

Newsletter

Bhatia & Bhatia Chartered Accountants



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KEY DATES FOR AUGUST 2021:

- GSTR1 (Monthly) by 11th August.
- GSTR 2B by 14th August.
- GSTR 3B (Monthly) by 20th August.
- DPT -3 Annual Filing by 31st August.
- Issue of TDS certificate in Form 16A for Q1 of FY 2021-22 by 15th August.
- Payment of ESI/ PF contribution for the month of July 2021 by 15th August.
- Form 1 (Equalization Levy) for FY 2020-21 by 31st August.
- Payment of tax under Vivad Se Vishwas Scheme, 2020 without additional charge by 31st August.



*"Formal education will make you a living;
self-education will make you a fortune."
– Jim Rohn*

"If your ship doesn't come in, swim out to meet it!"

– Jonathan Winters



As the old saying goes, “There is no ‘I’ in team.” But that’s only half the story. Effective managers in the office, just like effective baseball managers, know the importance of keeping the team in harmony and putting people in positions where they can succeed.

By getting a good handle on the strengths and weaknesses of each employee, managers can assign responsibilities more strategically. Then different duties are performed by people who excel at those types of tasks — illustrating and emphasizing the value of collaboration, mutual support and team cohesion.

There may not be an “I” in team, but there is most certainly a “we” in well-balanced. Successful teamwork balances employees’ skills with the needs of the organization, resulting in a more collaborative and positive organizational culture.

CA Ashok Bhatia
Partner

"Success is walking from failure to failure with no loss of enthusiasm."

– Winston Churchill



CBDT notifies Rule 8AC for computation of Short Term Capital Gain & WDV u/s 50 when depreciation on goodwill is claimed.

NOTIFICATION G.S.R. 472(E) [NO. 77/2021/F. NO. 370142/23/2021-TPL]



**Central Board of Direct Taxes
(CBDT)**

In exercise of the powers conferred by proviso to section 50 read with section 295 of the Income-tax Act, 1961 (43 of 1961), the CBDT hereby makes the rules 8AC with regard to the computation of short term capital gains and written down value where depreciation on goodwill has been obtained.

CBDT issues guidelines and notifies rules for taxation of receipt of cash or specified assets by partners in connection with reconstitution of firms.

Circular No. 14 of 2021 dated 02 July 2021

The CBDT has issued guidelines as part of Circular No. 14/2021 dated 2 July 2021 (Guidelines) with regard to section 9B and sub-section (4) of section 45 of the Income-tax Act, 1961.

Finance Act, 2021 inserted a new section 9B in the Income-tax Act 1961. This section mandates that whenever a specified person receives any capital asset or stock in trade or both from a specified entity, during the previous year, in connection with the dissolution or reconstitution of such specified entity, then it shall be deemed that the specified entity have transferred such capital asset or stock in trade or both, as the case may be, to the specified person (hereinafter referred to as “deemed transfer”). This deemed transfer would be in the year in which such capital asset or stock in trade or both are received by the specified person. Any profits and gains arising from such deemed transfer is deemed to be the income of such specified entity of the previous year in which such capital asset or stock in trade or both were received by the specified person. Further, it is chargeable to income-tax as income of such specified entity under the head -Profits and gains of business or profession” or under the head “Capital gains”, in accordance with the provisions of this Act. It has also been provided that the fair market value of the capital asset or stock in trade or both, on the date of its receipt by the specified person, shall be deemed to be the full value of the consideration received or accruing as a result of such deemed transfer. The definitions of terms “reconstitution of the specified entity”, “specified entity” and “specified person” are provided in section 9B of the Act.



*"Your time is limited, so don't waste it living someone else's life."
– Steve Jobs*



Charitable trust donating to activities other than education cannot be denied section 11 exemption [Director of Income Tax, Exemptions, Chennai vs Shanmuga Arts in ITA No. 1059 of 2014]

The Hon'ble High Court of Madras, mentioned that charity is clearly defined as relief to the poor, education, yoga, medical relief, preservation of environment, etc. Thus public charitable trust donating to activities other than education cannot be denied exemption u/s.11 of the Act. Therefore, the conclusion of the Assessing Officer is totally unwarranted.

Balraj Hire Purchase Pvt. Ltd. vs National Faceless Assessment Centre in WP(C) No. 6126/ 2021

In this case the assessee requested for a personal hearing in the matter before passing the assessment order. Concededly, the Assessing Officer passed the impugned assessment order without according a personal hearing to the petitioner.

The Hon'ble Delhi High Court held that assessee had a statutory right to a personal hearing under section 144B(7)(vii). In the case of Sanjay Aggarwal v. National Faceless Assessment Centre, Delhi, WP(C)No 5741 of 2021, it was held that a careful perusal of Section 144B(7)(vii) would show that liberty has been given to assessee, if their income is varied to seek a personal hearing in the matter. Therefore, the usage of the word 'may' cannot absolve the revenue from the obligation cast upon it to consider the request made for a grant of personal hearing. It was incumbent upon the revenue to accord a personal hearing to assessee. In assessee's case, AO had made a substantial variation in the taxable income. Therefore, assessee ought to have been granted a personal hearing in the matter. The failure to grant a personal hearing has vitiated the assessment order.

Karnataka HC allows set off of past business loss against gain arising from sale of capital asset used for business [Nandi Steels Limited vs. ACIT ITA 103 of 2012]

The Income Tax Act, 1961, provides for a mechanism of set off and carry forward of losses incurred in the course of business. As per the provisions of the Act, past business loss can be set off only against profits and gains of any business or profession carried on by a taxpayer. Furthermore, any income on transfer of capital asset which is used for business purposes, is taxed under a separate head of capital gains, whereas income from regular business transactions is taxed under the head profits and gains from business or profession (PGBP). The Special Bench of the Bangalore Income Tax Appellate Tribunal, in the Assessee's case, had ruled that past business losses cannot be set off against capital gains arising on sale of capital assets used for business purposes since such capital gains cannot be regarded as profits and gains of the business carried on by the Taxpayer.

Aggrieved to which the Assessee filed appeal with the Hon'ble High court. The Hon'ble High court held that the legislature has referred "profits and gains from any business" in the set off provision and has not specifically referred to income which is taxable under the head PGBP. The Hon'ble High court relied on the ratio of the Supreme Court ruling in the case of Cocanada Radhaswami Bank Ltd, [1965] 57 ITR 306 (SC), which permitted set off of past business losses against income which has attributes of business income (income from securities held as stock-in-trade in that case), even if it is taxable under any other head of income (income from securities in that case). Accordingly, brought forward business loss was held as allowable against capital gains of current year.

EU Court dismissed Nike's appeal to stop investigation into its Dutch tax affairs

Nike European Operations Netherlands BV, Converse Netherlands BV (Foreign Court Europe Case T-648/19)

In the contested decision, the Commission had held that the Kingdom of the Netherlands granted State aid by means of APAs issued by the Netherlands tax administration for the benefit of Nike European Operations Netherlands BV ('NEON') in 2006, 2010 and 2015, and of Converse Netherlands BV ('CN') in 2010 and 2015. The issue relates to the pricing, for tax purposes, of tax-deductible royalties paid by NEON to Nike International Ltd ('NIL'), then to Nike International CV ('NI'), and by CN to All Star CV ('AS') in return for the grant of licences to use intellectual property ('IP') rights related to Nike and Converse products, respectively, in the EMEA region. At the end of the preliminary investigation, the Commission reached the conclusion that the Kingdom of the Netherlands had granted State aid to two companies of the Nike group that was unlawful and incompatible with the internal market. The Commission had thereafter opened a formal investigation in 2019 to assess whether the APAs complied with State aid law. The assessee pleaded before the Court for annulment of the Commission's decision to open the investigation based on three main pleas by the assessee. The Court dealt with each of the pleas and sub-pleas in detail and rejected each of the assessee's arguments.

*"Business has only two functions
– marketing and innovation."
– Peter Drucker*



Madras HC sets aside ITAT's decision of deletion excess profits under section 10B(7)

Tweezerman (India) Pvt. Ltd (Tax Case Appeal Nos.1253 & 1254 of 2010)

The taxpayer is 100% Export Oriented Unit (EOU) and the products manufactured by the taxpayer were exported exclusively only to the "closely associated" importer Company in the US i.e M/s. Tweezerman Corporation. During the assessment proceedings, the AO had disallowed INR 3.54 crores and treated the amount as deemed income under the head "Other Sources". The AO also concluded that out of the total turnover of INR 15.06 crores, income of INR 12.51 crores worked out to a whopping profit margin of 83.1% which was very high and the TPO had determined the ALP. Since the assessee itself had admitted that the excess profit as INR 3.54 crores, it was accepted by the AO as the amount of disallowance, by excluding it from business profits. On further appeal, the CIT(A) also determined the net profit in respect of the turnover of INR 3.54 crores keeping in mind the 83.1% profit margin to arrive at the portion permissible to be deducted u/s 10B. The ITAT deleted the reduction of the eligible profits of the assessee by an amount of INR 3.54 crores as done by the AO by invoking the provisions of Sec.80-IA(10) read with section 10B(7) of the Income Tax Act. The Madras HC noted that since assessee's profit margin for the given accounting period is extraordinarily high being 83.1% and assessee made exports only to the closely associated US Company and thereby, affirms CIT (A)'s observation.





Upholds corporate guarantee as an international transaction, determines commission of 0.9%

GOCL Corporation Ltd. (ITA No. 579/Hyd/17 and 2012/Hyd/17)

In this case, the taxpayer argued that a corporate guarantee is a shareholder's activity which has been wrongly treated as an international transaction under section 92B of the Income Tax Act 1961. ITAT relied on Madras HC latest decision in Redington India Pvt. Ltd., Vs. DCIT, Tax Appeal No.590 and 591 of 2019, dated December 10, 2020 wherein the Hon'ble HC has settled the law that a corporate guarantee indeed forms an international transaction and covered by the Explanation to section 92B with retrospective effect as well. The Tribunal adopted lumpsum corporate guarantee commission of 0.9% and clarified that the impugned estimation shall not be taken as a precedent in any other case.

"Have the end in mind and every day make sure your working towards it"

– Ryan Allis



Questioning genuineness of the assessee's expenditure is beyond TPO's jurisdiction

Luwa India Private Limited (ITA No. 296 of 2017)

The Karnataka HC dismissed Revenue's appeal against ITAT's rejection of nil arm's length value for royalty transaction entered into by the taxpayer with its Associated Enterprises (AE). The Tribunal had rejected nil arm's length value determined by TPO since the taxpayer had produced its agreement with the AE under which license was granted to the assessee to use technical know how belonging to the AE for the purpose of manufacturing activity. The HC observed that the issue whether TPO while exercising its power can only determine ALP of an international transaction is no longer res integra and is covered by Delhi HC ruling in EKL Appliances Ltd (ITA Nos. 1068/2011 & ITA Nos. 1070/2011) and Bombay HC ruling in Lever India Exports. Further, the HC noted that since Revenue has not challenged Tribunal's action of directing benchmarking of the said transaction in an aggregated manner at entity level and thus, HC dismissed Revenue's appeal since issue with respect to TPO's jurisdictions is covered by the aforesaid Delhi HC and Bombay HC decisions.



Cumulative application of Rule 36(4) for April, May, June 21

Matching of GSTR2B with ITC availed in GSTR3B as per Rule 36(4) shall be applied cumulatively for tax periods April, May and June 2021 in the return for the period June 2021.

GST on milling of wheat into flour or paddy into rice for distribution by Govt

Circular No. 153/09/2021-GST; 17th June, 2021

To clarify that supply of service by way of milling of wheat/paddy into flour (fortified with minerals etc. by millers or otherwise)/rice to Government/ local authority etc. for distribution of such flour or rice under PDS is exempt from GST if the value of goods in such composite supply does not exceed 25%. Otherwise, such services would attract GST at the rate of 5% if supplied to any person registered in GST, including a person registered for payment of TDS.

Late fees on GSTR3B reduced going forward

Also Government has capped the maximum late fees payable in respect of taxpayers with turnover upto Rs 5 Crore as under:

For the tax period of June, 2021 onwards or quarter ending June, 2021 onwards:

<u>Sl. No.</u>	<u>Class of Registered Persons</u>	<u>Late Fee Payable Waived In Excess of (Rs.)</u>
1.	Registered persons whose total amount of Central Tax & State/UT tax payable in the said return is Nil	500
2.	Registered persons having an aggregate turnover of up to rupees 1.5 crores in the preceding financial year, other than those covered under S. No. 1	2,000
3.	Taxpayers having an aggregate turnover of more than rupees 1.5 crores and up to rupees 5 crores in the preceding financial year, other than those covered under S. No. 1	5,000



GST

REGISTRATION

New Functionality to register complaint on misuse of PAN in GST Registration

To address the complaint related to misuse of PAN for obtaining GST registration, a functionality to register such complaints on GST Portal has been introduced. It will check the misuses, control the frauds and help officers in enquiry and cancellation of such registration.

Once complaint is registered, it will be sent to the concerned jurisdictional authority where the registration is claimed to be fraudulently taken, for necessary enquiry and suitable action.



*“Always deliver more than expected.”
— Larry Page, co-founder of Google*

“Courage is being scared to death, but saddling up anyway.” – John Wayne

AAR
Authority For Advance Ruling
MAHARASHTRA



Emerald Court Co-operative Housing Society Limited (AAR-Maharashtra)

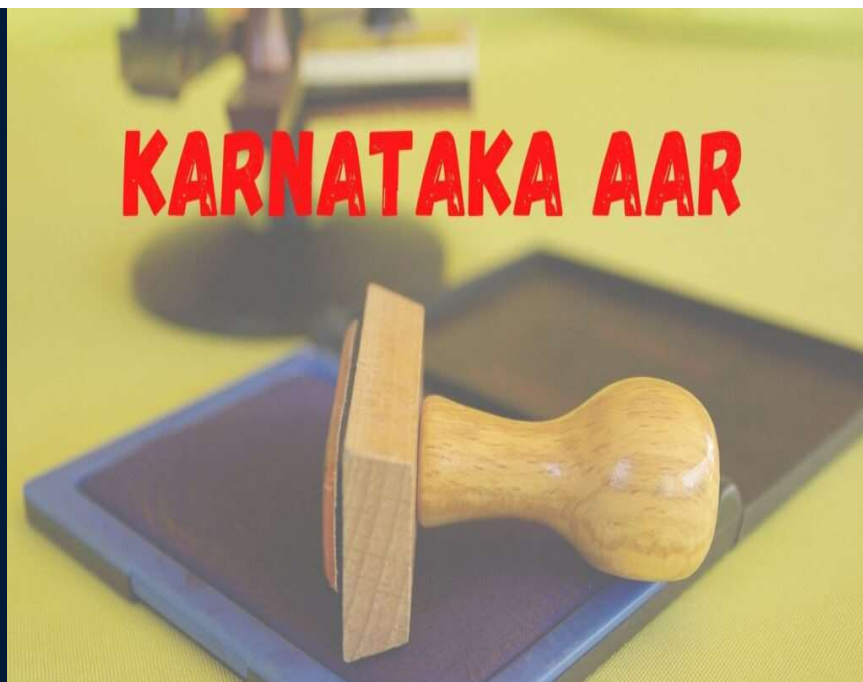
Question: – Determination of the liability to pay GST on Maintenance charges.

Answer: - In view of the amended Section 7 of the CGST Act, 2017. We find that the applicant society and its members are distinct persons and the amounts received by the applicant, against maintenance charges, from its members are nothing but consideration received for supply of goods/services as a separate entity. The principles of mutuality, which has been cited by the applicant to support its contention that GST is not leviable on the maintenance charges collected by them from its members, is not applicable in view of the amended Section 7 of the CGST Act, 2017 and therefore, the applicant has to pay GST on the said amounts received against maintenance charges, from its members. The applicant is liable to pay GST on maintenance charges (by whatever name called) collected from its members, if the monthly subscription or contribution charged from the members is more than Rs. 7,500/- per month.

Aadhya Gold Private Limited (AAR-Karnataka)

Question: –Whether GST is to be paid only on the difference between the selling price and purchase price as stipulated under Rule 32(5) of CGST Rules, 2017, if applicant purchases used/ second hand gold jewellery from individuals who are not dealers under the GST and at the time of sale there is no change in the form / nature of goods?

Answer:-In the case of applicant dealing in second hand goods and invoicing his supplies as “second hand goods”, the valuation of supply of second hand gold jewellery which are purchased from individuals who are not registered under GST and there is no change in the form and nature of such goods, can be made as prescribed under sub-rule (5) of rule 32 of the Central Goods and Service Tax Rules



Government approves PLI scheme for specialty steel

The government has approved a ₹6,322 crore production-linked incentive (PLI) scheme for specialty steel that is expected to attract investments of around ₹40,000 crore. The decision is part of India's playbook of creating global manufacturing champions in India and bring the country on a par with global steel making majors such as South Korea and Japan. India is trying to attract firms that are exploring a China-plus-one strategy for production. With the disruptions caused in the wake of coronavirus pandemic that originated in China, several firms are looking to leverage the incentives offered under the marquee PLI scheme to set up a manufacturing base in India.

RBI relaxes norms for sanctioning of loan to relatives of directors/ directors of other banks

The RBI has revised the limit of amount that banks can sanction without board's approval to directors of the other banks, relatives of their own directors (other than spouse), any firm in which relative is interested as partner or guarantor. The limit has been hiked to Rs. 5 crores. As per the extant norms, sanction by board for grant of loans to a company is required, where relative of a director holds 10 % of paid-up capital or Rs 5 lakh, whichever is less.

Specialty Steel

Insolvency Business Code (IBC) (Amendment) Bill 2021 introduced in Lok Sabha

There has been a demand for offering a simplified version of IBC that saves time and cost of bankruptcy proceedings for small businesses in distress. Accordingly, an Ordinance was promulgated in April that offered what is called a 'pre-packaged' or pre-pack resolution scheme. It is an informal way of stitching together a corporate rescue plan for which seal of approval from a tribunal will be sought subsequently. The IBC (Amendment) Bill, 2021 seeks to replace this Ordinance.

Almost 60% of the over 13 lakh active companies in the country will be eligible for the pre-pack bankruptcy resolution scheme. That is because a large part of the functional companies fit the definition of micro, small and medium enterprises (MSMEs) which are incorporated. An MSME which has not met its payment obligation of ₹10 lakh, could either on its own initiate a pre-pack bankruptcy resolution scheme with approval from lenders or lenders representing 66% of the debt of the business could initiate the process. Under the scheme, lenders have extensive oversight but the business in distress enjoys moratorium from all recovery proceedings and remains in control of the operations so that there is no disruption to business and employment. It is informal up to a point and formal thereafter.





100% FDI in PSU refiners to aid BPCL sale

The Government approved a proposal to allow 100 per cent foreign direct investment (FDI) in public sector refiners, expanding the scope for FDI in the privatisation of Bharat Petroleum Corporation Ltd (BPCL). The approval will enable the sale of the government's 52.98 per cent stake in BPCL to a foreign buyer, and, at the same time, will open the door for FDI in other public sector companies in the oil sector put up for privatization.

Blackstone invests \$ 250 million for majority stake in Simplilearn

Blackstone is investing \$250 million to acquire a majority stake in Bengaluru-based online digital skilling platform Simplilearn. This marks the former's first PE investment in Asia's and India's consumer tech space. India's edtech space is seeing a lot of funding and M&As, with the pandemic accelerating the need for online education delivery, and the need for a variety of digital skills and certifications.

SEBI to introduce concept of 'controlling shareholders driven company' in place of 'promoter-driven companies'

To enable companies, especially startups without promoters, to get listed on stock exchanges for accessing public capital, Sebi is planning to introduce the concept of "controlling shareholders-driven companies" in place of "promoter-driven" companies. The concept of promoters has been existing in India for years. Concentrated ownership is still predominant in our country. However, over time, with high levels of PE/VC funding, increasing startup culture and new-age companies, there is an increasing trend of companies with diversified shareholding and in many cases, with professional management and no promoters.

With entrepreneurial activities thriving in India, most of the startups do not have any clear promoter. Typically, a group of investors, mostly PEs and VCs, come together and put in the initial growth capital with an aim to expand the company's business and exit with high returns. The new rules will particularly benefit startups but even all listed firms will need to make changes in their articles and memorandum.

Singapore's MCE invests in India based MedTel for e-pharmacy business

Metal Component Engineering Limited ("MCE"), through its subsidiary, Metal Precision Services Pte Ltd, entered into a term sheet to take an equity stake in MedTel Healthcare Private Limited ("MedTel"). MCE intends to invest up to 10% of the issued and paid-up share capital of MedTel during MedTel's current funding round. MedTel is an India-based Internet of Medical Things (IoMT) which has commercialized its platform with over 50 healthcare organizations in India deploying its remote monitoring healthcare devices, whatsapp chatbots and healthcare kiosks. MedTel, through fundraising, intends to further expand into corporate healthcare and insurance lead healthcare plans.

Apollo, Synergy Metals to invest about \$200mn in JSW Cement

Two private equity players Apollo Global Management (a USA based private equity giant) and Synergy Metals Investments Holding have decided to invest up to Rs 1,500 crore (around \$201.7 million) in unlisted JSW Cement. The transaction is a structured private equity deal wherein compulsorily convertible preference shares (CCPS) are being issued to the investors and the conversion of such CCPS into common equity of the company will be linked to the company's future performance and valuation determined at the time of the initial public offering (IPO).

FedEx invests \$ 100 million in Indian Logistics Startup Delhivery

One of India's fastest growing logistics startups has secured a significant investment from FedEx. The US delivery giant is securing a foothold for further expansion into the Indian market with a \$100m equity investment in Gurgaon-based logistics and supply chain startup Delhivery. As part of the equity investment, FedEx Express India and Delhivery will enter a long-term commercial agreement leveraging both parties' strengths. FedEx will offer a range of international import and export services through its global network for both international customers seeking to enter or accelerate their growth in India, and Indian businesses looking for opportunities to expand beyond their domestic market. For its part, Delhivery will sell FedEx Express international products and services in the Indian market, as well as providing pick-up and delivery services across the country.



“The function of leadership is to produce more leaders, not more followers.”

– Ralph Nader

BASF Venture Capital GmbH invests in Indian startup UrbanKisaan

BASF Venture Capital GmbH (BVC) is investing in the Indian startup UrbanKisaan, which specialises in hydroponic cultivation of various types of vegetables, greens and herbs in tropical urban environments. This is BVC's first investment in an early stage business focusing on India. Conceptualised in 2017, UrbanKisaan operates several suburban greenhouses and vertical indoor farms in Hyderabad and Bangalore. The company sells the fresh produce, some of which is grown directly in the shops, in its franchise-owned brick-and-mortar stores and via an app and website. With the investment from BASF, UrbanKisaan plans to further expand its market presence in India, deploy its farming technology to work with thousands of farmers, and bring fresh, local, sustainable produce to urban dwellers.

Tamil Nadu inks deals with 35 companies to see over Rs. 17,000 crores investments

The government of Tamil Nadu (TN) signed a memorandum of understanding (MoUs) with 35 companies that may see investment to the tune of Rs 17,141 crore, creating employment opportunities for 55,054 people. The major companies that would be coming up with fresh investments over Rs 1,000 crore in the state include JSW Renew Energy Two, TCS, ZF Wabco and Srivaru Motors among others. JSW Renew Energy will be coming up with a 450 megawatt (Mw) wind power generation unit at Tuticorin, Tirunelveli, Dindigul and Tiruppur for Rs 3,000 crore. TCS will be coming up with its third phase of expansion at SIPCOT IT Park in Siruseri, ZF Wabco with an auto component unit at Kancheepuram for Rs 1,800 crore and a two-wheeler EV unit by Srivaru Motors for Rs 1,000 crore at Coimbatore.

RBI bans Mastercard from issuing new debit and credit cards

RBI has banned indefinitely Mastercard's cards for its failure to comply with data storage norms. Mastercard, a major card issuing entity in the country, is the third company to have been barred by RBI from acquiring new customers after American Express Banking Corp and Diners Club International over data storage issue. In terms of RBI's circular on Storage of Payment System Data on April 6, 2018, all system providers were directed to ensure that within a period of six months the entire data relating to payment systems is stored only in India. They were also required to report compliance to RBI and submit a board-approved System Audit Report conducted by a CERT-In empanelled auditor within specified timelines.

Though existing customers will not be hit, business impact will be significant as banks need to sign new commercial deals with rival networks such as Visa, a process that can take months and involve weeks of back-end technology integration.

Guidance Tamil Nadu enters deal with ATEA to promote startups

Guidance Tamil Nadu has also entered into a deal with American Tamil Entrepreneurs Association (ATEA) to promote start-ups in the fields of innovation, research and development in TN. This digital accelerator program sanctions grants to the start-up projects engaged in innovation, research and development. Government has sanctioned a sum of Rs. 5 crore for this programme.

Microsoft in talks with Telangana for setting up \$2 billion data center

Global techgiant Microsoft is in discussions with the Telangana government on a proposal for setting up one of its largest data centres with an investment outlay of about \$2 to 2.25 billion in Hyderabad. If the discussions fructify, this would be one of the major investments of Microsoft outside the USA.



“Paying attention to simple little things that most men neglect makes a few men rich.” – Henry Ford



Microsoft in talks with Telangana for setting up \$2 billion data center

Global techgiant Microsoft is in discussions with the Telangana government on a proposal for setting up one of its largest data centres with an investment outlay of about \$2 to 2.25 billion in Hyderabad. If the discussions fructify, this would be one of the major investments of Microsoft outside the USA.

Rajasthan announces EV buyer incentives

Rajasthan has become the latest state to forward EV adoption in India, particularly for two-wheelers and three-wheelers, albeit with different incentives compared to other states.

- Reimburse the SGST (State Goods and Service Tax) applicable
- To provide a one-time grant on EVs, depending on battery capacity

Changes in allotment of new name/ change in name of existing company

Section 16 relates to the rectification of a company name subject to various conditions, including that the government may direct changing a firm's name if it is identical with or too nearly resembles the name of an existing company. In case such a direction is issued, the same has to be implemented by the company concerned within three months. Now, the ministry has put in place new rules, wherein for such companies, the letters ORDNC, the year of the 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.





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