

At a Glance

(Brief Updates from the world of Tax and Finance)

For Private Circulation Only

March 2019

Message

The month of February has been an exceptional one. The government presented its last budget before the elections and the GST Council met twice in a single week to decide upon the critical matter of taxation in real estate. But it was the horrific attack at Pulwama killing more than 40 soldiers which shocked the nation to its core. At this time we would like to pay our respects to all the soldiers who lost their lives in this horrific attack. The whole Nation stands together today in support of our armed forces.

Budget 2019

In its last budget before the election, the government presented various proposals to address the concerns of the agricultural and rural community primarily. With only few months being left under this government tenure, no major proposals for the industry or economy at large were presented leaving the next government to take up this in detail.

GST Council Meetings

The GST Council held two meetings in February to address challenges in the real estate sector. While some relief for residential sector have been given, the fine print is yet to come out which will be issued by way of notifications in the coming weeks.

The Government also informed that they collected Rs. 97 Thousand Crores under GST for the month of February which is a healthy and buoyant increase of 18% over the last year's figure.

Interest Rate

The Reserve Bank of India reduced the repo rate by 25 basis points to 6.25% surprising businesses and analysts.

The move will reduce interest costs for businesses and home owners and combined with the reduction in GST rate may provide a boost to the real estate sector.

Inclusion of allowances in Basic Salary

This month, the Supreme Court ruled on the issue of allowances under basic salary for the purpose of calculation of EPF and held that any allowance which is of fixed nature and not variable in nature will be included for computation of EPF. Only variable or production linked incentives are to be excluded from the said calculation. While the court did not specifically rule on it, the judgement may have implication in the case of gratuity where again the definition of salary is very similar to that under EPF.

Coming ahead

March, being the last month of the financial year is always critical. Government and businesses will scuttle to maximise their numbers for the financial year 2018-19. This may translate into stricter checks by the Government to avoid leakages. With elections due in May, the model code of conduct will become applicable this month. Consequently, we do not expect any big bang reforms to be announced as yet. However, the consumer spend does increase during election times and accordingly, the retail sector may see an uptick in the coming couple of months. Professionals might be busy with managing the increasing compliance a few of which were announced just last month. Safe to say, that March will be a busy time for all of us.

With Warm Regards
Ankit Jain

Income Tax

CBDT streamlines the monetary limits for filing of appeal by department in Wealth Tax cases.

CBDT has issued a circular for streamlining the monetary limits of filing of appeal in wealth tax cases with the Income Tax which was revised vide earlier circular dated 11/07/2018 and said circular will apply in mutatis mutandis manner with some modifications as prescribed in the circular. Following were key points or revised limits of the circular dated 11/07/2018:

S.no.	Appeals/ SLPs in Income-Tax matters	Monetary Limits (Rs.)
1.	Before Appellate Tribunal	20,00,000
2.	Before High Court	50,00,000
3.	Before Supreme Court	1,00,00,000

However, the decision to file or not to file an appeal is to be taken on merits also after considering the above mentioned monetary limits with some exceptions. Further, the amount of tax will not include any interest

thereon, except where chargeability of interest itself is under dispute. It has also been directed that all the existing appeals filed by the department should be withdrawn.

[Circular no. 5 of 2019 dated February 05, 2019]

Provision for claiming deduction u/s 80IAC and granting exemption u/s 56(2)(viib) of the Act

Section 80IAC of the Income-tax Act, 1961 provides provisions w.r.t. deduction to eligible start-ups from the profits and gains derived from specified business for any three consecutive years (as per choice of the assessee) out of seven years starting from the year in which Start-ups is incorporated subject to the conditions as specified in the said section. Now CBDT has issued a notification wherein certain conditions has been clarified and some are relaxed. Main features are as below:

- An entity shall be considered as Start-up upto a period of ten years instead of earlier 7 years;
- Person will be treated as start up till the time it achieved turnover of Rs. 100 crores instead of Rs. 25 crore ;
- A start-up will be eligible for exemption from provisions of section 56(2)(viib) of Income-tax Act subject to the condition as specified;

[PIB Press Release and Notification No. GSR 127 (E) [F.NO.5 (4)/2018-SI, dated February 19, 2019]

Mandatorily linking of Aadhaar-PAN till 31.03.2019 for filing of income tax return

Government has made linking of Aadhaar-PAN mandatory and in this regard CBDT has issued a press release wherein it has specified that after the decision of Hon'ble Supreme Court wherein Aadhaar has been held as constitutionally valid, it is mandatory now to link the PAN with Aadhaar and it has to be completed by 31/03/2019 for filing of Income Tax return.

[Press Release Dated February 14, 2019]

Direct Tax – Judgements

CIT can't invoke Sec. 263 on different aspect of same issue concluded by CIT (A)- Gauhati High Court

Gauhati HC upholds ITAT order quashing revisionary order u/s. 263 on the ground that the issue pertaining to Sec. 80-IC deduction could not be re-examined by CIT as AO's order on the said issue had merged with the CIT(A)'s order; AO had denied deduction u/s 80IC (available to mineral based undertaking) to assessee on the ground that each oil well of assessee was not an undertaking, however, CIT(A) had allowed assessee's claim, subsequently CIT initiated revision proceedings u/s 263 on the ground that the AO had not examined or applied his mind on the basic issue as to whether

the assessee is actually a mineral based undertaking; HC holds that "when the claim was disallowed by the AO but allowed by the CIT(A), the issue would stand concluded and there would be no scope for re-examination in the jurisdiction u/s. 263 of the Act as the assessment order has merged in the appellate order."

[PCIT v. Oil India Ltd. (ITA 7/2016) - Gauhati High Court]

No restriction u/s 54 on investing capital gains from sale of 'multiple house'

Mumbai ITAT upholds CIT(A)'s order allowing exemption u/s 54 in respect of long term capital gains ('LTCG') arising from sale of 3 residential flats, relies on Bombay HC ruling in Devdas Naik; During subject AY 2011-12, assessee had sold three flats (located on the same floor, which were later combined and used as one residential house) and invested the amount in the Capital Gains account scheme, and claimed Sec. 54 exemption which was rejected; CIT(A) had held that there is no restriction placed anywhere in Sec. 54 that exemption is available in relation to sale of one residential house, further it was held that even if the assessee sells more than one residential houses in the same year and the capital gain is invested in a new residential house, the claim of exemption cannot be denied if the other conditions of section 54 are fulfilled; Upholding CIT(A) order, ITAT holds that "CIT(A) has given a detailed finding and passed a very reasoned order after following the Hon'ble Bombay High Court on this issue."

[ACIT v. Bipin N. Sagar (ITA No.1507/Mum/2017) – ITAT Mumbai]

CIT(A) cannot enhance income on 'new source' not considered in assessment proceedings

Delhi ITAT deletes addition u/s 68 made on individual-assessee during AY 2014-15, rules that when the matter in assessment proceedings was with respect to claim u/s 54/54F, CIT(A) should not have enhanced assessee's income on altogether 'new source'; During the relevant AY, assessee's claim u/s 54F/54 on sale of 'residential property' was denied by AO upon which CIT(A) conducted further enquiry to hold that the property in question was never sold as neither the registration was made nor physical possession was given and the source of money given by the purchaser to the assessee also could not be explained; States that the issue of unexplained 'sales consideration' was not an issue of dispute before AO, therefore CIT(A) could not have made enhancement on the issue which falls within the scope of sec.147

[Hari Mohan Sharma v. ACIT (ITA No.2953/Del/2018) – ITAT Delhi]

International Taxation & Transfer Pricing

SC dismiss Revenue SLP, HC upheld TP adjustment deletion on commission payment to AE sparing

credit on 'dividend' exempt under Thailand incentive legislation will be available

SC dismisses Revenue's SLP against HC order in case of Sun Pharmaceuticals Industries (assessee) for AY 2002-03; HC had upheld ITAT order deleting TP adjustment on overriding commission paid by assessee to AEs after noting that weighted average rate of commission paid by the assessee was 7.84% as against 11% paid to unrelated party; HC had concluded that ITAT's decision demonstrated that the entire issue was based on facts and appreciation of record; Dismissing SLP, SC states that "The Special Leave Petition is dismissed on the ground of delay as well as on merits"

[Pr. CIT v. Sun Pharmaceutical Industries Ltd. {SLP (Civil) Dairy No. 4466/2019}]

Corporate Laws

Declaration of Significant Beneficial Owners

Ministry of Corporate Affairs has notified the Companies (Significant Beneficial Owners) Amendment Rules, 2019 which came into force on 08.02.2019. Every significant beneficial owner of a company is required to file declaration to Company for disclosing their interest within 90 days i.e. on or before 08th May 2019.

[Companies (Significant Beneficial Owners) Amendment Rules, 2019, GSR 100(E) dated 08th February, 2019]

Adjudication of Penalties under the provisions of Companies Act, 2013

Ministry of Corporate Affairs has notified the Companies (Adjudication of Penalties) Amendment Rules, 2019, wherein the procedure for adjudication of penalties has been defined for defaults under the provisions of Companies Act, 2013.

[Companies (Adjudication of Penalties) Amendment Rules, 2019, GSR 131(E) dated 19th February, 2019]

One time return of Active Company Tagging Identities and Verification (ACTIVE)

Every company incorporated on or before 31st December, 2017 is required to file the particulars of the company and its registered office, in e-Form ACTIVE (Active Company Tagging Identities and Verification) on or before 25.04.2019. Otherwise the status of the Company will be changed to Active Non-Compliant and a penalty of Rs. 10000/- will be levied to change the status of the Company Active Compliant.

[Companies (Incorporation) Amendment Rules, 2019, dated 21st February, 2019]

Extension of due date of filing of declaration for outstanding dues of Micro, Small and Medium Enterprises

Ministry of Corporate Affairs extended the due date of filing of declaration for outstanding dues of Micro,

Small and Medium Enterprises from 20th February, 2019 to 30 days from the date of deployment of form MSME I.

[General Circular No. 01/2019 dated 21st February, 2019]

Goods & Services Tax

Decisions taken in 33rd GST Council Meeting

The 33rd GST Council Meeting, the first one after the Interim Budget 2019, was held on 24th February 2019 in New Delhi. The GST Council met to discuss the specific issues of relief to the real estate sector & private lottery distribution. GST Council decided that the issue of tax rate on lottery needs further discussion in the GoM constituted in this regard. However, the tax rate on construction of residential properties has been finally reduced by the Council after much deliberation.

To boost the residential segment of the real estate sector, following recommendations were made by the GST Council in the meeting:

i. GST Rate

- GST shall be levied at effective GST rate of 5% without ITC on residential properties outside affordable segment.
- GST shall be levied at effective GST of 1% without ITC on affordable housing properties.

ii. Effective date

The new rate shall become applicable from 1st April, 2019.

iii. Definition of Affordable Housing has been redefined under GST law as follows:

In case of Metro cities: A residential house/flat of carpet area of upto 60 sqm having value upto Rs. 45 lacs.

Metropolitan Cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (the whole of MMR).

In case of Non-metro cities: A residential house/flat of carpet area of upto 90 sqm having value upto Rs. 45 lacs.

iv. GST exemption on TDR/JDA, long term lease (premium), FSI

Intermediate tax on development right, such as TDR, JDA, lease (premium), FSI shall be exempted only for such residential property on which GST is payable.

Rationalization of GST Rate:

Residential Segment Type	Existing Effective GST Rate	New Effective GST Rate w.e.f. 1st April, 2019	ITC Availability
Residential properties outside affordable segment	12%	5%	Without ITC
Affordable housing properties	8%	1%	Without ITC

[Source: cbic.gov.in, Press release dated 24th February, 2019]

Option to transfer ITC for multiple places of business within a State:

The CBIC makes further amendment in CGST Rules, 2017. A new rule 41A has been inserted according to which a registered person, who has obtained separate registration for multiple places of business within a State or a Union territory can now transfer the unutilised ITC lying in his electronic credit ledger to the newly registered place of business. The person shall be required to furnish FORM GST ITC-02A electronically on the common portal within a period of thirty days from obtaining such separate registrations.

[Notification No. 03/2019- Central Tax]

Functionality made available in GST Portal for import of outward supply details in Form GSTR-1 from E-way bill system:

The CBIC has issued its weekly update dated February 02, 2019 which enables a new functionality on GST portal. At the time of generating E-way bill for outward supply, the taxpayers enter the various details such as invoice number, date, quantity, value, Tax, HSN code and Consignee GSTIN etc. The taxpayers can now easily import these details of outward supply invoices, as indicated in the E-Way Bill, at the time of preparation of Form GSTR-1, by clicking the "Import EWB Data" button, on the GST portal.

Loan's/Deposit's interest not includible while calculating threshold for "Composition Scheme" eligibility:

CBIC explains that while computing aggregate turnover in order to determine eligibility for said Scheme, consideration represented by way of interest or discount in respect of value of supply of exempt services by way of extending deposits, loans or advances, shall not be taken into account.

[Order No. 01/2019- Central Tax]

Details of inter-State supplies made to unregistered persons in Table 3.2 of FORM GSTR-3B and Table 7B of FORM GSTR-1

On observing that a number of registered persons have not reported the details of inter-State supplies made to unregistered persons in Table 3.2 of FORM GSTR-3B, a circular has been issued by the Board to clarify that the tax payers has to fill the details of such supplies mandatorily in table 3.2 of GSTR-3B and also in table 7B of GSTR-1 in order to ensure uniformity in the implementation of the provisions of law. Non-mentioning of the said information results in non-apportionment of the due amount of IGST to the State where such supply takes place. It is further clarified that the non-compliance would lead to levy of penalties u/s 125 of the act.

[Circular No. 89/08/2019- Central Tax]

Requirement of disclosing Place of Supply (POS) along with Name of the State on invoices issued for Inter-State Supplies

On observing that few of the tax payers (majority of banking, insurance and telecom sectors) are not specifying the Place of supply (POS) for the IGST invoices in accordance with Rule 46(n) which specifies that all registered persons who are making inter-state supply of goods / services are required to specify the place of supply along with the name of the State in the tax invoice, a circular has been issued by the Board to clarify that the POS and name of the state has to be mandatorily specified by the tax payers in the tax invoice. It is also clarified that the non-compliance would lead to levy of penalties u/s 122 or 125 of the act.

[Circular No. 90/09/2019- Central Tax]

Clarification regarding tax payment made for supply of warehoused goods while being deposited in a customs bonded warehouse for the period July, 2017 to March, 2018

Circular no. 3/1/2018-IGST dated 25.05.2018 has been issued by the Board in which it was clarified that w.e.f. 1st April, 2018, the supply of warehoused goods before their clearance from the warehouse would not be subject to the levy of integrated tax. Now, it has been brought to notice of the Board that where the supplier and recipient were located in the same State, the GSTN Portal did not have facility to enable taxpayers to report Inter-State supplies (IGST) and hence, tax payers during the period July 2017 to March 2018 have reported the same as Intra-State supplies and discharged Central and State Tax instead of Integrated Tax. Hence, it has been decided by the Board that the suppliers who have paid central tax and state tax on such supplies, during the said period, would be deemed to have complied with the provisions of law.

[Circular No. 91/10/2019- Central Tax]

Bombay HC stays Rs. 7.5 crores recovery in anti-profiteering matter against McDonald's franchisee

Bombay HC has granted stay order to a franchisee of McDonalds, who has been found guilty of profiteering for increasing base price despite of reduction in GST rate from 18% to 5% w.e.f. November 15, 2017 vide N/N 26/2017- CT (Rate). HC had earlier given the order against recovery of Rs. 7.5 crores (approx) along with interest at 18% payable as per order of National Anti-Profiteering Authority (NAA).

[Hardcastle Restaurants Private Limited vs. UOI]

Delhi HC upholds Session Court's bail application dismissal where Petitioner attempted to intimidate witnesses in fraudulent ITC case

Delhi HC dismisses the bail application applied by the petitioner where he had intimidated witnesses whom he made dummy directors/ proprietors in certain companies /firms to generate fake invoices to pass fraudulent ITC to him. HC referred section 132(1)(i) of CGST Act, which stipulates that in a case where amount of tax evaded or ITC wrongly availed or utilized exceeds Rs.5 crores, the offence is punishable with imprisonment for a term which may extend to 5 years and with fine.

[Rajesh Jindal Vs The Commissioner of Central Tax GST Delhi]

Manpower Services provided to Hospitals cum Medical Colleges/State Universities, taxable : Haryana AAR

In a recent Advance ruling given by Haryana AAR, it was held that Manpower Services to Hospital Cum

General medical college and State University do not qualify for Exemption under Sr. No 66 of Notification No. 12/2017 –CT(Rate). As per entry no. 66 i.e. Heading 9992 of the said notification, the specified services provided to educational institution are exempt. The authority further observes that the said entry applies only to the services provided to educational institutions providing education up to higher secondary school or equivalent level, and therefore, services in the given case shall be taxable.

[In the matter of Oscar Security & Fire Service]

Labour Laws

Special Allowance to be included for purposes of EPF Contribution, rules Supreme Court

Supreme Court held that the allowances which vary from individual to individual according to their efficiency and diligence are only to be excluded for the purpose of computation of contribution towards EPF. Where the wage is universally, necessarily and ordinarily paid to all across the board, such emoluments are to be considered for the purposes of contribution towards EPF. In view of this judgement, special allowance or any other allowance, by whatever name called, paid by an establishment to all employees shall be taken into consideration for the purpose of computation of contribution towards EPF unless it is linked to individual factors.

[The Regional Provident Fund Commissioner & Others V. VIVEKANANDA VIDYAMANDIR & OTHERS]

Compliance Dates

Compliance Particulars	Due Date
1. Income Tax	
Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA & 194-IB in the month of January, 2019	2nd March, 2019
Deposit of Tax Deducted/ Collected for the month of February, 2019	7th March, 2019
Fourth installment of advance tax for the assessment year 2019-20	15th March, 2019
Due date for payment of whole amount of advance tax in respect of assessment year 2019-20 for assessee covered under presumptive scheme of section 44AD/ 44ADA	15th March, 2019

Due date for issue of TDS Certificate for tax deducted under section 194-IA & 194-IB in the month of January, 2019	17th March, 2019
Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA & 194-IB in the month of February, 2019	30th March, 2019
Country-By-Country Report in Form No. 3CEAD for the previous year 2017-18 by a parent entity or the alternate reporting entity, resident in India, in respect of the international group of which it is a constituent of such group	31st March, 2019
Country-By-Country Report in Form No. 3CEAD for a reporting accounting year (assuming reporting accounting year is April 1, 2017 to March 31, 2018) by a constituent entity, resident in India, in respect of the international group of which it is a constituent if the parent entity is not obliged to file report u/s 286(2) or the parent entity is resident of a country with which India does not have an agreement for exchange of the report etc.	31st March, 2019
2. Goods & Services Tax (GST)	
GSTR-7: Summary of Tax Deducted at Source (TDS) for the month of February, 2019	10th March, 2019
GSTR-8: Summary of Tax Collected at Source (TCS) and deposited by E-commerce Operator for the month of February, 2019	10th March, 2019
GSTR-1 for Outward Supplies for the month of February 2019 (with aggregate turnover exceeding Rs. 1.50 Crores)	11th March, 2019
GSTR-6: Return by Input Service Distributor for the month of February, 2019	13th March, 2019
GSTR-3B for the month of February, 2019	20th March, 2019
Declaration in Form GST TRAN-1 (for registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal)	31st March, 2019
Declaration in FORM GST ITC-04, in respect of goods dispatched to a job worker or received from a job worker, during the period from July, 2017 to December, 2018	31st March, 2019
3. Labour Laws	
Deposit of ESI for the month of February, 2019	15th March, 2019
Deposit of Provident Fund for the month of February, 2019	15th March, 2019

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