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# NEWSLETTER

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Covering Updates for the Month of December' 21  
For private circulation and clients only



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# DIRECT TAX UPDATES

- **Circulars & Notifications**

## 1. Insertion of Rule 21AK for Exemption from Tax to N.R.I. on transfer of non-deliverable forward contracts

**(CBDT Notification No.136 dated 10.12.2021)**

Section 10(4E) provides Exemption from tax on any income accrued or received by a Non-resident (NRI) on transfer of non-deliverable forward contracts entered into with an offshore banking unit of an International Financial Services Centre subject to fulfilment of prescribed conditions.

C.B.D.T. has notified the following conditions to be fulfilled by insertion of Rule 21AK vide Income-tax (33rd Amendment) Rules, 2021 :-

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

## 2. Insertion of Rule 21AK & Form No. 56FF to claim Exemption U/sec 10A

**(CBDT Notification No.140 dated 29.12.2021)**

In order to claim Exemption U/sec 10A(1B)(b) in respect of new Undertaking in FTZ, particulars are required to be furnished in respect of new plant & machineries along with the return of income.

C.B.D.T. has notified Form No. 56FF to be furnished along with income tax return in new Rule 21AK as inserted vide Income-tax (33rd Amendment) Rules, 2021.

## 3. One-time Relaxation for Verification of Income-tax returns for A.Y. 2020-21

**(CBDT Cir No. 21/2021 Dated 28.12.2021)**

In order to resolve the grievances of the taxpayers to regularize non-verified ITRs for the Assessment Year 2020-21, the CBDT has provided one-time relaxation for submission of ITR-V/e-Verification for Assessment Year 2020-21. CBDT has permitted such tax payers verification of such returns either by sending a duly signed physical copy of ITR-V to CPC, Bengaluru through speed post or through EVC/OTP. **Such verification process must be completed by 28-2-2022.** The relaxation is applicable in respect of all ITRs for Assessment Year 2020-21 which were uploaded electronically within the time allowed U/sec 139 of the Income tax Act.

#### 4. FACELESS APPEAL SCHEME, 2021

##### (CBDT Notification No. 5429/2021 dated 28.12.2021)

The Finance Minister had introduced Faceless Appeal Scheme in her Budget 2020. Accordingly the Faceless Appeal Scheme, 2020 was notified vide Notification No. 76/2020 dated 25.09.2020 wherein any option of physical hearing was not mandatory. Therefore, The Chamber of Tax Consultants filed a PIL No. 16066 of 2021, before the Hon'ble Bombay High Court challenging that the principle of natural justice of physical hearing was violated. Accordingly, the CBDT has replaced the Faceless Appeal Scheme, 2020 by Faceless Appeal Scheme, 2021 by the above Notification. Most of the provisions of the Scheme 2020 are carried over in the Scheme, 2021 with insertion of following major changes :-

##### i. No personal appearance in the Centres or Units

Appellant is not required to present personally for hearing either himself or through his representative. However, if a request for personal hearing before the Commissioner (Appeals), through the National Faceless Appeal Centre is made. CIT (Appeals) has to grant personal hearing. This hearing will be conducted under virtual mode i.e., through video conferencing or video telephony including use of any telecommunication application software in accordance with the procedure laid down by the Board. Unlike Faceless Appeal Scheme, 2020, the appellant need not obtain any approval for personal hearing from the Chief Commissioner. Hence, Faceless Appeal Scheme, 2021 has allowed personal hearing on-request under virtual modes of hearing.

##### ii. No Draft Appellate Order

Faceless Appeal Scheme, 2021, has removed the procedure of issuance of Draft Appeal Order unlike the Faceless Appeal Scheme, 2020. Accordingly, CIT(A) shall pass his appellate order as provided under Para 5(x) of the Scheme, 2021.

##### iii. Removal of Automated Examination Tool from the appeal procedure

Faceless Appeal Scheme, 2021, has removed "automated examination tool" from the Appeal Procedure which was provided under Para 2(vii) of the Faceless Appeal Scheme, 2020, which facilitated algorithm for standardized examination of draft orders, by using suitable technological tools, including artificial intelligence and machine learning, with a view to reduce the scope of discretion. Now under New Scheme, 2021, the CIT (Appeal) has to pass his order without use of any such algorithm technology which may create a situation where one issue differing decisions from different CIT (Appeals) may be passed

#### 5. Early Hearing of Appeal by CIT(A)

##### (Notification No. F.No. 279/Misc./M-102/2021 dated 29.12.2021)

In order to address many taxpayers request for priority/out of turn hearing of their appeals pending before CIT (Appeals), the CBDT has directed to Pr.CCIT NFAC and CCIT of Central Charges & International Taxation based on recommendations from jurisdictional Pr.CIT/Pr.CIT(Central) or CIT(IT) to grant out of turn hearing in the following mentioned pending appeals :-

- i. Cases having demand above Rs. 1 Cr.
- ii. Cases where Refund was claimed in the ITRs in excess of Rs. 1 Lakh.
- iii. As per direction of High Court
- iv. As per request of Senior Citizens
- v. Cases of genuine hardship

##### • Important Circulars & Notifications under Allied Laws :

#### Extension of filing Annual Accounts with Charity Commissioner, Maharashtra

##### (Notification No. 592/2021 dt. 26.11.2021)

Due date for filing of Annual Audited Accounts for the F.Y. 2020-21 by Public Charitable Trust with the office of the Charity Commissioner in Maharashtra has been extended from 31.12.2021 to 31.01.2022.



## COMPANY LAW UPDATES

### A. Relaxation on levy of additional fees in filing of E-forms AOC-4 and MGT-7:

Relaxation has been provided whereby no additional fees will be levied upto 15.02.2022 for the filing of e-forms AOC-4, AOC-4 (CFS), AOC-4 XBRL, AOC-4 Non-XBRL and upto 28.02.2022 for filing of e-forms MGT-7 / MGT-7A in respect of the financial year ended on 31.03.2021 respectively.

Circular can be accessed at:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NDEzNDU=&docCategory=Circulars&type=open>

### B. Clarification on passing of Ordinary and Special resolutions through Audio Visual Modes:

It has been decided to allow companies to conduct their EGMs through Video Conference (VC) or Other Audio Visual Mode (OAVM) or transact items through postal ballot in accordance with framework provided in this regard upto June 30, 2022.

Circular can be accessed at:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NDExNDA=&docCategory=Circulars&type=open>

### C. Clarification of holding of Annual General Meeting (AGM) through Audio Visual Modes:

It has been decided to allow companies whose AGMs are due in the year 2021, to conduct their AGMs on or before 30th June, 2022 in accordance with the framework provided in Para 3 and 4 of the General Circular No. 20/2020 dated 05.05.2020.

Circular can be accessed at:

<https://www.mca.gov.in/bin/dms/getdocument?mds=LzJdfoYrL7zlnxT8HWRv5Q%253D%253D&type=open>



## ACCOUNTING UPDATES

### A. EAC Opinion:

**Expert Advisory Committee (EAC) of ICAI has provided an Opinion on Accounting treatment of Compulsorily Convertible Debentures (CCDs) by the issuer under Ind AS 32, Financial Instruments: Presentation.**

The relevant text of the Opinion is reproduced below:

*“The Committee notes from the Facts of the Case that the CCDs are convertible only in the hands of sponsors at the end of the tenure/buy-out option or exercising of put option by the investors and the Company would be required to convert the same into equity shares of the Company ranking pari-passu with existing shares at the time of conversion in the same proportion of shareholding /backstop support by reckoning share price at that time as per conversion formula defined in the transaction documents. The conversion option shall be effective on the exercise of the Accelerated Buy-out Option, the Mandatory Buy-out or the Accelerated Put Option giving the sponsor/nominee an unilateral right to convert the debentures into equity of the Company.*

*Thus, with regard to conversion feature of the CCD, the Committee notes that in the extant case, there is no contractual obligation to pay cash that the issuer (the Company) cannot avoid, since the conversion into own equity shares is compulsory. However, the conversion ratio for the purpose of the conversion shall be dependent on the share price of the Company at the time of conversion. The equity conversion feature can only be settled through the issue of equity shares – however, there is an obligation to issue a variable number of shares – the number of shares to be issued is based on the share price on conversion. In other words, the conversion price and, hence, the conversion ratio of CCDs into ordinary equity shares of the Company is not fixed at the point of initial recognition of the CCDs. Therefore, the conversion component within the instrument would not meet the criteria laid down in Ind AS 32 for the purpose of classifying as equity. Accordingly, overall, the CCDs do not meet the criteria for being classified as compound instrument as there is no equity component. The CCDs should be classified as financial liabilities in entirety.”*

EAC Opinion can be accessed at:

<https://resource.cdn.icai.org/68614cajournal-jan2022-10.pdf>



## RBI UPDATES

### 1. Introduction of LEI for Cross Border Transactions:

The Legal Entity Identifier (LEI) is a 20 digit number used to uniquely identify parties to financial transactions worldwide to improve the quality and accuracy of financial data systems.

- W.e.f. 1st October, 2022, AD Cat-1 banks shall obtain LEI number from resident entities (non-individuals) undertaking capital or current account transactions of over Rs. 50 crore per transaction under FEMA 1999.
- Entities can obtain LEI from any Local Operating Units accredited by GLEIF. In India, LEI can be obtained from Legal Entity Identified Ltd. (LEIL) ([www.ccilindia-lei.co.in](http://www.ccilindia-lei.co.in)) which is authorized by RBI.

Link of notification dated 10th December, 2021

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12206&Mode=0>

### 2. Dip in borrowing capacity of Banks w.e.f. 1st January, 2022:

Upto 31st December, 2021, Banks were allowed to avail funds under the Marginal Standing Facility (MSF) by dipping into the SLR by upto 3% of their Net Demand and Time Liabilities outstanding at the end of second preceding fortnight. The said 3% would be reduced to 2% w.e.f. 1st January, 2022 which would lower the banks capacity to borrow funds under MSF.

Link of notification dated 10th December, 2021

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12207&Mode=0>

### 3. Prompt Corrective Action (PCA) Framework for NBFC's from 1st October 2022:

RBI had introduced PCA framework for scheduled commercial banks in 2002 and has evolved since then. NBFC's have been growing in size and have substantial interconnectedness with other segments in financial system and thus similar framework has been introduced to further strengthen the supervisory tools applicable to NBFC's. The framework would be applicable to certain specified categories of NBFC's from 1st October, 2022 based on its financial position on or after 31st March, 2022.

The framework defined 3 risk thresholds for NBFC's and CIC's with capital, leverage and asset quality being the key area's of monitoring. Breach of any of the above risk thresholds would result in invocation of PCA. The corrective actions defined under the framework are categorized into Mandatory and Discretionary actions.

Link of notification dated 14th December, 2021

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12208&Mode=0>



## GST UPDATES

The Government has vide Finance Act, 2021 made certain amendment in GST Law which are contained from section 108 to section 123 of the said Act. Few of those amendments have already been notified and are in force. The amendments which are now brought into force with effect from 01/01/2022 Vide Notification No. 39/2021 – CT dt. 21/12/2021 are as follows:

### 1. ITC – Compulsory matching with GSTR 2B

A new condition by way of clause (aa) to Sec. 16(2) of the CGST Act, 2017 has been brought into force w.e.f. 01.01.2022. As per the said clause, the eligibility of the ITC shall be contingent upon the vendors furnishing the invoice/debit note details in their GSTR 1.

Rule 36(4) that provided for the availment of ITC upto 5% beyond the eligible ITC for which the details are reported by the vendors in GSTR 1 has been amended w.e.f. 01.01.2022 to withdraw the said benefit of 5%.

The amended rule provides that no ITC shall be availed in respect of invoice/debit note unless the:

- a. Details of such invoice/debit note have been furnished in GSTR 1 or IFF and
- b. Such details have been communicated in GSTR 2B.

Hence from 01.01.2022, the ITC in respect of invoice/debit note can be claimed only if the details of the same are reflected in GSTR 2B. It may be noted that the said condition does not apply to availment of ITC in respect of imports/RCM (unregistered vendor)/ISD.

### 2. Extension of due dates for GSTR 9/9C

The due dates for the filing of the GSTR 9 as well as GSTR 9C for FY 2020-21 has been extended till 28.02.2022. Rule 80 has been amended to that effect.

### 3. E-way bill violations

The provisions contained u/s 129 & 130 of the CGST Act, 2017 dealing with the detention, seizure, release as well as confiscation of goods or conveyance in respect of the contravention of the E-way bill requirements have been amended w.e.f. 01.01.2022.

Corresponding amendments have also been made in the CGST Rules, 2017 w.e.f. 01.01.2022 as under:

- a. Rule 142 that provides for the issuance of notice and order for demands under the Act has been amended to the effect that if the concerned person makes the payment of penalty as specified in the notice issued u/s 129(3) (200% of the tax payable in the general case) within a period of seven days from the date of issuance of notice but before the issuance of the order and intimate the officer in FORM DRC 03 then the officer shall issue an order in FORM DRC 05 concluding the proceedings in respect of the given notice. It must be noted that the said option is required to be considered only if the given person is not desirous of contesting the demands. If the person intends to contest the demands, it must seek order in FORM GST MOV 09. An appeal is accordingly required to be filed against the said order.
- b. New Rule 144A has been inserted to provide for the recovery of the penalty imposed u/s 129 (E-way bill violations) if not paid voluntarily within 15 days from the receipt of the order. The said recovery shall be made by way of an auction of the goods/conveyance that has been seized. Similarly, Rule 154 has been substituted to provide for the appropriation of the sale proceeds.



#### 4. Provisional attachment

GST law has empowered the commissioner to provisionally attach any property including the bank account of the registered person if he is of the opinion that it is necessary to attach the same to protect the interest of the revenue.

Provisional attachment u/s 83 of the CGST Act, 2017 can be undertaken by the department only during the pendency of the stipulated proceedings. In other words, provisional attachment cannot be undertaken if the stipulated proceedings are not pending.

Now w.e.f. 01.01.2022 Sec.83(1) is substituted to the effect that the provisional attachment can be undertaken after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV if the Commissioner is of the opinion that the same is necessary to protect the revenue. Hence the sweep of the draconian powers is expanded to permit provisional attachment on mere initiation of the proceedings and that too the proceedings covered under multiple Chapters (that includes assessment, inspection, search, seizure and arrest (that will include summons), demands and recovery.

#### 5. Refund claims of foreign diplomatic missions and embassies

Rule 95 has been amended to provide that the refund claims filed by the foreign diplomatic missions and embassies in FORM GST RFD-10 in respect of the tax charged on the invoice for their inward supplies shall be supported by the copy of the invoice, duly attested by the authorized representative of the applicant if the said invoice do not bear the Unique Identity Number of the applicant.

#### 6. Scope of Supply Amended to include supply to its Members

Section 7(1)(aa) of the CGST Act, has been retrospectively inserted from 1st July,2017 which states that any activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration shall be considered as a Supply.

#### 7. Closure of Proceedings u/s 73/74 (Demand/Recovery) will be independent of Proceedings u/s 129/130(Detention/Seizure)

Section 74 stated that where the proceedings against the main person have been concluded under section 73 / 74, the proceedings against all such persons liable to pay penalty under sections 122, 125, 129 and 130 would have been deemed to be concluded. But after the amendment , Section 129 & Sec.130 has been removed and only proceedings under 122 &125 would be deemed to be concluded thus resulting in proceedings of the detention ,seizure & confiscation of goods and conveyances in transit(Sec.129&130) separate from the demand and recovery proceedings u/s 73& 74.

#### 8. Self Assessed Tax shall be determined as furnished in Return u/s 37 (GSTR-1) and not as furnished in Return u/s 39 (GSTR-3B)

For the purposes of the Section 75(12) , the expression “self-assessed tax” shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.

Previously, the Government could initiate Demand / Recovery Proceedings only if Liability was furnished in GSTR 3B. Such practical difficulty has now been removed vide the Explanation inserted and any Liability as furnished in GSTR 1 and not paid through GSTR 3B Is liable to be recovered.

#### 9. Section 107 – Appeals to Appellate Authority

Following Proviso to Section 107 of CGST Act,2017 has been Inserted

Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent of the penalty has been paid by the appellant.

Previously payment of 10% of the tax in dispute was enough for the Assesse to file an appeal against an order u/s 129(3) which has now been increased to 25% of the penalty.

#### 10. Bar on disclosure of information under Section 152

Sec 152(1) of CGST Act,2017 has been amended now to result in that if any information obtained through return or otherwise has to be disclosed for any proceeding under the Act, the same cannot be done without giving an opportunity of personal hearing.

## 11. Instructions

Sec. 168(2) of CGST Act, 2017 provides that the Commissioner specified in the stipulated provisions shall mean the Commissioner or Joint Secretary posed in the Board. In view of the recasting of Sec. 44 (self-certification of annual return as well as reconciliation statement), the present reference u/s 168(2) to Sec. 44(1) is amended to Sec. 44.

Presently in view of Sec. 168(2), the Commissioner u/s 151 (to call for information) means the Commissioner or Joint Secretary posed in the Board. Now the reference to Sec. 151(1) is omitted u/s 162(2) and hence the Commissioner u/s 168(2) shall mean the Commissioner u/s 2(24) that means The Commissioner of Central Tax and includes Principal Commissioner.

## 12. Works Contract Services To Governmental Authority Or Government Entity

Previously, works contract services provided for specified contracts to Government Authority or Government Entity attracted the reduced tax rate entry of GST @5%/12%.

Now, those specified works contract services which have been excluded from the reduced tax rate entry of GST @5%/12% w.e.f 01.01.2022 will be taxable at residual tax rate @18% under entry 3 (xii) of tax rate notification no 11/2017-CT(R).

The contractor and the sub-contractor (providing services to the main contractor) providing works contract services to the Government Authority or Government Entity must revisit their contracts to check the implications in their ongoing projects and to ensure compliance with the said amendment effective from 01.01.2022.

## 13. Rules related to Mandatory Aadhaar authentication for GST Refund & Revocation application

The Central Board of Indirect Taxes and Customs (CBIC) has notified that Rules related to Mandatory Aadhaar authentication for GST Refund and Revocation application are to be effective from 1 January 2022.

## 14. Linkage of PAN/Aadhaar with the bank account for Refund purposes

Refund shall be disbursed in the bank account which is linked with the same PAN on which registration has been obtained under GST.

## 15. 12% GST payable on Footwear

There is an increase in the GST rate on footwear to 12% from 5% earlier, which will be effective from January 1, 2022. At present, 5% GST is charged on the sale value of up to Rs.1,000 per pair.



## DUE DATE

### Due dates of various compliances falling in the month of December 2021

S.No	Due Date	Act/Authority	Compliance Description
1	07/01/2022	GujRera	In case of projects whose dynamic quarter completes in December-2021
2	07/01/2022	Income Tax	Deposit of Tax Deducted at Source (TDS) / Tax Collected at source (TCS) during the month of December-2021
3	10/01/2022	GST	GSTR-7/GSTR-8 for the month of December-2021 for persons required to deduct TDS
4	10/01/2022	GST	GSTR-8 for the month of December -2021 for e-commerce operator required to Collect TCS
5	11/01/2022	GST	GSTR-1 for the month of December-2021 for taxpayers opted to file Monthly Return
6	13/01/2022	GST	Filing of GSTR-1 for the quarter ended December -2021 for taxpayers who opted for Quarterly Return Monthly payment(QRMP) Option
7	13/01/2022	GST	GSTR-6 for the month of December-2021 for Input Service Distributor(ISD)
8	15/01/2022	PF/ESIC	Payment of PF / ESIC for the month of December-2021
9	15/01/2022	Income Tax	Due date for filing of audit report under section 44AB for the financial year 2020-21 in the case of a corporate-assessee or non-corporate assessee.
10	15/01/2022	Income Tax	Filing of TCS returns for the quarter ended on December 31, 2021
11	18/01/2022	GST	CMP-08 for quarter ended on December 31, 2021 by Composite Dealer
12	20/01/2022	GST	Payment of GST & Filling of GSTR-3B for the month of December-2021, for taxpayers having turnover of more than Rs.5 Crore in preceding financial Year
13	20/01/2022	GST	GSTR-5 & 5A by Non-resident taxable person & OIDAR for the month of December-2021
14	22/01/2022 24/01/2022	GST	Payment of GST & Filling of GSTR-3B for taxpayers having turnover upto Rs.5 Crore in preceding Financial year for the quarter ended on December 31, 2021 who opted for Quarterly Return Monthly payment(QRMP) Option depending on place of business(State)
15	30/01/2022	Income Tax	Furnishing of Challan-cum-Return for Tax Deducted (TDS) u/s 194IA, 194IB and 194M during the month of December-2021
16	31/01/2022	Income Tax	Filing of report u/s 92E in respect of international/domestic transaction for the financial year 2020-2021
17	31/01/2022	Income Tax	Filing of TDS returns for the quarter ended on December 31, 2021



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