



OCTOBER
2021

THE NEWSLETTER
UPDATES

Your monthly guide to news, information and more...



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Why Newsletter ?

“ One of the most important areas we can develop as professionals is competence in accessing and sharing knowledge ”

- Connie Malamed

We, KNKP Advisors are excited to publish our newsletter in association with Connect Easy as their Knowledge Partner, under the esteem guidance of Virag Shah. With our efforts and network of Connect Easy, we wish to reach all the professionals to give updates on variety of topics relevant for their daily practices, ranging from GST, Income Tax, Companies Act, SEBI & RBI compliances. Not to mention that this newsletter shall cover some interesting Advanced Excel traits & some motivational stories to ensure complete mix of learning.

Further, you can reach out to us on any of our platforms as mentioned in the new letter as we invite articles & blogs from all the aspiring writers and authors here on any relevant subjects to the businesses. We look to include best content for our readers across the nation from the best of the industry experts. We help professional firms in designing their news letter & videos as well. Furthermore, we include advertisement and promotions as well in our news letter, if you wish to reach our wide base of readers and stimulate traction & visibility for your business.

Who are we ?



KNKP Advisors is a result of continuous brainstorming and discussions regarding how we, as a professional, who have command over variety of areas such as Financial Reporting, Corporate Finance, Corporate Laws, Direct and Indirect Taxes, Cost and Performance Evaluation, Strategic Planning, Technology & innovation, come together and contribute to all the kinds of business houses, matured or the startups. Our ambitious common goal here at the firm is to offer the world's best in class products and services to our clients, making us an elite financial services and solutions company with the vision to perfect business, one emboldened entrepreneur at a time.

We believe that every business is unique, has unique needs and that the people who own and manage these companies have their own individual concerns and ambitions. With us you will be treated as an individual, as someone. Not as everyone.

We have seen the business landscape change dramatically and noticed that there are glaring problems arising as a direct cause of this. This ever-changing reality is eroding value, the same value you hoped to create when you started out on this journey and decided to work seven days a week to create. It's also destroying something you can never hope to recover physically or financially, and that's time. Not many people think of this as a commodity, (think of all those missed holidays and lost years) but imagine your life with much more of it?

That brings us around to the question; Why should you talk to us? We have noticed that a small fortune is being lost due to ineffective or nonexistent advice, planning, strategy, negotiation and execution. We believe this is not a systemic effect of the current environment and can be reversed and rectified. Given the right tools and a little bit of time, large tangible operational and financial improvements can be made that will make a huge difference to the way you run and look at your business. This is where we come in.

Core Areas of KNKP Advisors



Business Support Service



Corporate Advisory Service



Taxation



RERA

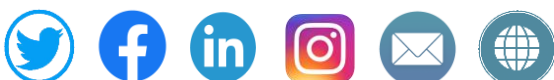


Valuation



Management Reporting

Lets Keep in Touch



October 2021- Compliance Calendar



- ✓ Due date for Payment of TDS for the month of September 2021

- ✓ GSTR 7 & 8 For the Month of September 2021



- ✓ GSTR 1 For the Monthly Filers for September 2021

- ✓ GSTR 1 For the Quarterly Filers for July-September 2021

- ✓ GSTR 6 For the Month of September 2021

- ✓ Issue of TDS Certificate under Form 16B, 16C & 16D for tax deducted in June 2021



- ✓ issuing TDS certificates in form 16B, form 16C and form 16D under sec 194-IA, 194-IB and 194M, for tax deducted in Aug 2021.

- ✓ TCS Return (Quarterly) for Jul-Sep 2021

- ✓ Payment of PF & ESIC for the month of August 2021.

October 2021- Compliance Calendar

✓ CPM-08 (Quarterly) for Jul-Sep 2021



- ✓ GSTR 3B for the month of September - 2021
- ✓ GSTR 5 & 5A for the month of September-2021

✓ GST-3B (Quarterly) for Jul-Sep 2021



✓ GST-3B (Quarterly) for Jul-Sep 2021

✓ ITC-04 (Quarterly) for Jul-Sep 2021



- ✓ Form 26QB ,26QC & 26QD for the month of August 2021
- ✓ TCS Certificates for Jul-Sep 2021(Form 27D)

- ✓ TDS Return (Quarterly) for Jul to Sep 2021
- ✓ Tax Audit Report for 2020-21 (AY 2021-22)
- ✓ Payment under Vivad se Viswaas






Direct Tax Updates



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Government extends certain timelines to escape compliances

- ✓ The Central Government, in continuation of its commitment to address the hardship being faced by various stakeholders on account of the Covid-19 pandemic, has, on consideration of representations received from various stakeholders, decided to extend timelines for compliances under the Income Tax, 1961 (hereinafter referred to as “the Act”) in the following cases, as under:
 - ✓ Time limit for intimation of Aadhar number to the Income Tax Department for linking of PAN with Aadhar has been extended from 30th September, 2021 to 31st March, 2022.
 - ✓ The due date for completion of penalty proceedings under the Act has also been extended from 30th September, 2021 to 31st March, 2022.
- ✓ Further, the time limit for issuance of notice and passing of order by the Adjudicating Authority under the Prohibition of Benami Property Transactions Act, 1988 has also been extended to 31st March, 2022.



<https://incometaxindia.gov.in/communications/notification/notification-no-113-2021.pdf>

Extension of time lines for filing of Income Tax Returns

Sr. No.	Particulars	Original Due Date	Extended Due Date
1	For furnishing ITR for AY 2021-22	31-07-2021	31-12-2021
2	For furnishing the Report of Audit	30-09-2021	15-01-2022
3	The due date of furnishing Report from an Accountant by persons entering into international transaction or specified domestic transaction under section 92E	31-10-2021	31-01-2022
4	For furnishing ITR for AY 2021-22	31-10-2021	15-02-2022
5	For furnishing ITR for AY 2021-22	30-09-2021	28-02-2022
6	For furnishing the Belated/Revised ITR for AY 2021-22	31-12-2021	31-03-2022



Goods & Service Tax Updates



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Notification 35/2021 – Central Tax

- ✓ 1. Rule 10A of CGST Rules, 2017 for registration has been amended which provides that details of bank account should be updated on GST portal in the name of person who has taken registration.
- ✓ Also proviso has been inserted according to which PAN should be linked with Aadhar No. in case of Proprietorship concern.
- ✓ New Rule 10B is inserted after Rule 10A. According to this rule for certain purposes Aadhar Authentication is made compulsory which is as follows for person other than person notified u/s 25(6D).

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

- ✓ With effect from 1st Day of October, 2021 requirement of Filling of Form ITC-04 is changed.

Sr. No.	Particulars	New Requirement	Previous Requirement
1	T/O more than 5 Crore	Half Yearly	Quarterly
2	T/O less than 5 Crore	Yearly	Quarterly

- ✓ In Rule 89 new subrule (1A) is inserted for claiming refund by person who had wrongly paid tax by considering inter state supply as Intra State Supply.
- ✓ Any person, claiming refund under section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner
- ✓ With respect to payment of tax u/s 77 before coming in to force this sub rule than person can file application for refund before expiry of two years from the date on which this sub rule comes into force.



<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-35-central-tax-english-2021.pdf>

Circular No. 159/15/2021-GST

Clarification on doubts related to scope of “Intermediary”–reg.

- ✓ 1 Representations have been received citing ambiguity caused in interpretation of the scope of “Intermediary services” in the GST Law. The matter has been examined. In view of the difficulties being faced by the trade and industry and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues in succeeding paragraphs.
- ✓ 1.1 With respect to Intermediary Services big issue is with respect to provision of supply as for intermediary services place of supply is in India and there is lot of litigation from service tax days. Today there is lot of litigation going on about whether services provided is intermediary service and taxable service. This circular brings lot of clarity on subject matter and will be used widely by professional at large. Also, there is lot of claims of refund is denied on this ground as well so it will be very useful for BPO/KPO industry because biggest issue is faced by them.

2 Scope of Intermediary services

- ✓ 2.1 ‘Intermediary’ has been defined in the sub-section (13) of section 2 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as “IGST” Act) as under– “Intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.”
- ✓ 2.2 The concept of ‘intermediary’ was borrowed in GST from the Service Tax Regime. The definition of ‘intermediary’ in the Service Tax law as given in Rule 2(f) of Place of Provision of Services Rules, 2012 issued vide notification No. 28/2012-ST, dated 20-6-2012 was as follows: “intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the ‘main’ service) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account;”
- ✓ 2.3 From the perusal of the definition of “intermediary” under IGST Act as well as under Service Tax law, it is evident that there is broadly no change in the scope of intermediary services in the GST regime vis-à-vis the Service Tax regime, except addition of supply of securities in the definition of intermediary in the GST Law.

3. Primary Requirements for intermediary services

- ✓ The concept of intermediary services, as defined above, requires some basic prerequisites, which are discussed below:
 - 3.1 Minimum of Three Parties: By definition, an intermediary is someone who arranges or facilitates the supplies of goods or services or securities between two or more persons. It is thus a natural corollary that the arrangement requires a minimum of three parties, two of them transacting in the supply of goods or services or securities (the main supply) and one arranging or facilitating (the ancillary supply) the said main supply. An activity between only two parties can, therefore, NOT be considered as an intermediary service. An intermediary essentially “arranges or facilitates” another supply (the “main supply”) between two or more other persons and, does not himself provide the main supply.
 - 3.2 Two distinct supplies: As discussed above, there are two distinct supplies in case of provision of intermediary services;
 - (1) Main supply, between the two principals, which can be a supply of goods or services or securities;
 - (2) Ancillary supply, which is the service of facilitating or arranging the main supply between the two principals. This ancillary supply is supply of intermediary service and is clearly identifiable and distinguished from the main supply.
- ✓ A person involved in supply of main supply on principal to principal basis to another person cannot be considered as supplier of intermediary service.
- ✓ 3.3 Intermediary service provider to have the character of an agent, broker or any other similar person: The definition of “intermediary” itself provides that intermediary service provider means a broker, an agent or any other person, by whatever name called....”. This part of the definition is not inclusive but uses the expression “means” and does not expand the definition by any known expression of expansion such as “and includes”. The use of the expression “arranges or facilitates” in the definition of “intermediary” suggests a subsidiary role for the intermediary. It must arrange or facilitate some other supply, which is the main supply, and does not himself provides the main supply. Thus, the role of intermediary is only supportive.

- ✓ 3.4 Does not include a person who supplies such goods or services or both or securities on his own account: The definition of intermediary services specifically mentions that intermediary “does not include a person who supplies such goods or services or both or securities on his own account”. Use of word “such” in the definition with reference to supply of goods or services refers to the main supply of goods or services or both, or securities, between two or more persons, which are arranged or facilitated by the intermediary. It implies that in cases wherein the person supplies the main supply, either fully or partly, on principal-to-principal basis, the said supply cannot be covered under the scope of “intermediary”.
- ✓ 3.5 Sub-contracting for a service is not an intermediary service: An important exclusion from intermediary is sub-contracting. The supplier of main service may decide to outsource the supply of the main service, either fully or partly, to one or more sub-contractors. Such sub-contractor provides the main supply, either fully or a part thereof, and does not merely arrange or facilitate the main supply between the principal supplier and his customers, and therefore, clearly is not an intermediary. For instance, ‘A’ and ‘B’ have entered into a contract as per which ‘A’ needs to provide a service of, say, Annual Maintenance of tools and machinery to ‘B’. ‘A’ subcontracts a part or whole of it to ‘C’. Accordingly, ‘C’ provides the service of annual maintenance to ‘A’ as part of such sub-contract, by providing annual maintenance of tools and machinery to the customer of ‘A’, i.e. to ‘B’ on behalf of ‘A’. Though ‘C’ is dealing with the customer of ‘A’, but ‘C’ is providing main supply of Annual Maintenance Service to ‘A’ on his own account, i.e. on principal to principal basis. In this case, ‘A’ is providing supply of Annual Maintenance Service to ‘B’, whereas ‘C’ is supplying the same service to ‘A’. Thus, supply of service by ‘C’ in this case will not be considered as an intermediary
- ✓ 3.6 The specific provision of place of supply of ‘intermediary services’ under section 13 of the IGST Act shall be invoked only when either the location of supplier of intermediary services or location of the recipient of intermediary services is outside India

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

□ Illustration 1

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

□ Illustration 2

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

□ Illustration 3

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

❑ Illustration 4

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

Circular 160/16/2021

Clarification on various issues of GST.

❑ Issue 1.

- ✓ Section 16 (4), as amended with effect from 01.01.2021, provides that a registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier. Doubts have been raised seeking following clarification:
- ✓ 1. Which of the following dates are relevant to determine the 'financial year' for the purpose of section 16(4):
 - (a) date of issuance of debit note, or
 - (b) date of issuance of underlying invoice.
- ✓ 2. Whether any availment of input tax credit, on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, will be governed by the provisions of the amended section 16(4), or the amended provision will be applicable only in respect of the debit notes issued after 01.01.2021?

❑ Clarification

- ✓ With effect from 01.01.2021, section 16(4) of the CGST Act, 2017 was amended vide the Finance Act, 2020, so as to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit. The amendment made is shown as below: “A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.” As can be seen, the words “invoice relating to such” were omitted w.e.f. 01.01.2021
- ✓ The intent of law as specified in the Memorandum explaining the Finance Bill, 2020 states that “Clause 118 of the Bill seeks to amend sub-section (4) of section 16 of the Central Goods and Services Tax Act so as to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit.
- ✓ Accordingly, it is clarified that:
- ✓ w.e.f. 01.01.2021, in case of debit notes, the date of issuance of debit note (not the date of underlying invoice) shall determine the relevant financial year for the purpose of section 16(4) of the CGST Act.
- ✓ The availment of ITC on debit notes in respect of amended provision shall be applicable from 01.01.2021. Accordingly, for availment of ITC on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, the eligibility for availment of ITC will be governed by the amended provision of section 16(4), whereas any ITC availed prior to 01.01.2021, in respect of debit notes, shall be governed under the provisions of section 16(4), as it existed before the said amendment on 01.01.2021.

- ✓ Illustration 1: A debit note dated 07.07.2021 is issued in respect of the original invoice dated 16.03.2021. As the invoice pertains to F.Y. 2020- 21, the relevant financial year for availment of ITC in respect of the said invoice in terms of section 16(4) of the CGST shall be 2020-21. However, as the debit note has been issued in FY 2021-22, the relevant financial year for availment of ITC in respect of the said debit note shall be 2021-22 in terms of amended provision of section 16(4) of the CGST Act.
- ✓ Illustration 2. A debit note has been issued on 10.11.2020 in respect an invoice dated 15.07.2019. As per amended provision of section 16(4), the relevant financial year for availment of input tax credit on the said debit note, on or after 01.01.2021, will be FY 2020-21 and accordingly, the registered person can avail ITC on the same till due date of furnishing of FORM GSTR-3B for the month of September, 2021 or furnishing of the annual return for FY 2020-21, whichever is earlier.

❑ Issue 2:

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

❑ Clarification

- ✓ Rule 138A (1) of the CGST Rules, 2017 inter-alia, provides that the person in charge of a conveyance shall carry— (a) the invoice or bill of supply or delivery challan, as the case may be; and (b) a copy of the e-way bill or the e-way bill number, either physically or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner.
- ✓ Further, rule 138A (2) of CGST Rules, after being amended vide notification No. 72/2020-Central Tax dated 30.09.2020, states that “In case, invoice is issued in the manner prescribed under sub-rule (4) of rule 48, the Quick Reference (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice”

- ✓ A conjoint reading of rules 138A (1) and 138A (2) of CGST Rules, 2017 clearly indicates that there is no requirement to carry the physical copy of tax invoice in cases where e-invoice has been generated by the supplier. After amendment, the revised rule 138A (2) states in unambiguous words that whenever einvoice has been generated, the Quick Reference (QR) code, having an embedded Invoice Reference Number (IRN) in it, may be produced electronically for verification by the proper officer in lieu of the physical copy of such tax invoice.
- ✓ Accordingly, it is clarified that there is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier in the manner prescribed under rule 48(4) of the CGST Rules and production of the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) electronically, for verification by the proper officer, would suffice.

□ Issue 3:

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

□ Clarification

- ✓ The term 'subjected to export duty' used in first proviso to section 54(3) of the CGST Act, 2017 means where the goods are actually leviable to export duty and suffering export duty at the time of export. Therefore, goods in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, cannot be considered to be subjected to any export duty under Customs Tariff Act, 1975.

- ✓ Accordingly, it is clarified that only those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered under the restriction imposed under section 54(3) from availment of refund of accumulated ITC. Goods, which are not subject to any export duty and in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, would not be covered by the restriction imposed under the first proviso to section 54(3) of the CGST Act for the purpose of availment of refund of accumulated ITC.

Circular 161/17/2021

Clarification relating to export of services-condition (v) of section 2(6) of the IGST Act 2017

- ✓ 1 Various representations have been received citing ambiguity caused in interpretation of the Explanation 1 under section 8 of the IGST Act 2017 in relation to condition (v) of export of services as mentioned in sub-section (6) of the section 2 of the IGST Act 2017. Doubts have been raised whether the supply of service by a subsidiary/ sister concern/ group concern, etc. of a foreign company in India, which is incorporated under the laws in India, to the foreign company incorporated under laws of a country outside India, will hit by condition (v) of subsection (6) of section 2 of IGST Act.
- ✓ 2 The matter has been examined. In view of the difficulties being faced by the trade and industry and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issue in succeeding paragraphs.
- ✓ 3.Relevant legal provisions:
 - ✓ 3.1 The export of services has been defined in sub-section (6) of the section 2 of the IGST Act 2017 as under:
 - ✓ (6) "export of services" means the supply of any service when,—
 - (i) the supplier of service is located in India;

- (ii) the recipient of service is located outside India;
 - (iii) the place of supply of service is outside India;
 - (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
 - (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;
- ✓ 3.2 Explanation 1 of the Section 8 of the IGST Act provides for the conditions wherein establishments of a person would be treated as establishments of distinct persons, which is reproduced as under: Explanation 1.—For the purposes of this Act, where a person has,—
- (i) an establishment in India and any other establishment outside India;
 - (ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or
 - (iii) an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory, then such establishments shall be treated as establishments of distinct persons.
- ✓ As per the above Explanation, an establishment of a person in India and another establishment of the said person outside India are considered as establishments of distinct persons.
- ✓ 3.3 Reference is also invited to the Explanation 2 of Section 8 of IGST Act, which is reproduced below: “Explanation 2.—A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.”
- ✓ 3.4 Reference is also invited to the definition of “person” as provided under CGST Act 2017, made applicable to IGST Act vide section 2(24) of IGST Act 2017. “Person” has been defined under sub-section (84) of the section 2 of the CGST Act 2017, as under:
- ✓ (84) “person” includes—
- (a) an individual;
 - (b) a Hindu Undivided Family;
 - (c) a company;
 - (d) a firm;

- (e) a Limited Liability Partnership;
 - (f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
 - (g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;
 - (h) any body corporate incorporated by or under the laws of a country outside India;
 - (i) a co-operative society registered under any law relating to co-operative societies;
 - (j) a local authority;
 - (k) Central Government or a State Government;
 - (l) society as defined under the Societies Registration Act, 1860;
 - (m) trust; and
 - (n) every artificial juridical person, not falling within any of the above;
- ✓ 3.5. The definitions of company and foreign company have been provided under section 2 of Companies Act 2013, as under:
- (20) “company” means a company incorporated under this Act or under any previous company law;
 - (42) “foreign company” means any company or body corporate incorporated outside India which— (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and (b) conducts any business activity in India in any other manner.

□ Analysis of the issue:

- ✓ 4.1 Clause (v) of sub-section (6) of section 2 of IGST Act, which defines “export of services”, places a condition that the services provided by one establishment of a person to another establishment of the same person, considered as establishments of distinct persons as per Explanation 1 of section 8 of IGST Act, cannot be treated as export. In other words, any supply of services by an establishment of a foreign company in India to any other establishment of the said foreign company outside India will not be covered under definition of export of services.
- ✓ 4.2 Further, perusal of the Explanation 2 to section 8 of the IGST Act suggests that if a foreign company is conducting business in India through a branch or an agency or a representational office, then the said branch or agency or representational office of the foreign company, located in India, shall be treated as establishment of the said foreign company in India. Similarly, if any company incorporated in India, is operating through a branch or an agency or a representational office in any country outside India, then that branch or agency or representational office shall be treated as the establishment of the said company in the said country.
- ✓ 4.3. In view of the above, it can be stated that supply of services made by a branch or an agency or representational office of a foreign company, not incorporated in India, to any establishment of the said foreign company outside India, shall be treated as supply between establishments of distinct persons and shall not be considered as “export of services” in view of condition (v) of sub-section (6) of section 2 of IGST Act. Similarly, any supply of service by a company incorporated in India to its branch or agency or representational office, located in any other country and not incorporated under the laws of the said country, shall also be considered as supply between establishments of distinct persons and cannot be treated as export of services.
- ✓ 4.4 From the perusal of the definition of “person” under sub-section (84) of section 2 of the CGST Act, 2017 and the definitions of “company” and “foreign company” under Section 2 of the Companies Act, 2013, it is observed that a company incorporated in India and a foreign company incorporated outside India, are separate “person” under the provisions of CGST Act and accordingly, are separate legal entities.

✓ Thus, a subsidiary/ sister concern/ group concern of any foreign company which is incorporated in India, then the said company incorporated in India will be considered as a separate “person” under the provisions of CGST Act and accordingly, would be considered as a separate legal entity than the foreign company.

□ Clarification:

✓ 5.1 In view of the above, it is clarified that a company incorporated in India and a body corporate incorporated by or under the laws of a country outside India, which is also referred to as foreign company under Companies Act, are separate persons under CGST Act, and thus are separate legal entities. Accordingly, these two separate persons would not be considered as “merely establishments of a distinct person in accordance with Explanation 1 in section 8”.

✓ 5.2 Therefore, supply of services by a subsidiary/ sister concern/ group concern, etc. of a foreign company, which is incorporated in India under the Companies Act, 2013 (and thus qualifies as a ‘company’ in India as per Companies Act), to the establishments of the said foreign company located outside India (incorporated outside India), would not be barred by the condition (v) of the sub-section (6) of the section 2 of the IGST Act 2017 for being considered as export of services, as it would not be treated as supply between merely establishments of distinct persons under Explanation 1 of section 8 of IGST Act 2017 . Similarly, the supply from a company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India, would not be treated as supply to merely establishments of distinct person under Explanation 1 of section 8 of IGST Act 2017. Such supplies, therefore, would qualify as ‘export of services’, subject to fulfilment of other conditions as provided under sub-section (6) of section 2 of IGST Act

Circular No. 162/18/2021

Clarification in respect of refund of tax specified in section 77(1) of the CGST Act and section 19(1) of the IGST Act

- ✓ Representations have been received seeking clarification on the issues in respect of refund of tax wrongfully paid as specified in section 77(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”) and section 19(1) of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as “IGST Act”). In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues detailed hereunder: 2.1 Section 77 of the CGST Act, 2017 reads as follows:
 - ✓ “77. Tax wrongfully collected and paid to Central Government or State Government. — (1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.
 - ✓ (2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable.”
- ✓ Section 19 of the IGST Act, 2017 reads as follows:
 - ✓ “19. Tax wrongfully collected and paid to Central Government or State Government----- (1) A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.
 - ✓ (2) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable.”

- ✓ 3. Interpretation of the term “subsequently held”
- ✓ 3.1 Doubts have been raised regarding the interpretation of the term “subsequently held” in the aforementioned sections, and whether refund claim under the said sections is available only if supply made by a taxpayer as inter-State or intra-State, is subsequently held by tax officers as intra-State and inter-State respectively, either on scrutiny/ assessment/ audit/ investigation, or as a result of any adjudication, appellate or any other proceeding or whether the refund under the said sections is also available when the inter-State or intra-State supply made by a taxpayer, is subsequently found by taxpayer himself as intra-State and inter-State respectively.
- ✓ 3.2 In this regard, it is clarified that the term “subsequently held” in section 77 of CGST Act, 2017 or under section 19 of IGST Act, 2017 covers both the cases where the inter-State or intra-State supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-State or inter-State respectively or where the inter-State or intra-State supply made by a taxpayer is subsequently found/ held as intra-State or inter-State respectively by the tax officer in any proceeding. Accordingly, refund claim under the said sections can be claimed by the taxpayer in both the above mentioned situations, provided the taxpayer pays the required amount of tax in the correct head.
- ✓ 4. The relevant date for claiming refund under section 77 of the CGST Act/ Section 19 of the IGST Act, 2017
- ✓ 4.1 Section 77 of the CGST Act and Section 19 of the IGST Act, 2017 provide that in case a supply earlier considered by a taxpayer as intra-State or inter-State, is subsequently held as inter-State or intra-State respectively, the amount of central and state tax paid or integrated tax paid, as the case may be, on such supply shall be refunded in such manner and subject to such conditions as may be prescribed. In order to prescribe the manner and conditions for refund under section 77 of the CGST Act and section 19 of the IGST Act, sub-rule (1A) has been inserted after sub-rule (1) of rule 89 of the Central Goods and Services Tax Rules, 2017
- ✓ (hereinafter referred to as “CGST Rules”) vide notification No. 35/2021-Central Tax dated 24.09.2021. The said sub-rule (1A) of rule 89 of CGST Rules, 2017 reads as follows:

- ✓ “(1A) Any person, claiming refund under section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:
- ✓ Provided that the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of two years from the date on which this sub-rule comes into force.”
- ✓ 4.2 The aforementioned amendment in the rule 89 of CGST Rules, 2017 clarifies that the refund under section 77 of CGST Act/ Section 19 of IGST Act, 2017 can be claimed before the expiry of two years from the date of payment of tax under the correct head, i.e. integrated tax paid in respect of subsequently held inter-State supply, or central and state tax in respect of subsequently held intra-State supply, as the case may be. However, in cases, where the taxpayer has made the payment in the correct head before the date of issuance of notification No.35/2021-Central Tax dated 24.09.2021, the refund application under section 77 of the CGST Act/ section 19 of the IGST Act can be filed before the expiry of two years from the date of issuance of the said notification. i.e. from 24.09.2021
- ✓ 4.3 Refund under section 77 of the CGST Act / section 19 of the IGST Act would not be available where the taxpayer has made tax adjustment through issuance of credit note under section 34 of the CGST Act in respect of the said transaction.



COMPANIES ACT

MCA Updates



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Extension in Due Date of Filing E-Form CRA-4 (Cost Audit Report):

- ✓ Time limit of submission of cost audit report by cost auditor to company for FY 2020-21 is extended upto October 31, 2021 and accordingly companies can file form CRA-4 within 30 days from receipt of such report from cost auditor. Further, in case where companies have got extension of time for holding AGM, such filing can be done within extended period of filing financial statements for FY 2020-21.
- ✓ The same Circular can be accessed through following link.



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

Extension in time limit for holding Annual General Meeting (AGM):

- ✓ Last date to hold AGM for financial year 2020-21 is extended by two months i.e. from September 30, 2021 to November 30, 2021.
- ✓ State wise notification of extension can be accessed at:



<https://www.mca.gov.in/content/mca/global/en/data-and-reports/rd-roc-info/extension-agm.html>



SEBI Updates

Amendment in SEBI (LODR) Regulations:

- ✓ Major amendments made in SEBI (LODR) Regulations are:
 - Amendment in Definitions of Non-convertible debt securities, Non-convertible redeemable preference shares, Non-convertible securities, Perpetual debt instruments, Perpetual non-cumulative preference shares and various regulations related to such instruments
 - Amendment in various regulations related to high value debt listed entities
 - Submission of financial results by debt listed entity to be made on quarterly basis instead of half yearly
 - Insertion of various new financial ratios required to be reported at the time of quarterly results submission
 - Disclosure of asset cover available for non-convertible debt securities in financial results in specified format
- ✓ Amendment can be accessed at:



https://www.sebi.gov.in/legal/regulations/sep-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-fifth-amendment-regulations-2021_52488.html



Accounting Updates



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Expert Advisory Committee (EAC) Opinion :

- ✓ Expert Advisory Committee (EAC) of ICAI has provided an Opinion on Presentation of change in non-current asset in Cash Flow Statement
- ✓ The relevant text of the Opinion is reproduced below:

□ “the Committee is of the opinion that in the statement of cash flows of the Company, as per the requirements of paragraph 20 of Ind AS 7, changes in non-current financial asset (receivable from the Authority) should be adjusted as ‘changes in operating receivables’ to determine the cash flow from operating activities under indirect method.

□ Further, since a portion of the financial asset, viz., receivable from the Authority contains interest element also which is a financing component in the transaction; such financing component which represents payment due to time value of money should be separated from the financial asset as per the relevant applicable Standard and should be considered and classified as cash flows from investing activities.”

- ✓ EAC Opinion can be accessed at:



<https://resource.cdn.icai.org/66321cajournal-sep2021-9.pdf>



FEMA Updates



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Amendment in Regulation 15 Advance payment against exports:-

❑ Existing Provision:

- ✓ As per the existing rules, the rate of interest, payable on the advance payment shall not exceed 100 basis points above the London Inter-Bank Offered Rate (LIBOR).

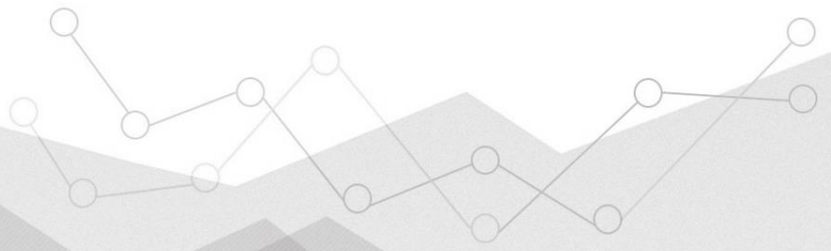
❑ Amendment:

- ✓ As per Notification No. FEMA 23(R)/(5)/2021-RB dated 08.09.2021, the rate of interest, payable on the advance payment shall not exceed 100 basis points above the London Inter-Bank Offered Rate (LIBOR) or other applicable benchmark as may be directed by the Reserve Bank, as the case may be.

- ✓ The same notification of extension can be accessed at:



<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12167&Mode=0>



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Vlookup Function

- ✓ Use VLOOKUP when you need to find things in a table or a range by row. For example, look up a price of an automotive part by the part number, or find an employee name based on their employee ID.
- ✓ In its simplest form, the VLOOKUP function says:
- ✓ =VLOOKUP(What you want to look up, where you want to look for it, the column number in the range containing the value to return, return an Approximate or Exact match – indicated as 1/TRUE, or 0/FALSE).



<https://youtu.be/afKxaGTe0Es>

	A	B	C	D	E
1	V-Lookup Table				
2					
3	Name Of Item	Product Code	Quantity	Price	
4	Cosmetic	19643	18	10000	
5	Laptop	21818	1	80000	
6	Cloths	48	186	9000	
7	Grocery	168897	298	1805	
8	Shoes	16GD53	325	4187	
9	Food Packet	3SDG3219	126	4000	
10	Watches	231SE524	154	15000	
11	Perfumes	2323216	2000	30000	
12	Lunch Boxes	1854463	16	1500	
13					
14					
15	Name Of Item		Price		
16	Food Packet		=+VLOOKUP(A17,\$A\$5:\$D\$13,4,0)		
17	Watches		15000		
18	Lunch Boxes		1500		

MOTIVATION?

IT'S RIGHT INSIDE YOU!

Motivational Mantra

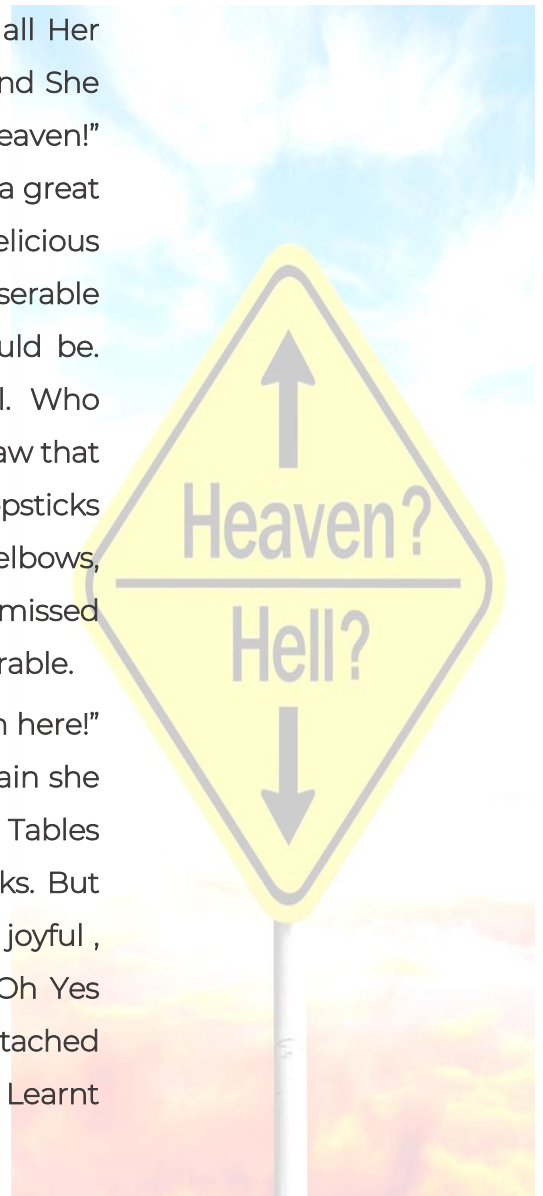
WE HAVE THE CHOICE

Once upon a time... A Woman who had worked all Her life to bring about good, Was Granted one wish and She said: " Before I Die , Let me visit Both Hell and Heaven!" And her wish was granted! She was whisked off to a great Dinning hall. The tables ware Pilled High, with Delicious food and Drinks, and around the tables sat miserable Looking, starving People as wretched as one could be. "Why are they like this?" She asked the angel. Who accompanied her. "Look at their arms", the angel saw that attached to the peoples arms were long Chopsticks secured above the elbow. Unable to bend their elbows, The People aimed the chopsticks at the food, missed every time and sat hungry and frustrated and miserable.

"Indeed this is Hell!" She said, "Take me away from here!" And so then the angel took her to Heaven and again she found herself in the same great dining Hall! The Tables Piled high with Delicious looking foods, and Drinks. But this time, around the tables sat people Laughing , joyful , Contented. "No Chopsticks I Suppose", she said "Oh Yes there are Look Just as in Hell they are long and Attached above. The Elbow , but Look...Here the people have Learnt to feed one another."

Moral of the story

Some Times Heaven and Hell can be the same place with the same people. The only Difference is how we Treat each other. How we help each other It's Up to us, If we make our life Heaven Or Hell on earth!



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