

# At a Glance

(Brief Updates from the world of Tax and Finance)

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October 2018

## Income Tax

### CBDT extends the due date for filing of ITR and Tax Audit Report in respect of A.Y. 2018-19 upto 15th October, 2018

The due date for filing of Income Tax Return (ITR) along with Tax Audit Report has been extended from 30th September, 2018 to 15th October, 2018 in respect of the F.Y. 2017-18, relevant to A.Y. 2018-19, in the case of assesses where due date of filing of ITR was 30th September, 2018. However, interest under Section 234A of the Income Tax Act, 1961 is liable to be paid in such cases and no exemption has been granted in respect of payment of such interest.

[F. No. 225/358/2018 dated 24.09.2018]

### CBDT inserts and modifies rules related to valuation of inventories and shares

CBDT has amended sub-rule (b) of Rule 11U defining the meaning of the term 'Balance-Sheet'. The modified rule has specifically provided that the Balance Sheet which is to be used in the case of valuation of shares of Foreign Companies is the Balance Sheet as drawn up on the valuation date and as audited by the auditor of the said country (if any). Further, a new Rule 11UAB has been inserted in respect of valuation of inventories in case of taxability of the same upon conversion into capital asset. This insertion of new rule is in line with the amendment brought in by the Finance Act, 2018, whereby deferment of tax on conversion of inventories into capital assets was done away with.

[Notification No. 42 of 2018]

### Section 54 relief was available on newly constructed property including cost of land

Assessee sold an old residential house property and within 3 years from date of such sale, constructed new residential house on a land, which was purchased 3 years prior to sale of old property. Assessee claimed the cost of construction along with cost of land as exempt from tax under Section 54 of the Act. Assessing Officer (AO) was of the view that only construction expenditure incurred after sale of original asset would be eligible for exemption under Section 54 and not the cost of land. High Court, however, held that the cost of new residential house would necessarily include the cost of land, cost of materials used in construction, cost of labour and any other cost relatable to acquisition and construction of residential house.

[C. Aryama Sundaram v. CIT– Madras High Court] (97 taxmann.com 74)

### Delay of 589 days in filing appeal condoned if there was no malafide intention and delay was on account of clerk's mistake

In this case, the appeal could not be filed before the ITAT within 60 days because the employee of the company forgot to do so, and later on realizing the mistake, filed the appeal. The ITAT, in this case, after considering the Affidavit of the employee has held that there was no malafide intention of the company in not filing the appeal in time and therefore, the delay of 589 days in filing the appeal was condoned by the ITAT and appeal was heard on merits.

[Jakson Ltd. v. ACIT – ITAT Delhi] (ITA No. 6432/Del/2014 dated 27.09.2018)

## International Taxation

**No Permanent Establishment (PE) of Japanese company could be established if its supervision period in India was of less than 180 days**

High Court in its order held that where period of supervision under contract between assessee, a Japanese company, and Indian company did not exceed period of 180 days, it would not constitute a supervisory PE in terms of Article 5(4) of India-Japan Double Tax Avoidance Agreement (DTAA). The SLP filed by the Revenue against the judgment of the High Court has been dismissed by the Supreme Court holding that there was no ground to interfere with the order of High Court

**[CIT v. Sumitomo Corporation – Supreme Court] (96 taxmann.com 612)**

**Arm's Length Price (ALP) of an international transaction is to be determined without considering any benefit accrued to the assessee**

In this case, assessee availed business support services from its associated enterprise (AE) and segregated these services under 12 heads. According to Transfer Pricing Officer (TPO), either services received were in the nature of shareholder services or duplication of services or no benefit was received or there was no evidence of assessee having received such services at all. TPO, therefore, determined ALP of these services at Nil. The Tribunal has held that TPO was required to simply determine ALP of international transaction, unconcerned with the fact if any benefit accrued to assessee and thereafter, AO was required to decide the deductibility of this amount under the Act. ITAT further observed that to determine as to whether a transaction is at ALP or not is not dependent on whether transaction results in an increase in assessee's profit. Thus, considering the above, ITAT concluded that the action of AO and TPO could not stand.

**[Exxon Mobil Lubricants (P.) Ltd. v. ACIT – ITAT Delhi] (97 taxmann.com 43)**

## Goods & Services Tax (GST)

**Form for GST Annual Return and GST Audit notified**

The forms for GST Annual Return (GSTR-9) and GST Audit (GSTR-9C) have been notified by the CBIC. Annual Return is required to be filed by all registered suppliers summarizing the details of supplies made and received during the financial year 2017-18. GST Audit is required to be conducted for suppliers whose total aggregate turnover exceeds Rs. 2 Crores during the financial year.

**[Notification No. 39/2018 and 49/2018-Central Tax dated 04.09.2018 and 13.09.2018 respectively]**

**TDS and TCS provisions to be implemented from 1st October, 2018**

The provisions of TDS and TCS will be effective from 1st October, 2018 as notified under Notification 50 & 51 of 2018-Central Tax dated 13th September, 2018.

Provisions of Tax Collected at Source (TCS) read under section 52 of CGST Act requires every electronic commerce operator to collect tax at source at a prescribed percentage (notified at 1%) of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies are collected by such operator.

Provisions of Tax Deducted at Source (TDS) read under section 51 of CGST Act requires deduction of tax at source at two percentage [1% CGST + 1% SGST] of the value of supply (excluding GST), where the value of such supply under a contract exceeds Rs.2,50,000/- by the following:

- Department or establishment of Central Government or State Government;
- Local Authority;
- Government Agencies;

- An authority or a board or any other body set up by an Act of parliament or a state legislature; or established by any government;
- The Society established by the Central Government or State Government or a Local Authority under the Societies Registration Act, 1860;
- Public Sector Undertaking.

**[Notification No. 50 and 51/2018 – Central Tax dated 13.09.2018]**

### **Due date for filing of return in Form GSTR-1 and Form GSTR-3B extended**

The due date for furnishing the return of Outward Supplies in Form GSTR-1 for all the periods since July 2017 to September 2018 has been extended to October 31, 2018. No late fee would be charged on the delayed filing for the said returns.

The date has been extended as one-time relief to the large number of suppliers who had successfully uploaded the summary return of Form GSTR 3B but failed to upload the return GSTR-1. The relief is available to all suppliers irrespective of the fact whether they were required to file return monthly or quarterly.

The due date for the returns for the period of October 2018 onwards shall remain the same, i.e. 11th of the succeeding month for monthly returns and 31st of succeeding month for quarterly returns.

For filing of GSTR-3B, the due date for the period from July 2017 to November 2018 shall be furnished electronically on or before 31st December 2018.

**[Notification No. 43 and 44/2018 - CGST dated 10.09.2018]**

**[Notification No. 46 and 47/2018 – CGST dated 10.09.2018]**

### **Option to file TRAN-1 opened once again**

CBIC has extended the due date for filing of

TRAN-1 to March 31, 2019. TRAN-1 is the form for transfer of input credit from taxes existing prior to GST (Excise, VAT, Service Tax, etc.) to GST. The due date has only been extended for those registered persons who faced technical difficulties in filing the return on the common portal. Correspondingly, the statement in form GST TRAN-2 can now be filed on or before 30th April 2019.

**[Notification No. 48/2018 - CGST dated 10.09.2018]**

### **Job work (Return) – Declaration in form GST ITC-04**

The time limit for declaration in ITC-04 in respect of goods dispatched to a job worker or received from a job worker or sent from one job worker to another, for the period from July 2017 to June 2018 has been extended till the 30th September, 2018.

**[Notification No. 40/2018 – CGST dated 04.09.2018]**

### **Supply of solar inverter, controller, battery and panels would be covered under “Solar Power Generating System”**

Uttarakhand Authority of Advance Ruling (AAR) in case of Eapro Global Limited held that the supply of solar inverter, controller, battery and panels would be covered under ‘Solar Power Generating System’ as a whole and thus, the entire supply would fall under composite supply, being taxable at 5% as being “composite supply” u/s 2(30) of CGST Act. Thus, AAR holds same in case of solar inverters and solar panels supplied together for generation of power from sunlight as well. Also, the aforesaid findings are applicable for both manufacturers and traders engaged in said supply.

**[Eapro Global Ltd. – AAR Uttarakhand] (97 taxmann.com 563)**

### **No concessional rate allowed to Government entity for business**

## **purpose on construction of electricity distribution lines**

Madhya Pradesh AAR in the case of a wholly owned subsidiary of MP Power Management Co. Ltd. engaged in construction of electricity distribution lines, sub-stations and other infrastructure for sale of electricity, holds that the applicant is liable to pay tax at 18% (CGST + SGST). Despite of fact that the applicant's holding company is wholly owned by Govt. of MP and Govt. of MP having full control over the applicant, such applicant is not covered under definition of Govt. entity. With reference to the Memorandum of Association of applicant, it was observed that projects under various Govt. schemes are carried out for business purposes, hence, benefit of concessional 12% GST rate (CGST+SGST) shall not be available under Notification No. 24/2017 – Central Tax (Rate) read with Notification No. 31/2017. Thus, AAR holds that said contract qualifies as 'works contract' and is taxable under Sr. No. 3 of Notification No. 11/2017 – Central Tax (Rate).

**[M.P. Power Management Co. Ltd. – AAR Madhya Pradesh]**

## **Food, soft drinks and snacks supplied in Snack Bar and Food Court at Mall/Multiplex cannot be treated as 'outdoor catering'**

Madhya Pradesh AAR holds that food, soft drinks and snacks supplied in Snack Bar and Food Court at Malls/Multiplexes shall be chargeable to 5% GST, stating that such supply cannot be treated as outdoor catering chargeable to 18% by any stretch of imagination.

The AAR further clarified that ITC of GST paid on goods purchased viz. vitrified tiles, marble granite etc. and works contract services for purpose of maintenance of mall building is disallowed under Section 17(5) of CGST Act. AAR concluded that mere statement that a specific expenditure is not being capitalized

will not make the applicant eligible for ITC.

**[Jabalpur Entertainment Complexes P. Ltd. – AAR Madhya Pradesh] (97 taxmann.com 587)**

## **AbhivahanShulk collected by Forest Division for carrying forest produce taxable at 18%**

Uttarakhand AAAR has upheld the decision of AAR holding 'AbhivahanShulk' (Transit Fee) charged and collected by Forest Division in respect of forest produce carried by a person to be subject to GST at 18%. The AAAR held that the rates of AbhivahanShulk are fixed on quantity of forest produce transported and in return to such fees, forest department is providing service of maintaining/regulating forest produce and ensuring continued availability and its safe transit, which services are restricted to particular class of people registered with forest department and paying fee under 'The Uttarakhand Transit of Timber and Other Forest Produce Rules, 2012'. AAAR holds that such Govt. fees is covered under the definition of service and supply envisaged u/s 2(102) and 7 of CGST Act.

**[Divisional Forest Officer – AAAR Uttarakhand] (97 taxmann.com 565)**

## **Corporate Laws**

### **Extension of time period for filing of declaration of beneficial interest received by the Company**

Ministry of Corporate Affairs (MCA) has extended the time period for filing of beneficial interest to Registrar of Companies (ROC), which will be received by the company from the persons who have held the beneficial interest. Now, Form BEN-2 is to be filed by the Company within a period of 30 days from the date of deployment of form and it is yet to be deployed by the Ministry.

**[General Circular No. 07/2018 dated 06th September, 2018]**

## **Dematerialisation of securities of unlisted public company**

Unlisted Public Companies are required to facilitate the dematerialization of its existing securities in accordance with the provisions of Depositories Act, 1996 and regulations made there under. With effect from 02nd October, 2018, no unlisted company can issue the securities unless the entire holding of securities of its promoters, directors or key managerial personnel has been dematerialized.

**[Companies(Prospectus and Allotment of Securities) Third Amendment Rules, 2018 dated 10.09.2018]**

## **No approval of Central Government is required for payment of managerial remuneration**

The Central Government has done away with the requirement to take approval to make the payment of managerial remuneration in accordance with the provisions of Section 197 of the Companies Act, 2013.

**[The Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2018 dated 12.09.2018]**

## **New window for updation of KYC in Director Identification Number (DIN)**

MCA has provided the window for a period of 15 days from 21stSeptember, 2018 to 05th October, 2018 to update the KYCs in DIN of those persons who have failed to complete their KYCs before 15thSeptember, 2018. The fee for filing of form during this period has been reduced from Rs.5,000/- to Rs.500/-.

**[Companies (Appointment and Qualification of Directors) Sixth Amendment Rules, 2018 and Companies (Registration Offices and Fees) Fifth Amendment Rules, 2018 dated 20.09.2018]**

## **Extension of transition period for professionals for valuation of assets under the Companies Act, 2013**

MCA has extended the time period for professionals who are rendering the valuation services, to continue the said services without registering as registered valuer under the Companies Act, 2013, from 30thSeptember, 2018 to 31stJanuary, 2019.

**[Companies (Registered Valuers and Valuation) Third Amendment Rules, 2018 dated 25.09.2018]**

## **Re-engineering of process of incorporation of Limited Liability Partnership [LLP]**

MCA has notified that with effect from 02nd October, 2018 the process of incorporation of LLP's would be changed and thereafter, form for approval of name, incorporation of LLPs and conversion of firms or companies into LLPs would be processed by Central Registration Centre instead of the respective ROC under whose jurisdiction the registered office of LLP will be located. The forms for the said services would be revised accordingly.

**[Limited Liability Partnership (Second Amendment) Rules, 2018 dated 18.09.2018]**

## Compliance Dates

<b>1. Income Tax</b>	
Deposit of Tax Deducted/ Collected for the month of September, 2018	7th October, 2018
Due date for issue of TDS Certificate for tax deducted under section 194-IA and 194-IB in the month of August, 2018	15th October, 2018
Annual return of income for the assessment year 2018-19 if the assessee (not having any international or specified domestic transaction) is –  (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	15th October, 2018
Audit report under section 44AB for the assessment year 2018-19 in the case of a corporate assessee or non-corporate assessee (who is required to submit his/its return of income by October 15, 2018)	15th October, 2018
Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA and 194-IB in the month of September, 2018	30th October, 2018
Quarterly TCS certificate (in respect of tax collected by any person) for the quarter ending September 30, 2018	30th October, 2018
Intimation by a designated constituent entity, resident in India, of an international group in Form No. 3CEAB for the accounting year 2017-18	31st October, 2018
Country-By-Country Report in Form No. 3CEAD by a parent entity or an alternate reporting entity or any other constituent entity, resident in India, for the accounting year 2017-18	31st October, 2018
Quarterly statement of TDS deposited for the quarter ending September 30, 2018	31st October, 2018
<b>2. Goods &amp; Services Tax (GST)</b>	
GSTR-4 for 2nd quarter, i.e. July 2018 to September 2018	18th October, 2018
GSTR-3B for the month of September 2018	20th October, 2018
GSTR-1 for Outward Supplies for the month of July 2017 to September 2018	31st October, 2018

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