

# DEVMANTRA TIMES

## Editorial

*We have started with our 3<sup>rd</sup> edition of Devmantra Times for the month of May.*

*Financial Year 2020-21, was perceived that it won't be a fruitful year as the Indian Economy was in a drop-down position due to coronavirus pandemic effect. However, GST collections have crossed Rs 1 lakh crore in a row for straight five months converting it to the highest sustaining collection ever since the implementation of GST in July 2017, representing a resounding economic upturn.*

*There was significant resumption of business and trade after the COVID-19 lockdown - 1.*

*However, we are now experiencing a much tougher version of the pandemic with health infrastructure completely going out of gear and significant uncertainty looms over the economy.*

*But businesses must as usual continue their operations as well as the law enforcing agencies. With this edition We bring you a concise and noteworthy regulatory developments in Income Tax, Goods & Services Tax*

*during April 2021. We had tried to cover all important updates occurred during April 2021 in*

*this volume of newsletter. The sole purpose of this circulation is to update finance professionals and business*

*owners on direct & indirect taxes .*

*Why this Volume of Newsletter is important for reader?*

*Through the series of this newsletter, we aim at covering all relevant Income Tax, Goods & Service Tax and Companies Act notification, circulars and case laws which may directly or indirectly impact our readers. At Devmantra, it is our utmost priority to help our readers to be informed with respect to the changes in relevant laws for a smoother compliance.*

## GST

### REGULATORY UPDATES

**1. Taxpayers can now Check their GST Returns for last 5 Return periods on GST Portal. The Return Calendar will help every registered business and professionals to check the past 5 returns periods so as to avoid incurring any interest or late fee.**



**2. CBIC allows companies to file GST Returns without DSC with Mobile OTP**

The Central Board of Indirect Taxes and Customs (CBIC) allowed the companies to file GST Returns without Digital Signature Certificate (DSC) with Mobile One Time Password (OTP). The government notified the Central Goods and Services Tax (Second Amendment) Rules, 2021 which seeks to amend Central Goods and Services Tax Rules, 2017.

**3. Advisory on implementation of PMT-03 to re-credit the ITC sanctioned as refund**

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## Background:

Earlier, the CBIC issued the Notification No.16/2020-Central Tax dated 23.03.2020, vide which sub-rule (4A) has been inserted in Rule 86 of the Central Goods and Services Tax Rules, 2017 (“CGST Rules”) and a Circular No 135/05/2020 dated 31.03.2020 (Para 4), wherein the procedure for refund of tax paid on supplies, other than zero rated supplies was provided.

## Advisory:

The CBIC issued Advisory No. 8 /2021- Refunds dated April 20, 2021 w.r.t. implementation of PMT-03 to recredit the Input Tax Credit (“ITC”) sanctioned as refund, in a following manner:

- The refund of tax wrongly paid or paid in excess shall be made in the same mode by which the tax liability was discharged i.e. if the tax was paid by partly debiting the credit ledger and partly debiting the cash ledger, the refund shall be sanctioned in the same proportion. The cash part has to be sanctioned and credited to the bank account of the taxpayer by issuance of RFD-05 and the credit part should be re-credited to the electronic credit ledger of the taxpayer through PMT-03.

- In order to enable the operationalisation of re-crediting of ITC sanctioned as refund towards tax wrongly paid or paid in excess by debiting the credit ledger, a new enhanced PMT-03 functionality has been

developed and deployed in the system, which is applicable only to the following 4 types of refund:

1. Refund of excess payment of tax;
2. Refund of tax paid on intra-state supply which is subsequently held to be inter-state supply and vice versa;
3. Refund on account of assessment/provisional assessment/appeal/any other order; and
4. Refund on account of “any other” ground or reason.

## Effect:

This Advisory has been issued to clarify the manner for refund/re-credit of ITC sanctioned as refund, through PMT-03.3.

## RECENT JUDICIAL RULINGS ON GST

### 1. Allowed use of Form-C to purchase Petroleum, Natural Gas and Liquor products post GST.



The Hon’ble Supreme Court of India in the Commissioner of Commercial Taxes and Anr. etc. v. the Ramco Cements Ltd. etc. [Petition(s) for Special Leave to Appeal (C) No(s) .15785-15788/2020, dated March 24, 2021] declined to interfere in Revenue’s Special Leave Petitions, for use of ‘C’ Forms of the Central Sales Tax Act, 1956 (“CST Act”) post GST in respect of purchase of

six commodities (petroleum crude, diesel, petrol, aviation turbine fuel, natural gas and liquor) for use in the course of inter-state trade or commerce by the Assessee.

### 2. Gift vouchers are neither goods nor services, but instruments used as consideration for payment – Controversy Saga Continues



The AAAR, Tamil Nadu in the matter of Kalyan Jewellers India Ltd. [Order-in-Appeal No. AAAR/11/2021 (AR), dated March 30, 2021] modified the order passed by the AAR, Tamil Nadu to the extent that vouchers are neither good nor service and the Central Goods and Services Tax Act, 2017 (“CGST Act”), recognized it as an instrument of consideration (non-monetary form) for future supply. Further, held that Goods and Services Tax (“GST”) will be levied at the time of issue of the voucher and not at the time of actual availing of service or time of redeeming the voucher as the supply is deemed to have been made at the time of issue of voucher itself.

## Our comments:

Vouchers have no inherent value of their own and are just an instrument which are accepted as consideration

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for supply of underlying goods or service.

According to Rule 32(6) of the CGST Rules, voucher gets its worth from the underlying goods or services redeemable against them. Subsequently, if the supply of goods/services is not clearly known at the time of issuance of voucher or if it does not indicate the goods/services against which the voucher can be redeemed, will bring result in double tax collection; once at the time of supply of vouchers and afterward again at the time of supply of basic goods or services. Therefore, the CBIC must come out with appropriate clarification in this regard.

It is pertinent to note that if the vouchers are considered as an instrument for payment that means the same is covered under the definition of 'Money' under the CGST Act, which excluded from the definition of both "Goods" and "Services" and hence not chargeable to GST. Further, in the service tax regime, the definition of 'Money' was essentially same as under CGST Act.

The Hon'ble Delhi High Court in Union of India vs. Delhi Chit Fund Association (W.P. (C) 4512/2012, dated April 23, 2013) has held that, a mere transaction in money represents the gross value of the transaction. But what is chargeable to service tax is not the transaction in money itself since it can by no means be considered as a service.

Therefore, there might not be any GST implications on the issuance of

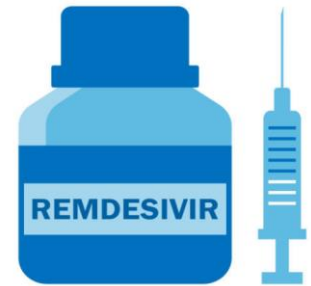
vouchers unless underlying goods or services are actually supplied as consideration.

### **3. Supply of medicines, food, room on rent etc. to in-patients is a composite supply of healthcare service.**



The AAR Gujarat, in the matter of M/s Baroda Medicare (P.) Ltd., [Advance Ruling No. GUJ/GAAR/R/106 OF 2020 dated, December 30, 2020] has held that, the supply of medicines, surgical items, implants, consumables and other allied services & items provided by the hospital through their hospital in-house pharmacy, as well as food, room on rent, other services to the in-patients admitted to hospital for diagnosis, or medical treatment or procedures is part of composite supply of health care treatment service and is exempted under SI. No. 74 of the Notification No. 12/2017-Central Tax (Rate) dated June 28, 2017 ("Services Exemption Notification")

### **4. CBIC exempt the customs duty on imports of Remdesivir and related ingredients**



The CBIC vide Notification No. 27/2021-Customs, dated April 20, 2021, has exempted certain goods, from the whole of the duty of customs leviable under the Customs Act, 1962, till October 31, 2021, when imported into India, to increase the production and supply of the anti-COVID-19 drug as infections rise rapidly and due to surge in demand over the recent few days in India as the second wave of COVID-19 cases is sweeping across the country.

Effect: Customs Duty levied on imports of Remdesivir injections, Active Pharma Ingredients used in its manufacture has been withdrawn and a conditional customs duty exemption has been granted for the ingredient Beta Cyclodextrin (SBEBDC) used in the manufacture of Remdesivir, till October 31, 2021.

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## INCOME TAX

### REGULATORY UPDATES

#### 1. CBDT extends Time Limit for Income Tax Assessment



The Central Board of Direct Taxes (CBDT) extended the time limit for Income Tax Assessment due to COVID-19 pandemic. In the light of several representations received and to address the hardship being faced by various stakeholders, the CBDT has decided to extend the **time limits** to 30th June, 2021 in the four cases where the time limit was earlier extended to 30th, April 2021 through various notifications issued under the Taxation and Other Laws (Relaxation) and Amendment of Certain Provisions Act, 2020.

Firstly, the time limit for passing of any order for assessment or reassessment under the Income-tax Act, 1961 the time limit for which is provided under section 153 or section 153B thereof. Secondly, time limit for passing an order consequent to direction of DRP under sub--section (13) of section 144C of the Act.

Thirdly, time limit for issuance of notice under section 148 of the Act

for reopening the assessment where income has escaped assessment. Fourthly, time Limit for sending intimation of processing of Equalisation Levy under sub--section (1) of section 168 of the Finance Act 2016.

#### 2.CBDT extends Time Limit for Amount payable under Direct Tax Vivad se Vishwas Act, 2020

In the wake of CoronaVirus Pandemic, the Central Board has decided that time for payment of amount payable under the Direct Tax Vivad se Vishwas Act, 2020, without an additional amount, shall be further extended to 30th June, 2021. Amid the raging coronavirus pandemic, the Centre announced the extension of several time limits on Saturday. Considering requests from taxpayers, tax consultants and several other stakeholders, the Union ministry of finance deferred the payment date under Direct Tax Vivad se Vishwas Act, 2020 to June 30.

The time for payment of the amount payable under the Direct Tax Vivad se Vishwas Act, 2020, without an additional amount, has been extended to June 30,” the government said in a release on Saturday. In February, the Central Board of Direct Taxes (CBDT) had extended the due date for filing declaration under the Vivad Se Vishwas Scheme till 31 March, 2021.

#### 3.CBDT notifies Conditions for Pension Fund for Exemption under Sec 10(23FE) and substitutes Form No. 10BBA



The Central Board of Direct Taxes (CBDT) notified the conditions for the pension fund for exemption under section 10(23FE) and substituted Form No. 10BBA. The Board notified the Income-tax (11th Amendment) Rules, 2021 which seeks to further amend the Income-tax Rules, 1962.

In the Income-tax Rules, 1962, in rule 2DB,- after clause (ii), the proviso shall be inserted, which says, provided that the condition in clause (ii) shall be deemed to have been satisfied with respect to assets being administered or invested, if the three conditions are satisfied.” Firstly, the value of such assets is not more than ten per cent. of the total value of the assets administered or invested by such funds.

Secondly, such assets are wholly owned directly or indirectly by the Government of a foreign country. Thirdly, such assets vests in the Government of such foreign countries upon dissolution.”

After the proviso to clause (iii), the proviso shall be inserted, namely “Provided further that the provisions

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of clause (iii) shall not apply to earning from the assets referred to in the proviso of clause (ii), if the said earning are credited either to the account of the Government of that foreign country or to any other account designated by such Government so that no portion of the earnings inures any benefit to any private person". In the principal rules, in the APPENDIX II, for Form No. 10BBA the following Form shall be substituted which is in respect of application for notification under sub-clause (iv) of clause (c) of Explanation 1 to the clause (23FE) of section 10 of the Income-tax Act, 1961.

## RECENT JUDICIAL RULINGS ON INCOME TAX

**1.Foreign Currency is not a 'Commodity' to invoke provisions relating to Speculative Transactions: ITAT grants Relief to Lifestyle International.**



The Income Tax Appellate Tribunal (ITAT), Bangalore Bench while granting the relief to Lifestyle International ruled that the Foreign Currency is not a 'commodity' to invoke provisions relating to Speculative Transactions.

**2. Actual Receipt of Money by Assessee is a mandatory condition to invoke section 68 for Unexplained Cash Credit: ITAT grants relief**

The Income Tax Appellate Tribunal (ITAT), Delhi Bench while providing the relief to the Zexus Air Services Pvt. Ltd. ruled that Actual Receipt of Money by Assessee is a mandatory condition to invoke section 68 for Unexplained Cash Credit

**3.Assessment without issuance of Notice U/s 143(2) is void ab-initio: ITAT quashes Assessment Order**

The Income Tax Appellate Tribunal (ITAT), Kolkata Bench while quashing the Assessment Order reiterated that the assessment without issuance of notice under section 143(2) is void ab-initio.

**4.Depreciation allowable on Machineries kept ready for Use: ITAT allows Relief since Non-Usage of Machineries due to reasons beyond the control of Assessee**



The Income Tax Appellate Tribunal (ITAT), Chennai Bench while allowing the relief since non-usage of Machineries due to reasons beyond the control of assessee held that the depreciation allowable on Machineries kept ready for use.

**5.Relief to Reliance: Deductions for Profits and Gains from Industrial Undertakings not to be confined to 'Business Income' Only, rules Supreme Court**

The Supreme Court of India has ruled that the Deductions for profits and gains from industrial undertakings under Section 80-IA must not be confined to 'Business Income' only. The Assessing Officer restricted the eligible deduction under Section 80-IA of the Income Tax Act, 1961 to the extent of 'business income' only. The Commissioner of Income-Tax (Appeal)-I partly allowed the Appeal filed by the Assessee and reversed the order of the Assessing Officer on the issue of the extent of deduction under Section 80-IA of the Act. The Income Tax Appellate Tribunal, upheld the decision of the Appellate Authority on the issue of deduction under Section 80-IA. The High Court refused to interfere with the Tribunal's order as far as the issue on deduction under Section 80-IA is concerned.

The Assessee, M/s. Reliance Energy Ltd. is in the business of generation of power and also deals with purchase and distribution of power. The Assessee-Company generated power from its power unit located at Dahanu. In respect of deduction under Section 80-IA of the Act, the Assessee was asked to explain as to why the deduction should not be restricted to business income, as had been the stand of the Revenue for the assessment year 2000-01. The Assessee had revised its claim under Section 80-IA of the Act to Rs.

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546,26,01,224/-, having admitted that there was an error in calculation of income-tax depreciation. The Assessing Officer rejected the contention of the Assessee that Section 80AB of the Act is not applicable.

The Assessing Officer elaborated on this point by stating that 'income from business' alone had to be considered for allowing any deduction computed on 'income from business' and using the same analogy, deduction computed on 'income from other sources' should be allowable against 'income from other sources' only. As the deduction under Section 80-IA of the Act pertains to profits and gains from a business undertaking, the deduction is allowable only against 'income from business'. The Assessee supported the order passed by the Appellate Authority which was upheld by the Tribunal and the High Court. It is the argument of Mr. Ajay Vohra, learned Senior Counsel appearing on behalf of the Assessee, that Section 80AB of the Act is with reference to computation of deduction on the basis of net income. He submitted that there is no indication in sub-section (5) of

Section 80-IA that the deduction under sub-section (1) is restricted to 'business income' only. On the other hand, according to him, sub-section (5) deals with determination of the quantum of deduction by treating eligible business as the only source of income of the Assessee. The controversy in this case pertains to the deduction under Section 80-IA of the Act being allowed to the extent of 'business income' only. The claim of the Assessee that deduction under Section 80-IA should be allowed to the extent of 'gross total income' was rejected by the Assessing Officer. The division bench of Justices L.Nageshwara Rao and Vineet Saran highlighted the essential ingredients of Section 80-IA (1) of the Act. Firstly, the 'gross total income' of an assessee should include profits and gains. Secondly those profits and gains are derived by an undertaking or an enterprise from a business referred to in sub-section (4). Thirdly, the assessee is entitled for deduction of an amount equal to 100% of the profits and gains derived from such business for 10 consecutive assessment years. Lastly, in computing the 'total income' of the Assessee, such deduction shall be allowed. The

Apex court held that the scope of sub-section (5) of Section 80- IA of the Act is limited to determination of quantum of deduction under sub-section (1) of Section 80-IA of the Act by treating 'eligible business' as the 'only source of income'. Sub-section (5) cannot be pressed into service for reading a limitation of the deduction under sub-section (1) only to 'business income'."

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## Compliance calendar for May 2021

Date	Particular
7 <sup>th</sup> May 2021	TDS Payment for April
11 <sup>th</sup> May 2021	GSTR 1 (Monthly) for April
15 <sup>th</sup> May 2021	<p>Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of March, 2021</p> <p>Due date for issue of TDS Certificate for tax deducted under Section 194-IB in the month of March, 2021</p> <p>Due date for issue of TDS Certificate for tax deducted under Section 194M in the month of March, 2021</p> <p>Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of April, 2021 has been paid without the production of a challan</p> <p>Quarterly statement of TCS deposited for the quarter ending March 31, 2021</p> <p>Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes have been modified after registering in the system for the month of April, 2021</p>
20 <sup>th</sup> May 2021	GSTR 3B for April for Monthly

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<p>30<sup>th</sup> May 2021</p>	<p>Submission of a statement (in Form No. 49C) by non-resident having a liaison office in India for the financial year 2020-21</p> <p>Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of April, 2021</p> <p>Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194M in the month of April, 2021</p> <p>Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IB in the month of April, 2021</p> <p>Issue of TCS certificates for the 4th Quarter of the Financial Year 2020-21</p>
<p>31<sup>st</sup> May 2021</p>	<p>Quarterly statement of TDS deposited for the quarter ending March 31, 2021</p> <p>Return of tax deduction from contributions paid by the trustees of an approved superannuation fund</p> <p>Due date for furnishing of statement of financial transaction (in Form No. 61A) as required to be furnished under sub-section (1) of section 285BA of the Act respect of a financial year 2020-21</p> <p>Due date for e-filing of annual statement of reportable accounts as required to be furnished under section 285BA(1)(k) (in Form No. 61B) for calendar year 2020 by reporting financial institutions</p> <p>Application for allotment of PAN in case of non-individual resident person, which enters into a</p>



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	<p>financial transaction of Rs. 2,50,000 or more during FY 2020-21 and hasn't been allotted any PAN</p> <p>Application for allotment of PAN in case of person being managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer of the person referred to in Rule 114(3)(v) or any person competent to act on behalf of the person referred to in Rule 114(3)(v) and who hasn't allotted any PAN</p>
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