

**MARCH 2021**

# NEWSLETTER

## TAX

- Income Tax
- Goods and Services Tax

## **Lovi Mehrotra & Associates**

**Chartered Accountants**

**21-22 IInd Floor Krishna Nagar Safdarjung Enclave  
New Delhi 110029**

**Website : [www.lma.co.in](http://www.lma.co.in) • Email : [a.kaushik@lma.co.in](mailto:a.kaushik@lma.co.in)**



## INCOME TAX

### **1. Residential Status of certain individuals under Income-Tax Act, 1961**

CBDT

Circular No. 2/2021 dated 3.03.2021

The Central Board of Direct taxes (CBDT) has received representations requesting for relaxation in determination of residential status for previous year 2020-21 for individuals who had come on a visit to India during the previous year 2019-20 and who intended to leave India but could not do so due to suspension of international flights.

Vide this circular CBDT has clarified on the subject as follows: -

#### ➤ **Short Stay will not result in Indian Residency.**

*A Citizen of India or a person of Indian origin* may become resident in India only in one of the following situations: -

- If his total income from Indian sources does not exceed Rs. 15 lakh in PY 2020-21 **and** he stays in India for 182 days or more during the PY 2020-21; or
- If his total income from Indian sources exceeds Rs. 15 lakhs in PY 2020-21 **and**
  - a) he stays during PY 2020-21 for 182 days or more; or
  - b) he stays during the PY 2020-21 for 120, days or more **and also** stays for 365 days or more in preceding four previous years.

An Individual who is not a citizen of India or a person of Indian origin may become resident in India only in one of the following situations:

- a) if he stays during PY 2020-21 for 182 days or more; or
- b) if he stays during the PY 2020-21 for 60 days or more and also stays for 365 days or more in preceding four previous years.

Thus, generally, a person would become resident in India for the PY 2020-21 only if he stayed in India for 182 days or more, unless he is covered by the exceptions discussed above.

#### ➤ **Possibility of Dual Non-Residency in case of General Relaxation**

Most of the countries have the condition of stay for 182 days or more for determining residency. Thus, a person in most situations will be resident in only one country since there are 365 days in a year. In fact, if general relaxation for the stay period of 182 days is provided, there may be cases of double non-residency. In such a situation, a person may not become a tax resident in any country in PY 2020-21 even after staying for more than 182 days or more in India resulting in double non-taxation and may end up not paying tax in any country.

#### ➤ **Tie breaker Rules as per Double Taxation Avoidance Agreement (DTAA)**

A person may become resident in India in some cases even if he stays for less than 182 days in India. In that situation, there may be a case of dual residency. However, due to applicability of Double Taxation Avoidance Agreement (DTAA), such person will become resident of only one country as per the "**tie breaker rule**" in the DTAA.

#### ➤ **Employment Income Taxable subject to conditions of DTAA**

DTAA distributes the taxation rights between the employee's jurisdiction of residence and the place where the employment is exercised, Salaries, wages and other similar remuneration are taxable only in the country in which the employee is resident unless the employment is exercised in the other country. Generally, as per the DTAA's, such other country (the source jurisdiction) has taxation rights only if the employee is present in that country for more than 183 days or the employer is a resident of the source jurisdiction, or the employer has a permanent establishment in the source jurisdiction that bears the remuneration. Accordingly, if a USA resident under employment of a USA corporation has got stranded in India and performs employment from India, its salary will not be taxable in India unless he is present

in India for 183 days or more during the PY 2020-21 or if the salary is borne by Indian permanent establishment of such USA corporation.

➤ **Credit for the taxes paid in other country**

A resident person in India shall be entitled to claim credit of the taxes paid in any other country in accordance with the rule 128 of the Income-tax Rules, 1962.

➤ **Conclusion**

The OECD as well as most of the countries have clarified that in view of the provisions of the domestic income tax law read with the DTAAs, there does not appear a possibility of the double taxation of the income for PY 2020-21. The possibility of double taxation does not exist as per the provisions of the Income-tax Act, 1961 read with the DTAAs. However, in order to understand the possible situations in which a particular taxpayer is facing double taxation due to the forced stay in India, it would be in the fitness of things to obtain relevant information from such individuals. After understanding the possible situations of double taxation, the Board shall examine

- i. whether any relaxation is required to be provided in this matter; and
- ii. whether general relaxation can be provided for a class of individuals or specific relaxation is required to be provided in individual cases.

Therefore, if any individual is facing double taxation even after taking into consideration the relief provided by the respective DTAAs, he may furnish the information in Form -NR by 31st March, 2021. (Format of NR annexed to this circular)

[Circular No.2](#)

## **2. Clarifications on provisions of the Direct Tax Vivad se Vishwas Act, 2020**

CBDT

Circular No. 3 /2021 dated 4.03.2021

CBDT has issued further clarifications as below on provisions of the Direct Tax Vivad se Vishwas Act, 2020.

Sub-section (1) of section 5 of VSV Act provides that the Designated authority ("DA") shall pass a determination order within fifteen days from the date of receipt of the declaration. The DA is also required to pass another order under Section 5 (2) of VSV Act for full and final settlement of the tax arrear.

Representations have been received from field authorities that under the Income-tax Act, 1961 there is no provision available to the Assessing Officer to give effect to the order passed by the DA under Section 5(1) and Sec 5 (2) of VSV Act.

It is clarified that where the DA has passed orders under sub-sections (1) and (2) of section 5 of VSV Act, the Assessing Officer shall pass consequential order under the Act.

[Circular No.3](#)

## **3. Income-tax (1<sup>st</sup> Amendment) Rules, 2021**

CBDT

Notification No. 11/2021 dated 5.03.2021

CBDT has prescribed the method of computation of perquisite under section 17(2)(vii) of the Income Tax Act

For the purposes of this section, annual accretion by way of interest, dividend or any other amount of similar nature during the previous year, to the balance standing to the credit of the fund or scheme referred to in sub-clause (vii) of clause (2) of section 17 of the Act shall be the amount or aggregate of amounts computed in accordance with the following formula, namely -

$$TP = (PC/2) * R + (PC1 + TP1) * R$$

Where,

- TP = Taxable perquisite for the current previous year
- TP1= Aggregate of taxable perquisite for the previous year or years commencing on or after 1st day April, 2020 other than the current previous year
- PC= Amount or aggregate of amounts of principal contribution made by the employer in excess of Rs. 7.5 lakh to the specified fund or scheme during the previous year
- PC1= Amount or aggregate of amounts of principal contribution made by the employer in excess of Rs. 7.5 lakh to the specified fund or scheme for the previous year or years commencing on or after 1st day April, 2020 other than the current previous year
- $R = I / \text{Favg}$
- I=Amount or aggregate of amounts of income accrued during the current previous year in the specified fund or scheme account;
- $\text{Favg} = (\text{Amount or aggregate of amounts of balance to the credit of the specified fund or scheme on the first day of the current previous Year} + \text{Amount or aggregate of amounts of balance to the credit of the specified fund or scheme on the last day of the current previous year})/2.$

**Note:** Where the amount or aggregate of amounts of TP1 and PC1 exceeds the amount or aggregate of amounts of balance to the credit of the specified fund or scheme on the first day of the current previous year, then the amount in excess of the amount or aggregate of amounts of the said balance shall be ignored for the purpose of computing the amount or aggregate of amounts of TP1 and PC1.”

[Notification No.11](#)

#### 4. Income-tax (2<sup>nd</sup> Amendment) Rules, 2021

CBDT

Notification No. 13/2021 dated 9.03.2021

CBDT Vide Income-tax (2nd Amendment) Rules, 2021 has amended **Rule 10V (12)** which provides manners for computation of remuneration payable to the **Fund manager**.

Two new provisios (as below) have been inserted in Rule 10V(12) after the second provisio

- Provisions of sub-rules (3) to (12) of rule 10VA shall, mutatis mutandis, apply to the application made under the second proviso as they apply to application made under subrule (2) of the said rule:
- Provisions of sub-rule (3) of rule 10VA shall not apply to an application made under the second proviso, if it is for the previous year beginning on the 1st day of April, 2021, and made on or before the 1st day of February, 2021.”

[Notification No.13](#)

#### 5. Income Tax (3<sup>rd</sup> Amendment) Rules, 2021

CBDT

Notification No. 15/2021 dated 11.03.2021

CBDT has notified the following Revised forms relating to Income from **Salary of employees**

- Form No. 16 for Part B (Annexure),
- Form No. 12BA
- Form No. 24Q Annexure-II

[Notification No.15](#)

## 6. Income Tax (4<sup>th</sup> Amendment) Rules, 2021

CBDT

Notification No. 16/2021 dated 12.03.2021

CBDT has issued Income Tax (4<sup>th</sup> Amendment) Rules, 2021 to further amend **Rule 114E** of the Income-tax Rules, 1962. After sub-rule (5), the following sub-rule shall be inserted,

**(Rule 5A)** For the purposes of pre-filling the return of income, a statement of financial transaction under sub section (1) of section 285BA of the Act containing information relating to capital gains on transfer of listed securities or units of Mutual Funds, dividend income, and interest income shall be furnished by the persons mentioned in such form, at such frequency, and in such manner, as may be specified by the Principal Director General of Income Tax (Systems) or the Director General of Income Tax (Systems), as the case may be, with the approval of the Board, **namely:-**

| S.No. | Nature of Transaction  | Class of person (Reporting person)   |
|-------|--|--|
| 1.    | Capital gains on transfer of listed securities or units of Mutual Fund | 1) Recognised Stock Exchange;<br>2) Depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996);<br>3) Recognised Clearing Corporation;<br>4) Registrar to an issue and share transfer agent registered under subsection (1) of section 12 of the Securities and Exchange Board of India Act, 1992  |
| 2.    | Dividend income  | A Company  |
| 3.    | Interest income  | 1) A banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act);<br>2) Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898<br>3) Non-banking financial company which holds a certificate of registration under section 45-IA of the Reserve Bank of India Act, 1934 to hold or accept deposit from public. |

[Notification No.16](#)

## 7. Income Tax (5<sup>th</sup> Amendment) Rules, 2021

CBDT

Notification No. 18/2021 dated 16.03.2021

*CBDT has issued Income-tax (5<sup>th</sup> Amendment) Rules, 2021, to insert **Rule 29BA** (as below) relating to **Application for grant of certificate for determination of appropriate proportion of sum (other than Salary), payable to non-resident, chargeable in case of a non-resident recipient under section 195(2)/(7) of the Act.***

Details as below:

- An application to be filed by a person for determination of appropriate proportion of sum chargeable in the case of non-resident recipient in Form 15E electronically: -
  - under digital signature; or
  - through electronic verification code.
- The Assessing Officer, in order to satisfy himself, shall examine whether the sum being paid or credited is chargeable to tax under the provisions of the Act read with the relevant DTAA, and if the sum is chargeable to tax, he shall proceed to determine the appropriate proportion of such sum chargeable to tax.
- The Assessing Officer shall examine the application and on being satisfied that the whole of such sum



would not be the income chargeable in case of the recipient, may issue a certificate determining appropriate proportion of such sum chargeable under the provision of this Act, for the purposes of tax deduction under sub-section (1) of section 195.

4. While examining the application, the Assessing Officer shall also take into consideration, following information in relation to the recipient: -
- a) tax payable on estimated income of the previous year relevant to the assessment year;
  - b) tax payable on the assessed or returned or estimated income, as the case may be, of preceding four previous years;
  - c) existing liability under the Income-tax Act, 1961(43 of 1961) and Wealth-tax Act, 1957(27 of 1957);
  - d) advance tax payment, tax deducted at source and tax collected at source for the assessment year relevant to the previous year till the date of making application under sub-rule (1).
5. The certificate shall be valid only for the payment to non-resident named therein and for such period of the previous year as may be specified in the certificate.
6. An application for a fresh certificate may be made, if the assessee so desires, after the expiry of the period of validity of the earlier certificate or within three months before the expiry thereof

Form 15 E (format for application under Rule 29 BA) inserted in the principal rules after Form 15 D forms part of the notification.

#### [Notification No.18](#)

### **8. Clarifications on provisions of the Direct Tax Vivad se Vishwas Act, 2020**

CBDT

Circular No. 4/2021 dated 23.03.2021

In order to facilitate the taxpayers, FAQs were issued vide circular no. 9/2020 dated 22nd April, 2020 (covering FAQ 1-55) and circular no. 21/2020 dated 4th December, 2020 (covering FAQ no. 56-89).

FAQ no.70 of circular 21/2020 clarified eligibility for **search case** under VSV. It was clarified that if the assessment order has been framed in the case of a taxpayer under section 143(3) /144 of the Income Tax Act based on search executed **in some other taxpayer's case**, it will be considered as a 'search case' under VSV

Representations have been received seeking clarity with regard to classification of a case as a 'search case'

It has now been clarified that a '**search case**' means an assessment or reassessment made under sections 143(3)/ 144/ 147/ 153A/ 153C/ 158BC of the Income-tax Act in the case of a person referred to in section 153A or section 153C or section 158BC or section 158BD of the Income-tax Act on the basis of search initiated under section 132, or requisition made under section 132A of the Income-tax Act.

To this extent FAQ 70 of circular 21/2020 stands modified.

#### [Circular No.4](#)

### **9. Delay in due date of Tax audit clause 30C & 44**

CBDT

Circular No. 5/2021 dated 25.03.2021

CBDT had further deferred the applicability of **Clause 30C & 44** which require companies to include the details of **Goods and Services Tax (GST) and GAAR** in their tax audit report till **31<sup>st</sup> March 2022**.

#### [Circular No.5](#)

## 10. Income Tax (6<sup>th</sup> Amendment) Rules, 2021

CBDT

Notification No. 19/2021 dated 26.03.2021

CBDT has notified the new **registration procedure** for **NGOs** and **Charitable Trusts** and other institutions under section **12AB** and section **10(23C)** of the Income Tax Act, 1961. Procedure for furnishing the statement of donation received by NGO/Trust under section-**80G(5)** has also been notified.

The details of the registration procedure and applications to be made by various classes of institutions in terms of the Rules notified are as below:

**“Rule 2C.** Application for the purpose of grant of approval of a fund or trust or institution or university or any hospital or other medical institution under clause (i) or clause (ii) or clause (iii) or clause (iv) of first proviso to clause (23C) of Section 10, to be made to the Principal Commissioner or Commissioner authorised by the Board

- i. Form No. 10A in case of application under clause (i) or clause (iv) of first proviso to clause (23C) of section 10; or
- ii. Form No. 10AB in case of application under clause (ii) or clause (iii) of first proviso to clause (23C) of section 10

**“Rule 5CA** Intimation under Fifth Proviso to sub-section (1) of section 35. (1) by a research association, university, college or other institution referred to in clause (ii) or clause (iii) or the company referred to in clause (ia) of said sub-section to the Principal Commissioner or Commissioner authorised by the Board **in Form No.10A,**

**“Rule 11AA** Application for approval under clause (vi) of sub-section (5) of section 80G, the institution or fund , to the Principal Commissioner or Commissioner authorised by the Board

- i. Form No. 10A in case of application under clause (i) or clause (iv) of first proviso to subsection (5) of section 80G; or
- ii. Form No. 10AB in case of application under clause (ii) or clause (ii) of first proviso to subsection (5) of section 80G

**“Rule 17A** Application for registration of charitable or religious trusts or institution under subclause (i) or sub-clause(ii) or sub-clause(iii) or sub-clause(iv) or sub-clause(v) or sub-clause(vi) of clause (ac)of sub-section (1) of section 12A for registration of a charitable to be made to the Principal Commissioner or Commissioner authorised by the Board

- i. Form No. 10A in case of application under sub-clause (i) or (vi) of clause (ac)of sub-section (1) of section 12A; or
- ii. Form No. 10AB in case of application under sub-clause (ii) or (iii) or (iv) or (v) of clause (ac)of sub-section (1) of section 12A

**Rule18AB.** Furnishing of Statement of particulars and certificate under clause (viii) and clause (ix) of sub-section (5) of section 80G or under sub-section (1A) of section 35.

(1) For the purpose of clause (viii) of sub-section (5) of section 80G and clause (i) to sub-section (1A) of section 35, the prescribed authority shall be the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems)

(2) Statement of particulars required to be furnished by any research association, university, college or other institution or company or fund (hereinafter referred to as reporting person) under clause (viii) of sub-section (5) of section 80G or under clause (i) to sub-section (1A) of section 35 shall be furnished in respect of each financial year, beginning with the financial year 2021-2022, in Form No. 10BD and shall be verified in the manner indicated therein.

(3) The reporting person, referred to in sub-rule (2), shall, while aggregating the amounts for determining the sums received for reporting in respect of any person,

- i. take into account all the donations of the same nature paid by that person during the financial year; and
- ii. Proportionately attribute the value of the donation or the aggregated value of all the donations to all the persons, in case where the donation is recorded in the name of more than one person and where no proportion is specified by the donors, attribute equally to all the donors

(4) Form No. 10BD, shall be furnished electronically

- i. under digital signature, if the return of income is required to be furnished under digital signature;
- ii. through electronic verification code in a case not covered under clause (i).

Formats of the various application forms are included in the notification

[Notification No.19](#)



## GOODS AND SERVICES TAX

### **1. Implementation of E-invoicing for the Taxpayers.**

CBIC Notification No.  
5/2021 of Central Tax – dated 8.03.2021

In exercise of the powers conferred by sub-rule (4) of rule 48 of the Central Goods and Services Tax Rules, 2017 the CBIC vide notification No. 13/2020 – Central Tax, dated the 21st March, 2020, had notified registered person, other than those referred to in sub-rules (2), (3), (4) and (4A) of rule 54 of the said rules, whose aggregate turnover in a financial year **exceeds one hundred crore rupees**, as a class of registered person who shall prepare invoice and other prescribed documents (**E- invoicing**) , in terms of sub-rule (4) of rule 48 of the said rules in respect of supply of goods or services or both to a registered person. (**effective date Oct 01, 2020**)

In the said notification, with effect from the 1st day of April 2021, for the words “one hundred crore rupees”, the words “**fifty crore rupees**” shall be substituted.

[Notification No.5](#)

### **2. Clarification on refund related issues**

CBIC Circular No.  
147/2021 of Central Tax – dated 12.03.2021

CBDT has clarified refund related issues under GST. The key clarifications are as follows: -

- Para 41 of Circular No. 125 is modified to remove the restriction of non-availment of input tax credit by the recipient of deemed export supplies on the invoices, for which refund has been claimed.
- Taxpayers who had inadvertently entered details of zero-rated supplies in table 3.1(a) instead of table 3.1(b) of Form GSTR-3B, can now file refund applications for the tax periods up to **31<sup>st</sup> March 2021**. Earlier, the same was allowed till June 2019.
- For the purpose of rule 89(4) of the Central Goods and Services Tax Rules, 2017 (CGST Rules), the restriction of **150%** of the value of goods domestically supplied, as applicable for Turnover of zero-rated supply of goods, would also apply while computing Adjusted Total Turnover.

[Circular No.147](#)

### **3. Waiver of penalty for non-compliance of generating dynamic QR code for B2C Invoicing**

CBIC Notification No.  
6/2021 of Central Tax – dated 30.03.2021

CBIC has extended **waiver of penalty**, for non-compliance of generating dynamic QR code for B2C invoicing (applicable for registered person whose aggregate turnover exceeds INR 500 crores), from 31<sup>st</sup> March 2021 **till 30<sup>th</sup> June 2021**.

[Notification No.6](#)

**Disclaimer:**

This is not a complete listing of all circulars/notifications issued during the month. Instead, it is only a listing of some of the circulars/notifications that we considered important.



**Lovi Mehrotra & Associates**

**Chartered Accountants**

**21-22 IInd Floor Krishna Nagar Safdarjung Enclave  
New Delhi 110029**

**Website : [www.lma.co.in](http://www.lma.co.in) • Email : [a.kaushik@lma.co.in](mailto:a.kaushik@lma.co.in)**