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INCOME TAX

CUSTOMS

TAX CONNECT
Kolkata: 1, Old Court House Corner, "Tobacco House" 1st Floor, R.No.-13 (North), Kolkata-700001
Gujarat: Quarter no. 3/174, Gujarat Refinery Township, Jawaharnagar, Vadodara-391320

Contact: +919331042424; +919831594980; +913322625203
Email: tb.chatterjee@yahoo.co.in;cavivekjalan@gmail.com

EDITORIAL

Friends,

The Govt. is all set to implement GST from 1st July 2017. The GST Council is next slated to meet on 11th June (Sunday) and finalize a host of issues.

Some critical question for Trade & Industry has been answered by the transitional Rules which were published this week –

1. What will happen for Traders in a case where they do not have an excise Invoice. Would they get a Credit under GST and if yes how much.
2. What will happen to Credit on stock kept in the warehouse
3. What will happen to the unutilized CENVAT credit

This had become a matter of huge speculation. Rumour mongers have been at their best at spreading myths in this regard. The Final Answers are as follows –

1. In case an excise invoice is available, the trader gets 100% of Excise Credit
2. In a case where Traders do not have a excise Invoice, they will get 60% of CGST Credit & 30% of IGST Credit [incase rate of GST is 18% or more]
3. In a case where Traders do not have a excise Invoice, they will get 40% of CGST Credit & 20% of IGST Credit [incase rate of GST is less than 18%]
4. In case of Stock in warehouse, the above principals envisaged in 1 & 2 above prevails.
5. The entire unutilized credit in the last returns shall be available subject to fulfillment of procedures laid down.

A Draft Credit Transfer Document (CTD) Rules have been Published which lay down the Rules for transfer of credit for certain goods of more than Rs.25000/- with a distinct Identity No. like chasis no., etc. These Rules will be important for Industries like automobiles, Electronic Items like Laptops, computers, etc. The highlights of such rules are as follows –

1. This is applicable only in respect to sale by manufacturers. **An important segment left out is purchase from importers where CVD is paid. Possibly this anomaly shall be taken care of in the Final Rules.**
2. The manufacturer shall issue a CTD for the dealer who has such goods in stock.
3. The dealer shall have manufacturer's invoice copy, the intermediary dealer's invoice copy & the CTD to avail credit on his closing stock.
4. CTD forms shall be filed by both manufacturer and the dealer
5. Incase benefit of these rules are taken, then benefit of 60%/ 30%/ 40%/20% is not available.

Further, the Final return Rules & Forms have also been issued. There are major changes in the same.

We do hope that this bulletin adds value to your professional sphere.

Just to reiterate that we remain available over a telecom or e-mail.

Truly Yours

Timir Baran Chatterjee
M.Com, FCS, MBA (International Business)-IIFT, ACMA

Vivek Jalan
FCA, LL.B, B. Com (Hons.)

SYNOPSIS

TAX CALENDAR

DUE DATE	COMPLIANCES FROM 11th Jun, 2017 to 17th Jun, 2017	STATUTE
14th Jun, 2017	Deposit of VAT of previous month (VAT Act)	Rajasthan
	Deposit of Entry tax of previous month (Entry Tax Act)	Rajasthan
15th Jun, 2017	Deposit of VAT of previous month (VAT Act)	Bihar Haryana (if Tax> Rs. 1 lac) Jharkhand Kerala Sikkim
	Filing of VAT return (VAT Act)	Kerala
	Deposit of WCT of previous month (VAT Act)	Bihar Chandigarh Delhi Haryana Jharkhand Punjab Rajasthan Himachal Pradesh
	Filing of WCT return (VAT Act)	Punjab
	Issuance of WCT certificate (VAT Act)	Haryana, Jharkhand, Himachal Pradesh
	PF deposit of previous month (EPF Act)	All India
	Deposit of P Tax of previous month (Commercial Tax Act)	Sikkim Gujarat
	Deposit of Entry tax of previous month (Entry Tax Act)	Bihar
	Advance income-tax for 1st quarter (Corporate Assessee) Income-Tax Act	All India

ANALYSIS

ZERO RATED SUPPLY

Zero Rated Supply means export of goods and/or services or supply of goods and/or services to a SEZ (Special Economic Zone) developer or a SEZ Unit.

WILL IMPORT OF SERVICES WITHOUT CONSIDERATION BE TAXABLE UNDER GST?

Generally, import of services without consideration will not be considered as supply under GST in terms of Section 3.

As per Sl. No.4 of Schedule-I of the GST law, following import of services in the course of furtherance of business even without consideration will be treated as supply:

i. Import of services by a taxable person from a related person.

ii. Import of services from any of his other establishments outside India.

TRANSACTION VALUE

The value of taxable supply of goods and services shall ordinarily be the transaction value.

Transaction value refers to the price actually paid/payable for the supply of goods and/or services where the supplier and the recipient are not related and price is the sole consideration for the supply.

Transaction value includes any amount which the supplier is liable to pay but which has been incurred by the recipient of the supply.

Section 15 of the CGST/SGST Act further elaborates various inclusions and exclusions from the ambit of transaction value. For example, the transaction value shall not include refundable deposit, discount allowed subject to certain conditions before or at the time of supply.

TIME OF SUPPLY OF GOODS UNDER REVERSE CHARGE

In case of tax payable under Reverse charge, the time of supply will be the earliest of the following dates:

i. Date of receipt of goods; or

ii. Payment date; or

iii. The date following 30 days from the date of issue of invoice.

TIME OF SUPPLY OF SERVICE IN CASE OF TAX PAYABLE UNDER REVERSE CHARGE

In case of tax payable under Reverse charge, the time of supply will be the earliest of the following dates:

i. Date on which payment is made; or

ii. The Date immediately following 60 days from the date of issue of invoice by the supplier.

DATE OF RECEIPT OF PAYMENT

Date of Receipt of the payment means the earliest of the following dates:

i. Date on which the payment is entered in the books of accounts of the supplier; or

ii. Date on which the payment is credited to bank account of the supplier.

ANALYSIS

ITC IS TO BE GIVEN OR DENIED IF THE INVOICES DO NOT MATCH

If invoices in GSTR-2 do not match with invoices in counter-party GSTR-1, then such mismatch shall be intimated to the supplier.

Mismatch can be because of two reasons:

i. It could be due to mistake at the side of the recipient. In such a case, no further action is required.

ii. It could be possible that the said invoice was issued by supplier but he did not upload it and pay tax on it. In such a case, the ITC availed by the recipient would be added to his output tax liability and will be recovered accordingly.

Conclusion: All mismatches will lead to proceedings if the supplier has made a supply but not paid tax on it.

RECLAIM OF AMOUNT, RECOVERED AS OUTPUT TAX ON ACCOUNT OF MISMATCH BETWEEN GSTR-1 AND GSTR-2

As per Section 42(7) and Section 43 of GST law;

Once the mismatch is rectified by the supplier/recipient by:

i) Declaring the details of the invoices; or

ii) Debit note/Credit Note,

as the case may be, in his valid return for the month/quarter in which the error had been detected.

The said amount can be reclaimed by way of reducing the output tax liability during the subsequent tax period.

CONSEQUENCES OF CLAIMING ITC ON THE BASIS OF A DOCUMENT MORE THAN ONCE

According to Section 42(6) of GST law, in case the system detects Input Tax Credit being taken by the recipient on the same document more than once i.e. duplication of claim, the amount of such credit would be added to the output tax liability of the recipient in the return.

CAN A PERSON CLAIM ITC ON GOODS LOST, DESTROYED OR WRITTEN OFF DUE TO VARIOUS REASONS?

No, a person cannot take ITC with respect to goods lost, stolen, destroyed or written off.

In addition, ITC with respect of goods given as gifts or free samples are also not allowed

GST: GST Return, Payments & Refunds

ANALYSIS

DETAILS TO BE FILED IN GSTR-2 FORM

- The special feature of GSTR-2 is that the details of supplies received by a recipient can be auto populated on the basis of the details furnished by the counter party supplier in his GSTR-1.

- Also the recipient can himself feed the invoices in GSTR-2 not uploaded by his supplier in GSTR-1.

- While a large part of GSTR-2 will be auto-populated, there are some details that only recipient can fill:-

  - Details of imports.
  - Details of purchases from non-registered Supplier.
  - Details of purchases from composition Suppliers.
  - Details of Exempt supplies.
  - Details of non-GST supplies.
  - Details of supplies which have nil rate of GST.

- Since the Composite Tax payers are not eligible for any input tax credit, so they do not need to file GSTR-2.

- The details of the Tax Deducted at Source (TDS) as uploaded by the deductor shall be auto populated in the GSTR-2 of the deductee.

  The taxpayer shall be required to confirm these details in his GSTR-2 to avail the credit for deductions made on his behalf.

WHO IS LIABLE TO PAY GST?

Generally, the supplier of goods or services is liable to pay GST.

The recipient of goods or services is liable to pay tax under reverse charge mechanism in some specified cases like imports and other notified supplies.

Further, in some notified cases of intra-state supply of services (i.e. supply of services within the same state), the liability to pay GST may be cast on e-commerce operators through which such services are supplied.

E-commerce operators are required to collect tax (TCS) on the "net value" of supplies made through them and deposit it with the Government.

"Net value" means:

Aggregate value of taxable supplies of goods and/or services

Less: Value of services on which the operator is made liable to pay GST under Section 9(5) of the CGST Act, 2017]

Also Government Departments making payments to vendors above a specified limit are required to deduct tax (TDS)

NOTE: According to Section 2(45) of CGST Act "electronic commerce operator" means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

ANALYSIS

ISSUE OF INVOICE IN CASE OF CONTINUOUS SUPPLY OF GOODS

- In case of continuous supply of goods, where
  - Successive statements of accounts are involved, or
  - Successive payments are involved

The invoice shall be issued before or at the time each such statement is issued or each such payment is received as the case may be.

- Where the due date of payment is ascertainable from the contract :
  - The invoice shall be issued on or before the due date of payment,.

- Where the due date of payment is not ascertainable from the contract :
  - The invoice shall be issued before or at the time when the supplier of service receives the payment.

PERIOD OF RETENTION OF ACCOUNTS

As per Section 36 of CGST Act, 2017 every registered person required to keep and maintain books of account or other records in accordance with the provisions of sub-section (1) of section 35.

Every registered person shall retain books of account or other records until the expiry of 72 months from the due date of furnishing of annual return for the year pertaining to such accounts and records.

Provided that a registered person, who is a party to:

- An appeal, or
- Revision, or
- Any proceedings before any Appellate Authority, or
- Any proceedings before any Revisional Authority, or
- Any proceedings before any Appellate Tribunal, or
- Any proceedings before any court.

whether filed by him or by the Commissioner, or is under investigation for an offence under Chapter XIX, shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceedings or investigation for a period of one year after final disposal of such appeal or revision or proceedings or investigation, or for the period specified above, whichever is later.

MEANING OF COMMENCEMENT OF AUDIT

Commencement of audit is an important term because audit has to be completed within a given time frame in reference to this date of commencement.

Commencement of audit means the later of the following:

i) The date on which the records/accounts called for by the audit authorities are made available to them, or

ii) The actual institution of audit at the place of business of the taxpayer.

GST AUTHORITY INTERFACE- ASSESSMENT AND APPEAL

ANALYSIS

ADVANCE RULING

- As per section 95 of CGST/SGST Law and section 12 of UTGST law Advance Ruling means a decision provided to an applicant on matters or on questions specified in section 97(2) or 100(1) of CGST/SGST Act as the case may be in relation to the supply of goods and/or services proposed to be undertaken or being undertaken by the applicant, by the :

  - Authority, or
  - Appellate Authority

- <u>The broad objective for setting up such an authority is to:</u>

  - provide certainty in tax liability in advance in relation to an activity proposed to be undertaken by the applicant;
  - attract Foreign Direct Investment (FDI);
  - reduce litigation;
  - Pronounce ruling expeditiously in transparent and inexpensive manner.

- It is not necessary for a person seeking advance ruling to be registered.
  Any person registered or desirous of obtaining registration under the GST Act (s) can be an applicant.

- An applicant can apply for advance ruling even before taking up a transaction (proposed supply of goods or services) or in respect of a supply which is being undertaken.

The only restriction is that the question being raised is already not pending or decided in any proceedings in the case of applicant.

QUESTIONS FOR WHICH ADVANCE RULING CAN BE SOUGHT?

- Advance Ruling can be sought for the following questions:

  - Classification of any goods or services or both;
  - Applicability of a notification issued under provisions of the GST Act(s);
  - Determination of time and value of supply of goods or services or both;
  - Admissibility of input tax credit of tax paid or deemed to have been paid;
  - Determination of the liability to pay tax on any goods or services under the Act;
  - Whether applicant is required to be registered under the Act;
  - Whether any particular thing done by the applicant with respect to any goods or services amounts to or results in a supply of goods or services, within the meaning of that term.

OTHER TOPICS UNDER GST

ANALYSIS

TRANSITIONAL PROVISIONS: SOME IMPORTATNT QUESTIONS BY THE TAXPAYERS IN THE GST REGIME

Q.1: When tax shall become payable in GST on manufactured goods sent for carrying out tests or any other process to a Job worker not amounting to manufacture under the existing law?

Answer: Tax will be payable in GST on manufactured goods sent for carrying out tests or any process to a job worker prior to the appointed day not amounting to manufacture under the existing law if such goods are not returned to the manufacturer within six months (or within the extended period of maximum two months) from the appointed day.

As per Section 141(3) the input tax credit enjoyed by the manufacturer will liable to be recovered if the aforesaid goods are not returned within six months from the appointed day.

Q.2: What will be the place of supply if a person from Gurgaon travels by Spicejet flight from Kolkata to Mumbai and gets his travel insurance done in Kolkata?

Answer: As per the proviso clause to section 11(13) of the IGST Act, the location of the recipient of services on the records of the supplier of insurance services shall be the place of supply. So Gurgaon shall be the place of supply.

Q.3: What would be the place of supply of services provided for organizing an event, say, IPL cricket series which is held in multiple states?

Answer: In case of an event:

- If the recipient of service is registered :
  - The place of supply of services for organizing the event shall be the location of service receiver.
- If the recipient of service is NOT registered :
  - The place of supply of services for organizing the event shall be the place where event is held.

As per Explanation clause to Section 12(7) of the IGST Act, since a consolidated amount is charges for such services and the event is being held in multiple states and, the place of supply shall be taken as being in each state in proportion to the value of services so provided in each state.

Q.4: What is the default presumption for place of supply in respect of unregistered recipients?

Answer: The usual place of supply is location of recipient, In respect of unregistered recipients.

However, in many cases, the address of recipient is not available, in such cases, location of the supplier of services is taken as proxy for place of supply.

INCOME TAXES

NOTIFICATION/CIRCULARS

DUE DATE FOR FURNISHING TDS CERTIFICATE IN FORM 16 (FOR SALARIES) WILL BE 15TH DAY OF JUNE

OUR COMMENTS: The CBDT, Department of Revenue, Ministry of Finance, Government of India vide **Notification No. 42/2017 dated 02.06.2017** has notified That the certificates in Form No.16 shall be furnished to the employee or the payee, as the case may be by 15th day of June (earlier the date was 31st may) of the financial year immediately following the financial year in which the income was paid and tax deducted.

U/S 10(38) OF IT ACT 1961 - CENTRAL GOVERNMENT NOTIFIES ALL TRANSACTIONS OF ACQUISITION OF EQUITY SHARE ENTERED INTO ON OR AFTER THE 1ST DAY OF OCTOBER, 2004

OUR COMMENTS: The CBDT, Department of Revenue, Ministry of Finance, Government of India vide **Notification No. 43/2017 dated 05.06.2017** has notified transactions for which the condition of chargeability to STT for claiming exemption under Section 10(38) of the Income Tax Act, 1961 shall not apply.

It has been notified that the condition of chargeability to STT shall not apply to all transactions of acquisitions of equity shares entered into on or after the first day of October, 2004 other than the specified transactions such as acquisition of listed shares in preferential issues of a company whose shares are not frequently traded in a recognised stock exchange, acquisition of existing listed equity share in a company not through a recognised stock exchange of India and acquisition of shares of company during the period of its delisting.

However, to protect the interest of genuine investors, exceptions are also provided in the specified transactions.

COST INFLATION INDEX AS APPLICABLE FROM FINANCIAL YEAR 2017-18 (ASSESSMETN YEAR 2018-2019) WILL BE 272.

OUR COMMENTS: The CBDT, Department of Revenue, Ministry of Finance, Government of India vide **Notification No. 44/2017 dated 05.06.2017** has notified Cost inflation index **272 (Two Hundred and Seventy Two)** for Long Term Capital Assets sold after 01.04.2017 i.e. during the financial year 2017-2018. Readers may refer the above notification for the detail List of CII of Previous years.

CLAIM FOR REFUND OF TDS PAID CAN BE FURNISHED BY THE DEDUCTOR IN FORM 26B ELECTRONICALLY UNDER DIGITAL SIGNATURE OR VERIFIED THROUGH AN ELECTRONIC PROCESS.

OUR COMMENTS: The CBDT, Department of Revenue, Ministry of Finance, Government of India vide **Notification No. 45/2017 dated 05.06.2017** has notified that claim for refund of TDS paid can be furnished by the deductor in Form 26B electronically under digital signature or verified through an electronic process.

It further specified that in TDS Return in respect of Tax Deducted at Source (TDS) Under Section 194IA of the Income Tax Act for which Form No. 26QB has been filed by the deductor to claim refund of TDS.

Deductor has an option to mention:

- his Permanent Account Number (PAN) in place of Tax Deduction and Collection Account Number (TAN),
- Period can be left blank, and
- Has to furnish acknowledgement number of Form No. 26QB.

CUSTOMS

NOTIFICATIONS/CIRCULARS

CONTINUATION OF ANTI-DUMPING DUTY ON IMPORTS OF DIGITAL OFFSET PRINTING PLATES, ORIGINATING IN, OR EXPORTED FROM, PEOPLE'S REPUBLIC OF CHINA UPTO AND INCLUSIVE OF THE 3RD JUNE 2018

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No.24 /2017 -Customs (ADD) dated 02.06.2017 & in suppression of Notification No. 51/2012-Customs (ADD) dated 03.12.2012** has notified in the matter of continuation of anti-dumping duty on imports of Digital Offset Printing Plates, originating in, or exported from, People's Republic of China imposed and had recommended for extension of anti-dumping duty up to and inclusive of the 3rd June 2018.

REVISION OF EXCHANGE RATE OF FOREIGN CURRENCIES INTO RUPEE & VICE VERSA (CORRIGENDUM)

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 52/2017-Customs (N.T.) dated 01.06.2017 & in supersession of Notification No. 49/2017-Customs (N.T.) dated 18.05.2017** has **revised the exchange rate of foreign currencies** specified in col.(2) of each of **Schedule I** and **Schedule II** annexed hereto, into Indian currency or vice versa, w.e.f. **02.06.2017** to be the rate mentioned against it in the corresponding entry in column (3) thereof, for the purpose of the said section, relating to imported and export goods.

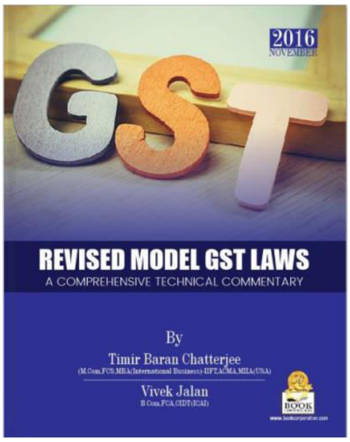
SCHEDULE-I

Sl. No	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
(1)	(2)	(3)	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Australian Dollar	48.55	46.80
2.	Bahrain Dinar	177.25	165.25
3.	Canadian Dollar	48.60	47.00
4.	Chinese Yuan	9.65	9.35
5.	Danish Kroner	9.95	9.55
6.	EURO	73.85	71.30
7.	Hong Kong Dollar	8.40	8.15
8.	Kuwait Dinar	219.95	205.60
9.	New Zealand Dollar	46.55	44.75
10.	Norwegian Kroner	7.80	7.50
11.	Pound Sterling	84.50	81.65
12.	Qatari Riyal	18.25	17.25
13.	South Arabian Riyal	17.80	16.65
14.	Singapore Dollar	47.35	45.90
15.	South African Rand	5.10	4.75
16.	Swedish Kroner	7.55	7.30
17.	Swiss Franc	67.75	65.50
18.	UAE Dirham	18.15	17.00
19.	US Dollar	65.35	63.70

SCHEDULE-II

Sl. No	Foreign Currency	Rate of exchange of 100 units of foreign currency equv. to Indian rupees	
(1)	(2)	(3)	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Japanese Yen	59.20	57.20
2.	Kenya Shilling	64.65	60.40

IN STANDS: REVISED MODEL GST LAWS : A COMPREHENSIVE TECHNICAL COMMENTARY



ABOUT THE BOOK: While the Government is moving at a rapid pace, yet it is still a question whether the Corporates are GST Ready or not. It is high time that the law needs to be analysed and implemented into every facet of the business including sales and marketing, Logistics, procurement, HR, IT and of course Finance and Taxation. The book contains an exhaustive coverage of the Revised Model GST in the form of a Section wise technical commentary. It provides an insight into the following:

1. Brief about the major changes between the Revised law and the earlier law.
2. Revised Model GST Law November 2016
3. Revised Model IGST Law November 2016
4. GST Compensation Law
5. GST Return Rules
6. GST Refund Rules
7. GST Registration Rules
8. GST Payment Rules
9. GST Invoice Rules

Authors:

Timir Baran Chatterjee
M.Com, FCS, MBA (International Business)-IIFT, ACMA

Vivek Jalan
B. Com, FCA, LLb, CIDT (ICAI)

Knowledge Partner:
Bengal Chamber of Commerce and Industry (the first chamber of the Country)

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BOOK CORPORATION
4, R. N. Mukherjee Road
Kolkata 700001
Phones: (033) 64547999, 22306669, 22205367
Cell : 9830010297, 9331018333
Order by email:bookcorporation@gmail.com
Website :www.bookcorporation.com