

# At a Glance

*(Brief Updates from the world of Tax and Finance)*

For Private Circulation Only

May 2020

## Message

The month of April passed completely under the countrywide lockdown. Originally planned till April 14, the Government extended the lockdown to May 3rd in view of the still increasing number of cases. Partial relaxation was provided to some industries located in non-urban areas. However, most of the country continued to be under lock down.

The lockdown primarily meant that not only the business and industry struggled, even the Government and courts struggled with its operations. Only urgent matters are currently being taken up at Government offices and courts.

Under Income Tax, clarification was issued in respect of declaration to be furnished by the employee while opting for the new scheme. Validity of 15G/H was also extended till June 30, 2020. CBDT also deferred the reporting requirements of GAAR and GST under tax audit report for another year.

Under Corporate law, the MCA introduced two schemes to improve compliance. Under the Companies Fresh Start Scheme, 2020, MCA allowed all defaulting companies to submit their belated documents such as annual return and financial statements without any additional fee till September 30, 2020. MCA also allowed people to reactivate their DIN without any fee which had been deactivated due to the non-submission of DIR-3KYC.

Under GST, CBIC clarified that refund can also be availed for situation where a taxpayer receives and advance for a service contract which thereafter gets cancelled. The CBIC also enabled form PMT-09 for transfer of amount between any tax heads such as interest, penalty, etc.

The Rajasthan AAR struck up a huge controversy by ruling that salary paid to directors of the company will attract GST under reverse charge. If this is held, this can have severe implications especially for those companies where credit of GST cannot be availed or utilised by them.

With the COVID-19 infection cases still rising, the times ahead are definitely going to be testing for India. And with lockdown extending into 40 days, the onus of controlling the infection falls onto the individual. We all need to make sure that we keep our masks on, wash/sanitize our hands regular and maintain social distance. Till the time the virus comes under control, this has to become the way of life for us. Only with proper precautions and care, we can expect to come back to the normal quick enough. Here's us hoping that all of you take these steps and remain safe.

**With Warm Regards**  
**Ankit Jain**

## Income Tax

### CBDT issues clarification regarding short deduction of TDS/ TCS due to increase in rates of surcharge.

Finance Minister vide Finance Budget, 2019 presented in Lok Sabha on 05th July, 2019 announced increased rate of surcharge of 25% & 37% in respect of the assesses earning income above Rs. 2 Crore and Rs. 5 Crore respectively and such surcharge is applicable from 1st April, 2019 for previous year 2019-20 relevant to assessment year 2020-21. Further, TDS/ TCS of such assesses are required to be deducted / collected after taking into account enhanced rates of surcharge, however, several cases were noticed wherein deductors / collectors were held to be assessee in default for short deduction of TDS / TCS where the final transactions had been done before 5th July, 2019. For this, requests had been made for not holding such deductors in default since the transactions had been completed before the enhanced rates were announced.

Accordingly, vide this circular, it has been clarified that in a case where final transaction has been completed and entire payment has been made prior to 05th July, 2019 and there is no subsequent transactions for the FY 2019-20 from which shortfall could be recovered and such deductor / collector has deposited the tax before due date and filed return of TDS within due date will not be considered as assessee in default.

Further, even if the deductor/collector has deducted/ collected shortfall of tax after 5th July, 2019, no interest for delay in deduction/ collection will be levied.

Furthermore, above relaxation does not absolve assessee to pay tax as per the enhanced rates of surcharge at the time of filing of return, accordingly, return needs to be filed after paying such enhanced rate of surcharge.

**[Circular No.8/2020 F.No.370133/5/2020-TPL, dated 13.04.2020]**

### CBDT issues clarification in respect of option u/s 115BAC of the Act

Finance Minister vide Finance Budget, 2020 provided an alternative mechanism of taxation for Individual and Hindu Undivided Family (HUF) wherein lower slab rates were provided, however, no deduction / incentives were to be allowed. Accordingly, section 115BAC was introduced to provide for such alternative mechanism and such mechanism to be opted for while filing income tax return for AY 2021-22 in respect of person having income from business and profession and option once exercised will be applicable for subsequent assessment years also and for other assesses i.e. not having income from business and profession, option to be exercised every year.

There was lack of clarity regarding whether in case of an employee where TDS is to be deducted on his income, employee would adopt for taxation under the respective section of the Act or not at the time of filing of the return. Therefore, clarifications has been made that an employee having income other than the income under the head "profit and gains of business or profession" and intending to opt for the concessional rate under section 115BAC of the Act may intimate the deductor, (employer) of such intention for each previous year and accordingly, the deductor shall compute his total income and deduct TDS thereon in accordance with the provisions of respective section. However, if such intimation is not made by the employee, the employer shall deduct TDS without considering the provisions of this section. However, such intimation made will only be for the purposes of TDS and cannot be modified during that year. Further, employee will still continue to have the right whether to exercise such option or not at the time of filing of income tax return.

**[Circular C1 of 2020 F.No.370142/13/2020-TPL, dated 13.04.2020]**

### Extension of validity of Form 15G and 15H

Due to outbreak of pandemic Covid-19 virus, some eligible persons might not be able to submit form 15G and 15H timely to bank and other institution etc. which would lead to deduction of TDS from such banks /institutes even when there would be no tax liability.

To mitigate such hardship, it has been clarified that the persons who had submitted valid Form 15G / 15H for F.Y. 2019-20, such forms will remain valid upto 30.06.2020 also and accordingly, banks /institutions will not deduct TDS on such payment, however, such transactions are to be reported in TDS Statement.

**[Order u/s 119 F.No.275/25/2020-IT(B), dated 03.04.2020]**

### **Donation made to PM CARE Funds by an employee.**

The donations made to the PM CARE Funds are eligible for deduction u/s 80G of the Act. Further, in cases where such donation has been made by an employee through his/ her employer, no separate certificate will be issued to every such employee and such donations will be admissible u/s 80G of the Act on the basis of Form 16 or certificate issued by Drawing and Disbursing officer / employer in this behalf.

**[Circular F.No.178/7/2020-ITA-I, dated 09.04.2020]**

### **CBDT clarifies procedures to be adopted for disposing off pending applications u/s 197 etc. for lower/ nil rate of deduction/collection.**

Due to outbreak of Covid-19 virus, there may be the cases in which the applications filed by assesseees u/s 195 and 197 of the Act for lower or nil rate of deduction of TDS and by buyers/ licensees/ lessees u/s 209C(9) of the Act for lower rate of collection of TCS for F.Y. 2019-20 may not be attended in the timely manner by the assessing officers since normal working has already been disrupted.

To mitigate this hardship, it is clarified that the assesseees who have timely filed the respective application will have to intimate the pendency of such application vide an email to the concerned Assessing Officer along with all the documents and evidences filed on TRACES Portal and such application shall be disposed off by the Assessing Officer by 27.04.2020.

**[Circular F.No.275/25/2020-IT(B), DATED 03.04.2020]**

### **Clarification in respect of earlier circular dated 31.03.2020 extending the applicability of**

### **previous year's certificate u/s 197 till 30.06.2020.**

Due to outbreak of Corona Virus and lockdown in the country, normal working has been affected in all the sectors including Income Tax Department also and since March-April being the period when applications for lower rate of tax deduction at source are filed by various assesseees for the new financial year commencing from April, however, since Income Tax department is also not operative normally, therefore, vide circular dated 31.03.2020 CBDT extended the applicability of previous year's Certificate upto 30.06.2020 and also provides procedures for applying the new certificate through email to the concerned assessing officer. Now, CBDT has issued certain clarification in respect of earlier circular as under:

- Such certificate will be valid for the period 01/04/2020 to 30/06/2020;
- Threshold limit for the period 01/04/2020 to 30/06/2020 will be applied afresh and limit will be the same as specified in the previous year's certificate;
- Official email or other electronic communication to be used for obtaining internal approvals;
- Above relaxation is related to TAN / PAN for which certificate has been issued in previous years at the rate provided in such certificate, however, in respect of new TAN / PAN or revised rate, fresh application need to be filed.

**[Circular F.No.275/25/2020-IT(B), dated 09.04.2020]**

### **CBDT defers furnishing of GST & GAAR details in Form 3D for FY 19-20**

During FY 2018-19, CBDT amended form of Tax Audit report and made various changes which were made effective for Tax Audit Report filed after 20/08/2018, however, later on CBDT deferred the reporting requirements under clause 30C related to General Anti-Avoidance rules and clause 44 related to Goods and Service Tax compliance of Form no. 3CD till 31st March, 2019. Now, the same reporting requirements i.e. clause 30C and clause 44 has been deferred for the previous year ended 31st March, 2020.

**[Circular No.10/2020 F. No. 370142/9/2018-TPL, dated 24.04.2020]**

## Direct Tax – Judgements

### SC holds additions in quantum assessment are to be deleted, because in penalty proceedings relating to the same matter it was found that additions are bad in law and penalty levied thereon was deleted

The Hon'ble Court held that on factual basis on which the Assessing Officer formed his opinion in the assessment order for assessment year, in regard to addition stands dispelled by the affidavits and statements of the concerned unregistered dealers in penalty proceedings. That evidence fully supports the claim of the appellant/assessee. The appellate authority vide its order, had not only accepted the explanation offered by the appellant/assessee but also recorded a clear finding of fact that there was no concealment of income or furnishing of any inaccurate particulars of income by the appellant/assessee for that assessment year. That now being the indisputable position, it must necessarily follow that the addition of amount cannot be justified, much less, maintained.

**[Basir Ahmed Sisodiya vs ITO in CA No. 6110/2009 dated 24.04.2020]**

### Delhi High Court quashed the penalty proceedings initiated under section 271C and the order passed under section 201(1)(1A) dated 26.03.2020

The AO issued show cause notice dated 17.03.2020 as to why proceeding should not be initiated against it under Section 201(1)(1A) before 20.3.2020. the assessee had immediately sent an e-mail and letter dated 19.3.2020, requesting for a period of three weeks to respond to the same as the officers were working from home and they did not have access to the official records to enable them to reply to the show cause notices. Another Notice to show cause dated 23.3.2020 to the assessee and was required to comply with the said notice on or before 24.3.2020. In response there to assessee sought time on account of the lockdown declared by the Government of India across India so as to effectively deal with the COVID-19 pandemic. Having regard to the peculiar facts

the Hon'ble Court ordered the quashing of the order passed and held that immediately after the lockdown is withdrawn by the Government, a period of two weeks reckoned therefrom is granted to the assessee to reply to the Notices to the show cause issued by the department.

**[BT India Private Ltd vs ITO in W.P.(C) 2981/2020 dated 22.04.2020 Delhi High Court]**

### ITAT Jaipur held that if acquisition of jewellery is explained with proof, said quantity to be allowed separately over and above weight of jewellery allowed in CBDT Instruction No. 1916, dated 11-5-1994

ITAT held that it is pertinent to note that CBDT Instruction No. 1916 dated 11-05-1994 has explained in case of gold jewellery found in the possession of the assessee during the course of search and seizure action and the assessee is not able to explain the same then the quantity prescribed under the said CBDT Instruction No. 1916 in respect of married female member, unmarried female member and male member of the assessee would be treated as a reasonable holding of jewellery on account of acquisition of that much jewellery on various occasions of marriages, other social & customary occasions as prevailing in the society. The CBDT Instruction No. 1916 allowing the specific quantity as reasonable and need not to be explained, does not include the jewellery which is otherwise explained by proof of documents of acquisition as well as declared/recorded in the books of account of the assessee. Hence, the quantity of jewellery which is otherwise explained by the assessee by producing the purchase bills as well as recorded in the books of account of the assessee and the AO had not disputed the said explanation then the quantity which is explained otherwise by producing the purchase bills and books of account would not be treated as part of the quantity of reasonable possession as prescribed under the said CBDT Instruction No. 1916 dated 11-05-1994. Therefore, the benefit of CBDT Instruction No. 1916 dated 11-05-1994 will not take away the benefit of the explained jewellery acquired by the assessee.

**[Ram Prakash Mahawar vs Dy. CIT, ITA No.**

**918/JPR/2019 dated 20.02.2020 (Jaipur- Trib.)**

## **International Taxation & Transfer Pricing**

### **Supreme Court held that Liaison office of UAE Co. in India could not be held as PE as it was only carrying on preparatory/auxiliary activities**

The Hon'ble Court observed that respondent company, incorporated in UAE, offered remittance services to NRIs in UAE and on request of NRI remitter, it sent instruments/cheques through its liaison offices ('LOs') in India to beneficiaries designated by NRI remitter. It was observed that the transactions had completed with the remitters in UAE and no charges towards fee/commission could be collected by the LOs in India in that regard. Court, in this background, concluded that even if said activities of LOs was regarded as business activity, same being of "preparatory or auxiliary character", by virtue of Article 5(3)(e) of DTAA regarding PE, was deemed to be expressly excluded from being so. The Apex Court further held that since by a legal fiction it was deemed not to be a PE of respondent, it was not liable to tax in terms of Article 7 of DTAA.

**[Union of India v. UAE Exchange Center in Civil Appeal No. 9775 of 2011 dated 24.04.2020 – Supreme Court]**

## **Corporate Laws**

### **Companies Fresh Start Scheme, 2020**

MCA has issued a circular regarding CFSS Scheme, 2020. This is opportunity for all defaulted companies to file the all belated documents such as annual returns and financial statements etc. as fresh started documents without any additional fees. It is applicable from 1st April 2020 and will remain into force up to 30th September 2020.

**[General Circular No. 12/2020 dated 30th March 2020]**

### **Opportunity for deactivated DIN holders and Active Non-Compliant companies to file**

### **forms DIR-3KYC/ DIR-3 KYC-Web or ACTIVE without any filing fee.**

DIN holders of DINs marked as 'Deactivated' due to non-filing of DIR-3KYC/ DIR-3 KYC-Web and those Companies whose compliance status has been marked as "ACTIVE non-compliant" due to non-filing of Active Company Tagging Identities and Verification(ACTIVE) e-form are encouraged to become compliant once again in pursuance of the General Circular No. 11 dated 24th March, 2020 & General Circular No.12 dated 30th March 2020 and file DIR-3 KYC/ DIR-3 KYC-Web/ ACTIVE as the case may be between 1st April, 2020 to 30th September, 2020 without any filing fee of Rs. 5,000/- or Rs. 10,000/- respectively.

**[General Circular No. 11 dated 24th March, 2020 & General Circular No.12 dated 30th March 2020]**

### **Contribution to PM CARES Fund qualifies as CSR expenditure under Co.'s Act 2013**

The Ministry of Corporate Affairs has clarified that donations made by companies to the Prime Minister's Citizens Assistance and Relief in Emergency Situations Fund (PM CARES Fund) will be considered as expenditure on corporate social responsibility. The PM CARES Fund has been set up to provide relief to those affected by any kind of emergency or distress situation therefore, any contribution made to the PM CARES Fund shall qualify as CSR expenditure under the Companies Act 2013.

**[Office memorandum for clarification on contribution to PM CARES Fund dated 28th March, 2020]**

### **Modification to LLP Settlement Scheme, 2020.**

MCA has modified the provisions related to LLP Settlement Scheme, 2020. Any defaulting LLP is permitted to file belated documents, which were due for filing till 31st August, 2020 in accordance with the provisions of this scheme. It is applicable from 1st April 2020 and will remain into force up to 30th September 2020.

This Scheme shall not apply to LLPs which has made an application for striking off its name from the registrar as per provisions of Rule 37(1)

of the LLP Rules, 2009.

**[General Circular No. 13/2020 dated 30th March 2020]**

### **MCA extends validity of Reserved Names & Resubmission Period**

The MCA on 22nd April 2020 has extended the validity of approved names for Incorporation of new companies or LLP or change of name of existing companies or LLP. MCA has also extended the period of resubmission of forms for companies and LLP.

**[News and Important updates on MCA portal]**

### **Extension in holding of AGM by companies whose F.Y has ended on 31st December, 2019**

MCA has clarified that the stakeholders with regard to difficulty in holding annual general meetings (AGMs) due to COVID-19 for companies whose financial year (other than first financial year) ended on 31st December, 2019, can hold their AGM for such financial year within a period of nine months from the closure of the financial year (i.e. by 30th September, 2020), the same shall not be viewed as a violation.

**[General Circular No. 18/2020 dated 21st April 2020]**

### **Goods & Services Tax**

#### **CBIC seeks to give effect to provisions of Rule 87(13) and form GST PMT-09 of The CGST Rules, 2017**

CBIC has given effect to form GST PMT-09, which was introduced vide Notification No. 31/2019-Central tax dated 28th June 2019 for transferring the amount deposited under wrong head. This enables a registered taxpayer to transfer any amount of tax, interest, penalty, etc. that is available in the electronic cash ledger, to the appropriate tax or cess head under IGST, CGST and SGST in the electronic cash ledger.

**[N/N 37/2020 - Central Tax dated 28th April 2020]**

#### **CBIC issues circular on the eligibility of refund under various circumstances**

CBIC has provided the clarifications in respect to the treatment to be done where the tax has

been paid wrongly or is paid in excess. The important ones are discussed as under-

- An advance is received by a supplier for a Service contract which subsequently got cancelled.

**Case I: The supplier has issued the invoice before supply of service and paid the GST thereon.**

Treatment: Issuance of Credit note by Supplier and adjustment in output tax liability in return. In absence of no output tax liability, refund can be claimed. The same treatment shall also be applicable where the goods supplied are returned by the recipient.

**Case II: The supplier has issued receipt voucher and paid the GST on such advance received. No invoice has been issued.**

Treatment: Issuance of refund voucher by Supplier. Refund application can be filed.

- As per section 54 (1), refund application has to be filed before expiry of two years from the relevant date. If such date expires on 31.03.2020, can such person make an application for refund before 29.07.2020?

In terms of notification No. 35/2020-Central Tax dated 03rd April, 2020, as the timeline for such compliance falls during the period 20.03.2020 to 29.06.2020, such due date has also been extended till 30.06.2020.

**[Circular No. 137/07/2020-GST dated 13th April 2020]**

#### **Kerala High Court: Absent mandatory continuous 6 month return default, quashes order passed for "registration cancellation"**

HC has quashed an order passed for cancellation of registration citing absence of mandatory 6 months' continuous default in filing the returns. It finds that show-cause notice to cancel the registration was correctly issued on account of the alleged non-filing of returns for a continuous 6 months' period, however, on the said date, the assessee filed returns for one of the default month. States that as the filing of the return is through on-line process, Revenue cannot be blamed for being unaware of said filing, more so when the assessee has also not informed about this 'crucial fact'. Nonetheless, it is also true that,

on the date the order directing cancellation of the registration was passed, there was only 5 months' continuous default and not the mandatory 6 months' continuous default, which is the essential jurisdictional fact required for invoking the power of cancellation of registration u/s 29(2)(c) of CGST Act. The Court concludes that said order "is illegal and ultra vires and is liable to be interdicted by this Court" while observing that "the requirement of 6 months' continuous period should be fulfilled both at the time of issuance of the above said notice" and "also at the stage of passing the final order cancelling the registration".

**[Phoenix Rubbers vs. The Commercial Tax Officer & Ors.]**

### **Rajasthan AAR: Directors are not company employees, salary/remuneration paid to them taxable under 'reverse charge'**

AAR held that remuneration/salary paid to Directors (including a part-time Director) is taxable under reverse charge mechanism (RCM) vide Notification No. 13/2017-Central Tax dated June 28, 2017. It rejects applicant's submission that director is in employment of the company and his services are excluded from provisions of CGST Act, 2017 under Sr. No. 1 of Schedule III of CGST Act. It observes that there are 6 directors in the company, all working at different level of management and each one holding charge of procurement of raw material, production, quality check, dispatch, accounting, etc. It finds that consideration in form of salary and commission paid to Directors by the company is against the services provided by them to the company and "company is recipient of such service and Directors are the supplier". It refers to the definition of 'consideration' contained u/s 2(31) of CGST Act, while emphasizing that consideration paid to Director for supply of services is specifically covered under Notification No. 13/2017 which makes the company or body corporate liable to pay tax under RCM. The Authority expounds that "Directors are not the employee of the Company", while stating that "services rendered by the Director to the company for which consideration is paid to them

in any head" is liable to GST under RCM.

**[In the matter of Clay Craft India Pvt Ltd]**

### **AAR Karnataka: Denies "resident dwelling exemption to collective leasing of property for student accommodation"**

AAR has held that collective leasing of immovable property (consisting of rooms for students) is not exempt under Entry 13 of Notification No. 9/2017-Integrated Tax (Rate) as "Services by way of renting of residential dwelling for use as residence". It notes that applicant along with 4 others have pooled their assets & let out a residential complex to a Company engaged in business of providing affordable residential accommodation to students on a long term basis along with a host of other services, generally called as a 'Paying Guest Accommodation'. It reasons that property consists only of rooms along with attaché toilets which does not fit into the meaning of dwelling which means a house. It holds that entire leased premises consisting of 42 rooms, by no stretch of imagination, can be treated as a residential dwelling. Observing that applicant, along with other lessors, have collectively leased out their premises, it infers that contract is for the entire property given as a single piece and that sharing of the rent is only an apportionment of the common income. It opines that amount collected is in course of or furtherance of business, hence, the transaction between the lessor and Company would constitute a "supply" of service in terms of Section 7(1-A) of CGST Act, 2017 r/w Entry 2(b) of Second Schedule to said Act. Noting that applicant is not providing the service of leasing in individual capacity to the lessee but as a part of the group of lessors, it holds that question of charging GST for the transaction between the applicant and Company does not arise as applicant is not effecting any supply of service to the Company directly. Further, it states that invoice needs to be issued by the group to the Company while clarifying that exact nature of group cannot be ascertained absent any details provided regarding constitution or registration of the group.

**[In case of Shri Taghar Vasudeva Ambrish]**

## AAR Uttarakhand: Transfer of under construction project under BTA as a 'going concern' exempt from GST

Uttarakhand AAR has held that the transfer of under-construction project under a Business Transfer Agreement (BTA) is exempted from GST. It notes that applicant sold the under-construction building as a whole with all its assets and transfer of the rights to buyer including the approved map from the competent authority. It observes that the buyer had purchased the under-construction building/business to carry on the same kind of business as the purchaser themselves engaged in constructing residential/ commercial complexes and selling thereof. Further, it finds no series of immediate consecutive transfers of the said business. It explains that 'transfer of a going concern' means a transfer of running business which is capable of being carried on by the purchaser as an independent business.

The Authority concludes that applicant has transferred the business as 'going concern' which may be treated as 'supply of services' which is exempted in terms of Sl.No. 2 of Notification No. 12/2017-Central Tax (Rate).  
*[In case of Rajeev Bansal and Sudarshan Mittal]*

## Compliance Calendar May 2020

Compliance Particulars	Due Date
<b>1. Goods &amp; Services Tax (GST)</b>	
<b>GSTR-3B: Summary Return for the month of March, 2020 (with aggregate turnover exceeding Rs. 5 Crores) – without levy of interest</b>	5 <sup>th</sup> May, 2020
<b>2. Labour Laws</b>	
<b>Deposit of ESI for the month of March &amp; April, 2020</b>	15 <sup>th</sup> May, 2020
<b>Deposit of Provident Fund for the month of March &amp; April, 2020</b>	15 <sup>th</sup> May, 2020

## VED JAIN AND ASSOCIATES

100, Babar Road, Opp. Hotel Lalit, New Delhi – 110001

**Phone** : 23354546, 23354547 **Mail** : mail@vedjainassociates.com

**Website**: www.vedjainassociates.com