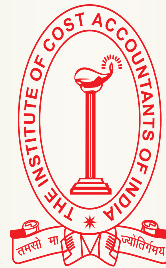
TAX Bulletin

August, 2018 Volume - 22



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)

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1. Preparation of Guidance Note and Analysis of various Tax matters for best Management Accounting Practices 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.
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4. Evaluating opportunities for CMAs to make effective value addition to the tax-economy.
5. Designing of Certificate Course on Direct and Indirect Tax for members and stake holders.

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FROM THE DESK OF THE CHAIRMAN

"Remember to celebrate milestones as you prepare for the road ahead."

- Nelson Mandela

Namaskar and Best Wishes!

Today is a very humbling day for me. It reminds me of my very first day at the Committee, 12 months back. I had a choice but, I came here because I believed Tax Research would be the best platform to serve the members and the Institution. I realised that handing over of the responsibility of chairmanship brings with it the winds of change, but the core DNA must and will remain unchanged. I along with Team – TRD had put in every effort to make things move and to fall in place, and "Yes" we have tasted success.

Last Year many new initiatives have started which was gladly accepted and widely appreciated by the stakeholders. Some are enumerated as below:

- ✓ The fortnightly Tax Bulletin, which is widely circulated among the Members, industry, corporate and the Ministry.
- ✓ GST certificate course for members, non-members and students
- ✓ Released publications – Guidance note on Anti-profiteering & Guidance Note on GST Audit.
- ✓ Seminar on PAN India basis involving Educational institutions, corporate and Chapters
- ✓ Conducting National Seminar on GST on 27th and 28th January 2018 at Bhubaneswar
- ✓ Webinars with huge participation
- ✓ GST help desk
- ✓ Representation/suggestions to GST Council/ CBIC and CBDT on specific issues.

When I joined, I knew there was no better forum to join, if I wanted to make a difference. This is the very same inspiration that continues to drive me even today. Appreciation and feedbacks from each one of you have meant a lot to me. I have taken-up each of them personally and have placed them suitably. I am motivated and enthusiastic to work for the coming year too with the same passion and zeal. The untiring support of my Council Colleagues, Resource persons, industry stalwarts, professionals and moreover my team TRD, is my driving force. I solicit it for the coming year also.

A great new year awaits us!!

CMA Niranjan Mishra
Chairman - Taxation Committee
18th August, 2018

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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
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SIMPLIFIED GST RETURNS

CMA SANJEEV MOTIYANI
Executive Director - Finance & Logistics, India Armstrong World Industries (India) Pvt Ltd

The GST Council approved new, simplified GST Return formats during its 28th meeting held on the 21st of July 2018 in New Delhi. The below write up is an attempt to explain the new terms and underlying concept of the new GST return.

Small Taxpayers

Taxpayers who have a turnover up to Rs.5 crores in the last financial year shall be considered small. A newly registered taxpayer shall be classified on the basis of self-declaration of estimated turnover. These small taxpayers shall have facility to file quarterly return with monthly payment of taxes on self-declaration basis. However, the facility would be optional and small taxpayer can also file monthly return like a large taxpayer.

Monthly GST Returns

The monthly returns are compulsory to be filed for taxpayers having turnover above Rs.5 crores. The return is simple with two main tables – One to report outward supplies and another for availing ITC based on invoices uploaded by the supplier. The monthly returns are not applicable to small taxpayers, composition dealers, Input Service Distributor (ISD), Non Resident registered person, persons liable to collect tax at source or deduct tax at source. The due date to file monthly return is 20th of next month.

Quarterly GST Returns

Regular taxpayers with a turnover of up to Rs.5 crores can now file GST returns on a quarterly basis against the earlier limit of Rs.1.5 crores. Return can be either 'Sahaj' or 'Sugam', wherein the first one, report only B2C supplies and the other report both B2B & B2C supplies, respectively. The quarterly returns will be mostly be similar to the monthly returns, but require lesser information to be filled as compared to the regular returns.

Periodicity Option

During the course of the year option to change from monthly to quarterly or vice-versa shall be allowed only once. This is necessary to avoid confusion for the taxpayer and also to avoid complex validations in the IT system. Option to change from monthly to quarterly or vice-versa shall be allowed only at the beginning of any quarter.

Nil Return

Nil returns are those with no output tax liability and no Input tax credit both satisfied. But have to report by SMS, the NIL transaction statement /declaration the first and second month of that Quarter. Hence the concept of NIL return has been envisaged with reference to quarter and not month.

Amendments to the return

The current return filing process did not have the concept of filing a revised return and for any amendments, the invoices filed previously had to be amended.

The new process, however, will have a provision for amendment in returns itself. The taxpayers can file a revised return called as amendment return. This would allow them to make corrections in the data and accordingly in the tax payments and thus avoid any interest liability on tax payment if any.

Continuous uploading and viewing of Invoices

Invoices can be uploaded continuously by the seller anytime during the month and can be continuously viewed and locked by the buyer for availing input tax credit. The new simplified process can be summarised as – 'UPLOAD-LOCK-PAY'. For availing input tax credit, uploading of invoices by the seller and acceptance of invoices by the buyer is a must. Invoices uploaded by supplier by 10th of the next month auto-populated in the liability table of the main return of the relevant tax month. The screen where it shall be visible to the recipient is hereafter called "viewing facility" shown as "inward annexure" in the return document. Input tax credit shall be posted in the relevant field of the input tax credit table of the return of the recipient by 11th of the next month.

Viewing Facility

The screen where invoice is visible to the recipient is hereafter called "viewing facility" (shown as "inward annexure" in the return document). Apart from uploaded invoices, recipient can also view;

a) The return filing status of the supplier, after the due date for the filing of return is over
b) The trade name of the supplier.

Missing invoice reporting

What if the supplier does not upload the Invoices / Documents? Then, Reporting of missing invoices by the recipient can be delayed up to two tax periods to allow the recipient to follow up and get the missing invoice uploaded from the supplier. Purchase invoices received by the recipient on which input tax credit has been availed but not uploaded by the supplier shall be reported by the recipient filing monthly return in the return filed after two tax period. Taxpayers filing quarterly returns shall report missing invoices in the next quarter.

Pending Invoices

After uploading of invoices by the supplier, three situations exist for pending invoices by the recipient;

1. the supply has not been received by the recipient or
2. where the recipient is of the view that the invoice needs amendment or
3. where recipient is not able to decide whether to take input tax credit for the time being.

These invoices are called pending invoices. Pending invoices shall be reported by the recipient and no input tax credit shall be availed by the recipient on such pending invoices.

Amendment of Invoices

Once an invoice is locked by the recipient, no amendment of the same shall be allowed. Any rectification can be done either by issue of debit /credit note or unlocked online by the recipient himself subject to reversal of the input tax credit by him and online confirmation thereof.

So, Amendment of an invoice may be carried out by the supplier where input tax credit has not been availed and the invoice has not been reported as locked by the recipient

Tax Payment

Monthly Returns filers: Liability declared in the return shall be discharged in full at the time of filing of the main return by the supplier as is being done at present in the present return FORM GSTR 3B.

Quarterly Returns filers: Although small taxpayer shall be required to file the return quarterly but periodicity of tax payment is monthly. In the first and second month of every quarter, they would use a payment declaration form. In this, self-assessed liability and input tax credit on self-declared basis shall be declared. But this will be full payment of the liability arising out of uploaded invoices only.

Conclusion

The above revision is the welcome step toward **ease of doing business**;

- Most taxpayers would file single monthly returns. The original scheme required 3 monthly returns.
- There would be facility for continuous uploading of invoices by the supplier anytime during the month. Under present scheme of returns, the invoices are uploaded monthly or quarterly as per turnover of taxpayer.
- Invoices uploaded by the supplier by 10th of succeeding month shall be auto-populated in the liability table of the main return of the supplier. These invoices shall be available for availing input tax credit in the return filed by the recipient.
- According to the government, about 93 per cent of the taxpayers have a turnover of less than Rs.5 crore and these taxpayers would benefit substantially from the above simplification.

It's simple yet effective system to properly implement the system of returns. The new formats are expected to come into force w.e.f. 1st January 2019.

INTERNATIONAL TAXATION IN INDIA - RECENT DEVELOPMENTS & OUTLOOK (PART - I)

CMA MRITYUNJAY ACHARJEE
Associate Vice President, Tax and Chief Internal Auditor, Balmer Lawrie Ltd.

INTRODUCTION

In the midst of the slowdown in major developed economies across the globe and general anti – establishment sentiments in major trading partners, India continued to remain an important jurisdiction for global trade as well as with regard to regulatory developments & jurisprudence concerning international taxation. India played significant role at OECD and UN for the formulation on global consensus on various international tax policies. India continued to support the action also on the area of transparency and exchange of information.

India's commitment to the area of international tax also gets reflected in various regulatory developments taking place during the year 2016, including vide Finance Act 2016.

Year 2016 also witnessed the conclusion of much controversial & talked about treaty negotiation between India - Mauritius, Singapore& Cyprus. With GAAR coming into play effective 1st April 2017, we can expect tremendous activity and interest of all the stake holders in the field of cross border transactions & India's participation in global M&A activities.

This article has been divided into two sections; Section 1 provides an overview of recent important developments at India. Recent developments are further bifurcated under three parts dealing with Regulatory developments, Treaty Amendments and Negotiations & Recent Judgement respectively. The Section 2 provides Outlook for 2017-18.

AN outlook on the tax challenges which select activity will face having regard to the identified parameters of Income tax provision/rules has also been provided. The table summarising sensitivity analysis of select economic activity shall be an indicator of the likely tax disputes/controversy which MNEs will have to manage for the year 2017 and in 2018.

The developments during the year 2016 were in the backdrop of the release of BEPS reports by OECD, effort by developed economies on transparency & exchange of information and various tax challenges/issues surrounding cross border transactions. The ongoing treaty negotiations by India of its controversial and much talked about round tripping concern was one of the significant developments in India on international tax matter.

A. Regulatory developments

The Indian parliament passed requisite Bill in June 2016, which resulted into the amendments to the Income-tax Act, 1961 vide Finance Act 2016. Subsequent to the same, Government also released further clarifications on subject of "Indirect Transfer" Few of the important regulatory development of year 2016 are summarised below:

A.1. FATCA & Common Reporting Standard

It may be recalled that reporting requirements under section 285A for implementation of the Common Reporting Standard (CRS) and the US Foreign Account Tax Compliance Act (FATCA)was introduced in the Finance Act 2015 and further, the new rules were inserted w.e.f. 7 August 2015.

On this basis, a guidance note on the implementation of reporting requirements under Rule 114F to 114H of Income - tax rules, 1962 was issued on 31 December 2015 on implementation of FATCA and CRS reporting requirements. The brief summary of Income tax rules for compliance of maintaining and reporting of information under FATCA and CRS is as follows:

Rule	Particular
Rules 114F	Definitions of the various terms referred to in the rules • Financial account, Financial asset, Financial institution, Non- participating financial institution, Non-reporting financial institution, Financial institution with only low - value accounts, Reportable account, Controlling person, Passive non financial entity, Reportable person, Specified U.S. person

Rules 114G	Information to be maintained and reported
	
	• The Reporting Financial Institution (RFI) is expected to maintain and report the following information with respect to each reportable account:
	• The name, address, taxpayer identification number [TIN (assigned in the country of residence)] and date and place of birth [DOB, POB (in the case of an individual)];
	• Where an entity has one or more controlling persons that are reportable persons:
	  ○ the name and address of the entity, TIN assigned to the entity by the country of its residence; and
	  ○ the name, address, DOB, POB of each such controlling person and TIN assigned to such controlling person by the country of his residence;
	• Account number (or functional equivalent in the absence of an account number);
	• Account balance or value (including, in the case of a cash value insurance contract or annuity contract, the cash value or surrender value) at the end of the relevant calendar year;
	• In the case of any custodial account:
	  ○ the total gross amount of interest or dividends or other income generated with respect to the assets held in the account during the calendar year; and
	  ○ the total gross proceeds from the sale or redemption of financial assets during the calendar year with respect to which the reporting financial institution acted as a custodian, broker, nominee, or otherwise as an agent for the account holder
	• In the case of any depository account, the total gross amount of interest paid or credited to the account during the relevant calendar year;
	• In the case of any account other than that referred above, the total gross amount paid or credited to the account holder with respect to the account during the relevant calendar year; and
	• In case of any account held by a non - participating financial institution (NPFI), for the calendar years 2015 and 2016, the name of NPFI and aggregate amount of such payments.
	
	The above are reporting requirements became applicable from F.Y. 2015-16

Rules 114H	Due diligence procedures for identifying reportable accounts • These rules provide for specific guidelines for conducting due diligence of reportable accounts, viz. US reportable accounts and other reportable accounts.

A.2. Equalisation Levy

OECD BEPS Action Plan 1 dealt with the subject of 'Digital Economy'. The said Action Plan 1 highlighted various challenges on taxation of the transactions carried in digital economy and suggested alternative approaches for taxing such transactions. It was felt that concrete action could be concluded for taxation of the transaction of digital economy by year 2020.

Finance Act 2016, taking cue from the BEPS Action Plan 1, inserted a separate Chapter VIII titled "Equalisation Levy". The said levy came into effect from 1st June 2016.

- Applicability of Equalisation Levy Rules

  The applicability & scope of Chapter VIII has been briefly tabulated below:

Sr. No.	Payer	Recipient	EQL Not Applicable	EQL Applicable
1	Resident	Resident	✔	
2	Non-Resident	Non-Resident	✔	
3	Non-Resident	Resident	✔	
4	Resident	Non-Resident (having PE with the specified service effectively connected to PE)	✔	
5	Resident (carrying on B&P)	Non-Resident (other than at Sr. No. 4 above)		✔

- The summary of the Equalisation Levy Rules is as under:

Particulars	Section	Rule	Explanation
Computation and payment	Section 165 &166	Rule 3 and Rule 4	Equalisation levy of 6% to be deducted from amounts paid to a non-resident not having any permanent establishment in India, on specified services*. Amount deducted during a month is to be deposited with RBI or SBI before seventh day of the following month.
Furnishing of statement of specified services / annual return	Section 167	Rule 5 and Rule 6	The statement of specified service is required to be furnished electronically in Form No. 1 on or before 30th June immediately following that financial year.
Processing of statement of specified services	Section 168	Rule 7	Where any levy, interest or penalty is payable under the provisions, a notice of demand specified in Form No. 2 shall be served upon the taxpayer.
Filing of appeal against the penalty order before the Commissioner of Income-tax (Appeals) [CIT(A)]	Section 174	Rule 8	An appeal against the penalty order shall be electronically filed before the CIT(A) in the prescribed Form No. 3 within 30 days of receipt of the penalty order. Further, a sum of INR 1,000 is required to be deposited as appeal filing fee.
Filing of appeal before the Income-tax Appellate Tribunal (Tribunal)	Section 175	Rule 9	An appeal against the order of the CIT(A) has to be filed in triplicate with the Tribunal within 60 days of date of receipt of the order of CIT(A) in the prescribed Form No. 4. Further, a sum of INR 1,000 is required to be deposited as appeal filing fee.

- The provisions of Chapter VIII have not surprisingly invited lot of criticism & attention from various stakeholders. Few of the issues which were debated by the stakeholders are summarised below:

    - Is imposition of EQL constitutional?

      Article 248 of the Constitution of India grants power to Parliament to make laws in respect of matters not enumerated in Concurrent & State list. Having regard to the same, question on constitutionality of EQL was raised.

    - Is EQL in the nature of income tax or indirect tax?

      As the Equalization Levy is not imposed on income, it does not fall within the scope of

*Specified service is defined as follows:

- Online advertisement
- Any provision for digital advertising space or any facility/ service for the purpose of online advertisement.
- Any other service as may be notified by the Central Government

"income-tax" or "tax on income" or "any identical or substantially similar taxes", which typically define the scope of taxes covered within the tax treaties. Thus, the inherent concept of 'Equalization Levy' as suggested in the BEPS Report on Action 1 keeps it outside the purview of the limitations imposed by tax treaties, a feature, which makes it the only option that can be adopted without violating or in any other way affecting the treaty obligations of the Contracting States in a tax treaty.

- Will imposing EQL be a breach of India's treaty obligations?

  The BEPS Report on Action 1 recognizes that imposition of equalisation levy may not be compatible with the Source State's obligations under existing bilateral tax treaties. Accordingly, the Report points out that countries may introduce, inter alia, equalisation levy in their domestic laws "as additional safeguards against BEPS, provided they respect existing treaty obligations, or in the bilateral tax treaties. Adoption as domestic law measures would require further calibration of the options in order to provide additional clarity about the details, as well as some adaptation to ensure consistency with existing international legal commitments." Thus as acknowledged in the BEPS Report on Action 1, imposition of equalisation levy as unilateral measure under the Source State's tax law may lead to protracted litigation in tax treaty situations. As the Indian equalisation levy seems to be in the nature of a tax on income, and since that tax is levied only in case of incomes not attributable to a PE in India, Art. 7(1) of an applicable tax treaty is likely to preclude imposition of the equalisation levy. Indeed, it appears that the objective behind introduction of the equalisation levy is to overcome this hurdle. But, in the author's view, with due respect, bilateral amendments through renegotiation of the existing treaties is the only legitimate way forward. Else, again with due respect, imposition of equalisation levy in tax treaty situations may amount to treaty dodging.

A.3. Relaxation to Non-Residents from higher withholding tax – PAN not required

- The earlier provisions of section 206AA of the Act, inter alia, provide that any person who is entitled to receive any amount on which tax is deductible at source, shall furnish his PAN to the deductor, failing which a higher withholding tax rate will be applicable.
- In order to reduce compliance burden, the Finance Act, 2016 amended the provisions of section 206AA of the Act (w.e.f. June 1, 2016) to provide relaxation from higher withholding tax rate while making payment to non-residents in the absence of PAN.
- Rule 37BC of the Rules provides that the provisions of section 206AA of the Act shall not apply on following payments made to non-residents who do not have PAN in India:
  a. Interest;
  b. Royalty;
  c. Fee for Technical Services; and
  d. Payments on transfer of any capital asset
- In respect of the above specified payments, the non-residents shall be, however required to furnish following details and documents:
  a. Name, e-mail id, contact number;
  b. Address in the country of residence;
  c. Tax Residency Certificate (TRC), if the law of country of residence provides for such certificate; and
  d. Tax Identification Number (TIN) in the country of residence. Where TIN is not available, a unique identification number is required to be furnished through which the deductee is identified in the country of residence.

A.4. Place of Effective Management (PoEM)

- The Finance Act, 2015 amended the provision of section 6(3) which provides the rule for determination of residential status of a foreign company. The effect of this amendment is that a company would be resident in India in any previous year if it is an Indian company or its PoEM in that year is in India. The PoEM was defined to mean a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are in substance made.
- Implementation of PoEM based residence rule has given rise to various issues on applicability of current provisions of the Act to the foreign company. Determining the PoEM is a subjective issue and this fact was also accepted by the lawmakers when section 115JH was introduced to provide transitional relaxations to the foreign companies to whom PoEM applies for the first time. In order to provide clarity in respect of implementation of PoEM based rule of residence and also to address

concerns of the stakeholders,the government had issued draft guidelines in December, 2015. However, the same guidelines couldn't be finalised by the government for variety of reasons. Consequently, vide Finance Act, 2016, the implementation of PoEM was deferred by the government by one year. It is pertinent to note that till December 2016, the government has not issued any clarification, circular or guidelines for implementation of amended PoEM rules. It is felt that implementation of PoEM shall therefore may get deferred again by one year vide ensuing Finance Bill 2017.

A.5. Tax Issues for income arising through 'Indirect Transfer'

- Post the retrospective amendment introduced by the Finance Act, 2012, India taxes the capital gains arising to a non-resident on transfer of shares of a foreign company if such shares derives its value substantially from the assets located in India (i.e. the fair market value (FMV) of assets located in India exceeds Rs. 10 crores; and FMV of assets located in India represents at least 50% of FMV of total assets of the foreign company or entity).
- The CBDT has released rules specifying the method for determination of FMV of the Indian assets vis-a-vis global assets of the foreign company (Rule 11UB), way of determination of proportionality of capital gain taxable in India (Rule 11UC), and the manner of reporting requirement on the Indian concern in which the foreign company holds the assets in India (Rule 114DB).
- CBDT issued Circular No. 41 of 2016 providing clarification on various issues surrounding indirect transfer directly having effect on Foreign Portfolio Investors (FPI).The said circular was in FAQ structure &it dealt with broad subjects concerning:
    a. Tax issues arising from the redemptions by Investors in Offshore Funds registered as FPIs
    b. Master-Feeder Structures
    c. India specific Sub-Funds
    d. Offshore Listed Funds
    e. Valuation Considerations
    f. Corporate Reorganizations
    g. Retrograde positioning on retrospectively

- The clarifications provided by said FAQ/ circular are as follow

    a. Redemptions by Investors in Offshore Funds registered as FPIs
    In order to get exposure to Indian capital markets, various offshore funds are registered as FPIs with the Securities and Exchange Board of India ("**SEBI**") and are accordingly, investing directly in listed Indian companies. Such funds are typically open-ended allowing for frequent subscriptions and redemptions by investors in the fund on the basis of periodic net asset value ("**NAV**") calculations. In this context, a clarification was sought as to whether indirect transfer provisions would apply to redemptions made by investors in such a fund when the fund has been paying applicable taxes on its transactions in listed securities. The CBDT has clarified that where Explanation Conditions are satisfied, redemption by investors of their shares in the fund will be taxable in India unless the investors are covered by the Explanation Carve Out. Further, in Circular No.4 of 2015 dated March 26, 2015, CBDT clarified that an offshore distribution of dividends would not result in a tax liability under Section 9(1)(i) read with Explanation . Therefore, even in a situation where an investor is not covered by the Explanation 7 Carve Out, distributions made out of accumulated profits to such investor may not be subject to tax in India.

    b. Master-Feeder Structures
    Master-feeder structures represent another prevalent model for global platforms accessing Indian listed opportunities. In such structures, monies from the offshore investors are pooled in feeder funds set up in different offshore jurisdictions which in turn pool monies in a master fund set up in an offshore jurisdiction.

    The Circular has clarified that in case the ultimate shareholder satisfies the Explanation 7 Carve Out requirements, he would not be subject to taxation on indirect transfers. By implication, the large investors could be subject to tax. Moreover, in order to satisfy the request of such a shareholder, the feeder and master funds may be required to undertake capital redemptions and be subject to multiple levels of taxation on indirect and direct transfers respectively, although the initial request arose from an investor satisfying Explanation 7 Carve Out conditions.

The Circular does little to relieve the funds from multiple levels of taxation that may be suffered at

- The time of sale of Indian shares by the master fund,
- The time of redemption of shares of the master fund by the feeder funds,
- The time of redemption of shares by investors (holding 5% or more in the master fund) in the feeder fund and taxation of investors on gains arising from redemption of units of the feeder fund in the investor's home jurisdiction.

c. India specific Sub-Funds

The Circular discusses a situation where an offshore fund allocates 10% of its corpus for India investments and sets up an India focused sub-fund for investing exclusively in Indian securities where none of the investors hold more than a 5% stake in the parent offshore fund. The Circular concludes that the indirect transfer rules will apply to the gains derived by the fund on sale / redemption of shares of the sub-fund since the value of shares in the sub-fund substantially derive their value from Indian assets. The Circular further states that such will be the case irrespective of the shareholding of the ultimate investors.

The Circular does nothing to address the primary concern of investors, which is the possibility of economic double taxation. The response ignores the practical and commercial realities of fund structuring, which require multiple considerations from various jurisdictions to be reconciled, and essentially subjects portfolio investors to an additional level of tax due to the structure adopted to invest in the Indian market. In other words, had the investors directly invested into the sub-fund, gains made by investors satisfying Explanation 7 Carve Out conditions on redemption of their shares should not have been subject to the indirect transfer tax. Another way to look at this would be if the offshore fund had directly invested into India, then the Explanation 6 Condition would likely not have been met and again the investors, including the larger investors, would not have been subject to indirect transfer tax on redemption of their shares in the fund. However, merely because the investment is routed through a sub-fund that has an India focus (which may have been done for several commercial reasons), gains arising on the redemption by the parent offshore fund of shares in the sub-fund would be subject to tax in India under the indirect transfer rules. This goes against the grain of the legislative intention behind the indirect transfer provisions and the recommendations of the Report.

d. Offshore Listed Funds

The Circular deals with a scenario involving an offshore fund listed on a foreign stock exchange which satisfies the Explanation 6 Conditions, and where the investors in such offshore fund keep changing due to regular trading on the foreign stock exchange. The Circular clarifies that the investors in the offshore fund would be liable to tax on the gains arising from sale of their shares in the offshore fund due under the indirect transfer provisions unless they can avail of the Explanation 7 Carve Out. Again, the rigid approach adopted here by the CBDT is extremely disappointing and one that disregards the commercial considerations behind the entities being listed outside India. There has previously been discussion, including in the Report, about excluding listed companies from the ambit of the indirect transfer provisions; however, the CBDT has chosen to disregard any such recommendations. Although the above clarification was in the context of funds, the Indian revenue will likely adopt the same interpretation in case of offshore listed corporates which satisfy the Explanation 6 Conditions. Further, in case of listed entities, while CBDT may choose to adopt a technical approach, practical enforcement is questionable. Interestingly, Indian rules also impose obligations on foreign buyers to withhold tax where the foreign seller may be subject to tax in India. Considering how these trades are undertaken, it is practically impossible for these obligations to be imposed. An effort on CBDT's part to take a deeper dive into some of these aspects would have been appreciated.

e. Valuation Considerations

The Circular has discussed a case where a fund satisfies the Explanation 6 Conditions on the 'specified date' but the value derived from Indian assets falls to 47% of the fund's total asset value on the date of the actual transfer. The Circular clarifies that that the indirect transfer provisions would still apply owing to the definition of 'specified date'. The clarification provided by the CBDT brings along with it levels of absurdity. In a M&A situation where the shares of an Indian company are sold and the gains are subsequently up-streamed by the Seller company post the sale, even such up-streaming can be brought within the Indian tax net, even though at the time of such up-streaming, there were no Indian

assets held by the Seller and in fact, the Seller may have discharged taxes in respect of the sale of shares of the Indian company.

Another important valuation-related issue pertains to the reporting obligations imposed on Indian companies under Section 285A of the Income Tax Act read with the recently introduced Rule 114DB of the Income Tax Rules, 1962. These provisions impose onerous reporting obligations on the Indian company with foreign investors, in respect of reporting indirect transfer transactions. A specific clarification was sought in respect of Indian public companies with investments from various FPIs (some of whom may be listed) whose shares witness frequent churn and whose India exposure can vary with investments in multiple investee companies, and how the Indian investee company can be required to assess and comply with the provisions mentioned above. The CBDT has responded stating that the practical implementation of the newly introduced Section 285A and Rule 114DB is first to be seen. This amounts to an absolute shirking of responsibility of the regulator in respect of the issues created by it in the first place. It also points to an implicit acceptance of the immense practical difficulties that the industry faces by virtue of the onerous obligations imposed by the provisions. The response of the CBDT is highly discouraging and offers little in the way of guidance to real problems faced by businesses. Greater clarity on this aspect should be forthcoming from the revenue authorities.

f. Corporate Reorganizations

Under Section 47 of the Income Tax Act, certain corporate re-organization transactions specified therein are not regarded as transfers for the purpose of charging capital gains tax. For instance, Sections 47(via) and 47(vic) exempt, upon satisfaction of certain conditions, transfer of Indian assets as part of overseas amalgamations and demergers involving foreign companies. Similar to these, Section 47(viab) and 47(vicc) exempt the indirect transfer of Indian assets as part of an overseas amalgamation or demerger, provided certain conditions are satisfied. In this regards, the Circular clarifies that the exemption under Section 47(viab) only applies to foreign amalgamating companies holding shares of an offshore company substantially deriving its value from shares of an Indian company. The exemption does not extend to shareholders of an amalgamating foreign company. As such, in case of an offshore fund which satisfies Explanation 6 Conditions, merge into another offshore fund, the investors of the former fund may not rely on Section 47(viab) and could be subject to indirect transfer provisions. Similar would be the case in any other corporate re- organization. The Circular also states that the exemption available to amalgamations under Section 47 is restricted to foreign corporate entities and does not extend to foreign non-corporate entities. Therefore, both foreign non-corporate entities and their investors can be subject to indirect transfer provisions. It is counterintuitive to state that in case of foreign corporate re-organizations, resulting in an indirect transfer of assets, there is an exemption extended to the entities undergoing re-organization, but not for the shareholders. Further, it is even more absurd if placed against the fact that a direct transfer in case of corporate re-organization can be exempt for both the entities and the shareholders, but the same situation does not arise for an indirect transfer.

g. Retrograde positioning on retrospectively

Another concern on which a clarification was sought in the Circular and which has gone unheeded relates to FPIs being treated as 'representative assessees' or 'assessees in default' for failure to withhold tax when such FPIs, in accordance with the position of law as existing at the time of redemption / transfer, did not withhold tax on payments to meet redemption requests. The Shome Committee had recommended that (i) no person should be treated as an assessee in default or a representative assessee of a non-resident, on account of the retrospective nature of the amendments to Section 9, for relying on the existing position of law at the time of a transaction involving the transfer of shares of a foreign company having underlying assets in India, to not withhold tax; and (ii) that in all cases where a demand of tax is raised on account of the retrospective amendment, no interest should be charged in respect of such demand and no penalty should be levied in respect of the income brought to tax. These recommendations were made on the basis that any alternate course of action would result in the imposition of a burden of impossibility of performance and cause undue hardship to the taxpayer. Unfortunately, the CBDT has failed to address real and problematic issues relating to retrospective amendment, merely stating the provisions of the ITA shall apply. Such clarifications by the CBDT are retrograde and at odds with the Government's much touted "non-adversarial" and "business friendly" approach to taxation.

After receiving representations of various stakeholders regarding concern in relation to the possible multiple taxation on the same income, CBDT vide a Press Release dated 17th January 2017 has decided keep the above circular in abeyance.

A.6. Multilateral Instrument

- The multilateral instrument of BEPS Action 15 is a key part of the OECD's effort toward implementation of the recommended measures. The instrument will implement the tax treaty related BEPS measures into existing bilateral or regional tax treaties. Governments are currently preparing their lists of treaties to be covered by the multilateral instrument and are considering which options to select and reservations to make. They will have to notify this to the OECD, who will be the depositary of the multilateral instrument and will support governments in the process of its signature, ratification and implementation. The multilateral instrument was open for signature as of 31 December 2016 and a first high-level signing ceremony will take place in the week beginning 5th June 2017, with the expected participation of a significant group of countries.

B. Treaty Amendments and Negotiations

B.1. Introduction

In the year 2016, the Government of India has amended few treaties with the aim of avoiding treaty abuse and curbing the evasion of taxation. The developments during 2016 were in the backdrop of efforts made by India with the object of transparency and exchange of information with other jurisdictions.

The year 2016 also witnessed conclusion of much talked about treaty negotiation between India and Mauritius, Singapore & Cyprus. There was a reasonable apprehension that India's DTAA's with Mauritius, Singapore &Cyprus were misused for round tripping and bringing money back in India through this route. India has amended its tax treaty with Mauritius, Cyprus & Singapore, a significant milestone in plugging round-tripping of funds. These Amended treaties will help India to curb black money.

The table below summarizes few of the important tax treaties amended/renegotiated/revised by India during the year 2016.

Amended/Renegotiated/ Revised Treaty	Effective Date	Stated Purpose of the Treaty
Singapore *	April 1, 2017	DTAA, Effective Exchange of Information on Tax matters, Eliminating Double Non Taxation
Mauritius *	April 1, 2017	DTAA, Effective Exchange of Information on Tax matters, Eliminating Double Non Taxation
South Korea *	April 1, 2017	DTAA, Effective Exchange of Information on Tax matters, Eliminating Double Non Taxation
Cyprus	April 1, 2017	DTAA, Effective Exchange of Information on Tax matters, Eliminating Double Non Taxation
Japan	April 1, 2017	Internationally accepted standards for Effective Exchange of Information on Tax matters
Tajikistan	Not yet notified	DTAA, Prevention of Fiscal evasion & Effective Exchange of Information on Tax matters
Kazakhstan	Not yet notified	DTAA, Prevention of Fiscal evasion & Effective Exchange of Information on Tax matters

* New Limitation of Benefits Clause introduced and taxing rights of capital gain on alienation of shares has now been given to the source country\

On a broad review of the above table it can be observed that India's treaty policy has kept its focus on treaty shopping and ill effects of the treaty shopping (like giving rise to double non taxation).

B.2. Treaty Specific Analysis

It appears clear from the spate of amendments to India's tax treaties in the recent years, that the Indian government is making a concerted effort to bring the era of tax free investments in India to a close, and is consciously moving towards a source based taxation regime which factor should be considered by investors looking to invest in India. We have provided further analysis of few of the above mentioned treaties

B.2.1. India – Singapore Treaty

The Government of India and the Government of Singapore, on **30 December, 2016,** signed a Protocol amending the Double Taxation Avoidance Agreement (tax treaty) between India and Singapore (India - Singapore tax treaty).

Key highlights of amendments

Following are the key highlights of the signed protocol between India and Singapore.

Taxation of capital gains on shares

- India will have the right to tax capital gains arising from alienation of shares acquired on or after April 01, 2017 by a Singapore resident. Capital Gains will be taxed at 50% for 2 years post April 2017, subject to LOB clause. Earlier DTAA of the countries gave complete exemption from payment of tax on profits made through capital gains as there was no such levy in the host country. Capital gains on derivatives and fixed income securities will continue to be exempt. After 2 years i.e. post March 31, 2019, it will be taxed at 100% in India.

Taxation of interest income of banks

- Withholding tax on interest income earned by Banks @ 15% in case of debt claims or loans made after 31st March 2017

Anti-avoidance measure

- The 2016 Protocol introduces a new article which explicitly provides that the India - Singapore tax treaty shall not prevent either of the countries from applying its domestic laws and measures concerning the prevention of tax avoidance or tax evasion.

Limitation of benefits

- The LOB conditions provided in the 2016 Protocol are similar to the conditions prescribed in the 2005 Protocol. For the specific information, in respect of capital gains arising from transfer of shares acquired prior to 1 April, 2017, the LOB conditions are same as in the 2005 Protocol. However, in respect of investments acquired after 1 April, 2017 and sold before 31 March, 2019, the expenditure test needs to be met for the twelve month period immediately preceding the date of transfer.

Promotion of bilateral investments

- As per the media release issued by the Government of Singapore, both the countries have agreed to conclude an agreement in the second half of 2017 laying down new joint, initiatives to be undertaken for promotion of bilateral investments. This is a welcome development, and may give an impetus to future cross border investments.
- Settlement of cross-border tax issues, especially transfer pricing, will be easier under the amended India-Singapore tax treaty

Impact and Analysis

- This amendment will have far reaching impact across all the sectors and investors; however we have provided impact and analysis for Private Equity Fund Companies, FPIS, and P-Notes.

Impact on shares held by Foreign Portfolio Investors ("FPIs")	• Under the Indian income tax law, shares of listed Indian companies held by FPIs are deemed to be capital assets irrespective of the holding period or the frequency of trading equity carried out by the concerned FPI. As such, income from sale of shares results in capital gains and at present, FPIs enjoy the benefits of the capital gains provisions under the Singapore Treaty. • While the Protocol should provide some relief to FPIs based out of Singapore as regards the tax regime to be applicable to their investments after March 31, 2017, they will find themselves in a similar position to FPIs based out of Mauritius. The signing of the Protocol will no doubt result in an increase in tax costs, especially where short term capital gains are earned.
Impact on private equity funds and holding companies	• As mentioned earlier, while investments by a Singapore resident in shares of an Indian Company made before April 01, 2017 should continue to be eligible to avail of the benefits of the erstwhile provisions of the 2005 Protocol, such benefits shall be subject to fulfilling the requirements of the Revised LOB clause. • Such investments shall be subject to tax in India at the rate of 50% of the tax rate prevailing in India provided the investments are realized before March 31, 2019. All investments made after April 01, 2017 which is also realized after March 31, 2019 shall be subject to full taxation as per the domestic tax rate in India. • Investments made through hybrid instruments such as compulsory convertible debentures should continue to be exempt from tax in India and Singapore should have the right to tax gains from such instruments. • Quick implementation may allow companies to avail benefit of the grandfathering provisions. However, with the GAAR set to come into force, and a concerted effort by the Indian authorities to introduce source based taxation in those treaties which do not already provide for it, offshore investors may also need to carefully reconsider their choice of intermediate jurisdiction and the overall value of investing through intermediate jurisdictions.
Impact on P-Note issuers and Derivatives	• The Protocol will have a significant impact on P-Notes issued against underlying shares of Indian companies. This will have an impact on P-Note investments, especially in issues relating to tax pass through to the P-Note holders on the taxes payable by the FPI. • The Protocol should not adversely impact derivatives, which should also continue to enjoy exemptions from Indian capital gains taxes. The gap that is created between the tax treatment for equity shares vis-à-vis derivative instruments may lead to a shift in strategies that are dominated by exposure to derivative instruments as opposed to investments in equity shares.

B.2.2. India – Mauritius Treaty

The Government of India and the Government of Mauritius, on **10 May, 2016**, signed a Protocol for amending the Double Taxation Avoidance Agreement (tax treaty) dated 24 August, 1982 between India and Mauritius. (India - Mauritius tax treaty). The Protocol is the outcome of an extensive and long drawn-out negotiation process that has been going for more than a year and a half. The revised position shall only be applicable to investments made on or after April 1, 2017.

Key highlights of amendments

Following are the key highlights of the signed protocol between India and Mauritius

Taxation of capital gains on shares

- Under Article 13 (4) of the India-Mauritius DTAA, capital gains derived by a Mauritius resident from alienation of shares of a company resident in India ("Indian Company") were taxable in

Mauritius alone. However, the Protocol marks a shift from residence-based taxation to source-based taxation. Consequently, capital gains arising on or after April 01, 2017 from alienation of shares acquired on or after 1st April 2017 of a company resident in India shall be subject to tax in India.

- The Protocol provides for a relaxation in respect of capital gains arising to Mauritius residents from alienation of shares between April 01, 2017 and March 31, 2019 ("Transition Period"). The tax rate on any such gains shall not exceed 50% of the domestic tax rate in India ("Reduced Tax Rate").

Grandfathering of investments made before April 01, 2017

- The Protocol states that capital gains arising out of sale of shares of an Indian Company that have been acquired before April 01, 2017 shall not be affected by the Protocol. Such investments shall continue to enjoy the treatment available to them under the erstwhile Article 13(4) of the DTAA.

Taxation of interest income of banks

- The Protocol revises the tax rate on interest arising in India to Mauritius resident banks to state that such streams of income shall be subject to withholding tax in India at the rate of 7.5% in respect of debt claims and loans made after March 31, 2017. At present such streams of income are exempt from tax in India under the India-Mauritius DTAA.

Exchange of information

- The text of the Protocol states that the exchange of information article (Article 26) has been amended to bring it at par with the international standards. Provisions such as assistance in collection of taxes and assistance in source-based taxation of other income have been introduced.

Limitation of benefits

- As per the Press Release, the benefit of the Reduced Tax Rate shall only be available to such Mauritius resident who is (a) not a shell/conduit company and (b) satisfies the main purpose and bonafide business test. Further, a Mauritius resident shall be deemed to be a shell/conduit company if its total expenditure on operations in Mauritius is less than INR 2,700,000 (approximately 40,000 US Dollars) in the 12 months immediately preceding the alienation of shares.

Other changes

- Withholding tax on interest income earned by Banks @ 7.5% in case of debt claims or loans made after 31st March 2017.
- Where the debts-claims exist on or before 31 March 2017, shall be exempt from tax in India.
- Article 12A to deal with Fees for Technical Services has also been included. The rate of withholding tax is 10%

Impact and Analysis

- This amendment will have far reaching impact across all the sectors and investors; however we have provided impact and analysis for Private Equity Fund Companies, FPIS, and P-Notes.

Impact	Explanation
Impact on private equity funds and holding companies	• As mentioned above, while investments in shares of an Indian Company made before April 01, 2017 shall receive the benefit of the erstwhile provisions of the India-Mauritius DTAA, such benefits shall be curtailed for investments made during the Transition Period. • Such investments shall be subject to tax in India at the rate of 50% of the tax rate prevailing in India provided the investments are realized before March 31, 2019. All investments made after April 01, 2017 which is also realized after March 31, 2019 shall be subject to full taxation as per the domestic tax rate in India.

	• However, investments that are made through hybrid instruments such as compulsory convertible debentures may still be eligible to claim residence-based taxation as the Press Release only refers to allocation of taxation rights in respect of shares and the Protocol may restrict the shift to source based taxation only to such transactions. Having said that, clarity on this issue shall only be available once the text of the Protocol is released.
Impact on shares held by Foreign Portfolio Investors ("FPIs")	• Under the Indian income tax law, shares of listed Indian companies held by FPIs are deemed to be capital assets irrespective of the holding period or the frequency of trading equity carried out by the concerned FPI. As such, income from sale of shares results in capital gains • At present, FPIs enjoy the benefits of the capital gains provisions under the India-Mauritius DTAA. • Such investments will also be impacted by the amendment and as per the Protocol such investments shall be subject to tax in India after April 01, 2017. While there is a zero percent rate applicable on gains arising out of shares that are listed and sold on a recognized stock exchange if such shares are held for more than 12 months, capital gains arising out of investments are subject to a tax rate of 15% (exclusive of applicable surcharge and cess) if such shares are held for less than 12 months i.e. short term capital gains. • During the Transition Period, and subject to the satisfaction of the limitation of benefits clause, this rate may be reduced to 7.5%.
Impact on P-Note issuers	• Issuers of promissory notes ("P-Notes") may be adversely affected by the Protocol as the cost of taxation arising out of the changed position on taxation would have to be built into such arrangements. This would make such arrangements not only costly but also less lucrative for investors who seek synthetic exposure to Indian securities. • Considering that it is the FPI entity is issuing the P-Note which will be subject to tax in India, issues may arise with respect to the tax amounts that they will be able to pass on to the P-Note holders due to a timing mismatch on the taxability of the FPI entity (which is taxed on a FIFO basis and not on a one-to-one co- relation). It will have to be seen whether P-Notes can still prove to be attractive for investors, considering the incremental tax associated with the same
Impact on F&O transactions	• Similar to the position in respect of compulsory convertible debentures, Mauritius based entities that enter futures and options contract in India, may still be able to claim the benefits of residence based taxation since such contracts relate to capital assets other than shares.

B.2.3. India – South Korea Treaty

India and South Korea have signed a revised Agreement for Avoidance of Double Taxation (tax treaty) on 18 May, 2015, in Seoul. The revised tax treaty replaces the existing tax treaty signed between the two countries in 1985 and shall be effective in India from 1 April, 2017. The Central Board of Direct Taxes has issued a press release dated 26th October, 2016 to this effect.

Key highlights of amendments

Significant changes have been highlighted below:

Taxation of capital gains on shares

The existing DTAA provided for residence based taxation of capital gains on shares. India – South Korea treaty provides for source based taxation of capital gains arising from alienation of shares comprising more than 5 % of share capital.

Limitation of benefits

- The revised DTAA inserts new Limitation of Benefits Article i.e. anti-abuse provisions to ensure that the benefits of the Agreement are availed only by the genuine residents of both the countries.

Taxation of royalty income and Fees for technical service

- In order to promote cross border flow of investments and technology, the revised DTAA provides for reduction in withholding tax rates from 15% to 10% on royalties or fees for technical services and from 15% to 10% on interest income.

Permanent Establishment

- Service PE clause introduced – furnishing of services, including consultancy services, through employees or others would lead to a service PE, if such activities (same or connected project) continue for more than 183 days within any 12 - month period.
- Insurance PE clause introduced – collection of premiums or insuring risk through dependent agent (other than re - insurance) would be deemed as PE.
- Building site or construction, installation or assembly project, or supervisory activities in connection therewith, would constitute a PE if such site project or activities last more than 183 days within any 12 months period.
- Dependent Agent PE – The scope has been expanded to include the following additional activities of agent:
- Habitually exercising in that state an authority to conclude contracts in the name of the enterprise subject to activities mentioned in Article 4. Maintaining stock of goods or merchandise and regular delivery in the contracting state. Securing orders in the contracting state.

Dispute Resolution Changes

- The revised DTAA, with the introduction of Article 9(2), provides recourse to the taxpayers of both countries to apply for Mutual Agreement Procedure (MAP) in transfer pricing disputes as well as apply for bilateral Advance Pricing Agreements (APA). Further, as per understanding reached between the two sides, MAP requests in transfer pricing cases can be considered if the request is presented by the tax payer to its competent authority after entry into force of revised DTAA and within three years of the date of receipt of notice of action giving rise to taxation not in accordance with the DTAA.

Exchange of information

- The Article on Exchange of Information is updated to the latest international standard to provide for exchange of information to the widest possible extent. As per revised Article, the country from which information is requested cannot deny the information on the ground of domestic tax interest. Further, the revised DTAA contains express provisions to facilitate exchange of information held by banks. Information exchanged under the revised DTAA can now be used for other law enforcement purposes with authorization of information supplying country.

Other changes

- Assistance between India and South Korea for collection of taxes.

B.2.4. India – Cyprus Treaty

The Government of India and the Government of Cyprus, on 18 November 2016, signed a protocol amending the provisions of the double taxation avoidance agreement (tax treaty) between India and Cyprus (India- Cyprus tax treaty). The Government of India has issued a press release dated 18 November 2016 (press release) providing a gist of the key amendments.

Key highlights of amendments

Following are the key highlights of the signed protocol between India and Cyprus

Taxation of capital gains on shares

- Amendment shall result into source - based taxation of capital gains arising from alienation (disposal) of shares. In other words, India shall have the right to tax capital gains arising to Cyprus tax residents on transfer of shares of an Indian company.

- However, grandfathering clause has been provided for investments made before April 01, 2017.

Exchange of information

- The provisions related to exchange of information are updated as per international standards, which will enable exchange of banking information and allow the use of such information for purposes other than taxation (subject to prior approval of competent authorities).

Taxation of royalty income

- The tax rate on royalty in the country from which payments are made to 10% from the existing rate of 15%, in line with the tax rate under Indian tax laws.

Other changes

- Expanding the scope of the permanent establishment (PE), possibly to introduce the concept of service PE.
- Assistance between India and Cyprus for collection of taxes.
- Provisions of the India-Cyprus tax treaty in accordance with international standards and India's policy with respect with respect to tax treaties

B.3. Other Points

Besides concluding and renegotiating treaties, the government has also continued its dialogue with few countries and have carried out further amendment to the respective tax treaties by issuance of MOUs or Clarifications

B.3.1. India – Switzerland

The Central Board of Direct Tax has signed an agreement with Switzerland; it will now begin sharing with India from 2019 information on all investment or accounts maintained in its banks post-2018.

B.3.2. India - Sweden

The Competent Authorities of India and Sweden have signed a Memorandum of Understanding (MoU) regarding suspension of collection of taxes during the pendency of MAP. In terms of the MOU, the collection of outstanding taxes in case of a taxpayer whose case is pending in MAP before the Competent Authorities of India and Sweden, would be kept in abeyance for a period of two years (extendable to a maximum period of five years through mutual agreement between the Competent Authorities of India and Sweden) subject to furnishing of a bank guarantee of an amount equal to the amount of tax under dispute and interest accruing thereon, as per the provisions of the Income-tax Act.

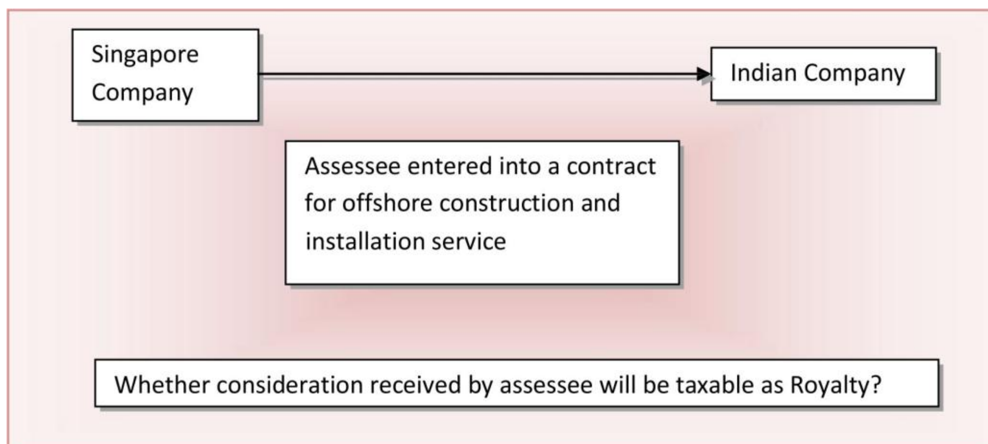
B.3.3. India – Japan

A protocol amending the Double Taxation Avoidance Convention between India and Japan has come into force. The Amended Protocol will provide for internationally accepted standards for effective exchange of information on tax matters. It further provides that the information received from Japan in respect of a resident of India can be shared with other law enforcement agencies with authorization of the competent authority of Japan and vice versa. The protocol provides for exemption of interest income from taxation in the source country with respect to debt-claims insured by the government/government owned financial institutions.

C. Recent Judgements

Summary of the most talked about and controversial judgement are given below:

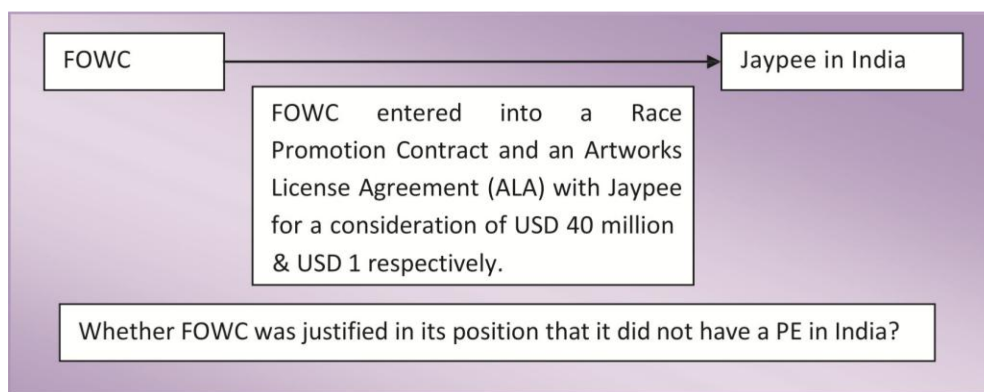
- **Technip Singapore Pte Ltd v DIT - TS-301-HC-2016 (Del) [India - Singapore DTAA]**



The Court held that where the assessee had entered into a contract with Indian Oil Corporation Limited (IOCL) for offshore construction work involving mobilization / demobilization and installation services, the Revenue was incorrect in separating the mobilization / demobilization services from the installation services since the payment made to the assessee was for the execution of a composite contract.

It held that since the equipment used by the assessee while providing services to IOCL were in the exclusive control of the assessee and IOCL did not have any dominion or control over the same, the payment received by the assessee could not be taxed as equipment royalty under Article 12(3) of the India Singapore DTAA. Further, it rejected the contention of the Revenue that the installation services were incidental to mobilization / demobilization services and therefore taxable under Article 12(4)(a) of the DTAA and held that since the demobilization / mobilization services were not taxable under Article 12(3), the installation services even if considered ancillary, would not be taxable. Further, it held that the said services were neither taxable under the DTAA since they didn't make available any technology nor under the Act since it fell under the exclusionary clause to Explanation 9(1)(vii).

- **Delhi HC: Racing Circuit Constitutes Permanent Establishment of Formula One**

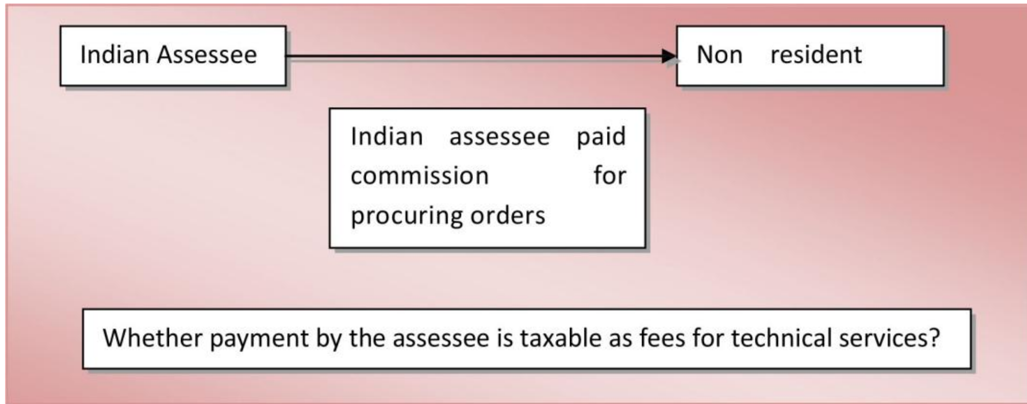


The Court discussed various illustrative examples across jurisdictions on the interpretation of a fixed place PE, such as Universal Furniture Ind AB v Government of Norway, the Swiss Server decision and Joseph Fowler v Her Majesty the Queen. No conclusive rule could be laid down as to the number of days which could impart a degree of permanence to a place of business to make it a fixed place. The AAR also noted that a place of business could constitute a PE even for a very short period of time because of the nature of the business. Therefore, even if the business was

done for a short duration with intermittent gaps, the existence of a fixed place of could not be ruled out.

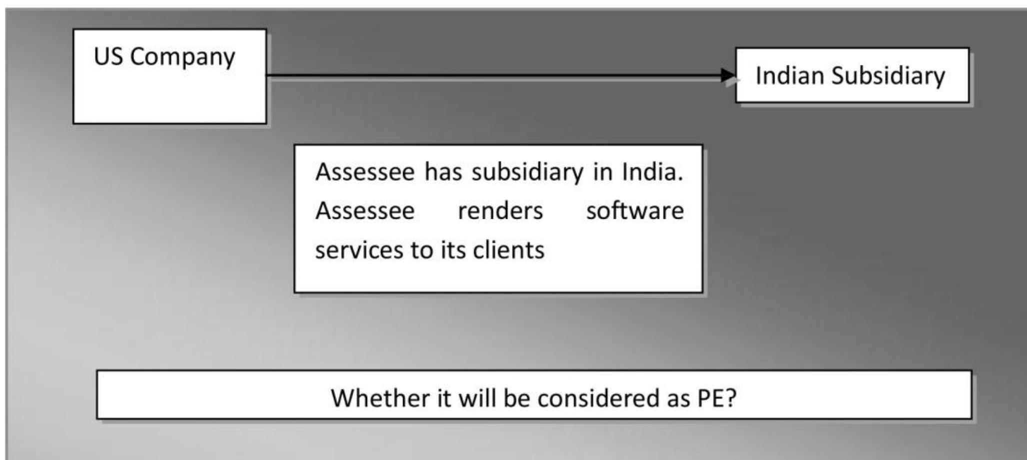
Further, relying on the OECD commentary and Klaus Vogel's commentary on the general principles applicable to a fixed place PE, the Court noted that as long as the presence was in a physically defined geographical area, permanence in such fixed place could be relative, having regard to the nature of the business.

- **CIT v Farida Leather Company - (2016) 66 taxmann.com 321 (Mad)**



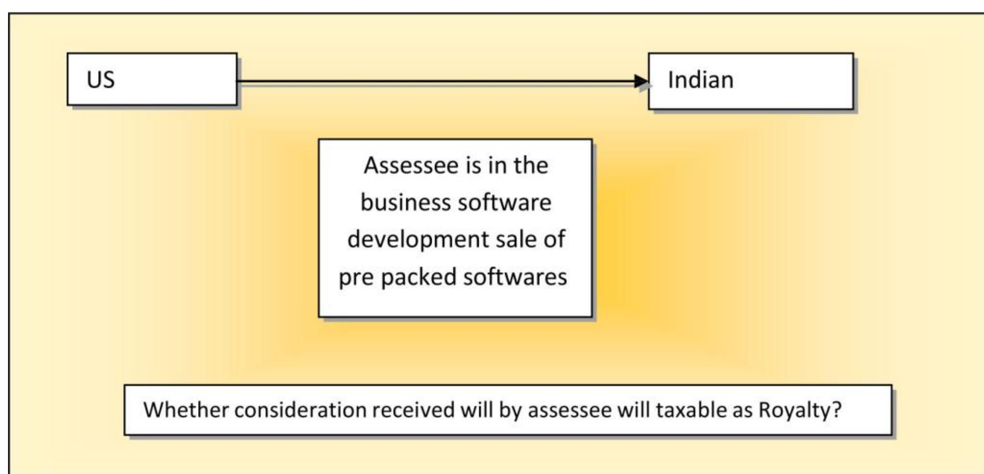
The Court held that agency commission paid by the assessee to non- resident agents for procuring orders for the assessee outside India, would not be taxable as fees for technical services under section 9(1)(vii) of the Act and therefore section 195 of the Act would not be applicable, since obligation to deduct tax at source under section 195 only arises if the payment is chargeable to tax in the hands of the non-resident recipient.

- **Adobe Systems Incorporated v ADIT - (2016) 96 CCH 0012 (Del) [India - US DTAA]**



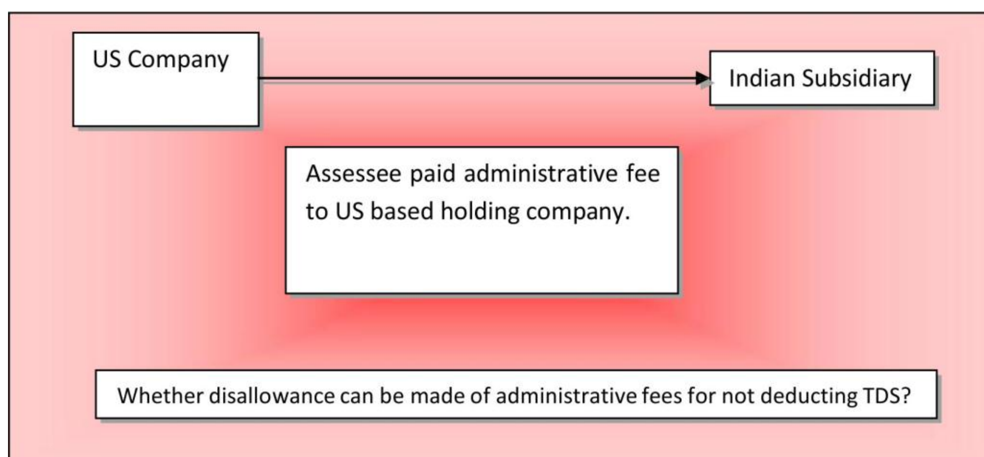
The Court held that where the subsidiary company of the assessee was compensated at ALP for international transactions with the assessee (its AE), assuming that the subsidiary company was the PE of the assessee, no further profits could be attributed to the assessee's operations in India. Without prejudice to the above, the Court held that the assessee's subsidiary in India did not constitute a fixed place PE since there was no evidence that the assessee had the right to use its premises or any fixed place at its disposal. The Court held that held that in the absence of any evidence that any of the assessee's employees provided services in India, there could be no Service PE and merely because the assessee had the right to audit the Indian subsidiary, it cou ld not be concluded that the employees of the assessee provided services in India. Further,it held that there was no allegation that the Indian subsidiary was authorized to conclude contracts on behalf of the Petitioner and therefore could not be considered as a Dependent Agent PE.

- **CIT & ANR vs. Halliburtion Export Inc. & ANR - (2016) 96 CCH 0060 (Del HC) - ITA 363/2016, 365/2016 [India - US DTAA]**



The Court held that consideration received by assessee on sale of pre packaged software was not royalty. It further held that there is a clear distinction between royalty paid on transfer of copyright rights and consideration for transfer of copyrighted articles. Right to use a copyrighted article or product with the owner retaining his copyright, is not the same thing as transferring or assigning rights in relation to the copyright. The enjoyment of some or all the rights which the copyright owner has is necessary to invoke the royalty definition. Hence the Court held that a non-exclusive and non-transferable licence enabling the use of a copyrighted product cannot be construed as an authority to enjoy any or all of the enumerated rights ingrained in Article 12 of India-USA DTAA.

- **CIT v Herbalife International India Pvt Ltd - (2016) 96 CCH 0007 (Del) [India - US DTAA]**



The Court held that for AY 2001-02, prior to the insertion of section 40(a)(ia) of the Act, disallowance of payments to non-residents on account of non-deduction of tax at source was discriminatory, since payments to residents were not subject to such disallowance arising out of non-deduction of tax at source and consequently assessee would be eligible to benefit of Article 26(3) of the India -US DTAA i.e. Non-discrimination, and therefore it held that the administrative fee paid by the assessee to its US based holding company was allowable in spite of non-deduction of tax at source.

The Outlook for 2017-18 would be continued in the next Bulletin.

TAX UPDATES, NOTIFICATIONS AND CIRCULARS

INDIRECT TAX

GOODS AND SERVICES TAX

CENTRAL TAX

Notification No. 31/2018 – Central Tax
Dated: 06.08.2018

As per this Notification, the migrated Tax Payers who has received Provisional ID in GST can now apply for GST Identification No. Below mentioned is the procedure:

1. The details as per the Table below should be furnished by such taxpayers to the Jurisdictional nodal officer of the Central Government or State Government on or before the 31st August, 2018

Table

1	Provisional ID	
2	Registration Number under the earlier law (Taxpayer Identification Number (TIN)/Central Excise/Service Tax Registration number)	
3	Date on which token was shared for the first time	
4	Whether activated part A of the aforesaid FORM GST REG-26	Yes/ No
5	Contact details of the taxpayer	
5a	Email id	
5b	Mobile	
6	Reason for not migrating in the system	
7	Jurisdiction of Officer who is sending the request	

2. On receipt of an e-mail from the Goods and Services Tax Network (GSTN), such taxpayers should apply for registration by logging onto https://www.gst.gov.in/) in the "Services" tab and filling up the application in FORM GST REG-01 of the Central Goods and Services Tax Rules, 2017.
3. After due approval of the application by the proper officer, such taxpayers will receive an email from GSTN mentioning the Application Reference Number (ARN), a new GSTIN and a new access token.
4. Upon receipt, such taxpayers are required to furnish the following details to GSTN by email, on or before the 30th September, 2018, to migration@gstn.org.in:-
   (a) New GSTIN;
   (b) Access Token for new GSTIN;
   (c) ARN of new application;
   (d) Old GSTIN (PID).
5. Upon receipt of the above information from such taxpayers, GSTN shall complete the process of mapping the new GSTIN to the old GSTIN and inform such taxpayers.
6. Such taxpayers are required to log onto the common portal www.gstn.gov.in using the old GSTIN as "First Time Login" for generation of the Registration Certificate.
7. Such taxpayers shall be deemed to have been registered with effect from the 1st July, 2017.

Notification No. 32/2018 - Central Tax
Dated: 10.08.2018

The time limit for filing GSTR 1 by the taxpayers having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year, has been extended for each of the months from months from July, 2018 to March, 2019 till the eleventh day of the month succeeding such month.

Notification No. 33/2018 - Central Tax
Dated: 10.08.2018

Central has specified the due dates for filing GSTR 1 by the taxpayers having aggregate turnover of less than 1.5 crore rupees in the preceding financial year or the current financial year.

Sl. No.	Quarter for which details in FORM GSTR-1 are furnished	Time period for furnishing details in FORM GSTR-1
1	July - September, 2018	31st October, 2018
2	October - December, 2018	31st January, 2019
3	January - March, 2019	30th April, 2019

Notification No. 34/2018 - Central Tax
Dated: 10.08.2018

Central has specified the due dates for filing GSTR 3B by the Regular Tax Payers for each of the months from July, 2018 to March, 2019. It shall be furnished electronically through the common portal, on or before the twentieth day of the month succeeding such month.

CENTRAL TAX RATE

Notification No. 22/2018 - Central Tax (Rate)
Dated: 06.08.2018

Central has extended the exemption under section 9(4) i.e. Payment of Central Tax under Reverse Charge mechanism if aggregate purchase from unregistered dealers crosses the limit of Rs. 5000 / day. The said exemption has been extended till 30th September, 2019.

INTEGRATED TAX RATE

Notification No. 23/2018 - Integrated Tax (Rate)
Dated: 06.08.2018

Central has extended the exemption under section 9(4) i.e. Payment of Integrated Tax under Reverse Charge mechanism if aggregate purchase from unregistered dealers crosses the limit of Rs. 5000 / day. The said exemption has been extended till 30th September, 2019.

UNION TERRITORY TAX RATE

Notification No. 22/2018 – Union Territory Tax (Rate)
Dated: 06.08.2018

Central has extended the exemption under section 7(4) i.e. Payment of Union Territory Tax under Reverse Charge mechanism if aggregate purchase from unregistered dealers crosses the limit of Rs. 5000 / day. The said exemption has been extended till 30th September, 2019.

CIRCULARS

Circular No. 52/26/2018-GST
Dated: 09.08.2018

Circular No.52/26/2018-GST dt 09.08.2018 issued. Clarifies GST Rate on the following goods

- **Applicability of GST on Fortified Toned Milk**
  Toned milk fortified (with vitamins 'A' and 'D') attracts NIL rate of GST under HSN Code 0401

- **Applicable GST rate on refined beet and cane sugar.**
  It is clarified that beet and cane sugar, including refined beet and cane sugar, will fall under heading 1701 and attract 5% GST rate.

- **Applicable GST rate on treated (modified) tamarind kernel powder and plain (unmodified) tamarind kernel powder.**
  As both plain (unmodified) tamarind kernel powder and treated (modified) tamarind kernel powder fall under chapter 13, it is hereby clarified that both attract 5% GST in terms of the said notification.

- **Applicability of GST on supply of safe drinking water for public purpose:**
  Accordingly, supply of water, other than those excluded from S. No. 99 of notification No. 2/2017-Central Tax (Rate) dated 28.06.2017, would attract GST at "NIL" rate. Therefore, it is clarified that supply of drinking water for public purposes, if it is not supplied in a sealed container, is exempt from GST.

- **GST rate on Human Blood Plasma**
  - Normal human plasma is specifically mentioned at S. No. 186 of List I under S. No.180 of Schedule I of the notification No. 1/2017-Central Tax (Rate) dated 28th June, 2017, and attracts 5% GST. Other items falling under HS Code 3002 (including plasma products) would attract 12% GST under S. No. 61 of Schedule II of the said notification, not specifically covered in the said List I.

  - Thus, a harmonious reading of the two entries would mean that normal human plasma would attract 5% GST rate under List I (S. No. 186), whereas plasma products would attract 12% GST rate, if otherwise not specifically covered under the said List

- **Appropriate classification of baby wipes, facial tissues and other similar products.**
  Wipes of various kinds are classifiable under heading 3307 or 3401 depending upon their constituents. Therefore, if the baby wipes are impregnated with perfumes or cosmetics, then the same would fall under HS code 3307 and would attract 18% GST rate. Similarly, if they are coated with soap or detergent, then it would fall under HS code 3401 and would attract 18% GST.

- **Classification and applicable GST rate on real zari Kasab (thread).**
  It is clarified that imitation zari thread or yarn known as "Kasab" or by any other name in trade parlance, would attract a uniform GST rate of 12% under tariff heading 5605.

- **Applicability of GST on marine engine**
  It is clarified that the supplies of marine engine for fishing vessel (being a part of the fishing vessel), falling under tariff item 8408 10 93 attracts 5% GST.

- **Applicable GST rate on cotton quilts under tariff heading 9404- Scope of the term "Cotton Quilt".**
  - Cotton quilts falling under tariff heading 9404 attract a GST rate of 5% if the sale value of such cotton quilts does not exceed Rs. 1000 per piece. However, such cotton quilts, with sale value exceeding Rs.1000 per piece attract a GST rate of 12%.
  - The essential character of the cotton quilt is imparted by the filling material. Therefore, a quilt filled with cotton constitutes a cotton quilt, irrespective of the material of the cover of the quilt. The GST rate would accordingly apply.

- **Applicable GST rate for bus body building activity:**
  - Thus, fabrication of buses may involve the following two situations:
  - a) Bus body builder builds a bus, working on the chassis owned by him and supplies the built-up bus to the customer, and charges the customer for the value of the bus.
  - b) Bus body builder builds body on chassis provided by the principal for body building, and charges fabrication charges (including certain material that was consumed during the process of job-work).
  - It is clarified that in case as mentioned at Para (a) above, the supply made is that of bus, and accordingly supply would attract GST @28%. In the case as mentioned at Para (b) above, fabrication of body on chassis provided by the principal (not on account of body builder), the supply would merit classification as service, and 18% GST as applicable will be charged accordingly.

- **Applicable GST rate on Disc Brake Pad:**
  - It is clear, in view of the HSN Explanatory Notes that the said goods, namely "Disc Brake pad" for automobiles, are appropriately classifiable under heading 8708 of the Customs Tariff Act, 1975 and would attract 28% GST.

Circular No. 53/26/2018-GST
Dated: 09.08.2018

Applicability of GST on petroleum gases retained for the manufacture of petrochemical and chemical products.

- GST on petroleum gases, which are supplied by oil refineries to them on a continuous basis through dedicated pipelines, while a portion of the raw material is retained by these manufacturers (recipient of supply), and the remaining quantity is returned to the oil refineries.
- In this regard, an issue has arisen as to whether in this transaction GST would be leviable on the whole quantity of the principal raw materials supplied by the oil refinery or on the net quantity retained by the manufacturers of petrochemical and chemical products.
- It is clarified that, GST will be payable by the refinery only on the net quantity of petroleum gases retained by the recipient manufacturer for the manufacture of petrochemical and chemical products. Though, the refinery would be liable to pay GST on such returned quantity of petroleum gases, when the same is supplied by it to any other person. It is reiterated that this clarification would be applicable mutatis mutandis on other cases involving supply of goods, where feed stock is retained by the recipient and remaining residual material is returned back to the supplier. The net billing is done on the amount retained by the recipient.
- **This clarification is issued in the context of the GST only and past issues, if any, will be dealt in accordance with the law prevailing at the material time.**

Circular No. 54/26/2018-GST
Dated: 09.08.2018

- Fertilizers falling under heading 3102, 3103, 3104 and 3105, other than those which are clearly not to be used as fertilizers, attract 5% GST. However, the fertilizers items falling under the above mentioned headings, which are clearly not to be used as fertilizer, attract 18% GST. The intention has been to provide concessional rate of GST to the fertilizers which are used directly as fertilizers or which are used in the manufacturing of complex fertilizers which are further used as soil or crop fertilizers. The phrase "other than clearly to be used as fertilizers" would not cover such fertilizers that are used for making complex fertilizers for use as soil or crop fertilizers.
- **Thus, it is clarified that the fertilizers supplied for direct use as fertilizers, or supplied for use in the manufacturing of other complex fertilizers for agricultural use (soil or crop fertilizers), will attract 5% IGST.**

Circular No. 55/26/2018-GST
Dated: 10.08.2018

- Whether GST is payable on vocational training provided by private ITI in designated trades and in other than designated trades.
- Services provided by private ITI's in respect of designated trades (under the apprenticeship act, 1961). As a corollary services provided by such ITI's in respect of other designated trades will not be exempt.
- Whether GST is payable on service provided by private ITI's for conduct of examination against consideration in the form of entrance fees and also on services related to admission to or conduct of examination.
    - For designated trades – it will be exempt
    - For non-designated trades - it will not be exempt
- **Services provided by Government ITI's**
  Services provided by a Government ITI to an individual trainees or students is exempt under s.no.6 of notification 12/2017-CT(R) dated 28.06.2017 as these are in the nature of services provided by the Central or State Government to individuals. Such exemption would cover both – vocational training and examinations conducted by these Government ITI's.

CUSTOMS

TARIFF

Notification No. 56/2018 – Customs
Dated: 03.08.2018

In the Notification No. 50/2017-Customs, dated the 30th June, 2017, with effect from the 4th day of August, 2018 the following proviso shall be inserted after the second proviso, namely:-

"Provided also that the,-
(a) Entries against serial number 14A, and
(b) The second proviso,
Shall come into effect from the 18th day of September, 2018".

Notification No. 57/2018 – Customs
Dated: 07.08.2018

The following Tariff shall be inserted

SL. No.	Chapter or Heading or sub-heading or tariff item	Description of goods	Standard rate	Integrated Goods and Services Tax
"377B	73181500, 73269099	Screw or SIM socket / other mechanical items (metal) for cellular mobile phone	15%	- "

NON TARIFF

Notification No. 68/2018 – Customs (N.T.)
Dated: 03.08.2018

This Notification is regarding regulations to amend the Courier Imports and Exports (Clearance) Regulations, 1998. The regulations may be called the Courier Imports and Exports (Clearance) Amendment Regulations, 2018.

These regulations shall apply for assessment and clearance of imported or export goods, carried by an Authorised Courier by air, on behalf of a consignee or consignor at such Customs airports and in such form and to such extent, as the Board may, by notification, declare for the purposes of these regulations in this behalf.

Amendment has been made in the cases where these rules are not applicable:
In case of export of goods, goods where the value of the consignment is above rupees **Five Lakhs** and transaction in foreign exchange is involved.

Notification No. 70/2018 – Customs (N.T.)
Dated: 22.06.2018

Central Board of Indirect Taxes and Customs hereby appoints the officers as officer of Customs and assigns the said officers of Customs to function as Commissioner of Customs (Appeals)

Officer	Jurisdiction	Condition
1. Commissioner of Central Excise and Central Tax, Aizawl; 2. Commissioner of Central Excise and Central Tax, Dimapur; 3. Commissioner of Central Excise and Central Tax, Imphal.	Commissioner of Customs (Appeals), Kolkata as specified in notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 92/2017-Customs (N.T.), dated the 28th September, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R. 1210(E), dated the 29 the September, 2017.	The cases relating to appeals, as may be assigned by an order of the Principal Chief Commissioner or the Chief Commissioner of Customs, Kolkata, filed on or before 31st July, 2018 with the Commissioners of Customs (Appeals) Kolkata.

CIRCULARS

Circular No. 25/2018-Customs
Dated: 08.08.2018

References have been received from the exporter associations that there is an inordinate delay in release of bonds executed by the nominated agencies/ banks under Notification no. 57/2000-Customs dated 08.05.2000, while importing gold for the purpose of export of gold jewellery/ articles.

In the interest of trade facilitation, it has been decided that a standard operating procedure will henceforth be followed for the expeditious discharge of the said bonds.

Click on the link, to get the entire procedure
http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2018/Circular_No._25-2018-Customs.pdf;jsessionid=D4B01968203D26F1C730330D2E87533E

DIRECT TAX

INCOME TAX

Notification No. 37/2018
Dated: 08.08.2018

Chief Justice of the Gauhati High Court hereby designate the Court of Munsiff No. 3 -cum-Judicial Magistrate, 1st Class, Kamrup (M), Guwahati as the Special Court for the North Eastern Region for the purposes of the sub-section (1) of section 280A of the Income-tax Act, 1961

JUDGEMENTS

INDIRECT TAX

Patanjali Trust liable to pay Service Tax on Consideration received under Vanprastha Ashram Scheme: CESTAT

M/s. Patanjali Yogpeeth Trust vs. C.C.E., Meerut
Order No. - 52579/2018
Date - 23.07.2018

Fact of the Case

1. Here Patanjali Trust is the appellant.
2. The Trust is engaged in the activities of teaching Yoga and for research on Vedic traditions of Yoga and are registering the interested people in these activities as their members.
3. Under the Vanprastha Ashram Scheme, the appellant was leasing the accommodation to all those who are interested to visit the appellant premises till their life time on payment of certain amount ranging from Rs.5,00,000/- to 21,00,000/-.
4. The revenue department demanded service tax on the above consideration by finding the it is a taxable service under the Finance Act, 1994.

Decision of the Case

1. The Tribunal noted that as per the scheme, by making the above payment, a person does not become the member of the Trust as such, but become the lease-holder for a particular accommodation
2. This observation is sufficient to hold that such person become the shareholders of the appellant's Scheme but not the members of the Trust.
3. The Trust and the member of Vanprastha Ashram Scheme become two different legal entities. Any services of club and association being provided by the appellant to such members are therefore, taxable services under Section 65 (25a).
4. Therefore, Tribunal allowed the Revenue Department to demand service tax from Patanjali Trust.

Mobile Phone Batteries sold to Customers attract 28% GST: AAR

M/S Epcos India Pvt. Ltd. vs. Haryana Authority for Advance Ruling
Date - 14.03.2018

Fact of the Case

1. The applicant has made an additional investment in the manufacturing of batteries for mobile phones and started the production or the said mobile phone batteries and are supplying the same to domestic handset manufacturers.
2. The applicants sought for a clarification on the tax rates applicable to 'Battery for Mobile Handset'
3. Battery is a part of the mobile handset. They also sought for same tax rate applicable on the same product when it sold to the customer.

Decision of the Case

1. The authority noted that accepted the contentions raised by the applicant that a mobile phone cannot function or cannot be operated without a battery,
2. It was, therefore, clarified that the product 'Battery for Mobile Handset' whether it be separable or non-separable when sold to the mobile handset manufacturers who use the same to make it form part of the mobile handset will be taxed at 12 per cent.
3. The Advance Ruling Authority (AAR), Haryana has clarified that the mobile phone batteries would attract 12 percent tax on supplying the same to manufacturers and a higher tax rate of 28 is applicable when the same is sold to the end-consumers.

Upholding of simultaneous penalties u/s 76 & 78 under Service tax: High Court

Fact of the Case

1. In the present case, assessee is a provider of commercial coaching & training service.
2. It is liable to pay service tax under Financial Act 1994.
3. The assessee had obtained registration where no service tax was paid for the period 9th September 2004 to 31st March 2008.
4. Return was submitted stating that there was no service tax liability on the above respect.
5. During investigation, assessee offered to pay service tax dues & filed revised returns on 2nd March 2009.In the meantime show cause notice was issued on 23rd June 2009 where tax liabilities & penalties were also imposed.
6. Assessee's appeal to CESTAT was rejected & it approached to High Court.

Decision of the Case

1. In the opinion of High Court it was justified of lower revenue authorities in connection with recovery of dues & imposition of penalties under section 78.
2. Since penalty was already imposed ,so the assessee cannot avoid responsibility of giving the same.
3. HC dismisses assessee's challenge to imposition of simultaneous penalties u/s 76 & 78 of Finance Act, 1994 for non-payment of services tax dues against commercial training and coaching services. It Rejects assessee's reliance on Gujarat HC ruling in Raval Trading Company to urge that CESTAT erred in upholding penalties simultaneously.

GST Rules on Refund of Input Tax Credit on account of Inverted Duty Structure challenged before HC, Jodhpur

M/s Shree Ram Lime Products Private Limited vs. Union Of India And Ors.
Writ No. 11337/2018
Date - 06/08/2018

Fact of the Case

1. In the present case Sree Ram Products Pvt Ltd. is the assessee.
2. Petitioner's advocate argued that where the amount of input tax is higher than that of output tax to be refunded to the assessee.
3. However, The Ministry of Finance ,Govt. of India ,and Finance department, Govt. of Rajasthan made an amendment for restricting the refund of accumulated input tax.
4. Petitioner's Advocate also argued for refunding of accumulated input tax without considering the fact of output supply.
5. Further, there is no apparent justification for excluding tax paid on input services from the purview of Net ITC for computing the refund amount under inverted duty structure.
6. Further, restraining the refund of input tax credit availed on input services would lead to result in blockage of funds / working capital in the form of tax paid on input services.

Decision of the Case

Matter was heard by the bench consisting of Chief Justice and Justice Dinesh Ji Mehta. Notice have been issued by the Hon'ble High Court to the Respondents and sought their reply within a period of 4 weeks.

AAR Appellate Authority Upholds denial of Krishi Kalyan Cess paid Pre-GST rollout

Kansai Nerolac Paints Limited vs. Maharashtra Appellate Authority for Advance Ruling
Order No. – MAH/AAAR/SS-RJ/03/2018-19
Date - 03.08.2018

Fact of the Case

1. In this case M/S Kansai Nerolac Paints Limited is the assessee who is engaged in the business of manufacturer of paints and also engaged in provision of work contract service.
2. Before the authorities, the applicant contended that as the CGST liability subsumed KKC lability through a constitutional amendment, the migrated KKC credit will be admissible to set off with KKC liability.
3. The authority noted that that no reference is made to the KKC until Notification No.28/2016/Central Excise (N.T.) 26 May, 2016 came into effect. The Central Government made the rules which came into effect from 01.06.2016.

Decision of the Case

1. These rules were intended to amend the CENVAT Credit Rules, 2004 as per which KKC could be utilized towards payment of KKC only.
2. Similarly, the CENVAT credit in respect of KKC cannot be utilized for payment of excise duty or service tax.
3. It could be utilized only for payment of KKC. Thus the CENVAT rules made an exception in respect of credit of KKC," the appellate authority said.

Providing Transport Facility to Workers is only a Welfare Measure, Not 'Input Service': CESTAT denies Credit

Andhra Organics Ltd vs. CCT, Visakhapatnam - G.S.T
Order No. A/30750-30751/2018
Date - 24.07.2018

Fact of the Case

1. In the present case, Andhra Organics Ltd is the assessee.
2. The assessee had availed credit of tour operator services used for transporting their employees from their residence to the factory.
3. The Revenue Department denied the same by holding that the Bus Hire charges are in the nature of rent a cab operator service.

Decision of the Case

1. It was observed that bringing the workers to the factory from homes cannot be termed as an input service is in relation to the manufacture of final products.
2. Once the workers come into the factory their services are used in relation to the manufacture of final products. But bringing workers to the factory or providing accommodation to them outside the factory or providing any other welfare measures for the workers or their families have no nexus with the manufacture of the final products, although they are welfare measures meant for the general well-being of the workers who manufacture the goods.
3. Thus, in this case, the assessee is not entitled to the credit of service tax paid on the buses hired to bring workers to their factory."

DIRECT TAX

Provisions of Deemed Dividend Applicable only to Extent of Accumulated Profits available at the beginning of the relevant FY: ITAT, Hyderabad

Sri Srikanth Marru vs. Income Tax Officer
ITA No.240/Hyd/2017
Date - 10.08.2018

Fact of the Case

1. In the preset case, The Appellant is a substantial shareholder in M/s. Santoshi Chit Fund Pvt Ltd.
2. The company had taken a Keyman Insurance Policy a few years ago in the name of the Appellant. Subsequently, the company took a loan from LIC against the Keyman Insurance Policy to the extent of Rs. 65,29,750/- and this sum was advanced to the Appellant.
3. The AO was of the opinion that since the nexus between the loan and advance to the assessee is clearly established and there is accumulated profit of the company available to such an extent, the same is taxable as deemed dividend u/s 2(22)(e) of the Act.
4. The assessee contended that the accumulated profit of the company is only to an extent of Rs.4,15,830 and as it was not the sum advanced to the assessee for Keyman Insurance Policy, the same cannot be brought to tax u/s 2(22)e of the Act.

Decision of the Case

1. The Tribunal held that "there is a nexus between the loan taken from the LIC and the premium paid for the Keyman Insurance Policy.
2. Since the Keyman Insurance Policy is for the benefit to the assessee, it was held that the same is taxable as deemed dividend u/s 2(22)(e) of the Act.
3. The provisions of section 2(22)(e) of the Act would be applicable only to the extent of accumulated profits of the company available at the beginning of the relevant financial year."

Tax Relief cannot be denied to Society for having Objects other than Education: ITAT Bangalore

Kenchappa Samajika Shikshana vs. The Assistant Commissioner of Income Tax
ITA No.1974/Bang/2018
Date - 10.08.2018

Fact of the Case

1. Here the Kenchappa Samajika Shikshana Foundation is the assessee.
2. The sole grievance of the assessee society was that the AO denied the tax exemptions to the assessee by observing that the society was established not only for the sole purpose of education but also for other objects such as improving the economic standard of the poor people, promote good health for the people through health and nutrition programme etc.
3. As the assessee failed to get relief from the first appellate authority, the matter travelled to the Tribunal.

Decision of the Case

1. The Tribunal held that "It is undisputed that the assessee was formed as a society.
2. It is undisputed that the income arose solely from the activity of assessee running the educational institution.
1. Therefore, the fact that there are other objects other than education, cannot be the basis to deny the claim of the assessee for exemption.

No Tax Exemption if Agricultural Land was declared as Industrial Plot during Registration of Sale Deed

Virvati Devi vs. Commissioner of Income Tax (Appeals)
ITA No:- 264/Del/2018
Date - 10/08/2018

Fact of the Case

1. Here the assessee is an agriculturist and sold agriculture land and agriculture activity was done on the land at the time of transfer of agricultural land.
2. As per the sale deed, the properties in question have been referred as "industrial plot" for industrial purposes.
3. During the course of the assessment proceedings, the Assessing Officer denied the capital gain exemption to the assessee and held that the gain in respect of the sale is taxable as long-term capital gain.
4. On appeal, the CIT(A) confirmed the order.

Decision of the Case

1. On second appeal, the Tribunal noted that the possession of the property in question was not transferred at the time of Agreement to Sale.
2. It is clear that the sale transaction was completed on the execution of the sale deed and at that time the land had acquired the character of the non-agricultural land. Thus, on the date of sale, the land in question was not an agricultural land. The same would qualify to be considered as capital assets u/s 2(14) of the Income Tax Act."
3. Since prior to the sale of the property in question, it was declared as the industrial plot by the competent authority, therefore, it could not assume the character of agriculture land. Since the industrial plot was sold by the assessee, therefore, it was correctly considered as capital assets for the purpose of computing long-term capital gain," the bench said.
4. The Division Bench dismissed the appeal of the assessee & issued order for payment of income tax on the sale of agricultural land if the same was declared as the industrial plot by the competent authority at the time of registration of sale dees.

TAX COMPLIANCE CALENDAR AT A GLANCE

GST CALENDAR

Date	Return Type
20th August, 2018	GSTR 3B for July, 2018
20th August, 2018	GSTR 5, for the month of July, 2018 (for Non Resident taxable person)
20th August, 2018	GSTR 5A, for the month of July, 2018 (for OIDAR)
10th September, 2018	GSTR 7, TDS Returns for August, 2018
10th September, 2018	GSTR 8, Return for E-Commerce operators for August, 2018
11th September, 2018	GSTR 1 for August, 2018 (For turnover of more than Rs. 1.5 crore/For turnover of less than 1.5 crore but opted Monthly)
20th September, 2018	GSTR 3B for August, 2018
20th September, 2018	GSTR 5, for the month of August, 2018 (for Non Resident taxable person)
20th September, 2018	GSTR 5A, for the month of August, 2018 (for OIDAR)
30th September, 2018	GSTR-6 (by ISD) for July 2017 to August 2018

DIRECT TAX CALENDAR - AUGUST, 2018

07.08.2018

- Due date for deposit of Tax deducted/collected for the month of July, 2018. However, all 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

14.08.2018

- Due date for issue of TDS Certificate for tax deducted under section 194-IA and section 194-IB in the month of June, 2018

15.08.2018

- Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending June 30, 2018
- Due date for furnishing of Form 24G by an office of the Government where TDS for the month of July, 2018 has been paid without the production of a challan

30.08.2018

- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA and section 194-IB for the month of July, 2018

31.08.2018

- Due date for filing of returns of income-tax for the assessment year 2018-19 has been extended from July 31, 2018 to August 31, 2018 vide Order [F.NO.225/242/2018-ITA.II], dated 26-7-2018.

DIRECT TAX CALENDAR - SEPTEMBER, 2018

07.09.2018

- Due date for deposit of Tax deducted/collected for the month of August, 2018. However, all 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

14.09.2018

- Due date for issue of TDS Certificate for tax deducted under section 194-IA and section 194-IB in the month of July, 2018

15.09.2018

- Due date for furnishing of Form 24G by an office of the Government where TDS for the month of August, 2018 has been paid without the production of a challan
- Second instalment of advance tax for the assessment year 2019-20

30.09.2018

- Audit report under section 44AB for the assessment year 2018-19 in the case of a corporate-assessee or non-corporate assessee (who is required to submit his/its return of income on September 30, 2018).
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA or under section 194-IB in the month of August, 2018
- Statement by scientific research association, university, college or other association or Indian scientific research company as required by rules 5D, 5E and 5F (if due date of submission of return of income is September 30, 2018)
- Annual return of income for the assessment year 2018-19 if the assessee (not having any international or specified domestic transaction) is (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) working partner of a firm whose accounts are required to be audited).
- Application in Form 9A for exercising the option available under Explanation to section 11(1) to apply income of previous year in the next year or in future (if the assessee is required to submit return of income on September 30, 2018)
- Statement in Form no. 10 to be furnished to accumulate income for future application under section 10(21) or11(2) (if the assessee is required to submit return of income on September 30, 2018)
- Submit copy of audit of accounts to the Secretary, Department of Scientific and Industrial Research in case company is eligible for weighted deduction under section 35(2AB) [if company does not have any international/specified domestic transaction]
- Due date for claiming foreign tax credit, upload statement of foreign income offered for tax for the previous year 2017-18 and of foreign tax deducted or paid on such income in Form no. 67. (if due date of submission of return of income is September 30, 2018).
- Due date of intimation under section 286(1) by a resident constituent entity of an international group whose parent is non-resident.

WEBINAR CALENDAR 16th To 31st AUGUST, 2018

Sl. No	Date	Time	Topic of the Webinar	Name of the Faculty
1.	21.08.2018 (Tuesday)	4:00 - 5:00 PM	Latest Advance Ruling & Its implications	CMA Vishwanath Bhat

Please Note: One CEP hour awarded for attending each webinar

Note

Note

TAXATION COMMITTEE - PLAN OF ACTION

Proposed Action Plan:

1. Train the trainers' program - capacity building of the practicing members of the Institute and others on PAN India basis to equip them on Registration, record maintenance, Filing of different returns and other matters.

2. Carry out webinars for the Capacity Building of Members of the Institute - Trainers in the locality to facilitate the traders/ registered dealers on various practical aspects.

3. Conducting Seminars in association with the Trade associations/ Traders/ Chambers of Commerce at different locations on practical issues/aspects associated with GST.

4. Conducting workshop on industry specific issues with Chambers of Commerce, CREDAI, Jewellers Association, Hotel and Restaurant Association, Bankers' Association and other agencies to resolve their issues instantly.

5. Forwarding suggestions and issues on GST to the Government after getting feedback from various stake holders.

6. Extending Certificate Course on GST for corporate and Trade Bodies.

Disclaimer:

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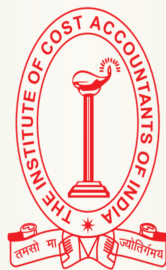

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