

At a Glance

(Brief Updates from the world of Tax and Finance)

For Private Circulation Only

January 2019

Message

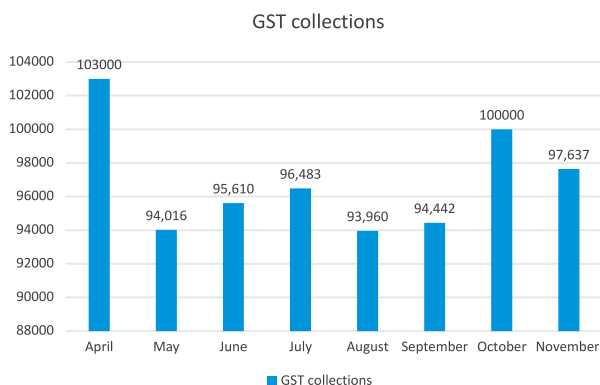
At the outset, I would like to wish all our readers a happy 2019 and beyond!

As we move into 2019, we have endeavoured to look at the major happenings from the finance angle and see where we are headed for.

The year started with the presentation of the Union Budget 2018 which put the spotlight on agriculture, rural development, health, education, employment, MSME and infrastructure sectors. It projected a jump in revenue buoyancy primarily because of a stabilising goods and services tax (GST), but still took a pause on fiscal consolidation. It added that a series of structural reforms will propel India among the fastest growing economies of the world. The nation is firmly on course to achieve over 8 % growth as manufacturing, services and exports back on good growth path. Fiscal Deficit was pegged at 3.5%, projected at 3.3% for 2018-19.

As the year unfolded, signs of uneasiness started emerging with oil prices rising to a new high, the rupee depreciating to a new low, debate on the autonomy of the central bank, increased pressure on the fiscal and current account deficit and investments not keeping up to the desired level.

GST collections till November 2018

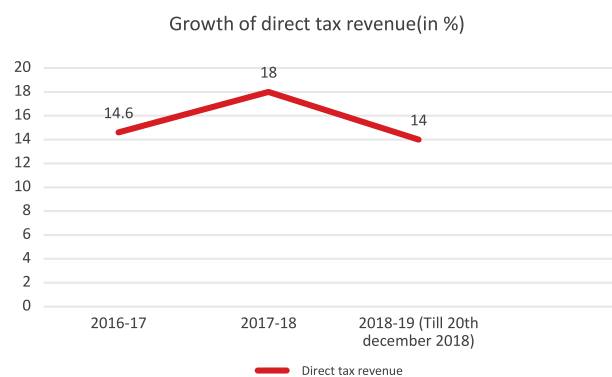


Of the Rs 97,637 crore collected in November 2018, central GST (CGST) collection is Rs 16,812 crore, state GST (SGST) is Rs 23,070 crore, integrated GST (IGST) is Rs 49,726 crore (including Rs 24,133 crore collected on imports) and cess is Rs 8,031 crore (including Rs 842 crore collected on

imports). The collections have become remained stable despite there being reduction in tax rates throughout the year by the GST Council.

The 31st Goods and Services Tax (GST) Council meet on December 22, 2018, undertook some sweeping changes. It reiterated the Central and State Governments' effort to make GST simple, easy and rational. Most important of all, tax slabs for more than 30 items were slashed, thereby making them cheaper. TVs, Digital cameras, power banks, among others, were transferred from the 28 per cent slab to 18 per cent and 12 per cent slabs. Changes will come into effect from January 1, 2019. Only 28 luxury or sin items will now remain in the highest 28 per cent bracket. Indeed, the Government has taken a significant move as 183 goods will now fall in the 0 per cent category; 308 items will be taxed at five per cent; 178 in the 12 per cent category; and 517 goods will fall under the 18 per cent bracket. This will provide significant buoyancy in the market leading to growth of the economy.

Direct tax revenue

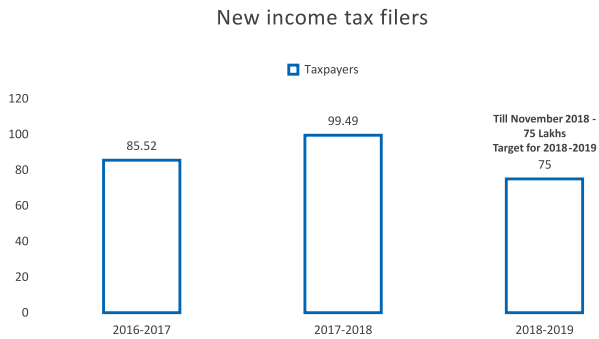


This year also, the Direct Tax collections are showing a growth of around 14%. This reflects the positive mindset of the Indian businesses especially corporates. Despite the adverse global headwinds, the sustained growth in Direct Tax collections speaks about the resilience of the Indian economy.

The annual figure for 2018-2019 are likely to witness further improvement – currently it is 64% of the Budget estimate for direct tax collection in the current fiscal.

Number of new income tax filers

With 99.49 lakh new tax filers, income tax returns surged by 26% in 2017-18.



Looking Ahead

India's tax-GDP ratio of around 17 per cent is half the average of OECD countries (35 per cent) and is low even when compared to other emerging economies like Brazil (34 per cent), South Africa (27 per cent) and China (22 per cent).

To enhance public investment, India aims to increase its tax-GDP ratio to at least 22 per cent of GDP by 2022- 23 as stated in the Niti Aayog recent strategy paper.

Efforts need to be made to rationalize direct taxes for both corporate tax and personal income tax. Simultaneously, there is a need to ease the tax compliance burden and eliminate direct interface between taxpayers and tax officials using technology.

With the elections due in the mid of the year, 2019 will surely remain an exciting year for all. Here's wishing you the very best of 2019

With Warm Regards

Ankit Jain

Income-Tax

CBDT notifies provisions and conditions related to exemption in capital gain at the time of conversion of foreign bank's branch to Indian subsidiary company.

Central Board of Direct Taxes vide Finance Act, 2012 inserted Chapter XII-BB to incentivise foreign banks to set up subsidiary in India and provided benefits related to exemption in capital gain on the assets transferred consequent to conversion from foreign bank's branch to Indian subsidiary and also provided exceptions, modifications and adaptations in treatment of unabsorbed depreciation, set-off or carry forward of losses, availability of minimum alternative tax (MAT) credit and the computation of income of the foreign bank and the Indian subsidiary company.

In continuation of the same, Central Board of Direct Taxes has notified the conditions to be met for claiming the

exemption of capital gain consequent to transfer of assets at the time of conversion from foreign bank's Indian branch to Indian subsidiary company. After meeting the specified conditions, capital gain will be exempt from tax and period of holding of previous owners will also be included while calculating total period of holding in the hands of Indian subsidiary and other benefits as per the scheme will also be provided.

[Notification No. 85 & 86 dated December 06, 2018]

No TDS on Interest other than 'interest on securities' to Senior Citizen under section 194A of the Income-tax Act, 1961

Section 194A of the Income-tax Act, 1961 deals with deduction of tax at source in respect of interest on other than 'interest on securities'. Whereas third proviso to sub-section 3 of section 194A provides that no deduction of tax at source shall be made in case of senior citizens where amount paid or credited during a financial year does not exceed fifty thousand rupees.

In this regard, it has been observed that some TDS deductors / Banks are still making TDS deductions irrespective of the amount paid to senior citizen. Thus, Pr. Directorate Income-tax (Systems) vide this notification further clarifies that no deduction of tax at source u/s 194A shall be made in case of senior citizen where amount paid or credited during a financial year not exceeding fifty thousand rupees.

[Notification no. 06/2018 – DGIT, Dated December 06, 2018]

CBDT notifies period for furnishing report under section 286(4) of the Income-tax Act, 1961 by constituent entity

CBDT notified the time period of twelve months from the end of the reporting accounting year in respect of report to be furnished by constituent entity related to international group as mandated by sub-section (4) of 286 of Income Tax Act, 1961. Further, in respect of assessee whose parent entity is resident of a country or territory where there has been systemic failure, period of submission of report shall be six months from the end of the month in which said systemic failure has been intimated.

However, in respect of reporting accounting years ending up to February 28, 2018 CBDT has extended the period for furnishing of said report to March 31, 2019.

[Notification No. 88 dated 18/12/2018 and Circular No. 9 dated 26/12/2018]

CBDT extended compulsory e-filing of form 13 for lower rate of tax deduction / collection.

CBDT vide notification no. 74 dated 25/10/2018 has mandated online filing of form 13 related to lower rate of tax deduction / collection. However, due to practical difficulties being faced by the assessee in filing form 13

online, CBDT has allowed manual filing of form 13 upto 31st December, 2018 in the case of resident assessee and upto 31st March, 2019 in the case of non-resident assessee.

[Press release dated 24 December 2018]

Direct Taxes- Cases December 2018

Subsequent amendments can't re-open concluded proceedings; 16 years re-assessment time-limit, prospective

Delhi HC quashes re-assessment initiation for AY 1998-99 on assessee-individual (who was non-resident for subject AY), as it was barred by limitation u/s. 149;

In this case, AO had issued notice u/s 148 in March, 2015 thereby proposing to tax the amount of US \$ 2-3 million contributed by assessee for settling a trust in foreign country. Hon'ble HC observed that assessment for subject assessment year A.Y. 1998-99 could not be reopened beyond 31-3-2005 in terms of provisions of section 149 as applicable at the relevant time.

The subsequent amendment by Finance Act, 2012, which extended the limitation to sixteen years, could not be resorted for reopening concluded proceedings, in respect of which limitation had already expired/ lapsed before the date the amendment became effective.

[Brahm Datt v. ACIT {W.P. (C) 1109/2016} – Delhi High Court]

HC rejects stamp-duty valuation u/s. 50C for computing capital-gains on assignment of development rights

Bombay HC, rules that capital gains arising to assessee during AY 2005-06 on assignment of development rights, in respect of the immovable property, to a builder is to be computed based on the amount actually received by assessee, rejects adoption of stamp duty valuation u/s. 50C of the Income Tax Act.

[PCIT v. The Executor of Estate of Late Smt. Manjula A. Shah (ITA No. 859 of 2016) - Bombay High Court]

Issue of Search warrant in respect of assessee's locker was unjustified when DIT failed to prove such locker contained undisclosed income.

Search and seizure operations were conducted on premises of KSJ, who was cousin of assessee. During search, keys of 3 lockers belonging to assessee were found at premises of KSJ. Addl. DIT issued a warrant of search authorization along with satisfaction note in name of assessee to search said lockers. On opening 2 of those lockers, nothing was found and in one locker jewellery was found. It was noted that Addl. DIT had not disclosed any material or information on basis of which he had entertained belief that lockers contained jewellery or

other articles representing undisclosed income. It was also taken note of that the satisfaction note did not state that any attempt was made to verify and ascertain facts in respect of assessee's lockers post discovery of locker keys. It was observed by the Court that there was no business connection, link and association established between assessee and KSJ, who was subjected to search and seizure operations. In view of these facts, the HC concluded that the issuance of search warrant in respect of assessee's lockers was unjustified and same was to be set aside

[Shah E Naaz v. Addl. CIT (WP (C) No. 5937/2016) – Delhi High Court]

Online payment of TDS due will relate to the date of online payment, not the date of debiting the account

Hon'ble ITAT Delhi Bench clarified that when the assessee has made payment of TDS on 07.07.2014 by way of online payment and the same was debited from his account on 08.07.2014, the same is to relate back with date of online payment i.e. 07.07.2014 and not 08.07.2014, as online payment is on better footing than payment made by cheque and thus no interest is chargeable under section 201(1A) of the Income Tax Act.

[Interocean Shipping (India) Pvt. Ltd. v DCIT (ITA No.3637/3638/Del/2016) – ITAT Delhi]

Sec. 194-IA TDS on property purchases applicable qua each transferee, not sale-deed value

Delhi ITAT holds assessee-individual (transferee) not liable to deduct TDS u/s. 194-IA as the property purchase consideration qua assessee being less than (Rs. 50 lakhs) threshold prescribed u/s. 194-IA(2) of the Income Tax Act.

Tribunal has clarified that Sec. 194-IA (as introduced by Finance Act, 2013) is applicable only with respect to the amount related to each transferee and not with reference to the amount as per sale deed, cites.

Memorandum explaining Finance Bill, 2013 provisions stated that each transferee is a separate income tax entity therefore, the law has to be applied with reference to each transferee; Since the sale consideration w.r.t. each transferee is less than Rs. 50 lakh, ITAT concludes that Sec. 194-IA was not applicable.

[Vinod Soni v. ITO (ITA No.2736/ Del/2015) – ITAT Delhi]

Corporate Laws

Procedure for Change in Financial Year and Conversion of Public Company into Private Company

Ministry of Corporate Affairs has laid down the procedure of change in financial year and conversion of public

company into a private company in accordance with the Companies (Amendment) Ordinance, 2018 dated 02nd November, 2018 issued by the Ministry of Law & Justice.

[Companies (Incorporation) Fourth Amendment Rules, 2018, G.S.R. 1219(E) dated 18th December, 2018]

Relaxation for filing of form under National Financial Reporting Authority Rules, 2018

Ministry of Corporate Affairs have permitted the bodies corporate to file the NFRA-1 (on which it is applicable) within a period of 30 days from the date of deployment of it in its portal.

[General Circular No. 12/2018 dated 13th December, 2018]

Goods & Service Tax (GST)

1. Updates from the 31st GST Council Meet dated 22 December, 2018

After a period of nearly 5 months, the GST Council meeting was held to resolve several pending matters. Understanding the problems faced by the businesses, the Council relaxed various provisions and reduced tax rates on several items. Key updates from the council meet are as follows.

- a. The due date for furnishing Annual return in form GSTR-9 and GSTR-9A and reconciliation statement in form GSTR 9C, extended to 30 June 2019.
- b. Un-availed ITC for the financial year 2017- 18 can now be availed before the filing of GSTR-3B for March 2019 subject to certain conditions to be prescribed in this regards.
- c. Outward supplies to be reported in GSTR- 9/9A shall be with respect to supplies “made during the year” and not supplies “reported in the monthly/ quarterly returns”.
- d. HSN code to be declared only for inward supplies having an individual value exceeding 10% or more of the total value of inward supplies.
- e. Complete waiver of interest for all taxpayers where GSTR-1, GSTR-3B and GSTR-4 for the months or quarters July 2017 to September 2018 are furnished after 22 December 2018 but before 31 March 2019.
- f. The process of applying for refund is being simplified with all relevant documents to be submitted online only and no visit required to the tax office. The Council has also recommended formation of single authority for disbursement of refund amount. Other processes in refund submission are being simplified and concerns of the suppliers would be clarified also.
- g. The Council has also allowed approval for creation of Centralised Appellate Authority for Advance

Ruling to deal with conflicting decisions of two State AARs.

- h. In principle approval has also been given for charging interest on the amount net of input tax credit where the supplier has failed to deposit the tax in a timely manner.
- i. The due date for Form GST ITC-04 for the period July 2017 to December 2018 shall be extended till 31 March 2019.
- j. Reduction of tax rates- Rates of following items have been reduced:
 - Gear boxes
 - Monitors and TVs
 - Retreaded Tyres
 - Power banks of Lithium ion batteries
 - Digital cameras
 - Video Game consoles
 - Parts of carriages for disabled persons
 - Cork and articles of cork
 - Music books
 - Branded Frozen Vegetables
 - Cinema Tickets

[Source: cbic.gov.in, Press Release dated 22nd December, 2018]

2. Maharashtra AAR held that security services provided to Pimpri Chinchwad Municipal Corporation (PCMC) for providing security guards is exempted as it falls under Notification No. 12/ 2017- Central Tax (Rate). AAR clarified that providing such assistance to security guards of PCMC shall be covered under various functions entrusted to a Municipality under Article 243W of the Constitution. Though, the security guards provided are working under overall supervision of security guards who are on the establishment of PCMC, however, they are not mere assistants/ helpers because they are fully responsible for security of entire premises and suppose to handle emergency situation and co-ordinate with important organization. AAR held that applicant is providing pure services to PCMC, as being enumerated under S.No. 3 of the notification.

(National Securities Limited, Maharashtra AAR)

3. Maharashtra AAR has stated that no registration is required where amount is collected by individual clubs and it's District for convenience of members. Such amount is collected for paying meeting expenses and communications expenses, being deposited in single bank account. Such fees collected are used for social causes and to meet expenses incurred in furtherance of objectives i.e. to perform social relevant activities. AAR concluded that from such fees there is no supply been made under the GST Act.

[Lions Club of Poona Kothrud, Maharashtra AAR]

4. Maharashtra AAAR supports AAR decision that tea procured from public tea auctions or manufacturers of tea in 50 kg bags, after undergoing various stages of processing shall not be considered as an 'agricultural produce'. Thus, all services of warehousing, loading, unloading, packing and storage in relation thereto not exempt under Sr. No. 54(e) of Notification 12/2017 - Central Tax (Rate). AAAR stated that the tea procured stored in warehouses was with different name, character and uses that from green tea leaves which are cultivated in tea gardens. The tea procured is a produce of plants, which is obtained after manufacturing of agricultural produce which changes the characteristics of green tea leaves, thus amounts to "manufacture" as per definition provided u/s 2(72) of CGST Act, 2017. AAAR clarified that the blending of tea of various qualities into different proportions as depending upon requirement of overseas customers may be construed as manufacturing process, as the blended and packaged product is not the primary markets as envisaged in the definition of the agricultural markets.

Reference was made to SC decision in Belgachit Tea Co and Brook Bond Lipton India Ltd. while distinguishing SC judgment in D.S. Bist.

[Nutan Warehousing Company Pvt Ltd, Maharashtra AAAR]

5. Karnataka AAAR upholds the decision of AAR, that taxi aggregator shall be liable to pay tax on amount billed for services provided by a motor cab or maxi cab or motor cycle or radio-taxi, by way of transportation of passengers in accordance with Section 9(5) of CGST Act r/w Notification No. 17/2017-Central Tax (Rate). By referring to the definition of "E-Commerce" & "E-Commerce Operator", AAAR observed that in such service model, the customers and taxi operator gets connected through a common IT platform for booking the taxi and, after completion of service, the taxi aggregator sent an invoice to the customer through the digital network facility, which is payable by consumer to taxi driver. However, the appellant pleaded that they only provide a service of booking through digital platform and not "supplied through it". AAAR elucidated that for providing such cab/taxi services, booking request through digital platform shall be an integral part of the supply chain at the initial stage. Further, holds that the supply of the service of transportation of passengers is via digital platform and thus with reference to the provisions of Section 9(5) of the CGST Act, the e-commerce operator shall be liable to pay the tax on all intra-state supplies as if he is the supplier".

[Opta Cabs Private Limited, Karnataka AAAR]

6. Where the applicant is engaged in recruitment of shipping personnel for Foreign Ship Owner (FSO), he shall not be liable to pay GST on salary amount received and disbursing the amount to the Crew. AAR observed that amount received as salary of Crew of FSO is deposited directly in the bank account of applicant and same is transferred to the bank account of Crews by the bank. Since, the amount received as salary of Crew is disbursed as such, AAR concluded that the applicant is acting as a 'pure agent' of FSO. Also, the applicant will be receiving a fixed fee separately as service charges and no other amounts which are not authorized shall be handled through this account.

[DRS Marine Services Private Limited, Maharashtra AAR]

7. Maharashtra AAR held that amortized value of tools provided on FOC basis from customer shall not be included while considering the value of finished goods manufactured. Here, AAR referred to the clarification issued by CBIC vide Circular No. 47/21/2018-GST dated June 08, 2018 which states that in absence of any consideration for the goods owned by OEM which are provided to a component manufacturer on FOC basis does not amount to supply. Further, from the agreement and purchase copy, it was found that the tools supplied to manufacturer (applicant) are on payment of GST and thus are owned by OEM and supplied to manufacturer on FOC basis for manufacturing process. AAR elucidated that as the obligation to provide the tools on FOC basis is on customer, therefore amortized value of tools shall not be added. However, the situation is reversed where the obligation to use tools is on the applicant. Thus, AAR accepted applicant's plea that the said transaction shall fall out of the provisions of Section 15(2) of CGST Act, 2017.

[Lear Automotive India Private Limited, Maharashtra AAR]

8. Maharashtra AAR held that service of providing goods on rent constitutes transfer of 'right to use' the goods which would be categorised as supply of 'service' with reference to Entry 5(f) of Schedule II of CGST Act, 2017. In the present case, the goods (workwear) are designed for a specified period for a pre-determined consideration, however the ownership rests with the applicant and only the right to use is transferred to the customer. Also, such goods cannot be sublet nor be used for any other purpose. For the said good, services namely washing, maintenance and repair of workwear is a standalone service. Hence, AAR accepts Revenue's plea that bundling of services shall not be classified as 'composite supply' and qualifies as 'mixed supply'.

[Lindstrom Services India Private Limited, Maharashtra AAR]

9. West Bengal AAR held that applicant's activity of printing the Bible under the specific orders received from foreign customer shall be classified as a supply of service under SAC 9989 and not supply of goods. In the case, such supply shall be considered as a composite supply as the transfer of title is principal supply and physical inputs are ancillary to such supply, however, rights of printed content do not belong to applicant. AAR noted that as the service is supplied to recipient through its branch located in

India hence supply is not export of service as recipient is located in India. Further, both purchase orders and tax invoice are in INR, therefore clause (b) and clause (d) of section 2(6) of IGST Act are violated. AAR held that the service cannot be termed as "export of service" and therefore, applicant shall be liable to pay GST under the appropriate Act on such supplies.

[Swapna Printing Works Private Limited, West Bengal AAR]

Compliance Particulars	Due Date
1. Income Tax	
Deposit of Tax Deducted/ Collected for the month of December, 2018	7th January, 2019
Due date for issue of TDS Certificate for tax deducted under section 194-IA and 194-IB in the month of November, 2018	14th January, 2019
Deposit of ESI for the month of December, 2018	15th January, 2019
Deposit of Provident Fund for the month of December, 2018	15th January, 2019
Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA and 194-IB in the month of December, 2018	30th January, 2019
2. Goods & Services Tax (GST)	
GSTR-1 for Outward Supplies for the month of December 2018 (with aggregate turnover exceeding Rs. 1.50 Crores)	11th January, 2019
GSTR-1 for Outward Supplies for October-December 2018 (with aggregate turnover upto Rs. 1.50 Crores)	31st January, 2019
GSTR-3B for the month of December 2018	20th January, 2019
GSTR-7 for the months of October-December 2018	31st January, 2019
GSTR-4 for the months of October-December 2018	18th January, 2019

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