supplier of services. Therefore, since the location of the supplier (i.e. applicant) and the place of supply is in same state, the supply of services would be considered intra-state supply of services and would be liable to CGST and SGST as per the provisions of Section 9(1) of the CGST Act, 2017.

Therefore, the applicant is liable to payment of CGST and SGST on the services provided by them.

**AUTHORITY FOR ADVANCE RULINGS – GUJARAT IN M/s Sagar Powertex Private Limited (Advance Ruling No. GUJ/GAAR/R/98/2020-Dated 14th October 2020)**

## Case Law 2:

**Applicant liable to pay GST on recovery of Notice Pay from employees leaving the company without completing the notice period.**

The applicant is engaged in the manufacturing of pharmaceuticals products. They, at the time of appointing any employee, enters a contract with him/her by issuing "Appointment Letter". Under appointment letter, it has been mentioned that, either parties shall serve a three months mandatory notice to terminate the contract. In case, if any employee doesn't serve the notice period after tendering the resignation, then as per the contract (Appointment Letter), company is entitled to recover the notice pay from the agreed portion of salary to compensate the loss to company.

In respect of the above backdrop, the applicant sought for advance ruling in respect of the following:

Whether the applicant is liable to pay GST on recovery of Notice pay from the employees who are leaving the company without completing the notice period as specified in the Appointment Letter issued as per the contract entered between Employer and the Employee?

The applicant in its submission stated that the Notice pay recovery is the amount stipulated in the employment contract for breach in serving the stipulated notice period. Thus, notice pay can be regarded as a consideration flowing from the employment contract. Besides, once notice pay recovery is stipulated in the contract.



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employer can only sue for recovery of such amount but cannot enforce mandatory serving of the notice period. Thus, employer cannot be said to have refrained from an act of suing the employee for not serving the mandatory notice period against notice pay recovery.

The applicant contended that notice pay is a deduction from the salary payable to the resigning employee. It is not a separate consideration flowing from any independent contract and the employee is relieved from the services once the terms of employment agreement (Appointment Letter) are fulfilled. Hence, it should be covered under Entry No 1 of Schedule III to the CGST Act, 2017 which provides that “services by an employee to the employer in the course of or in relation to his employment shall not be regarded as supply of goods or supply of services”.

The applicant further quoted a similar issue with respect to claim of deduction for notice pay came up before Hon. Ahmedabad Tribunal in the case of **Nandinho Rebello v. Deputy Commissioner of Income Tax (2017)**. In this case, notice pay recovered from the salary by the employee’s previous employer was claimed as deduction in return of income and the actual salary received by the employee was only taxed. Referring the above ruling, the applicant stated that notice pay recovery is nothing but an adjustment of salary and hence does not tantamount to any supply chargeable to GST.

The ruling authority in the present case, observed that Notice pay is an amount stipulated in the employment contract for breach in serving (not serving) the stipulated notice period. Based on clause 5(e) to Schedule II to CGST Act 2017 which says

‘agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to an act’ shall be treated as supply of service. Thus, it can be regarded as a consideration for the employer for “tolerating the act” of the employee to not serve the notice period, which is the employee’s agreed contractual obligation. Hence, this transaction of the employer agreeing to the obligation of tolerating an act (quitting without any advance notice) on the part of the employee, for payment of a sum (notice pay) will be covered under clause 5(e) to Schedule II to CGST Act 2017 as a declared service.

Secondly, the ruling authority perused the case laws quoted by the applicant and observed that the decisions of such case laws relate to the dispute of Service Tax Regime. Hence, these rulings are not applicable to the present case in respect of levy of GST. Therefore, the ruling authority held that the applicant is liable to pay GST @ 18% on recovery of Notice pay from the employees who are leaving the company without completing the notice period as specified in the Appointment Letter issued as per the contract entered between them.

**AUTHORITY FOR ADVANCE RULINGS – GUJARAT IN M/s Amneal Pharmaceuticals Pvt. Ltd. (Advance Ruling No. GUJ/GAAR/R/51/2020-Dated 30th July 2020)**

# Indirect Tax

## Notifications & Circulars



### S. No Notifications

#### 1. Notification No. 91/2020 – Central Tax

CBIC vide Notification No. 91/2020 – Central Tax seeks to extend the due dates for compliances and actions in respect of anti-profiteering measures under GST till 31.03.2021.

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-91-central-tax-english-2020.pdf;jsessionid=74262D7476186AEBF9970598B3E90577>

#### 2. Notification No. 89/2020 – Central Tax

CBIC vide Notification No. 89/2020 – Central Tax seeks to waive penalty payable by any registered person under section 125 of the said Act for noncompliance of the provisions of notification No.14/2020 – Central Tax, dated the 21st March.

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-89-central-tax-english-2020.pdf;jsessionid=C5C208F212E7A14C37BA467CED73FBA8>

#### 3. Notification No. 02 /2021 – Central Tax

CBIC vide Notification No. 02/2021 - Central Tax seeks to notify the amendment to jurisdiction of Central Tax officers.

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-02-central-tax-english-2021.pdf;jsessionid=F824EA68290060AE2DA1183267667C55>

#### 4. Notification No. 01/2021 – Central Tax

CBIC vide Notification No. 01/2021 – Central Tax seeks to make the following key amendments (2021) to CGST Rules, 2017 :

- a. A registered person is no longer allowed to furnish FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for preceding two months.
- b. A registered person filing GSTR-1 quarterly shall not be allowed to file FORM GSTR-1 or use IFF, if he has not filed FORM GSTR-3B for preceding tax period.

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-01-central-tax-english-2021.pdf;jsessionid=A62156089831D712D9AAFF45F595C3BF>

# Legal & Regulatory Notifications



## S. No Notifications

### 1. CLARIFICATION ON SPENDING OF CSR FUNDS FOR AWARENESS AND PUBLIC OUTREACH ON COVID- 19 VACCINATION(MCA Notification dated December 18, 2020)

**(MCA circular Dated January 13, 2021)**

MCA vide its general circular dated January 13, 2021, in continuation to its general circular no. 10/ 2020 dated March 23, 2020 clarified that spending of CSR Funds for carrying out awareness programmes/ campaigns or public outreach campaigns on COVID-19 vaccination programme are eligible CSR activity under item no. i, ii and xii of schedule VII of the Companies Act, 2013 relating to promotion of health care and sanitization, promoting education and disaster management respectively.

The said circular is effective with effect from January 13, 2021.

**Link:** [http://www.mca.gov.in/Ministry/pdf/CSR2021\\_13012021.pdf](http://www.mca.gov.in/Ministry/pdf/CSR2021_13012021.pdf)

### 2. CLARIFICATION OF HOLDING ANNUAL GENERAL MEETING (AGM) THROUGH VIDEO CONFERENCING (VC) OR OTHER AUDIO-VISUAL MEANS (OAVM)

**(MCA circular Dated January 13, 2021)**

MCA vide its general circular dated January 13, 2021 has allowed companies to conduct their AGM (which will become due in the year 2021) through VC or OAVM up to December 31, 2021 in accordance with the requirements provided in paragraphs 3 and 4 of the MCA Circular No. 20/2020 dated May 05, 2020.

**Link:** [http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.02\\_14012021.pdf](http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.02_14012021.pdf)

### 3. SCHEME FOR CONDONATION OF DELAY FOR COMPANIES RESTORED ON THE REGISTER OF COMPANIES

**(MCA Circular Dated January 15, 2021)**

MCA vide its general circular dated January 15, 2021 has introduced the Scheme of Condonation of Delay for Companies restored on the Register of Companies between December 01, 2020 to December 31, 2020 under Section 252 of the Companies Act, 2013 for the purpose of condoning the delay in filling forms with the Registrar, in so far as it relates to charging of additional fees on account of delay in such fillings. The details of such scheme are as follows:

- **Effective date:** The scheme shall come into effect from February 01, 2021.

# Legal & Regulatory

- **Applicability:** Companies which got order under section 252 of the Act for restoration of the name of the company between December 01, 2020 to December 31, 2020.
- **Duration of the Scheme:** From February 01 2021 to March 31, 2021.
- **Eligible forms:** All E-forms except E-Form SH-7 and charge related forms (E-forms CHG-1, CHG-4, CHG-8 and CHG-9).
- **Applicable Fees:** Normal filing fees prescribed under Companies (Registration Offices and Fees) Rules, 2014.

**Link:** [http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.3\\_15012021.pdf](http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.3_15012021.pdf)

## 4. FORM CFSS-2020 IS AVAILABLE FOR FILING FROM JANUARY 16, 2021

MCA vide its Circular No. 12/2020 dated 30th March, 2020, states that every company which has filed belated document/ return/ statement etc. under the Company Fresh Start Scheme (CFSS)-2020 shall file a Form CFSS-2020 within 6 months of closure of the Scheme without payment of any fees. Based on the filing of Form CFSS-2020, a certificate of immunity will be issued to the Company and no prosecution or adjudication of penalty proceedings shall be initiated against the company and defaulted officers for such belated filings. CFSS-2020 has been closed on December 31, 2020 and in this regard, Form CFSS-2020 is now available for filing from January 16, 2021 till June 31, 2021.

Link for circular No. 12/2020: [http://www.mca.gov.in/Ministry/pdf/Circular12\\_30032020.pdf](http://www.mca.gov.in/Ministry/pdf/Circular12_30032020.pdf)

## 5. COMMENCEMENT OF SECTION OF COMPANIES (AMENDMENT) ACT, 2020

### (MCA Notification dated January 22, 2021)

MCA vide its notification dated January 22, 2021 has notified the commencement of following Sections of the Companies (Amendment) Act, 2020 with effect from January 22, 2021:

| Sr. No | Section No. as per Companies Act, 2013 | Section No. as Companies (Amendment) Act, 2020 | Section Name   |
|--------|--|--|--|
| 1.     | Section 2                              | Section 2 (52)                                 | Definition (Listed Company)                                |
| 2.     | Section 11                             | Section 62                                     | Further Issue of Share Capital                             |
| 3.     | Clause (C) of Section 18               | Section 89 (11)                                | Declaration in Respect of Beneficial Interest in any Share |
| 4.     | Clause (ii) of section 22              | Section 117                                    | Resolutions and agreements to be filed                     |
| 5.     | Section 25                             | Insertion of New Section 129A                  | Periodic financial results                                 |
| 6.     | Section 27                             | Section 135                                    | Corporate Social Responsibility                            |
| 7.     | Section 53                             | Section 379                                    | Application of Act to Foreign Companies                    |



# Legal & Regulatory

|     |   |                               |  |
|-----|---|-------------------------------|--|
| 8.  | Section 55                                | Insertion of new section 393A | Exemption under Chapter XXII   |
| 9.  | Section 58 to section 60 (both inclusive) | 410, 418A and 435             | Constitution of Appellate Tribunal, Staff of Tribunal and Appellate Tribunal and Establishment of Special Courts |
| 10. | Section 62                                | 446B                          | Factors for determining level of punishment  |
| 11. | Section 64 and section 65                 | 452 and 454                   | Punishment for wrongful withholding of property and Adjudication of penalties                                    |

Link: [http://www.mca.gov.in/Ministry/pdf/CommencementNotification\\_23012021.pdf](http://www.mca.gov.in/Ministry/pdf/CommencementNotification_23012021.pdf)

## 6. COMMENCEMENT OF SECTIONS OF THE COMPANIES (AMENDMENT) ACT, 2019

**(MCA notification dated January 22, 2021)**

MCA vide its notification dated January 22, 2021 has notified the commencement of following Sections of the Companies (Amendment) Act, 2020 with effect from January 22, 2021:

Corresponding Section for Section 21 of the Companies (Amendment) Act, 2019 is Section 135 of the Companies Act, 2013 which pertains to the Corporate Social Responsibility.

Link: [http://www.mca.gov.in/Ministry/pdf/CommencementNotificationCAA\\_23012021.pdf](http://www.mca.gov.in/Ministry/pdf/CommencementNotificationCAA_23012021.pdf)

## 7. Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021

**(MCA notification dated January 22, 2021)**

MCA vide its notification dated January 22, 2021 has amended the Companies (Corporate Social Responsibility Policy) Rules, 2014 by notifying the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021.

**The key highlights of this amendment are:**

### I. Rule 2: Definitions :

Following new definitions have been added to the rules

- Administrative overhead
- International organization
- Ongoing project
- Public authority

# Legal & Regulatory

**Further, following definitions have been amended:**

- Corporate Social Responsibility (CSR)
- Net profit
- Corporate Social Responsibility Policy

## **II. Rule 4: CSR Implementation :**

The Board to ensure that CSR activities are undertaken by the company either itself or through:

- Section 8 company
- A registered public trust
- A registered society, registered under section 12A and 80 G of the Income Tax Act
- Any entity established under an Act of Parliament or a State legislature

Bodies corporates mentioned at point no. i, ii and iii above, may be established by either of the following:

- By the company, either singly or along with any other company
- By the Central Government or State Government
- Having an established track record of at least three years in undertaking similar activities

Further, every entity covered above which intends to undertake any CSR activity, shall register itself with the Central Government by filing the form CSR-1 electronically with the Registrar, with effect from the April 01, 2021.

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

International Organization as defined in Rule 2 of the Rule can also be engaged for designing, monitoring and evaluation of the CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR.

The Board of a company shall ensure that the funds disbursed for CSR have been utilized for the purposes and in the manner as approved by it and the Chief Financial Officer or the person responsible for financial management shall certify to the effect.

## **III. Rule 5: CSR Committees :**

The CSR Committee has been entrusted to formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy including:

- The list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act;
- The manner of execution of such projects or programmes as specified in sub-rule (1) of rule 4

# Legal & Regulatory

- The modalities of utilization of funds and implementation schedules for the projects or programmes;
- Monitoring and reporting mechanism for the projects or programmes; and
- Details of need and impact assessment, if any, for the projects undertaken by the company: The Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect.

## **IV. Rule 7: CSR Expenditure :**

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

Where a company spends an amount in excess of the requirement provided such excess amount may be set off against the requirement to spend under sub-section (5) of section 135 up to immediate succeeding three financial years subject to the conditions that

- the excess amount available for set off shall not include the surplus arising out of the CSR activities, if any, in pursuance of sub-rule (2) of this rule;
- the Board of the company shall pass a resolution to that effect.

## **Capital Asset:**

The CSR amount may be spent by a company for creation or acquisition of a capital asset, which shall be held by

- company established under section 8 of the Act, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number under sub-rule (2) of rule 4; or
- beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or
- a public authority.

Any capital asset created by a company prior to the commencement of the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021, shall within a period of one hundred and eighty days from such commencement comply with the requirement of this rule, which may be extended by a further period of not more than ninety days with the approval of the Board based on reasonable justification.

# Legal & Regulatory

## **V. Rule 8: CSR Reporting :**

The Board's Report of a company covered under these rules pertaining to any financial year shall include an annual report on CSR as per the format provided. In case of a foreign company, the balance sheet filed under clause (b) of sub-section (1) of section 381 of the Act, shall contain an annual report on CSR.

**Impact Assessment:** Every company having average CSR obligation of ten crore rupees or more in the three immediately preceding financial years, shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of one crore rupees or more, and which have been completed not less than one year before undertaking the impact study. A Company undertaking impact assessment may book the expenditure towards Corporate Social Responsibility for that financial year, which shall not exceed five percent of the total CSR expenditure for that financial year or fifty lakh rupees, whichever is less.

## **VI. Rule 9: Display of CSR activities on its website :**

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

## **VII. Rule 10: Transfer of unspent CSR amount**

Until a fund is specified in Schedule VII for the purposes of subsection (5) and (6) of section 135 of the Act, the unspent CSR amount, if any, shall be transferred by the company to any fund included in schedule VII of the Act.

**Link:** [http://mca.gov.in/Ministry/pdf/CSRAmendmentRules\\_23012021.pdf](http://mca.gov.in/Ministry/pdf/CSRAmendmentRules_23012021.pdf)

## **8. COMPANIES (INCORPORATION) AMENDMENT RULES, 2021**

### **(MCA notification dated January 25, 2021)**

MCA vide its notification dated January 25, 2021 has amended the Companies (Incorporation) Rules, 2014 through the Companies (Incorporation) Amendment Rules, 2021, which shall come into force on its publication in the official gazette.

### **Key Highlights:**

#### **I. The previous Rule 41(6)(c) stated as follows for the conversion of public company into private company:**

In cases where such further information called for has not been provided or the defects or incompleteness has not been rectified to the satisfaction of the Regional Director within the period allowed under sub- rule (6), the Regional Director shall reject the application with reasons within thirty days from the date of filing application or within thirty days from the date



# Legal & Regulatory

of last re-submission made. as the case may be.

Now, in the abovementioned Rule 41(6)(c), the phrase “sub-rule (6)” has been substituted with “clause (b)”.

- II. The clause (d) of Rule 41(6) has been omitted which stated that in case where no explicit order is given by Regional Director (RD) for approval or re-submission within thirty days, it shall be deemed that the application stands approved and an approval order shall be automatically issued to the applicant.
- III. The existing sub rule (9), (10), (11) of Rule 41 shall be renumbered as (7), (8), (9) respectively.

**IV. The renumbered clause 7 has been substituted. The major amendments are as follows:**

- As per the earlier provisions there was a concept of automatic approval order for conversion of public company to private company in cases where Regional Director does not pass an order either approving or rejecting the application within thirty days from the date of hearing. This automatic approval is now removed.
- The RD can now approve the conversion, even in case where consensus is not received, in case where he is satisfied that the said conversion would not be against the interest of the company or is not being made with an intention to contravene or avoid the compliance of the Act.

**Link:** [http://www.mca.gov.in/Ministry/pdf/CompaniesAmendmentRules\\_25012021.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesAmendmentRules_25012021.pdf)

## **9. RELAXATION ON CHARGE OF ADDITIONAL FEES IN FILING E-FORMS**

### **(MCA Circular Dated January 28, 2021)**

MCA vide its circular dated January 28, 2021 has put a relaxation on charge of additional fees in filing following e-forms:

- a. AOC – 4
- b. AOC – 4 (CFS)
- c. AOC – 4 XBRL

This is for filing the above e-forms for financial year ended March 31, 2020 and the relaxation is up to February 15, 2021.

**Link:** [http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.4\\_29012021.pdf](http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.4_29012021.pdf)

## **10. COMPANIES (SPECIFICATION OF DEFINITIONS DETAILS) AMENDMENT RULES, 2021**

(MCA notification dated February 01, 2021)

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MCA vide notification dated February 01, 2021 has notified the Companies (Specification of Definitions Details) Amendment Rules, 2021 to further amend the Companies (Specification of Definitions Details) Rules, 2014, which shall come into force on April 1, 2021.

The amendments are carried out to extend the scope of the term 'Small Companies'. The Financial Minister declared on the Budget Speech 2021-2022 that the benefits provided for small companies shall be extended to more companies. The amendment provides that, companies with paid-up capital and turnover not exceeding rupees two crores and rupees twenty crores respectively shall be considered as small companies.

Link: [http://www.mca.gov.in/Ministry/pdf/SpecificationAmndtRules\\_02022021.pdf](http://www.mca.gov.in/Ministry/pdf/SpecificationAmndtRules_02022021.pdf)

## 11. COMPANIES (INCORPORATION) SECOND AMENDMENT RULES, 2021

(MCA notification dated February 01, 2021)

MCA vide its notification dated February 01, 2021 has amended the Companies (Incorporation) Rules, 2014 through the Companies (Incorporation) Second Amendment Rules, 2021, which shall come into force on April 01, 2021

### Key highlights:

- Any individual who is an Indian citizen whether resident or not, can incorporate a One Person Company (OPC).
- The definition of "resident in India" has been modified to a person who has stayed in India for at least one hundred twenty (120) days during the immediately preceding financial year as against the provision of 182 days earlier.
- OPC can now convert voluntarily into any kind of company except the section 8 company without having to wait for a period of two years from the date of incorporation.
- The Rule 6 for conversion of One Person Company into a Public Company or a Private Company has been substituted to give effect to the amendment mentioned in above clause (iii).
- E-form INC-5 for intimation of exceeding threshold of One person company is omitted.
- E-form INC-6 has been substituted with a new e-form.
- The provision stating that a private company having maximum paid up share capital of Rs. 50 Lakhs and maximum turnover of Rs. 2 Crores can only convert into OPC is omitted implying that any private company except the Section 8 company can now convert into One person company.

Link: [http://www.mca.gov.in/Ministry/pdf/SecondAmndtRules\\_02022021.pdf](http://www.mca.gov.in/Ministry/pdf/SecondAmndtRules_02022021.pdf)

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## **12. COMPANIES (COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS) AMENDMENT RULES, 2021**

**(MCA notification dated February 01, 2021)**

MCA vide its notification dated February 01, 2021 has amended the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 through the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2021 which shall come into force on its publication in the official gazette.

Through this amendment a new provision has been inserted stating that the following companies can enter into scheme of merger or amalgamation under section 233 of the Companies Act, 2013

- two or more start-up companies; or
- one or more start-up company with one or more small company.

Link: [http://www.mca.gov.in/Ministry/pdf/AmalgamationsAmndtRules\\_02022021.pdf](http://www.mca.gov.in/Ministry/pdf/AmalgamationsAmndtRules_02022021.pdf)

## **13. RESERVE BANK OF INDIA ("RBI")**

### **INTRODUCTION OF LEGAL ENTITY IDENTIFIER FOR LARGE VALUE TRANSACTIONS IN CENTRALISED PAYMENT SYSTEMS**

**(RBI circular dated January 05, 2021)**

RBI vide its circular dated January 05, 2021 has introduced the Legal Entity Identifier (LEI) for large value transactions in centralized payment systems.

Initially the RBI has introduced the LEI for large corporate borrowers and for participants in the over the counter (OTC) derivative and non-derivative markets. Now, the RBI has decided to introduce the LEI system for all payment transactions of value Rs. 50 crore and above undertaken by entities (non-individuals) by using Reserve Bank-run Centralized Payment Systems Viz. Real Time Gross Settlement (RTGS) and National Electronic Funds Transfer (NEFT).

The LEI system shall be effective from April 1, 2021.

Link: [Reserve Bank of India - Index To RBI Circulars](#)



## The Impact of COVID-19 on Internal Audit

By – Nirmal Singh

IBA

The Internal Audit profession continues to contribute to recovery and resiliency efforts through its various professional disciplines and specialties. One of these disciplines, internal audit, assists organizations by providing independent assurance and advice on the effectiveness of its response and management of the crisis. Internal Audit response to COVID-19 situation, focus areas include risk assessment, continuous monitoring, service delivery, people, and stakeholder communications.

### **A Changing Environment :**

Internal auditors were already experiencing changes and revising strategies before COVID-19. Digital transformation and other emerging technologies challenged many internal audit functions. For many, COVID-19 required reprioritizing priorities to respond to resiliency issues relating to the Corona Virus. Yet as organizations seek even more digital solutions to interact with customers and employees, internal audit must continue to manage these risks. Cybersecurity was a persistent threat before COVID-19, and not surprisingly, organizations continue to face increasing risks in this area.

Cost-optimization was always on the mind of most executives, and the economic pressures from COVID-19 enhanced attention to this area. Optimization does not necessarily mean reduction; instead, it ensures the appropriate alignment of expenditures with strategic organizational initiatives. Typically, it also requires enhanced governance and automated monitoring tools to identify and question expenditures.

### **Using Data Analytics to Enhance Monitoring:**

For years, internal audit has considered the adoption of data analytic technologies. These often require some type of manual involvement to extract data and cleanse it for further analysis. Sometimes these extracts resulted from the inability of the business unit to provide an automated feed.



For example, larger financial service organizations may focus on credit and loan activity trends. Based on the data available, internal auditors can monitor portfolio performances, identify payment trends, and uncover suspicious activities. Many internal auditors are enhancing their understanding of core systems to identify data that can be useful in developing continuous monitoring programs. In smaller entities, internal auditors focus their reviews on identifying trends and providing a risk-based perspective of information supplied by these systems that line-of-business managers may not have time to review.

To the extent available, internal auditors are also using data provided by vendors and third-party service providers to enhance monitoring capabilities. These can include performance reports, information feeds, industry benchmark activity reports, and compliance with service-level agreements. Analytical review over financial activities, including key industry ratios and cash management, may also be available from the organization's banking relationship managers.

### **Audit Reporting and Stakeholder Communication :**

Any major change requires clear communications with stakeholders; the current crisis is no exception. Internal auditors are often called the "the eyes and ears of the audit committee." To achieve this requires strong relationships, credibility, and trustworthiness, qualities aspired to by chief audit executives. During the crisis, audit committee members continued to rely on their internal audit functions to supplement and confirm status reports provided by management. In regulated industries, many internal auditors have comparable communications with their regulators.

Some areas of focus include ensuring compliance with regulatory expectations, despite the challenges caused by COVID-19. Other reportable items include identifying control activities that have been suspended and tracking their eventual restoration, and ensuring the resolution of related risks. Another concern involves increased oversight of suppliers and other third-party service providers. As a result, internal auditors have dedicated more time to reviewing external assessment reports and internal reports provided by vendors. The COVID-19 crisis exposed concerns at several organizations that discovered unexpected weaknesses in their vendors' resiliency capabilities.

### **Caring for and Managing People :**

Not surprisingly, the human factor has had the most dramatic impact on internal audit during the COVID-19 crisis. Recognizing the personal impact is vital to enabling internal audit staff to contribute to the organization's and department's objectives. Fortunately, many internal auditors have been able to work remotely. Like other professions, internal auditors have mostly overcome the strain that everyone has experienced.

An organization's capability to provide employees with appropriate technology has been critical for productivity, an overall sense of community, and general mental well-being. A sense of teamwork and enhanced collegial relationships have resulted from shared concern, and a sense of community has developed through non-traditional communication channels, such as periodic "virtual" social hours.

Although many organizations report increased productivity levels, others continue to investigate tools to monitor employee activity while working remotely. A more significant challenge facing internal audit is helping organizations understand and manage the risks of bringing employees back to the worksite. Internal audit's unique skills in risk assessment can be applied to the complexities of working remotely. Strategically, internal audit will also need to develop new relationship management skills within an organization—not just for conducting interviews or issuing reports, but also for monitoring events effectively.

## **Conclusion**

Given their well-practiced skills in risk assessment and cumulative enterprise knowledge, internal auditors can deliver significant value to their organization and clients. All businesses will face many challenges in the recovery phase of the Corona Virus. Management will need to prioritize and assign resources to a changed business environment. The focus on controls may be surrendered in the name of efficiency and creativity. These are no doubt critical for organizations to survive; but so are discipline, governance, and the need to manage risk. Internal auditors can respond to this crisis by helping the organization and its people navigate the challenges, and eventually succeed.

# IBA NEWS

## Congratulations to our newly qualified CAs, Harpreet and Shweta



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Congratulations! Years of hard work, effort and dedication have paid off and they are now newly qualified Chartered Accountants.

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## Team Outing



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We believe “ Almost everything will work again if you unplug it for a few minutes, including yourself “

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# Upcoming Compliances

| Date              | Compliance   |
|-------------------|--|
| February 11, 2021 | Due date for furnishing of Form GSTR-1 for the taxpayers having aggregate turnover of more than 1.5 crore for the month of January 2021, who have opted out of the QRMP Scheme.  |
| February 13, 2021 | Due date for furnishing of Form GSTR-6 for Input Service Distributor for the month of January 2021.  |
|                   | Due date for furnishing of IFF (Invoice Furnishing Facility) for Taxpayers opting in for the QRMP Scheme for the 4th Quarter of 2020-21.   |
| February 14, 2021 | Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB and 194M in the month of December, 2020  |
| February 15, 2021 | Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending December 31, 2020.  |
|                   | Due date for filing of return of income for the assessment year 2020-21 if the assessee is (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) partner of a firm whose accounts are required to be audited or (d) required to submit a report under section 92E pertaining to international or specified domestic transaction(s)   |
| February 20, 2021 | Due date for filing consolidated return in the Form GSTR-3B for the taxpayers having aggregate turnover of more than 5 Crore the month of January 2021.  |
| February 22, 2021 | Due Date for filing consolidated return in the Form GSTR-3B for the taxpayers having aggregate turnover up to 5 crore (who have opted out of the QRMP Scheme) and principal place of business in the state of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep. |



# Upcoming Compliances

| Date              | Compliance   |
|-------------------|--|
| February 24, 2021 | Due Date for filing consolidated return in the Form GSTR-3B for the taxpayers having aggregate turnover up to 5 crore (who have opted out of the QRMP Scheme) and principal place of business in the state of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi. |
| February 25, 2021 | Due date for making payment for taxpayers opting in for the QRMP Scheme for the month of January 2021.   |
| February 28, 2021 | Due date for furnishing FORM SGTR-9 & 9C (GST Audit) for the Financial Year 2019-20 for the eligible Taxpayers.  |

# Editorial Team



## About us:

IBA is a leading financial and legal advisory company with specialization in Assurance, Risk Consulting, Legal, Direct Tax, Indirect Tax(GST) and Corporate Advisory for midsize, SMEs and start-up firms. IBA constitute a young team of path breaking professionals, who believe in creating value through innovation and creativity to provide ultimate client satisfaction. Clients benefit from our fresh thinking, constructive challenge and practical understanding of the issues they face. We aim to alloy a perfect blend of professionalism with high standards of service, in our pursuit of excellence.

Founded in the Year 2003, the company witnessed immense growth from 2 members to currently a 100 members team, with its offices in Delhi, Mumbai and Bengaluru and its clients from across states. IBA continues to offer wholesome service experience to boost highly valued client relationships by combining the technical and industry expertise at par with well-placed firms together with a personal commitment to optimize client service.

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