TAXCONNECT

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TAX CONNECT

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EDITORIAL

Friends,

The GST Council yesterday in its 27th meeting approved principles for filing of new return design based on the recommendations of the Group of Ministers on IT simplification. The key elements of the new return design are as follows –

1. **Unidirectional Flow of invoices**: There shall be unidirectional flow of invoices uploaded by the seller which would be the valid document to avail input tax credit by the buyer. Buyer would be able to continuously see the uploaded invoices during the month. There shall not be any need to upload the purchase invoices.
   It seems that a format in the form of GSTR 2A shall be issued and matching needs to be done invoice-wise from such format.
   It is pertinent to note here that the same shall be done for FY 17-18 wherein ITC availed in GSTR 3B shall be matched invoice wise with GSTR 2A.
2. **Supplier side control**: Unloading of invoices by the seller to pass input tax credit who has defaulted in payment of tax above a threshold amount shall be blocked to control misuse of input tax credit facility. Similar safeguards would be built with regard to newly registered dealers also. Analytical tools would be used to identify such transactions at the earliest and prevent loss of revenue.
   No automatic reversal of credit: There shall not be any automatic reversal of input tax credit from buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller however reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc.

This is a welcome move as Regulator control on Supplier shall promote better compliance rather than just making the purchaser liable for defaults of the supplier

3. **One monthly Return**: All taxpayers excluding a few exceptions like composition and dealers having nil transaction shall file one monthly return.

4. **Simple Return design and easy IT interface**: The B2Bdealers will have to fill invoice-wise details of the outward supply made by them, based on which the system will automatically calculate his tax liability. The input tax credit will be calculated automatically by the system based on invoices uploaded by his sellers.
   It needs to be seen as to how this will be implemented. It seems the provisions of Sec 41 read with Sec 16(2) of CGST Act for provisional availability of ITC may be tweaked.
   This may be a big change and may cause hardship to dealers as the ITC may be delayed.

5. **Transition**: There will be a two stage transition to the new system –

   Stage I shall be the present system of filing of return GSTR 3B and GSTR 1. GSTR 2 and GSTR 3 shall continue to remain suspended. Stage I will continue for a period not exceeding 6 months by which time new return software would be ready.

   Stage 2, the new return will have facility for invoice-wise data upload and also facility for claiming input tax credit on self declaration basis, as in case of GSTR 3B now.

   During this stage 2, the dealer will be constantly fed with information about gap between credit available to them as per invoices uploaded by their sellers and the provisional credit being claimed by them.
   After 6 months of this phase 2, the facility of provisional credit will get withdrawn and input tax credit will only be limited to the invoices uploaded by the sellers from whom the dealer has purchased goods.

EDITORIAL

6. **Due process for recovery and reversal**: Recovery of tax or reversal of input tax credit shall be through a due process of issuing notice and order. The process would be online and automated to reduce the human interface.

Further vide **Circular No. 44/18/2018-CGST, I**ssue related to taxability of 'tenancy rights' under GST has been clarified as follows –

(i) Whether transfer of tenancy rights to an incoming tenant, consideration for which is in form of tenancy premium, shall attract GST when stamp duty and registration charges is levied on the said premium, if yes what would be the applicable rate?
(ii) Further, in case of transfer of tenancy rights, a part of the consideration for such transfer accrues to the outgoing tenant, whether such supplies will also attract GST?

Clarification –

The activity of transfer of 'tenancy rights' is squarely covered under the scope of supply and taxable per-se. Transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable. However, renting of residential dwelling for use as a residence is exempt [Sl. No. 12 of notification No. 12/2017-Central Tax(Rate)]. Hence, grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt. As regards services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST.

In Income Tax, the question before The Hon'ble Supreme Court was whether waiver of loan by the creditor is taxable as a perquisite under Section 28 (iv) or taxable as a remission of liability under Section 41(1). In a very important judgment in the case of **The Commissioner Versus Mahindra and Mahindra Ltd. thrg. M.D.,** it has held that Section 28(iv) of the IT Act does not apply on the present case since the receipts are in the nature of cash or money AND Section 41(1) of the IT Act does not apply since waiver of loan does not amount to cessation of trading liability.
In another Important decision The Rajasthan High Court in the case of **Pr. Commissioner of Income Tax, Jaipur-II, Jaipur Versus M/s Agribiotech Industries Limited** has held the following **–**
Disallowance made u/s. 37(1) on account of penal excise duty debited in P & L Account - whether ITAT was justified in holding that alleged excise demand notice are not penal in nature without appreciating the fact that the same are for penalty demand levied by the Excise Department raised on account of fake export permit. It was held that explanation of Section 37 will not come into play. In that view of the matter that was business expenses.

We do hope that this bulletin adds value to your professional sphere.
Just to reiterate that we remain available over telecom or e-mail.

Truly Yours

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SYNOPSIS

TAX CALENDAR

Due date	COMPLIANCES FROM 06TH MAY, 2018 to 12TH MAY, 2018	Description
10th May 2018	Form: GSTR - 1	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 for the month of March 2018

NOTIFICATIONS/CIRCULARS

ISSUE RELATED TO TAXABILITY OF 'TENANCY RIGHTS' UNDER GST

OUR COMMENTS: The Department of Revenue, Ministryof Finance, Government of India, vide **Circular No. 44/18/2018-CGST dated 2nd May, 2018**hereby notifies regarding issue related to taxability of 'tenancy rights' under GST.

In this regard certain doubts have been raised as to :-

- Whether transfer of tenancy rights to an incoming tenant, consideration for which is in form of tenancy premium, shall attract GST when stamp duty and registration charges is levied on the said premium, if yes what would be the applicable rate?
- Further, in case of transfer of tenancy rights, a part of the consideration for such transfer accrues to the outgoing tenant, whether such supplies will also attract GST?

In the context of the above the issue has been examined. The transfer of tenancy rights against tenancy premium which is also known as "pagadi system" is prevalent in some States. In this system the tenant acquires, tenancy rights in the property against payment of tenancy premium(pagadi). The landlord may be owner of the property but the possession of the same lies with the tenant. The tenant pays periodic rent to the landlord as long as he occupies the property. The tenant also usually has the option to sell the tenancy right of the said property and in such a case has to share a percentage of the proceed with owner of land, as laid down in their tenancy agreement. Alternatively, the landlord pays to tenant the prevailing tenancy premium to get the property vacated. Such properties in Maharashtra are governed by Maharashtra Rent Control Act, 1999.

As per section 9(1) of the CGST Act there shall be levied central tax on the intra-State supplies of services. The scope of supply includes all forms of supply of goods and services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business and also includes the activities specified in Schedule II. The activity of transfer of tenancy right against consideration in the form of tenancy premium is a supply of service liable to GST. It is a form of lease or renting of property and such activity is specifically declared to be a service in para 2 of Schedule II i.e. any lease, tenancy, easement, licence to occupy land is a supply of services

The contention that stamp duty and registration charges is levied on such transfers of tenancy rights, and such transaction thus should not be subjected to GST, is not relevant. Merely because a transaction or a supply involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the scope of supply of goods and services and from payment of GST. The transfer of tenancy rights cannot be treated as sale of land or building declared as neither a supply of goods nor of services in para 5 of Schedule III to CGST Act, 2017. Thus a consideration for the said activity shall attract levy of GST.

To sum up, the activity of transfer of 'tenancy rights' is squarely covered under the scope of supply and taxable per-se. Transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable. However, renting of residential dwelling for use as a residence is exempt [Sl. No. 12 of notification No. 12/2017-Central Tax(Rate)]. Hence, grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt. As regards services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST.

For further information kindly refer the above mentioned circular.

ANALYSIS

SOME MISCELLANEOUS PROVISIONS IN GST

There are certain miscellaneous provisions in GST law, which are relevant for taxpayers as well as tax administration, as follows

Bar of Jurisdiction of Civil Court

Section 162 of the GST Act provides for a bar on the jurisdiction of Civil Courts in matters under the provisions of GST law. It provides that except for appeal to High Court or Supreme Court of India, no other Court will have jurisdiction to deal with or decide any question arising from or relating to anything done or purported to be done under the Act

Levy of Fees

As provided in section 163 of the GST Act, any person seeking a copy of an order or a document will have to make an application along with prescribed fee. This will include fee for such application also.

Power of Central (or State) Government to make Rules

The Central or State Government under the provisions of section 164 of the GST Act, has the authority to make rules on the recommendation of GST Council to carry out various purposes of the Act. This power includes the power to issue notification from prospective or retrospective effect. Section 164(3) of the GST Act, gives power to Government to make rules from retrospective effect but not from a date earlier than the date on which relevant provision of the Act came into force.

The Central and State Government while making such rules may also provide that the breach of such rules will be liable to a penalty of not exceeding rupees ten thousand in case no other specific penalty has been provided for such rules.

Service of Notice in certain Circumstances

Various methods of service of any decision, notice, order, summon or any other communication under the Act or Rules have been provided in section 169, are as follows:

- By giving or tendering it directly or through a messenger or courier to the addressee or the taxable person or to his manager or to person duly authorized or an advocate or a tax practitioner holding authority to appear in the proceeding on behalf of the taxpayer or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxpayer, or
- By registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised agent, if any at his last known place of business or residence, or
- By sending a communication to his e-mail address, provided at the time of registration or as amended from time to time or
- By making it available on common portal, or
- By publication in a newspaper circulating in the locality of taxpayer or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain, or
- If none of the above is practicable, by affixing it in some conspicuous place on his last known place of business or residence address, or
- If such affixing is also not practicable, by affixing a copy thereof on the notice board of the officer who has passed such decision or order or issued such summons or notice.

Every decision, order, summon, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner as above. As per section 169(3) of the GST Act, when such communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by a registered/speed post letter in transit unless contrary is proved.

GST: SGST/UTGST

NOTIFICATIONS/CIRCULARS

CIRCULATION OF THE WEST BENGAL APPELLATE AUTHORITY FOR ADVANCE RULING REGULATIONS, 2018

OUR COMMENTS: The Commercial Taxes Department, Government of West Bengalvide**Notification No.08/2018-C.T./GSTdated 20th April 2018** hereby notifies regarding the West Bengal Appellate Authority for Advance Ruling Regulations, 2018.

For further information kindly refer the above mentioned notification.

E-WAYBILL FOR INTRASTATE MOVEMENT OF GOODS

OUR COMMENTS: The Commercial Taxes Department, Government of Meghalaya vide**Notification No.ERTS(T) 84/2017/20 dated 20th April 2018** hereby notifies regarding implementation of the e-waybill for intrastate movement of goods with effect from 25th April 2018.

For further information kindly refer the above mentioned notification.

QUARTERLY RETURN IN FORM GSTR-1 FOR TAX PAYERS HAVING TURN-OVER UP TO ₹ 1.5 CRORE FOR QUARTER APRIL-JUNE.2018

OUR COMMENTS: The Commercial Taxes Department, Government of Maharashtravide**Notification No.17/2018-State Tax dated 23rd April 2018** hereby notifies regarding due date for quarterly return in form GSTR-1 for tax payers having turn-over up to ₹ 1.5 Cr.for Quarter April-June.2018.

The said return shall be furnished with the details of outward supply of goods or services or both in FORM GSTR-1 effected during the quarter April to June, 2018 till the 31st day of July, 2018.

For further information kindly refer the above mentioned notification.

WITHDRAWAL OF EXEMPTION GIVEN TO INTRA-STATE MOVEMENT OF GOODS FROM GENERATION OF E-WAY BILL

OUR COMMENTS: The Commercial Taxes Department, Government of Puducherryvide**Notification No.F.No. 3240/CTD/GST/2018/3Tax dated 24th April 2018** hereby makes amendment in the **Notification No. F.No.3240/CTD/GST/2018/2 dated 29th March, 2018** regarding withdrawal of exemption given to intra-State movement of goods from generation of e-way bill with effect from 25th April 2018.

For further information kindly refer the above mentioned notification.

NO E-WAY BILL SHALL BE REQUIRED TO BE GENERATED FOR INTRA-STATE MOVEMENT OF GOODS IN THE STATE OF MADHYA PRADESH

OUR COMMENTS: The Commercial Taxes Department, Government of Madhya Pradesh vide**Notification No.FA-3-08/2018-1-V-(43)Tax dated 24th April 2018** hereby makes amendment in the **Notification No. F-A-3-08-2018-1-V (41) dated 28th March, 2018**regarding e-way bill generation.

No e-way bill shall be required to be generated for intra-state movement of goods in the State of Madhya Pradesh, except for the goods listed in the notification, when the movement of such goods commences from within the area of any district of Madhya Pradesh and terminates within the area of any other district of Madhya Pradesh, subject to the condition that the consignment value for such goods exceeds Rs. fifty thousand.

For further information kindly refer the above mentioned notification.

NOTIFICATIONS/CIRCULARS

INTEREST PAID TO CLOSE RELATIVES, THOUGH SIMILAR TO BANK LOAN INTEREST BUT MORE THAN PAID TO THIRD PARTIES- EXCESS DISALLOWED

Capital is borrowed for business purposes from banks, close relatives, friends, associates and outsiders also.In each case of money lender there can be different terms and conditions as to rate of interest, periodicity of payment, security, post-dated cheques, promissory notes issued and re-payment etc.Flexibility in payment of interest and re-payment of loan is also an important factor. In case of bank, interest is charged by bank every month. Generally loans taken for business, from banks are secured loan.In case of third parties, the terms and conditions are more stringent than in case of loan taken from close relatives.

In case of loans taken from close relatives also the terms and conditions are negotiated. However, in relation to payment of interest and re-payment of loan borrower can expect much more flexibility and sympathetic considerations from lender, in case need arises.Comparison of all terms and conditions and privileges is desired:

When we need to compare relative terms and conditions, we need to compare all terms and conditions and aspect of flexibility. A loan taken from close relative can be considered as a safer loan in comparison to loan from others. This is because, in case of difficult times in business, one can expect more co-operation and more flexibility about payments to be made.The level of comfort is also, therefore, higher in case of loan taken from close relatives.

Loans from close relatives are for long period:Generally loans taken from close relatives is for open term or tenure which is considered flexible term.Close relatives, while granting loan, also act in a team manner.Therefore, a higher rate of interest can be justified.Case of ShriRashmikantVenilal Mehta (supra.)As noted by the Tribunal in this case assesse had taken loans from bank on interest @ 17.25% was charged, however, on taking into account all direct and indirect costs cost of borrowing was about 21% per annum.

Loan from third parties were availed at interest rate of 12% PA.Loan from close relatives were availed at interest rate of 18% PA.On reading of the order we do not find other terms and conditions.Comparison has been made only on the basis of rate of interest. Even fact about when loans were taken is not known. If a loan was taken in past, and rates were negotiated earlier, then that factor also need to be considered.Comparison has also not been made about amount of loans taken from close relatives vis a vis loans taken from third parties.It seems that the assesse did not provide all relevant details to counsel and counsel also did not made an in-depth study and both were over confident that in view of finance cost for loan taken from bank, rate of interest of 18% paid to close relatives was reasonable.

Order of Tribunal

Tribunal confirmed assessment order and order of CIT(A) and thus disallowance of interest paid , in excess of 12% to close relatives has been upheld.

The reasons for such decision are as follows:

- There was no reason for paying higher rate of interest to the close relatives.
- That the interest charged by the bank at the relevant point of time is not relevant.
- The rate of interest charged by bank may be relevant in case the assessee has not borrowed loan from third parties.
- When the loan was availed from third parties at the rate of 12%, there is no reason why the assessee preferred to borrow loan from close relatives and paid interest at the rate of 18%.
- Therefore The Tribunal expressed opinion that the CIT(Appeals) has rightly found that the excess payment has to be disallowed.

CUSTOM

NOTIFICATIONS/CIRCULARS

IMPOSE DEFINITIVE ANTI-DUMPING DUTY ON IMPORTS OF METHYL ETHYL KETONE OR MEK ORIGINATING IN, OR EXPORTED FROM CHINA PR, JAPAN, SOUTH AFRICA AND TAIWAN

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministryof Finance, Government of India vide **Notification No.23/2018-Customs (ADD)dated 24th April, 2018** hereby notifies regarding imposition of definitive anti-dumping duty on imports of Methyl Ethyl Ketone or MEK originating in, or exported from China PR, Japan, South Africa and Taiwan.

It is further stated that in the matter of import of 'Methyl Ethyl Ketone' or MEK' falling under the First Schedule to the Customs Tariff Act, 1975, originating in, or exported from China PR, Japan, South Africa and Taiwan and imported into India, the designated authority vide its final findings published in the Gazette of India, Extraordinary, Part I, Section 1, vide notification No. 14/26/2016-DGAD, dated 1st February 2018, has come to conclusion that-

- the product under consideration has been exported to India from the subject countries below normal values;
- the domestic industry has suffered material injury on account of dumped subject imports from subject countries;

For further information kindly refer the above mentioned notification.

EXCHANGE RATES NOTIFICATION

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministryof Finance, Government of India vide **Notification No.35/2018 - Customs (N.T.)dated 3rd May, 2018**hereby makes amendment in the Notification No. 33/2018-CUSTOMS (N.T.), dated 19th April, 2018 regarding the rate of exchange of conversion of each of the foreign currencies into Indian currency or vice versa, shall, with effect from 4th May, 2018, for the purpose of the said section, relating to imported and export goods.

SCHEDULE-I

Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
	(For Imported Goods)	(For Export Goods)
Australian Dollar	51.10	49.35
Bahrain Dinar	182.60	171.05
Canadian Dollar	52.70	51.10
Chinese Yuan	10.65	10. 30
Danish Kroner	10.95	10.50
EURO	81.15	78.45
Hong Kong Dollar	8.60	8.35
Kuwait Dinar	228.70	213.85
New Zealand Dollar	47.55	45.90
Norwegian Kroner	8.35	8.05
Pound Sterling	92.10	89.15
Qatari Riyal	18.85	17.85
Saudi Arabian Riyal	18.35	17.20
Singapore Dollar	50.75	49.20
South African Rand	5.45	5.10
Swedish Kroner	7.60	7.35
Swiss Franc	68.00	65.65
UAE Dirham	18.75	17.55
US Dollar	67.50	65.80

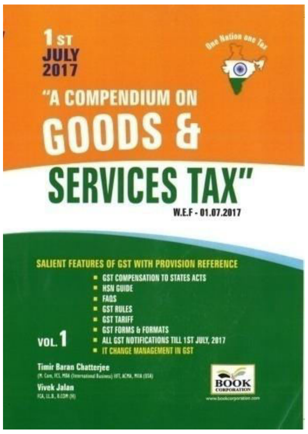
SCHEDULE-II

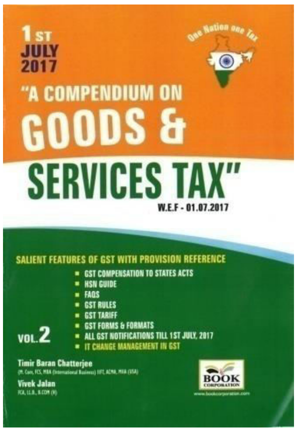
Foreign Currency	Rate of exchange of 100 units of foreign currency equivalent to Indian rupees	
	(For Imported Goods)	(For Export Goods)
Japanese Yen	61.80	59.75
Kenyan Shilling	64. 90	60.65

For further information kindly refer the above mentioned notification.

AVAILABLE IN STANDS

A COMPENDIUM ON GOODS & SERVICES TAX
(Including ALL Notifications till 09th July, 2017)





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1. Section-wise Compilation of IT Changes under GST
2. The GST Rates as finalised by The GST Council along with the HSN Code Referencer.
3. FAQs on GST
4. CGST, IGST, UTGST and The GST Compensation to States Acts
5. The Rules related to GST available in public Domain as on 17th June 2017.
6. The Forms and formats related to GST available in public Domain as on 17th June 2017.

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AVAILABLE IN STANDS

A COMPENDIUM ON WEST BENGAL GOODS & SERVICES TAX

(Including ALL Notifications till date)

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1. The Rules related to WBGST available in public Domain till date.
2. The Notifications, Circulars and Orders issued by The SGST Authority till date.
3. The Forms and formats related to GST available in public Domain till date.

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