VED JAIN AND ASSOCIATES

At a Glance

(Brief Updates from the world of Tax and Finance)

For Private Circulation Only

February 2019

Message

January marks the beginning of the calendar year and the last quarter of the financial year. The Indian Government will present the budget for the next financial year in this quarter along with the Economic Survey summarizing the results of the current and previous years.

GST

The GST Council held its 32nd meeting in January making significant changes to the thresholds and composition scheme which will be beneficial for the small and unorganised sector. The Government also notified February 1, 2019 as the date from which the amendments in the GST Acts, as approved in August 2018 will come into force.

Economic Indicators

During the month,while the indexes and interest rates, maintained stability, oil and dollar rates creeped up slightly.

Particulars	January 31, 2019	January 1, 2019
Rupee/USD	71.2442	69.7131
Oil (USD)	54.485	45.885
NIFTY	10830.95	10910.10
SENSEX	36256.69	36254.57
10 Year Gsec	7.541%	7.401%

Budget 2019

The Budget for the upcoming financial year will be presented on February 1, 2019. Being an election year, it is expected that the Government will only present a 'interim budget' to tide over the uncovered period till the election leaving the new Government to present the full budget and set the way forward. Regardless, the Government may look to tweak the income tax slabs allowing more disposable income in the hands of the tax payers. Finance Minister Arun Jaitley had promised to reduce the corporate tax rates for all companies to 25% by 2019 which is upto now limited to companies having turnover upto Rs. 250 Crores. The Government may also want to look at incentivising the service sector and real estate sector which have been languishing since the implementation of demonetisation and GST. Other populist measures such as guaranteed minimum income may also find a place in this budget speech.

With Shri Piyush Goyal at the helm of the finance ministry at this time, it will be the first time in the history of this country that a Chartered Accountant will be presenting the budget. The modifications that will come into force can be seen in our special edition of At a Glance which will cover the Union Budget 2019-2020.

With Warm Regards
Ankit Jain

Income Tax

Govt. simplifies procedure for startups to seek exemption from applicability of S. 56(2)(viib)

A Startup which is recognized by DIPP under para 2(iii) (a) shall be eligible to apply for approval for the purposes of clause (viib) of sub-section (2) to section 56 of the Act for the shares already issued or proposed to be issued subject to the fulfillment of conditions based on amount of paid up share capital and share premium, retuned income of the investor and net worth. After that CBDT, within a period of 45 days from the date of receipt of application from DIPP may grant approval to the Startup.

[Notification No. G.S.R. 34(e) [F.No. 5(4)/2018-SI]

CBDT clarifies regarding issue of prosecution notices

CBDT has stated that certain news items that appeared in a section of media regarding enmasse issue of prosecution notices to small companies for TDS default are completely misleading and full of factual inaccuracies. CBDT clarified that Mumbai Income Tax TDS office has issued prosecution Show Cause Notices only in a limited number of big cases where more than Rs. 5 lakhs of tax was collected as TDS from employees etc. and yet the same was not deposited with the Income Tax Department on time.

[PIB Press Release dated 21.01.2019]

CBDT identifies non- filers through non- filers monitoring system (NMS) by using Data Analytics

The Non-filers Monitoring System (NMS) aims to identify and monitor persons who enter into high value transactions and have potential tax liabilities but have still not filed their tax returns. Analysis was carried out to identify non-filers about whom specific information was available in the database of the Department. The sources of information include Statement of Financial Transactions (SFT), Tax Deduction at Source (TDS), Tax Collection at Source (TCS), information about foreign remittances, exports and imports data etc.

Data analysis has identified several potential non-filers who have carried out high value transactions in Financial Year 2017-18 but have still not filed Income Tax Return for Assessment Year 2018-19 (relating to FY 2017-18).

[PIB Press Release dated 22.01.2019]

Clarification regarding liability and status of official assignees under the Income tax Act

Income tax department has clarified that official assignee appointed under presidency towns Insolvency Act, 1909 and provincial insolvency Act, 1920 is now to be treated as an 'artificial juridical person' instead of representative assessee. Now, the official assignee is required to file Income tax return electronically in the ITR form applicable to 'artificial juridical person' separately for each of the estate of the insolvent. Official assignees would have to obtain a separate PAN for each of the estate of the insolvent.

[Circular No. 4/2019 dated 28.01.2019]

Direct Tax – Judgements

SLP dismissed against invalidating re-assessment based on VAT Department's hawala purchases details

SC dismisses assessee-company's SLP challenging Bombay HC order upholding re-assessment initiation (beyond 4 years period) based on a special audit report; HC had held that the special audit report constituted fresh tangible material with AO to reach the reasonable belief of income escapement; HC had rejected assessee's stand that since the special audit report was prepared for Forward Market Commission, it could not be relied upon as its purpose was not to detect tax evasion; HC had opined that "the power of the AO to reopen an assessment...is not fettered or circumscribed, to be formed only on material found during a tax audit or with material found during examining a case of tax evasion."

[Pr. CIT v. Manzil Dineshkumar Shah {SLP (Civil) Dairy No. 708/2019} Supreme Court]

Delhi High Court upholds constitutional validity of dividend income taxation u/s 115BBDA

Delhi HC upholds constitutional validity of Sec 115BBDA and proviso to Sec 10(34) providing for taxation of dividend income in the hands of specified assessees where dividend income exceeds Rs. 10 lakhs; Rejects Petitioner's contention that clause (a) of Sec 115 BBDA(1) is ambiguous and vague, holds that the relevant provision clearly stipulates that where specified assessees have income from dividend exceeding Rs. 10 lakhs, 10% tax is payable "only on the dividend income beyond Rs. 10 lacs.

[Rajan Bhatia v. CBDT {W.P. (C) 4089/2017} – Delhi High Court

Delhi High Court allows enhanced Sec. 10A deduction claimed in revised computation filed during assessment proceedings

Delhi HC upholds ITAT order allowing assessee's enhanced Sec. 10A deduction claim on the basis of the revised computation of income furnished during the course of assessment proceedings for AY 2009-10; Assessee had made Sec. 10A deduction claim in the original return of income which was revised subsequently during the course of assessment proceedings, rejects Revenue's stand that in view of Sec. 80A(5), the revised computation should not have been accepted; Clarifies that Sec. 80A(5) would not be attracted in the instant case as it bars and prohibits the assessee from claiming the deduction u/s 10A/10B if no such claim was made in the return of income filed u/s 139(1)

[PCIT v. Oracle (OFSS) BPO Services Ltd. (ITA No. 593/2018) - Delhi High Court

Legal-fees payment for advising foreign co. on transfer of Indian subsidiary's shares, deductible u/s 48

Mumbai ITAT allows deduction u/s 48(i) for legal/ professional fees paid to Accounting/Law firms for advising / assisting assessee (a foreign co.) in transfer of shares of Indian subsidiary; While computing long term capital gain on sale of subsidiary's shares, the assessee had claimed deduction of U.S. $ 13,27,609 towards legal fees, ITAT notes that the condition precedent for claiming expenditure u/s 48(i), is that it must have been incurred wholly and exclusively in connection with the transfer of the capital asset. It is observed that services rendered were in relation to advice on sale of entire shareholding of the Indian Subsidiary, and includes preparation of share sale / purchase agreement, rendering advice on and preparing necessary closing documentation including board resolution, share transfer forms, etc.

[AIG Offshore System Services Inc. v. ACIT (ITA No.6715/ Mum/2014) – ITAT Mumbai]

No TDS on cost-to-cost reimbursement to overseas affiliates; Deletes disallowance u/s 40(a)(i)

Delhi ITAT deletes disallowance u/s 40(a)(i) for TDS non-deduction on reimbursement by assessee to its overseas affiliates towards corporate, administrative, finance and marketing expenses during AY 2011-12; Notes that the cost incurred in providing impugned services by the overseas group entities were allocated across all APCO group companies worldwide including the assessee on cost to cost basis and there was no mark-up involved; Rejects Revenue's reliance on SC ruling in Transmission Corporation of AP wherein it was held that TDS was liable to be deducted by the payer on gross amount, if such payment included in it, an amount, which was chargeable to tax in India, notes that payments made to non-resident were on cost-to-cost basis and did not involve an element of income which is chargeable to tax in India.

[Dy. CIT v. Apco Worldwide (India) Pvt. Ltd. Ltd. (ITA No.205 & 1256/3638/Del/2016) – ITAT Delhi]

International Taxation & Transfer Pricing

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

Delhi ITAT allows assessee's (an Indian co.) claim for 'tax sparing credit' u/s. 90/91 of the Act read with Article 23 of India-Thailand DTAA with respect to taxes payable in Thailand on dividend received from its 100% Thailand based subsidiary; During relevant AY 2010-11, assessee had received Rs. 68 Cr dividend from its subsidiary which was offered to tax @ 30% as per Indian tax laws, assessee sought foreign tax credit (FTC) @ 10% (being tax payable in Thailand) which was denied by AO; Rejects Revenue's stand that since no tax has actually been paid in Thailand, the question of double taxation does not arise and hence no FTC claim can be allowed; Holds that methodology provided under Article 23(3) of DTAA is 'tax sparing method', further refers to UN Model commentary and Klaus Vogel notes regarding Article 23, rules that "concept of 'tax sparing credit' shall be applicable to an assessee, only if dividend received by assessee is taxable in the hands of assessee as per "Thai tax laws" and exemption is available to assessee either as per the 'Revenue Code of Thailand' or as per 'Investment Promotion Act B.E, 2520(1977)' in order to avail credit of such taxes spared in Thailand."; Since assessee is not liable to pay any tax in Thailand by virtue of exemption granted as per Investment Promotion Act, ITAT allows assessee the benefit of tax sparing of foreign tax payable in Thailand.

[Polyplex Corporation Ltd. V. ACIT (ITA No.4347 to 4350/Del/2016) – ITAT Delhi]

Routing money through AE for distribution rights acquisition from third party, not international transaction'

Bombay HC upholds ITAT order for AY 2009-10, holds that the transaction of routing money through AE by assessee (engaged in production and distribution of films) for specific purpose of acquisition of distributorship from Citi Gate (third party) is not an international transaction and hence the machinery under Chapter X of the Act cannot be invoked; Rejects Revenue's reliance on clause (c) of Explanation to Sec 92B which states that "capital financing including any type of long-term or short-term borrowings, lending...or any type of advance, payments... or any other debt arising in the course of business would be included within the expression "international transaction", notes that this was not a case of financing or lending or advancing of any moneys but routing money through AE for purpose of acquisition of distribution rights.

[Pr. CIT v. KSS Limited (ITA No.476 of 2016) – Bombay High Court]

TNMM used for benchmarking intra-group services, not estimation basis

ITAT deletes ad-hoc TP-adjustment of Rs.143.67cr in respect of intra-group services for assessee (engaged in business of equity broking) for AY 2012-13, rejects TPO/DRP's ALP-determination on estimation basis instead of adopting prescribed TP-methods u/s 92C(1); Stating that TPO is bound to make TP adjustment using one of the prescribed TP-methods, ITAT accepts assessee's claim and hold that TPO was not permitted compute ALP on estimation basis and that TNMM as applied by assessee's could be adopted for benchmarking payment of intra-group services, follows HC ruling in case of Johnson and Johnson and co-ordinate bench decision in Knorr Bremese.

[CLSA India Pvt. Ltd. v. DCIT (ITA No.1182/Mum/2017) – ITAT Mumbai]

Corporate Laws

Filing of onetime return for amount not considered as deposit

Every Company other than a Government Company is required to file a onetime return of outstanding receipt of money or loan by a company but not considered as deposits from 01st April, 2014 to 22nd January, 2019 in Form DPT-3 within ninety days w.e.f. 22nd January, 2019.

[Companies (Acceptance of Deposits) Amendment Rules, 2019, dated 22nd January, 2018]

Filing of declaration for outstanding dues of Micro, Small and Medium Enterprises

Every Company who get supplies of goods or services from micro and small enterprises and whose payments to micro and small enterprise suppliers exceed forty five days from the date of acceptance are required to file a declaration in form MSME I within a period of 30 days w.e.f 22nd January, 2019 i.e. on or before 20th February, 2019.

[The Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019, S.O. 368(E) dated 22nd January, 2019]

Relaxation from dematerialization of shares

Ministry of Corporate Affairs have relaxed the following unlisted public companies from the mandatory requirement of dematerialization of shares:

a. Nidhi;

b. a Government company or

c. a wholly owned subsidiary

[Companies (Prospectus and Allotment of Securities) Amendment Rules, 2019, G.S.R. 43(E) dated 22nd January, 2019]

Goods & Services Tax

32nd GST Council Meeting –key takeaways

The 32nd GST Council Meeting was held on 10th January 2019 in New Delhi. In the meeting, the Government took steps to provide compliance relief to small businesses by providing various concessions as discussed below:

GST Registration

The threshold limit for GST registration for suppliers of goods will be increased from Rs 20 lakhs to Rs 40 lakhs. The option has been provided to the States to choose the limit from either of the above.

However, service providers will continue to be required to register for GST once they cross a turnover of Rs.20 lakhs in all other states except the special category States for which the threshold for registration shall continue to be Rs. 10 lakhs.

Composition scheme simplified

The Government has given a thrust to the GST Composition Scheme with the following three changes:

- **Increase in Turnover Limit**

  The limit of Annual Turnover in the preceding Financial Year has been increased to Rs 1.5 crore for availing Composition Scheme for Goods. Special category States must decide, within one week, about the Composition Limit in their respective States.

- **Yearly Return**

  Persons enrolled under the Composition Scheme shall be required to file only one annual return instead of filing GSTR-4 return every quarter, but with the requirement of quarterly payment of taxes.

- **New composition scheme for service providers**

  Those suppliers rendering either only services or supply of both goods as well as services with a turnover of up to Rs 50 lakhs in the preceding financial year, can join this scheme. The Tax rate is fixed at 6% (3% CGST +3% SGST) for such suppliers.

[Note: The effective changes with respect to GST turnover limit and composition scheme changes would be effective from 1st April 2019].

Consensus received for charging calamity cess in Kerala

Kerala state has been given an approval by the GST Council to charge disaster/calamity cess of upto 1% on all the intra-state supplies of goods and services within the state for up to two years. This will be used as revenue mobilization for supporting the natural calamity.

GST Rate cuts

- No GST rate cut on sale of under construction flats. Instead, a 7 member group of ministers shall be formed to study the implications of giving a composition scheme to real estate sector.

- Further, no GST rate cuts on the Private lottery distributions. A Group of ministers will be formed to examine the GST rate structure on lotteries.

Extension of GST practitioner exam

The last date for passing the examination for GST Practitioners to be extended till 31.12.2019 for those GST Practitioners who have enrolled under rule 83(1)(b) i.e. who were sales tax practitioner or tax return preparer under the existing law for a period of not less than five years.

Free accounting software

Free accounting and billing software shall be provided to small taxpayers by GSTN.

[Source: cbic.gov.in, Press release dated 10th January, 2019]

CBIC has rescinded the notification no. 08/2017 – Central Tax (rate), which had prescribed the limit of Rs. 5000/- per day for reverse charge mechanism on procurement from unregistered dealers u/s 9(4) of CGST Act with effect from 1st February 2019. Since such RCM is no more applicable, the purpose of the notification had already become obsolete.

[Notification No. 01/2019- Central Tax (Rate)]

CBIC has notified the applicability of CGST (Amendment) Act, 2018, IGST (Amendment) Act, 2018, UTGST (Amendment) Act, 2018 and GST (Compensation to States) Amendment Act, 2018 with effect from 1st February 2019. It will lead to various significant changes in the GST provisions.

[Notification No. 02/2019 – Central Tax, Notification No. 01/2019 – Integrated Tax, Notification No. 1/2019 – Union Territory Tax, Notification No. 1/2019 — Goods and Services Tax Compensation]

Some of the major highlights of CGST (Amendment) Act, 2018 are given as follows:

- Schedule II for classification excluded from scope of Supply

Classification of certain specified activities or transactions either as supply of goods or supply of services is supposed to be done in Schedule II. However, it is observed that clause (d) being part of the subsection defining the term 'supply' leads to a situation where an activity listed in Schedule II would be deemed to be a supply even if it does not constitute a supply. Now the amendment has made it clear that if it is a supply under section 7, then only Schedule II has to be used to classify said supply as that of goods or that of service.

- **ITC prohibitions relaxed due to amendment**

  ITC on Motor Vehicle for transportation of persons having approved seating capacity of more than 13 passengers shall now be allowed.

- **Consolidated Credit/Debit Notes**

  Prior to the amendment to GST law, one credit/ debit note was required to be issued against every invoice. Now section 34(1) and 34(3) are amended to provide for issuance of one or more credit or debit notes against one or more tax invoices.

- **Transitional Provisions [retrospectively amended with effect from 01/07/2017]**

  Amendment is being brought to deny credit of Krishi Kalyan Cess, which was carried forward from service tax regime to GST through TRAN-1.

- **Clarification regarding High sea sales & in-bond sales**

  The high sea sales & in-bond sales have been included in schedule III of CGST Act implying thereby to treat such transaction as out of scope of supply of GST.

- **More than one GST registration allowed in a state for same business**

  CGST Act, 2017 states that more than one registration can only be taken in a state if they are business verticals. It is amended now as to allow persons having multiple places of business in a State or Union territory to obtain a separate registration for each such place of business.

GSTN releases 7 new functionalities/ enhancements on GST Portal

- GSTN deployed new functionalities/enhancements on GST Portal as on January 09, 2019 to make GST compliance easy and smooth for taxpayers and tax administrators. The list of new release covers the following:

  a. Assessment and Adjudication,

  b. Refund Module (Filing of Monthly Refund applications by Quarterly GSTR-1 filers),

  c. Appeal (Preparation of Form GST APL-01 by GSTP, on behalf of taxpayer),

  d. Appeal,

  e. Composition Scheme,

  f. Payment Module (Preferred bank list for taxpayer for making payment);and

  g. Advance Ruling

New IT system to soon bar e-way bills if GST returns not filed for 6 months

Non-filers of GST returns for 6 consecutive months will soon be barred from generating e-way bills for movement of goods. The Goods and Services Tax Network (GSTN) is developing such IT system that businesses who have not filed returns for two straight return filing cycle, which is 6 months, would be barred from generating e-way bills.

Delhi HC provides relief to HUL in proceedings regarding GST Anti-profiteering

Delhi HC grants relief to HUL by staying recovery proceedings against NAA order which held petitioner guilty of profiteering for not passing GST rate cut benefits to consumers. The said order has been passed subject to payment of 90 crores by petitioner in 2 installments. However, HC states that investigation in the matter may proceed while posting the matter for April 16.

[Hindustan Unilever Ltd. vs. UOI & Others]

Penalty cannot be imposed for goods non-production where bank guarantee/security duly furnished, says Kerala HC

HC disposes writ appeal while holding that non-production of goods is not a ground for imposition of penalty u/s 129 of IGST Act when assessee furnished bank guarantee for applicable tax and penalty and security equal to value of the goods. As per facts of the case, the goods were detained due to issuance of wrong invoice. During the proceedings, the appellant had furnished bank guarantee for applicable tax and penalty under section 129 and also furnished bond for production of goods and security equivalent to the value of goods. HC remarks that, confiscation is a coercive measure to ensure payment of tax and penalty levied on a delinquent dealer and not automatic consequence ensuing from detention and order passed u/s 129(3) of there being a contravention of provisions of Act/Rules. Further stating that in the present case, goods were released on furnishing bank guarantee and security, HC held that there arises no question of applicable tax and penalty not being paid, since at any time the bank guarantee could be enforced and security could be invoked.

[Noushad Allakkat vs. The State Tax Officer (WC)]

Security and Scavenging Services to medical colleges and Govt. hospitals taxable : West Bengal AAR

West Bengal AAR holds that provision of security and scavenging services to medical colleges and various Govt. hospitals is not exempt under Notification No. 12/2017-CT (Rate) and WB Govt. Gazette Notification No. 1136-FT. Referring to Eleventh and Twelfth Schedule of the Indian Constitution, which contains items falling within purview of Panchayats and Municipalities, remarks that security services "are clearly not covered under either list". The said authority further clarifies that scavenging services comprising of manual cleaning, attendant duties, operator of trolleys are also not covered under Article 243G and Article 243W of Constitution of India nor do they constitute 'health care service'.

[Ex-Servicemen Settlement Society vs. West Bengal AAR]

Compliance Particulars	Due Date
1. Income Tax	
Deposit of Tax Deducted/ Collected for the month of January, 2019	7th February, 2019
Due date for issue of TDS Certificate for tax deducted under section 194-IA and 194-IB in the month of December, 2018	14th February, 2019
Quarterly TDS certificate for the quarter ending December 31, 2018	15th February, 2019
2. Goods & Services Tax (GST)	
GSTR-1 for Outward Supplies for the month of January 2019 (with aggregate turnover exceeding Rs. 1.50 Crores)	11th February, 2019
GSTR-3B for the month of January, 2019	20th February, 2019
3. Labour Laws	
Deposit of ESI for the month of January, 2019	15th February, 2019
Deposit of Provident Fund for the month of January, 2019	15th February, 2019

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