

Manubhai & Shah LLP

Chartered Accountants

Ahmedabad • Mumbai • NCR • Rajkot • Baroda • Gandhinagar • Udaipur

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Covering Updates for the Month of May' 21
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DIRECT TAX UPDATES

1. C.B.D.T. Notification No.41/2021 F.No 370142 dtd 03.05.2021

Insertion of New Rule 11UD for thresholds for the purposes of Significant Economic Presence (SEP) in India:

"11UD. Thresholds for the purposes of significant economic presence.-

1. For the purposes of Explanation 2A to section 9(1)(i)(a), the amount of aggregate of payments arising from transaction or transactions in respect of any goods, services or property carried out by a nonresident with any person in India, including provision of download of data or software in India during the previous year, shall be Rs. 2 Crores;
2. For the purposes of Explanation 2A to section 9(1)(i)(b) the number of users with whom systematic and continuous business activities are solicited or who are engaged in interaction shall be Rs. 3 Lakhs".

2. C.B.D.T. Notification No.56/2021 dtd 07.05.2021

Non-application of Section 269ST to specified persons or class of persons providing covid treatment :

In order to facilitate all the patients taking the treatment of COVID, The Central Government, in exercise of powers conferred under clause (iii) of Proviso to Section 269ST of the Income-tax Act, 1961, hereby specifies Hospitals, Dispensaries, Nursing Homes, Covid Care Centres or similar other medical facilities providing Covid treatment to patients are excluded from the provisions of Section 269ST of the Income-tax Act, 1961 for payment received in cash in excess of Rs.2 Lakhs during 1-4-2021 to 31-5-2021. However, it is necessary to obtain the PAN or AADHAAR number of the patient and the payee and the relationship between the patient and the payer by such Hospitals, Dispensaries, Nursing Homes, Covid Care Centres or similar other medical facilities.

3. C.B.D.T. Circular No. 10 of 2021 dated 25.05.2021

Due date for Filing of Appeal before C.I.T.(Appeal):

By the Order dated 27.04.2021, the Hon'ble Supreme Court of India has directed that the period of limitation for filing of any appeal as provided under the General or Special Law in respect of any judicial or quasi-judicial proceedings shall get extended till further order.

C.B.D.T. vide its Circular No.8 dated 30.04.2021 had extended date of filing of appeal before C.I.T.(Appeals) to 31.05.2021. However, now vide the above Circular, C.B.D.T. has clarified that the date of filing an appeal before C.I.T.(Appeals) is extended to a date beyond 31.05.2021 till any further orders of the Hon'ble Supreme Court.

4. C.B.D.T. Circular No. 9 of 2021 dated 20.05.2021

Extension of due dates for compliances Direct tax compliances:

The C.B.D.T. had last extended the due dates of various tax compliances to 31-05-2021 vide Circular 08/2021, dated 30.04.2021 issued under the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. Now, C.B.D.T. has decided to further extend the time limits to 30-06-2021 of following compliances to provide relief to tax payers in view of the prevailing pandemic of COVID :

No.	Particulars	Due Time	Due Time
1	Furnishing of TDS Statement for the 4th quarter of the Financial Year 2020-21.	31.05.2021	30-06-2021
2	Issue of TDS certificate in form 16 in respect tax deducted from the salary paid during the Financial Year 2020-21	15-06-2021	15-07-2021
3	Furnishing of Form 24G by an officer of the Government where TDS/TCS for the month of May, 2021 has been paid without the production of a challan	15-06-2021	30-06-2021
4	Furnishing of Statement of TDS from contributions paid by the trustees of an approved superannuation fund for the Financial Year 2020-21	31-05-2021	30-06-2021
5	Filing of Declaration in Form No. 60 and Statement in Form No. 61 (SFT) for the F.Y. 2020-21 under Section 285BA read with Rule 114E.	31-05-2021	30-06-2021
6	Furnishing of Statement of Reportable Account for calendar year 2020 under Section 285BA read with Rule 114G	31-05-2021	30-06-2021
7	Furnishing of statement in Form No. 64C by Alternative Investment Fund (AIF) under Section 115UB to unit holders in respect of income distributed during the previous year 2020-21	30-06-2021	15-07-2021
8	Furnishing of statement in Form No. 64D of income paid or credited by an investment fund under Section 115UB to its unit holder for the Previous year 2020-21	15-06-2021	30-06-2021
9	Due Date for filing of Income tax Return under sec 139(1) for the assessment year 2021-22 for all assessee other than- a corporate-assessee; b non-corporate assessee (whose books of account are required to be audited); c partner of a firm whose accounts are required to be audited or the spouse of such partner if the provisions of section 5A applies; or d an assessee who is required to furnish a report under section 92E.	31-07-2021	30-09-2021
10	Due Date for filing of Income tax Return under sec 139(1) for the assessment year 2021-22 if the assessee (not having any international (TP) or specified domestic transaction (SDT) is: a corporate-assessee; 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 the spouse of such partner if the provisions of section 5A applies.	31-10-2021	30-11-2021
11	Due Date for filing of Income tax Return under sec 139(1) for the assessment year 2021-22 in the case of an assessee if it is required to submit a report under section 92E pertaining to international (TP) or specified domestic transaction (SDT)	30-11-2021	31-12-2021
12	Due date for filing of audit report under section 44AB for the assessment year 2021-22 i in the case of a corporate-assessee or non-corporate assessee ii in the case of an assessee entering in to international (TP) or specified domestic transactions (SDT) under Section 92E	30.09.2021 31-10-2021	31-10-2021 30-11-2021
13	Furnishing of belated return of income under Section 139(4) or revised return of income under Section 139(5) for the Assessment Year 2021-22	31-12-2021	31-01-2022

Clarifications:

1. It is clarified by the said Circular that though the due date for filing of Income-tax Return for the Assessment Year 2021-22 has been extended, but interest shall be chargeable under section 234A if the tax liability exceeds Rs.1 lakh. Thus, if self-assessment tax liability of a taxpayer exceeds Rs.1 lakh, he would be liable to pay interest under section 234A from the original due dates if he avails the benefit of extended date for filing the return of income.
2. Further, it is clarified that a resident senior citizen who does not have any income from business or profession is not required to pay advance tax and he can pay the entire tax by way of self-assessment tax. For computing the limit of Rs.1 lakh, the self-assessment tax paid by a senior citizen on or before 31-07-2021 shall be deemed to be the advance tax which shall be reduced while computing the tax liability of Rs.1 lakh.



COMPANY LAW UPDATES

A. Clarification on offsetting the excess CSR spent for FY 2019-20

MCA has clarified that where a company has contributed any amount to 'PM CARES Fund' on 31.03.2020, which is over and above the minimum amount as prescribed under section 135(5) of the Companies Act, 2013 for FY 2019-20, and such excess amount or part thereof is offset against the requirement to spend under section 135(5) for FY 2020-21 in terms of the aforementioned appeal, then the same shall not be viewed as a violation subject to the conditions that:

- the amount offset as such shall have factored the unspent CSR amount for previous financial years, if any;
- the Chief Financial Officer and Statutory Auditor shall certify the contribution so made to "PM CARES Fund"; and
- the details of such contribution shall be disclosed separately in the Annual Report on CSR as well as in the Board's Report for FY 2020-21.

Circular can be accessed at:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=14175&type=download>

B. Clarification on spending of CSR Funds:

MCA has clarified that spending of CSR funds for 'creating health infrastructure for COVID care', 'establishment of medical oxygen generation and storage plants', 'manufacturing and supply of Oxygen concentrators, ventilators, cylinders and other medical equipment for countering COVID 19' or similar such activities are eligible CSR activities.

Circular can be accessed at:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=13450&type=download>

C. Gap between two board meetings:

In view of difficulties arising due to resurgence of Covid-19, it has been decided that the gap between two consecutive Board meetings may extend to 180 days instead of 120 days during the Quarter - April to June, 2021 and Quarter – July to September, 2021

Circular can be accessed at:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=13462&type=download>

D. Relaxation in filing of Form for Companies and LLPs:

- i For Forms related to Charge creation and modification:

In relation to e-Forms related to charge creation and modification, MCA has clarified that:

- a where the date of creation or modification of charge was before April 1, 2021 but due date of filing e-Form was not expired on the said date, in such case the period from April 1, 2021 till May 31, 2021 shall not be counted for the purposes of determining due date of filing e-Form.
- b where the date of creation or modification of charge falls in the period from April 1, 2021 till May 31, 2021, in such case the period from the date of creation or modification till May 31, 2021 shall not be considered for the purpose of determining due date of filing e-Form.

Circular can be accessed at:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=13466&type=download>

ii For Forms (other than Charge creation and modification) for Companies and LLPs:

It has been decided that forms (other than forms related to creation, modification and satisfaction of charge) that due for filing between April 1, 2021 to June 30, 2021, can be filed up to July 31, 2021 without paying any additional fees.

Circular can be accessed at:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=13468&type=download>

List of forms which can be filed upto July 31, 2021 without paying additional fees can be accessed at:

<https://www.mca.gov.in/bin/dms/getdocument?mds=N2pxvsmVDKIDdx0TtXM3Ow%253D%253D&type=open>



SEBI UPDATES

A. **Business Responsibility and Sustainability Reporting (BRSR) by listed entities:**

With effect from the financial year 2022-2023, filing of BRSR shall be mandatory for the top 1000 listed companies (by market capitalization) and shall replace the existing BRR. Filing of BRSR is voluntary for the financial year 2021-22.

Circular can be accessed at:

https://www.sebi.gov.in/legal/circulars/may-2021/business-responsibility-and-sustainability-reporting-by-listed-entities_50096.html

The format of the BRSR can be accessed at:

https://www.sebi.gov.in/sebi_data/commndocs/may-2021/Business%20responsibility%20and%20sustainability%20reporting%20by%20listed%20entitiesAnnexure1_p.PDF

The guidance note on BRSR can be accessed at:

https://www.sebi.gov.in/sebi_data/commndocs/may-2021/Business%20responsibility%20and%20sustainability%20reporting%20by%20listed%20entitiesAnnexure2_p.PDF

B. **Format of Compliance Report on Corporate Governance by listed entities:**

In order to bring about transparency and to strengthen the disclosures around loans / guarantees / comfort letters / security provided by the listed entity, directly or indirectly to promoter / promoter group entities or any other entity controlled by them, it has been decided to mandate such disclosures on a half yearly basis, in the Compliance Report on Corporate Governance, effective from financial year 2021-22

The format of disclosure in this regard can be accessed at:

https://www.sebi.gov.in/web/?file=https://www.sebi.gov.in/sebi_data/attachdocs/jun-2021/1622538932011.pdf#%5B%7B%22num%22%3A20%2C%22gen%22%3A0%7D%2C%7B%22name%22%3A%22XYZ%22%7D%2C69%2C531%2C0%5D

Circular can be accessed at:

https://www.sebi.gov.in/legal/circulars/may-2021/format-of-compliance-report-on-corporate-governance-by-listed-entities_50338.html



ACCOUNTING UPDATES

A. EAC Opinion:

Expert Advisory Committee (EAC) of ICAI has provided an Opinion on Disclosure of Changes in Inventory of Scrap in the Statement of Profit and Loss.

The relevant text of the Opinion is reproduced below:

“the Committee is of the view that Schedule III permits the use of additional line items, heads etc. in the presentation of Statement of Profit and Loss, if these are relevant to an understanding of the entity’s financial performance. Accordingly, in the extant case, separate disclosure of ‘change in the inventory of scrap’ under the classification, ‘Changes in inventories of finished goods, work in progress and stock in trade’ is permissible under the requirements of Schedule III to the Companies Act, 2013.

On the basis of the above, the Committee is of the opinion that ‘change in the inventory of scrap’ in the extant case should also be disclosed separately under the classification, ‘Changes in inventories of finished goods, work in progress and stock in trade’, and not under ‘other operational revenue/income’ in the Statement of Profit and Loss.”

EAC Opinion can be accessed at:

<https://resource.cdn.icai.org/64618cajournal-may2021-8.pdf>



Article - TDS on Purchase of goods - a new compliance under the Income Tax Act, 1961

The Finance Act, 2021 has expanded the scope of TDS by insertion of new section 194Q which comes into force on 01.07.2021. This section provides that a buyer of goods is liable to deduct TDS @0.1 % on sum payable to a resident seller on purchase of goods if the value of goods exceeds Rupees Fifty Lakhs during a financial year.

1. Applicability :

The provisions of section 194Q are applicable :

- a. If the buyer whose sales, turnover or gross receipts from the business in the preceding financial year exceeds Rs.10 Crores ; and
- b. This provision will apply only in respect of the amount payable to a resident seller on purchase of goods of the value exceeding Rupees fifty Lakhs during a financial year in excess of Rs.50 lakhs. So, no tax to be deducted upto purchases of Rs.50 lakhs in a year from a seller.

Thus the main condition for applicability of provisions of section 194Q is that the person is having business income and the value of purchase of goods from a seller is in excess of Rs.50 lakhs in a financial year. It is to be noted that turnover of Rs.10 crores is to be considered for the preceding financial year.

2. Exceptions :

It may be noted that this provision does not apply in the following cases :

- i. tax is deductible under any of the provisions of the Income tax Act. e.g. purchase of property
- ii. on purchase of goods on which seller has collected tax at source (TCS) under the Act. e.g. under section 206C.
- iii. any other purchaser as may be notified by the Central Government.

3. Meaning of Goods

The term 'Goods' is neither defined under this section nor under the Income tax Act. However, the meaning of the same can be borrowed from the Sale of Good Act, 1930. The term 'Goods' under the Sale of Goods Act, 1930, means all movable items. If this definition is applied then the provisions of section 194Q will apply to all movable assets only. Accordingly, no TDS under section 194Q will be required to be deducted on purchase of an immovable property. However, a clarification about the meaning of the term 'Goods' is required from the CBDT.

4. Time of deduction of TDS :

The buyer has to deduct TDS at the time of actual payment to the seller or at the time of credit of such amount to the account of the seller whichever is earlier.

e.g. Invoice issued on 01.08.2021 and payment received on 01.10.2021 then liability to pay the TDS will arise from 01.08.2021.

5. Applicable to non-resident buyer

A Non-Resident buyer of goods is also required to deduct TDS under this section unlike the exemption provided to non-resident seller of goods to collect TCS under section 206C(1H). It will be difficult for a non-resident buyer, i.e. Importer from India to comply with the procedure of TDS under section 194Q as they might not be aware of the provisions of Income tax Act and Rules.

6. Rate of TDS :

6.1. This section provides that a buyer of goods is liable to deduct TDS at the rate of 0.1%.

6.2. If PAN /Aadhar of buyer not available :

However, the rate of TDS will be 5% when the seller does not provide PAN or Aadhar Card Number as provided under section 206AA.

7. Consequences of Failure to deduct TDS under section 194Q

In the event of failure to deduct TDS under section 194Q, the cost of purchases will get disallowed @30% under section 40a(ia). However, the said amount disallowed can be claimed in the year of deposit of the TDS under section 194Q.

8. Deposit of TDS & Filing of Return

The buyer needs to deposit the TDS within 7 days of next month vide Challan no 281.

However, for the month of March, due date for deposit of TDS is 30th April.

A quarterly return in form no. 26Q is required to be filed within one month from the close of quarter which is as under:

Quarter Ending on	Due date of submission of return	Due date for issuance of certificate of tax
30th June	31st July	15th August
30th September	31st October	15th November
31st December	31st January	15th February
31st March	31st May	15th June

Issuance of certificate

The deductor is required to issue TDS Certificate in Form No 16A

9. Interest, Penalty & Prosecution for Non-compliance

9.1. Interest :

If deductor fails to deduct or after deduction fails to deposit it to the credit of Central Government, he shall be liable to pay interest under section 201 at the rate of 1% for every month or part thereof on the amount of tax he failed to deduct or deposit. The interest shall be calculated for the period starting from the date on which tax was required to be deducted and ending on the date on which tax is deposited.

9.2. Late Fees

In a case, the deductor files return of TDS after the due dates, he is liable to pay late filing fees under section 234E which is Rs.200/- per day from the due date of filing till the date of filing of such belated return of TDS maximum upto the amount of TDS payable.

9.3. Penalty

In a case, the deductor fails to file the TDS return or does not file it by the due dates or furnishes inaccurate information in the TDS return he shall be liable to pay penalty under section 271H which is minimum amount of Rs.10,000 and maximum amount of Rs. 100,000.

9.4. Failure to issue TDS Certificate

In a case, the deductor fails to issue TDS certificate to the seller, he shall be liable to pay penalty of Rs.10,000/- under section 272A.

9.5. Failure to deduct TDS

If a purchaser fails to deduct the TDS, he shall be liable to pay penalty under section 271CA which shall be equal to the amount of tax he failed to collect.

9.6. Prosecution

In a case, the deductor fails to deposit the tax to the credit of Central Government, he shall be punishable under section 276BB with rigorous imprisonment for a term which cannot be less than 3 months but which may extend to 7 years and with fine.

9.7. Lower Rate of TDS :

A purchaser can not obtain a Certificate under Sec 194Q r.w. Rule 37G and 37H for deduction at lower rate of TDS.



Article - Overseas Citizen of India (OCI)

New rules have been announced recently by the Union Ministry of Home Affairs, Government of India (MHA) for Overseas Citizens of India cardholders (OCI cardholders) vide MHA notification of 4 March 2021 (OCI Notification 2021).

The Overseas Citizen of India (OCI) Cardholder is a foreign national holding passport of a foreign country and is not a citizen of India, but falls under the definition as per The Citizenship Act, 1955 is entitled to certain benefits. The benefits are –

1. Grant of multiple entry lifelong visa for visiting India.

However, for the following purposes, they shall obtain special permission or a Special permit from competent Authority (like Ministry of Home Affairs), Foreign Regional Registration Officer (FRRO), or the Indian Mission concerned, namely

- a. to undertake research
- b. to undertake any Missionary or Tabligh or Mountaineering or Journalistic activities
- c. to undertake an internship in any foreign Diplomatic Missions or foreign Government organizations in India or to take up employment in any foreign Diplomatic Missions in India
- d. to visit any place which falls within the Protected or Restricted or prohibited areas as notified by the Central Government or competent authority

2. Exemption from registration with FRRO or Foreigners Registration Officer for any length of stay in India: However, any changes in the permanent address, the occupation should be intimated to FRRO / FRO via mail

3. Parity with Indian nationals in the matter of

- a. tariffs in airfares in domestic sectors in India
- b. entry fees to be charged for visiting national parks, wildlife sanctuaries, the national monuments, historical sites, and museums in India

4. Parity with Non-Resident in the matter of

- a. inter-country adoption of Indian children subject to the compliance of the procedure as laid down by the competent authority for such adoption.
- b. appearing for the all-India entrance tests such as National Eligibility cum Entrance Test, Joint Entrance Examination (Mains), Joint Entrance Examination (Advanced), or such other tests to make them eligible for admission only against any Non-Resident Indian seat or any supernumerary seat (except Provided that the OCI cardholder shall not be eligible for admission against any seat reserved exclusively for Indian citizens)
- c. purchase or sale of immovable properties other than agricultural land or a farm house or plantation property.

OCI Cardholder is at parity with Non-Resident Indians (NRIs) towards property transactions. As per FEMA, RBI frames the Directions / Regulations concerning the Acquisition and Transfer of immovable property in India.

As per the latest, updated on 11th April 2018, an NRI or an OCI can acquire by way of purchase any immovable property (other than agricultural land/ plantation property/ farm house) in India.

Further, an NRI or an OCI can acquire by way of gift any immovable property (other than agricultural land/ plantation property/ farm house) in India from a person resident in India or from an NRI or an OCI who in any case is a relative as defined in section 2(77) of the Companies Act, 2013

Similarly, an NRI or an OCI can acquire any immovable property in India by way of inheritance from a person resident outside India who had acquired the property in accordance with the provisions of the foreign exchange law in force at the time of acquisition or can also acquire any immovable property in India by way of inheritance from a person resident in India

The above Regulation also permits NRO/OCI to transfer or sell the immovable property without prior permission from RBI, to a person resident in India, NRO or OCI. They can repatriate the funds up to USD 1 million per year; provided in the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.

d. Pursuing the pro professions, namely doctors, advocates, architects, chartered accountants.

- 5. Parity with foreigners:** In respect of all other economic, financial, and educational fields not specified above or notified by RBI under FEMA, OCI Cardholder shall be treated the same as a foreigner.



DUE DATES

Due dates of various compliances falling in the month of June 2021

S.No	Act	Due Date	Compliance
1	Income Tax	07-06-2021	Deposit of Tax Deducted at Source (TDS) / Tax Collected at source (TCS) during the month of May-2021
2	GST	10-06-2021	GSTR-8 for the month of May -2021 for e-commerce operator required to Collect TCS
3	Income Tax	14-06-2021	Due date for issue of TDS Certificate for tax deducted under section 194IA, 194IB and 194M in the month of April, 2021
4	ESIC	15-06-2021	Payment of ESIC for the month of April-2021
5	PF/ESIC	15-06-2021	Payment of PF / ESIC for the month of May-2021
6	Income Tax	15-06-2021	Advance Tax - 1st Installment payment for financial year 2021-22
7	GST	20-06-2021	Payment of GST & Filling of GSTR-3B for the month ended May-2021 for taxpayers having turnover more than 5 crores or who have not opted for Quarterly Return Monthly Payment (QRMP) option
8	GST	26-06-2021	GSTR-1 for the month of May-2021
9	GST	28-06-2021	Filling of Invoice Furnishing Facility (IFF) for May- 2021 for taxpayers who opted for Quarterly Return Monthly Payment (QRMP) option
10	GST	30-06-2021	Declaration by for goods dispatched to a job worker or received from a job worker in Form ITC-04 for the quarter ended March 31, 2021
11	GST	30-06-2021	GSTR-5 & 5A by Non-resident taxable person & OIDAR for the month of May-2021
12	GST	30-06-2021	GSTR-6 for the month of May-2021 for Input Service Distributor
13	GST	30-06-2021	GSTR-7 for the month of May-2021 for persons required to deduct TDS
14	Income Tax	30-06-2021	Filing of TDS returns for the 4th quarter ended on March 31,2021 (for financial year 2020-21)
15	Income Tax	30-06-2021	Furnishing of Challan-cum-Return for Tax Deducted (TDS) u/s 194IA, 194IB and 194M during the month of May-2021
16	Income Tax	30-06-2021	Payment of Tax without additional interest under Direct Tax Vivad Se Vishwas Act, 2020
17	Income Tax	30-06-2021	Furnishing Specified Financial Transaction (SFT) u/s 285BA for financial year 2020-2021 (in Form 61A and Form 61B)
18	Income Tax	30-06-2021	Linking of Aadhar with PAN



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Shivalik Corporate Park,
Behind IOC Petrol Pump,
132ft. Ring Road, Satellite,
Ahmedabad - 380 015, Gujarat, India.

13th Floor, A Block,
Ratnakar Nine Square,
Opp. Keshav Baug party Plot,
Mansi Road, Vastrapur,
Ahmedabad - 380 015, Gujarat, India.

BRANCHES

RAJKOT	UDAIPUR
BARODA	GANDHINAGAR