NEWSLETTER

April 2021 (Volume I: Serial No. 04/2021)

Bhatia & Bhatia
Chartered Accountants

Covered in this edition:

- Updates on Vivad se Vishwas
- Conditions for deducting TDS on reimbursements
- E-invoicing updates in GST
- Renewal of LUT
- Updates on HSN Code & Composition Scheme.
- Quarterly Return Filing and Monthly Payment of Taxes (QRMP) Scheme under GST
- Insolvency Proceedings to resume
- Details of Vehicle scrapping policy
- India to offer incentives to Global EV players
- Remuneration for non-executive and independent directors

Key Dates for April:

- TDS payment for March on 7 April 21.
- Setup Online Accounting Software for FY 2021-22 on 9 April 21.
- GSTR-1 (Monthly) for March on 11 April 21.
- GSTR-1 (Jan-Mar 2021) for QRMP on 13 April 21.
- TCS payment for Jan-Mar 2021 Quarter on 15 April 21.
- GSTR 3B for March for Monthly on 20 April 21.
- GSTR 3B (Jan-Mar 2021) for South India on 22 April 21.
- GSTR 3B (Jan-Mar 2021) for North India on 24 April 21.
- GST Challan Payment if no sufficient ITC for Mar (for all Quarterly Filers) on 25 April 21.

"If your actions inspire others to dream more, learn more, do more and become more, you are a leader"

- John Quincy Adams

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"If people like you, they'll listen to you, but if they trust you, they'll do business with you"

- Zig Ziglar

As we move to another financial year, I would like to thank all of our client's, new & old. We are humbly pleased by your support, as we grow with your growth.

We sincerely believe in providing our clients with the best professional services and ensure to inculcate these qualities in all our valuable employees.

This wouldn't have been possible without the continuous support and commitment of our employees who act as the pillars of the firm.

Our growth over the years has been a cumulative outcome of the efforts of every individual associated with us. So, our ventures in the next year will also look forward to your active participation in boosting us further in 2021.

- Ashok Kr. Bhatia
Partner

Income Tax

AO to pass consequential order to give effect to order passed by designated authority under 'Vivad se Vishwas': CBDT - CIRCULAR NO. 3/2020 [F.NO. IT (A)/1/2020-TPL]

The Direct Tax Vivad se Vishwas Act, 2020 was enacted on 17-03-2020 with the objective of inter alia reducing pending income tax disputes, generating timely revenue for the Government and benefitting taxpayers by providing them peace of mind, certainty and savings on account of time and resources. In view of the foregoing, and in exercise of the powers conferred on the Board under section 10 of Direct Tax Vivad se Vishwas Act, 2020, the board has clarified that AO shall be required to pass a consequential order under the Income-tax Act after the passing of orders under the Direct Tax Vivad se Vishwas Act, 2020.

CBDT provides clarification on eligibility for search case under Vivad se Vishwas Scheme

The Central Board of Direct Taxes (CBDT) vide circular no. 9/2020 and circular no. 21/2020 issued frequently asked questions (FAQs) to clarify provisions related to the Direct Tax Vivad se Vishwas Act, 2020 (Vivad se Vishwas). Question 70 of FAQs clarified eligibility for search case under the Vivad se Vishwas. The Board has clarified that if the assessment order has been framed in the case of a taxpayer under section 143(3)/144 and such order is based on the search executed in some other taxpayer's case, then such case is to be considered as a search case under Vivad se Vishwas.

The wording 'assessment order has been framed' is wide enough to cover all situations even situations like, framing assessment based on basis of a report prepared by the Income-tax Dept. on modus operandi unearthed during a search of the unrelated party. The disputed tax impact is higher while settling search case in comparison to the non-search case.

CBDT issues instructions for selection of cases under section 148 of the Income-tax Act, 1961

CBDT Instruction F.No.225/40/2021/ITA-II, dated 4 March 2021

CBDT Instruction F.No.414/132/2018 (INV.I) (Part I), dated 9 March 2021

The CBDT has listed down categories of cases which shall be considered as 'potential cases' for issue of notice under section 148 for the Assessment Year 2013-14 to Assessment Year 2017-18 by the Jurisdictional Assessing Officer (JAO). Notice shall be issued by 31-03-2021. JAO is also advised to strictly follow the instruction and no case, other than mentioned below, shall be considered for taking action under section 148.

a) Cases where there are Audit Objections (Revenue/Internal) which require action under section 148,

b) Cases of information from any other Government Agency/Law Enforcement Agency which require action under section 148,

c) Cases where information arising out of field survey action, requiring action under section 148,

d) Cases of information received from any Income-tax authority requiring action under section 148 with the approval of Chief Commissioner of Income-tax concerned, and

e) Potential cases including, reports of Directorate of Income-tax (Investigation), reports of Directorate of Intelligence & Criminal Investigation, cases from Non-Filer Management System (NMS) & other cases as flagged by the Directorate of Income-tax (Systems) as per risk profiling.

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Central Board of Direct Taxes

(CBDT)

Notification No. 18/2021, dated 16-03-2021

CBDT notifies Form no. 15E for making application to determine 'sum chargeable to tax' u/s 195

Previously, no form had been prescribed by the Department for filing of an application under section 195(2) if the payer considers that whole of the sum would not be income chargeable in the case of the recipient. Thus, the payer has to follow the manual process by approaching the Assessing Officer (AO) with an application to require him to issue an order under section 195(2). To streamline the process and to enable tax administration in monitoring such payments, The CBDT has inserted a new rule 29BA and Form no. 15E to operationalize the provisions of section 195(2). Section 195(2) was amended by the Finance (no. 2) Act, 2019 to empower the board to prescribe the form and manner of filing the application to determine the appropriate proportion of such sum so chargeable and upon determination, tax to be deducted as per section 195 on that proportion only.

Case Laws:

Sum received by NR for sale of computer software through EULAs not taxable as royalty Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT – Civil Appeal Nos. 8733-8734 of 2018

Assessee-Engineering Analysis Centre of Excellence Pvt. Ltd. was a resident Indian end-user of shrink-wrapped computer software, directly imported from the United States of America (USA). Assessing Officer (AO) held that what was transferred between parties was copyright which attracted the payment of royalty. Thus, tax was required to be deducted at source by the Indian importer and end-user while making payment.

The Supreme Court held that as per royalties mentioned in Article 12 of the DTAAs, there is no obligation on the persons mentioned in section 195 to deduct tax at source. This is because the distribution agreements or EULAs do not create any interest or right in such distributors/end-users, which would amount to the use of or right to use any copyright. The provisions of section 9(1)(vi), along with Explanations 2 and 4 thereof, which deal with royalty, couldn't be applied also as same not being more beneficial to the assessee's in comparison to provision contained in DTAAs. Accordingly, amounts paid by resident Indian end-users/distributors to non-resident computer software manufacturers/suppliers, as consideration for the resale/use of the computer software through EULAs/distribution agreements, was not the payment of royalty for the use of copyright in the computer software.

'UBER India' not liable to Sec. 194C TDS as it is remitting money to drivers on behalf of 'UBER Netherland'

Uber India Systems (P.) Ltd. v. JCIT - ITA No.5862 & 5863/Mum/2018

The assessee "UBER India" engaged in the services of marketing and support services to UBER B.V., a non-resident company which is engaged in providing digital platform services to drivers in India. There was no privity of contract between the Assessee and the Driver partners nor was there any contract with UBER B.V. The only contract that existed was between the Driver partners and the user of service.

Assessing Officer (AO) held that Uber B.V. is in the business of providing transportation services. Thus, provisions of section 194C are applicable when the payments are made to Driver-Partners. Since Uber India is the face of Uber B.V., Uber India is the person responsible for making payment and consequently liable to deduct tax at source (TDS) under section 194C. The Mumbai Tribunal held that the following three conditions are required to be fulfilled in entirety to conclude that Uber India is required to withhold taxes under section 194C:

a) Uber India should be the person responsible for paying' as per provisions of Section 204,
b) Disbursements made to the Driver-Partners should be in pursuance for carrying out any work by the Driver-Partners for Uber India; and
c) There is a contract entered into between the Driver-Partners and Uber India for the said work.

In the instant case, Uber India does not satisfy any of the above 3, further, the amount paid by Uber India is not to carry out any work for Uber India, and there is no contract between Uber India and a Driver-Partner. Therefore, the provisions of section 194C could not come into operation at all on disbursements made by Uber India to the Driver-Partners.

Interest paid on loan taken to repay housing loan of commercial property is eligible for deduction u/s 24(b) (Indraprastha Shelters (P.) Ltd. v. DCIT - ITA No.2597/Bang/2019)

Assessee was engaged in the business of construction, development of real estate projects and renting of a commercial building. It borrowed money from a bank (Original Loan) for construction and letting out of the commercial building. Later on, it took another loan and repaid the original loan. Assessee claimed a deduction for interest paid on both the loans under Section 24(b). Assessing Officer (AO) disallowed assessee's claim for deduction under Section 24(b). CIT(A) allowed assessee's claim in respect of interest paid on the original loan whereas interest paid on loan taken for repayment was disallowed. Aggrieved-assessee filed the instant appeal before the Tribunal.

The Tribunal held that on perusal of the provisions of section 24(b), it is clear that the deduction is allowed on account of interest paid on any borrowed capital which is used for the purpose of acquiring, constructing, repairing, renewing or reconstructing the property. The expression used in section 24(b) is 'property' and not residential or commercial property. Therefore, irrespective of the nature of the property whether it is residential or commercial, the deduction has to be allowed under section 24(b). As far as the 3rd proviso to section 24(b) is concerned, all the provisos to section 24(b) deal with property referred to in section 23(2) which refers to a residential property. The proviso only carves out an exception to section 24(b), in so far as it relates to property used for residential purposes. It does not deal with or curtail the right of an assessee to get a deduction on interest paid on loans borrowed to construct a commercial property. Thus, interest paid on the loan taken for repayment of the original loan was also deductible.

International Taxation & Transfer pricing

Case Laws:

To attract provisions of TDS u/s 195, Tribunal lays down twin conditions for classifying payments as 'reimbursement'

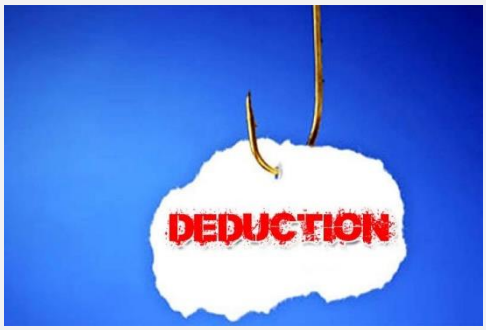
BYK Asia Pacific Pte. Limited [ITA No.2110/PUN/2019]

During the course of assessment proceedings, the AO observed that the assessee claimed deduction towards certain expenses paid to the Singapore HO without deducting Tax at source u/s 195 of the Act. Tribunal held that Chargeability under the provisions of the Act pre-supposes some profit element involved in the receipt. If the recipient simply recovers the amount spent by it without any profit element, such a receipt, being reimbursement, cannot be characterized as any `sum chargeable under the provisions of this Act' and hence would be immune from tax deduction at source. Pune Tribunal holds that two fundamental conditions must co-exist in order to fall within the domain of reimbursement. The first is that one-to-one direct correlation between the outgo of the payment and inflow of the receipt must be established; and the second is that the receipt and payment must be of identical amount. Therefore the sums reimbursed by Indian branch/ PE of a Singapore-based company to its head office is not liable to TDS u/s 195.

Fees paid to lawyers, CAs not FTS, Tribunal deletes disallowance u/s 40(a)(i)

Sundaram Business Ltd [ITA No.771/CHNY/2019]

The taxpayer paid professional fees to a law firm (KL Gates, Australia) and Chartered Accountants (TWB CA, USA) without deducting tax at source u/s 195. The AO has disallowed both payments u/s.40(a)(i) of the Act, for non-deduction of tax at source u/s.195 of the Act. With respect to professional fees to KL Gates, the Tribunal held that such services are in the nature of independent professional services as defined under Article 14 and hence are outside the scope of definition of royalties as defined u/s.9(1)(vi) of the Act, and thus, outside the scope of provision of section 195 of the Act. As regards professional charges paid to TWB CA, tribunal held that although payment made to said company is not covered under Article 14, but said payment is covered under Article 7 of DTAA between India and USA. However, this would not be taxable in India in the absence of PE of TWB CA in India. The Tribunal also observed that the nature of services rendered by the company of accountants does not make available technical knowledge, expertise, skill, know-how or processes to the assessee and therefore, outside the scope of provisions of section 195 of the Act.



AAR holds assessee liable for TDS u/s 194E on payments made in respect of games played in India

LG Electronics India Private Ltd [A.A.R. No. AAR/971/2010]

AAR held that payment by the taxpayer under Marketing and Advertising Agreement (MAA) was purely for advertisement and publicity of the brand name of the taxpayer and for promotion of its product during the Cricketing events of ICC and it was not "royalty" as defined in Article 12.3 of DTAA between India and Mauritius. AAR also observed that the payment does not qualify as "Fee for Technical Services" as well; as no service was rendered in this case. The payments may constitute "business profits" in the hands of the recipient to which Article 7 of the DTAA would apply, but in the absence of any permanent establishment of the payee in India, is not chargeable to tax in India. Assessee had also entered into an agreement with IML. AAR held that the amount paid by the assessee to IML in relation to the games played in India was covered under the provision of section 194E of the Act read with section 115BBA. AAR placed reliance on the Hon'ble Supreme Court's decision in PILCOM [CIVIL APPEAL NO. 5749 OF 2012], wherein the SC held that the liability to deduct TDS under section 194E was absolute and distinct from the liability under section 195 of the Act. There was no requirement to ascertain that the amount paid under section 115BBA was chargeable to tax or not. Even if it was not chargeable, it did not absolve the taxpayer from the liability to deduct TDS under section 194E. This obligation was neither affected by the DTAA nor by the Notification issued by the CBDT as the benefit of the DTAA or the Notification could have been claimed only by the IML and not by the taxpayer. AAR, therefore, held that the taxpayer was liable to withhold tax under section 194E of the Act on payments made to IML for grant of commercial rights under the 'Marketing and Advertising Agreement' in respect of games played in India.

Transaction of recovery of expenses re-characterized as provision of services

Tata Coffee Limited [IT(TP)A Nos.568 & 729/Bang/2015]

The taxpayer has incurred expenses on carrying out due-diligence exercises with an intention to acquire an overseas company. However, subsequently AE of assessee acquired this overseas company and the taxpayer raised a debit note on AE for a sum equal to the due diligence expenses incurred, which was accepted and paid by AE.

The Revenue submitted that the assessee has incurred expenditure in the process of acquisition of the overseas entity. Since the assessee has spent money and also performed pre-acquisition activities and thus, relieved the AE from pre-acquisition exercises, the same would represent services performed by the assessee to its AE. Accordingly, revenue held that it is only justified to estimate the markup at 10% of the investment made by the assessee.

The Tribunal upheld Revenue's contention stating that they were right in observing, that in an uncontrolled transaction when the assessee is transferring the benefit of preliminary work done by it on acquisition project to an uncontrolled party, it would have charged a mark-up in the normal course since its resources, infrastructure, skills, time, etc. were invested in the said activities. Hence assessee's contentions that this transaction itself would fall outside the scope of transfer pricing provisions in the absence of any income element, was rejected. Tribunal however was of the view that the determination of rate of markup requires fresh examination and restored the same to the file of the A.O./TPO for examining it afresh.

"You only have to do a few things right in your life so long as you don't do too many things wrong." - Warren Buffett

Indirect Tax

E-invoicing

Amendment has been made in respect of the aggregate turnover limit for e-invoicing. The aggregate turnover limit for e-invoicing has been further reduced to **INR 50 crore** w.e.f. **April 01, 2021**. Earlier the same was reduced to INR 100 Crore from INR 500 Crore w.e.f. January 1,2021

Important points:

- The aggregate turnover will include the turnover of all GSTINs under a single PAN.
- ITC not available without E-Invoicing. ITC shall not be available to the recipient of goods or services without having e-invoice issued by the supplier who is liable for raising e-invoice. Therefore, taxpayers need to ensure that the supplier is complying with all the provisions with respect to the e-invoicing.

Important Guidelines for the taxpayers having aggregate turnover between 50 cr. and 100 cr. w.r.t. e-invoicing:

- GSTINs of taxpayers are enabled for e-Invoicing.
- Registration and login to the system is now open for taxpayer's GSTINs.
- Live invoices may be prepared and registered in the e-invoice portal
- E-Invoice Bulk Tools may be downloaded for preparing JSON and IRNs may be generated.
- E-way bills may be generated for IRNs.
- Taxpayers may register for e-Invoice APIs.

New/Unique series of invoice

In order to avoid duplication or repetition of invoices with preceding Financial Year, new/ unique series of invoices to be raised for the F.Y. 2021-22.

The invoice should contain description, quantity and value & such other prescribed particulars under rule 46 of CGST Rules, 2017. An invoice or a bill of supply need not be issued if the value of the supply is less than Rs. 200/- subject to specified conditions

Renewal of LUT

Renewal of LUT should be applied at the end of Financial Year for the FY 2021-22 by every registered person who is inclined to export goods.

Important Point:

A bond or LUT is required to be furnished to the jurisdictional Commissioner before effecting zero-rated supplies.

DUE DATES:

Return	Period	Due dates
GSTR-1 Monthly Taxpayer (Turnover more than INR 1.5 Crore)	March 2021	11th April, 2021
GSTR-1 Quarterly Taxpayer (Turnover upto INR 1.5 Crore)	January – March 2021	13th April, 2021
GSTR-3B (Turnover more than INR 5 Crore)	February 2021	20th April, 2021

HSN Code Requirement

New HSN codes rules will apply w.e.f. 1st April 2021 as given below.

Important Points:

- 4- digits HSN Code is optional in respect of supplies made to unregistered persons.
- Changes of mentioning 4/6 Digit HSN/ SAC code are required to be included in Table 12 of Form GSTR-1 and corresponding changes are made in the same in GSTR 1.
- Penalty of INR 50,000/- (INR 25,000/- each for CGST and SGST) can be levied for non-mentioning or mentioning wrong HSN/ SAC Code.

S.No.	Aggregate Turnover in Preceding Financial Year	Number of Digits of HSN Code
1	Up to INR 5 crores for all B2B Supplies	4 Digits
2	More than INR 5 crores for all B2B and B2C Supplies	6 Digits

Composition Scheme

The eligible taxpayers, who wish to avail the composition scheme may opt in for composition.

Same has been made available for the FY 2020-21 in the dashboard of the taxpayers at the GST Common Portal.

Quarterly Return Filing and Monthly Payment of Taxes (QRMP) Scheme under GST

CBIC introduced the QRMP scheme under GST which allows small taxpayers to file GSTR-3B on quarterly basis & pay tax every month.

The window to opt-in or opt- out of the QRMP Scheme for the first quarter (April 1, 2021 to June 30, 2021) of FY 2021-22.

Important Points:

- **Eligibility**- Every Registered Person required to furnish GSTR-3B having turnover up to 5 Crore in preceding financial year.
- **Due Dates**-Due Date for filing quarterly GSTR-3B:

S.No.	GST Registration in States and Union Territories	Due Dates
1	Chhattisgarh, Madhya Pradesh, Gujarat, Dadra and Nagar Haveli, Daman and Diu, Maharashtra, Karnataka, Goa, Lakshadweep, Kerala, Tamil Nadu, Puducherry, Andaman and Nicobar Islands, Telangana and Andhra Pradesh	22nd of the month succeeding such quarter
2	Jammu and Kashmir, Ladakh, Himachal Pradesh, Punjab, Chandigarh, Uttarakhand, Haryana, Delhi, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Mizoram, Manipur, Tripura, Meghalaya, Assam, West Bengal, Jharkhand and Odisha	24th of the month succeeding such quarter

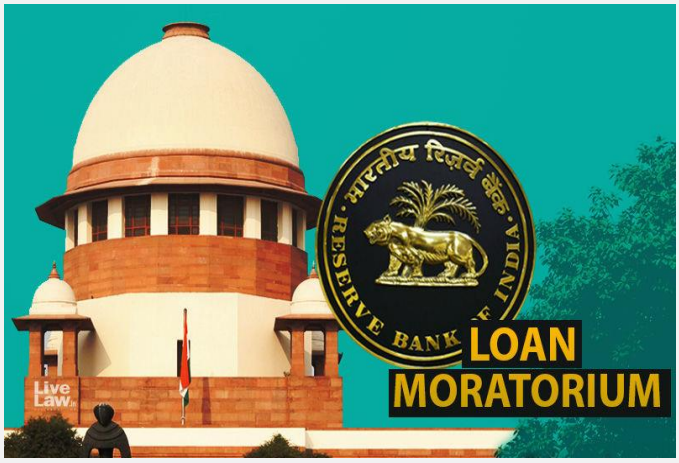
- **Late Fees**- The late fee should be paid as follows if the quarterly GSTR-3B is not filed within due date, subject to a maximum late fee of Rs 5,000:

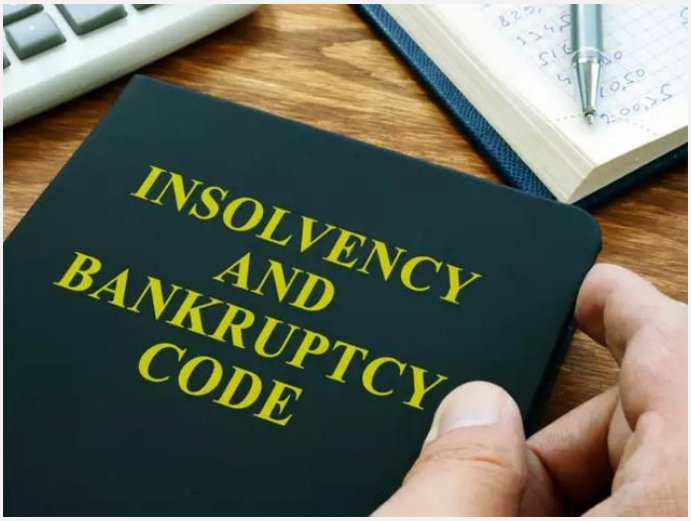
Name of the Act	Late fee for every day of delay	Late fee for every day of delay
CGST Act	INR 25	INR 10
SGST Act	INR 25	INR 10
IGST Act	INR 50	INR 20

Secretarial, Regulatory & Business Updates

Supreme Court's decision in case of loan moratorium

The apex court ruled against giving a complete interest waiver to borrowers. However, it said all borrowers need to be compensated for interest-on-interest charged during the 6-month moratorium period. The apex court observed that charging compound interest amounts to penal interest. The Court also said that no further extension will be given on the moratorium and signalled that banks can start tagging non-performing assets as NPAs lifting an earlier stay.





Non-repatriable investment by NRIs is not to be considered as FDI

Investments by NRIs on a non-repatriation basis as stipulated under Schedule IV of Foreign Exchange Management (non-debt instruments) Rules 2019 are deemed to be domestic investment at par with the investments made by residents. Accordingly, an investment made by an Indian entity which is owned and controlled by NRI(s) on a repatriation basis shall not be considered for calculation of Indian foreign investment.

Government to resume insolvency proceedings under Insolvency Bankruptcy Code (IBC) from March 25th

To insulate the corporate sector from the adverse impact of Covid-19, the government had ensured that any corporate debt default between March 25, 2020 and March 24, 2021, remained outside the IBC purview. This was done through an Ordinance issued on June 5, 2020 suspending IBC for six months from March 25 to September 25, 2020. Two subsequent three-month extensions, owing to the continued spread of the pandemic, kept the IBC in abeyance for one full year. Now, with the economy returning to normalcy, the Government has, allowed the IBC suspension valid till March 24 2021 to lapse. From March 25, 2021 the IBC will be back in full force.

DGFT plans to expand virtual presence

The Directorate General of Foreign Trade (DGFT), the nodal agency under the ministry of commerce and industry facilitating export and import, is gradually expanding its online presence across India, replacing physical offices with virtual ones to promote automated paperless processes. DGFT has been exchanging online data with departments and agencies, such as income tax, customs, ministry of corporate affairs (MCA), banks, and the Unique Identification Authority of India, besides special economic zones, to facilitate e-verification. The move provides confidence in the online system and will ensure that the same data will not have to be submitted at multiple places. DGFT also plans to remove the existing process of queuing up for benefits and approvals wherever possible.

India to offer incentives to Global EV players

India plans to offer fresh incentives to companies making electric vehicles (EVs) as part of a broad auto sector scheme it expects to attract $14 billion of investment over five years. The plans envisage $8 billion of incentives for carmakers and suppliers over a five-year period to drive large investment in the sector. Final details of the scheme are expected within a month, but companies will be able to apply for incentives from April 1. Companies will receive 4-7% government cashbacks on the eligible sale and export value of vehicles and components, but for EVs and their components there is an additional 2% as a "growth incentive" to promote electric mobility

Government announces details of vehicle scrapping policy

Vehicle scrapping policy in Parliament, explaining that the absence of a fitness certificate will mean an automatic cancellation of registration for commercial vehicles that turn 15, and that the registration of a private vehicle will be for 20 years, with renewal requiring proof of fitness. The minister added that the government plans to incentivise owners of old vehicles to scrap these through registered scrap centres.

Volkswagen eyes comeback with Rs 8,000 crore investment

Germany's Volkswagen group has started to pump in fresh investments to the tune of nearly Rs. 8000 crore and is expected to launch 4 new cars in the market to take on models from Maruti, Hyundai and Tata motors.

"Ideas are easy. Implementation is hard"

- Guy Kawasaki

Xiaomi to invest Rs. 100 Crores in India over next two years

Chinese smartphone maker Xiaomi is expected to invest Rs 100 Crore in India over the next two years, aimed at doubling its retail reach in the country, which currently stands at 15,000 touch points.

Remuneration for non-executive and independent directors

Till date there was no general provision to pay remuneration to non-executive directors and independent directors in case of inadequacy of profits. Only the executive director was entitled for a remuneration in the event of a loss.

Now, MCA has made a general provision for remuneration to non-executive director, including an independent director, has been made, if a company fails to make profits or makes inadequate profits in a financial year.

The amendment limits the remuneration that a non-executive director can be given depending upon the effective capital of the company. While these limits have been introduced under Schedule V of the Companies Act, an additional provision allows the board of directors to pass a special resolution if they want to further increase the remuneration beyond the upper limit. This provision is applicable to both non-executive and executive directors.

Mandatory audit trail

Going forward, from April 1, every company that uses an accounting software for maintaining its books of accounts will have to mandatorily ensure creating an edit log of each change made in books of account along with the date when such changes were made.

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