

At a Glance

(Brief Updates from the world of Tax and Finance)

For Private Circulation Only

July 2019

Message

The countdown to the first budget of the new Government begins. With inflation under control, favourable interest rates and oil prices, and global opportunities galore, there is only one agenda on the table - GROWTH. Prime Minister kickstarted the process this month holding discussions with leading businessmen and economists to brainstorm ideas on how to catapult the Indian economy.

GST Council also held its 35th meeting and first after the election discussing issues such as e-invoicing, reduction of rates, anti-profiteering mechanism, new return filing process and due dates. The due date for filing of annual return was extended to August 31, 2019 from June 30, 2019. It was also proposed to introduce e-invoicing from January 2020 for all entities having turnover of more than INR 50 Crores.

On the corporate law front, the month saw businesses

struggling with their return of deposits. With Government not in a mood to give any further extension for filing of such form, the professionals scurried to make the deadline.

In the coming month, the Finance Minister Nirmala Sitharaman shall present the budget on the 5th of July. Balancing expenditure with fiscal deficit is a key challenge for the new incumbent especially with statistics showing that the Government may not be able to achieve the numbers that it had projected in February this year. However, her background in Economics should definitely help her yield favourable results.

Please do follow our budget edition where we will decode the provisions of the budget and see how it impacts the country.

With Warm Regards
Ankit Jain

Income Tax

Procedures for e-filing of TDS / TCS returns on income tax department's e-filing portal www.incometaxindiaefiling.gov.in prescribed

CBDT vide this notification has prescribed procedure for online filing of TDS / TCS returns through e-filing portal. Earlier, TDS returns are being filed through TIN facilitation centre and now Income Tax department has provided another option for filing of TDS / TCS return online through their e-filing portal. Deductor / collector have the option to file the return either through TIN facilitation centre or through e-filing portal.

Now, on e-filing portal, another category of user has been created i.e. 'Tax Deductor and Collector'. Deductor / Collector needs to register themselves using TAN number and thereafter they can file their returns and e-verify using Digital Signatures / Electronic Verification Codes.

[Notification No. 10 of 2019 DGIT (Systems), dated June 04, 2019]

Extension in due dates for filing of TDS return in Form 24Q and issuance of TDS certificate in Form 16 for quarter ended on 31.03.2019

Due to revision in format of filing of TDS returns and consequent updation of the File Validation Utility, CBDT has extended the due date for filing of TDS return in Form 24Q (related to salary) and TDS certificate in Form 16 (Certificate of Tax Deduction at Source on Salary) for financial year 2018-19 as under:

- i. TDS return filing due date from 31st May, 2019 to 30th June, 2019;
- ii. TDS certificate issue due date from 15th June, 2019 to 10th July, 2019.

[Circular F.No. 275/38/2017-IT-(B), dated June 04, 2019]

Guidelines for Compounding of offences under Direct Tax laws

CBDT vide these guidelines has notified certain guidelines, procedures and standards which are to be followed while applying for compounding of offence

and further provided list of offences which are compoundable and non-compoundable. Some of the non-compoundable offences are as below:

- i. Where accused is proved to be involved in tax evasion by way of launder money, generate bogus purchase / sale invoices without actual business or providing accommodation entry by any other mode.
- ii. Offences which has bearing on undisclosed foreign bank account / assets.
- iii. Offence which has bearing on offence under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.
- iv. Offence has bearing on offence under Benami Transactions (Prohibition) Act, 1988.

[Circular F. No. 285/08/2014-IT(INV.V)/147, dated June 06, 2019]

Set-off of losses against deemed income under section 68 / 69 / 69A / 69B / 69C / 69D r.w.s. 115BBE of the Act will be allowed till AY 2016-17

Section 115BBE of the Income-tax Act, 1961 provides that where total income of an assessee includes any income referred to in section(s) 68 / 69 / 69A / 69B / 69C / 69D of the Act, no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provisions of the Act in computing the income under this section and said amendment was effective from 01.04.2017.

In this regard, conflicting views have been taken by the Assessing Officers in assessments prior to AY 2017-18 in allowing the set off of losses. Therefore, the CBDT has issued this notification to clarify that an assessee can claim "set off of losses" against the income determined under this section till the Assessment year 2016-17.

[Circular No. 11 of 2019 dated June 19, 2019]

Some important aspects which should be considered by AO while completing Assessments of Firms

In order to improve the quality of assessments being framed and also to reduce the scope for committing errors, the Board has obtained Performance Audit Report from C&AG regarding 'Assessment of Firms' and C&AG has reported certain suggestion which has been prescribed by the CBDT vide this circular and directed the assessing officer to take into consideration the suggestions while completing the assessment. Summary of important suggestions are as under:

- i. Expenses of firms such as interest and remuneration should be cross verified with the income-tax return of firm's partner.
- ii. AOs should invariably call for copy of the partnership deed and examine that remuneration

and interest being paid to partners is supported by partnership deed also and is allowable as per section 40(b) of the Act also.

[Circular No. 12 of 2019 Dated June 19, 2019]

Disability Pension exempt for armed forces personnel irrespective of their ranks

As per earlier Income Tax Act, 1922 (now repealed), pensions granted to members of naval, military or air forces who have been invalidated for providing their services due to bodily disability aroused on account of their services was exempted from tax. Later, after implementation of Income Tax Act, 1961, CBDT vide some instructions and clarification has clarified that 'disability element' and 'service element' of a disabled officer of the Indian Armed Forces will continue to exempt from Income Tax.

However, doubts arise whether only 'Officer' will be exempt from tax or all other members of Armed Forces having rank other than officer will also be eligible for claiming exemption under Income Tax Act. In this regard, CBDT has clarified that such exemption will be available to all armed forces personnel (irrespective of rank).

[Circular No. 13 of 2019 dated June 24, 2019]

Direct Tax – Judgements

SC: SLP filed against decision of High Court was dismissed 'holding that advertisement expenses incurred by assessee being revenue in nature, were eligible for deduction under section 37(1)

The learned Additional Solicitor General has addressed submissions to challenge the correctness of the findings of the High Court on the issue of advertisement expenses. The High Court has adverted to two circumstances, while upholding the decision of the Tribunal: firstly, for the previous Assessment Year 2008- 2009, the same view of the Tribunal regarding the allowability of advertisement expenditure as revenue expenditure has not been challenged; secondly, the High court has adverted to its own decision in the case of CIT v. Pepsico India Holdings India (P.) Ltd. [2012] 21 taxmann.com 165/207 Taxman 5 (Mag.) (Delhi). The learned Additional Solicitor General attempted to distinguish the decision on the ground that it dealt with advertisements on hoardings. The Court found no substance in that distinction and upheld the view which has been taken by the Tribunal and, sustained by the High Court. The Apex Court held that it does not call for interference under Article 136 of the Constitution.

[Pr.CIT v. Matrix Cellular International Service (P.) Ltd. (Special Leave Petition (Civil) Diary No(s). 19777/2018) Supreme Court]

HC: 'Providing Golf facilities to members for promotion of Golf is Charitable in Nature'

Bombay HC was of the view that where main object of the assessee golf club was to provide golf facilities to its members for promotion of sport and there was no element of assessee club being in nature of trade, commerce or business, then interest earned from banks on investment of surplus funds exempted from tax.

[CIT(E) v. Bombay Presidency Gold Club Ltd. (ITA No. 235 of 2017) Bombay High Court]

ITAT Delhi held "If IT Act provides assessee to get valuation done from a prescribed expert as per prescribed method, then same cannot be rejected because neither Assessing Officer nor assessee have been recognized as expert under law"

Assessee-company was engaged in business of production and distributor of Feature Film, tele films, etc., and was in initial phase of setting up its business approached accredited investors of India to join in as equity partners, and the funds were raised by way of issue of equity shares to aforesaid equity partners and by raising premium on such shares over and above face value of Rs. 10/- per share and assessee before issuing shares had got share valued by Chartered Accountant, as provided under Rule 11UA(2) of IT Rules, 1962 by using 'DCF Method' which is one of prescribed method in Rule 11UA(2)(b) read with section 56(2)(viib), but Assessing Officer had discarded valuation report of CA mainly on ground that valuation of equity shares carried out by assessee was based on projection of revenue which did not match with actual revenues of subsequent years and after invoking provision of section 56(2)(viib), Assessing Officer took fair market value of premium at Nil. Since Assessing Officer had neither disputed details of projects, revenues, cost incurred and manner in which it was substantiated by actual revenue and in fact, projected revenue really commensurate with actual state of affairs based on subsequent year financials and as per section 56(2)(viib), if statute provides that valuation has to be done as per prescribed method and if one of prescribed methods has been adopted by assessee, then Assessing Officer has to accept same and there is no express provision under Act or rules, where Assessing Officer can adopt his own valuation in DCF method or get it valued by some different valuer, approach finding of Assessing Officer so to take fair market value of share at 'Nil' under provision of section 56(2)(viib) and thereby making addition could not be approved.

[Cinestaan Entertainment (P.) Ltd v Income Tax Officer, Ward-6(2), New Delhi (ITA No.8113/Del/2018) – ITAT Delhi]

International Taxation & Transfer Pricing

ITAT Delhi held "Grouting activity carried out to protect subsea pipelines, cables and structures falls under head construction activity as specified in article 5(2)(h) of Indo-UAE DTAA; where it was carried out for less than 9 months, assessee UAE company could not be said to have a PE in India"

Assessee Company was incorporated in UAE and was engaged in providing 'grouting and precast' solutions for subsea off-shore construction industry. It provided products and solutions to support and protect subsea pipelines, cables and structures. The appellant contended that the grouting activities carried out in India fell within construction activity contemplated in specific provision of article 5(2)(h) whereas the revenue authorities were of the firm belief that article 5(1) squarely applied on the facts of the case. The DRP determined the number of days spent in India during the year under consideration at 264 days. The equipment of the assessee was in India for at least 264 days on which work for execution of construction was carried on. Thus, the assessee had equipment PE in India. Even movable place of business may constitute a PE even if they are temporary in location but permanent in time. The assessee should be allowed benefit of limitation clause only when such activities would be occasional but when such activities were carried on from year to year regularly and periodically, then it did raise a presumption that it was being done deliberately to avoid establishment of PE in India. ITAT held "Grouting activity carried out to protect subsea pipelines, cables and structures falls under head construction activity as specified in article 5(2)(h) of Indo-UAE DTAA; where it was carried out for less than 9 months, assessee UAE company could not be said to have a PE in India.

[ULO Systems LLC v Assistant Director of Income-tax, International Taxation, Dehradun (ITA No.5968/Del/2010) – ITAT Delhi]

Corporate Laws

Incorporation of Section 8 Company through Form INC-32 (SPICe)

The Ministry of Corporate Affairs (MCA) on 07th June, 2019, has published the Companies (Incorporation) Sixth Amendment Rules, 2019 to further amend the Companies (Incorporation) Rules, 2014. It will come into force with effect from August 15, 2019.

The amendments are made in Rule 19(1) of the Companies (Incorporation) Rules, 2014 which specifies that application for incorporation of Section 8 Company along with application for license for such company will now be submitted in Form INC-32 (SPICe). However, application for license under Section 8 for an existing company will continue to be in form INC-12.

Presently, the power to grant license for Section 8 Company is with ROC. But after this amendment said power for new companies will go into the hands of Central Registration Centre (CRC).

[Companies (Incorporation) Sixth Amendment Rules, 2019 vide its notification G.S.R. 411(E) dated 07th June, 2019]

MCA proposed to amend the method of doing Director's KYC and to extend due date for filing DIR-3 KYC

MCA has proposed to extended due date for filing DIR-3 KYC due to non-availability of revised form on MCA Portal and also proposed to amended the method of doing KYC of Directors. New method of doing Director's KYC is divided into three parts:-

- i. If all the details of director are same as on MCA portal- then KYC need to file with simple web-based verification service.
- ii. If email or/and mobile number is required to be updated- then KYC need to file with Form DIR-3 KYC.
- iii. If any other personal information to be updated- then first file DIR-6 for change in particulars and then KYC need to file with simple web-based verification service.

MCA clarifies that further amendment in the relevant rules related to conformity of adequate time of extension or web-based KYC verification will be notified shortly.

[MCA issued clarification vide General Circular No. 07/2019 dated 27th June, 2019 under Rule 12A of the Companies (Appointment and Qualification of Directors) Rules, 2014]

Goods & Services Tax

35th GST Council Meeting

The 35th GST Council Meeting was held on 21st June, 2019 at New Delhi after a long gap of more than three months. This was the first meeting of the council after the swearing in of the new Government. Several reformative measures were announced to cater to Govt.'s motive of ease of doing business and ease of compliance. The consensus on the following matters were made in the meeting:

- i. Due date of GST Annual return for the FY 2017-18 extended till August 31, 2019:

On account of difficulties being faced by taxpayers in furnishing the annual returns in FORM GSTR-9, FORM GSTR-9A and reconciliation statement in FORM GSTR-9C, the due date for furnishing these returns/reconciliation statements to be

extended by two months i.e. 31st August 2019.

[Removal of difficulty Order No. 6/2019-Central Tax dated 28.06.2019]

- ii. Central Govt. provides exemption from furnishing of Annual return/ Reconciliation statement to suppliers of OIDAR services

The Central Government provides that the persons supplying online information and data base access or retrieval services from a place outside India to a person in India, other than a registered person shall not be required to furnish an annual return in FORM GSTR-9 and reconciliation statement in FORM GSTR-9C.

[Notification No. 30/2019-Central Tax dated 28.06.2019]

- iii. The tenure of National Anti-Profiteering Authority has been extended by two years:

In order to deal with all the pending cases, the tenure of National Anti-profiteering, which was due on 30th November 2019, is to be extended by two years till 30th November 2021.

- iv. E-invoicing to start from January 2020:

The council has decided to introduce electronic invoicing system in a phase-wise manner, which shall be rolled out from January 2020. The Phase 1 is going to be voluntary. It was earlier clarified that the taxpayers with the turnover of more than INR 50 crores will be required to generate e-invoice on the GST portal for B2B sales. By this system, GST returns will be framed from these e-invoices.

- v. Blocking of the generation of E-way bill vis-à-vis non-filing of GST return:

Rule 138E of the CGST Rules, which states that where the GST returns in GSTR-3B/ GSTR-4 is not filed for two consecutive tax periods, e-way bill generation for such taxpayers would be disabled, to be brought into effect from 21st August 2019 instead of the earlier notified date of 21st June 2019.

- vi. Extension of due date for filing of CMP-02 & ITC-04:

Last date for filing of intimation, in FORM GST CMP-02, for opting for composition scheme for service providers as per notification No. 2/2019-Central Tax (Rate) dated 07.03.2019 to be extended from 30.04.2019 to 31.07.2019. Further, the due date for furnishing the form GST ITC-04 relating to Job work for the period July, 2017 to June, 2019 to be extended to 31st August, 2019.

- vii. New GST returns filing procedure to be fully effective from 1st January, 2020:

In order to give ample opportunity to taxpayers as well as the system to adapt, the new return system to be introduced in a phased manner, as described below:

- Between July 2019 to September 2019, the new return system (FORM GST ANX-1 & FORM GST ANX-2 only) to be available for trial for taxpayers. Taxpayers to continue to file FORM GSTR-1 & FORM GSTR-3B as at present;
- Large taxpayers (having aggregate turnover of more than Rs. 5 crores in previous year) to file FORM GST ANX-1 on monthly basis from October, 2019 whereas small taxpayers to file first FORM GST ANX-1 for the quarter October 2019 to December 2019 in January 2020;
- For October and November 2019, large taxpayers to continue to file FORM GSTR-3B on monthly basis and will file first FORM GST RET-01 for December 2019 in January 2020. From October 2019, small taxpayers to stop filing FORM GSTR-3B and to start filing FORM GST PMT-08. They will file their first FORM GST RET-01 for the quarter October 2019 to December 2019 in January 2020;
- From January, 2020 onwards, FORM GSTR-3B to be completely phased out.

viii. GST council recommendations on GST Rate related changes and valuation:

The GST council has recommended GST rate cuts on electric vehicles, chargers and hiring of electric vehicles. It has also directed to place the issue related to valuation of goods and services in a solar power generating system and wind turbine before the next Fitment Committee.

[Source: cbic.gov.in, Press release dated 21st June, 2019]

Maharashtra AAR upholds mandate to register for discharging liability under 'reverse-charge', irrespective of exclusive exempt

Maharashtra AAR upholds the requirement to obtain registration u/s 24 of the CGST Act, 2017 in respect of GST payable under 'reverse charge mechanism' in respect of GTA service, notwithstanding the fact that applicant is exclusively engaged in manufacture of exempt goods (animal feed).

The said authority states that GTA service is covered under Notification No. 13/2017-Central Tax (Rate) and as per conjoint reading of section 9 and 24,

applicant is required to pay tax under reverse charge and compulsorily get registered under GST. The requirement pertaining to taxable supply and threshold limits u/s 22(1) is not applicable.

[In the matter of Jalaram Feeds]

Maharashtra AAR: No need of separate registration in different States with godowns of importer

Maharashtra AAR holds that the applicant need not take separate registration in each State where the goods are imported and stored in godowns. The said authority clarifies that since the applicant would be importing goods into India, such supply of imported goods should be treated as supply in the course of interstate trade or commerce and the place of supply shall be location of importer as per Section 11(a) of the IGST Act, 2017. The AAR further opines that the place from where the applicant makes a taxable supply of goods shall be his location i.e. Mumbai Head Office.

[In the matter of Gandhar Oil Refinery (India) Limited]

West Bengal AAR exempts up-gradation & related service provided to West Bengal Fisheries Corporation Ltd.

West Bengal AAR holds that up-gradation of Landing Centre, improving of navigability and related work for West Bengal Fisheries Corporation Ltd. is exempt from GST under Sl. No. 3A of Notification No. 9/2017 – Integrated Tax (Rate) as amended by Notification No. 2/2018. Examining these aspects w.r.t. eligibility under Sl. No. 3 or 3A of Exemption Notification, the authority observes that the recipient is a government entity and clarifies that Sl. No. 4 of the functions listed under the Eleventh Schedule under Article 243G of Constitution contains fisheries. It holds that work awarded to applicant has direct nexus with fisheries development. Therefore, supply is being made in relation to any function entrusted to a panchayat or a municipality under Article 243 G of the Constitution. It elucidates that Circular No. 51/25/2018-GST dated July 31, 2018 has broadened scope of Sl. No. 3 or 3A of Exemption Notification vis-a-vis Sr. No. 25 (a) of ST Notification No. 25/2012 dated June 20, 2012 to include "any such functions that are performed by a panchayat or a municipality under specific provisions of the Constitution".

[In the matter of Dredging and Desiltation Company Private Limited]

Compliance Calender July 2019

Compliance Particulars	Due Date
1. Income Tax	
Due date for deposit of Tax deducted/collected for the month of June, 2019	7th July, 2019
Due date for deposit of TDS for the period April 2019 to June 2019 when Assessing Officer has permitted quarterly deposit of TDS under section 192, 194A, 194D or 194H	7th July, 2019
Due date for issuing quarterly TDS certificates in respect of salary paid and tax deducted has been extended from June 15, 2019 to July 10, 2019 vide order F.No. 275/38/2017-It(b), dated 04-06-2019	10th July, 2019
Due date for issue of TDS Certificate for tax deducted under section 194-IA & 194-IB in the month of May, 2019	15th July, 2019
Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of June, 2019 has been paid without the production of a challan	15th July, 2019
Quarterly statement of TCS deposited for the quarter ending 30 June, 2019	15th July, 2019
Upload the declarations received from recipients in Form No. 15G/15H during the quarter ending June, 2019	15th July, 2019
Quarterly TCS certificate in respect of tax collected by any person for the quarter ending June 30, 2019	30th July, 2019
Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA for the month of June, 2019	30th July, 2019
Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of June, 2019	30th July, 2019
Quarterly statement of TDS deposited for the quarter ending June 30, 2019	31st July, 2019
Annual return of income for the assessment year 2019-20 for all assessee other than (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) working partner of a firm whose accounts are required to be audited or (d) an assessee who is required to furnish a report under section 92E.	31st July, 2019
Quarterly return of non-deduction of tax at source by a banking company from interest on time deposit in respect of the quarter ending June 30, 2019	31st July, 2019
Statement by scientific research association, university, college or other association or Indian scientific research company as required by rules 5D, 5E and 5F (if due date of submission of return of income is July 31, 2019)	31st July, 2019
Application in Form 9A for exercising the option available under Explanation to section 11(1) to apply income of previous year in the next year or in future (if the assessee is required to submit return of income on or before July 31, 2019)	31st July, 2019
Statement in Form no. 10 to be furnished to accumulate income for future application under section 10(21) or 11(1) (if the assessee is required to submit return of income on or before July 31, 2019)	31st July, 2019
Due date for claiming foreign tax credit, upload statement of foreign income offered for tax for the previous year 2018-19 and of foreign tax deducted or paid on such income in Form no. 67. (If the assessee is required to submit return of income on or before July 31, 2019.)	31st July, 2019
2. Corporate Laws	
Due date to file FLA Return with Reserve Bank of India	15th July, 2019
3. Goods & Services Tax (GST)	
GSTR-7: Summary of Tax Deducted at Source (TDS) for the month of June, 2019	10th July, 2019
GSTR-8: Summary of Tax Collected at Source (TCS) and deposited by E-commerce Operator for the month of June, 2019	10th July, 2019
GSTR-1: Details for Outward Supplies for the month of June 2019 (with aggregate turnover exceeding Rs. 1.50 Crores)	11th July, 2019
GSTR-6: Return by Input Service Distributor for the month of June, 2019	13th July, 2019
GSTR-3B: Summary Return for the month of June, 2019	20th July, 2019
GSTR-1: Details for Outward Supplies for the quarter April 2019 to June 2019 (with aggregate turnover not exceeding Rs. 1.50 Crores)	31st July, 2019
FORM GST CMP-02: Opting for composition scheme for service providers as per notification No. 2/2019-Central Tax (Rate)	31st July, 2019
4. Labour Laws	
Deposit of ESI for the month of June, 2019	15th July, 2019
Deposit of Provident Fund for the month of June, 2019	15th July, 2019

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