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I. CHART OF FORTHCOMING DUE DATES: -

a) GST due dates falling in the month of August 2021.

Sr No.	Particulars	Due Date
1.	GSTR-1 (Monthly)	11.8.21
2.	GSTR-1 (QRMP)	13.8.21
2.	GSTR-3B	20.8.21

b) Others due dates falling in the month of August 2021

Sr No.	Particulars	Due Date
1	TDS Payment	07.08.2021
2	PF Payment	15.08.2021
3	Payment of tax under Vivad Se Vishwas Payment	31.08.2021

II. OVERVIEW:

o TAXATION LAWS (AMENDMENT) BILL, 2021 - ANALYSIS

'THE TAXATION LAWS (AMENDMENT) BILL, 2021' introduced in Lok Sabha on 05th August 2021 (passed on 06th August 2021) proposes to amend the Income Tax Act, 1961 and the Finance Act, 2012 to scrap the effect of RETRO TAX amendment which took place in the year 2012 after Supreme Court judgment dated 20th January 2012 in the case of Vodafone International B.V vs Union of India & Anr.

Before explaining about the proposals made in the Amendment Bill, a brief Introduction is mentioned below for the purpose of understanding the scenario before and after the amendment made in the Finance Act, 2012.

Before Finance Act, 2012 :

Section 9 of the Income Tax Act, 1961 mentions about the Incomes which shall be deemed to accrue or arise in India. Section 9(1)(i) specifies that any Income accruing or arising, whether directly or indirectly, through the transfer of a capital asset situated in India, shall be deemed to be accrue or arise in India.

After Finance Act, 2012 :

Explanation No. 4 and 5 added to the Section 9(1)(i) of Income Tax Act, 1961 as under:

" Explanation 4. – For the removal of doubts, it is hereby clarified that the expression "through" shall mean and include and shall be deemed to have always meant and included "by means of', "in consequence of' or "by reason of'.,

'Explanation 5. – For the removal of doubts, it is hereby clarified that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and **shall always be deemed** to have been situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India. "

ANALYSIS OF AMENDMENT MADE IN FINANCE ACT, 2012

Explanation 5 to the provisions of Section 9(1)(i) covered all the transactions which took place from 1961 till 2012 that involved transfer of the shares of foreign company which derives its value substantially from assets located in India.

The amendment was made retrospectively by mentioning the word "and shall always be deemed". Huge reactions were received from India and around the

world for bringing in a law which goes back to 1961 retrospectively, which created an uncertainty and lack of trust among the foreign investors in India.

The issue however remained unsolved for a long time and huge demands were raised for transactions which took place before 2012 as well.

Later on, the issue was taken to the Permanent Court of Arbitration by invoking the clauses of the Bilateral Investment Treaty with the United Kingdom & Netherlands. In the year 2020, the International Arbitration Court (of Netherlands) ruled in favour of the taxpayer and the said demand raised using retrospective legislation was said to be "breach of the guarantee of fair and equitable treatment" guaranteed under the bilateral investment protection pact between India and the Netherlands.

WHAT IS INTRODUCED IN "THE TAXATION LAWS (AMENDMENT) BILL, 2021"

The bill is introduced in Lok Sabha to scrap the said retrospective clarificatory amendment made in Finance Act, 2012. The Bill proposes to amend the Income Tax Act, 1961 so as to provide that no tax demand shall be raised in future on the basis of the retrospective amendment for any indirect transfer of Indian Assets if the transaction was undertaken before 28th May, 2012 (Date on which the **Finance Bill, 2012** received the assent of the President).

The following proposals have been made to scrap the retrospective amendment:

- No tax demand to be raised in future for transactions made before 28th May 2012.
- Where any amount has been collected as per the retrospective amendment in Finance Act, 2012 or any amount becomes refundable after nullifying the order already passed; such amount shall be refunded to him without any interest under Section 244A on fulfilment of specified conditions.
- Further, Section 119 of Finance Act, 2012 provides that "Notwithstanding anything contained in any judgment, decree or order of any Court or Tribunal or any authority, all notices sent or purporting to have been sent, or taxes levied, demanded, assessed, imposed, collected or recovered or purporting to have been levied, demanded, assessed, imposed, collected or recovered under the provisions of Income-tax Act, 1961 (43 of 1961). in respect of income accruing or arising through or from the transfer of a capital asset situate in India in consequence of the transfer of a share or shares of a company registered or incorporated outside India or in consequence of an agreement, or otherwise, outside India, shall be

deemed to have been validly made, and the notice, levy, demand, assessment, imposition, collection or recovery of tax shall be valid and shall be deemed always to have been valid and shall not be called in question on the ground that the tax was not chargeable or any ground including that it is a tax on capital gains arising out of transactions which have taken place outside India, and accordingly, any tax levied, demanded, assessed, imposed or deposited before the commencement of this Act and chargeable for a period prior to such commencement but not collected or recovered before such commencement, may be collected or recovered and appropriated in accordance with the provisions of the Income-tax Act, 1961 as amended by this Act, and the rules made thereunder and there shall be no liability or obligation to make any refund whatsoever."

Accordingly, The Bill also proposes to amend the Finance Act, 2012 so as to provide that the validation of demand, etc., under section 119 of the Finance Act, 2012 shall cease to apply and refunds shall be made on fulfilment of specified conditions.

Specified Conditions have been mentioned as under:

(i) where the said person has filed any appeal before an appellate forum or any writ petition before the High Court or the Supreme Court against any order in respect of said income, he shall either withdraw or submit an undertaking to withdraw such appeal or writ petition, in such form and manner as may be prescribed;

(ii) where the said person has initiated any proceeding for arbitration, conciliation or mediation, or has given any notice thereof under any law for the time being in force or under any agreement entered into by India with any other country or territory outside India, whether for protection of investment or otherwise, he shall either withdraw or shall submit an undertaking to withdraw the claim, if any, in such proceedings or notice, in such form and manner as may be prescribed;

(iii) the said person shall furnish an undertaking in such form and manner as may be prescribed, waiving his right, whether direct or indirect, to seek or pursue any remedy or any claim in relation to the said income which may otherwise be available to him under any law for the time being in force, in equity, under any statute or under any agreement entered into by India with any country or territory outside India, whether for protection of investment or otherwise; and

(iv) such other conditions as may be prescribed.

Now that the bill has been passed in Lok Sabha, it is expected that the foreign investment may increase and help in promoting faster economic growth and investment as said by the Finance Minister.

III. INCOME TAX ACT

AMENDMENT IN CHARITABLE TRUST FINANCE ACT 2021

1. Section 11(1)(d) has been amended which reads as under: –

Income in the form of voluntary contribution made with the specific direction that they shall form part of the corpus of the trust or institution subject to the condition that such voluntary contributions are invested or deposited in one or more of the forms or mode specified in sub-section (5) maintained specifically for such corpus. w.e.f. 01st April 2022

Previously income in **the form of voluntary contributions** made with the **specific directions, that they shall form part of corpus of trust or institution** shall be **fully exempt**. Now **this the clause (d)** has been amended to provide that the income forming part of corpus shall be **exempt only if the voluntary contributions** has been **invested or deposited in one or more forms or mode specified in section 11(5)**.

2. Explanation 4 to section 11(1) has been inserted which reads as under: –

Explanation 4 -For the purpose of determining the amount of application under clause (a) and clause (b) –

i. Application for charitable or religious purposes from the corpus as referred to in clause (d) of this sub-section, shall not be treated as application of income for charitable or religious purposes:

Provided that amount not so treated as application, or part thereof, shall be treated as application of income for charitable or religious purposes in the previous year in which the amount, or part thereof is invested or deposited back, into one or more of the forms or modes specified in sub-section (5) maintained specifically for such corpus, from the income of that year and to the extent of investment.

ii. Application for charitable religious purpose, from any loans or borrowings, shall not be treated as application of income for charitable or religious purposes: –

Provided that the amount not so treated as application, or part there-of, shall be treated as application for charitable or religious purposes in the previous year in which the loan or borrowing, or part there-of, is repaid from the income of that year and to the extent of such repayment.

In view of this the explanation 4 has been inserted which provides that the **application for the charitable or religious purposes from the corpus** as referred to clause (d) of this sub section, shall **not be treated as application of income for the charitable or religious** purposes **provided that** if the amount **is deposited or invested** back in to **one or more forms specified in sub-section (5) maintained specifically for such corpus shall be treated as application for charitable or religious purposes in the previous year and to the extend the amount is deposited or invested .**

It further provides that **application for loans or borrowings** shall **not be treated as application of income for charitable purposes** provided if the **loan is repaid in the previous year then it shall be treated as application of income from the previous year from the income of such previous year to extent it is repaid.**

3. Explanation 4 to section 11(1) has been inserted which reads as under: –

For the purpose of this sub-section, it is hereby clarified that the calculations of income required to be applied or accumulated during the previous year shall be made without any set off or deduction or allowance of any excess application of any of the year preceding the previous year.

In view of this it has been provided that Charitable trust or the institution shall not be permitted to **claim any carry forward of losses, deduction and allowance** of any **excess application** of **any preceding year** while **computing the income required to be applied or accumulated during the previous year.**

4. Amendment in Section 10(23C) clause (iiiad) and (iiiae) which reads as under: –

Any university or other educational institution existing solely for educational purposes and not for the purpose of profit if the aggregate annual receipts of such university or educational institution do not exceeds amount of receipts as may be prescribed.

Any hospital or other institution for the reception and treatment of person suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for profit, if the aggregate annual receipts of such hospital or institution do not exceed the amount of annual receipts as may be prescribed.

Explanation: – For the purpose of clause (iiiad) and (iiiae), it has been clarified that if the person has receipts from university or educational institution as referred in clause (iiiad), as well as the hospital or institution as referred to in clause (iiiae), the exemption under these clauses shall not apply if the aggregate of the annual receipts of the person from such university or educational institution, hospitals or institution exceeds rupees five crores

In view of the above it has been provided that **Educational or Medical Institution** are entitled to **exemption under section 10(23C) (iiiad) and 10(23C)(iiiae)** respectively, if the **annual receipts do not exceeds Rs 5 crores (Previously it was Rs 1 crores)**

IV. COMPANY LAW

SUMMARY OF MACA AMMENDMENTS, JULY 2021

Amendment THROUGH NOTIFICATIONS

1. RECTIFICATION OF NAME OF THE COMPANY

MCA has issued a notification on 22nd July, 2021, Commencement of **Section 4 of Companies (Amendment) Act, 2020.** As per notification, it will came into effect from 1st September 2021.

A. ANALYSIS OF NOTIFICATION – (Amendment in Section 16)

By this notification, the Central Government has appointed 01st September, 2021 as the date on which Section 4 of the **Companies (Amendment) Act, 2020** i.e., amendment in Section 16 of the **Companies Act, 2013** shall come into force.

Section 16 stands form "Rectification of Name of Company"

EFFECT OF AMENDMENT

If any owner of registered Trade Mark that the name is identical with or too nearly resembles to a registered trade mark of such proprietor under the Trade Marks Act, 1999, made to the Central Government within three years of incorporation or registration or change of name of the company,

The Central Government may direct the company to change its name and the company shall change its name or new name, as the case may be, **within a period of three months** from the issue of such direction, after adopting an ordinary resolution for the purpose.

NEW INSERSION – SECTION 16(3): If a company is in default in complying with any direction given under sub- section (1), the *Central Government shall allot a new name to the company* in such manner as may be prescribed and the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name, which the company shall use thereafter:

Provided that nothing in this sub-section shall prevent a company from subsequently changing its name in accordance with the provisions of section 13.

Amendment THROUGH Circulars

2. Clarification regarding spending of CSR Funds for Covid-19 Vaccination:

MCA vide **Circular No.13/ 2021 dated 30th July 2021** had once again clarified that spending of CSR Funds by Corporate onCovid-19 vaccination for persons other than employees and their families, is an eligible CSR activity. The same can be covered under item (i) Promotion of Health care including preventive health care and also under item (xii) Disaster Management of Schedule VII to the Companies Act, 2013.

The above clarification is simply communication and appeal to the Corporate to spend on Covid-19 vaccination.

Amendments in Rules

3. Amendment in Companies (Incorporation) Fifth Amendment Rules, 2021:

MCA has issued two notification on 22nd July, 2021 for Companies (Incorporation) Fifth Amendment Rules, 2021.

- This Rules came into effect from 1st September 2021.

Effect of Amendment:

B. ANALYSIS OF NOTIFICATION – Two: Insert new rule, " Allotment of a new name to the existing company under section 16(3) of the Act".

Pursuant to amendment in section 16 of the Act, the Central Government has incorporated Rule 33A in the **Companies (Incorporation) Rules, 2014** for prescribing provisions for allotment of a new name to the existing company under section 16(3) of the Act.

This rule shall be applicable in the case Company fails to change its name after direction u/s 16 of Companies Act, 2013.

A. NEW NAME BY CENTRAL GOVERNMENT:

In case a company fails to change its name or new name, as the case may be, in accordance with the direction issued under sub-section (1) of section 16 of the Act **within a period of three months** from the date of issue of such direction, the letters "ORDNC" (which is an abbreviation of the words "Order of Regional Director Not Complied"), the year of passing of the direction, the serial number and **the existing Corporate Identity Number (CIN) of the company shall become the new name of the company without any further act or deed by the company**,

and the Registrar shall accordingly make entry of the new name in the register of companies and issue a fresh certificate of incorporation in Form No.INC-11C:

EXEMPTION:

If Company has already filed INC 24 and it is pending for approval even after expiry of three months from the date of issuance of direction by ROC, then Central Government shall not change the name of the Company by itself.

B. COMPLIANCE BY COMPANY – AFTER CHANGE OF NAME BY CG:

A company whose name has been changed under sub-rule (1)

- shall at once make necessary compliance with the provisions of section 12 of the Act like (Change of Name on Letter Head, Boards, Invoices, other documents etc.) and
- the statement, "Order of Regional Director Not Complied (under section 16 of the Companies Act, 2013)"

shall be mentioned in brackets below the name of company, wherever its name is printed, affixed or engraved.

V. GST

MONTHLY GST UPDATES FOR AUGUST 2021

1. Latest updates by way of Notifications issued

♦ **Notification No. 29/2021- Central Tax dated 30.07.2021**

[Omission of Section 35(5) of the GST Act i.e. GST Audit and Substitution of Section 44 – by inserting Self-Certified Reconciliation Statement]

The said notification omitted Section 35(5) of the GST Act i.e. GST Audit to be done away with by the Chartered Accountants.

Also, from now onwards, the reconciliation statement i.e. Form GSTR-9C would now be self-certified by the registered person on their own as per the amendment made in Section 44 of the GST Act.

The above changes will be with effect from 1st August 2021.

GST Audit should not be done away with. Business gets benefitted more from the audit when their GST liability would be missed out and any ITC which should have been availed or correctness of GST liabilities and input tax credit availed by the businesses. The Government might extend the applicable turnover limit to get the GST audit done. Big business houses will get more benefit due to the GST audit.

♦ **Notification No. 30/2021- Central Tax dated 30.07.2021**

[Amendment in CGST Rules in Rule 80 in regard to insertion of GSTR-9C self-certification and filing of GSTR-9 for the year 2020-21

The said notification amends the rule 80 which deals with Annual Return i.e. GSTR-9 & now it includes self-certified GSTR-9C i.e. reconciliation statement.

The above changes will be with effect from **1st August 2021.**

♦ **Notification No. 31/2021- Central Tax dated 30.07.2021**

[Exempts the registered person from filing GSTR-9 whose aggregate turnover is upto two crores for the financial year 2020-21]

The said notification exempts the registered person whose aggregate turnover in the financial year 2020-21 is upto two crores, from filing the annual return for the said financial year.

Disclaimer:

The issues of concern raised, conclusions reached, and views expressed in the presentation are matters of opinion. Our opinion is based on our understanding of the law and regulations prevailing as of the date of this Note and our experience with the tax and / or regulatory authorities. However, there can be no assurance that the tax authorities or regulators may not take a position contrary to our views. Legislation, its judicial interpretation and the policies of the tax and / or regulatory authorities are also subject to change from time to time, and these may have a bearing on the advice that we have given. Accordingly, any change or amendment in the law or relevant regulations would necessitate a review of our comments and recommendations contained in this Note. Unless specifically requested, we have no responsibility to carry out any review of our comments for changes in laws or regulations occurring after the date of issue of this Note. This presentation is prepared exclusively for knowledge upgradation of members of SUFI and not for solicitation of any assignment. This presentation may not be distributed or otherwise made available to other parties without our consent. Umesh P Gosar & Associates, its promoters, employees and or agents, neither owe nor accept any duty of care or any responsibility to any other party, whether in contract or in tort (including without limitation, negligence or breach of statutory duty) however arising, and shall not be liable in respect of any loss, damage or expenses of whatever nature which is caused to any other party.

Thanking you,
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