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**SPCM**  
LEGAL

# **S**AMĀCĀRA November 2021





# **SAMĀCĀRA – NOVEMBER 2021**

## **TEAM SAMĀCĀRA**

### **INCOME TAX**

			
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### **GOODS AND SERVICES TAX**

	
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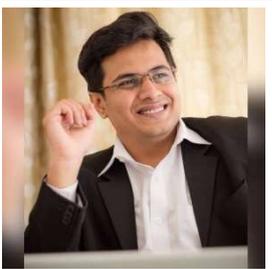


# **SAMĀCĀRA – NOVEMBER 2021**

## **COMPANY LAW, BANKING AND FINANCE**

			
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# SAMĀCĀRA – NOVEMBER 2021

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# SAMĀCĀRA – NOVEMBER 2021

## EDITORIAL

Dear All,

Diwali, 2021 – the festival of light and joy- has come at a time when the nation just started coming out the pandemic, which has bled the country and its citizens physically, emotionally and financially in an unprecedented manner. But then, that is what Diwali is for! Diwali brings happiness and joy and restores faith and that exactly is the need of hour! So, in a way this year's Diwali has come at a right time!

This time, Diwali is special as it also signifies rising from fall and going upwards and strengthening the positions, straightening ourselves up and continuing the life journey with renewed physical strength and good health and hope. It also means helping someone else to rise to enable to continue the life journey with cheers. As it is very aptly said, "What defines us is how well we rise after we fall" and it is the nature's rule that we rise by lifting others! Though understandably it is beginning for new scenario with renewed energy, Diwali signifies the triumph of light over darkness, joy over sadness and hope over despair and gloom.

The light, the joy and the hope need not necessarily manifest in the form of flashy bright lights and the loud noise – it never was and was never meant to be so. The true meaning of Diwali is the feeling of happiness, joy and hope within oneself, not merely an outwardly demonstration with loud noise. The flashy light is no match for a radiant smile and glow that overwhelm the face that come from inner peace and joy and the young generation does am sure understands this.

On the GST front, the gross GST revenue collected in the month of October 2021 exceeded ₹1.3 lakh crore. The GST revenues for October is the second highest ever since introduction of GST, second only to that in April 2021, which related to year-end revenues. The revenues for the



month of October 2021 are 24% higher than the GST revenues in the same month last year.

On Direct Tax Front, after introduction of E- assessment, E- penalty proceedings, and Faceless appeals, Now, CBDT, vide Notification No. 129 of 2021, notifies e-Settlement Scheme, 2021. The Scheme is meant to deal with pending applications in respect of which the option u/s 245M has not been exercised and have been allotted or transferred by CBDT to the Interim Board.

In the last month, team SPCM strikers have participated Inter firm Box cricket Tournament conducted by the Pune Branch of WIRC of ICAI and with the team efforts and well plan strategy succeeded in having Third place in the tournament. It is proud moment for the SPCM family, hearty congratulations to entire team.

I take this opportunity to wish a happy and prosperous New year to all. May festival of lights shower upon all of us super good health, lasting mental peace and equally important plentiful prosperity. This Diwali is more about being hopeful for a healthy and happy tomorrow.

**With Warm Regards.**



**CA. Suhas P. Bora**



**GLIMPSE OF EVENTS - OCTOBER, 2021**

*Respected CA Suhas P. Bora sir was invited by Palande School, Shikrapur, Pune to share his valuable experiences in life and guide children for their brighter future.*



***We are proud of our students who voluntarily contributed for a social cause to Orphans at- The Salvation Army, Hope House, Pune***



Students distributed Diwali snacks and sweets and performed prayers and music for kids.

This was followed by distribution of Diwali snacks and sweets to street children at Market Yard.



*We are proud of our Team SPCM Strikers who secured third place at Archers Wealth CA Inter firm Box cricket !*





*We are proud of Omkar P. Karatiya for receiving best fielder of the tournament award.*





**DUE DATE CALENDER**

**Income Tax, PF and ESIC due date calendar for the month of November, 2021:**

DATE	DUE DATE FOR
07/11/2021	Payment of TDS/TCS deducted /collected in October, 2021.
14/11/2021	Due date for issue of TDS Certificate for tax deducted under Section 194A in the month of September, 2021.
14/11/2021	Due date for issue of TDS Certificate for tax deducted under Section 194B in the month of September, 2021
14/11/2021	Due date for issue of TDS Certificate for tax deducted under Section 194M in the month of September, 2021
15/11/2021	Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending September 30, 2021.
15/11/2021	E-payment of PF and ESI for October, 2021.
30/11/2021	Last date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB, 194M in the month of October, 2021


**GST due dates for the month of November, 2021:**

Due date	Return	Period	Description
10 <sup>th</sup> November	GSTR-7 (Monthly)	Oct'21	Summary of Tax Deducted at Source (TDS) and deposited under GST laws
	GSTR-8 (Monthly)	Oct'21	Summary of Tax Collected at Source (TCS) and deposited by E-commerce operators under GST laws
11 <sup>th</sup> November	GSTR-1 (Monthly)	Oct'21	Summary of outward supplies where turnover exceeds Rs. 5 crore or have not chosen the QRMP scheme for the quarter of Oct-Dec 2021
13 <sup>th</sup> November	Furnishing Invoices in IFF Facility (Oct)	Oct-Dec	Taxpayer who has opted for the Invoice Furnishing Facility (IFF) and choose to upload B2B outward supply invoices for first two months of the quarter. The B2B invoices relating to last month of the quarter are to uploaded while filing GSTR – 1 along with B2C invoices of entire quarter.
13 <sup>th</sup> November	GSTR-6	Oct-21	Details of ITC received and distributed by ISD
20 <sup>th</sup> November	GSTR-3B	Oct'21	Summary of outward supplies, ITC claimed, and net tax payable for taxpayers with turnover more than Rs.5 crores in the last FY or have not chosen the QRMP scheme for the quarter of Oct-Dec 2021
20 <sup>th</sup> November	GSTR-5 (Monthly)	Oct'21	Summary of outward taxable supplies & tax payable by a non-resident taxable person
20 <sup>th</sup> November	GSTR-5A (Monthly)	Oct- 21	Summary of outward taxable supplies and tax payable by OIDAR
25 <sup>th</sup> November	GST Challan For all Quarterly filers	Oct	GST Challan Payment if no sufficient ITC for Oct 2021, (for all Quarterly Filers)

**ANALYSIS OF NEW PROVISIONS RELATING TO PARTNERSHIP  
FIRM- SEC. 9B AND 45(4) OF THE INCOME TAX ACT 1961****A. PROVISIONS APPLICABLE PRIOR TO 1.04.2020**

Where partner receives cash or property on dissolution or reconstitution of the firm, the income tax implication in the hands of the partner and the firm have been completely changed by the Finance Act, 2021.

Earlier section 45(4) of the Act provided for a tax on distribution of any capital asset to the partner by the Partnership generally, on retirement of the partner or dissolution of the firm. There was no explicit provision dealing with the transfer of money whether on excess of capital or otherwise stock in trade by the partnership firm. Various judicial decisions of the Apex court, High Court and Tribunals have held that withdrawal of cash even in excess of capital balance of partner at the time of retirement was not liable to tax as, section 45(4) of the Act is triggered only in the case of transfer of a capital asset by a firm to its partner, reliance is placed upon the decision in the case of CIT vs, Dynamic Enterprises 359 ITR 83 and PCIT vs Electroplast Engineers (2019) TS 168 Bombay HC.

In following cases it was held that section 45(1) is not attracted at the time of retirement of partner and the amount received by the partner on retirement is only working out rights of the partner and therefore said amount is not taxable.

- a. ACIT vs Mohanbhai Pamabhai 165 ITR 166 (SC)
- b. CIT vs R. Lingmallu Raghukumar 247 ITR 801 (SC)
- c. CIT vs Mohanbhai Pamabhai 91 ITR 393 (GUG HC)

The above settled position which has been accepted by various court including Apex court has been unsettled and there is a complete paradigm shift in the provisions. What is more disturbing is that the amendments apply retrospectively, something which the present government was against one point of time, while being in the opposition, and was being referred to as “Tax Terrorism”

In this article, analysis of the amended provision is discussed.

**B. AMENDED PROVISIONS :****1. SECTION 9B OF INCOME TAX ACT:-**

Finance Act, 2021 introduced a new section, section 9B under income tax act which specifies the provision related to **transfer of Capital Assets or stock in trade on Reconstitution or Dissolution** of Firm / AOP, etc.

**• Section 9B of Income Tax Act is re-produced as under:**

*“9B (1) Where a specified person receives during the previous year any capital asset or stock in trade or both from a specified entity in connection with the dissolution or reconstitution of such specified entity, then the specified entity shall be deemed to have transferred such capital asset or stock in trade or both, as the case may be, to the specified person in the year in which such capital asset or stock in trade or both are received by the specified person.*

*(2) Any profits and gains arising from such deemed transfer of capital asset or stock in trade or both, as the case may be, by the specified entity shall be—*

*(i) deemed to be the income of such specified entity of the previous year in which such capital asset or stock in trade or both were received by the specified person; and*

*(ii) chargeable to income-tax as income of such specified entity under the head "Profits and gains of business or profession" or under the head "Capital gains", in accordance with the provisions of this Act.*

*(3) For the purposes of this section, fair market value of the capital asset or stock in trade or both on the date of its receipt by the specified person shall be deemed to be the full value of the consideration received or accruing as a result of such deemed transfer of the capital asset or stock in trade or both by the specified entity.*

*(4) If any difficulty arises in giving effect to the provisions of this section and sub-section (4) of [section 45](#), the Board may, with the approval of the Central Government, issue guidelines for the purposes of removing the difficulty.*

*(5) Every guideline issued by the Board under sub-section (4) shall, as soon as may be after it is issued, be laid before each House of Parliament, and shall be binding on the income-tax authorities and on the assessee.*



*Explanation.—For the purposes of this section,—*

- (i) *"reconstitution of the specified entity" means, where—*
- (a) *one or more of its partners or members, as the case may be, of such specified entity ceases to be partners or members; or*
  - (b) *one or more new partners or members, as the case may be, are admitted in such specified entity in such circumstances that one or more of the persons who were partners or members, as the case may be, of the specified entity, before the change, continue as partner or partners or member or members after the change; or*
  - (c) *all the partners or members, as the case may be, of such specified entity continue with a change in their respective share or in the shares of some of them;*
- (ii) *"specified entity" means a firm or other association of persons or body of individuals (not being a company or a co-operative society);*
- (iii) *"specified person" means a person, who is a partner of a firm or member of other association of persons or body of individuals (not being a company or a co-operative society) in any previous year.]”*

• **ANALYSIS OF SECTION 9B OF INCOME TAX ACT:**

**1.1 Applicability.**

Provision of section 9B will be applicable if the following conditions are satisfied;

- There should be a **Specified entity**
- There should be a **Specified Person**
- Transfer of **Capital Assets / Stock in trade / both**
- In connection with the **dissolution / reconstitution.**

**1.2. If the above conditions are fulfilled;**

- Such transfer is said to be **Deemed Transfer**
- Profit & Gain on such deemed transfer shall be **deemed to be an income of such Specified entity.**
- Deemed income shall be recognized in the previous year in which specified person received such capital assets or stock in trade or both. **(i.e., Income in the year of receipt).**



- Nature of income shall be determined as per the nature of assets (**Taxed either as Capital Gain or as PGBP Income**).
- FULL VALUE OF CONSIDERATION = **FMV OF CA / SIT** on the date of receipt of such assets. (**DEEMED CONSIDERATION**).

### 1.3. What is Reconstitution Stands for:

Reconstitution means:

a. One or more members ceases to be partners/members of such specified entities.

E.g.; – ABC is a partnership firm, in which A B & C is a partner if any of the partners let's say B ceases to be a partner either through retirement or otherwise, then the said situation covered under reconstitution of the firm.

b. One or more person admitted as a partner in the already existing specified entity in which one or more partners of a specified entity before a change continue to be a partner of such specified entity.

E.g.; –XYZ is a partnership firm, in which A B & C is a partner, if D is admitted as a partner while partner A, B, C continues to be a partner of such entity then such case shall be fall under b. and the said case shall be a reconstitution of the firm.

c. All or either of the partners of the specified entity continues with the change of their respective share.

E.g.; –XYZ is a partnership firm, in which x,y and z is a partner having 1/3 profit sharing ratio if all the partner agrees to change the share of all/ either of the partner, let's say c share shall be decreased to 30% and X and Y share shall increase to 35 % each than the said case fall under c, and it is said to be reconstitution.

E.g.: -XYZ is a partnership firm, in which X Y and Z partner, wants to retire and partner D E F want to admit as a partner, in the current scenario, It is not the case of reconstitution as existing partner before change shall not continue as partners after the change.

- 1.4** Section 9B is a **deeming provision**, which enables certain income will be taxable in the hand of a **specified entity**.



It is not a computation provision, for computation provision of PGBP or Capital gain will apply.

**1.5.** On the death of a partner, a legal heir is entitled to deceased partner's share, it is not a case of reconstitution, as reconstitution exists only in case of admission, retirement, or change in psr.

**1.6. What is Dissolution;**

As per case law (CIT vs Pigot Chapman & Co), A dissolution brings partnership comes to an end.

Where there are only two partners, and on the death of one partner, the firm is deemed to have dissolved as per case law (Mohd Laiquiddin vs Kamaladevi Mishra).

Where there are only two partners, and one of the partners is retire, and the existing partner continues their business as a proprietor then the firm is deemed to have been dissolved (ITO vs Om Namah Shivay builders & Developers).

**1.7. What is Capital Asset?**

It is defined under **section 2 (14)** for the purpose of section 9B.

An asset which is not an asset as per section 2(14), then the said asset is not a capital asset for the purpose of section 9B. it includes either movable, immovable, or actionable claims but does not include Stock in trade, Personal effects other than jewelry, Agricultural land, Gold Bond, and special bearer bond. **(That's why Government Specifically put Stock in Trade specifically in Section 9B).**

**1.8. What is Deemed Transfer**

Transfer of Capital asset or stock in trade by a specified entity to a specified person in the event of reconstitution or dissolution is treated as deemed transfer. It overruled various judgment which held that Distribution, division, or allotment of assets by partnership firm upon dissolution or reconstitution is nothing but mutual adjustment of rights between partners.

Remember In case of reconstitution or dissolution, for applying section 9B, there must be a transfer of a capital asset or stock in trade or both.

**1.9. Year of Transfer and Taxation.**



It is deemed to be transferred in the year, in which such capital asset or stock in trade is received by a specified person. And **shall be taxed on the hand of specified entity** in the year in which it is received by specified person.

**1.10. METHOD OF COMPUTATION**

Profit & gain on transfer of capital assets is chargeable to capital Gain, & all the provisions from section 45 to section 55A shall apply accordingly, except to the extent provision is in conflict with section 9B, as 9B is a special provision.

- Compute the gain as per **section 48**.
- Cost of acquisition shall be taken FMV as of 1. 04. 2001 if it is purchased before said date.
- The benefit of indexation shall be taken.

Profit & gain on transfer of stock in trade shall be computed in the manner provided in sections 28 to 44DB.

**1.11. SECTION 48**

Section 48 provides for the mode of computation of capital gain which is as follows.

**Computation of capital gain under section 9B read with rule 48(iii) shall be as follows**

Manner of computation		
	The full value of the consideration received or accrued (fair market value of capital assets) (Section 9B does not deal with money Section 45(4) does	XXX
Less: -	Expenditure incurred wholly and exclusively in connection with the transfer;	XXX
Less: -	Cost of acquisition/indexed cost of acquisition;	XXX
Less: -	Cost of improvement/indexed cost of improvement; and	XXX
Less: -	The amount chargeable to tax as income of specified entity under section 45(4) which is attributable to the capital asset being transferred by the said entity [section 48(iii)]	XXX
	Capital Gain	XXX



Clause (iii) of section 48 has been inserted by finance act 2021, which provide that if any money or capital asset is received by a specified person from a specified entity, then the amount chargeable to income-tax as income of such specified entity under section 45(4), which is attributable to the capital asset being transferred by the specified entity, shall be calculated in the prescribed manner and shall be allowed as a deduction in computing capital gains.

The amount which is chargeable to tax under section 45(4) shall be reduced for calculating capital gain under section 9B to avoid double taxation, that's why 48(iii) has been introduced in finance Act 2021

Section 9B (3) provides that FMV of capital assets or stock in trade shall be deemed to be full consideration for the purpose of computing capital gain or PGBP, hence Section 50C, 50 CA, and 43CA shall not be applied.

### 1.12. Rate of Tax

The rate of tax will be determined on the basis of the nature of capital assets transferred & their period of holding. Hence it may be liable to charge tax at a concessional rate as provided in section 111A or section 112A subject to the fulfillment of a condition

## 2. SECTION 45 (4) OF INCOME TAX ACT:-

- **Section 45(4) of Income Tax Act is re-produced as under:**

*“45(4) Notwithstanding anything contained in sub-section (1), where a specified person receives during the previous year any money or capital asset or both from a specified entity in connection with the reconstitution of such specified entity, then any profits or gains arising from such receipt by the specified person shall be chargeable to income-tax as income of such specified entity under the head "Capital gains" and shall be deemed to be the income of such specified entity of the previous year in which such money or capital asset or both were received by the specified person, and notwithstanding anything to the contrary contained in this Act, such profits or gains shall be determined in accordance with the following formula, namely:—*

$$A = B + C D$$

*Where,*



*A = income chargeable to income-tax under this subsection as income of the specified entity under the head "Capital gains";*

*B = value of any money received by the specified person from the specified entity on the date of such receipt;*

*C = the amount of fair market value of the capital asset received by the specified person from the specified entity on the date of such receipt; and*

*D = the amount of balance in the capital account (represented in any manner) of the specified person in the books of account of the specified entity at the time of its reconstitution:*

**Provided** that if the value of "A" in the above formula is negative, its value shall be deemed to be zero :

**Provided further** that the balance in the capital account of the specified person in the books of account of the specified entity is to be calculated without taking into account the increase in the capital account of the specified person due to revaluation of any asset or due to self-generated goodwill or any other self-generated asset.

*Explanation 1.—For the purposes of this sub-section,—*

- (i) the expressions "reconstitution of the specified entity", "specified entity" and "specified person" shall have the meanings respectively assigned to them in [section 9B](#);*
- (ii) "self-generated goodwill" and "self-generated asset" mean goodwill or asset, as the case may be, which has been acquired without incurring any cost for purchase or which has been generated during the course of the business or profession.*

*Explanation 2.—For the removal of doubts, it is clarified that when a capital asset is received by a specified person from a specified entity in connection with the reconstitution of such specified entity, the provisions of this sub-section shall operate in addition to the provisions of [section 9B](#) and the taxation under the said provisions thereof shall be worked out independently.]*

## **ANALYSIS**

### **2.1.Applicability:**

Provisions of section 45(4) of the Act are applicable, if the following conditions are satisfied;



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- There should be a specified person
- There should be a specified entity
- Transfer of capital assets or **money** or both
- From specified entity to specified person.
- During the previous year
- In connection with the **reconstitution** of a specified entity.

## 2.2 Non-Applicability:

- Not applicable in case of dissolution
- Not applicable for transfer of stock in trade.

## 2.3 Implication:

- Any profit or gain on transfer of such assets to the **specified person** shall be chargeable to income tax as the **income of specified entity**.
- Deemed to be the income in the year of receipt of such assets by the specified assets.
- Such profits shall be treated as **CAPITAL GAIN**.

## 2.4. FORMULA FOR COMPUTATION OF CAPITAL GAIN

$$A = B + C - D$$

- A = Income of specified entity which is to be calculated for charging capital gain.
- B = Value of money on the date of receipt.
- C = FMV of capital assets on the date of receipt.
- D = Amount of capital balance of the specified person which is appeared in their capital account on the date of reconstitution.

We Calculate capital account of a specified person without taking effect of an increase in capital account on account of following reason namely:

- Due to the revaluation of assets.
- Due to self-generation of goodwill.
- Due to other self-generated assets. (Proviso to section 45(4))

It comes with Notwithstanding effect whatever mentioned in Section 45(1).



**3. COMPARISON BETWEEN S9B AND 45(4)**

9B	45(4)
It would apply upon receipt of capital asset or stock-in-trade or both by a partner from the firm on the dissolution or reconstitution of a firm	It would apply upon receipt of capital asset or cash or both by a partner from the firm in connection with reconstitution of the firm
Allotment of stock-in-trade is covered	Allotment of stock-in-trade is not covered
For the purpose of computation under Section 9B, FMV is deemed to be FVC and computation would be in accordance with Chapter IV-C or D i.e. 'Profits and gains of business or profession' or 'Capital Gains'	Computation mechanism is given under Section 45(4) in the form of formula

**4. Following tabulation will clearly give a picture as to when the section 9B and/or 45(4) will be applicable**

Incidence	9B	45(4)
Reconstitution	✓	✓
Dissolution	✓	✗
Cash to partner	✗	✓
Capital asset to partner	✓	✓
Stock in trade to partner	✓	✗

**5. In case of compulsory dissolution of the firm having fixed assets as well as current assets where there are only two partners (father and son) and one of the partner i.e. father expires and the son being the only legal heir received the share of his deceased father. In this scenario, tax implication under the provision of section 45(4) and 9B of the Act will be as under:**

- a. The Hon'ble Supreme Court in the case of MohdLaiquiddin v. Kamala Devi Misra (Dead) by L.Rs. and Ors. (2010) 2 SCC 407 placed its reliance on the decision of the Hon'ble Madras High



Court in the case of S. Parvathammal (Smt.) v. CIT [1987] 163 ITR 161 (Mad) (HC) and held that when there are only two partners constituting the partnership firm, on the death of one of them, the firm is deemed to be dissolved despite the existence of a clause which says otherwise. Therefore, the firm would be deemed to be dissolved.

Section 45(4) of the Income-tax Act, 1961 (Act) would be attracted in the case of a reconstitution of a specified entity. Whereas section 9B of the Act would be attracted in the case of a reconstitution and dissolution of a specified entity.

Therefore, in the given case, section 9B of the Act would be attracted. As per section 9B of the Act, the capital asset or stock-in-trade or both received by the partner from a firm on dissolution of the firm will be considered as a deemed transfer, and the firm shall be liable to tax on such transfers in accordance with the provisions of the Act.

6. In above article, its merely an attempt to analyze the newly amended provisions of section 9B and 45(4) of the Act. In our opinion, these amendments may create plethora of litigation in coming years and especially due to impact of retrospective applicability; thus, with the amended provisions, the settled position relating to retirement of a partner, which was accepted by various court including the Hon'ble Supreme Court has become uncertain now. In nutshell, income of one person getting taxed in the hands of other person is the unique feature of these amended provisions of taxation relating to partnership firm.

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***Things work out best for those who make the best of how things work out."***

**-John Wooden**



## GST

**GIST OF GST CIRCULARS**

Circular No	Date of issue	Subject	Clarification
164/2020-2021	06 <sup>th</sup> October 2021	Clarifications regarding applicable GST rates & exemptions on certain services.	<p>The issues have been examined by GST Council in the 45rd meeting of the Council held on 17th September, 2021. The issue-wise clarifications are given below:</p> <p><b>1. Services by cloud kitchens/central kitchens:</b> Service provided by way of cooking and supply of food, by cloud kitchens/central kitchens are covered under „restaurant service“, as defined in notification No. 1/2017- Central Tax (Rate) and attract 5% GST [without ITC].</p> <p><b>2. Supply of ice cream by ice cream parlors</b> ice cream parlors sell already manufactured ice-cream and do not cook/prepare ice-cream for consumption like a restaurant, it is supply of ice cream as goods and not as a service, even if the supply has certain ingredients of service. Accordingly, it is clarified that ice cream sold by a parlor or any similar outlet would attract GST at the rate of 18%.</p> <p><b>3. Coaching services supplied by coaching institutions and NGOs under the central sector scheme of ‘Scholarships for students with Disabilities’</b> Where total expenditure is borne by the Government is covered under entry 72 of notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017 and hence exempt from GST.</p> <p><b>4. Satellite launch services provided by M/s New Space India Limited (NSIL).</b> It has been clarified vide Circular No. 2/1/2017-IGST dated 27.09.2017 that Place of Supply (PoS) of satellite launch services supplied by ANTRIX Corporation Ltd to customers located</p>



Circular No	Date of issue	Subject	Clarification
			<p>outside India is outside India and such supply which meets the requirements of section 2(6) of IGST Act, constitutes export of service and shall be zero rated. If the service recipient is located in India, the satellite launch services would be taxable.</p> <p><b>5. GST on Overloading charges at toll plazas</b> would get the same treatment as given to toll charges. Entry 23 of notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017, exempts Service by way of access to a road or a bridge on payment of toll charges.</p> <p><b>6. Renting of vehicles to State Transport Undertakings and Local Authorities</b> Services where the said vehicles are rented or given on hire to State Transport Undertakings or Local Authorities are eligible for the exemption irrespective of whether such vehicles are run on routes, timings as decided by the State Transport Undertakings or Local Authorities and under effective control of State Transport Undertakings or Local Authorities which determines the rules of operation or plying of vehicles.</p> <p><b>7. Services by way of grant of mineral exploration and mining rights.</b> The service by way of grant of mining rights, during the period 1.7.2017 to 31.12.2018, it was taxable at 18% in view of principle laid down in the 14th meeting of the Council for residuary GST rate. Post, 1st January, 2019 no dispute remains as stated above.</p> <p><b>8. Admission to indoor amusement parks having rides etc.</b> 28% rate [entry 34 (iia)] applies on admission to a place having casino or race club [even if it provides certain other activities] or admission to a sporting event like IPL. On the other hand, Entry 34 (iii), having a rate of 18%, covers all other cases of admission to amusement parks, or theme park etc or any place having joy rides,</p>



Circular No	Date of issue	Subject	Clarification
			<p>merry- go rounds, go- carting etc, whether indoor or outdoor, so long as no access is provided to a casino or race club. This clarification will also apply to Entries 34(iii) and 34(iia) as they existed prior to their amendment w.e.f 01.10.2021.</p> <p><b>9. Services supplied by contract manufacturers to brand owners for manufacture of alcoholic liquor for human consumption.</b> The expression “food and food products” excludes alcoholic beverages for human consumption. As such, in common parlance also alcoholic liquor is not considered as food. Accordingly, services by way of job work in relation to manufacture of alcoholic liquor for human consumption are not eligible for the GST rate of 5% prescribed under the said entry. GST Council recommended that such job work would attract GST at the rate of 18%.</p>
163/2020-2021	06 <sup>th</sup> October 2021	Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 45th meeting held on 17th September, 2021 at Lucknow-reg.	<p>Based on the recommendations of the GST Council in its 45th meeting held on 17<sup>th</sup> September, 2021, at Lucknow, clarification, with reference to GST levy, related to the following are being issued through this circular:</p> <ul style="list-style-type: none"> <li>i. Fresh vs dried fruits and nuts;</li> <li>ii. Classification and applicable GST rates on Tamarind seeds;</li> <li>iii. Coconut vs Copra;</li> <li>iv. Classification and applicable GST rate on Pure henna powder and leaves, having no additives;</li> <li>v. Scented sweet supari and flavored and coated illaichi;</li> <li>vi. Classification of Brewers’ Spent Grain (BSG), Dried Distillers’ Grains with Soluble [DDGS] and other such residues and applicable GST rate;</li> <li>vii. GST rates on goods [miscellaneous pharmaceutical products] falling under heading 3006;</li> <li>Circular No. 163/19/2021-GST</li> <li>viii. Applicability of GST rate of 12% on all laboratory reagents and other goods falling under heading 3822;</li> <li>ix. Requirement of Original/ import Essentiality</li> </ul>



Circular No	Date of issue	Subject	Clarification
			certificate, issued by the Directorate General of Hydrocarbons (DGH) on each inter-State stock transfer of goods imported at concessional GST rate for petroleum operations; x. External batteries sold along with UPS Systems/ Inverter; xi. Specified Renewable Energy Projects; xii. Fiber Drums, whether corrugated or non-corrugated.

***"Opportunities don't happen, you create them."***

-Chris Grosser

***"Try not to become a person of success, but rather try to become a person of value."***

-Albert Einstein

***"Great minds discuss ideas; average minds discuss events; small minds discuss people."***

-Eleanor Roosevelt

**GST UPDATES****1. New Tool for E-invoice Preparation:**

GePP on Line Application Available in Beta Version: "GST e-Invoice Preparing and Printing" is an online application for GST Invoice Entry, generation of IRN and printing of invoice. The application can be used on a mobile device and also in offline mode. The application is designed to enable the users to enter invoice details using simple forms and generate IRN on click of a button. The seamless integration of GePP-On with e-Invoice portal will help the taxpayers having few invoices to register, in generating IRN without API Integration or using bulk upload option in the portal. Use the credentials (username/password) as registered in e-Invoice portal (<https://einvoice1.gst.gov.in>)

**2. GSTN to soon make enhanced facilities of GST Return, Refund, Registration available on GST portal:****Returns**

- Auto-Interest Computation in R-3B/CMP-8/R-5
- Negative Liability in GSTR-3B
- Changes in Comparison Report

**Refunds**

- Converting IGST Refund withheld cases at ICEGATE into RFD-01
- Refund of Advances paid but supplies not made under development
- Refund to be filed by the Unregistered person under development

**Registration**

- Mandating Aadhaar Authentication at BO for the taxpayers applying for —Refund and Revocation application
- Additional document upload functionality for taxpayer in GST REG 05/REG19/REG20 and to show uploaded document to BO



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- Temp ID —search functionality, enhancements like —reset password, change email /mobile number and link it with new registration process.
- Enabling EVC option even for Companies/ LLP in registration module
- Geo-Spatial data Integration for taxpayers to help declaring correct address

**Miscellaneous**

- Advance Ruling Search Functionality
- Appeal, Rectification of Mistakes and Appeal Effect related Functionalities
- Recon and on demand call APIs for Bills of Entry data of Customs
- Front Office Revamp to improve tax payers experience
- AATO and validations in return, registration etc.
- Removal of Contact Details — Mobile No. and e-mail from Search Taxpayers.

**3. CBIC Clarification Regarding Applicability Of GST Rates &Exemption:**

•**GST on Hitherto, Corrugated Boxes and Cartons** has been@ 12% Corrugated boxes and cartons, falling under heading 4819 attracted GST at the rate of 12% (entry 122 of 12% rate schedule), while other cartons falling under this heading attracted GST at the rate of 18%.

•**Clarification regarding fresh and dried fruits and nuts gst applicability:**

At present, fresh nuts (almond, walnut, hazelnut, pistachio, etc) falling under heading 0801 and 0802 are exempt from GST, while dried nuts under these headings attract GST at the rate of 5% or 12%. The general Explanatory Notes to chapter 08 mentions that this chapter covers fruit, nuts intended for human consumption. They may be fresh (including chilled), frozen (whether or not previously cooked by steaming or boiling in water or containing added



sweetening matter), or dried (including dehydrated, evaporated, or freeze-dried). Thus, the HS chapter differentiates between fresh, frozen, and dried fruits and nuts. Fresh fruit and nuts would thus cover fruit and nuts which are meant to be supplied in the state as plucked. They continue to be fresh even if chilled. However, fruit and nuts do not qualify as fresh, once frozen (cooked or otherwise), or intentionally dried to dehydrate, including through sun drying, evaporation or freezing, for supply as dried fruits or nuts. It may be noted that in terms of note 3 to Chapter 8, dried fruits, even if partially rehydrated, or subject to preservation say by moderate heat treatment, retain the character of dried fruits or dried nuts. Therefore, exemption from GST to fresh fruits and nuts covers only such products which are not frozen or dried in any manner as stated above or otherwise processed. Supply of dried fruits and nuts, falling under heading 0801 and 0802 attract GST at the rate of 5% or 12% as specified in the respective rate Schedules.

**•GST on heena powder**

It has been clarified that pure henna powder and henna leaves, having no additives, are classifiable under tariff item 1404 90 90 and shall attract a GST rate of 5%.

**•GST rate on mehndi paste**

The GST rate on mehndi paste in cones falling under heading 1404 and 3305 shall be 5%.

**•GST on illaichi**

The circular stated that flavored and coated illaichi generally consists of Cardamom Seeds, Aromatic Spices, Silver Leaf, Saffron, Artificial Sweeteners. It is distinct from illaichi or cardamom (which falls under heading 0908). It is clarified that flavored and coated illaichi is a value-added product and falls under sub-heading 2106. It accordingly attracts GST at the rate of 18%.

**•GST on fiber drum**

Disputes have arisen as regards applicable GST on fiber drums, which is partially corrugated (as to whether it can be treated as corrugated or otherwise). This dispute gets resolved on account of the



recommendation of the GST Council, in its 45th meeting, to prescribe a uniform GST rate of 18% on all goods classifiable under heading 4819 (with effect from 1st October 2021 under S. No. 153A of Schedule III of notification No.1/2017-Central Tax (Rate) dated 28.6.2017). “For the period prior to 1.10.2021, the Council upon taking note of the fact that there was ambiguity regarding the GST rates applicable on a Fibre Drums, because of its peculiar construction (partially corrugated), has decided that supplies of such Fibre Drums even if made at 12% GST (during the period from 1.7.2017 to 30.9.2021), would be treated as fully GST-paid. Therefore, no action for recovery of differential tax (over and above 12% already paid) would arise. However, as this decision has only been taken to regularize the past practice in view of certain ambiguity, as detailed in para 14.1, no refund of GST already paid shall be allowed if already paid at 18%,” the CBIC in the circular clarified.

#### **4. GSTN is not allowing for Preparation of E-Way Bill if IRN is generated 2 days prior:**

The GSTN has been displaying errors for the preparation of E-Way bill if IRN is generated 2 days prior. It is noteworthy that the restriction which is in the form of error shown on the GST portal imposed by the GSTN. Taxpayers are facing acute difficulty in preparing the E-Way bills if the IRN has been generated 2 days prior. “GSTN is not allowing to prepare E-Way bill if IRN is generated 2 days before.

#### **5. GST Advisory On Availability Of ITC For F.Y.2020-21:**

- As per Section 16(4) of CGST Act, 2017, no taxpayer shall take input tax credit in respect records (invoices and debit notes) for supply of goods or services (or both) for Financial Year 2020-21 after the due date of furnishing the return for the month of September 2021. The due date for the GSTR-3B for September 2021 is either 20th October 2021 for monthly filers and 22nd or 24th October 2021 depending on the State/UT of registration of the taxpayer. In view of the same, the following may kindly be noted:

- (i) Records (invoice or debit notes) pertaining to Financial Year 2020-21 reported in GSTR-1 after due date of GSTR-3B of September 2021 will not reflect as “ITC Available” in GSTR-2B of the recipients. Such records will reflect in “ITC Not Available” section of



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GSTR-2B and such ITC shall in turn not be auto-populated in GSTR-3B

- (ii) Records (invoice or debit notes) pertaining to Financial Year 2020-21 reported in GSTR-1 after due date of GSTR-3B of September 2021 will also not reflect as “ITC as per GSTR-2A” in Table-8A of GSTR-9 of the recipients.

- It is requested that the taxpayers may take note of the above and ensure that their records pertaining to Financial Year 2020-21 are reported on or before the due date of their GSTR-3B for the month September 2021, or for the quarter of July to September 2021 in case of quarterly GSTR-3B filers. Availment of ITC by the recipients contrary to the legal provisions in GST may entail action by the tax administrations in accordance with law

**6. Job work return Form ITC-04 on Inputs/Capital Goods sent to or Received from a Job Worker to be filed before 25th October for the period 1st July to 30th sep-2021:**

The GST Taxpayers has to file Form ITC-04 in respect of inputs/capital goods sent to or received from a job worker. The due date for filing Form ITC-04 in respect of inputs/capital goods sent to a job worker or received from a job worker, during the quarter from July to September 2021 is October 25, 2021.

**7. GSTR-2B can viewed by the tax payer after the due date of GSTR-1 available in GST Portal till Afternoon of 14th of every month:**

- The GSTN has issued the Advisory for taxpayers on Form GSTR-2B wherein it was stated that availability of ITC will be made available to the taxpayers in the Afternoon of 14th of every month.

**Contents of Input in From 2B:**

- All the B2B information/documents filed by suppliers in their monthly or quarterly GSTR-1, IFF and GSTR-5 filed by NRTP taxpayers.
- Information filed by ISD taxpayers in their GSTR-6.



- Information of ITC of IGST paid on import of goods filed in ICEGATE.
- ITC Available Summary is captured in Table-3 of GSTR-2B which shows the ITC available as on the date of generation of FORM GSTR-2B. It is divided into following parts:
  - A.** Part A captures the summary of credit that may be availed in relevant tables of FORM GSTR-3B.
  - B.** Part B captures the summary of credit that shall be reversed in relevant table of FORM GSTR-3B.
- ITC not-available summary is captured in Table 4 of GSTR-2B which shows the summary of ITC not available as on the date of generation of FORM GSTR-2B, under the specific scenarios detailed at Sr. No. 11 below. Credit reflected in this table shall not be entered in Table 4(A) of FORM GSTR-3B
- Credit shown as “ITC Not available” in Table 4, Part A covers the following scenarios only: -
  - i. Invoice or debit note for supply of goods or services or both where the recipient is not entitled to input tax credit as per the provisions of sub-section (4) of Section 16 of CGST Act, 2017.
  - ii. Invoice or debit note where the Supplier (GSTIN) and place of supply are in the same State while recipient is in another State.
 However, there may be other scenarios for which Input Tax Credit may not be available to the taxpayers as per other legal provisions. Taxpayers are advised to exercise caution and self-assess & reverse such credit in their FORM GSTR-3B.

#### **8. CBIC Notified that Permanent Transfer of IPRs attracts 18% GST:**

The CBIC has notified that permanent transfer of IPRs attracts 18% GST. In exercise of the powers conferred by sub-section (1) of section 9 and subsection (5) of section 15 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the further amend the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.1/2017-Central Tax (Rate), dated the 28th June, 2017. In the said notification, in Schedule II – 6%, S. No. 243 and the entries relating thereto shall be omitted. Further, in Schedule III 9%, against S. No. 452P, in column (3), the words “in



respect of Information Technology software” shall be omitted. The above mentioned changes are applicable on Integrated Goods and Service Tax (IGST), Central Goods and Service Tax (CGST) and Union Territory Goods and Service Tax (UTGST)

### 9. CBIC issues Guidelines for disallowing Debit of Electronic Credit Ledger under GST:

- The CBIC vide **CBEC-20/16/05/2021-GST/1552** dated **November 02, 2021** issued guidelines for disallowing debit of electronic credit ledger under Rule 86A of the Central Goods & Services Tax Rules, 2017 (“**CGST Rules**”).
- The reasons for such belief must be based only on one or more of the following grounds:
  - a) The credit is availed by the registered person on the invoices or debit notes issued by a supplier, who is found to be non-existent or is found not to be conducting any business from the place declared in registration.
  - b) The credit is availed by the registered person on invoices or debit notes, without actually receiving any goods or services or both.
  - c) The credit is availed by the registered person on invoices or debit notes, the tax in respect of which has not been paid to the government.
  - d) The registered person claiming the credit is found to be non-existent or is found not to be conducting, any business from the place declared in registration.
  - e) The credit is availed by the registered person without having any invoice or debit note or any other valid document for it.

The including the nature of prima facie fraudulently availed or ineligible input tax credit and whether the same is covered under the grounds mentioned in sub-rule (1) of rule 86A and whether disallowing such debit of electronic credit ledger of a person is necessary for restricting him from utilizing/ passing on fraudulently availed or ineligible input tax credit to protect the interests of revenue

**10. Now e way bill details & SMS update through Sandes app only.**

- Sandes is an indigenous instant messaging platform developed by National Informatics Centre (NIC), to facilitate instant messaging communication. This app can be downloaded by anyone to Android or iOS mobile from Playstore and Appstore respectively and can be used for sending and receiving messages.
- Henceforth, e-waybill and e-invoice systems will send daily e-way bill and e-invoice statistics, alerts and notifications to the tax payers through Sandes and SMS to their registered mobile numbers. After few weeks, the messages through SMS will be stopped. Hence, all the users of the e-way bill and e-invoice systems are requested to install Sandes app on their registered mobile numbers.

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***"A successful man is one who can lay a firm foundation with the bricks others have thrown at him."***

*-David Brinkley*

***"No one can make you feel inferior without your consent."***

*-Eleanor Roosevelt*

***"What seems to us as bitter trials are often blessings in disguise."***

*-Oscar Wilde*

***"When you stop chasing the wrong things, you give the right things a chance to catch you."***

*-LollyDaska*

**MINISTRY OF CORPORATE AFFAIRS (MCA)****Frequently Asked Questions about Independent Directors under the Companies Act, 2013.****1. How to find Independent Directors?**

**Ans:** An independent director may be selected from a data bank containing names, addresses and qualifications of persons who are eligible and willing to Act as independent directors maintained by Indian Institute of Corporate Affairs at Manesar.

**2. Which topics will be part online proficiency self-assessment test?**

**Ans:** This test will be based on all relevant topics on functioning of an individual acting as an Independent Director, such as, Companies Law, Securities Law, Basic Accountancy and Corporate Governance.

**3. Who approve the Appointment of Independent Directors?**

**Ans:** The appointment of independent director shall be approved by the company in general meeting.

**4. What if Company failed to fulfill the Conditions of Appointment in later date?**

**Ans:** A company ceases to fulfill any of the conditions laid down for three consecutive years, it shall not be required to comply with the provisions until it meets the Conditions again.

Note: The paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account

**5. For how much time name can be include in Data Bank?**

**Ans:** Inclusion of name in the data bank can be for a period of one year or five years or for life-time by paying accordingly.

**6. How to apply for Renewal of Application?**

**Ans:** Application for renewal shall be filed within a period of thirty days from the date of expiry of the period.

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*The foundation stones of honesty, character, faith, integrity, love, and loyalty are necessary for a balanced success that includes health, wealth, and happiness. As you go onward and upward in life, you will discover that if you compromise any of these principles you will end up with only a beggar's portion of what life has to offer.*

*-ZigZiglar*

*"Taking responsibility - practicing 100 percent responsibility every day - is about seeing ourselves not as right or wrong, but as an agent, chooser, problem solver, and learner in the complex interrelationships of our lives so that we can better integrate with the people and world around us. When we do this, we enjoy a better and more productive way to live and lead."*

*-Christopher Avery*



# THANK YOU!

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