



**Chengalpattu District Branch of SIRC of ICAI
(Formerly known as Kanchipuram District Branch)**

E- NewsLetter AUGUST 2021



Chengalpattu District Branch of SIRC of ICAI

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Note: The views expressed in the articles published are their own views and Chengalpattu District Branch does not endorse or take responsibility for the views expressed in the articles.

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E-NEWSLETTER

CHENGALPATTU DISTRICT BRANCH OF SIRC OF ICAI

From the Chairman's Desk

My Dear professional colleagues,



Professional Colleagues,

My hearty 75th Independence day wishes to all members and students. The 75th Independence day is to be celebrated at the branch premises on 15th August 2021. The prize distribution for the students games and cultural events held during 2020-21 is to be held as part of Independence day celebrations.

The branch fifth annual general meeting was held on 30th July 2021 virtually and the branch accounts was presented.

As per the ICAI guidelines, the branch is to setup MSME Committee and a MSME help desk and request the interested members to contact the branch to be volunteers for the desk.

As we are returning towards normalcy, lot of programmes are lined up for this month. Request the members to attend the programs at large.

With regard to our own land, the legal / compliance formalities are under process and agreements shall be signed very shortly.

On behalf of our branch, myself along with SIRC Chairman Sri. CA K. Jalapathy Sir, met

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the Honourable Minister of Rural Industries Sri T.M. Anbarasan, and presented him a shawl and Memento and discussed various issues regarding the MSME schemes of Tamil Nadu.



Be safe and follow the SOP's and get vaccinated. Vazhga Valamudan.

With regards.

CA C Kathiresan

9444083676

CHAIRMAN

CHENGALPATTU DT BRANCH OF SIRC OF ICAI.

DATE: 01.08.2021

SAVE BRANCH MOBILE NO: 8056244300

FAQs on TDS under Section 194Q Inserted from 01.07.2021

compiled by CA Geetha G

**1. On which type of Assessee section 194Q applies?**

Ans. Any person, being a buyer whose total sales/gross receipts/turnover from the business carried on by him exceed 10 crore rupees during the F.Y. immediately preceding the F.Y. in which the purchase of goods is carried out, not being a person, as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

and who is responsible for paying any sum to any resident (i.e. seller) for purchase of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year.

2. What will be Rate of TDS?

Ans. TDS shall be deducted at an amount equal to 0.1 % of such sum exceeding 50 lakh rupees as income-tax, if the seller has furnished his PAN or Aadhaar, otherwise, the tax shall be deducted at the rate of 5%.

3. Time of Deduction of TDS?

Ans. 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.

4. Whether section 194Q applies if any sum referred to in sub-section (1) of Sec.194 is credited to any account, whether called "suspense account" or by any other name, in the books of account of the person liable to pay such income?

Ans. Yes, the said section will be applicable as such credit of income in Suspens a/c or any other a/c shall be deemed to be the credit of such income to the account of the payee.

5. On Which transaction provision of the section 194Q not applicable?

Ans. The provisions of this section shall not apply to a transaction on which
(a) tax is deductible under any of the provisions of this Act like sec. 194O; and
(b) tax is collectible under the provisions of section 206C other than a transaction to which sub-section (1H) of section 206C applies.]

6. IS the provision is applicable on transactions carried through various Exchanges:(Stock exchanges and clearing corporations)?

Ans. No, Since it has been clarified vide Guidelines under section 194Q of the Income-tax Act, 1961 - dated 30.06.2021 vide Circular No. 13 of 2021 on Point no 4.1.

7. Whether the provision of sec 194Q Applicable on payment or credit made before 30th June 2021?

Ans. The provision of this sub-section shall not apply on any sum credited or paid before 1 st July 2021. If either of the two events had happened before 1st July 2021 , that transaction would not be subjected to the provisions of section 194Q of the Act.

Hence, if a person being buyer has already credited or paid fifty lakh rupees or more up to 30th June 2021 to a seller, the TDS under section 194Q shall apply on all credit or payment during the previous year, on or after 1 st July 2021 , to such seller.

8. Whether non-resident can be buyer under section 194Q of the Act?

Ans. It is clarified that the provisions of section 194Q of the Act shall not apply to a non-resident whose purchase of goods from seller resident in India is not effectively connected with the permanent establishment of such non resident in India.

For this purpose, “permanent establishment” shall mean to include a fixed place of business through which the business of the enterprise is wholly or partly carries on.

9. Whether tax is to be deducted when the seller is a person whose income is exempt?

Ans. No, as It has been clarified that the provisions of Section 194Q of the Act shall not apply on purchase of goods from a person, being a seller, who as a person is exempt from income tax under the Act (like person exempt under section 10) or under any other Act passed by the Parliament (Like RBI Act, ADB Act etc.).

Similarly, with respect to sub-section (1 H) of section 206C of the Act, it is clarified that the provisions of this sub-section shall not apply to sale of goods to a person, being a buyer, who as a person is exempt from income tax under the Act (like person exempt under section 10) or under any other Act passed by the Parliament (Like RBI Act, ADB Act etc.).

The above clarifications would not apply if only part of the income of the person (being a seller or being a buyer, as the case may be) is exempt.

10. Whether tax is to be deducted on advance payment?

Ans. Yes, as it has been clarified that the provisions of section 194Q of the Act shall apply to advance payment made by the buyer. It is clarified that since the provisions apply on payment or credit whichever is earlier, the provisions of section 194Q of the Act shall apply to advance payment made by the buyer to the seller.

11. Whether provisions of section 194Q of the Act shall apply to buyer in the year of incorporation?

Ans. No, as It is clarified that under section 194Q of the Act a buyer is required to have total sales or gross receipts or turnover from the business carried on by him exceeding 10 crore rupees during the financial year immediately preceding the financial year in which

the purchase of good is carried out.

Since this condition would not be satisfied in the year of incorporation, the provisions of section 194Q of the Act shall not apply in the year of incorporation.

12. How the APPLICATION OF SECTION-194O, 206C(1H) & 194Q?

Ans. *If TDS Deducted By E-Commerce Operator U/S 194O, Then Transaction Will Not Be Subjected To TDS U/S 194Q

- If Transaction Is Both Within The Purview Of 194O & 194Q, Then The Tds Will Be Deducted U/S 194O & Not 194Q.
- If Transaction Is Both Within The Purview Of 194O & 206C(1H), Then The TDS Will Be Deducted U/S 194O & Not 206C(1H).
- If Transaction Is Both Within The Purview Of 194Q & 206C(1H), Then The TDS Will Be Deducted U/S 194Q & Not 206C(1H).

13. Whether Section-194Q Applies If Buyer's Turnover In Preceding Year Is Rs 10 Crore Or Less ?

Ans. If Turnover From Business Carried On By Buyer Exceeds Rs 10 Crore Then Section-194Q Will Be Applicable. Non Business Income Will Not Be Considered In The Ten Crore Limit.

14. Whether TDS u/s 194Q is required to be deducted on GST Component?

Ans. Accordingly with respect to TDS under section 194Q of the Act, it is clarified that when tax is deducted at the time of credit of amount in the account of seller and in terms of the agreement or contract between the buyer and the seller, the component of GST comprised in the amount payable to the seller is indicated separately, tax shall be deducted under section 194Q of the Act on the amount credited without including such GST.

However, if the tax is deducted on payment basis because the payment is earlier than the credit, the tax would be deducted on the whole amount as it is not possible to identify that payment with GST component of the amount to be invoiced in future.

15. How the treatment of Purchases return to be made for section 194Q?

Ans. Further, with respect to purchase return it is clarified that the tax is required to be deducted at the time of payment or credit, whichever is earlier. Thus, before purchase return happens, the tax must have already been deducted under section 194Q of the Act on that purchase. If that is the case and against this purchase return the money is refunded by the seller, then this tax deducted may be adjusted against the next purchase against the same seller.

No adjustment is required if the purchase return is replaced by the goods by the seller as

in that case the purchase on which tax was deducted under section 194Q of the Act has been completed with goods replaced.

16. Is section 194Q applicable to the purchase of capital goods?

Ans. Yes, section 194Q applies to purchase of all goods whether on capital or on revenue account.

17. Whether TDS to be deducted on the purchase of immovable property by a developer?

Ans. Goods' means every kind of movable property subject to certain exceptions and inclusions. Thus, the immovable property shall not be treated as 'goods'. Consequently, the TDS shall not be deducted from the purchase of immovable property by a developer.

18. Whether TDS is liable to be deducted on purchase of Jewellery not connected with business?

Ans. In section 194Q, there is no condition that the purchases should be connected with the business only. Thus, if a person is falling within the definition of the buyer, tax is required to be deducted even if such purchase is not connected with the business carried on by him Jewellery, being a movable property, is covered within the term goods. There is no specific exclusion under Section 194Q for deduction of TDS on purchase of jewellery. Thus, the tax

shall be deductible on purchase of jewellery if other conditions are also fulfilled.

19. Whether additional, allied and out-of-pocket expenses form part of the purchase value of goods?

Ans. Where these expenses have been reflected in the purchase invoice itself, it should form part of purchase value. If they are charged through a separate invoice, it should not form part of purchase value.

20. Whether tax to be deducted on the purchase of goods by one branch from another?

Ans. NO, Since TDS under this section is required to be deducted by any person, being a buyer, responsible for making payment to the seller for the purchase of goods. Thus, the existence of two distinct parties as 'seller' and 'buyer' is a pre-requisite to construe a transaction as a purchase. The condition of purchase is not fulfilled in the context of branch transfer.

Therefore, the provisions of this section shall not apply in the case of branch transfers.

21. Whether buyer shall be treated as assessee in default if the seller pays the tax due on the income declared in the return of income?

Ans. Section 201 of the Income-tax Act provides that a deductor, who fails to deduct tax at source, is not deemed to be in default if the payee has considered such amount while

computing income in the return and has paid the tax due on such declared income. The deductor will have to obtain a certificate to this effect from a Chartered Accountant in Form No. 26A and submit it electronically.

Thus, the buyer shall not be deemed as assessee-in-default if the seller has taken into account the purchase amount while computing his income and has paid the tax due on the income declared in the return.

22. If the seller has multiple units, whether purchases made from different units need to be aggregated?

Ans. In other words, if different units of the seller are under the same PAN or Aadhaar number, the amount paid or payable to all such units shall be aggregated to compute the limit of Rs. 50 Lakhs.

23. In which cases Sec 194Q is not applicable?

Ans. The provisions of this section shall not apply to a transaction on which –

(a) tax is deductible under any of the provisions of this Act (Actual deduction is not required it is only tax is deductible) ; and

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

i.e if the tax collected U/s 206(1H) – Still the Provisions of Sec 194Q is applicable irrespective of tax collected, provided all the conditions satisfied U/S 194Q.

if the tax collected U/s 206C – then the Provisions of Sec 194Q is not applicable.

If the tax deductible U/s 194Q – then the provisions of Sec 206(1H) not applicable. (Sec 206(1 H) not applicable, if the buyer is liable to deduct tax at source under any other provision of this Act on the goods purchased by him from the seller and has deducted such amount).

(c) Not applicable in case of seller is Non Resident (i.e Seller must be resident and there is no restriction on buyer).

24. From which date the provisions of Sec 194Q Applicable?

Ans. The provision of Sec 194Q notified in Finance Act, 2021 and applicable from 01st July 2021.

25. What are the consequences of not deducting or not depositing TDS?

Ans. As per sec 40(a)(ia), if TDS is not deducted or Deducted but not deposited then 30% of the amount on which TDS is to be deducted and deposited will be added to the Income of that person.

However on payment of such TDS in the subsequent year, the 30% of such amount added back in the previous is allowed as deduction in the year in which Tax deducted is paid.

26. Is this applicable for all types of assesses like individuals and firms?

Ans. The provisions are applicable to all types of assesseees whoever satisfies the definition of buyer. At present, there are no exclusions made.

27. Is it applicable for the goods alone or includes services also?

Ans. The new provision is applicable on purchase of goods only and not services.

28. Which is the base year for the threshold limit of Rs.50 lakhs?

Ans. Limit of 50 lakhs is considered in each financial year. The 50 lakhs exemption is for one financial year for a single seller.

29. Transfer of goods on testing purpose?

Ans. Section 194Q provides that buyer shall deduct TDS on purchase of goods. Considering that the goods are transferred for the purpose of testing and no purchase made, this provision will not apply.

Indirect Taxes Updates

by CA R. V. Bhuvaneshwari



Notifications:

1. Rule 80 of the CGST Act 2017, has been amended to give effect for filing of GSTR-9 for the FY 2020-2021, by all Registered Tax Payers except an ISD, a person paying TAX u/s 51 or 52, a Casual Taxable Person, and a NRTP on or before 31.12.2021.

Notification No.30/2021, CT. Dt.30.07.2021.

2. Every Registered person whose Aggregate Turnover in the FY 2020-2021, is upto Rs.2 Crores, is exempted from filing of Annual Return GSTR-9 for the said FY.

Notification No.31/2021, CT. Dt.30.07.2021.

Advance Rulings:

**M/s BMW India Pvt. Ltd. (Advance Ruling No. 49/2018- 19 dated 10th April, 2019) -
Availment of ITC on Goods Distributed for Promotional Events:**

The applicant is engaged in the business of manufacturing and sale of motor cars. It organises various events through the year for the purposes of marketing and sales promotion of its products. Such events are organised all over the country with an intention to increase the brand loyalty of its customers. In short, these are referred to as sales promotion events. For organising such events various expenses are incurred such as booking of space, hiring of consultants and other such expenses. At such events, amongst other things, the applicant distributes BMW branded lifestyle accessories like duffle bags, T-shirts, golf balls, caps, keychains, etc. These items are given on free of cost (FOC) basis to the attendees at such events.

The applicant company filed this Advance Ruling application before the Haryana AAR to know the eligibility of ITC on the purchase of the above items.

The Observations of AAR is as follows:

1. The applicant has contended that the goods supplied by it in the marketing events are intended to earn consideration in the form of reciprocity from customers and increase in sales and brand value of the company.
2. It has further maintained that the customers invited at such events are existing and potential customers.
3. As far as the supply of goods to the potential customers is concerned, the issue of consideration does not arise because the potential customers may not be actual customers / buyers of the applicant company's motor cars and motor bikes
4. The company has itself maintained that these free of cost supplies are made with an intention to earn consideration. This statement itself reflects that there is no consideration involved at the time of making of these free of cost supplies.
5. And Hence ITC shall not be available in respect of the "Goods Lost, Stolen, Destroyed, Written Off, or Disposed of by way of Gift or Free Samples"

MCA Updates

by CA A. Priya

Introduction of Companies (Incorporation) Fifth Amendment Rules, 2021

MCA amended the Companies (Incorporation) Rules, 2014, vide Notification No.G.S.R.503(E) dated 22nd July, 2021, and introduced the Companies (Incorporation) Fifth Amendment Rules, 2021, which shall be effective from 1st September, 2021.

New Rule 33A with respect to Allotment of a new name to the existing company under section 16(3) of the Companies Act, 2013 was inserted.

In case a company fails to change its name or new name, as the case may be, in accordance with the direction issued under section 16(1) of the Act within a period of 3 months from the date of issue of such direction, the letters "ORDNC" ("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.

The above shall not apply in case e-form INC-24 filed by the company is pending for disposal at the expiry of 3 months from the date of issue of direction by Regional Director, unless the said e-form is subsequently rejected.

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 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, no such statement shall be required to be mentioned in case the company subsequently changes its name in accordance with the provisions of section 13 of the Act.

Effective date for Section 4 to come into effect - 1st September, 2021

MCA vide its Notification No.S.O. 2904(E). dated 22nd July, 2021, notified changes in Section 4 of Companies Act, 2013 which relates to Memorandum of Association of a company, to come into effect from 1st September, 2021, by virtue of its powers conferred by Section 1(2) of the Companies (Amendment) Act, 2020 (29 of 2020), the Central Government appointed 1st September, 2021 as the date on which the provisions of section 4 of the said Act shall come into force.



MCA Clarification on spending of CSR funds for Covid-19 vaccination

MCA vide its General Circular No.13/2021, dated 30th July 2021, issued clarification on spending of CSR funds for Covid-19 vaccination. Earlier MCA vide its General Circular No.10/2020, dated 23th March 2020, clarified that spending CSR funds for COVID-19 is an eligible CSR activity.

MCA further clarified that spending of CSR funds for Covid-19 vaccination for persons other than employees and their families is an eligible CSR activity under item (i) of Schedule VII of the Companies Act, 2013 relating to the promotion of health care including preventive health care and item no. (xii) relating to disaster management. Companies may undertake the aforesaid CSR activity subject to fulfillment of Companies (CSR Policy) Rules, 2014 and the circulars issued by MCA.

Due dates for filing RoC forms:

E-Form DIR - 3 KYC (Web Based and E-form)	KYC for Director's DIN	For Financial year 2020-21 within 30.09 2021
Relaxation to Companies/LLPs to file forms without additional fees vide Circular No. 11/2021 & 12/2021 dated June 30, 2021		Within 31.08.2021
Annual Return for Limited Liability Partnership / LLP	LLP Form 11	Within 31.08.2021
Application for issue of immunity certificate under the Companies Fresh Start Scheme (CFSS) 2020	e-Form CFSS	Within 31.08.2021
Return of Deposits	e-Form DPT-3	Within 31.08.2021
Annual Return of Foreign Company (Sec. 384 of the Companies Act, 2013 and Rule 7 of the Companies (Registration of Foreign Companies) Rules, 2014)	Form FC-4	Within 31.08.2021
Reconciliation of Share Capital Audit Report (Half-yearly)	e-form PAS-6	Within 31.08.2021
For furnishing half yearly return with the registrar in respect of outstanding payments to Micro Small or Medium Enterprises, if any. (For the period from October to March).	Form MSME-1	Within 31.08.2021

Income Tax Case Laws

by CA. Muthu Abirami



Reference: <https://www.taxmann.com/>

HIGH COURT OF MADRAS

DIT(Exemptions) v Shanmuga Arts

TCA NO. 1059 OF 2014

Held: Where Public Charitable Trust, doing educational services, gave donations to charitable and religious institutions for philanthropy only, exemption under section 11 cannot be denied merely because it was donating to 'activities other than education'. There is no bar for the charitable or religious trust to claim exemption as long as its income is applied in India for such charitable or religious purposes. As per Section 11(1)(a) exemption of 15% of income is unfettered and not subject to any conditions [Para 10]

Respondent-Trust is a Public Charitable Trust and doing educational services. It gave donations to charitable and religious institutions only and philanthropy had been essence of all donations.[Para 11]

Moreover, Charity is clearly defined as relief of poor, education, yoga, medical relief, preservation of environment, etc., Thus, public charitable trust donating to activities other than education cannot be denied exemption under section 11.[Para 19]

High Court of Bombay

Tata Communications Transformation Services Ltd. v ACIT

WRIT PETITION NO.1334 OF 2021

Held: Where assessee challenged constitutional validity of section 3 of TLA Act, 2020 and Notification No. 20/2021, dated 31-03-2021 issued thereunder contending that even though section 148 was substituted by Finance Act, 2021 w.e.f. 1-4-2021, TLA Act, 2020 allowed revenue to issue reassessment notice under old provisions of section 148, notice was to be issued to revenue and Attorney General of India

Note: Similar challenges are made before High Court of Delhi, High Court of Calcutta and High Court of Madras. Interim stay of notice issued under section 148 ordered.

Madras High Court

Karti P Chidambaram vs ACIT

W.P.NOS.15125, 15129 OF 2021

Held: Assessing Authority is bound to afford reasonable opportunity, enabling petitioners/assesseees to defend their case in manner prescribed. Where assessment had been issued under section 153C in case of assessee, however, directions issued by Court to afford opportunities to assesseees had not been complied with by Assessing Authority before passing final assessment order, matters were to be remanded back to Assessing Authority for fresh consideration and for providing reasonable opportunity to assesseees and thereafter pass order of assessment(s) on merits and in accordance with law. Further, opportunity to cross-examine persons, who had given statement against assesseees was also to be provided

COMPLIANCE DUE DATES - AUGUST 2021

Due Date	Particulars of Compliance	Applicable Act	Forms/ Returns	Applicable To	Reporting Period
07-08-2021	Due Date for deposit of Tax Deducted/ Collected	Income Tax	Challan - 281	All Tax Deductors/ Collectors	Jul-21
10-08-2021	Return for TDS under GST	GST	GSTR - 7	Government Authorities	Jul-21
10-08-2021	Return for Details of Supplies and the amount of tax collected	GST	GSTR - 8	E-Commerce Operator	Jul-21
11-08-2021	Due date for filing of Summary Return of Outward Supplies.	GST	GSTR - 1	Taxpayers with Annual Turnover exceeding Rs. 1.5 crores.	Jul-21
11-08-2021	Due date for filing of Summary Return of Outward Supplies.	GST	GSTR - 1	Taxpayers with Annual Turnover less than 1.5 crores and not opted for QRMP Scheme	Jul-21
13-08-2021	Optional Facility for Furnishing of Invoices raised during the period	GST	IFF	Taxpayers with Annual Turnover less than 1.5 crores and opted for QRMP Scheme	Jul-21
13-08-2021	Return for details of ITC Received and Distribution	GST	GSTR - 6	Input Service Distributors	Jul-21
15-08-2021	Deposit of Provident Fund Contributions	Provident Fund	Through EPFO Portal	Entities registered with PF Authorities	Jul-21

15-08-2021	Deposit of E.S.I.C Contributions	ESI	Through ESIC Portal	Entities registered with ESIC Authorities	Jul-21
15-08-2021	Due date for issue of TDS Certificate	Income Tax	Form 16A	All Tax Deductors/ Collectors	Apr - Jun 2021
20-08-2021	Due date for filing Summary Return of Outward & Inward Supplies	GST	GSTR - 3B	GST Taxpayers having Turnover exceeding Rs. 1.5 Crores in Preceeding Financial Year	Jul-21
20-08-2021	Due date for filing Summary Return of Outward & Inward Supplies	GST	GSTR - 3B	GST Taxpayers having Turnover not exceeding Rs. 1.5 Crores in Preceeding FY but not opted for QRMP Scheme	Jul-21
20-08-2021	Last date for filing of Summary Return of Outward & Inward Supplies and Tax payable	GST	GSTR - 5	Non-Resident Taxable Persons	Jul-21
20-08-2021	Last date for filing of Summary Return of Outward & Inward Supplies and Tax payable	GST	GSTR - 5A	OIDAR Service Providers	Jul-21

Taxation of Crypto Currencies Under Income-Tax ACT, 1961

D.Jayasankar, B.Com, ACMA, FCA, ML



CRYPTO CURRENCIES nowadays become an asset class as investors started looking it as a long term investment. Bitcoin was the first Crypto currency launched in 2009 and thereafter numerous crypto currencies were in to the foray and still Bitcoin accounts for more than 40% of the Market cap. with a valuation of about \$846 bn (as on 9th Aug, 2021) . The price of a Bitcoin as on 9th Aug 2021 was about \$45,000 and it was at a all time high of \$64,804 on 14th April, 2021. In

July,2013 the price of a Bitcoin was around \$68 from there it went up to a huge surge of \$64,804 during April,2021. The Top 10 Crypto Currencies are; Bitcoin, Ethereum, Tether, Litecoin, Dogecoin, Binance coin, Cardano, XRP, Polkadot, USD Coin and there are about 5500 crypto currencies traded in the segment.

More than 1crore investors in India were investing in various crypto currencies and some of them become billionaires due to the rocketing price raise in these assets. Investment in Crypto Assets and trading in such currencies were not illegal but the crypto market is unregulated and highly speculative. The Govt. of India is planning to regulate the Cryptocurrencies . The Indian Government is currently considering favouring a digital currency under the authority and backing of the Reserve Bank of India. Despite its delay to take a stable decision on the legality of the cryptocurrencies, the proposed legal structure demands a lot of specifications from investors. For example, if passed , the law would have require crypto investors to declare their holdings and transactions. The Cryptocurrency and Regulation of Official Digital Currency Bill, 2021 , which prohibits all private crypto currencies and lay down the regulatory framework for the launch of an official digital currency and was put on hold as the matter is still under discussion.

There is no direct provision in the Income-tax Act, 1961 for the taxation of cryptocurrencies. In a broad understanding of the Income-tax Act, 1961, the taxation of gains or income from crypto assets , will be either under the heads of Capital Gains or Income from Business or under the head Income from Other Sources depends upon the nature of investment and holding period. Crypto Assets are Virtual Currencies and hence falling under the category of Intangible Assets. Countries like Russia, United Kingdom and European Union recognises Crypto Currencies as Virtual Currencies

and kept it out of the ambit of capital gains. Whereas few countries like Israel and USA treat Crypto Currencies as Commodities for taxation purposes. In India there is no specific provision to tax the crypto assets either as capital gains or as commodities.

The Income-tax department by collecting information from crypto exchanges sent notices to the investors those who are trading in Bitcoin, ripple, Ethereum, lite coin etc. to pay the advance-tax on such gains .

Circumstances where Income on Crypto Assets Assessed as Capital Gains

According to Section 2(14) of the Income-tax Act, 1961

["capital asset" means –

(a) property of any kind held by an assessee, whether or not connected with his business or profession;

(b) any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992),

but does not include –

(i) any stock-in-trade [other than the securities referred to in sub-clause (b)], consumable stores or raw materials held for the purposes of his business or profession

By virtue of the above definition any property held by an assessee not related to his business or Profession is a Capital Asset. The Ownership of the Crypto Assets are held in the name of the investor and he is the beneficial owner of the investments held in his digital wallet. Such assets not held as business assets are termed as Capital Assets.

Hence the holder of a crypto currency which is a Capital Asset and owns it for more than 3 years (36 Months) then such Assets will be considered as Long Term Capital Assets. (Sec.2(42A)). Then the gains on such long term capital Assets are taxed at 20%.

If the Holding period of the Crypto Assets were less than 3 years then the same will be considered as Short Term Capital gains and taxed as the Income of the Assessee at normal rates.

Circumstances where income on Crypto trading assessed as business Income:

If the investor in crypto assets are engaged in trading in crypto currencies as a trader in crypto assets or crypto futures as a business , then such income is taxable as business income. Similarly the income/compensation by way of crypto coins received by bitcoin miners are taxable as business income of mining of bitcoins.

Taxation of Crypto Assets under Income from Other Sources:

Crypto Currencies are not an asset class that produces value , it's simply put it's out of thin air and it has no minimum value except for what other people are willing to pay for it, which is based on speculation more of gambling in nature.

As per Section 2(24)(ix)

any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever.]

On the basis of the above provisions , one more view is possible, that the Crypto currencies are unregulated and not having any underlying assets which is more of a volatile and speculative profile, rated at par to gambling and as such gains/ income from transactions of a gambling nature are to be taxed under section 56(2)(ib) of the head Income from other sources .

Non - Resident Taxation of Crypto Assets:

A Non-Resident invests in Crypto assets out of India and earning income out of the same is not taxable in India naturally.

Even when a Non-Resident earning income in crypto assets in a Exchange platform operated in India is not taxable in India. As such non-resident is not liable for taxation on crypto gains either invested out of India or invested in an Exchange platform operated in India.

Conclusion:

Since Crypto Assets are unregulated in India and though it is not illegal to make transactions in crypto currencies, there is no clear mandate as how to tax gains/income from crypto assets in the Income tax Act, 1961.

By the broad understanding of the provisions of Income-tax Act, 1961, If Crypto Assets are held as Long term for more than 36 months , then the gains arising from transfer of such assets can be taxed as long term Capital gains @20%. With the holding period is less than 3 years then income on transfer of such assets can be taxed as shortterm capital gains. In case the assessee engaged in trading of crypto assets or crypto futures not holding such assets as a longterm assets, then the income/gains on such trading can be taxed as business Income. The consideration/ remuneration, by way of crypto coins earned by bitcoin miners can also be taxed as business income of such miners as they are engaged in mining operations.

Since the Crypto assets are invested in larger numbers of investors in India the numbers of which is more than 1 crore and considering the growing grace towards the digital currency , the need to regulate the same by the Government of India and RBI is very much warranted and is a need of the hour.

Upcoming Program

Date	Day	Subject	Speakers
8/18/2021	Wednesday	TAX AUDIT under Income Tax Act	CA S Muralidharan
8/21/2021	Saturday	Labour Codes	CA P Lakshmi
8/23/2021	Monday	GSTR - 9 & 9C	CA V Shankaranarayanan
8/28/2021	Saturday	Practical session on Incorporation process of Companies and LLPs	CS C Anuradha

Fees :	Rs. 118/- inclusive of GST
Time :	11.00am to 1pm
Registration Link :	https://events.cglportal-icai.org/member
Any Queries Contact :	8056244300

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Topic: INVESTORS AWARENESS PROGRAM 'FINANCIAL LITERACY AND WEALTH CREATION

Speaker: CA. Mr. Satya Yanmantram

Date: 07.07.2021



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Topic : CSR Amendments and Related Laws

Speaker : CA Priya A

Date: 17.07.2021

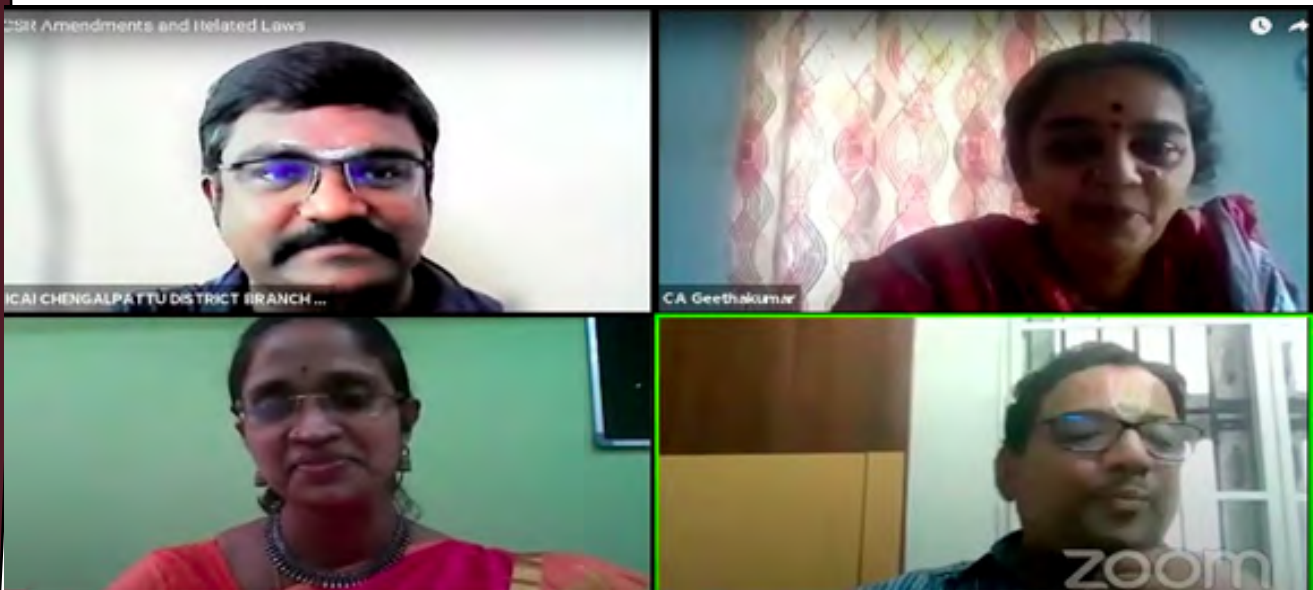
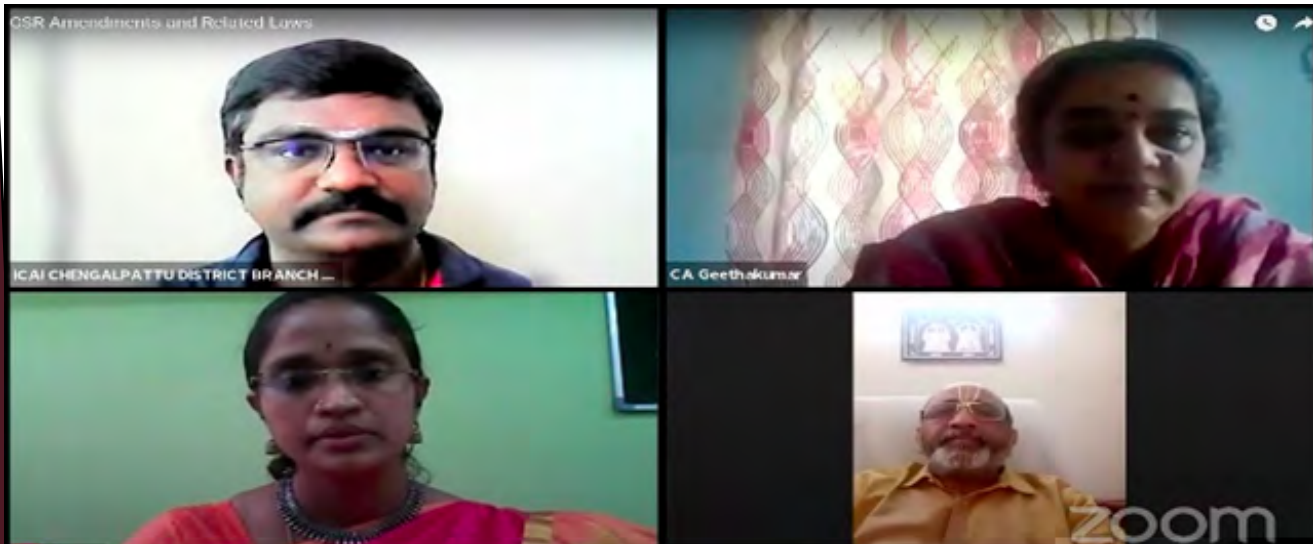


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ANNUAL GENERAL MEETING

PARTIALLY PHYSICAL & VIRTUAL

Date : 30.07.2021

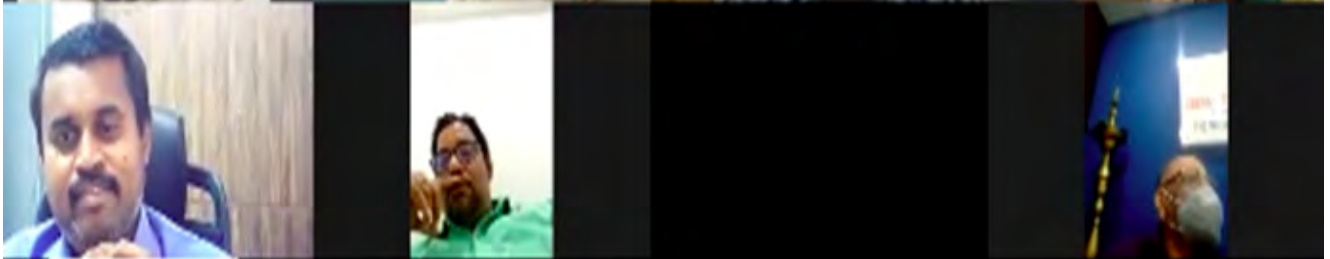
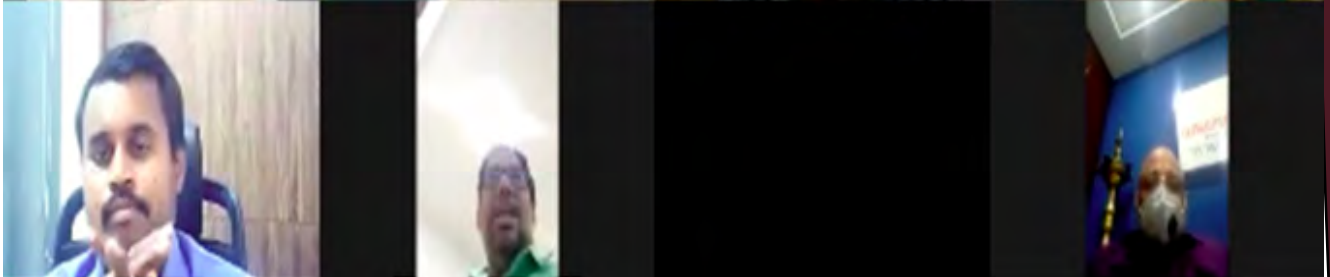
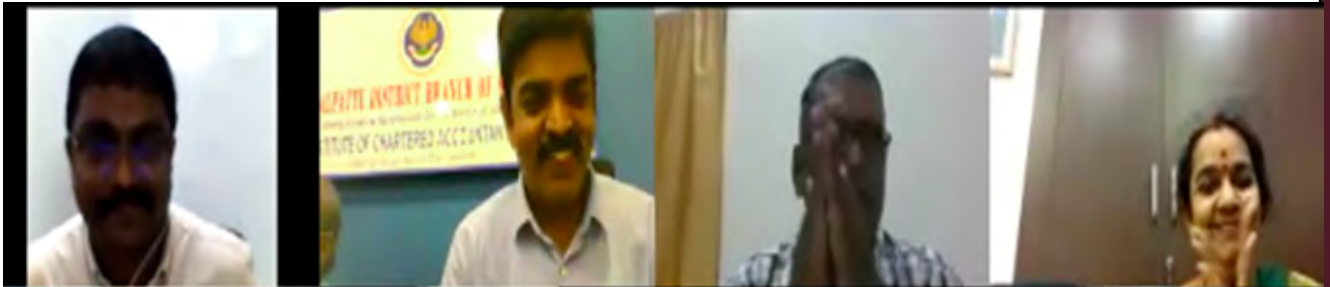


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SICASA ANNUAL GENERAL MEETING

Date:30.07.2021

