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The Institute of Chartered Accountant of India

VASAI BRANCH OF WIRC NEWSLETTER

www.vasai-icai.org

June 2021

CA Day
1st July 2021

CHAIRMAN'S COMMUNICATION

यद्यदाचरति श्रेष्ठस्तत्तदेवेतरो जनः।
स यत्प्रमाणं कुरुते लोकस्तदनुवर्तते॥

"Seeds of faith are always within us; sometimes it takes a crisis to nourish and encourage their growth."

Our esteemed Institute of Chartered Accountant of India ("Institute") completes its 72 years of existence and it is a proud moment for all of us. The Institute is constantly innovating, upgrading and making itself enriched for all of us. In return, we as the members also have the responsibility, in fact duty towards our Institute and such responsibility can be shared if we take interest in Institutes various activities, interact with each other and share our views.

1st July- Foundation Day was celebrated with lot of fanfare. Our branch has organized this time unique way to celebrate CA Day "VIRTUAL CA DAY CELEBRATION".

Past Events:

On the occasion of International Yoga Day, branch conducted 18 days' workshop under the guidance and expert of Mr. Vishnu Sharma, Yoga Therapist - Ministry of AYUSH certified Yoga Teacher and Evaluator

Vaccination Camp organised by branch in association with Bharat Vikas Parishad, Bhayandar and Saksham Foundation Bhayandar on 21st June 2021 for the benefit of Members, Students and their families. Thanks to Jupiter Hospital team for their support and cooperation in smooth conduct of campaign.

Branch conducted Virtual CPE Meeting under the guidance of Research Committee of ICAI on emerging topic Guide on Ethical issues involved in a Research. Thanks to Chairman CA. Anuj Goyal & Vice Chairman CA. Pramod Kumar Boob for giving us an opportunity to host above event.

Virtual CPE Meeting on Code of Ethics where renowned speaker CA. Amarjit Chopra (Past President, ICAI) enlighten the members with the area of Code of Conduct and Professional Ethics for CA.

Another VCM on Companies Act 2013, where in Chief Guest - CA. Anil Singhvi (Managing Editor – Zee Business) given opening remark followed by speaker of the session - CA. Durgesh Kabra (Central Council Member) highlight his views on Commonly found Non Compliance / Error Schedule II & III of Companies Act 2013

Remarkable VCM on Future of CA Profession, first time in branch history all Five Regional Chairman of ICAI came together on single platform shared their view with respect to CA Profession ahead.

Another VCM on Corporate Social Responsibility (CSR), wherein Chief Guest - Shri. Mangal Prabhat Lodha (Member of Maharashtra Legislature Assembly - Malabar Hill constituency of South Mumbai & Founder of Lodha Group Speaker - CA. Rajesh Mittal shared their experience and explain the importance of CSR in CA Profession especially in this pandemic situations.

International level VCM on Opportunities for CA in US & Canada, where CA. Sripal Jain share the opportunities in US & Canada for practicing CA, How to CPAs add value to CAs in practice and many more.

Last VCM of this month on Various Provision of TDS & TCS with learned speaker Adv. CA. S. Sriram covered the topic Special Focus on Section 43CA, 194Q, 206C (1H), 269SS, 269T.

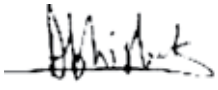
These are very small efforts when compared with the magnitude of the requirement. I request members to generously make voluntary contribution (https://cabf.icai.org/voluntaryMember) to the Chartered Accountants Benevolent Fund to enable us to extend maximum medical grant to the suffering Members and their dependents. Your valuable contribution can provide much needed help in time of financial stress.

Where on one hand, social and physical contacts are absent; our Institute has been able to continue walking on the path towards and into the hearts of our various stakeholders with the use of various digital channels.

I pay my sincere thanks to the entire Vasai Branch Managing Committee Members, Past Chairperson and all coordinator for playing a key role in an digital ambit of sharing, participating and keeping in touch with the stakeholders to fulfil their requirements which are also our own top-most priorities.

Noteworthy initiatives have been taken by our team, have served in the welfare of our stakeholders and have been instrumental in winning the trust.

Wishing all of you a good health! Stay Safe, Stay Healthy, and take care.



CA. Abhishek Tiwari
Chairman
Vasai Branch of WIRC of ICAI

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प्रवासी संदेश

मुंबई। शुक्रवार 11 जून 2021

PRAVASI SANDESH

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वसई ब्रांच आईसीएआई के लॉकडाउन में अंतराष्ट्रीय स्तर के अनेक वेबिनार आयोजित

■ प्रवासी संदेश टीम।

भायंदर। मैक्सस मॉल स्थित आईसीए मआई की वसई ब्रांच द्वारा कोरोनाकाल और लॉकडाउन में अनेक अंतराष्ट्रीय स्तर के वेबिनार का आयोजन किया गया।

ब्रांच के चेयरमैन सीए अभिषेक तिवाडी ने बताया कि पिछले 60 दिनों में 20 से भी ज्यादा वेबिनार किए गवे, जिसमे 5000 से भी ज्यादा चार्टर्ड अकाउंटेंट ने रजिस्ट्रेशन करवाया और इस वेबिनरो से सभी टैक्सेशन , ऑडिट और विभिन्न विषयो का अध्ययन हुआ । ब्रांच की इतिहास में पहेली बार सिंगापुर , कनाडा, मिडिल ईस्ट कन्ट्रीज और कतर से स्पीकर जुड़े । वसई ब्रांच में ऐसे आयोजन करने में पूरी टीम की भूमिका अहम रही । पिछले 20 प्रोग्राम मे 25 से भी ज्यादा कोऑर्डिनेटर ने बहुत ही लग्न के साथ प्रोग्राम को नई ऊंचाई प्रदान की । वसई ब्रांच के कार्यशैली की प्रशंसा राजस्थान के रतनगढ़ के विधायक अभिनेष महर्षि भी कर चुके है और उन्होंने कहा, देश की अर्थव्यवस्था में चार्टर्ड अकाउंटेंट का अहम

योगदान बताया है ।

सचिव सीए लोकेश कोठारी ने कहा कि महाराष्ट्र में लॉकडाउन के बावजूद ब्रांच के चेयरमैन ने वसई ब्रांच को नया आयाम दिया। सीए अंकित राठी ने कहा कि आगामी 6 महीनों तक निरंतर ऐसे आयोजन होने चाहिए । वाईस चेयरमैन सी ए सौरभ अग्रवाल ने सभी का धन्यवाद अदा किया ब्रांच नॉमिनी सी ए ललित बजाज और सी ए विमल अग्रवाल ने ब्रांच के कार्यो की सराहना की। प्रोग्राम को सफल बनाने में कमिटी मेंबर सीए विजेंद्र जैन और सीए अमित अग्रवाल का विशेष योगदान रहा।

नवभारत

वसई ब्रांच ICAI का वेबिनार

भायंदर, नवभारत न्यूज नेटवर्क. भायंदर मैक्सस मॉल स्थित आईसीएआई की वसई ब्रांच द्वारा कोरोना काल और लॉकडाउन में कई अंतराष्ट्रीय स्तर के वेबिनार का आयोजन किए गए. ब्रांच के युवा चेयरमैन सीए अभिषेक तिवाडी ने बताया कि पिछले 60 दिनों में 20 से भी ज्यादा वेबिनार किए गए, जिसमें 5000 से भी ज्यादा चार्टर्ड अकाउंटेंट ने रजिस्ट्रेशन करवाया और इस वेबिनारों से सभी टैक्सेशन, ऑडिटऔर विभिन्न विषयों का अध्ययन हुआ. ब्रांच के इतिहास में पहली बार सिंगापुर, कनाडा, मिडिल ईस्ट और कतर से स्पीकर जुड़े. पिछले 20 प्रोग्राम में 25 से भी ज्यादा कोऑर्डिनेटर ने मार्गदर्शन किया. वसई ब्रांच की कार्यशैली की प्रशंसा राजस्थान के रतनगढ़ के विधायक अभिनेष महर्षि भी कर चुके हैं. उन्होंने कहा देश की अर्थव्यवस्था में चार्टर्ड अकाउंटेंट का अहम योगदान है.

दिया नया आयाम

सचिव सीए लोकेश कोठारी ने कहा कि महाराष्ट्र में लॉकडाउन के बावजूद ब्रांच के चेयरमैन ने वसई ब्रांच को नया आयाम दिया .सीए अंकित राठी ने कहा कि आगामी 6 महीनों तक निरंतर ऐसे आयोजन होने चाहिए. वाईस चेयरमैन सीए सौरभ अग्रवाल ने सभी का धन्यवाद किया. ब्रांच नॉमिनी सीए ललित बजाज और सीए विमल अग्रवाल ने ब्रांच के कार्यों की सराहना की. प्रोग्राम को सफल बनाने में कमेटी मेंबर सीए विजेंद्र जैन और सीए अमित अग्रवाल का विशेष योगदान रहा.

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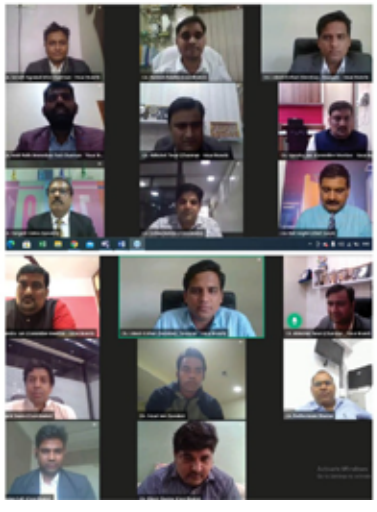
वसई ब्रांच के सीए की वर्चुअल इंटरनेशनल वेबिनार का आयोजन



■ प्रवासी संदेश टीम।

मुंबई। वसई ब्रांच द्वारा कोरोनकाल मे भी सीए मेम्बरसं को इंटरनेशनल जॉब और पेशे के अवसर के लिए समय समय पर ऐसे आयोजन करते रहते है । सीए सीपीए श्रीपाल जैन ने वेबिनार में बताया कि सीपीए करना क्यों जरूरी है। क्या प्रकिया है और यु एस , कनाडा में भारतीय सी ए के लिए जॉब और प्रिफेशनल अवसर क्या है ?

ब्रांच के चेयरमैन सीए अभिषेक तिवाड़ी ने बताया कि पिछले कुछ महीनों में संस्था द्वारा 25 वेबिनार किये गए जिसमे अमेरिका , कनाडा , सिंगापुर , कतर और मिडिल ईस्ट के देश शामिल है । मीरा भायंदर स्थित वसई ब्रांच ने 50वा वेबिनार मनाया जिसके चीफ गेस्ट सीए अनिल सिंघवी थे, जो जी बिजनेस के मैनेजिंग एडिटर है और शेयर बाजार में बहुत ही अच्छा ज्ञान रखते है। ब्रांच ऐसे आयोजन से ऑडिट ,टैक्सेशन, एकाउंटिंग, और टैक्सेशन का अध्ययन करते है। जो देश की कर प्रणाली को बनाए रखने और देश की अर्थव्यवस्था को मजबूती देने में चार्टर्ड अकाउंटेंट का अहम रोल है। वैसे हमारे देश के प्रधानमंत्री नरेंद्र मोदीजी ने कहा था कि सी ए अर्थव्यस्था का मजबूत स्तम्भ है और सी ए के सिग्नेचर बहुत ही पावरफुल है।

सीए लोकेश कोठारी , सीए अंकित राठी और सीए सौरभ अग्रवाल ने सभी को धन्यवाद किया। सीए ललित बजाज ने ब्रांच की एक्टिविटी की सराहना की। सीए विजेंद्र जैन , सीए अमित अग्रवाल और विमल अग्रवाल का प्रोग्राम आयोजन में सहयोग रहा।

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Foreign Investment in India

As per quarterly fact sheet on Foreign Direct Investment published quarterly by Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce & Industry, Government of India the inflows of foreign investment in India during fourth quarter of financial year 2020-21 (January, 2021 to March, 2021), India received the FDI inflow of USD 13,438 million. Different sectors have received different amount of FDI over the period of time also the state wise distribution of FDI is skewed towards metro cities. 16% of the FDI equity inflows have been received in the service sector, 13% in computer software and hardware followed by 7% in telecommunications, 6% in trading, 5% in construction development and automobile industry, 4% in chemicals (other than fertilizers) and construction (infrastructure) activities and finally, 3% in drugs & pharmaceuticals and hotel & tourism. 28% of FDI equity inflow is attracted by Maharashtra, 14% by Karnataka, 16% by Delhi, 30% by Gujarat, 3% by Jharkhand and a minor share of 4%, 2%, 3%, and 1% by Tamil Nadu, Telangana, Haryana, and Uttar Pradesh respectively.

India is playing an increasingly important role in global economic growth and has emerged out as one of the most beneficial and safe destinations in the whole world for FDI and all this FDI when comes in India by any way and the foreign companies which gets established in India by way of wholly owned subsidiary or Joint ventures do send their people to establish Indian operations, to work, to supervise or for many other reasons. There are employees of overseas parent company serving the Indian company on deputation.

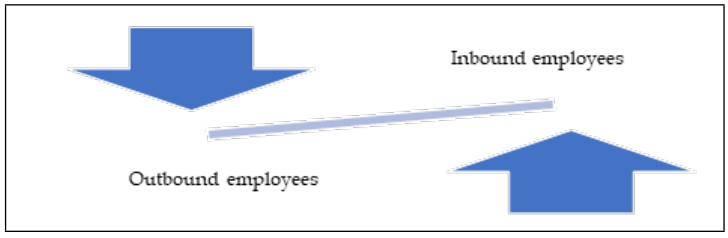
This article is about the persons who are resident of other country and come to India to work.

Meaning of Expatriates

The resident of a foreign country working in another country is called an **"Expatriate".**

"Expatriate" or "Expat" is a person residing in a country temporarily or permanently which is different from his/her home country, i.e, the country in which he/she is a resident. Usually, this term is used in case of technicians and professionals sent by their companies to their associated enterprises or foreign subsidiaries. Expatriates often work in a country or they are deputed to another country wherein the tax brackets, credits, deductions immensely differ from their home country.

Expatriate can be of two types: Inbound and outbound. In the Indian context, expatriate means a resident of foreign country working in India (inbound) or an Indian resident working abroad (outbound).



Depending upon the entry strategy adopted by the foreign employer and work requirements, an inbound expatriate can work in India under business visit, short-term assignment, medium-to-long-term assignment, permanent relocation or as a consultant.

In this article we are discussing the taxability of Inbound employees

Taxation as per Indian Laws

An inbound expatriate employee working in India would be liable to tax in India on the salary earned during the period of services rendered in India. It is immaterial who is bearing the expense of salary, whether he/she is on the payroll of the Indian entity or of the foreign entity because, as per the Indian Income Tax Act, 1961 (here in after referred as "ITA"/ "Act"), incidence of tax depends on the residential status of the taxpayer and where services are rendered.

The extent of Indian tax liability depends on the residential status of an individual which is based on the individual's physical stay in India. In India, charge of income tax is not based on domicile or citizenship.

In India, Residential status[1] is determined on the basis of the physical presence in India during each previous year, i.e, the FY commencing from 1st April and ending on 31st March each year.

For the purpose of the Income Tax Act, 1961, an individual may have any one of the following residential status:

(1) Resident and ordinarily resident in India [ROR];

(2) Resident but not ordinarily resident in India [RNOR]; or

(3) Non-resident [NR].

The scope of income of a person is determined based on section 5

1. To be read with Circular No.2 of2021 of CBDT dated 3rd March, 2021

of the ITA and is as specified below:

Nature of income	ROR (*)	RNOR (*)	NR (*)
Income which accrues or arises in India	Taxed	Taxed	Taxed
Income which is deemed to accrue or arise in India	Taxed	Taxed	Taxed
Income which is received in India	Taxed	Taxed	Taxed
Income which is deemed to be received in India (TDS, Annual accretion to EPF etc)	Taxed	Taxed	Taxed
Income accruing outside India from a business controlled wholly or partly from India or from a profession set up in India	Taxed	Taxed	Not taxed
Income other than above (ie, income which has no relation with India)	Taxed	Not taxed	Not taxed

In India, any salary due or received from the employer or the former employer is also charged to tax as 'Income from Salary'. Further, it is taxed on due or receipt basis, whichever is earlier. Salary income of expatriates would be taxable in India under the provisions of ITA in case the same is received or deemed to be received in India or in case it accrues or is deemed to be accrued in India.

Further, Section 7 of the Indian Income Tax Act, 1961 ("ITA") provides that the following incomes are deemed to be received in India:

(i) Annual increase in the recognised provident fund balance of an employee, in excess of the prescribed percentage;

(ii) Transferred balance in the recognised provident fund to the extent specified; and

(iii) Contribution made by the employer to the specified employee pension scheme.

Section 9 of the ITA inter alia provides that income from salary shall be deemed to be accrued in India in case the same is in respect of services rendered in India and leave period which is preceded and succeeded by services rendered in India and forms part of contract of employment.

Thus, salary income of an expatriate would be deemed to arise in India and hence taxable, if the services are rendered in India, irrespective of the place of entering into the contract of employment or receipt of the income.

Double taxation of Income

In case resident of one country derives income from another country, there arises a possibility of 'double taxation' of the same income in the source country and subsequently in the residence country. Such double taxation can also arise due to difference in the definition of tax residency and in the scope of taxation of various countries.

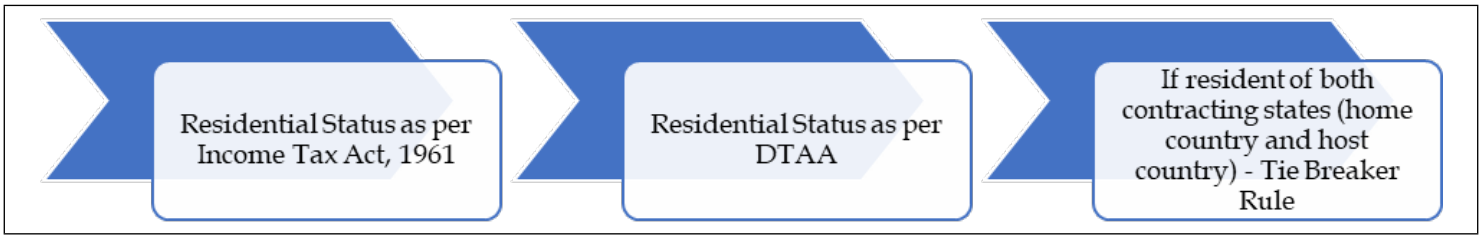
With respect to an expatriate, double taxation may arise on account of the following reasons:

— He/she is a resident of two countries and each country seeks to tax the individual on worldwide income;

— He/she is a resident of one country deriving income from another country.

In order to prevent such double taxation, governments enter into Double Taxation Avoidance Agreements/ Tax Treaty ('DTAA').

In India, Section 90 of the Income Tax Act, 1961 provides that where the provisions of the DTAA entered into by India with another country are more beneficial to any assessee, the assessee would be governed by such beneficial provisions of the DTAA. Hence, the provisions of the DTAA need to be examined for the purpose of ascertaining the tax liability.



Below is the discussion about the Residential status under DTAA

Residential status under DTAA

Generally, a person is subject to tax on global income in the resident country. Further, where the income is doubly taxed, there can be credit claimed either by credit method or exemption method, in the country of ultimate residency.

Generally, in all DTAAs, Article 4(1) defines the term 'resident' of a country. For claiming the benefit of DTAA employee needs to be resident of one or other country.

Article 4(1) of a DTAA defines resident to mean any person who, under the laws of that country, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political sub-division or local authority thereof. Thus, in order to qualify as a resident under a DTAA entered into by India, an expatriate should be a resident either in the overseas country or in India under the domestic laws. It may be noted that the residential status of the employer is not relevant in determining the status of the expatriate.

However, if by virtue of the above provision, an individual is a resident of both the contracting countries, the distributive rules cannot apply. Therefore, for such cases, clause 2 of the residency article provides the tie-breaker test for determining in which country from the two countries the person would be deemed to be a resident as per the DTAA.

The relevant factors to be considered in the tie-breaker test [in the same sequence as given below] are as follows:

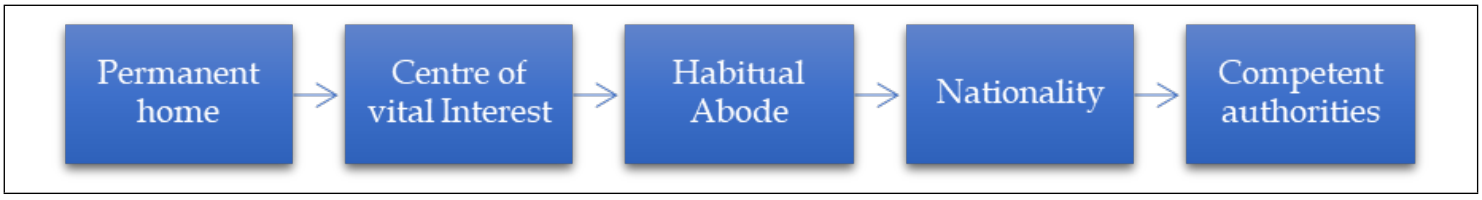
(a) **Permanent home:** The country in which he/she has a permanent home available to him/her;

(b) **Centre of vital interest:** The country with which his/her personal and economic relations are closer;

(c) **Habitual abode**: The country in which he/she has habitual abode;

(d) **Nationality:** Country of which he/ she is a national;

(e) **Competent authorities:** As determined by mutual agreement between both the countries competent authorities.



Short-stay exemption

Under the Income Tax Act, as per s 10(6)(vi), the remuneration received by an employee (who is not a citizen of India) of a foreign enterprise for services rendered by him during his stay in India shall not form part of his total income provided the following conditions are fulfilled:

(a) The foreign enterprise is not engaged in any trade or business in India;

(b) His stay in India does not exceed in the aggregate a period of 90 days in such previous year; and

(c) Such remuneration is not liable to be deducted from the income of the employer chargeable under this Act.

India's DTAAs with different countries also provide for a short-stay exemption for DTAA residents of other countries in respect of employment exercised in India. Generally, Article 15 or 16 (dependent personal services) of the DTAAs deals with taxation of employment income.

Thus, it could be concluded that inbound expatriates whose presence in India is for a short-term duration could be exempt from tax in India under the relevant DTAA subject to fulfilment of all the conditions mentioned in the relevant clause of the respective DTAA.

In order to claim any benefit under the applicable DTAA by a resident of other country, the person is required to obtain a tax residency certificate from the revenue authorities of the other country apart from other documents and information as may be prescribed by the Indian tax authorities.

Tax credits and exemptions

An inbound expatriate earning income in India may be liable to tax in India under the 'source' rule and may also be taxable in respect of the same income in his/ her home country as per the 'residence' rule. This scenario can lead to double taxation of the said income and in order to avoid the same DTAAs provide for specific provisions for elimination of such double taxation.

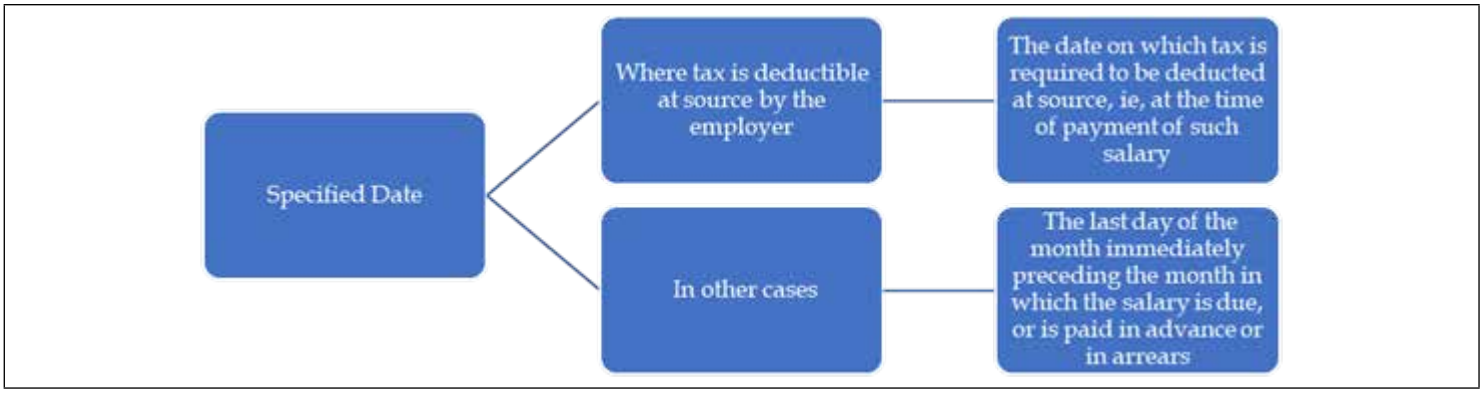
In case there is no DTAA, signed between India and the other country, the taxpayer can take benefit under section 91 of the ITA. The above relief is available to the individuals who qualify as residents of India in any tax year.

The individual will be entitled to the deduction from the Indian income tax payable of a sum calculated on the doubly taxed income at the Indian rate of tax or the rate of tax of the said country, whichever is the lower, or at the Indian rate of tax if both the rates are equal.

Conversion of salary in Indian rupees in order to calculate Indian taxes

As per Rule 115 of the Income Tax Rules where expatriates receive their salaries in foreign currency, the rate of exchange for the calculation of the value in rupees shall be the telegraphic transfer buying rate of such currency as on the specified date.

Specified date is the date as given below (Explanation 2 to Rule 115)



Telegraphic Transfer Buying Rate in relation to a foreign currency means the rate of exchange adopted by the State Bank of India for buying such currency having regard to the guidelines specified from time to time by the Reserve Bank of India [Explanation to Rule 26].

Withholding tax implications on the employer

As per section 192 of the Income Tax Act, there is an obligation on the 'person responsible for paying' salary to deduct and deposit withholding taxes at the prescribed rates of tax. Therefore, the employer is under an obligation under section 192(1) of the ITA to deposit withholding taxes (on an average basis) at the applicable rates, on the salary payments to the expatriates.

In cases where salaries are paid abroad, where the rendition of services in India, with no part of such services being performed for the foreign entity, tax has to be deducted at source from salaries of expatriate employees working in India. In other words, salary payable for services rendered in India should be subject to tax deducted at source/ withholding tax provisions, even on that part of the salary which is paid in the home country to the expatriate employee.

Repatriation of salary

Expatriates employed in India would like to repatriate to their families residing abroad a major part of their incomes. Salaries earned by them, being a current account transaction, are regulated by the Foreign Exchange Management (Current Account Transactions) Rules, 2000 ("Rule")

Foreign nationals who are resident but not permanently resident in India can remit their entire net salary. Net salary is computed after deduction of taxes, contribution to provide net fund and other deductions.

Conclusion

Tax is the key consideration for the foreign entities as well as expats and should be looked into comprehensively before an employee is sent by foreign entity to India.

There are many other things that should be considered by foreign companies while sending its people to India like if it would be tax equalising its employee, the Social security contribution, type of visa and its renewal, registration with Foreign Regional registration office etc. It is suggested that a proper to do list is made by Foreign entity along with the expat employee divided into three compartments viz

- Compliance at the time of arriving India
- Compliance at the time of staying in India
- Compliance at the time of moving out of India

A comprehensive list should serve a lot of purpose in keeping the foreign company in conformity with the law and also, expat employee shall be in control of his/her affairs and be properly complied.

Banking Corner

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Analysis of Recent communication from RBI's Desk for Banking and NBFC Sector

A. FAQ on appointment of Statutory Auditor (Banks/NBFC):

The Reserve Bank of India had issued new auditor guidelines for Banks and NBFC's on 27th April,2021. Since the introduction of the new guidelines, various stakeholders raised their concern on certain aspects regarding the new mechanism of auditor appointment. The Reserve Bank of India taking into consideration all these aspects have issued FAQ on 11th June 2021 to clarify some of the important aspect. Few of the important clarifications along with its impact are as follows:

Guidelines as per 27th April 2021 Circular	Clarification provided in FAQ on 11th June 2021	Impact of such clarifications
Ensuring time gap of one year between any non-audit work for entity or audit/non-audit work for **its group entities.**	The audit/non-audit work w.r.t. group entities should consider only those which are **regulated by the RBI** and not other entities. With respect to the firm providing audit/non-audit services to other entities, the Board and ACM can take appropriate precaution on Independence.	This is welcome clarification from the RBI and now clear distinction has been made for the group entities i.e. regulated by RBI and Others. For e.g. if ABC LLP is providing audit/non audit service to ABC Limited (not regulated by RBI) such firm now after clarification can be considered for appointment of auditor of Bank/NBFC.
Retrospective Look back period of appointment of one year for audit/non-audit services to the group to be considered for appointment in Financial Year 2021-22	This will be **applicable prospectively** for appointment during FY 2022-23.	This is one of the important classifications issued by RBI and has given relief to the industry as well as to the auditors. Post this clarification the management of the banks/ NBFC will have various options available to them for appointment as auditor. For e.g. ABC LLP which was providing any audit/non-audit services to group during FY 2020-21 is now eligible to be appointed as SCA/SA.
Non-Deposit NBFC with asset size below Rs.1000 cr. have option to continue with their existing appointment procedure. One audit firm can take statutory audit of maximum eight NBFCs.	The limit of eight NBFC includes all NBFC irrespective of the asset size.	This clarification has provided new opportunities for various SMP's since now any audit firm will not be able to take up more than eight NBFC across the firm and therefore in process the NBFC need to rotate their auditor from FY 2021-22. However, this has also created little conflict between the primary scope of the circular (i.e. excluding ND-NBFC asset size below Rs.1000 cr.) and FAQ by RBI.

B. Policy Circular:

1. Customer Due Diligence for transactions in Virtual Currencies (VC)- 31st May 2021:

Notification:

- Based on recent media report it was noted that few of the banks are not allowing the customer to carry out their transactions in virtual currencies in spite of Hon'ble Supreme Court order dated 4th March 2020. This position was taken on the basis of RBI circular dated 6th April 2018. However, now the RBI has issued clarification on 31st May 2021 clarifying that the banks can not quote/cite the above circular and prohibit the customer from making the transactions in in virtual currencies ('crypto currencies).
- The RBI has stated that the even through there is no prohibition, however, the banks should carry out their due diligence process under KYC norms, PMLA, FEMA etc.

Impact:

- The above circular even though clarifies the 'technical position' of RBI, however in practice there are many banks which still does not allow the transfer of funds for purchase of virtual currencies through various online platforms/exchanges. Therefore, it can be concluded that the above circular creates more confusion rather than clarifying the issue in hand.
- The dealing in virtual currencies has been one of the areas of discussion in the recent past. The government during its Budget of 2018-19 has clarified that it does not consider crypto-currencies as legal tender or coin in India.

2. Increase in limit - Restructuring Schemes for MSME & Others-4th June 2021:

Notification:

- The RBI considering the impact of second wave of COVID-19 has extended various restructuring scheme of last year in current year through circular issued on 5th May 2021.In the above circular, the benefit was available for to the accounts where the exposure was less than Rs.25 crore.
- The RBI has now through its circular dated 4th June 2021 has increased the limit of exposure **from Rs. 25 crores to Rs. 50 crores** for the benefits under the above circulars.

Impact:

- The increase in threshold will now extend this benefit to significant large number of borrowers across various sector. Further, this will also ease the pressure on the banking and NBFC segment from the potential NPAs with exposure upto Rs. 50 crore.
- This will also increase the 'COVID loan book' and 'COVID restructuring book' in the banks which will have potential impact on their credit quality of the portfolio.

3. Risk Based Internal Audit System- 11th June 2021:

Notification:

- The RBI on 3rd February 2021 has issued Risk-Based Internal Audit framework for all deposit taking NBFCs and Non- Deposit NBFCs beyond certain threshold. This framework is to be **implemented by 31st March 2022** in accordance with the guidelines provided in the circular.
- The recent circular by the RBI has extended the applicability of the said circular to **Housing Finance Companies** as well and same to be **implemented by 30th June 2022.**

Impact:

- The above circulars are issued in light of the recent financial frauds in the NBFC companies. These circular clearly indicates the idea to set-up an internal audit team within the organisation to deal with various risk associated with the business, timely identification and elimination of such risk.

4. Investments in Payment Systems in India- 14th June 2021

Notification:

- The RBI in February 2021 has issued circular prohibiting the fresh investments from FATF non-compliant jurisdictions[1] in existing NBFC or companies seeking NBFC license. However, the entities from these jurisdictions can make investments provided the voting power (including potential voting power) does not exceed 20%.
- The said restriction has not been extended or investments in Payment Systems Operators (PSOs) via circular dated 14th June 2021. Similar restrictions and conditions are provided as applicable in case of NBFCs. However, there is **no transition exemption available for the companies which has already applied for authorisation as a PSO** under the Payment and Settlement Systems Act, 2007.

Impact:

- The above circular is clearly in line with the policy of the government on the FDI. Some of the countries which are FATF non-compliant includes Mauritius, Panama, Pakistan etc.
- However, unlike the circular on NBFC, the RBI has made the retrospective application of the circular issued on 14th June 2021 which has created practical difficulty for the companies which has already made an application with RBI.
- Further the above circular is not clear in terms of its applicability on the existing investors in India from these jurisdictions which intends to make application with RBI for PSO. The RBI should come out with clarification on the meaning of 'New Investor'.

C. Key Takeaways:

a. **More Opportunities in Banks and NBFC for SMPs and SPs:** The recent circulars issued by RBI on the Statutory Auditor appointment has opened new opportunities for Small and Mid-size CA firms. Further the clarification on some of the aspect (specially on NBFC less than Rs.1000 cr.) will also provide huge opportunity for Small practitioners to enter the areas of Banking and NBFC audit. However, these audits are more of regulated entities and hence will require developing capabilities both in terms of Leaders as well as Team to take up such assignments.

b. **More opportunity for Internal Auditor:** The RBI circular on Internal audit will also increase the scope of practice for CA firm specialised in the Internal Audit areas. Although the circular requires to set-up and internal team, but the same circular also provides relaxation to the management to take the help of the expert in developing such system.

c. **Consulting services to Small Businesses/MSME:** The increase in the threshold limit from Rs. 25 crore to Rs. 50 crore for the various financial schemes by the Banks will also open up the new client base. The Small practitioners can assist them in preparation of various financial information and other details required to be submitted under such schemes.

d. **Penalty by RBI on Co-operative Banks:** The RBI in recent time has imposed penalties on various co-operative banks due to non-compliance to various RBI norms. In capacity as an advisor or auditor, we should be vigilant and provide timely advise to our clients to keep the money in safe and solvent banks.

1. FATF non-compliant jurisdictions are identified by Financial Action Task Force (FATF) and the list of such entities are available at https://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions.

Double or higher rate of TDS/TCS applicable from 01/07/2021 in case of non-filer as per section 206AB and 206CCA of the Income tax Act.

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It is all time objective of government to widen the taxpayer base by making provisions in such manner which compel the more people to file income tax return. To achieve this objective, In past also government added criteria for filing ITR like electricity bill and foreign travelling exceeding specified amount etc. and now The Finance Act,2021, introduced a new sections 206AB and 206CCA to achieve the objective of widen the taxpayer base. This will lead to add compliance burden on already burdened assessee. Following is the bare provisions

'206AB. Special provision for deduction of tax at source for non-filers of income-tax return.—(1) Notwithstanding anything contained in any other provisions of this Act, where tax is required to be deducted at source under the provisions of Chapter XVIIB, other than section 192, 192A, 194B, 194BB, 194LBC or 194N on any sum or income or amount paid, or payable or credited, by a person (hereafter referred to as deductee) to a specified person, the tax shall be deducted at the higher of the following rates, namely:—

(i) At twice the rate specified in the relevant provision of the Act; or

(ii) At twice the rate or rates in force; or

(iii) At the rate of five per cent.

(2) If the provisions of section 206AA is applicable to a specified person, in addition to the provision of this section, the tax shall be deducted at higher of the two rates provided in this section and in section 206AA.

(3) For the purposes of this section "specified person" means a person who has not filed the returns of income for both of the two assessment years relevant to the two previous years immediately prior to the previous year in which tax is required to be deducted, for which the time limit of filing return of income under sub-section (1) of section 139 has expired; and the aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in each of these two previous years:

Provided that the specified person shall not include a non-resident, who does not have a permanent establishment in India.

Now let us understand Section 206AB in detail

- ***Date of applicability***
  Section 206AB shall come into force from 1st July,2021.

- ***Transactions covered under this section***
  The section would be attracted in all cases where TDS is deductible under the provisions of Chapter XVII-B except mentioned in section.

- ***Transactions not covered under this section***
  Following payments are not covered under this section:

  1. Section 192: TDS on Salary;
  2. Section 192A: TDS on withdrawal from EPF;
  3. Section 194B: TDS on winning from lotteries, crossword puzzles, etc.
  4. Section 194BB: TDS on winning from racehorses;
  5. Section 194LBC: TDS on income in respect of investment in Securitization Trust;
  6. Section 194N: TDS on cash withdrawal.
  7. Non-Resident who does not have a permanent establishment in India.

- ***Who is Specified person?***
  Specified person means person who:

  1. Has not filed his return of income for both of the two assessment years relevant to the two previous years immediately prior to the previous year in which tax is required to be deducted, for which time limit of filing return of income u/s 139(1) has expired.

  AND

  2. Has an aggregate of tax deducted at source and tax collected at source in his case in each of the two previous years is Rupees **Fifty Thousand** or more?

So, if both conditions are not satisfied then the person is not considered as a specified person and this section is not applicable. Let us understand relevant assessment year as mentioned in definition.

Particular	Relevant Assessment year (*)
If deductee not covered under audit provisions	
Payment or credit made upto 30th Sept. 2021	A.Y. 2019-20 & A.Y. 2020-21
Payment or credit made from 1st Oct. 2021 to 31st March 2022	A.Y. 2020-21 & A.Y. 2021-22
If deductee not covered under audit provisions	
Payment or credit made upto 30th Nov. 2021	A.Y. 2019-20 & A.Y. 2020-21
Payment or credit made from 1st Dec. 2021 to 31st March 2022	A.Y. 2020-21 & A.Y. 2021-22

In case if deductor has filed belated return then for the period between due date u/s 139 and actual date of filing return, TDS is deducted and higher rate as specified u/s 206AB and after filing of ITR, TDS will be deducted at normal rate.

*Note: The relevant assessment year is decided based on the extended due dates u/s 139 for A.Y. 2021-22.

Let's understand the definition of Specified Person by example. Suppose for Mr. X the due date of filing return for A.Y. 2021-22 is 30th Sept.-2021 in such scenario status of Mr. X changes in each case which is as follow:

Sr. No.	Month of payment or credit	ITR filing for A.Y.			TDS/TCS amount for A.Y.			Wheter specified person?	Remarks
		2019-20	2020-21	2021-22	2019-20	2020-21	2021-22		
1	*Sep-21	Yes	Yes	No	55000	65000	75000	No	As condition of non-filing of ITR is not satisfied
2	Sep-21	Yes	No	No	55000	65000	75000	No	As condition of non-filing of ITR is not satisfied
3	Sep-21	No	No	No	45000	65000	75000	No	As condition of TDS/TCS > 50,000 is not satisfied
4	Sep-21	Yes	No	No	45000	65000	75000	No	As both conditions not satisfied
5	Sep-21	No	No	No	55000	65000	75000	Yes	As both conditions satisfied
6	*Oct-21	Yes	Yes	No	55000	65000	75000	No	As condition of non-filing of ITR is not satisfied
7	Oct-21	Yes	No	No	55000	65000	75000	Yes	As both conditions satisfied
8	Oct-21	No	No	No	45000	65000	45000	No	As condition of TDS/TCS > 50,000 is not satisfied
9	Oct-21	Yes	No	No	45000	65000	40000	No	As condition of TDS/TCS > 50,000 is not satisfied
10	Oct-21	No	No	Yes	55000	65000	60000	No	As condition of non-filing of ITR is not satisfied

***Note** – For the month of Sept.-21, relevant assessment years are A.Y. 2019-20 & A.Y. 2020-21 while for October-21, relevant assessment years are A.Y. 2020-21 & 2021-22.

- ***Rate of TDS u/s 206AB***

TDS should be deducted at the higher of following rate:

1. At twice the rate specified in the relevant provision of the Act; or
2. At twice the rate or rates in force; or
3. At the rate of five per cent.

In case where section 206AB and 206AA* both applies to deductee then higher rate from both the sections need to be deducted.

*Note – Section 206AA refers to TDS @ 20% when deductee failed to furnish his PAN to deductor.

- ***Clarifications required in certain scenario:***

In case where deductee obtained a lower or NIL rate TDS certificate from Jurisdictional assessing officer then section 206AB specifically does not provide applicability of this section so it would be prudent for CBDT to come up with proper clarification to ensure smooth compliance.

It is very difficult for deductor to collect and maintain the details of ITR filing and amount of TDS/TCS for relevant assessment year for all deductee so it is expected that CBDT will come up with some tool or mechanism to verify details of specified person.

After understanding section 206AB, now let us understand 206CCA which relates TCS collection in same manner as 206AB relates to TDS. Following is bare provision of 206CCA:

206CCA. Special provision for collection of tax at source for non-filers of income-tax return. —(1) Notwithstanding anything contained in any other provisions of this Act, where tax is required to be collected at source under the provisions of Chapter XVII-BB, on any sum or amount received by a person (hereafter referred to as collected) from a specified person, the tax shall be collected at the higher of the following two rates, namely:—

(i) At twice the rate specified in the relevant provision of the Act; or

(ii) At the rate of five per cent.

(2) If the provisions of section 206CC is applicable to a specified person, in addition to the provisions of this section, the tax shall be collected at higher of the two rates provided in this section and in section 206CC.

(3) For the purposes of this section "specified person" means a person who has not filed the returns of income for both of the two assessment years relevant to the two previous years immediately prior to the previous year in which tax is required to be collected, for which the time limit of filing return of income under sub-section (1) of section 139 has expired; and the aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in each of these two previous years:

Applicability of Section 206CCA:

Section 206CCA is related to TCS (tax collection at source), the date of applicability, rate of tax, specified person are same as defined under section 206AB.

For the ease of compliances tax deductor or collector can ask for declaration for both the requirements (Filing of return and TDS or TCS amount) from specified person (supplier or vendor) to comply with the provision of section 206AB and 206CCA.

Purchase / Sale of Goods – Tax Hurdles

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Background

The expanded scope of taxation on sale of goods has made decision making of purchase and sale more complex and burdensome.

The Government of India is taking rigorous steps to implement transaction level taxation on purchase and sale of goods. In last year's budget the Government of India introduced concept of equalisation levy on online sale of goods, extended scope of tax collection at source ("TCS") on sale of goods and introduced tax deduction at source ("TDS") on facilitating e-commerce sale of goods.

This year vide Finance Act 2021 the Government of India has further extended the scope of TDS by introducing Section 194Q. The said section is effective from 1 July 2021.

This article captures analysis of Section 194Q and key practical aspects related to said section.

Section 194Q – Key Provisions

The Section 194Q provides that any person, being a buyer, who is responsible for paying any sum to any resident -

- for purchase of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year,
- shall, at the time of credit of such sum to the account of the seller or at the time of payment thereof by any mode, whichever is earlier,
- deduct an amount equal to 0.1 per cent. of such sum exceeding fifty lakh rupees as income-tax.

Analysis

Person responsible to deduct tax:

By virtue of the said section, the obligation to ensure compliance of taxation on purchase/sale of goods has shifted on buyer.

"Buyer" means a person whose total sales, gross receipts or turnover from the business carried on by him exceeds Rs. 10 crores during the financial year immediately preceding the financial year in which the purchase of goods is carried out.

The question arises, whether non-resident buyer is also required to comply with the provisions of Section 194Q. There is no clarity on this aspect. The non-resident buyer may take shelter of extra territorial nexus for non-compliance of section 194Q. However, the tax department may take a contrary view by virtue of section 204(v) of the Act. In case non-resident has appointed any agent in India, then such agent can be held to be person responsible for compliance.

Further in case of newly incorporated company, there is no clarity on how turnover of 10 cr. rupees is to be computed for the year of incorporation.

Threshold

The obligation to deduct TDS arises only if the transaction value or aggregate value of such transactions exceeds fifty lakh rupees in any previous year.

Since, the obligation to deduct TDS is on amount exceeding fifty lakh rupees, the payer should initiate deducting TDS once the transaction value exceeds the said threshold. Non-deduction of TDS till transaction value reaches threshold of fifty lakhs rupees should not attract any interest or penalty.

The provision of section 194Q(1) refers to word *'for purchase of goods' and 'value or aggregate value'* which indicates that the TDS is to be deducted on total purchase price of goods inclusive of all charges such as freight, insurance, etc. levied on goods.

There is no clarification on whether adjustment of trade discount, cash discount or sales return is to be made while calculating threshold of fifty lakh rupees. The payer may take a shelter of CBDT circular no. 17 of 2020 pertaining to TCS, however, in absence of any specific circular with regard to TDS, adjustment of aforesaid components is an aggressive position.

The CBDT vide circular no. 23/2017 has already clarified position on applicability of TDS on GST component.

Further, the threshold provided under section 194Q is qua the vendor. The same is to be computed at an entity level irrespective of purchases at branch level.

Apart from the above, while computing threshold, the advances extended, and transaction undertaken between the period 1 April 2021 to 30 June 2021 should also be factored.

Goods

The obligation to deduct TDS under section 194Q arises on purchases of goods. The word 'goods' has not been defined under the said section or even under the Income-tax Act. The definition of 'goods' has always been a subject of interpretation for courts.

As per judicial interpretation[1] *'goods' may be tangible or an intangible one. It would become goods provided it has the attributes thereof having regard to (a) its utility; (b) capable of being bought and sold; and (c) capable of transmitted, transferred, delivered, stored and possessed.*

One may also take reference of definition of 'goods' defined under section 2(7) of the Sale of Goods Act, 1930. As per the said section 'goods' means every kind of moveable property other than actionable claims and money; and includes stock and shares, growing crops, grass and things attached to or forming part of land which are agreed to be served before sale or under the contract of sale.

In common parlance goods include traded goods, capital goods (such as fixed assets, software, other intangible assets), stationery, electricity, Gas, water, etc.

There is no clarity on whether purchases of shares, NCDs, loan assignment or fixed deposit will be covered within the ambit of TDS under section 194Q.

The securities and commodities traded on stock exchange is not covered within the ambit of TCS by virtue of CBDT Circular no. 17 of 2020. The benefit of said circular could be extended for TDS purpose.

However, in case of transactions in unlisted securities two views are possible.

View 1 - TDS applicable:

"Goods" has been defined under Sale of Goods Act which includes "Shares & Securities".

The CBDT Circular no. 17 of 2020 excludes only transaction in securities and commodities which are traded through recognized stock exchange. Transactions related to unlisted securities are not excluded.

View 2 - Not applicable

The provisions of TDS /TCS should not be applicable on primary market as the securities does not exists at the time of fresh issue. The fresh issue of securities is process of creating securities. The provision of TDS / TCS should be applicable on further sale of such securities i.e. only in case of secondary market sale.

Point of Taxation

The TDS is levied at the time of credit or payment whichever is earlier. In case of purchase of goods time of credit could be matter of debate.

Going forward buyer will have to account purchases of goods as per the terms and conditions of agreement. In case any delay in accounting of purchases due to internal arrangement / system may attract interest / penalty for delay in deduction of TDS.

For e.g.

Date of receipt of Goods in warehouse and purchase order is tagged with GRN in system	25 July 2021
Date on which obligation of seller comes to end	25 July 2021
Date of accounting of tax invoice by accounts team of buyer at HO in system	7 August 2021

1. Southern Petrochemical Industries Co. Ltd. vs. Electricity Inspector, AIR 2007 SC 1984; Tata Consultancy Services vs State of Andra Pradesh [2005] 271 ITR 401 (SC)

In the instant case, the date of credit as per accounting will be 7 August 2021 as the ledger of vendor is credited on 7 August 2021. However, the tax department may take a plea of section 194Q(2) and argue that the TDS should be triggered on 25 July 2021 as the purchase transaction was credited in system on 25 July 2021 and obligation of seller also ends on same day. The section 194Q(2) triggers even if the sum is credited to any account whether called "Suspense account". The possibility of levy of interest on delay in deduction of TDS for a month cannot be ruled out.

Another example could be contracts wherein installation and commissioning of goods is integral part of purchases, in such cases one will have to evaluate the time of credit.

Apart from the above, the constructive payments could also attract TDS obligation such as set-off of receivables – payables.

Rate of TDS deduction

The TDS under section 194Q is to be deducted at the rate of 0.1%, however, in absence of PAN of seller, the TDS rate applicable shall be 5%.

In case, the seller is specified person under section 206AB, then the TDS rate has to be computed in accordance with the provisions of section 206AB.

Exemptions

The provisions of section 194Q are not applicable on non-resident seller.

The provision of this section is also not applicable to a transaction on which—

(a) tax is deductible under any of the provisions of this Act;

The buyer will have to analyse nature of transaction and section under which the said transaction will be covered such as 194Q vs 194J v/s 194C.

In case of composite invoices which includes both goods and services determining TDS rate will be a burdensome process. On conservative basis applying higher rate of TDS on goods (such as 194J / 194C) may not be acceptable by seller, whereas applying low rate of TDS on goods is highly aggressive position.

(b) tax is collectible under the provisions of section 206C other than a transaction to which sub-section (1H) of section 206C applies:

There is confusion on whether TCS u/s 206C (1H) or section 194Q is to be collected on sales of goods above 50 lakhs.

The memorandum of Finance Act 2021 and section 194Q(5) has clarified that if on a transaction TCS is required under section 206C(1H) as well as TDS under section 194Q, then on that transaction only TDS under section 194Q shall be carried out.

Sale of motor vehicle / scrap will continue to be governed by the provisions of TCS under section 206C.

Apart from the above, entities specified under section 196 should also be exempt from the applicability of section 194Q.

Practical Challenges

The buyer and seller both will have to restart entire process of changing system from TCS to TDS.

Communicating TDS certificates on quarterly basis to sellers will be a challenging factor for large organizations. This will require additional investment in technology.

There are various grey areas wherein clarification from the CBDT is required such as time of credit, definition of goods, turnover, etc.

In case of non-compliance by buyer, seller cannot be exonerated from TCS compliance.

Reconciliation of TDS with Form 26AS by seller is also going to be challenging factor.

Apart from the above, taking credit of TDS deducted under section 194Q will also be a complex process. Since buyer will deduct tax on credit or payment whichever is earlier which may not be in sync with the year in which seller will offer said income to tax. A robust reconciliation will be required to be maintained for claiming tax credit.

Preparing and reconciling clause 34(a) of tax audit report and certifying the same by the Charted Accountant correctly will be a big task.

Conclusion

The aforesaid amendment is no doubt going to increase tax collection of Indian revenue authorities, but it is also going to increase procedural burden on businesses. The buyer will have invest in technology and manpower to smoothly drive the entire TDS compliance process.

Note: In the above article I have tried to analyse the essence of Section 194Q, a detailed analysis of section based on facts should be carried out while decision making. The above article is based on my own interpretation and understanding of law and should not be construed as any advice.

Provisions relating to Notice u/s.148 of Income Tax Act

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An Individual can receive the Notice u/s 148, whereas the A.O. believe that Income of such Individual chargeable to tax might have escaped assessment.

Whereas the proof supporting belief is available, the AO would record the reason and send the notice u/s.148. The AO cant change his mind and go for reinvestigation without a valid reason.

Whereas the assessee has disclosed all documents and correct information during the original assessment, the AO cannot send notice for reassessing the same documents, some facts or new required documents, which shows that income has escaped, must be brought to the notice.

Who can issue Notice:

No Notice would be issued by an AO, after the expiry of four years from the end of relevant Assessment year, unless Principal Commissioner or Chief Commissioner or Commissioner is satisfied on reason recorded by AO.

In case other than mentioned above, no notice would be issued by an AO, where AO is below the rank of Joint Commissioner unless Joint Commissioner is satisfied, on reason recorded by AO, that it is fit for issue of notice u/s.148.

If assessment has completed u/s.143(3) or 147, no further action could be taken u/s.147 after expiry of four years from end of relevant assessment year unless income chargeable to tax has been escaped assessment for such assessment year due to failure on assessee's part to file the return u/s.139 or 148 or truly or fully disclosing all the material facts required for the assessment.

Sec 148 deal with the issuance of notice wherein income is found to have escaped re-assessment, the AO required to produce the following information :

a) Income Tax Return

b) Income Tax Return of any person other than the assessee deemed assessable during the year prior to the assessment year.

The assessee is required to produce details of income tax return within thirty days as specified by the AO in the notice given.

Some reasons and conditions, for issuance of notice:

a) The AO should have some kind of concrete evidence that suggest the Assessee in question has evaded assessment of ITR of relevant assessment year. Without any proof , the officer cannot produce a notice based on mere suspicion.

b) Information provided to the AO should be of utmost relevance to the particular and not based on any superficial reasoning and understanding.

c) Before issuing Notice, the AO must provide in writing as why he thinks that the Assessee in question has tried to evade the assessment of Income.

d) Unless any new information is presented to the AO, he cannot issue notice to the assessee purely based on a difference of understanding.

e) The AO shall have no reason to suspect the assessee if he has provided disclosure regarding the particulars related to taxable income as well as disclosed the practical and factual information that has led to completion of assessment or reassessment.

f) If any information arises, which has been disclosed previously relevant to the assessment in question, the AO can immediately issue a notice, even if information has come to notice in a later period.

The AO will solely issue notice if any taxable income has been proved to have escaped assessment, for the subsequent reasons:

a) The Assessee did not furnished Income Tax Return u/s.139.

b) The Assessee did not furnished Income Tax Return, following the issuance of notice u/s.142(1).

c) The Assessee did not give full and complete revelation with regard to any information, factual information that neede for completion of assessment.

Provision of Sec 148, if Income Tax Return is not furnished by Assessee:

If ITR is not furnished by the assessee within the timeframe mentioned in the notice u/s.148, the assessee shall be made to pay interest u/s 243(3) for late filing of ITR or not filing of ITR, if income has already been determined u/s.143(1) or if assessment has already been done u/s.144.

Contrarily, if the assessee had not filled any ITR and no assessment has been done u/s.144, then the interest of late filing of ITR in response to notice u/s.148 shall be lavied u/s.234(1) instead of sec 234(3).

Legal Updates

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1) **Madras High Court 17-06-21: Validity of assessment** - Though the Income Tax Act does not anywhere contemplate issuance of a show cause notice prior to finalization of scrutiny assessments, as a matter of procedure and good office, the Assessing Authority is expected to crystalize the issues arising from the return of income filed by an assessee, the questionnaires issued under Section 142(1) and notices under Section 143(2) and responses thereto, issue a show cause notice setting out the issues, solicit the response of the assessee and pass orders only thereafter, after hearing the assessee concerned.

2) **ITAT Agra 14-06-21: Appellate order as passed by National Faceless Appeal Centre** - NFAC - the centralized NFAC have chooses to contemptuously ignore the binding precedent of Jurisdictional High Court and have applied the non-jurisdictional High Court decision to deprive the assessee from the benefit of the judicial High Court decision. - A good intentioned and well thought notification issued by the Board for NFAC, is not yielding the desired result on account of incorrect application of law.

3) **Delhi High Court 04-06-21: Validity of assessment** - order passed u/s 143(3A) & 143(3B) - challenge to the assessment order is made on the ground that it was passed without jurisdiction - HELD THAT:- In this particular case, the reason that we are proceeding ahead with the matter, is that, we are persuaded by the arguments that the impugned assessment order dated 15.04.2021 could not have been passed under Section 143(3A) and 143(3B) after March 31, 2021, having regard to the provisions of Section 143(3D) of the Act. Petitioner is also right in his contention that the CBDT notification dated 31.03.2021, also says, in effect, the same thing, i.e., that after 01.04.2021, the assessment order could have only have been passed in consonance with the provisions of Section 144B of the Act.

4) **Delhi High Court 03-06-21: Validity of assessment** - non issuance of a show cause notice-cum-draft assessment order; which is a mandatory requirement u/s 144B - The impugned assessment order dated 30.04.2021, as also the notice of demand issued under Section 156 of the Act, and notice for initiation of penalty proceedings issued under Section 270A of the Act, of even date, shall stand set aside.

5) **Delhi High Court 03-06-21: Validity of assessment order** - Faceless Assessment - Request for personal hearing rejected - since the revenue, time and again, portrays to the assessees' at large, in various communications, that since Covid-19 pandemic is prevalent, it would like to create an environment, which is friendly, this approach of the revenue, while carrying out assessment proceedings, has not been understood by us. According to us, on this short point alone, the impugned order deserves to be set aside.

6) **Delhi High Court 02-06-21: Faceless assessment** - return was processed under Section 143(1) - As incumbent upon the respondent/revenue to accord a personal hearing to the petitioner. - The entire scheme, encapsulated under Section 144B of the Act, was laid down to bring transparency as well as accountability in the system. According to us, irrespective of whether such a statutory scheme was framed or not, the system has to be both, transparent, and the persons administering it, have to remain accountable.

7) **Delhi High Court 02-06-21: Validity of assessment order** - faceless assessment - Violation of provisions of Section 144B - That being the position, there is no option, but to set aside the impugned assessment order dated 15.04.2021, issued under Section 143(3), read with Sections 143(3A) and 143(3B) of the Act, along with accompanying notice of demand, issued under Section 156 of the Act and notice for initiation of penalty proceedings, issued under Section 270A of the Act.

8) **Madras High Court 20-06-21: Validity of issuance of notice under Section 153C** - The issuance of the invalid notice dated 14.06.2019 does not compromise the assessment proceedings as, the invalid notice is one that does not exist in the eyes of the law and must thus be ignored. The provisions of Section 282 deal with service of notice in general terms and Section 282A with the authentication of notices for service by electronic means. In this case, it is not in dispute that notice dated 30.09.2019 is a valid notice qua the provisions of Sections 282 and 282A read with Rules 127 and 127A. The issuance of notice dated 14.06.2019 does not vitiate the impugned proceedings in any way.

9) **ITAT Indore 20-05-21: Validity of assessment - Non service of notice u/s 143(2)** - unless there is service of notice in accordance with provision under Section 282 of the Act separately specifying mode of service of notice, it cannot be treated as valid service of notice. - the service of notice under Section 143(2) of the Act, in our considered opinion is no service. Since the initiation of the proceeding is not in adherence to the prescribed rules, the entire proceeding is vitiated and hence quashed. Consequently, all action taken there under is bad.

10) **Delhi High Court 27-05-21: Faceless assessment u/s 144B -** Since the statute itself makes the provision for grant of personal hearing, the respondents/revenue cannot veer away from the same. - Accordingly, the impugned assessment order as well as the impugned notice of demand and notice for initiating penalty proceedings, of even date, i.e., 29.04.2021, are set aside.

11) **Delhi High Court 27-05-21: Faceless assessment u/s 144B** - Validity of assessment order passed u/s 143(3) r.w.s. 143(3A) & 143(3B) - principal grievance of the petitioner that the impugned assessment order was passed without issuance of a show cause notice-cum draft-assessment order - the impugned assessment order and the notice issued under Section 156 and Section 270A read with Section 274 of the Act are set aside. Liberty is, however, given to the respondent/ revenue to pass a fresh assessment order, albeit, as per law. -

12) **ITAT Agra 18-06-21: Unexplained money u/s 69A read with 115BBE** - acknowledge income/ notional income of House wife - cash deposit in bank during demonetization period - In the present case the assessee had given the explanation to the AO during the assessment proceedings and had submitted that the amount deposited in the bank, were her money saved by her in last many year's and were kept by her, for herself and for the family in case of emergency need - Assessee had duly explained the source of deposit - Additions deleted

13) **ITAT Jaipur 14-06-21: TDS u/s 195 - Disallowance u/s 40(a)(i)** - the said income in the hands of non-resident has to be considered in the light of the provisions of DTAA between India and the Country of the nonresident, i.e. UAE. In the absence of Permanent Establishment of the nonresident in India during the financial year relevant to impugned assessment year and any income attributable to such Permanent Establishment, such business income is not chargeable to tax in India. - When the amount paid by the assessee is not chargeable to tax in India then the assessee is not liable to deduct TDS u/s 195

14) **ITAT Mumbai 25-02-21: Inclusion of an amount on the basis of Form 26AS** to the returned income of the assessee - The assessee who had denied ownership of the aforesaid income or the source thereof, we are of the considered view that the A.O was not justified in adding the impugned amount as the income of the assessee. Multiple reasons leading to the aforesaid anomaly in reflection of the above-mentioned amount in the annual tax statement of the assessee cannot be ruled out.

15) **ITAT Indore 20-05-21: Addition u/s 69/115BBE** - unexplained money on the basis of difference in stock statement submitted to the lender bank - When no defect is found with the accounts of the assessee explanation rendered by the assessee that the inflated statement was given to the bank to avail higher credit is to be considered in its proper perspective, no interference in deleting such addition either by Ld. CIT(A)

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INTRODUCTION

Co-operative Housing Societies are entities registered under the co-operative laws of the respective States. According to Section 2(16) of the Maharashtra Co-operative Society Act, 1960, "housing society" means a society, the object of which is to provide its members with open plots for housing, dwelling houses or flats OR if open plots, the dwelling houses or flats are already acquired, to provide its members common amenities and services. In other words these are a collective body of persons, who stay in a residential society as a collective body, they would be supplying certain services to its members, be it collecting statutory dues from its members and remitting to statutory authorities, maintenance of the building, security etc.

HOUSING SOCIETY IS A DIFFERENT PERSON?

The definition of "Person" in Section 2(84)(i) of the CGST Act, 2017 specifically includes a co-operative society registered under any law relating to co-operative societies. Thus a registered co-operative society is a person within the meaning of the term in the CGST Act.

ACTIVITIES OF HOUSING SOCIETY TO BE CONSIDERED AS SUPPLY?, IF YES THEN SUPPLY OF GOODS OR SUPPLY OF SERVICE?

A Society is akin to a club, which is composed of its members. So, can a service provided by a Housing Society to its members be treated as service provided by one person to another? The answer is yes. The following extracts of the GST law will make the position clear.

Definition of supply provided in section 7 of CGST Act, 2017 is inclusive definition, the expression of "Supply" includes,

All forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.

The term "Supply", defined under section 7 of the CGST Act, 2017 is an inclusive definition and not an exhaustive one & therefore the activities of housing society for obtaining conveyance from the promoter (Builder), managing, maintaining, and administering the property of the society, raising fund for achieving the objects of the society, undertaking and providing and social, cultural, or recreation activities can clearly be considered as rendering of "Supply" of service being provided to its members.

Further Section 2(102) of CGST Act, 2017 specified "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion

by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Thus, on perusal of the above definition of the term "Service", it is adequately clear that the term "Service" under GST Act, 2017 has been rendered a very wide connotation which is evident from the presence of the expression "anything other than goods, money and securities". In view of this, it is clear that the activities undertaken by housing society would rightly be covered under the scope of the term "Service".

From the definition of Supply it can be said that the activities to be considered as supply there should be a "Consideration" & "in the course or furtherance of business".

The next question which arises is whether the activity of the society can be said to be in the course or furtherance of business.

As per definition of "Business" in section 2(17)(e) specifically includes provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members

Hence from the above definition it is clear that activities of housing society to be considered as supply and even for course or furtherance of business.

The next question which raised is whether the activities (Supply of Service) by the society i.e. Person can be said to be made for a Consideration.

As per definition of "Consideration" in section 2(31)(a) includes any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government.

From the above definition it can be construed that membership fee (in the name of maintenance charges) collected by Housing society from its members is also meant for meeting expenses for activities undertaken by the housing society to achieve the various object of the society as mentioned in By-laws of the society. Thus, membership fee (in the name of maintenance charges) collected by housing society from its members will be treated as "Consideration" paid for supply of service.

REQUIREMENT OF GST REGISTRATION BY HOUSING SOCIETY

As per Section 22 of CGST Act, 2017 Every supplier shall be liable to be registered under this Act in the State or Union territory from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds the threshold limit as specified below,

For supplier engaged exclusively "Supply of Service" or "Goods & Service"

(a) Normal State:- Rs.20 Lakhs.

(b) Special Category State:-

Manipur, Mizoram, Tripura, Nagaland:- Rs.10 Lakhs.

Jammu & Kashmir, Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim, Uttarakhand:- Rs.20 Lakhs.

Further definition of "aggregate turnover" in section 2(6) of CGST Act, 2017 means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess.

However extract of serial no. 77 of Notification No. 12/2017- Central Tax (Rate)_28.06.2017 provide "NIL" rate of GST in case of service provided by following person,

Service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution,

(a) as a trade union.

(b) for the provision of carrying out any activity which is exempt from the levy of Goods and service Tax. OR

(c) up to an amount of 7,500/- rupees per month per member (Threshold limit Increase from 5,000/- to 7,500/- per month per member wide Notification No. 2/2018- Central Tax (Rate)_25.01.2018) for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex.

In view of the provision contained at (c) above, a society may be registered under GST, however if the monthly contribution received from members is less than Rs. 7,500/ - (and the amount is for the purpose of sourcing of goods and services from a third person for the common use of its members), no GST is to be charged by the housing society on the monthly bill raised by the society. However, GST would be applicable if the monthly contribution exceeds Rs. 7,500/ -

Certain statutory dues such as property tax, electricity charges etc. form part of the monthly maintenance bill raised by the society on its members. The question would arise whether such charges should be included while computing the monthly limit of Rs. 7,500/- in terms of clause (c) of Sr. no.77 of Notification 12/2017 -Central Tax (Rate)_28.06.2017.

As per clause (b) of the above exemption, exemption is available to housing societies for provision of carrying out any activity which is exempt from the levy of Goods and service Tax assuming that a housing society is a non-profit registered entity; and property tax and electricity is exempt from the levy of GST. Thus, charges, collected by the society on account of property tax, electricity charges and other statutory levies would be excluded while calculating the limit of Rs. 7,500/-.

Further, the question would then arise that if the monthly bill is say Rs. 9,000/- (and the same is on account of services for common

use of its members), will GST be applicable on Rs. 9,000/- or Rs. 1,500/- which is in excess of Rs. 7500/-. In such cases, exemption is available up to an amount of Rs. 7,500/- and GST would be applicable on the entire amount of Rs, 9000/- and not on [Rs. 9000 – Rs. 7500] = Rs. 1500/-.

However Section 23 of CGST Act, 2017 provide that the following persons shall not be liable to registration,

(a) Person engaged in exclusive supply of goods, service, or both which are not liable to tax under GST Act, 2017.

(b) Person engaged in exclusive supply of goods, service, or both which are wholly exempt from tax under GST Act, 2017.

(c) An agriculturist, to the extent of supply of produce out of cultivation of land.

Thus, if the turnover of the society is less than Rs.20 Lakhs or even if the turnover is beyond Rs. 20 lakhs but the monthly contribution of individual members towards maintenance is less than Rs. 7,500/- (such services being exempt) and the society is providing no other taxable service to its members or outsiders, then the society (essentially Exclusively providing wholly exempt services) need not take registration under GST.

From the analysis of above extract of provision of law, Housing Society or Resident Welfare Association (RWA) required to register if following **BOTH** the conditions are satisfied.

1) Annual turnover is more than threshold limit (i.e. 20 Lakhs in Maharashtra) AND

2) Monthly maintenance charges is more than Rs. 7,500/- (Exclude the property tax, electricity charges and other statutory levies) per month per member.

INCLUSION OR EXCLUSION

Following things to be Include or Exclude while calculating limit of Rs. 7,500/- per month per member.

Include:- Sinking Fund, Maintenance and Repair Funds, Car Parking funds, Non-Occupancy Funds.

Exclude:- Property Tax {Municipal Corporation of Greater Mumbai (MCGM)}, Water Tax {Municipal Corporation of Greater Mumbai (MCGM)}, Electricity Charges , Non- Agricultural Tax (Maharashtra State Government)

Thus, those item will be considered for Rs. 7,500/- which are purely for sourcing of service for its members, and any expenses collected by society on behalf of other person or levied by some statue would be excluded while consideration of limit of Rs. 7,500/-.

AVAILABILITY OF ITC TO HOUSING SOCIETY OR RESIDENT WELFARE ASSOCIATION (RWA)

Housing society or RWAs are entitled to take ITC of GST paid by them on,

1) Capital goods (generators, water pumps, lawn furniture etc.),

2) Goods (taps, pipes, other sanitary/hardware fillings etc.) and

3) Input services such as repair and maintenance services.

EFFECT OF GST IF PERSON OWNS TWO OR MORE FLATS IN THE HOUSING SOCIETY

As per general business sense, a person who owns two or more residential apartments in a housing society or a residential complex shall normally be a member of the RWA for each residential apartment owned by him separately. The ceiling of Rs.7,500/- per month per member shall be applied separately for each residential apartment owned by him.

SAC CODE & GST RATE

SAC Code:- 999598 (Home owners associations)

GST Rate:- 18%

RELEVANT AAR ORDER

Name:- Apsara Co-operative Housing Society Limited.

Ruling Authority:-AAR.

Order No.:- MH_AAR_21_2019-20_B-34_17.03.2020

In the above case applicant is not satisfied with order passed by advance authority and filed appeal with AAAR.

Name:- Apsara Co-operative Housing Society Limited.

Ruling Authority:-AAAR.

Order No.:- MH_AAAR_28_2020-21_05.11.2020

The order passed by AAAR is also akin to ruling passed by AAR.

CONCLUSION

The exemptions given ensure that there would be no tax burden on smaller societies where the monthly contribution of the individual members does not exceed Rs. 7,500/-. The GST burden shifted to posh area societies where maintenance bill is more than Rs. 7,500/- per month per member.

NOTE

Sincere efforts have been made to make this article without any error. In case of any errors that you may want to bring to the notice of the author, queries or suggestions, the author may be reached at the following mail addresses, E mail:- harkhani123@gmail.com (M):- 9821668189.

DISCLAIMER

This is strictly my personal opinion. Above discussion cannot be considered as our professional or legal advice. Users shall consider legal provisions or take advice from experts before taking action on it.

Vaccination Camp organised on 21st June 2021 at Ostwal Bagicha, RNP Park, Bhayandar (East)

49th Virtual CPE Meeting on Code of Ethics held on 5th June 2021

Speaker: CA. Amarjit Chopra (Past President, ICAI) **Session Chairman:** CA. Abhishek Tiwari (Chairman – Vasai Branch), **Committee Members:** CA. Lokesh Kothari (Secretary & Treasurer), CA. Ankit Rathi (Immediate Past Chairman), CA. Vijendra Jain (Committee Member) **Special Invitee:** CA. Shweta Jain (Past Chairperson – Vasai Branch)

50th Virtual CPE Meeting on Companies Act 2013 held on 8th June 2021

Chief Guest: CA. Anil Singhvi (Managing Editor – Zee Business) **Speaker:** CA. Durgesh Kabra (Central Council Member) **Session Chairman:** CA. Abhishek Tiwari (Chairman – Vasai Branch), **Committee Members:** CA. Sorabh Agrawal (Vice Chairman – Vasai Branch), CA. Lokesh Kothari (Secretary & Treasurer), CA. Ankit Rathi (Immediate Past Chairman), CA. Vijendra Jain (Committee Member), **Coordinators:** CA. Vishnu Indoria, CA. Ramesh Pandey

51st Virtual CPE Meeting on Future of CA Profession held on 13th June 2021

Session Panelists: CA. Manish Gadia (Chairman - WIRC of ICAI), CA. Avinash Gupta (Chairman - NIRC of ICAI), CA. Nilesh Gupta (Chairman - CIRC of ICAI), CA. Jalapathi Kumar (Chairman - SIRC of ICAI), CA. Sunil Kumar Sahoo (Chairman - EIRC of ICAI) **Session Chairman:** CA. Abhishek Tiwari (Chairman – Vasai Branch), **Committee Members:** CA. Sorabh Agrawal (Vice Chairman – Vasai Branch), CA. Lokesh Kothari (Secretary & Treasurer), CA. Ankit Rathi (Immediate Past Chairman), CA. Vijendra Jain (Committee Member), **Special Invitees:** CA. Pramod Dhamankar (Past Chairman – Vasai Branch), CA. Dayaram Paliwal (Past Chairman – Vasai Branch)

52th Virtual CPE Meeting on Corporate Social Responsibility (CSR) held on 12th June 2021

Chief Guest: Shri. Mangal Prabhat Lodha (Member of Maharashtra Legislature Assembly (Malabar Hill constituency of South Mumbai & Founder of Lodha Group **Speaker:** CA. Rajesh Mittal **Session Director:** CA. Virag Shah **Session Chairman:** CA. Abhishek Tiwari (Chairman – Vasai Branch), **Committee Members:** CA. Vijendra Jain (Committee Member) **Coordinators:** CA. Mukesh Sharma

53rd Virtual CPE Meeting on Opportunities for CA in US & Canada held on 19th June 2021

Key Note Address: CA. Radheshyam Sharma **Speaker:** CA. Sripal Jain **Session Chairman:** CA. Abhishek Tiwari (Chairman – Vasai Branch), **Committee Members:** CA. Lokesh Kothari (Secretary & Treasurer), CA. Vijendra Jain (Committee Member) **Coordinators:** CA. Bharat Gupta, CA. Ritesh Sharma & CA. Gautam Lath

55th Virtual CPE Meeting on Various Provision of TDS & TCS held on 27th June 2021

Key Note Address: CA. Vimal Agarwal (RCM & Branch Nominee) Speaker: Adv. CA. S. Sriram **Session Chairman:** CA. Abhishek Tiwari (Chairman – Vasai Branch), **Committee Members:** CA. Lokesh Kothari (Secretary & Treasurer), CA. Ankit Rathi (Immediate Past Chairman), CA. Vijendra Jain (Committee Member), **Coordinators:** CA. Neeraj Bang

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