

JANUARY, 2021



TAX Bulletin

★ ★ VOLUME - 79 ★ ★



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

www.icmai.in

Headquarters: CMA Bhawan, 12 Sudder Street, Kolkata - 700016

Ph: 091-33-2252 1031/34/35/1602/1492

Delhi Office: CMA Bhawan, 3 Institutional Area, Lodhi Road, New Delhi - 110003

Ph: 091-11-24666100

MISSION STATEMENT

“The CMA Professionals would ethically drive enterprises globally by creating value to stakeholders in the socio-economic context through competencies drawn from the integration of strategy, management and accounting.”

VISION STATEMENT

“The Institute of Cost Accountants of India would be the preferred source of resources and professionals for the financial leadership of enterprises globally.”

Objectives of Taxation Committees:

1. Preparation of Suggestions and Analysis of various Tax matters for best Management Practices and for the professional development of the members of the Institute in the field of Taxation.
2. Conducting webinars, seminars and conferences etc. on various taxation related matters as per relevance to the profession and use by various stakeholders.
3. Submit representations to the Ministry from time to time for the betterment and financial inclusion of the Economy.
4. Evaluating opportunities for CMAs to make way for further development and sustenance of the opportunities.
5. Conducting and monitoring of Certificate Courses on Direct and Indirect Tax for members, practitioners and stake holders and also Crash Courses on GST for Colleges and Universities.

JANUARY, 2021

TAX Bulletin

★ ★ VOLUME - 79 ★ ★



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

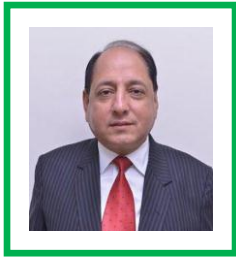
www.icmai.in

Headquarters: CMA Bhawan, 12 Sudder Street, Kolkata - 700016

Ph: 091-33-2252 1031/34/35/1602/1492

Delhi Office: CMA Bhawan, 3 Institutional Area, Lodhi Road, New Delhi - 110003

Ph: 091-11-24666100



CMA Rakesh Bhalla
Chairman, Direct Taxation Committee



CMA Chittaranjan Chattopadhyay
Chairman, Indirect Taxation Committee

FROM THE DESK OF CHAIRMAN

Dear Friends and Professional Colleagues,

Greetings from the Tax Research Department!!!

We wish this New Year 2021 will provide you with enough reasons to be happy and you have uncountable days filled with Joy and Mirth for your professional achievement.

You will be happy to learn that Tax Research Department on behalf of the Institute participated in Pre-budget meeting for Union Budget 2021-22 on 23rd December 2020. Suggestions were placed before CBDT on various issues of Direct Tax and Indirect Tax matter. Mr. Satish Kumar Gupta, Member Legislation CBDT and Mr. Kamlesh Varshanery, Joint Secretary Finance were present in the meeting. Matter of inclusion of Cost Accountant in the definition of 'Accountant' under section 288(2) of Income Tax Act, 1961 has also been presented before the members of CBDT by CMA P Raju Iyer, Vice- President, ICAI in the said pre budget meeting.

CMA Mrityunjay Acharjee, Vice President (Accounts, Finance & Taxation), Balmer Lawrie Ltd. and Member of IAASB of the Institute presented a PPT on behalf of the Institute with suggestions on various issues of Direct Tax viz. Profit and Gains from Business and Profession, Capital Gains, Income from Other Sources, Tax Deductions, Transfer Pricing, Tax Deducted at Source, Assessment, Special Provisions, International Taxation etc.

In GST, the Government on the 5th of December, 2020 has introduced the Quarterly Return Monthly Payment (QRMP) Scheme. The major highlights of this scheme being:

- Small Taxpayers with aggregate turnover up to Rs 5 Cr may file their FORM GSTR-1 and FORM GSTR-38 Quarterly.
- No Interest is applicable if 35% challan is paid by 25th of the succeeding month.
- Invoice Furnishing Facility (IFF): An optional Facility for furnishing B2B invoices and passing Input Tax Credit in Month 1 and Month 2 of a quarter
- GSTR-2A view to be provided every month.
- Quarterly GSTR-1 and GSTR-38 may be filed also through a simple SMS.
- Monthly payment to be done by a simple challan either by self-assessment of monthly liability or 35% of net cash liability of previous filed GSTR-38 of the quarter
- No Payment is required if there is no liability for the month or the balance in electronic cash or credit ledger is more than the liability.
- Different GSTINs on same PAN may file monthly or quarterly in different States.
- GSTR-28 view to be provided both Monthly and Quarterly

We are optimistic that such schemes would definitely benefit the tax payers.

The Tax Research Department has requested for Inclusion of Cost Accountants (CMA) in Advertisement No.1/ 2020-21 of IDBI Bank for the post of Manager (Taxation).

Request for extension of due date of Income Tax Returns and Tax Audit Report for A.Y. 2020-21 have also been submitted to the respective authorities.

Webinars have been conducted on the topics: (i) Recent Changes in GST by CMA Satya Mishra on 22nd December, 2020 and on (ii) E-Invoicing in GST by CMA Prasanna Kumar on 29th December, 2020.

The Taxation portal is also being updated on a regular basis.

Feedback is solicited from our readers for any improvement that may be made in the Bulletin.

Wish you all to take care of yourselves and your family members, and pray that 2021 would bring new hopes and aspirations for all of us.

Jai Hind.

Warm Regards



CMA Rakesh Bhalla
4th January 2021



CMA Chittaranjan Chattopadhyay
4th January 2021

TAXATION COMMITTEES 2020 - 2021

Indirect Taxation Committee

Permanent Invitees

CMA Biswarup Basu - President
CMA P. Raju Iyer - Vice-President

Chairman

1. CMA Chittaranjan Chattopadhyay

Members

2. CMA Balwinder Singh
3. CMA Ashwinkumar G. Dalwadi
4. CMA Debasish Mitra
5. CMA H. Padmanabhan
6. CMA (Dr.) V. Murali
7. CMA (Dr.) K Ch A V S N Murthy
8. CMA Vijender Sharma
9. CMA Rakesh Bhalla
10. CMA V.S. Datey (Co-opted)
11. CMA Ashok B. Nawal (Co-opted)
12. CMA Debasis Ghosh (Co-opted)

Secretary

CMA Rajat Kumar Basu, Addl. Director

Direct Taxation Committee

Permanent Invitees

CMA Biswarup Basu - President
CMA P. Raju Iyer - Vice-President

Chairman

1. CMA Rakesh Bhalla

Members

2. CMA Balwinder Singh
3. CMA Neeraj D. Joshi
4. CMA (Dr.) Ashish P. Thatte
5. CMA H. Padmanabhan
6. CMA Papa Rao Sunkara
7. CMA Chittaranjan Chattopadhyay
8. CMA Harijiban Banerjee (Co-opted)
9. CMA Rakesh Sinha (Co-opted)

Secretary

CMA Rajat Kumar Basu, Addl. Director

ACKNOWLEDGEMENTS

CMA Mrityunjay Acharjee

CMA Amit Sarker

CMA Vishwanath Bhat

CMA Bhogavalli Mallikarjuna Gupta

CMA T K Jagannathan

CMA Shiba Prasad Padhi

CMA Niranjana Swain

CMA Navneet Kumar Jain

CMA Anil Sharma

CMA Arindam Goswami

CMA Manmohan Daga

CMA Utpal Kumar Saha

TEAM - TAX RESEARCH DEPARTMENT

CMA Rajat Kumar Basu

CMA Tinku Ghosh Das

CMA Priyanka Roy

Ms. Mukulika Poddar

CMA Debasmita Jana

CMA Amitesh Kumar Shaw

CMA Priyadarsan Sahu

- Additional Director - Tax Research
- Deputy Director - Tax Research
- Assistant Director - Tax Research
- Officer - Tax Research
- Associate - Tax Research
- Research Associate
- Research Associate

SPECIAL ACKNOWLEDGEMENT

Mr. Dipayan Roy Chaudhuri

- Graphics & Web Designer

CONTENTS

ARTICLES		
INDIRECT TAX		
01	INTERPLAY BETWEEN SECTION 7(5)(C) AND SECTION 13(8)(B) OF IGST ACT, 2017 IN THE MATTER OF INTERMEDIARY SERVICES	
	CMA Utpal Kumar Saha	Page - 1
DIRECT TAX		
02	REFUND OF EXCESS TAX UNDER INCOME TAX ACT	
	CMA Niranjana Swain	Page - 4
RECENT UPDATES IN DIRECT AND INDIRECT TAX		
	Team TRD	Page - 9
OUTLINE OF QUARTERLY RETURNS MONTHLY PAYMENT (QRMC) SCHEME UNDER GST		
	Team TRD	Page - 10
TAX UPDATES, NOTIFICATIONS AND CIRCULARS		
	Indirect Tax	Page - 15
	Direct Tax	Page - 19
PRESS RELEASE		
	Direct Tax	Page - 20
JUDGEMENTS		
	Indirect Tax	Page - 23
	Direct Tax	Page - 25
TAX COMPLIANCE CALENDAR AT A GLANCE		
	Indirect Tax	Page - 29
	Direct Tax	Page - 29
	Courses - Tax Research Department	Page - 31
	E-Publications of Tax Research Department	Page - 32

Articles on the Topics of Direct and Indirect Taxation are invited from readers and authors. Along with the article please share a recent passport-sized photograph, a brief profile and the contact details. The articles should be the author's own original.

Please send the articles to

trd@icmai.in /trd.ad1@icmai.in



INTERPLAY BETWEEN SECTION 7(5)(C) AND SECTION 13(8)(B) OF IGST ACT, 2017 IN THE MATTER OF INTERMEDIARY SERVICES

CMA Utpal Kumar Saha

AGM – Indirect Tax, McNally Bharat Engineering Co. Ltd

Fact of the Case:

M/s. ABC India (P) Ltd, hereinafter referred to as ABC, in the city of Kolkata is carrying on liaison in relation to price negotiation including display of sample, vetting of the purchase order etc. between an Indian purchasers named M/s YXX (P) Ltd, a Kolkata based company, and foreign company in the country of Germany

Indian company M/s YXX (P) Ltd. has directly imported materials from the foreign company. All the invoices including shipping bills are in the name of Indian purchaser. Bill of Entry (BoE) has been filed by M/s YXX (P) Ltd and applicable customs duty including IGST has been paid on the imported goods. The goods are directly dispatched from the port in the Country of Germany to the place of business of the Indian purchaser in Kolkata. Subsequently, after confirmation of the purchase order and followed by delivery of goods by the foreign company, ABC has issued invoice to foreign company in Euro for the liaison charges/ commission.

Note: The above names are arbitrary only for easy of understanding.

Queries on the above transactions:

- (i) Whether the above transaction of claiming the liaison charges/ commission by raising invoice in foreign currency by ABC is an export of services?
- (ii) If the answer is negative, then whether this will be intra-State supply or Inter-State supply of services?
- (iii) HSN Code and Rate of GST applicable on this transaction.

Analysis of query no. (i)

The activity of ABC is purely a supply of service against the consideration in the form of commission charges from foreign company. Whether the instance service is export of service or not will be clarified from the analysis of the definition of export of service as given in section 2(6) of IGST Act. Now, we refer the definition of export of services in the context of IGST Act, 2017. Definition of export of services is as follows:

Section 2(6) - Export of services means the supply of any service when,-

- (i) **the supplier of service is located in India;**
- (ii) **the recipient of service is located outside India;**
- (iii) **the place of supply of service is outside India;**
- (iv) **the payment for such service has been received by supplier of service in convertible foreign exchange or in Indian rupees whenever permitted by the Reserve Bank of India; and**
- (v) **the supplier and the recipient of service are not merely establishment of a distinct person in accordance with *Explanation 1* in section 8.**

The above definition of export of services is exhaustive one and there are five parts in the definition itself. The definition starts with “when” and followed by each clause ending with a “semi-colon”. It shows a close connection with each other. The last two clauses are connected with “and” to make it

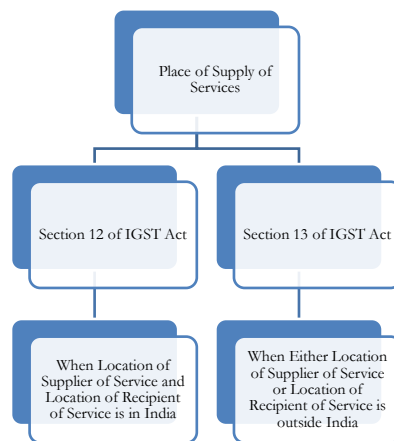
clear that all the conditions are to be fulfilled simultaneously and then it will be defined as export of services.

In the given case the following conditions are complied with:

- a. supplier is located in India – i.e. Kolkata;
- b. recipient of service is located outside India – i.e. Germany;
- c. place of supply of service is outside India – *detailed analysis is given below*;
- d. payment has been received in foreign currency- i.e. Euro;
- e. supplier and recipient are not establishment of distinct person.

One of the key conditions is the place of supply of service which is being analyzed below.

Place of supply in relation to service is covered under section 12 and 13 of IGST Act, 2017.



Section 12 is applicable when both the location of supplier of service and location recipient of service is in India. Section 13 will be applicable when either of the location of supplier of service or location of recipient of service is outside India. So, in the given situation section 13 is applicable as the location of recipient is outside India.

Nature of Service:

The service provided by ABC is in the nature of an arrangement or facility between Indian company and foreign company for selling and buying of goods. ABC is not selling any goods in his own account to Indian company rather he is only facilitating the transaction between these two persons. ABC is raising invoices against that arrangement to foreign company in convertible foreign currency. So, it is an intermediary service by ABC. As of date no specific definition of intermediary service is provided in GST Law. However, we may take the definition of intermediary from IGST Act.

The definition reads as follows:

intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.

From the above definition we may say that the intermediary is a person by whatever name called who only arranges or facilitates the supply between two or more persons. If such person supplies goods or services or both on his own account then it will not be an intermediary.

In our instance case the person ABC India (P) Ltd facilitates the arrangement of sale and purchase between Indian company and foreign company. ABC is not raising any invoice for supply of the particular goods that are required by Indian company. ABC is an intermediary between these two persons located in and outside India. The specific definition of intermediary service is not given but we

may correlate the service provide by M/s ABC in the capacity of an intermediary. In an indirect way the service provided by ABC may be recalled as intermediary services.

Place of supply of services:

As per provision of section 13(8)(b) of IGST Act the place of supply of service on an intermediary service is the location of the supplier of service. The location of supplier is Kolkata.

One of the ingredients of definition of export of service has not been fulfilled in the context of place of supply of service is not outside India and hence it is not an export of service. Now it is clear that GST is applicable in the instance transaction.

Analysis of query no. (ii)

Definition of Intra-State Supply:

Definition of Intra-State supply has two limbs. One is relating to goods and covered under section 8(1) and the second one is relating to service and covered under section 8(2). In the given case we are concerned with section 8(2) only. Subsection 2 of section 8 starts with the wording "subject to the provisions of section 12". Section 8(2) is correlated and interlinked with section 12 of IGST Act. Section 12 of IGST Act is applicable only when the location of supplier and location of recipient of services are in India. Section 8(2) depends upon section 12 by way of linking the provision of section 8(2) with section 12. Section 12 is applicable only when both the supplier of services and recipient of services is in India. In case the supplier or the recipient of services is outside India then section 12 is not applicable at all. By virtue of interlinking the section 8(2) with section 12 the section 8(2) is also not applicable in the given case for determining whether the transaction is Intra-State. In our case section 13 of IGST Act is applicable.

From the provision of 8(2) it is clear that the instance transaction is not an Intra-State supply and it is an Inter-State supply as per the residuary provision covered under section 7(5)(c). Now, we will analysis the provision of section 7(5)(c).

Section 7(5)(c) of IGST Act:

Supply of goods or services or both –

(a)

(b)

(c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section,

shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.

The transaction of intermediary service is provided in the taxable territory, i.e. India and it is not an intra-State supply of services and not covered in any other section. So the transaction is inter-State supply of service and liable to pay IGST.

Analysis of query no. (iii)

From the annexure to scheme of classification of services it has been observed that the tax rate for this service would be 18% under SAC code 9997.

In this connection, we may refer the order of the Authority of Advance Ruling, Maharashtra, in the matter of Mrs. Vishakhar Prashant Bhawe of Micro Instruments wherein the Hon'ble Authority of Advance Ruling held that the instance transaction is an inter-State supply and liable to GST. Although the order of the advance ruling is binding on the applicant and its jurisdictional authority but we may refer the order for detailed elaboration.



REFUND OF EXCESS TAX UNDER INCOME TAX ACT

CMA Niranjana Swain
Advocate & Tax Consultant

1. Who can claim income Tax Refund?[Section 237]

If any person satisfies the Assessing Officer that the amount of tax paid by him or on his behalf for any assessment year exceeds the amount which he is chargeable under the Income-tax Act for that year, he shall be entitled to a refund of the excess tax. **Section 237 of the Income Tax Act, 1961** deals with Income Tax refund of excess tax paid by the assessee. Up to August 31, 2019 claim of refund was made in Income Tax Form 30 & verified in the prescribed manner. However, with the advent of e-transfer of refunds, it can now be claimed by simply filing the ITR. The ITR should further be verified, either physically or electronically within 120 days of filing. Please note that the excess tax for which a refund is claimed should be reflected in Form 26AS. Moreover, the refund is subject to verification by the Income Tax Department. It is credited only if the refund claim is found to be valid by the department.

2. Who can claim Income Tax Refund: [Section 238]

Where an assessee has submitted any return of income and any refund of tax is due, such refund shall be granted by the Assessing Officer on his own. The assessee is not required to file any claim for such refund. Similarly, if any refund arises due to an order of appeal, rectification of mistakes, revision by CIT or appeal to the High Court, the refund shall be granted by the Assessing Officer himself. In this case also, the assessee is not required to file any claim for refund of tax.

3. Can a Person other than the Assessee Claim Refund of Tax? [Section 238]

Although only the assessee is entitled to claim refund, however, in the following cases the refund can be claimed by a person other than the assessee:

- (i) where the income of one person is included in the total income of any other person under any provision of the Income-tax Act (section 60 to 64), the latter alone shall be entitled to a refund in respect of such income;
- (ii) if a person is unable to claim tax refund due to death, incapacity, insolvency, liquidation (by liquidator) or other cause, his legal representative or the trustee or guardian or receiver, as the case may be, shall be entitled to claim or receive such refund for the benefit of such person or his estate.

4. Form and Period within which Claim for Refund of Tax should be made [Section 239 and Rule 41]

With effect from September 1, 2019, the Finance (No. 2) Act, 2019 has amended this provision to provide that the refund can be claimed only through filing of return of income within the time limit prescribed under Section 139.

Extract of Clause 55 of Finance Bill 2019

55. Amendment of section 239.

*In section 239 of the **Income-tax Act**, with effect from the 1st day of September, 2019,--*

(a) in sub-section (1), for the words “in the prescribed form and verified in the prescribed manner”, the words and figures “by furnishing return in accordance with the provisions of **section 139**” shall be substituted;

(b) sub-section (2) shall be omitted.

Note on Clause 55 of Finance Bill 2019

Clause 55 of the Bill seeks to amend section 239 of the Income-tax Act relating to form of claim for refund and limitation. Sub-section (1) of the said section provides that every claim of refund under Chapter XIX of the said Act shall be made in such form and verified in the such manner as may be prescribed.

It is proposed to amend the said sub-section so as to provide that every claim for refund under the said Chapter shall be made by furnishing return in accordance with the provisions of section 139.

It is further proposed to omit sub-section (2) of section 239. These amendments will take effect from 1st September, 2019.

4.2. Condonation of delay in filing the Claim of Refund:

The delay in filing the claim may be condoned by the Assessing Officer and the claim may be disposed off according to merits, under certain circumstances. The Central Board of Direct Taxes (CBDT) has issued the **Circular 9/2015 [F.NO.312/22/2015-OT], dated 9th June 2015** for dealing the matters relating to applications for condonation of delay in filing returns claiming refund and returns claiming carry forward of loss and set-off thereof. This Circular is issued in suppression of all earlier Instructions/ Circulars/ Guidelines issued by the CBDT relating to above discussed matter of condonation. The Circular containing comprehensive guidelines on the conditions for condonation and the procedure to be followed for deciding such matters. The details in this regard (as given in said Circular) are as follows:

4.2.1. The Principal Commissioners of Income-tax / Commissioners of Income-tax (Pr.CsIT / CsIT) shall be vested with the powers of acceptance / rejection of such applications / claims if the amount of such claims is not more than Rs. 10 lakhs for any one assessment year. The Principal Chief Commissioners of Income-tax / Chief Commissioners of Income-tax (Pr.CCsIT / CCsIT) shall be vested with the powers of acceptance / rejection of such applications / claims if the amount of such claims exceeds Rs.10 lakhs but is not more than Rs. 50 lakhs for any one assessment year. The applications/claims for amount exceeding Rs.50 lakhs shall be considered by the CBDT.

4.2.2. No condonation application for claim of refund/loss shall be entertained beyond six years from the end of the assessment year for which such application/claim is made. This limit of six years shall be applicable to all authorities having powers to condone the delay as per the above prescribed monetary limits, including the CBDT. A condonation application should be disposed of within six months from the end of the month in which the application is received by the competent authority, as far as possible.

4.2.3. In a case where refund claim has arisen consequent to a Court order, the period for which any such proceedings were pending before any Court of Law shall be ignored while calculating the said period of six years, provided such condonation application is filed within six months from the end of the month in which the Court order was issued or the end of financial year whichever is later.

4.2.4. The powers of acceptance/rejection of the application within the monetary limits delegated to the Pr.CCsIT / CCsIT / Pr.CsIT / CsIT in case of such claims will be subject to Following conditions:

- At the time of considering the case under Section 119(2)(b), it shall be ensured that the income/loss declared and/or refund claimed is correct and genuine and also that the case is of genuine hardship on merits.
- The Pr. CCIT / CCIT / Pr.CIT / CIT dealing with the case shall be empowered to direct the jurisdictional assessing officer to make necessary inquiries or scrutinize the case in accordance with the provisions of the Act to ascertain the correctness of the claim.

4.2.5. A belated application for supplementary claim of refund (claim of additional amount of refund after completion of assessment for the same year) can be admitted for condonation provided other conditions as referred above are fulfilled. The powers of acceptance/rejection within the monetary limits delegated to the Pr.CCsIT/ CCsIT/ Pr.CsJT / CsIT in case of returns claiming refund and supplementary claim of refund would be subject to the following further conditions:

- The income of the assessee is not assessable in the hands of any other person under any of the provisions of the Act.
- No interest will be admissible on belated claim of refunds.
- The refund has arisen as a result of excess tax deducted/collected at source and/or excess advance tax payment and/or excess payment of self-assessment tax as per the provisions of the Act.

4.2.6. In the case of an applicant who has made investment in 8% Savings (Taxable) Bonds, 2003 issued by Government of India opting for scheme of cumulative interest on maturity but has accounted interest earned on mercantile basis and the intermediary bank at the time of maturity has deducted tax at source on the entire amount of interest paid without apportioning the accrued interest/TDS, over various financial years involved, the time limit of six years for making such refund claims will not be applicable.

4.2.7. The Circular will cover all such applications/claims for condonation of delay under section 119(2)(b) which are pending as on the date of issue of the Circular.

8. The CBDT reserves the power to examine any grievance arising out of an order passed or not passed by the authorities mentioned in para 1 above and issue suitable directions to them for proper implementation of the Circular. However, no review of or appeal against the orders of such authorities would be entertained by the CBDT.

5. Income Tax Refund in case of appeal [Section 240]

As per section 240, in a case where the Income Tax refund becomes due as a result of any order passed in appeal or other proceeding under the Act, the Assessing Officer shall, except as otherwise provided in the Act, refund the amount to the taxpayer without his having to make any claim in that behalf.

However, where –

- an assessment is set aside or cancelled and an order of fresh assessment is directed to be made, the refund, if any, shall become due only on the making of such fresh assessment.
- an assessment is annulled, the refund shall become due only of the amount of the tax paid in excess of the tax chargeable on the total income returned by the taxpayer.

6. Interest on Income Tax refund: [Section 244A]

As per section 244A

- Where the refund arising to the taxpayer is out of any tax deducted / collected at source or tax paid by way of advance tax, then the taxpayer shall be entitled to interest calculated at the rate of one-half percent for every month or part of a month. Interest in such a case shall be allowed for a period commencing from the 1st day of April of the assessment year to the date on which the refund is granted if the return of income is furnished on or before the due date of filing of

return specified under section 139(1) otherwise interest shall be allowed from the date of furnishing of return of income to the date on which the refund is granted

- Where the refund arising to the taxpayer is out of tax paid by way of self-assessment tax then the taxpayer shall be entitled to interest calculated at the rate of one-half percent for every month or part of a month. Interest in such a case shall be allowed for a period commencing from the date of furnishing of return of income or payment of tax, whichever is later, to the date on which the refund is granted.

However, no interest shall be payable if the amount of refund is less than 10% of the tax as determined under section 143(1) or tax determined under regular assessment.

- In any other case (i.e., a case in which refund is due to reasons other than those stated above), interest shall be calculated at the rate of one-half percent for every month or part of a month. Interest in such a case shall be allowed for a period commencing from the date / dates (as the case may be) of payment of the tax or penalty to the date on which the refund is granted.

The expression “**date of payment of tax or penalty**” means the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 156 is paid in excess of such demand.

Note: in cases when assessment has been reframed under provisions of sections 141(1), 143(3), 154, 155, 250, 254, 260, 262 etc., the amount on which the interest was payable was increased / decreased; the interest portion will also increase / decrease accordingly. The Assessing officer may issue demand notice for recovery of excess interest paid in those cases. The denial of interest by the department has not been made unless an opportunity is given to the assessed of hearing.

Assessee has deducted tax source erroneously under Section 194A in respect of payment to IDBI, though no tax was required to be deducted from such payment. On assessee's request, the department granted refund of the amount deducted. The court held that on such refund interest will not be available under section 244A. - **Universal Cables Limited v. At CIT [2010] 191Taxman 370(MP)**,

7. Withholding of Refund of Tax in certain Cases [Section 241A]

Every assessment year commencing on or after the 1st day of April, 2017, where refund of any amount becomes due to the assessee under the provisions of section 143(1) and the Assessing Officer is of the opinion, having regard to the fact that a notice has been issued under 143 (2) in respect of such return, that the grant of the refund is likely to adversely affect the revenue, he may, for reasons to be recorded in writing and with the previous approval of the Principal Commissioner or Commissioner, as the case may be, withhold the refund up to the date on which the assessment is made.

8. Set-Off / Adjustment of Income Tax Refund Against Outstanding Tax Dues [Section 245]

The Assessing Officer empowers under section 245 to adjust Income Tax refund due to any assessee of any assessment year against any outstanding tax due of the previous years. But no adjustment of refund against tax due will be made without giving a notice to the assessee in this regard.

If Assessing Officer has adjusted the refund against tax due without proper notice in this regard to the assessee, then it will be against the provisions of Section 245 and liable to be quashed.

When no intimation in writing is given by the AO prior to proposed action of set off, the adjustment will be in violation of section 245 – **Genpact India v. CIT (2012) 17 Taxmann.com 145 (Delhi) / State Bank of Patiala v. CIT (1999) 105 Taxman 326**

No adjustment of refund due to assessee can be made against outstanding demand without service a proper notice u/s 245 and without giving proper opportunity of hearing to petitioner - **Shiv Narain Shivhare v. Asst. CIT (1996) 88 Taxman 93 / 222 ITR 620(MP)**

The same procedure as above to be followed even in case of refund to be adjusted by CPC at Bengaluru against an outstanding demand of a taxpayer – **Court on its own motion v. CIT (2013) 214 Taxman 335 (Del)**

Revenue cannot make adjustment contrary to procedure prescribed under Section 245 based on the wrong data uploaded by the Assessing Officer. One the amount is correctly and rightly reflected in Form 26AS, small or technical mismatch in return should not be make a ground to deny credit of amount paid. In cases TDS data reflected in Form 26AS requires rectification, notice should be issued to the assessee to revise or correct mistake and only if necessary rectification or correction is made, an order under section 143(1) should be passed and demand should be raised - **As decided in the case Court on its own motion v. CIT [2012] 210 taxman452 (Delhi),**

Where certain assessment had been held to be bad, the amount of tax recovered for such assessment years which become refundable cannot be retained by the department for being adjusted against tax due in respect of other assessment years - **S.S. Ahluwalia v. ITO [1996] 135 CTR (Gauhati) 225,**

Intimation u/s 143(1) is not 'intimation' for purposes of section 245 – **Japson Estate (P) Ltd v. CIT (2006) 285 ITR 40 (A)**

A demand outstanding against any other person cannot be set off against refund due to the taxpayer – **Archana Sukla v. CIT (2000) 112 Taxman 573 (Delhi)**

9. Tax Treatment of Income Tax Refund

Amount of income tax refund corresponds to the excess tax that was paid cannot be treated as an income & not taxable. However, the interest received on excess income tax refund is considered as an income under head 'Income from Other Sources' and is subjected to income tax as per the applicable tax slab applicable to assessee.

RECENT UPDATES IN DIRECT AND INDIRECT TAX

Team TRD

Direct Tax

Compliance	Previous Due Date	Revised Due Date
Income Tax Return (Non Audited) for F.Y 2019-20	31st December 2020	10th January 2021
Tax Audit Report for F.Y 2019-20	31st December 2020	15th January 2021
Income Tax Return (Audited) for F.Y 2019-20	31st January 2021	15th February 2021
Vivad se Vishwas Scheme	31st December 2020	15th February 2021

Indirect Tax

Compliance	Previous Due Date	Revised Due Date
GST Annual Return and Audit (GSTR 9 and GSTR 9C) for F.Y 2019-20	31 st December 2020	28 th February 2021
GST Annual Return and Audit (GSTR 9 and GSTR 9C) for F.Y 2018-19	31 st December 2020	No extension

Ignore prompt on liability for inward supplies attracting reverse charge in Table-3.1 (d)

For more details, please follow- <https://www.gst.gov.in/newsandupdates/read/429>

CBIC has facilitated communication between Recipient and Supplier Taxpayers on GST Portal

For more details, please follow- <https://www.gst.gov.in/newsandupdates/read/433>

CBIC has facilitated auto-population of e-invoice details into GSTR-1/2A/2B/4A/6A

For more details, please follow- <https://www.gst.gov.in/newsandupdates/read/434>

OUTLINE OF QUARTERLY RETURNS MONTHLY PAYMENT (QRMC) SCHEME UNDER GST

Team TRD

Amendments to Section 39(1) of CGST Act, 2017

Section 39(1) as it existed upto 9th Nov2020

Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed, on or before the twentieth day of the month succeeding such calendar month or part thereof.

Section 39(1) substituted by Section 97 of the Finance Act, 2019, w.e.f 10th Nov2020 [vide Notification No 81/2020CT]

Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, *for every calendar month or part thereof*, furnish, *a return*, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars *in such form and manner, and within such time, as may be prescribed*:

Classes of Registered persons is notified {vide Notification No. 84/2020 CT dated 10.11.2020}

Provided that the Government may, on the recommendations of the Council, notify *certain class of registered persons* who shall furnish a *return for every quarter or part thereof*, subject to such *conditions and restrictions as may be specified therein*.

QUARTERLY RETURNS MONTHLY PAYMENT (QRMC) SCHEME {EFFECTIVE FROM JANUARY 2021} [Notification No 84/2020 CT dt 10-11-2020]

❖ Who is Eligible ?

Registered persons who are required to file GSTR3B and having an aggregate turnover of upto Rs 5 cr in the previous financial year.

❖ Who is Not Eligible ?

Registered persons whose aggregate turnover exceeds Rs 5 crore during any quarter in the current financial year.

Person referred to in Section 14 of the IGST Act (OIDAR)

❖ Conditions of the Scheme

- The return for the preceding month as due on the date of exercising option should have been filed.
- Once option is exercised, it will continue to remain until it is changed or the taxpayer becomes ineligible.

MIGRATION TO QRMP SCHEME

For the 1st quarter of the Scheme, the following deeming option is prescribed for taxpayers who have filed the October 2020 GSTR 3B on or before 30th November 2020.

Sl. No	Class of registered person	Deeming Option
1	Registered persons having aggregate turnover of up to 1.5 crore rupees, who have furnished FORM GSTR1 on quarterly basis in the current financial year	Quarterly Return
2	Registered persons having aggregate turnover of up to 1.5 crore rupees, who have furnished FORM GSTR1 on monthly basis in the current financial year	Monthly Return
3	Registered persons having aggregate turnover more than 1.5 crore rupees and up to 5 crore rupees in the preceding financial year	Quarterly Return

Taxpayers who wish to change the default option should do so between 5th Dec 2020 to 31st January 2021 (**Authority: Notification No 84/2020 CT dt 10-11-2020**)

OPTING FOR QRMP SCHEME [NEW RULE 61A OF CGST RULES]

- Option to be exercised on the GST Portal.
- Option to join the Scheme available throughout the year.
- Option can be exercised between the 1st day of the second month of the preceding quarter till the last day of the 1st month of the quarter for which the option is being exercised.
- Option to avail the Scheme is GSTIN wise
- If Turnover crosses Rs 5 cr during the FY, taxpayer to opt out of the scheme from the first month succeeding the quarter when the TO exceeded RS 5 cr.

TIMELINE FOR EXERCISING OPTION UNDER QRMP SCHEME IN A FINANCIAL YEAR

April to June	1 st February to 30 th April
July to September	1 st May to 31 st July
October to December	1 st August to 31 st October
January to March	1 st November to 31 st January

4. To change the filing frequency to Monthly or Quarterly, select the radio button corresponding to the quarter and click the **SAVE** button, to save the preference.

Dashboard > Returns > Opt-in for Quarterly Return English

Opt-in For Quarterly Return Help

Financial Year* 2020-21 SEARCH Annual Aggregate Turnover (AATO) for FY 2019-20: NA Advisory

Quarter	Selected Frequency	Action	Selection available from	Applicable return due dates			
				Form type	Month 1	Month 2	Month 3
Q1 - Apr-Jun	☐ Monthly		1 st Feb 2020 to 30 th Apr 2020	GSTR - 1	11/05/2020	11/06/2020	11/07/2020
				GSTR - 3B	22/05/2020	22/06/2020	22/07/2020
Q2 - Jul-Sep	☐ Monthly		1 st May 2020 to 31 st Jul 2020	GSTR - 1	11/08/2020	11/09/2020	11/10/2020
				GSTR - 3B	22/08/2020	22/09/2020	22/10/2020
Q3 - Oct-Dec	☐ Monthly		1 st Aug 2020 to 31 st Oct 2020	GSTR - 1	11/11/2020	11/12/2020	11/01/2021
				GSTR - 3B	22/11/2020	22/12/2020	22/01/2021
Q4 - Jan-Mar	☐ Monthly	SAVE	1 st Nov 2020 to 31 st Jan 2021	GSTR - 1	NA	NA	13/04/2021
	☒ Quarterly			GSTR - 3B	NA	NA	22/04/2021

BACK CONTINUE TO RETURNS DASHBOARD

PAYMENT OF TAX - AMENDMENTS TO SECTION 39 (7) OF CGST ACT

Section 39 (7) as it existed upto 9th Nov 2020

Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return.

Section 39 (1) substituted by Section 97 of the Finance Act, 2019, w.e.f 10th Nov 2020 [vide Notf No 81/2020 CT]

Every registered person who is required to furnish a return under sub-section (1), other than the person referred to in the proviso thereto, or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return:

Provided that **every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, the tax due** taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars **during a month, in such form and manner, and within such time, as may be prescribed:**



Introducing Quarterly Return Monthly Payment (QRMP) Scheme

Can quarterly filers file Nil return through SMS?

Yes, Quarterly taxpayers may send the following SMS to 14409 to file a Nil GSTR-1 or Nil FORM GSTR-3B




MM should be the last month of the quarter for which the return is being filed.
For example, for the month of June 2020, taxpayer shall send
NIL 3B XXXXXXXXXXXXXXXX 062020 to 14409

To opt in for the scheme → Login > Services > Returns > Opt-in for quarterly return

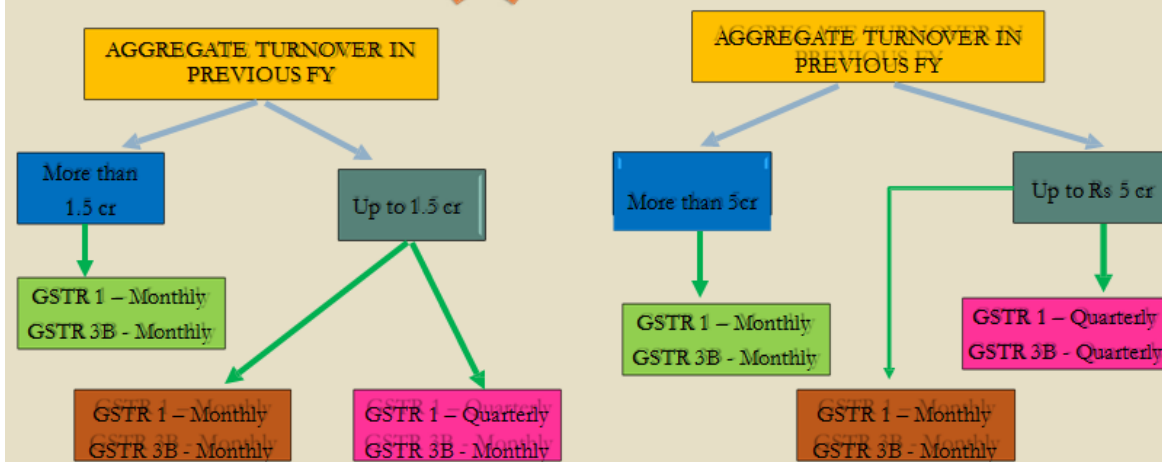
[/gstsystemsindia](#)
[Infosys_GSTN](#)
[/GoodsandServicesTaxNetwork](#)

RETURN FILING STRUCTURE

EXISTING till 31.12.2020



From 01.01.2021



RETURN FILING DUE DATES W.E.F 1st Jan 2021

Category of taxpayers	GSTR-1	Invoice Filing Facility (IFF)	PMT-06 for M 1	PMT-06 for M 2	GSTR 3B
Taxpayers who are required to file monthly return: ---Taxpayers whose aggregate TO is over Rs 5 cr ---Taxpayers who have not opted for ORMP Scheme	11th of the following month	NA	NA	NA	20th of the following month
Taxpayers who have opted for QRMP Scheme	13th day of the month following the quarter	1st to 13th day in M 1 & M 2	25th day of the month following M 1	25th day of the month following M 2	22nd or 24th day of the month following the quarter.

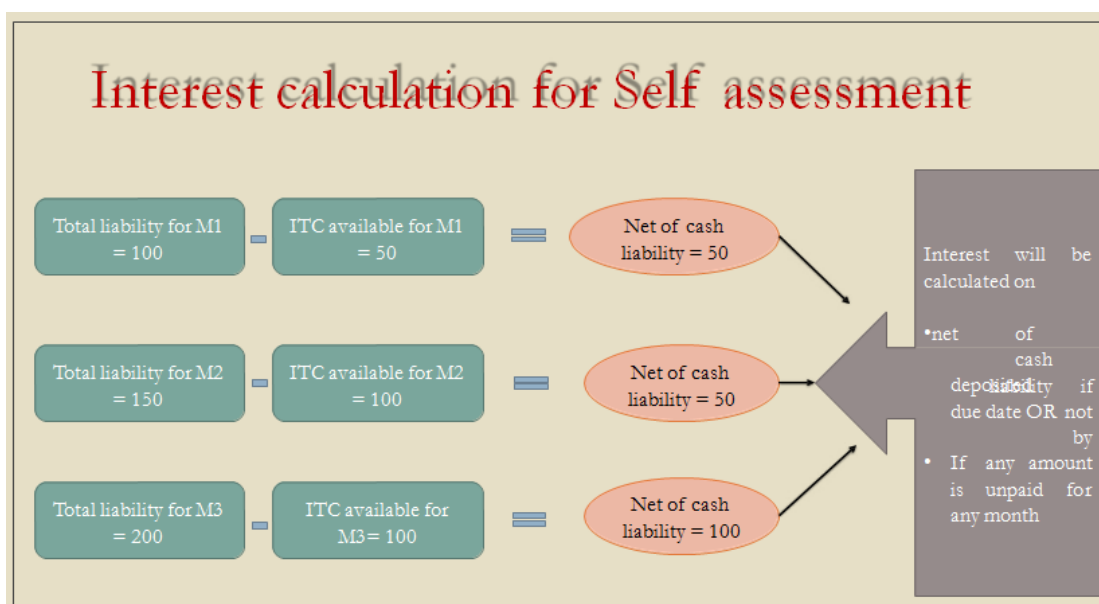
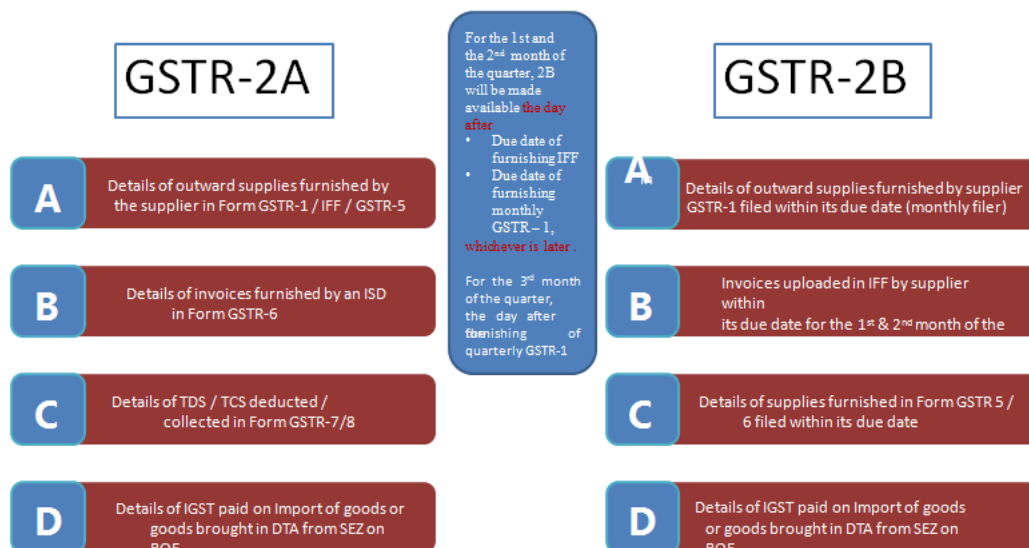
LATE FEE UNDER QRMP SCHEME

- ✓ Late fee is applicable only for the delay in furnishing the GSTR 3B and GSTR 1
- ✓ For quarterly GSTR 3B filers, the late fee will apply only on the delay in furnishing the GSTR 3B for the quarter.
- ✓ No late fee if the PMT-06 is filed beyond the due date during M 1 (1st month of Qtr) and M 2 (2nd month of Qtr).

IMPORTANT POINTS REGARDING GSTR 1 (NOTIFIED VIDE NN 94/2020 CT DT 22-12-2020)

- ✓ A registered person shall not be allowed to file GSTR-1 if he has not furnished the GSTR 3B for the preceding 2 months.
- ✓ A registered person who opted for the QRMP scheme shall not be allowed to furnish the GSTR-1 or use the IFF, if he has not furnished the GSTR-3B for the preceding tax period.
- ✓ With effect from Jan 2021, where the value of taxable supply in a month exceeds Rs 50 lakhs (excluding exempt supply and zero-rated supply), the registered person shall be allowed to use the credit ledger only for discharge of 99% of the tax liability. - (New Rule 86B inserted)
- ✓ A registered person who is restricted from using the amount in the credit ledger in terms of Rule 86B shall not be allowed to file the GSTR-1 or use the IFF if he has not furnished the GSTR-3B for the preceding tax period.

Details of Inward Supplies - New Rule 60 of CGST Rules, w.e.f 1st Jan 2021



INTRODUCING QUARTERLY RETURN MONTHLY PAYMENT (QRMP) SCHEME SUMMARY

- Now, Small Taxpayers with aggregate turnover up to Rs 5 Cr may file their FORM GSTR-1 and FORM GSTR-38 Quarterly
- No Interest applicable if 35% challan is paid by 25th of the succeeding month
- Invoice Furnishing Facility (IFF): An optional Facility for furnishing B2B invoices and passing Input Tax Credit in Month 1 and Month 2 of a quarter
- GSTR-2A view to be provided every month
- Quarterly GSTR-1 and GSTR-38 may be filed through a simple SMS also
- Monthly payment to be done by a simple cha/lan either by self-assessment of monthly liability or
- 35% of net cash liability of previous filed GSTR-38 of the quarter
- No Payment required if you have no liability for the month or your balance in electronic cash or credit ledger is more than your liability
- Different GSTINs on same PAN may file monthly or quarterly in different States
- GSTR-28 view to be provided both Monthly and Quarterly
- Scheme opens on 5th December 2020

To opt In for the scheme __Login> Services > Returns > Opt-Info quarterly return

TAX UPDATES, NOTIFICATIONS AND CIRCULARS

INDIRECT TAX

GST NOTIFICATIONS & CIRCULARS

Notification No. 92/2020

Date-22nd December 2020

Seeks to bring into force Sections 119,120,121,122,123,124,126,127 and 131 of Finance Act, 2020(12 of 2020).

CBIC has appointed the 1st January, 2021, on which the provisions of sections 119, 120, 121, 122, 123, 124, 126, 127 and 131 of the said Act have been effective

Notification No. 93/2020

Date-22nd December 2020

Seeks to waive late fee for FORM GSTR-4 filing in UT of Ladakh for Financial year 2019-20

CBIC has made further amendments in the Notification No. 73/2017- Central Tax, dated the 29th December, 2017:-

In the said notification, after the third proviso, the following proviso shall be inserted, namely: -

“Provided also that the late fee payable for delay in furnishing of FORM GSTR-4 for the Financial Year 2019-20 under section 47 of the said Act, from the 1st day of November, 2020 till the 31st day of December, 2020 shall stand waived for the registered person whose principal place of business is in the Union Territory of Ladakh.”

Interpretation-CBIC has waived late fee on failure to furnish Form GSTR-4 for FY 2019-20, from November 1, 2020 till the December 31, 2020 for the registered person having principal place of business in the Union Territory of Ladakh.

Notification No. 94/2020

Date-28th December 2020

Seeks to make the Fourteenth amendment (2020) to the CGST Rules.2017

CBIC has issued this notification for amendment in CGST Rules to amend the provisions relating to

1. Grant of Registration
2. Power to suspend or cancel GST Registration
3. Manner and extent of utilization of ITC
4. GST Return related amendment
5. E-Way Bills

For more details, please follow- <https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-94-central-tax-english-2020.pdf>

For more details about Corrigendum, please follow- <https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-94-central-tax-corrigendum-2020.pdf>

Notification No. 95/2020
Date-30th December 2020

Seeks to extend the time limit for furnishing of the annual return specified under section 44 of CGST Act, 2017 for the financial year 2019-20 till 28.02.2021

The due date for filling GST Annual Return for F.Y 2019-20 has been extended till 28.02.2021

CUSTOMS

Tariff Notification

Date-18th December 2020

Seeks to confirm the provisional Bilateral Safeguard measure on imports of Phthalic Anhydride originating in Korea RP under the India-Korea Comprehensive Economic Partnership Agreement, and to further amend notification no. 152/2009 dated 31.12.2009 to modify the rate of duty of customs on said imports, on recommendation of final findings of Directorate General of Trade Remedies under the India-Korea Comprehensive Economic Partnership Agreement (Bilateral Safeguard Measures) Rules, 2017.

In case of imports of "Phthalic Anhydride" falling under tariff item 2917 35 00 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) the Director General of Trade initiated an investigation in terms of the India-Korea Comprehensive Economic Partnership Agreement (Bilateral Safeguard Measures) Rules, 2017 vide initiation notification under F.No.22/8/2019-DGTR, dated the 1st October, 2019 in order to determine whether the imports of the subject goods from Korea RP constitute increased imports and whether the increased imports have caused or are threatening to cause serious injury to the domestic industry.

The Authority in its final findings in the Bilateral Safeguard investigation issued vide F.No.22/8/2019-DGTR, dated the 28th September, 2020, has concluded that-

- (i) imports of the product from Korea have increased and constitute "increased imports" within the meaning of the Rules and India-Korea Comprehensive Economic Partnership Agreement;
- (ii) the increased imports have caused serious injury and threatened to cause serious injury to the domestic industry;
- (iii) there exists a causal link between the increased imports of the originating goods due to the reduction or elimination of custom duty under the India-Korea Comprehensive Economic Partnership Agreement and serious injury and threat of serious injury to the domestic industry,

and has confirmed its preliminary findings issued vide notification No. 22/8/2019-DGTR dated the 11th May, 2020 and recommended imposition of bilateral safeguard measure of increasing the rate of customs duty on subject goods originating in Korea RP and imported into India as specified in the aforesaid final findings, from the date of issue of the notification of imposition of provisional measure by the Central Government vide notification No.29/2020-Customs dated 6th July, 2020.

For more details, please follow- <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-tarr2020/cs44-2020.pdf>

Notification No. 45/2020
Date-30th December 2020

Seeks to give effect to the 12th tranche of Tariff Concessions under the trade in Goods Agreement between India and ASEAN

CBIC has made further amendments in the Notification No. 46/2011 dated 1st June 2011

For more details, please follow- <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-tarr2020/cs45-2020.pdf>

Non-Tariff Notification

Notification No. 114/2020 (N.T)

Date-30th December 2020

Exchange rate Notification No.114/2020-Cus (NT) dated 30.12.2020 - Reg.

CBIC has made amendment in the Notification No.113/2020-CUSTOMS (N.T.), dated 17th December, 2020 with effect from 31st December, 2020.

In the SCHEDULE-I of the said Notification, for serial No. 18 and the entries relating thereto, the following shall be substituted, namely: -

Sl. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
(1)	(2)	(3)	
		(For Imported Goods)	(For Exported Goods)
18.	Turkish Lira	10.25	9.65

Notification No. 115/2020 (N.T)

Date-30th December 2020

Courier Imports and Exports (Electronic Declaration and Processing) Amendment Regulations, 2020

CBIC has made following regulations further to amend the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010, namely: -

1. Short title and Commencement. -

(1) These regulations may be called the Courier Imports and Exports (Electronic Declaration and Processing) Amendment Regulations, 2020.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010,-

(i) in regulation 2, after sub-regulation (2), the following sub-regulation shall be inserted, namely:-

“(3) Notwithstanding anything contained in sub-regulation (2), these regulations shall apply to the import of and export of vaccines in relation to COVID-19.”;

(ii) in regulation 6, in sub-regulation (3), for the words “for gifts, samples and prototype of goods”, the words “for bonafide gifts, commercial samples and prototypes of goods and re-export of durable container including accessories thereof, imported in relation to COVID -19 vaccines” shall be substituted;

(iii) in Form H, in the declaration, in paragraph 2, after the words “prototypes of goods”, the words and expression “, empty durable container including accessories thereof, imported in relation to COVID -19 vaccines” shall be inserted.

ANTI-DUMPING DUTY

Notification No. 48/2020 (Add)

Date-30th December 2020

Seeks to rescind notification No. 51/2015-Customs(ADD) dated 21st October, 2015, to revoke ADD imposed on "All Fully drawn or Fully Oriented Yarn/ Spin Draw Yarn/ Flat yarn of polyester (non-textured and non-POY)" originating in or exported from China PR and Thailand

CBIC has rescinded the Notification No. 51/25015-Customs(Add) dated 21st October 2015 except as respects things done or omitted to be done before such rescission

CIRCULARS - CUSTOMS

Circular No. 56/2020
Date-30th December 2020

Import and Export of vaccines in relation to COVID-19 through courier

The Central Board of Indirect Taxes and Customs (CBIC) has eased the norms for import and export of vaccines in relation to COVID-19 through Courier.

In order to facilitate the import or export of vaccines in relation to COVID-19 through Courier, at locations where the Express Cargo Clearance System (ECCS) is operational, the CBIC has issued the Courier Imports and Exports (Electronic Declaration and Processing) Amendment Regulations, 2020. These new regulations amended the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010.

Firstly, the board has allowed the Imports of and exports of vaccines in relation to COVID-19 without any value limitation. Secondly, since the vaccines will be imported in durable containers equipped with the requisite temperature monitoring and tracking devices, sub-regulation (3) of regulation 6 and the declaration in Form H (CSB IV) of the Regulations have been suitably amended to provide for the export of the durable container including accessories thereof, imported in relation to COVID-19 vaccines.

The Board said that the clarifications contained in Circular No.51/2020-Customs, dated November 20, 2020 would apply for the temporary importation and re-export of the durable containers including accessories thereof imported in relation to the COVID-19 vaccines through Courier.

The CBIC directed the commissioners in charge of the International Courier Terminals where ECCS is operational to immediately form a Task Force headed by an officer of the rank of Joint or Additional Commissioner of Customs and comprising of officials from relevant PGAs, Authorized Couriers, Custodians, Airlines and other relevant stakeholders.

The Task force shall adopt a coordinated approach for efficient clearance of vaccines relating to COVID-19.

“The details of the Task Force and the name, designation and contact details of the Joint/ Additional Commissioner of Customs, heading the Taskforce may be given wide publicity through the issue of Public Notices and should also be placed in a conspicuous location in the website of the Commissionerate/ Zone,” the CBIC said.

For more details, please follow- <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2020/Circular-No-56-2020-updated.pdf>

Circular No. 57/2020
Date-30th December 2020

Implementation of PGA e-SANCHIT- Paperless Processing under SWIFT-Uploading of Licenses/Permits/Certificates/Other Authorizations (LPCOs) by PGAs – reg

CBIC's e-SANCHIT application is successfully in operation since 01.04.2018. Aimed at further reducing physical interface between Customs/regulatory agencies and the trade and to increase the speed of clearance in both imports & exports, this application provides a facility to upload digitally signed Licenses/Permits/Certificates/Other Authorizations (LPCOs) by Participating Government Agencies (PGAs) at all ICES locations across India.

In this regard, kindly refer to Board's Circulars No. 44/2018-Cus. dated 13.11.2018, No.13/2019-Cus. dated 03.06.2019, No.19/2019-Cus. dated 16.07.2019, No.03/2020-Cus dated 15.01.2020, No.11/2020-Cus. dated 10.02.2020 and No.24/2020 dated 14.05.2020. Already 51 PGAs have been enabled for

uploading their LPCOs on e-SANCHIT. Reference is also invited to Circular No.55/2020-Customs dated 17.12.2020 vide which Board has decided that w.e.f. 15.01.2021, the supporting documents for justification of claim of duty exemption notification or fulfillment of a CCR requirement etc, shall be mandatorily required to be uploaded in e-SANCHIT along with the Bills of Entry.

For more details, please follow- <https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-circulars/cs-circulars-2020/Circular-No-57-2020.pdf>

DIRECT TAX

Notification No. 91/2020

Date-24th December 2020

Notification related to Yamuna Expressway Industrial Development Authority

The Central Government has notified 'Yamuna Expressway Industrial Development Authority', (PAN AAALT0341D), an authority constituted by the State Government of Uttar Pradesh, in respect of the following specified income arising to that Authority, namely:-

- (a)** Grants received from the State Government;
- (b)** Moneys received from the disposal of land, building and other properties, movable and immovable;
- (c)** Moneys received by the way of rent & fees or any other charges from the disposal of land, building and other properties, movable and immovable;
- (d)** The amount of interest earned on the funds deposited in the banks; and
- (e)** The amount of interest/penalties received on the deferred payment received from the Allottees of various movable or immovable properties.

For more details, please follow-

https://www.incometaxindia.gov.in/communications/notification/notification_91_2020.pdf

PRESS RELEASE

Extension of time limit

1. In view of the challenges faced by taxpayers in meeting the statutory and regulatory compliances due to the outbreak of COVID-19, the Government brought the Taxation and Other laws (Relaxation of Certain Provisions) Ordinance, 2020 ('the Ordinance') on 31st March, 2020 which, inter alia, extended various time limits. The Ordinance has since been replaced by the Taxation and Other laws (Relaxation and Amendment of Certain Provisions) Act.

2. The Government issued a Notification on 24th June, 2020 under the Ordinance which, inter alia, extended the due date for all Income Tax Returns for the FY 2019-20 (AY 2020-21) to 30th November, 2020. Hence, the returns of income which were required to be filed by 31st July, 2020 and 31st October, 2020 were required to be filed by 30th November, 2020. Consequently, the date for furnishing various audit reports including tax audit report under the Income tax Act, 1961 (the Act) was also extended to 31st October, 2020.

3. In order to provide more time to taxpayers for furnishing of Income Tax Returns, the due date was further extended vide notification No 8812020/F. No. 37014213512020-TPI dated 29th October, 2020,

- a) The due date for furnishing of Income Tax Returns for the taxpayers (including their partners) who are required to get their accounts audited (for whom the due date (i.e. before the said extension) as per the Act was 31st October, 2020) was extended to 31st January, 2021 .
- b) The due date for furnishing of Income Tax Returns for the taxpayers who are required to furnish report in respect of international/specified domestic transactions (for whom the due date (i.e. before the said extension) as per the Act was 30th November, 2020) was extended to 31st January, 2021.
- c) The due date for furnishing of Income Tax Returns for the other taxpayers (for whom the due date (i.e. before the said extension) as per the Act was 31st July, 2020) was extended to 31st December, 2020.
- d) Consequently, the date for furnishing of various audit reports under the Act including tax audit report and report in respect of international/specified domestic transaction was also extended to 31st December, 2020.

4. Considering the problems being faced by the taxpayers, it has been decided to provide further time to the taxpayers for furnishing of Income Tax Returns, tax audit reports and declaration under Vivad Se Vishwas Scheme. Further, in order to provide more time to taxpayers to comply under various ongoing proceedings, the dates of completion of proceedings under various Direct Taxes & Benami Acts have also been extended. These extensions are as under:

- a) The due date for furnishing of Income Tax Returns for the Assessment Year 2020-21 for the taxpayers (including their partners) who are required to get their accounts audited and companies [for whom the due date, as per the provisions of section 139(1) of the Income-tax Act, 1961, was 31st October, 2020 and which was extended to 30th November, 2020 and then to 31st January, 2021) has been further extended to 15th February, 2021 .
- b) The due date for furnishing of Income Tax Returns for the Assessment Year 2020-21 for the taxpayers who are required to furnish report in respect of international/specified domestic transactions [for whom the due date, as per the provisions of section 139(1) of the Income- tax Act, 1961 , was 30th November, 2020 and which was extended to 31st January, 2021] has been further extended to 15th February, 2021 .
- c) The due date for furnishing of Income Tax Returns for the Assessment Year 2020-21 for the other taxpayers [for whom the due date, as per the provisions of section 139(1) of the Income- tax Act, 1961 , was 31st July, 2020 and which was extended to 30th November, 2020 and then to 31st December, 2020) has been further extended to 10th January, 2021 .
- d) The date for furnishing of various audit reports under the Act including tax audit report and report in respect of international/specified domestic transaction for the Assessment Year 2020-21 has been further extended to 15th January, 2021 .
- e) The last date for making a declaration under Vivad Se Vishwas Scheme has been extended to 31 11 January, 2021 from 31st December, 2020.
- f) The date for passing of orders under Vivad Se Vishwas Scheme, which are required to be passed by 30th January, 2021 has been extended to 31st January, 2021 .

- g) The date for passing of order or issuance of notice by the authorities under the Direct Taxes & Benami Acts which are required to be passed! issued made by 30th March, 2021 has also been extended to 31st March, 2021 .

5. Further, in order to provide relief for the third time to small and middle class taxpayers in the matter of payment of self-assessment tax, the due date for payment of self-assessment tax date is hereby again being extended. Accordingly, the due date for payment of self-assessment tax for taxpayers whose self-assessment tax liability is up to Rs. 11akh has been extended to 15111 February, 2021 for the taxpayers mentioned in para 4(a) and para 4(b) and to 10" January, 2021 for the taxpayers mentioned in para 4(c).

6. The Government has also extended the due date of furnishing of annual return under section 44 of the Central Goods and Services Tax Act, 2017 for the financial year 2019-20 from 3111 December, 2020 to 28111 February, 2021 .

7. The necessary notifications in this regard shall be issued in due course

DIRECT TAX

Income Tax Department conducts searches in Chandigarh

Date-16th December 2020

The Income Tax Department carried out search and seizure operations on 13.12.2020 in the case of a Chandigarh based listed pharmaceutical company and its associated concerns. A total of 11 premises were covered spanning Chandigarh, Delhi and Mumbai.

The primary allegation against the group was that the assessee company had purchased 117 acres of Benami land in Indore, in the name of a conduit company. During the search, ample evidence has been found and seized which clearly establishes that the Benami company is a conduit of the pharmaceutical company with no real business activity. All the dummy directors and shareholders of the Benami company have also admitted in their respective statements that the company was a shell company with no real business activity and the land in Indore had been bought from the funds of the listed company for the benefit of the Managing Director.

The company was in the process of selling off this Benami land. Hot pursuit enquiries were conducted and an "agreement to sell" of the Benami land containing cash receipt of Rs. 6 crore was also found from the possession of the prospective buyers. The buyers have admitted in their statements that the deal was negotiated by the Managing Director and the agreement for the sale of the Benami land was signed in the office of the Managing Director. The buyers have also admitted that they had given unaccounted cash amounting to Rs. 6 crore on various dates through one hawala operator. The hawala operator in his statement, has also given a detailed modus operandi of cash transfer along with the exact dates and amounts of handing over of the cash by him in the office of the listed company.

Investigations have also proved that the Managing Director has claimed wrongful interest expense of Rs. 2.33 crore under Section 23 of the Income-tax Act, 1961 by showing his self-occupied property as a rented property to his sons.

Cash amounting to Rs. 4.29 crore and jewellery amounting to Rs. 2.21 crore have been seized so far. 3 lockers have been put under restraint.

Further investigations regarding the holding of Benami shares worth Rs. 140 crore by the HUF of the Managing Director and bogus purchases of substantial amounts are in progress.

Income Tax Department conducts searches in Tamil Nadu

Date-17th December 2020

The Income Tax Department carried out searches on 14.12.2020 in a group case from Erode in Tamil Nadu, covering 15 premises at Erode and Chennai. The group is a leading civil contractor for Government works, specialized in erecting Seawave breaks along the coastlines and diversified into bus transport, running marriage halls and food masala business.

The highlight of the search is seizure of Rs. 21 crore of unaccounted cash. It was found that the group indulges in inflation of purchases and other work contract expenses. Such inflated payments made to the suppliers and subcontractors are received back in cash regularly. The unaccounted income thus generated comes to around Rs. 700 crore, which is ploughed back into real estate investments and business expansion. Out of this, the assessee has admitted to having undisclosed income of Rs. 150 crore, so far.

Overall there is a detection of Rs. 700 crore of unaccounted income and a seizure of Rs. 21 crore of unaccounted cash as a result of this search.

Further investigations are in progress.

Income Tax Department conducts searches in Guwahati **Date-26th December 2020**

Income Tax Department started a Search and Survey action on 22.12.2020 in the cases of three leading contractors of North Eastern India. One of the groups is also into Hospitality business. The Search and Survey actions are being carried out at 14 locations in Guwahati, Delhi, Silapathar and Pathsala (Assam).

The main allegations against the three groups are that they have taken accommodation entries in the form of non genuine unsecured loans and also securities premium from dubious Kolkata based shell companies. The three groups have suppressed their net profits across the years and routed back into business the unaccounted income through entry operators based out of Guwahati and Kolkata.

During the course of Search actions, it has been established that the shell companies from which loans/premium had been taken exist only on paper and have no real business and creditworthiness. The entry operators, on being questioned, have admitted that the unsecured loans/share premium from the shell companies to the groups are non-genuine and bogus. Evidences of the cash trail of routing of funds through Securities premium was unearthed during search. It has been established that amounts to the tune of about Rs. 65 crore were routed back into regular books involving Shell companies which actually represent unaccounted income of the group. Further investigation is on to detect the actual quantum involved in tax evasion using this modus operandi.

It has been gathered during the Search action that one of the groups engages in huge cash transactions in hospitality business of proportions as high as 50%, which is under examination. It has been further gathered that some of the entities of the groups engage in purchases of Jewellery in cash. The source of the cash purchases are under examination.

Till now, Jewellery to the tune of Rs. 9.79 lakh has been seized. The sources of acquisition of remaining Jewellery found exceeding Rs. 2 crore are under verification. Cash of Rs 2.95 crore has also been seized. Overall, undisclosed income to the tune of approximately Rs. 100 crore has been unearthed so far during the Search and Survey operation. One locker has been found, which is yet to be operated. Further investigations are under progress.

Income Tax Department conducts searches in Delhi **Date-29th December 2020**

The Income Tax Department carried out search and seizure action on a number of hawala operators engaged in the activity of routing and handling unaccounted cash in Delhi region.

The search action has resulted in unearthing of incriminating evidences revealing various shell entities being used for raising bogus purchase/sale bills, and routing of unaccounted funds through several layers of bank accounts. Such shell entities are closed after two months, and new ones are formed.

Further, incriminating documents evidencing suppression of sales and bogus purchases in excess of Rs. 300 crore is detected.

The search action has resulted in seizure of unaccounted cash of Rs. 14 crore and Bullion worth Rs. 2 crore.

Further investigations are in progress.

JUDGEMENTS

INDIRECT TAX

AAAR affirms no Concessional Rate of 12% GST applicable for Work Contract Services supplied to KSEB

Fact of the Case

- The Kerala State Electricity Board has awarded the work of execution of civil works of PazhassiSagar Small Hydro electric project to the Appellant, M/s R.S. Development and Construction Pvt. Ltd. as per Work Order.
- As per the work order, the work involves construction of intake structure, leading channel, tunnel powerhouse, tailrace, civil works of the switchyard access roads and other allied works, fabrication and erection of Steel liners and specials from tunnel portal to powerhouse trash rack, intake gate, draft tube gate and Hoisting arrangements.

The applicant has sought advance ruling on the issue of whether the execution of Civil works of the PazhassiSagar Small Hydro Electric project as per the above Work Order would fall under Sl No. 3(iii)(b) or 3(vi) of Notification No.11/2017-Central Tax (Rate) dated June 28, 2017 attracting 12% GST.

Decision of the Case

- The lower authority ruled that the rate of 6% under Sl. No. 3(111) or Sl. No. 3(vi) of the Notification No. 11/2017-Central Tax (Rate) dated June 28, 2017 is not applicable for Works Contract Services supplied by the Applicant to the KSEB as per Work Order No. 06/CE CCN/2017-18 dated October 6, 2017.
- The contention of the appellant that the Advance ruling in question is in violation of the principles laid down by the decision of the 25th GST council meeting.
- The Coram clarified that Kerala State Electricity Board Ltd falls under the category of a Government entity for the purpose of the said exemption. The Authority further observed that the supply of services in relation to the execution of

the civil works of Pazhassi small hydroelectric project covered under Work order No. 06/CEECCN/ 2017-18 dated October 6, 2017, made by the appellant to the Kerala State Electricity Board Ltd **are not eligible to concessional rate of 6% CGST provided by the said notification No. 11/2017-Central Tax (Rate) dated June 28, 2017.** Therefore, the services provided by the applicant shall not be eligible for a concessional rate of SGST 6% also in terms of notification No. SRO 370/2017 dated June 30, 2017, since the CGST statutory provisions are parimateria with State GST provisions.

The Kerala Appellate Authority of Advance Ruling (AAAR) while affirming the AAR's ruling held that no concessional rate of 12% GST applicable for work contract services supplied to Kerala State Electricity Board.

.....

18% GST applicable on Construction of Directors Bungalow and Construction of Staff or Faculty Quarters in IIT, Bhubaneswar: AAR

Fact of the Case

- The applicant, M/s NBCC (India) Limited has been awarded construction of Directors Bungalow, staff Quarters, Faculty Quarters in the IIT Campus, Bhubaneswar. The civil construction of residential quarters is not the primary work entrusted to IIT, Bhubaneswar.

The advance ruling was sought on the issue which was related to the issue of construction of Directors Bungalow and construction of staff or faculty quarters.

Decision of the Case

- The Coram said that the intention of the Legislature has been to allow concessional rate to such work which has been entrusted to a Government entity for public interest in general, but extrapolating and extending this concessional rate to any or all activities of IIT, Bhubaneswar will not

only be unwarranted but also defeat the very purpose of concessional rate.

- The AAR ruled that construction of Directors Bungalow and construction of staff/faculty quarters is out of purview of exemption provided under Notification No. 11/2017 C.T. (Rate), dated June 28, 2017 and would attract 18% GST.
- The AAR ruled that the works entrusted to the Applicant by IIT, Bhubaneswar under contract/agreement dated May 2, 2016, cannot be termed as composite supply and thus entire work under the said contract shall not be entitled to concessional rate in terms of Notification No. 11/2017-C.T. (R), dated June 28, 2017. However, the AAR also held that the supply of goods and/or services or both which squarely fall within the ambit of the scope of work entrusted to HT, Bhubaneswar by Government of India shall be entitled to a concessional rate under Sr. No. 3(vi) to Notification No. 11/2017-C.T. (R). Accordingly, each and every supply under the subject contract shall be treated separately for determining the rate of tax under the CGST Act, 2017 read with the provisions of the GST Tariff and respective exemption notifications.

The Odisha Authority of Advance Ruling (AAR) ruled that 18% GST applicable on the construction of the Director's Bungalow and the construction of staff or faculty quarters in IIT, Bhubaneswar.

.....

No GST on Reverse Charge basis applicable on Supply of Service to Odisha Power Transmission Corporation Ltd: AAR

Fact of the Case

- The applicant M/s Tokyo Electric Power Company Service Limited (TEPSCO), a Japan based company, in association with Tokyo Electric Power Company, Holding Inc., a Japan based Company has entered into an agreement dated 13 April 2018 with an Indian entity Odisha Power Transmission Corporation Limited (OPTCL), whereby consultants have agreed to provide consultancy services to M/s Odisha Transmission System Improvement Project, Odisha, India.

The applicant has sought for a ruling as to whether the Applicant is required to be

registered under Odisha Goods and Services Act, 2017 and Central Goods and Services Act, 2017 for the consultancy services provided to Odisha Power Transmission Corporation Limited (OPTCL).

Decision of the Case

- The Coram said that supply of service to OPTCL is not an import of service in terms section 2(11) of the IGST Act. The recipient is not, therefore, liable to pay GST on a reverse charge basis in terms of Notification No. 10/2017 – integrated Tax (Rate) dated 28.06.2017. The applicant, being the supplier of service in India, is liable to pay tax and therefore, required to take GST registration under Odisha Goods and Services Act, 2017 and Central Goods and Services Act, 2017 for the consultancy services provided to Odisha Power Transmission Corporation Limited. However, the AAR clarified that the ruling is valid subject to the provisions under Section 103(2) until and unless declared void under Section 104(1) of the GST Act.

The Odisha Authority of Advance Ruling (AAR) ruled that no Goods and Service Tax (GST) on a reverse charge basis is applicable on Supply of service to Odisha Power Transmission Corporation Limited.

.....

Caroa Properties not guilty of Profiteering, rules NAA

Fact of the Case

- The Profiteering watchdog directed the DGAP under rule 133(5) of the Central Goods and Services Tax Rules, 2017 to conduct investigation to find out whether the Respondent had availed the benefit of Input Tax Credit (ITC) which was required to be passed on to the eligible recipients as per the provisions of section 171(1) of the Central Goods & Service Tax (CGST) Act, 2017 in respect of two others projects namely “Golf meadows Godrej City Phase II” and “EWS”.
- The DGAP reported that no profiteering was found in the case of the projects investigated in the instant investigation and therefore, Section 171(1) of the Central Goods and Services Tax Act, 2017 was not attracted against “Caroa Properties

LLP” in the present case as all the events like the launch of projects, bookings and allotment of the flats had happened in the post GST era.

Decision of the Case

- The NAA noted that the Respondent had launched the subject projects in the post-GST regime and there was not any demand raised by the Respondent in the pre-GST regime. The registration and approval of the project and receipt of the payments had taken place in the post-GST regime and hence, there was no pre-GST tax rate or ITC which could be compared with the post-GST tax rate and ITC.
- On this basis, the DGAP has reported that the Respondent had neither benefited from additional ITC nor had there been a reduction in the tax rate in the post-GST period and therefore it did not qualify to be a case of profiteering. Therefore, the NAA held that the respondent has not contravened the provisions of Section 171 of the CGST Act 2017.

The National Anti-Profiteering (NAA) while agreeing to the DGAP’s report held that the respondent, Caroa Properties LLP is not guilty of profiteering.

.....

ITC can be availed on distribution of promotional products to distributors/ franchisees free of cost as a promotional activity, rules AAR

Fact of the Case

- The applicant, M/s Paper Industries Ltd. is engaged in the manufacture, distribution marketing of Knitted and Woven Garments under the brand name of “Jockey”, Swim-wears and Swimming Equipments under the brand name of “SPEEDO”. The applicant also gets the said garments manufactured from their job workers.

The applicant has sought the advance ruling on the issue whether the promotional products or Materials and Marketing Items used by the Applicant in promoting their brand and marketing their products can be considered as “inputs” as defined under section 2(59) of the CGST Act, 2017 and GST paid on the same can

be availed as input tax credit in terms of section 16 of the CGST Act, 2017.

Decision of the Case

- The coram ruled that the ITC on GST paid on the procurement of the “distributable” products which are distributed to the distributors, franchisees is allowed as the said distribution amount to supply to the related parties which is exigible to GST.
- The AAR, further clarified that the distribution to the retailers for their use cannot be claimed as gifts to the retailers or to their customers free of cost and hence ITC of GST paid on such procurement is not allowed as per Section 17(5) of the GST Acts.
- The Authority also said that the GST paid on the procurement of “non-distributable” products qualify as capital goods and not as “inputs” and the applicant is eligible to claim the input tax credit on their procurement, but in case if they are disposed of by writing off or destruction or lost, then the same needs to be reversed under Section 16 of the CGST Act, 2017 read with Rule 43 of the CGST Rules, 2017.

The Karnataka Authority of Advance Ruling (AAR) held that the Input Tax Credit (ITC) can be availed on the distribution of promotional products to distributors or franchisees free of cost as a promotional activity.

.....

DIRECT TAX

Capital Gain Deduction allowable for Purchase of House Property Abroad
Joseph K. Zachariah Vs ACIT
(International Taxation) (ITAT
Bangalore)
Case No.- IT(IT)A No. 879/Bang/2019
Date- 23/12/2020

Fact of the Case

- In the present case Joseph K. Zachariah is the assessee
- The assessee, Joseph K. Zachariah earned long term capital gain at Rs.10.18 Crores. The assessee has invested in construction of a new residential house within the due date under section 139(1) of the Act.

- The assessee is having balanced capital gains, which ought to have been used for construction of residential houses or should have been deposited in the capital gain account notified by the Central Government in terms of section 54(2) of the Act. The assessee has not invested an amount which should have been invested in a capital gain account scheme.
- However, by that time, he has not utilized the amount in construction of new residential houses or deposited the same in the capital gain account scheme as notified by the Central Government.
- The assessee contended that even if the assessee deposited an unutilized portion of capital gain after the due date provided under section 139(1) of the Act, assessee is entitled for deduction under section 54 of the Act.

Decision of the Case

- The Coram headed by the Vice President, N.V. Vasudevan directed that the assessee shall furnish necessary evidence of construction or purchase of new residential property in Chicago, USA and also directed the AO has to examine the same and decide the issue in the parameters of section 54F of the Act.
- The Income Tax Appellate Tribunal (ITAT), Bangalore Bench held that the capital deduction is allowable for purchase of house property abroad.

No Tax on Compensation received for loss of Trees

M/s. Flower valley Agro Tech Pvt.Ltd. vs.

Income Tax Officer, Mumbai

Case No.- I.T.A. No.4261/Mum/2019

Date- 21/12/2020

Fact of the Case

- In the present case M/s. Flower valley Agro Tech Pvt.Ltd. is the assessee
- The assessee is a corporate resident and is engaged in the business of manufacturing and trading of essential oil, plantations & extraction of essential oils.
- An assessment was framed under section 143(3) wherein returned loss of Rs.22.22 Lakhs was reduced to Rs.12.08 Lakhs in view of addition of Rs.10.14 Lakhs under the head Income from other sources. The

sum of Rs.10.14 Lakhs was received by the assessee from Assam Electricity Grid Corporation for cutting of trees on assessee's land for heavy electric lines.

- The Agarwood trees weighing 4100 Kgs as obtained from cutting of trees were sold for Rs.2.05 Lacs which has been claimed as well as accepted to be an agricultural income.
- The assessee pleaded that the compensation so received shall either be capital receipt not chargeable to tax or alternatively, it would be in the nature of agricultural income exempt under section 10(1).
- It was submitted before the CIT(A) that the trees grown, nursed and protected by the company since the last many years was a capital asset from which regular income was derived from year to year. Cutting the tree permanently was a loss of capital asset. However, the CIT(A) rejected the contention.

Decision of the Case

- The coram consisting of Amarjit Singh and Manoj Kumar Aggarwal noted that the trees so cut by the assessee would form part of its trading operations since the assessee would be earning revenue by utilizing these trees. Had the trees not been cut, the assessee would have earned more revenue from the trees.
- The Tribunal observed that any compensation received in lieu of loss thereof would form part of assessee's trading operations. The same is evident from the fact that cut trees sold by the assessee constituted its trading income and the same were accepted to be agricultural income.
- Therefore, the ITAT held that similar treatment was to be given to the compensation received for loss of trees. It would akin to a situation where the assessee lost its trading stock and received compensation for loss of the stock. Such case no tax is applicable on compensation received for loss of trees

Cess paid can be deducted while computing Income chargeable under the head 'Profits and Gains of Business or Profession Overseas Polymers Private Limited vs. The ACIT, Mumbai

Fact of the Case

- In the present case Overseas Polymers Private Limited is the assessee
- The assessee, Overseas Polymers Private Limited has filed an additional ground of appeal to claim deduction for the payment made by it towards education cess and secondary and higher education cess.
- The counsel for the assessee, Mr. Dhanesh Bafna submitted that the judicial position on admissibility of the deduction for amounts paid towards education cess and secondary & higher education cess is now settled pursuant to the decision of the Bombay High Court in the case of Sesa Goa Ltd. v. JCIT and the Rajasthan High Court in the case of Chambal Fertilizers & Chemicals Ltd. v. CIT, wherein it is held that the expression “cess” ought not to be read or included in the expression “any rate or tax levied” as appearing in section 40(a)(ii) of the Act.
- On the other hand, the Departmental Representative, Manpreet Duggal argued that “cess” is nothing but “tax” and therefore, there is no question of deduction of amounts paid towards “cess” when it comes to computation of income chargeable under the head “profit or gains of any business or profession”.

Decision of the Case

- The coram consists of Saktijit Dey and N.K. Pradhan in the light of the Sesa Goa Ltd. v. JCIT and Chambal Fertilizers & Chemicals Ltd. v. CIT noted that the legislature in Section 40(a)(ii) has though provided that “any rate or tax levied” on “profits and gains of business or profession” shall not be deducted in computing the income chargeable under the head “profits and gains of business or profession”, but then there was no reference to any “cess”.
- The tribunal also observed that there was no scope to accept that “cess” being in the nature of a tax was equally not deductible in computing the income chargeable under the head “profits and gains of business or profession”. It is further observed that if the legislature would had intended to prohibit the deduction of amounts paid by an assessee towards say, “education cess”

or any other “cess”, then, it could have easily included a reference to “cess” in clause (ii) of Section 40(a).

- Therefore, the ITAT held that there was no prohibition on the deduction of any amount paid towards “cess” in Section 40(a)(ii), while computing the income chargeable under the head “profits and gains of business or profession”.
- “The assessee shall be entitled to a deduction of education cess and higher & secondary education cess while computing income chargeable under the head “profits and gains of business or profession”,” the ITAT said.

Relief to Tata Trusts: ITAT quashes Revised Assessment order passed by Tax Department

Dorabji Tata Trust vs. Deputy Commissioner of Income Tax, Mumbai
Case No.- 3909/Mum/2019
Date-28/12/2020

Fact of the Case

- In the present case Sir Dorabji Tata trust and Ratan Tata Trust are the applicant
- The first grievance of the Commissioner was that the payments made by trustees, including R. Venkataramanan and A.N. Singh, were in violation of the provisions of the trust deed.
- The Commissioner said that there was no effort by the assessing officer even to examine the reasonableness of payments made to the trustees in relation to the services rendered by the trustees, that some of the basic details were not even available during the assessment proceedings, and the fact that the payments to trustees were routed through Tata Sons Limited and Tata Services Limited should have provoked further detailed inquiries by the Assessing Officer.
- According to the Commissioner, shows that the Assessing Officer, during the course of the assessment proceedings, did not conduct due inquiries in the matter, and it is this inertia of the Assessing Officer which has rendered the related assessment order erroneous and prejudicial.
- It said that there has been no change in the above position for more than four decades. In all the past years, the assessee has been more granted exemption under section 11.

It has also submitted that section 263 cannot be applied to a matter on which no addition has been made by the revenue for several decades.

Decision of the Case

- The coram consisting of Headed by the President Justice P P Bhatt and Vice President, Pramod Kumar said that the current financial period was over forty years after the cut-off date of June 1, 1973, and in none of those forty-plus years, the exemption was declined on the ground that these shares were not part of the corpus.
 - ITAT said that the Commissioner had acknowledged that Cyrus Mistry had flagged some of these issues after he was ousted as the Chairman of Tata Sons.
 - His action of supplying documents to the income tax department, without any authorization of the company even though which were apparently obtained by him in the fiduciary capacity, almost immediately after being removed as Chairman of the Tata Sons, cannot be said to be influenced by call of pure conscious and high ground of morality, the ITAT added.
 - "The investment in Tata Sons by the assessee trust is not thus for the purpose of investment in shares, but this shareholding being held by the assessee trust is undisputedly for the purpose of sharing the fruits of the success, of the Tata Group, for the benefit of the general public at large.
 - The Income Tax Appellate Tribunal (ITAT), Mumbai Bench in a major relief to the Tata Trusts quashed the revised assessment order passed by the tax department
-

Penalty can't be imposed where Concealment of Income has not been proven

Fact of the Case

- In the present case the assessee is a person on whom penalty has been imposed without proper ground
- The assessing officer had initiated penalty proceedings against the respondent-assessee under Section 271(1)(c) of the Act and issued notices dated 30th December, 2006 under Section 274 read with Section 271(1)(c) of the Act for the respective assessment years.

- After considering the reply to the notice, the Assessing Officer levied the penalties for relevant years.
- The penalty order was challenged before the CIT(A), which confirmed the said order. Thereafter, it was challenged before the ITAT wherein the appeal of the assessee was allowed and the penalty amount was deleted vide the impugned order.

Decision of the Case

- The division bench of Justice Manmohan and Justice Sanjeev Narula noted that levy of penalty cannot be a matter of course, as sought to be contended by the Revenue. It can only be levied in cases where the concealment of income has been proven.
- If the quantum order itself has been challenged and this Court has framed substantial questions of law in the appeal preferred by the respondent-assessee, it shows that the alleged concealment is not final and the issue is disputable.

TAX COMPLIANCE CALENDAR AT A GLANCE

GST CALENDAR

Due Date	Form No.	For the period
10.01.2021	GSTR 7	December 2020
10.01.2021	GSTR 8	December 2020
11.01.2021	GSTR 1	December 2020[Taxpayers having an aggregate turnover of more than Rs. 1.50 Crores or opted to file Monthly Return]
13.01.2021	GSTR 1	For the quarter October to December 2020
13.01.2021	GSTR 6	December 2020
18.01.2021	CMP-08	For the quarter October to December 2020
20.01.2021	GSTR 5 & 5A	December 2020
20.01.2021	GSTR 3B	December 2020[having an Annual Turnover of more than 5 Crores]
22.01.2021	GSTR 3B	December 2020[Taxpayer having turnover upto Rs.5 crores in previous financial year (monthly return) in the state of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, Daman & Diu, and Dadra & Nagar Haveli, Puducherry, Andaman, and Nicobar Islands, Lakshadweep]
24.01.2021	GSTR 3B	December 2020[Taxpayer having turnover upto Rs.5 crores in previous financial year (monthly return) in the state of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand, Odisha, Jammu and Kashmir, Ladakh, Chandigarh, Delhi]

DIRECT TAX CALENDAR – JANUARY, 2021

07.01.2021

- Due date for deposit of Tax deducted/collected for the month of December, 2020. However, all the sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan
- Due date for deposit of TDS for the period October 2020 to December 2020 when Assessing Officer has permitted quarterly deposit of TDS under section 192, section 194A, 194D or 194H

10.01.2021

- Return of income for the assessment year 2020-21 for all assessee other than (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) 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.

Note: The due date for filing of return has been extended to January 10, 2021 vide Press Release, dated 30-12-2020.

14.01.2021

- Due date for issue of TDS Certificate for tax deducted under section 194-IA and 194-IB and also 194M in the month of November, 2020

15.01.2021

- Due date for furnishing of various audit reports including tax audit report and report in respect of international/specified domestic transaction for the Assessment Year 2020-21.

Note: The due date for furnishing of various audit reports including tax audit report and report in respect of international/specified domestic transaction has been extended to January 15, 2021 vide Press Release, dated 30-12-2020.

- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of December, 2020 has been paid without the production of a challan
- Quarterly statement of TCS for the quarter ending December 31, 2020
- Quarterly statement in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for quarter ending December, 2020
- Due date for furnishing of Form 15G/15H declarations received during the quarter ending December, 2020

30.01.2021

- Quarterly TCS certificate in respect of quarter ending December 31, 2020
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of December, 2020
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of December, 2020
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of December, 2020

31.01.2021

- Quarterly statement of TDS for the quarter ending December 31, 2020
- Quarterly return of non-deduction at source by a banking company from interest on time deposit in respect of the quarter ending December 31, 2020
- Intimation under section 286(1) in Form No. 3CEAC, by a resident constituent entity of an international group whose parent is non-resident
- Furnishing of declaration to opt for Vivad se Vishwas Scheme.

COURSES OFFERED BY TAX RESEARCH DEPARTMENT

Eligibility criterion for admission in TRD Courses

- The members of the Institute of Cost Accountants of India
- Other Professionals (CS, CA, MBA, M.Com, Lawyers)
- Executives from Industries and Tax Practitioners
- Students who are either CMA qualified or CMA pursuing

EXISTING COURSES

CERTIFICATE COURSE ON TDS

Course Fee - Rs. 10,000 + 18% GST
20% Discount for Members, CMA Final Passed Candidates and CMA Final pursuing Students

Exam Fees - Rs. 1, 000 + 18% GST
Duration – 30 Hours
Mode of Class – Online

CERTIFICATE COURSE ON INCOME TAX RETURN FILLING

Course Fee - Rs. 10,000 + 18% GST
20% Discount for Members, CMA Final Passed Candidates and CMA Final pursuing Students

Exam Fees - Rs. 1, 000 + 18% GST
Duration – 30 Hours
Mode of Class – Online

CERTIFICATE COURSE ON GST

Course Fee - Rs. 10,000 + 18% GST
20% Discount for Members, CMA Final Passed Candidates and CMA Final pursuing Students

Exam Fees - Rs. 1, 000 + 18% GST
Duration – 72 Hours
Mode of Class – Online

* *Special Discount for Corporate*

ADVANCED CERTIFICATE COURSE ON GST

Course Fee - Rs. 14,000 + 18% GST
20% Discount for Members, CMA Final Passed Candidates and CMA Final pursuing Students

Exam Fees - Rs. 1, 000 + 18% GST
Duration – 40 Hours
Mode of Class – Online

CRASH COURSE ON GST FOR COLLEGE AND UNIVERSITY

Batch Size – 50 (Minimum)

Eligibility criterion - B.COM/B.B.A pursuing or completed
M.COM/M.B.A pursuing or completed

Course Fee - Rs. 1,000 + 18% GST
Exam Fees - Rs. 200 + 18% GST
Course Duration - 32 Hours

NEW COURSES

ADVANCED COURSE ON GST AUDIT AND ASSESSMENT PROCEDURE

Course Fee - Rs. 12,000 +18% GST [Including Exam Fee]
Duration – 30 Hours
Mode of Class – Online

ADVANCED COURSE ON INCOME TAX ASSESSMENT AND APPEAL

Course Fee - Rs. 12,000 +18% GST [Including Exam Fee]
Duration – 30 Hours
Mode of Class – Online

For enquiry about courses, mail at – trd@icmai.in

E-PUBLICATIONS OF TAX RESEARCH DEPARTMENT

Impact of GST on Real Estate	Handbook on GST on Service Sector
Insight into Customs - Procedure & Practice	Handbook on Works Contract
Input Tax Credit & In depth Discussion	Handbook on Impact of GST on MSME Sector
Exemptions under the Income Tax Act, 1961	Insight into Assessment including E-Assessment
Taxation on Co-operative Sector	Impact on GST on Education Sector
Guidance Note on GST Annual Return & Audit	Addendum_Guidance Note on GST Annual Return & Audit
Sabka Vishwas-Legacy Dispute Resolution Scheme 2019	An insight to the Direct Tax- Vivad se Vishwas Scheme 2020
Guidance Note on Anti Profiteering	International Taxation and Transfer Pricing
Advance Rulings in GST	Handbook on E-Way Bill
Handbook on Special Economic Zone and Export Oriented Units	Taxation on Works Contract

For E-Publications, Please visit Taxation Portal -
<https://icmai.in/TaxationPortal/>

TAXATION COMMITTEES - PLAN OF ACTION

Proposed Action Plan:

1. Successful conduct of Certificate Course on GST.
2. Publication and Circulation of Tax bulletin (both in electronic and printed formats) for the awareness and knowledge updation of stakeholders, members, traders, Chambers of Commerce, Universities.
3. Publication of Handbooks on Taxation related topics helping stakeholders in their job deliberations.
4. Carry out webinars for the Capacity building of Members - Trainers in the locality to facilitate the traders/ registered dealers.
5. Conducting Seminars and workshops on industry specific issues, in association with the Trade associations/ Traders/ Chamber of commerce in different location on practical issues/aspects associated with GST.
6. Tendering representation to the Government on practical difficulties faced by the stakeholders in Taxation related matters.
7. Updating Government about the steps taken by the Institute in removing the practical difficulties in implementing various Tax Laws including GST.
8. Facilitating general public other than members through GST Help-Desk opened at Head quarter of the Institute and other places of country.
9. Introducing advance level courses for the professionals on GST and Income Tax.
10. Extending Crash Courses on Taxation to Corporates, Universities, Trade Associations etc.

Disclaimer:

The Tax Bulletin is an informational document designed to provide general guidance in simplified language on a topic of interest to taxpayers. It is accurate as of the date issued. However, users should be aware that subsequent changes in the Tax Law or its interpretation may affect the accuracy of a Tax Bulletin. The information provided in these documents does not cover every situation and is not intended to replace the law or change its meaning.

The opinion expressed in Article is fully based on the views of the experts. This information is provided for public services only and is neither an advertisement nor to be considered as legal and professional advice and in no way constitutes an attorney-client relationship between the Institute and the User. Institute is not responsible or liable in any way for the consequences of using the information given.

Contact Details:

Tax Research Department
12, Sudder Street, KolKata - 700016

Phone: +91 33 40364747/ +91 33 40364798/ +91 33 40364711

E-mail: trd@icmai.in



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

www.icmai.in

Headquarters: CMA Bhawan, 12 Sudder Street, Kolkata - 700016

Ph: 091-33-2252 1031/34/35/1602/1492

Delhi Office: CMA Bhawan, 3 Institutional Area, Lodhi Road, New Delhi - 110003

Ph: 091-11-24666100