

# TAX Bulletin

June, 2018 Volume - 18



## THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)

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## MISSION STATEMENT

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



## VISION STATEMENT

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

## Objectives of Taxation Committee:

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.
3. Submit suggestions to the Ministry from time to time for the betterment of Economic growth of the Country.
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

***“Quality means doing it right when no one is looking” – Henry Ford***

Namaskar and Best wishes,

Moving forward with my responsibilities this is my eighteenth communication to you all. I acknowledge the sustained enthusiasm and support given to me to work more effectively to achieve our goals in Tax Research. I am in receipt of new ideas and suggestions to improve our Bulletin.

This Bulletin would definitely continue to provide an input on the burning issues like latest tax rulings on both Direct and Indirect Taxation, notifications, specifically covering GST notifications, circulars in addition to the articles presented by the renowned Tax experts of the Country.

In the Month of June, 2018, the second batch of certificate course on GST has been successfully launched in 12 locations. The offline classes has commenced at Delhi, Kolkata, Pune, Hyderabad, Coimbatore on the 17<sup>th</sup> of this month. At locations like Mumbai, Bangalore, Guwahati, Ranchi, Chennai, Noida, Ahmedabad the course would commence from the 23<sup>rd</sup>. Simultaneously online class on GST is also going to be started PAN India basis. The response of the course among the learners has been humongous.

I request continuous support from every corner in the quest for value creation through the activities of this department. I am also very much confident that the stake holders, Members and Team TRD bearers will provide their assistance and best efforts undoubtedly and commit for its betterment.

Thanking you,  
With sincere regards

**CMA Niranjan Mishra**  
Chairman - Taxation Committee  
18<sup>th</sup> June, 2018

# TAXATION COMMITTEE 2017 - 2018

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CMA Susanta Kumar Saha	GST Consultant
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CMA Amit Dey	-	I-CMA Cadre
CMA Debasmita Jana	-	Consultant
Ms. Debjani Mukherjee	-	Consultant
Mr. Dipayan Roy Chaudhuri	-	Graphics & Web Designer

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## A COMPREHENSIVE GST CHECKLIST BEFORE FINALISATION OF BALANCE SHEET FOR THE FY 2017 - 2018 FOR REGISTERED PERSONS - PART 1

**CMA SUSANTA KUMAR SAHA**  
GST Consultant

**W**ith promulgation of GST Laws w.e.f. 1<sup>st</sup> July 2017, multiple taxes and duties levied by the central and state governments such as Central Excise/ CST/VAT/Entry Tax/ Service Tax/ WCT etc. have been replaced with Integrated Goods & Services Tax (IGST) in case of inter-state supply of goods or services or both and Central GST (CGST) plus State GST (SGST) for intra-state supply of goods or services or both.

Financial Year 2017 – 2018 has ended and this being the year where indirect tax compliance of a ‘taxable person’ would not be uniform throughout the year. It will be different for the quarter ended June, 2017 where taxes and duties of pre-GST regime would be applicable and different for the next three quarters where GST law would be applicable.

As a result, substantial amount of preparation is required for a ‘taxable person’ to be ready with GST audit (for applicable assesses), providing cross linked information for Statutory Audit and Tax Audit (u/s 44AB of the Income Tax Act, 1961), and GST assessment. The scope of GST Audit appears to be much wider when compared with audit under Income Tax Act, 1967. Thus in addition to detailed understanding of various provisions of GST law (Acts/Rules/Notifications), it is desirable to prepare documents and records for a better control before closure of financial accounts.

The following points are to be checked **for each GSTIN of a ‘taxable person’ having a single PAN**. The write up will address the points / topics chronologically as per GST law.

<b>A</b>			
<b>Sec. 7 – Supply (CGST Act, 2017 &amp; corresponding SCST / UGST Act, 2017)</b>			
Sl. No	Transactions categorised in accordance with GST law	Corresponding check with financial accounts in revenue account	Remarks
1.0	<b>Taxable supplies</b> (sale, transfer, barter, exchange, licence, rental, lease, disposal)	Revenue recognised - All such natural accounts with corresponding value as appearing the P&L A/c or I&E A/c for other than ‘zero rated supply’;	Natural accounts with account codes, as appearing in Chart of Accounts ( <b>CoA</b> ) for the period, rolled up to revenue account through sub-schedules and schedules. An illustrative format is given at the bottom of the table.
1.1	<b>‘Exempt’ / ‘Nil’</b> rated supply including <b>non-taxable</b> or <b>non-GST supply</b>	Revenue recognised - All such natural accounts with corresponding value as appearing the P&L A/c or I&E A/c for other than ‘zero rated supply’;	<b>Sec 2(47) – “exempt supply”</b> = [Goods or services or both, attracts <i>nil</i> rate of tax or wholly exempt from tax under relevant sections, and includes non-taxable supply]; <b>Sec 2(78) – “non-taxable supply”</b> = [Goods or services or both, which is not leviable to tax under this law] It is recommended to categorise the natural accounts under the broad heading as: i. Exempt supply; ii. Nil rated supply; and iii. Non GST supply.
1.2	Transactions between <b>‘distinct persons’</b> , i.e, inter-State stock transfer, in the course or furtherance of business ( <b>Schedule I</b> ).	Doesn’t appear in the credit side of the revenue account when financial accounts is consolidated on a single PAN basis.	<b>‘Distinct person’</b> as defined in Sec. 25(4) of the CGST Act, 2017. ‘Inter-unit’ reconciliation item.
1.3	Gifts to employee exceeding rupees fifty thousand in a year.	Not a revenue for the ‘taxable person’.	Reconciliation item. Supply as per GST law ( <b>Schedule I</b> )
1.4	Recovery of expenses from employees, e.g,	May not appear in revenue side, depending on the accounting policy	Supply as per GST law.



	transportation charges, notice pay, canteen expenses, mobile expenses etc. treated as an outward supply.	adapted by the 'taxable person'.	
1.5	Reimbursement of expenses to employees.	May not appear in revenue side, depending on the accounting policy adapted by the 'taxable person'.	Supply as per GST law only when such reimbursements have not been made in the course of employment as per terms of employment.
1.6	Sale of used motor car by a 'taxable person'.	Profit / (loss) made in sale of fixed or current assets depending on the nature of business of the 'taxable person'.	Check point-in addition to GST, compensation cess was required to be paid up to 24 <sup>th</sup> December, 2017.
1.7	Sale of land or sale of building after obtaining completion certificate.	Respective revenue account.	Not a supply in terms of <b>Schedule III</b> in GST law [Section 7(2)(a)]
1.8	Each and every revenue head.	Different revenue/ income clubbed under the head 'Other income' or 'Miscellaneous income' in financial account.	Impact of GST needs to be examined against each and individual account head.
<b>Sec. 16 - zero rated supply (IGST Act, 2017)</b>			
1.9	i. Export of goods or services or both; ii. Supply of goods or services or both to a SEZ unit or SEZ developer.	Corresponding revenue accounts in the financial accounts.	It is recommended to categorise the natural accounts under the broad heading as: i. Export of goods; ii. Export of services; iii. Goods supplied to SEZ unit or developer; and iv. Services supplied to SEZ unit or developer.
The above exercise will facilitate to reconcile ' <b>Aggregate Turnover</b> ' as per <b>GST</b> and as per <b>financial accounts</b> .			

An **illustrative roll up table** is given below [please refer to point no. 1.0]:

Natural Account Code	Revenue (Grand grand parent level)	Schedule name (Grand parent level)	Sub-schedule name (Parent level)	Natural account in CoA (Child level)
4000000	Total Revenue			
4100000		Revenue from operations		
4100100			Course fees	
4100101				Admission fees
4100102				Re-admission fees
4100103				Monthly fees
4100200			Batch Branch Transfer	
4100201				Branch transfer
4100202				Batch transfer
4200000		Other Income		
4200100			Hostel charges	
4200101				Hostel charges - residential
4200102				Hostel charges – non residential
4200200			Miscellaneous income	
4200201				Interest on loan to employees
4200202				Fine recovered
<b>B</b>	<b>Sec. 8 – Composite supply and Mixed supply (CGST Act, 2017 &amp; corresponding SCST / UGST Act, 2017)</b>			
Sl. No	Transactions categorised in accordance with GST law	Corresponding check with financial accounts in revenue account	Remarks	
2.0	Composite supply	Recommended to prepare a matrix of: Name of the debtor vis a vis natural account recorded in revenue	<b>Sec 2(30) – composite supply</b> = two or more taxable supplies of goods or services or both, or any combination thereof, <b>naturally bundled</b> and supplied in conjunction thereof in the ordinary course of business, one	

			of which a <b>principal supply</b> . <b>This is classification issue.</b> It is strongly recommended that a brief note be prepared on the basis (including judicial precedents, if any) of identification of <b>predominant element</b> of a composite supply based on which <b>principal supplies</b> in case of different type of composite supplies <b>have been identified including</b> , and the <b>test of determination</b> that the supplies are <b>naturally bundled and are not artificially bundled</b> . Judgements / AAR in support of the decision, if any, as indicated above may also be noted for future reference.
2.1	Mixed supply	Recommended to prepare a matrix of: Name of the debtor vis a vis natural account recorded in revenue	<b>Sec 2(74) – mixed supply</b> = two or more individual supply of goods or services, or any combination thereof, <b>made in conjunction thereof for a single price</b> , and where <b>such supply doesn't constitute to composite supply</b> . Preparation of similar note as recommended above for composite supply.
Notes as discussed above, will help to clarify queries from Statutory Auditor, GST Auditor and will be handy at the time of assessment. It is apprehended that composite supply consists with higher rate of tariff items, may be construed as mixed supply by the assessing authority.			

C Inward supply of specified category of goods or services or both, tax payable under RCM by the recipient of supply u/s 9(3) of the CGST Act, SCST / UGST Act, 2017, to be read with section 5(3) of the IGST Act, 2017.													
Sl No	Transactions	Corresponding check with financial accounts in revenue account							Remarks				
3.0	Specified category of goods	It is recommended to prepare a schedule collating all relevant information. A suggestive format is given below:							The same may be fetched from monthly return filing data				
		Sl No	Item details	Natural account with account code	Voucher No & date	Name of the supplier	Value of inward supply (₹)	Details of tax paid					
								CGST		SGST	IGST		
								%	₹	%	₹	%	₹
3.1	Specified category of services	Similarly for services, as stated above.							The same may be fetched from monthly return filing data				
		Sl No	Item details	Natural account with account code	Voucher No & date	Name of the supplier	Value of inward supply (₹)	Details of tax paid					
								CGST		SGST	IGST		
								%	₹	%	₹	%	₹

D				Supply of goods or services or both, by an unregistered supplier to a registered person, tax of which shall be paid under reverse charge mechanism (RCM) by the recipient of supply under section 9(3) of the CGST, SGST/UGST Act, 2017 to be read with section 5(4) of the IGST Act, 2017							
Sl. No	Transactions	Corresponding check with financial accounts in revenue account				Remarks					
4.0		<div style="text-align: center;"> <pre> graph TD     A[INWARD SUPPLY - URD] --&gt; B[Purchase - URD]     A --&gt; C[Indirect expenses - URD]     A --&gt; D[Direct expenses - URD] </pre> </div> <p>Ledgers for inward supplies from unregistered persons.</p>									
4.1	<b>Relevant Notifications:</b> <ul style="list-style-type: none"> <li>➤ <b>Notf. No. 8/2017 - CT(R)</b> dated 28.06.2017 effected from 1<sup>st</sup> July, 2017;</li> <li>➤ <b>Notf. No. 38/2017 - CT(R)</b> dated 13.10.2017</li> <li>✓ Value of inward supplies from URD persons when exceeded ₹ 5,000/- in a day, tax was to be paid under RCM by the recipient of supply during the period 01.07.2017 to 12.10.2017, although there is another school of thought that the withdrawal of monetary limit was effective from 01.07.2017.</li> </ul>										
4.2	Transactions	Corresponding check with financial accounts in revenue account				Remarks					
4.3	Supply of goods or services or both by URD	It is recommended to prepare a schedule collating all relevant information. A suggestive format is given below:				The same may be fetched from monthly return filing data					
		Sl No	Item details	Natural account with account code	Voucher No & date		Name of the supplier	Value of inward supply (₹)	Details of tax paid		
									CGST T	SGST T	IGST
									% ₹	% ₹	% ₹

E				Time of supply of goods and Time of supply of services as defined under section 12 and section 13 of the of the CGST Act, 2017 & corresponding SCST / UGST Act, 2017 respectively			
Sl. No	Particulars						
5.0	i. In case of change in rate of tax of goods or services, the same shall be determined in accordance with section 12 or section 13 of the Act respectively. ii. Rate of taxes in GST regime have been amended multiple times and the effect of such changes may be reviewed once before finalisation of Balance Sheet. iii. It is recommended that in case the rate of goods or services of a 'taxable person' have suffered changes, a <b>matrix for every item of 'goods' or 'services', be correlated with corresponding 'supply' (tax invoice) made during the transition period from earlier rate to revised rate</b> for the sake of clarity from law point. iv. The above worksheet will make points easily understandable not only at the time of audit but also during the time of assessment.						
5.1	List of Notifications in relation to changes in rates of Goods with respective dates:						
	<b>Nature</b>	<b>Original Notification No.</b>	<b>Amendment Notification No.</b>	<b>Dated</b>			
	<b>Goods</b>	01/2017 – CT(Rate)		28.06.2017			
			18/2017 – CT(Rate)	30.06.2017			
			19/2017 – CT(Rate)	18.08.2017			
			27/2017 – CT(Rate)	22.09.2017			
			34/2017 – CT(Rate)	13.10.2017			
			41/2017 – CT(Rate)	14.11.2017			
			06/2018 – CT(Rate)	25.01.2018			
		08/2018 – CT(Rate)	25.01.2018				
5.2	List of Notifications in relation to changes in rates of Services with respective dates:						
	<b>Nature</b>	<b>Original Notification No.</b>	<b>Amendment Notification No.</b>	<b>Dated</b>			
	<b>Services</b>	11/2017 – CT(Rate)		28.06.2017			
			20/2017 – CT(Rate)	22.08.2017			
			24/2017 – CT(Rate)	21.09.2017			

		31/2017 – CT(Rate)	13.10.2017
		47/2017 – CT(Rate)	14.11.2017
		01/2018 – CT(Rate)	25.01.2018

F Value of taxable supply as defined under section 15 of the of the CGST Act, 2017 & corresponding SCST / UGST Act, 2017		
Sl. No	Provisions in accordance with GST law	Discussion
6.0	Section 15(2)(c) of the CGST Act, 2017 – <b>incidental expenses</b> , including commission and packing, charged by the supplier to the recipient of a supply	<p>i. Identify list of <b>ancillary activities</b> performed in relation to supply of ‘goods’ by a taxable person, e.g,</p> <ul style="list-style-type: none"> <li>a. supply of ‘goods’ – principal supply;</li> <li>b. transportation of goods;</li> <li>c. material loading and unloading;</li> <li>d. insurance during transit, and similarly</li> </ul> <p>ii. list of <b>ancillary activities</b> performed in relation to supply of ‘services’ by a taxable person.</p>
6.1	Section 15(2)(c) of the CGST Act, 2017 - interest or late fee or penalty for delayed payment of any consideration for any supply.	<p>To ensure strict compliance, terms and conditions of contracts entered with the recipients, a brief summary for top debtors, say 25, be prepared.</p> <div style="border: 1px solid black; padding: 10px; text-align: center;"> </div> <p>Policy adopted contrary to the above may be reviewed again before finalizing the Balance Sheet.</p> <p><b>Let’s take a case study:</b>  A broking house recovers delayed payment charges (DPC) from it’s customers who fail to pay the settlement amount within due time, say, T+3 days. ‘Securities’ are neither a ‘good’ nor a ‘service’, and is thus outside the ambit of ‘supply’.  One school of thought argues that as there is no ‘supply’, the provision wouldn’t apply in this case.  Another school of thought argues that under such circumstances, the broker pays the amount to the Stock Exchange for settlement of account from it’s own bank account. Scope of supply is very wide, inter alia includes ‘agreeing to the obligation to tolerate an act or a situation’ and thus falls within the scope of supply. Provision under this sub-section thus applies in this instant case.  Government of India (GoI) has recently clarified via FAQs on Stock Broking Sector that tax (GST) shall be levied on delay payment charges realised from clients which at least indicates the intention of the revenue.</p>

6.2	Section 15(3) of the CGST Act, 2017 – the value of supply shall not include any discount under certain conditions	<div style="text-align: center;"> <pre> graph TD     A[Discount not included in value of supply] --&gt; B[When discount is recorded before or at the time of supply in invoice]     A --&gt; C[After the supply, in terms of an agreement entered into before the supply, linked to relevant invoices]     A --&gt; D[Input Tax Credit (ITC), attributable to the discount on the basis of document] </pre> </div> <p>Offering discount under different scenarios is a common practice in trade and commerce. Discount can be either a quantity discount or a price discount or a combination of both. Post sale discounts offered are generally conditional, e.g, bulk purchase discount which is periodical and to boost sales, early payment discount, breakage discount in case of perishable FMCG products, quarter end or yearend target achievement incentives in the form of discount etc.</p> <p>Burden of proof is on the assessee (taxable person) that all such discounts were given in terms of the agreement entered in to with the vendors before supply took place and to correlate with each such single tax invoice.</p> <p><b>Taxpayers, suppliers and recipients both are strongly recommended to take due care of appropriate documentations</b> for furnishing explanations to external authorities.</p> <p>It is apprehended that <b>in the event of such failure</b>, the external authorities may consider the <b>discount amount as part of value of supply</b> with corresponding incidence of tax.</p>																		
6.3	Section 15(4) of the CGST Act, 2017 – value of supply of goods or services or both as may be prescribed	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">CGST Rules, 2017</th> <th style="text-align: left;">Description</th> </tr> </thead> <tbody> <tr> <td>Rule 27</td> <td>consideration is not wholly in money</td> </tr> <tr> <td>Rule 28</td> <td>valuation between distinct or related person, other than through an agent</td> </tr> <tr> <td>Rule 29</td> <td>supply of goods made or received through an agent</td> </tr> <tr> <td>Rule 30</td> <td>supply of goods or services or both on cost</td> </tr> <tr> <td>Rule 31</td> <td>residual method of determination of value</td> </tr> <tr> <td>Rule 31A</td> <td>value of supply of lottery, betting, gambling or horse racing</td> </tr> <tr> <td>Rule 32</td> <td>value in respect of certain supplies</td> </tr> <tr> <td>Rule 33</td> <td>Value of supply of services in case of pure agents</td> </tr> </tbody> </table>	CGST Rules, 2017	Description	Rule 27	consideration is not wholly in money	Rule 28	valuation between distinct or related person, other than through an agent	Rule 29	supply of goods made or received through an agent	Rule 30	supply of goods or services or both on cost	Rule 31	residual method of determination of value	Rule 31A	value of supply of lottery, betting, gambling or horse racing	Rule 32	value in respect of certain supplies	Rule 33	Value of supply of services in case of pure agents
CGST Rules, 2017	Description																			
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Rule 32	value in respect of certain supplies																			
Rule 33	Value of supply of services in case of pure agents																			

G Eligibility and conditions for taking input tax credit under section 16 of the CGST Act, 2017 & corresponding SCST / UGST Act, 2017			
Sl. No	Transactions categorised in accordance with GST law	Corresponding check with financial accounts in revenue account	Remarks
7.0	Sec 16(2) of the CGST Act, 2017 – a. recipient is in possession of a tax invoice or debit note or such other documents; b. recipient has received the goods or services or both;	i. Pre-paid expenses as appearing in the Balance Sheet date. ii. Input tax credit (ITC) claimed during the period.	i. It might so happen that a taxable person has paid for some services in the FY 2017 – 2018 based on the tax invoice received and services might be receivable in some part during the FY 2018 – 2019, e.g, insurance premium paid for the period October 2017 to September, 2018. Proportionate premium amount for the period April, 2018 to September, 2018 will be recorded as pre-paid expenses as at 31.03.2018 in the books of accounts and input tax credit for the same period cannot be claimed in the FY 2017 – 2018 as <b>services have not been received</b> . ii. It is recommended to check to ensure that all the <b>conditions</b> as stipulated <b>under Rule 36</b> of the CGST Rules, 2017 have been complied with.
7.1	Second proviso to sec 16(2) of the CGST Act, 2017 – the recipient fails to pay the	Analyse <b>invoice wise creditor aging statement as at 31.03.2018</b> against receipt of inward taxable supplies	Reversal of input tax credit claimed along with interest thereon. Necessary adjustment entries are

	supplier of goods or services or both, value of supply along with tax payable within a period of 180 days from the date of issue of tax invoice.	w.e.f 01.07.2017 <b>to identify outstanding tax invoice(s) more than 180 days, if any</b> , either in part or in full, vide which taxable goods or services or both, were supplied by the creditor(s), and input tax credit (ITC) was claimed by the recipient.	recommended to be recorded in the books of accounts as at the year end.
7.2	Third proviso to sec 16(3) of the CGST Act, 2017 – payment after 180 days and reclaim credit of input tax amount	Analyse <b>bill wise payment to creditors statement</b> against all taxable inward supplies w. e. f 01.07.2017 to identify: whether any payment has been made during the year exceeding 180 days but within 31.03.2018;	To ascertain whether requisite actions have been taken in accordance with the provision, and if not, corrective actions be planned and taken.
7.3	Sec 16(3) of the CGST Act, 2017 – tax component not capitalised	Recheck the fixed asset and CWIP schedule for the additions made during the period July 2017 to March 2018.	To ensure that tax amount has not been capitalised credit of which, being eligible, has been claimed by the taxable person during the year.

<b>H. Apportionment of credit and blocked credit under section 17 of the CGST Act, 2017 &amp; corresponding SCST / UGST Act, 2017</b>			
Sl. No.	Transactions categorised in accordance with GST law	Corresponding check with financial accounts in revenue account	Remarks
8.0	Sec 17(1) of the CGST Act, 2017 – goods or services or both, partly used for business and partly for other than business	Recommended to corroborate with all such expenditures that are likely to be disallowed under <b>section 37</b> of the Income Tax Act, 1961.	Input tax credit (ITC) attributed to such non-business expenditures cannot be availed. It is recommended to recheck the <b>computation under Rule 42</b> of the CGST Rules, 2017 to ensure accurate compliance in accordance with law.
8.1	Sec 17(2) of the CGST Act, 2017 – ‘input’ and ‘input services’ used partly for effecting taxable services including zero-rated supplies and partly for effecting exempt supplies		It is recommended to recheck the <b>computation under Rule 42</b> of the CGST Rules, 2017 to ensure accurate compliance in accordance with law.
It is advisable to prepare month wise statement of ineligible credits with corresponding natural accounts for verification with financial accounts and month wise statement of reversal of credit.			
8.2	Sec 17(5) of the CGST Act, 2017 – <b>list of blocked credits.</b>	<b>(a).</b> Input tax credit (ITC) in respect of Motor vehicles or other conveyances except when they are used for supplies as stipulated in the law. It is recommended to prepare month wise statement of expenses with corresponding natural account, input tax credit of which have not been claimed.	i. Intention of the law is probably to deny ITC on purchase and related activities on motor vehicles for specified categories of taxable persons. ii. There are two different school of thoughts, as the words used in the Act are “...in respect of...” and not “...in relation to...”. Thus one can argue that ITC on other activities, e.g. insurance, repairs and maintenance of motor vehicles etc carried out <b>in respect of</b> motor vehicles can be claimed. iii. However, in either cases, preparation of month wise detailed statements are strongly recommended.
8.3		<b>(g)</b> Goods or services or both, used for personal consumption.	i. May be corroborated with expenses reportable in Income Tax Audit u/s 44AB of the Income Tax Act,1961. ii. It is recommended to prepare month wise detailed statements along with corresponding natural accounts.
8.4		<b>(h)</b> goods lost, stolen, destroyed, written off or disposed of by way of gift or <b>free samples.</b>	i. Month wise statement of reversal of input tax credit (ITC) under each category is recommended; ii. It is argued that input tax credit (ITC)

			<p>against <b>goods disposed of by way of gifts, as a measure of business promotional expenditure</b> would qualify to be considered as eligible credit as those activities have been carried out 'in the course of or furtherance of business',</p> <p><b>iii.</b> Admissibility of ITC would also depend on <b>types of free issue of 'goods'</b>, e.g, offering one cartoon of biscuit free against purchase of 10 cartoons of biscuits by a biscuit manufacturer or offering a dozen of ball pens free for purchase of a dozen of shirts by an apparel manufacturing entity.</p> <p><b>iv.</b> Thus, it is recommended to prepare details of scheme wise free issue of goods and corresponding treatment of input tax credit (ITC) for a ready reference for offering explanation with documentary evidence to external authorities.</p>
8.5		All other clauses of sec 17(5).	Preparation of monthly statement of blocked credits.

The above points have been discussed not to address issues of any specific industry but an honest attempt has been made to prepare a checklist from GST point of view before Balance Sheet of a taxable person is finalised for the FY 2017 - 2018. The points/topics discussed above, will not only measure the GST preparedness of the assessee, but would also make the 'taxable person' ready with ground work for filing annual return, prepare reconciliation statement, GST Audit and GST assessment.



# VALUATION OF UNQUOTED SHARES - CBDT ISSUED AMENDED RULE - 11UA - UNDERSTANDING THE IMPACT

**CMA MRITYUNJAY ACHARJEE**

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

Valuation of Shares is not a science and hence determining the fair market value (FMV) of shares can be challenging particularly in case of unquoted equity shares. To deal with this, the Income-tax Department had prescribed a specific formula based on "Net Asset Value Approach" under rule 11UA of the Income Tax Rules, 1962. However, the said formula took into account the book value of the asset rather than current market value, or FMV. Recently, the Finance Act, 2017 inserted Section 56(2) (x) so as to widen the scope of taxability of receipt of sum of money or property without/inadequate consideration. – The latest in the series of Specific Anti-Avoidance Provisions ('SAAR') is section 50CA as introduced by the Finance Act, 2017. This amendment has been introduced for the purpose of taxing the "indirect" sale of immovable property. – Considering the context and objective of section 56(2)(x) and section 50CA, the CBDT had come out with Draft Rules earlier ( May 2017). It suggested amendment in the method of valuation of unquoted equity share by taking into account the FMV of jewellery, artistic work, shares & securities and stamp duty value in case of immovable property and book value for the rest of the assets. – After considering the comments and suggestion, recently, the CBDT has notified final rules on 12 July 2017 which is largely in line with the draft rules.

The Central Board of Direct Taxes ('CBDT') has, vide Notification No. 620 dated 12.07.2017, notified the much-awaited amended Rule-11UA providing for rules for valuation of unquoted equity shares relevant for section 56(2)(x) and also, inserted new Rule-11UAA providing for rules for determination of Fair Market Value ('FMV') for unquoted shares relevant for section 50CA of the Income tax Act, 1961.

The aforesaid notified rules are broadly inline with the draft rules issued by CBDT in May, 2017 for the Public Comments. The notified rules have undoubtedly provided the much-needed guidance for the taxpayers with respect to valuation of unquoted equity shares yet certain issues still remain unanswered in these Rules as highlighted infra.

**Court Decisions** which might have triggered introduction of section 50CA and changes in the valuation rules

1. **Bhoruka Engineering Inds. Ltd. Vs. DCIT [2013] 36 taxmann.com 82 (Karnataka High Court)** In this case, Revenue contended that transaction of sale of shares was a colourable device and virtually immovable property had been transferred. While rejecting such argument the High Court observed as

follows: "The assessee by resorting to such a tax planning has taken advantage of the benefit of the law or the loopholes in the law, which had ensured to his benefit. After seeing how this loophole has been exploited within four corners of the law, it is open to the Parliament to amend the law plugging the loophole."

2. **DCIT vs. Maya Appliances (P.) Ltd [2017] 82 taxmann.com 447 (Chennai - Trib.)** In this case, according to Revenue, the assessee sold the actual land and building in the guise of sale of shares and thus the provisions of the section 50C is applicable. However, the Tribunal declined to adopt this argument and held that no question of invoking the provisions of the section 50C of the Act as there is no direct transfer of land or building or both.
3. **Medplus Health Services P. Ltd vs. ITO [ITA.No.871/Hyd/2015]** dated 8th March 2016 In this case, the Revenue adopted the market value of unquoted equity shares ignoring the valuation methodology given in Rule 11 UA as it was based on Book Value of the assets. The Tribunal held that "A.O. has to compute the fair market value in accordance with the prescribed method but cannot adopt the market value as fair market value under section 56(2)(viiia) of the Act. The legislature in its wisdom has also given a formulae for computation of the fair market value which cannot be ignored by the authorities below."

## **Background**

Finance Act, 2017 inserted two new provisions under the Act – clause (x) under section 56(2) and section 50CA. The said sections were inserted to deal with a situation where the property, including unquoted shares, are being transacted for inadequate consideration much below the FMV of such property.

The Finance Act, 2017 had brought into force two major amendments in the Income Tax Act: - Insertion of clause (x) in section 56(2) to provide that receipt of money or specified property by any person for inadequate consideration or without consideration from any person shall be subject to tax. - Introduction of section 50CA to provide that where consideration for transfer of shares of a company other than a quoted share is less than the FMV of such a share, the FMV determined as per the Rules shall be deemed to be the full



value of consideration for computing income under the head “capital gains.”

While clause (x) under section 56(2) provided for taxability in the hands of the purchaser of property, including shares, the differential amount of consideration and FMV of such property, section 50CA of the Act, on the other hand, for the purposes of computing capital gains, seeks to substitute, in the hands of the seller of the property being the unquoted shares, the FMV of such property in place of the amount of inadequate consideration.

The CBDT on 05 May, 2017 issued a draft notification that proposed to amend Rule 11UA and introduce Rule 11UAA for computing the FMV of unquoted shares of a company for the purpose of sections 56(2)(x) and 50CA respectively. • Recently, on 12 July 2017, the CBDT has issued final notification in this regard. The final rules are largely similar to the draft rules and are applicable to all transactions taxable during financial year’s ending commencing on or after 01 April, 2017.

Thus, in case of transaction involving transfer of unquoted shares, the aforesaid computational mechanism seeks to tax the same differential amount of consideration and FMV in hands of both tax payers i.e., the transferor and transferee.

It is further important to note that clause (x) under section 56(2) has widened the scope of the provisions as the same becomes applicable for all taxpayers unlike provisions of clauses section (vii) and (viia) of section 56(2) of the Act which were applicable to selected taxpayers.

#### **Valuation of unquoted shares**

For valuation of the unquoted shares, clause (x) under section 56(2), even after insertion, continued to make reference to provisions of Rule-11UA as was applicable for clauses section (vii) and (viia) of section 56(2) of the Act. The CBDT, however, came out with the drafted amended Rule-11UA which were at variance with the erstwhile Rule-11UA.

The CBDT has now notified the amended Rule-11UA which provides for valuation of unquoted equity shares. Final Valuation Rules • Final Rule 11UA (1)(c)(b) replacing the existing rule prescribes computation of FMV of the unquoted equity shares as follows:

**FMV of unquoted equity shares = (A+B+C+D-L) x PV/PE**, where

A - Book value of all the assets (except those mentioned at B, C and D below) as reduced by income tax paid (net of refund) and unamortized deferred expenditure

B - Fair market value of jewellery and artistic work based on the valuation report of a registered valuer

C - Fair market value of shares or securities as determined according to this rule

D – Stamp duty valuation in respect of any immovable property

L - Book value of liabilities, excluding paid up equity share capital, amount set apart for undeclared dividend, reserves and surplus, provision for tax, provisions for unascertained liabilities and contingent liabilities

PV - Paid up value of equity shares

PE - Total amount of paid up equity share capital as shown in the balance sheet.

#### **Further Explanation**

B = the price that the jewellery and artistic work would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer;

C = FMV of shares and securities as determined according to this rule;

D = the value adopted or assessed or assessable by any authority of the government for the purpose of payment of stamp duty in respect of the immovable property;

L= book value of liabilities shown in the balance sheet, but not including the following amounts, namely:-

- i) the paid-up capital in respect of equity shares;
- ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general meeting of the company;
- iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;
- iv) any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;
- v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;
- vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;
- vii) PE = total amount of paid up equity share capital as shown in the balance-sheet;
- viii) PV= the paid up value of such equity shares;

The New Rule 11UAA prescribes that for the purposes of section 50CA, the FMV of the share of a company other than a quoted share, shall be determined as provided in Rule 11UA (1)(c)(b)/(c), and that the reference to valuation date in the rule 11U and rule 11UA shall mean the date on which such shares are transferred.

#### **Understanding the provisions of Section 50CA**

- Prior to introduction of section 50CA, where shares were sold by the assessee for a consideration, which is not in conformity with the fair-market value of the shares, there was no mechanism available under the Act to substitute the full value of consideration as disclosed by the assessee by any other value, for the purposes of computation of capital gains. Section 50C dealt with transfer of capital asset being land or buildings or both, which is not applicable in case of shares. To plug this loophole section 50CA was introduced.
- Applicable to all assessee( Resident, Non-resident, Related and unrelated entity)
- Applies to all shares whether equity or preference.
- Unquoted Shares should be capital asset
- Not applicable with respect to gains from transfer of an interest in a partnership, trust where the property

of such entities consists, directly or indirectly of immovable property

- May cover even some quoted shares based on the definition of “quoted share”
- Where unquoted equity shares are contributed by a partner to a firm, the question will arise whether the provisions of section 50CA would override section 45(3). In this respect one may take guidance from the decision in the case of Canoro Resources Ltd., In re [2009] 180 Taxman 220 (AAR) and decision in the case of Carlton Hotel (P.) Ltd. v. Asstt. CIT [2010] 35 SOT 26 (Lucknow Tribunal)
- No tolerance band provided. Thus, FMV as per the new formula method will be taken as full value of consideration, even if difference in FMV and the sale consideration is marginal.
- In case of sale consideration being less than FMV, the seller will be taxed under section 50CA on the ground that he has not declared true consideration. On the other hand, the buyer will be taxed under section 56(2)(x), on the ground that he has understated the purchase consideration.

### **Comparative Review**

The Erstwhile Rule 11UA (1)(c)(b) determined FMV of unquoted equity shares wholly on the basis of book value of the company without considering valuation impact relating to assets for which specific valuation rules were provided and thus, there was an inconsistency in direct and indirect valuation of certain assets. The amended rule 11UA(c)(b) removes above inconsistency and provides valuation adjustment for such assets in valuation of unquoted equity shares of company holding such assets. Valuation of rest of the assets, including assets such as intangible assets, business undertaking, investment held in Limited Liability Partnership or partnership firm etc., and liabilities of the company continues to be valued at book value.

- Newly inserted Rules 11UAA provides valuation methodology to be adopted for the purpose of new section 50CA. It provides that equity shares covered there under should be valued as per above Rule 11UA (1)(c)(b) and preference shares should be valued as per Rule 11UA(1)(c)(c) which provides for valuation it will fetch if sold in open market.

The Final Rules have not addressed some issues which were necessary and were expected to be addressed: – Adoption of actual fair value, in case the FMV of immovable property is less than the Stamp Duty Value; – Reduction in relation to securities premium payable on redemption of preference shares, – Rules being notified on 12th July, 2017 and being made effective from 01 April, 2017, relaxation should have been provided to transactions entered between 01 April, 2017 and 12 July, 2017.

### **Conclusion**

The new method of calculation of FMV of unquoted equity shares is based on adjusted Net Asset value Method with certain assets on FMV and remaining assets based on book value. Thus, now one will have to take into account the FMV

of jewellery, artistic work, shares & securities and stamp duty value in case of immovable property.

– Where value of unquoted equity shares are mainly derived from intangibles assets such as goodwill, trademark or other intangible assets, this approach of valuation will not reflect the true value of the shares of the company.

– The prescribed method of valuation fails to give weightage to the fact as to whether shares being subject matter of transfer are of minority interest or majority interest. Normally, asset values are out of the reach of the minority shareholder.

– The prescribed method of valuation is specific for section 50CA and section 56(2)(x) and cannot be applied in other sections even though FMV is a term which has been used various places in the Act.

– In case of non-resident, there could be chances of conflict between normal provisions i.e. section 50CA and section 56(2) (x) and the provisions of transfer pricing.

– There could be difficulty at the time of withholding tax. Suppose a non-resident seller transfers certain unquoted equity shares to a resident at Rs. 100 per share whereas the FMV of such share as per new valuation method is Rs. 500 per share. Assuming that cost of share acquired by a non-resident is Rs. 50 per share, the capital gain would be Rs. 50 per share (if actual sale consideration is considered) or Rs. 450 per share (if FMV of share is considered). In this respect, it is as yet unclear whether resident payer shall withhold tax under section 195 on Rs. 50 or Rs. 450.

– Issue of shares at premium wherein the provisions of section 56(2)(viiB) is applicable, the tax authority is already empowered to consider the market Value of underlying assets including Intangible assets.

# ADVISORY IN RELATION TO GST BEFORE FINALIZING THE BOOKS OF ACCOUNTS FOR INCOME TAX PURPOSE

Team TRD

Financial Year 2017-18 has ended on 31.03.2018 and we are all on the verge of finalising Books of Accounts for that period. Before finalisation of Books of Accounts for the purpose of Income Tax, Companies Act following things are to be taken care of in relation to GST. You all are advised to look upon these details before finalising the Books of Accounts:-

**1.** A complete reconciliation to Sale declared under GSTR-1 and GSTR-3B vis-à-vis books of accounts is to be made. If there is any difference between GSTR-1 and GSTR-3B, then the either of the 2 should be rectified in the current period. Differences in relation to previous periods could be adjusted by amending GSTR-1 during filing for current period (month).

**2.** Mistakes, if any in GSTR-3B should be adjusted in subsequent periods GSTR-3B. If any sales are reducing/increasing then the same must be adjusted in the current tax periods and tax should also be adjusted accordingly.

**3.** All the purchases and corresponding credits are to be checked and verified with GSTR-3B. Balance of books and Online Electronic Credit Ledger should be matched in entirety. Any difference should be adjusted in books or GSTR-3B accordingly.

**4.** \*Reversal of Credits\*: - If there are any exempted supplies, then the credits are to be reversed as advised under Rule 42 and 43. In case of Non business use also the credits are to be reversed to the extent of 5% in case of capital goods.

**5.** \*Reversal of credits where Higher Duty Draw Back and ROSL have been claimed\*:- During the period in which higher duty Draw back and ROSL were availed (i.e. July – September, 2017), No credit availed in relation to material exported during that period could be taken in the Books of Accounts. Such credits need to be reversed in GSTR-3B and books of accounts as well. If such credits are not reversed, then the Higher Duty Draw back claim may be in jeopardy and you may face customs notices for refund back of such duty draw back.

**6.** \*Refund if already taken\*:- If a refund GST of period July-September, 2017 has already been taken from GST department, then the same should be immediately refunded back to the department so that there is no case of refund of higher duty draw back and ROSL to the customs department.

**7.** \*Reversal of Credit where Payment is not made within 180 Days\*:- All the payments to vendors are to be made within 180 days of his Invoice. If payment is not made to the vendor within 180 of his Invoice then the credit in relation to that Invoice needs to be reversed alongwith an interest @ 24% p.a. from the date of taking such credit till the date of final reversal.

\*It is worth to note here that as soon as the payment is made against such Invoice, such reversed credit can be taken again.\*

**8.** \*RCM Payment is to be made\*:- Reverse Charge Mechanism was applicable on goods or services taken from transporters, Advocates and all the unregistered persons. W.e.f. 13.10.2017, such Reverse charge in relation to unregistered persons was withdrawn. However reverse charge in relation to transporters and Advocates (and some other services) is still continuing. Thus it is pertinent to note the following :-

**a.** Reverse Charge in relation to all the unregistered persons were paid upto 13.10.2017

**b.** Reverse Charge in relation transporters and advocates etc are paid till date continuously.

\*If such Reverse Charges are not paid then they should be given in current periods GSTR-3B and recorded in the books of accounts accordingly.\*

**9.** \*Checking Input Tax Credit in relation to denied supplies\*:- Items as per attached list are denied for the purpose of taking credit. Such credits should not be taken. If any of such credits have been taken, then they should be removed from the books of accounts and GSTR-3B.

**10.** \*Checking for any pending ITC\*:- Any ITC which was related to the year 2017-18 and which could not be taken due to non-receipt of Invoices or non-receipt of material, then such credit should be taken before the month of September-2018. After that period such credit could not be taken in anyway.

**11.** \*Checking for any pending liabilities\*:- If any liability is pending which could not be declared in the return then the same is also to be deposited in time before finalization of books of accounts.

**12.** \*Pending Credit/Debit notes\*:- Any pending debit/credit notes should also be finalised before finalisation of books of accounts and should be declared in the return before the month of September, 2018.

# TAX UPDATES, NOTIFICATIONS AND CIRCULARS

## INDIRECT TAX NOTIFICATION

### CENTRAL TAX

**Notification No. 26/2018 – Central Tax**  
**Government of India**  
**Ministry of Finance**  
**Department of Revenue**  
**Central Board of Indirect Taxes and Customs**

**Date- 13th June, 2018**

The Central Government amends the following rules

- 1) These rules may be called the Central Goods and Services Tax (Fifth Amendment) Rules, 2018.
- 2) Save as otherwise provided, they shall come into force on the date of their publication in the Official Gazette.

For more details, please follow the below link –

[http://www.cbic.gov.in/resources//htdocs-cbec/gst/Notification-26-2018-central\\_tax-English.pdf](http://www.cbic.gov.in/resources//htdocs-cbec/gst/Notification-26-2018-central_tax-English.pdf)

**Notification No. 27/2018 – Central Tax**  
**Government of India**  
**Ministry of Finance**  
**Department of Revenue**  
**Central Board of Indirect Taxes and Customs**

**Date- 13th June, 2018**

The Central Government notifies the goods or the class of goods which shall be disposed of by the proper officer, having regard to the perishable or hazardous nature, depreciation in value with the passage of time, constraints of storage space or any other relevant considerations of the said goods. The schedule of the goods are as follows -

#### **Schedule**

- 1) Salt and hygroscopic substances
- 2) Raw (wet and salted) hides and skins
- 3) Newspapers and periodicals
- 4) Menthol, Camphor, Saffron
- 5) Re-fills for ball-point pens
- 6) Lighter fuel, including lighters with gas, not having arrangement for refilling
- 7) Cells, batteries and rechargeable batteries
- 8) Petroleum Products
- 9) Dangerous drugs and psychotropic substances
- 10) Bulk drugs and chemicals falling under Section VI of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)

For Details, please follow the link –

[http://www.cbic.gov.in/resources//htdocs-cbec/gst/Notification-27-2018-central\\_tax-English.pdf](http://www.cbic.gov.in/resources//htdocs-cbec/gst/Notification-27-2018-central_tax-English.pdf)

## CIRCULARS

### CENTRAL TAX

**Circular No. 46/20/2018-GST**  
**Government of India**  
**Ministry of Finance**  
**Department of Revenue**  
**Tax Research Unit**

**Date- 6th June, 2018**

**Applicable GST rate on Priority Sector Lending Certificates (PSLCs), Renewable Energy Certificates (RECs) and other similar scrips –regarding**

Renewable Energy Certificates (RECs) and Priority Sector Lending Certificates (PSLCs) and other similar documents are classifiable under heading 4907 and attract 12% GST. The duty credit scrips, however, attract Nil GST.

For Details, please follow the link –

[http://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular\\_No.46.pdf](http://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_No.46.pdf)

**Circular No. 47/20/2018-GST**  
**Government of India**  
**Ministry of Finance**  
**Department of Revenue**  
**Central Board of Indirect Taxes and Customs**  
**GST Policy Wing**

**Date- 8th June, 2018**

**Clarifications of certain issues under GST– regarding**

Representations have been received seeking clarification on certain issues under the GST laws. The same have been examined and the clarifications on the same are as below:

Sl. No.	Issue	Clarification
1	Whether moulds and dies owned by Original Equipment Manufacturers (OEM) that are sent free of cost (FOC) to a component	<b>1.1</b> Moulds and dies owned by the original equipment manufacturer (OEM) which are provided to a component manufacturer (the two not being related persons or distinct persons) on FOC basis does not constitute a supply as there is no consideration involved. Further, since the moulds and dies are provided on FOC basis by the OEM to the component

	<p>manufacturer is leviable to tax and whether OEMs are required to reverse input tax credit in this case?</p>	<p>manufacturer in the course or furtherance of his business, there is no requirement for reversal of input tax credit availed on such moulds and dies by the OEM. <b>1.2</b> It is further clarified that while calculating the value of the supply made by the component manufacturer, the value of moulds and dies provided by the OEM to the component manufacturer on FOC basis shall not be added to the value of such supply because the cost of moulds/dies was not to be incurred by the component manufacturer and thus, does not merit inclusion in the value of supply in terms of section 15(2)(b) of the Central Goods and Services Tax Act, 2017 (CGST Act for short).</p>
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For Details, please follow the link –

[http://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular\\_No.47.pdf;jsessionid=2764B842DF55F4F33A0E6297904919F3](http://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_No.47.pdf;jsessionid=2764B842DF55F4F33A0E6297904919F3)

**Circular No. 48/20/2018-GST**  
**Government of India**  
**Ministry of Finance**  
**Department of Revenue**  
**Central Board of Indirect Taxes and Customs**  
**GST Policy Wing**

Date- 14<sup>th</sup> June, 2018

Clarifications of certain issues under GST– regarding

Sl. No.	Issue	Clarification
1	<p>Whether services of short-term accommodation, conferencing, banqueting etc. provided to a Special Economic Zone (SEZ) developer or a SEZ unit should be treated as an interstate supply (under section 7(5)(b) of the IGST Act, 2017) or an intra-State supply (under section 12(3)(c) of the IGST Act, 2017)?</p>	<p>1.1 As per section 7(5) (b) of the Integrated Goods and Services Tax Act, 2017 (IGST Act in short), the supply of goods or services or both to a SEZ developer or a SEZ unit shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce. Whereas, as per section 12(3)(c) of the IGST Act, the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location at which the immovable property is located. Thus, in such cases, if the</p>

		<p>location of the supplier and the place of supply is in the same State/ Union territory, it would be treated as an intra-State supply.</p>
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For Details, please follow the link –

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular-48-22-2018-GST-updated.pdf>

**Govt. to reduce GST Rates**

The Minister of State for Finance, Shiv Pratap Shukla said on Thursday that the GST Council is working on rationalizing Goods and Service Tax (GST) rates. A big announcement from the government regarding GST is imminent, he said at an event.

Currently, there are four slabs under the GST including 5 per cent, 12 per cent, 18 per cent and 28 per cent. The GST Council, the apex body deciding policies had, in its meeting in January, decided to slash the GST rate on 54 services and 29 items. In its November 2017 meeting, the council had removed 178 items from the highest 28 per cent category while cutting tax on all restaurants outside starred-hotels to 5 per cent.

**Govt. introduces PAN-Based Refund Clearance for Exporters**

The Central Board of Indirect Taxes and Customs (CBIC) is introducing PAN – based refund clearance for the exporters if such refunds are held up due to mismatch in GSTIN mentioned in shipping bill and return forms.

A circular issued by the Board last day said that the refund should be cleared if the Permanent Account Number (PAN) mentioned in shipping bill and returns form GSTR-3B/GSTR-1 is same.

**F. No. 31013/16/2017-ST-I-DoR**  
**Ministry of Finance**  
**Department of Revenue**

Date – 4<sup>th</sup> June, 2018

**Govt. Notifies GST Settlement of Funds**

As per the GST Settlement of Fund (2nd Amendment) rules 2018, at any point of time in any particular financial year, the Central Government may, on the recommendations of the Council, provisionally settle any sum of integrated goods and services tax collected in that particular financial year which has not been settled so far which will be adjusted in the subsequent month(s)/year(s), based on the returns filed by the taxpayers.

**GST Exemption to Re-Insurance Services provided for Exempted Govt Sponsored Insurance Schemes on the Cards**

The most powerful Goods and Services Tax Council is working on to exempt re-insurance services provided for exempted Government-Sponsored Insurance Schemes under the Goods and Services Tax (GST) regime.

In January, the proposal to exempt reinsurance schemes was recommended by the Fitment Committee and was approved by the GST Council. The Council has prescribed that any benefit from the reduction in premium on such insurance schemes, must be passed on to the beneficiaries, as well as State and Central exchequers.

**CUSTOMS**

**TARIFF**

**Notification No. 47 /2018-Customs  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Indirect Taxes and Customs**

**Date-14<sup>th</sup> June, 2018**

The Central Government makes the following further amendments in the Notification No. 50/2017-Customs, dated the 30th June, 2017, namely:-

In the Table,-

- 1) against S.No. 61, for the entry in column (4), the entry "35%" shall be substituted;
- 2) against S.No. 62, for the entry in column (4), the entry "45%" shall be substituted;
- 3) against S.No. 63, for the entry in column (4), the entry "35%" shall be substituted;
- 4) for S.No. 64 and the entries relating thereto, the following shall be substituted, namely:-

(1)	(2)	(3)	(4)	(5)	(6)
"64.	1508, 1510, 1512 (other than 1512 19 10), 1513, or 1515	All goods, refined and edible grade	45%	-	-
64A.	1509	All goods, refined and edible grade	45%	-	-

- 5) against S.No. 70, for the entry in column (4), the entry "35%" shall be substituted;
- 6) against S.No. 71, for the entry in column (4), the entry "45%" shall be substituted;
- 7) against S.No. 73, for the entry in column (4), the entry "35%" shall be substituted;
- 8) against S.No. 74, for the entry in column (4), the entry "45%" shall be substituted;

- 9) against S.No. 77, for the entry in column (4), the entry "45%" shall be substituted;
- 10) against S.No. 79, for the entry in column (4), the entry "45%" shall be substituted.

**CUSTOMS**

**NON TARIFF**

**Notification No. 48 /2018-Customs (N.T.)  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Indirect Taxes and Customs**

**Date-4<sup>th</sup> June, 2018**

The Central Board of Indirect Taxes and Customs makes the following regulations-

**1. Short title and commencement.** - These regulations may be called the Exports by Post Regulations, 2018 and they shall come into force on 21st June 2018.

**2. Application.** – These Regulations shall apply to export of goods by any person, holding a valid Import-Export Code issued by the Director General of Foreign Trade, in furtherance of business from any foreign post office notified under sub-section (e) of section 7 of the Customs Act, 1962;

**3. Definitions.** – (1) In these regulations, unless the context otherwise requires, -  
a) "Act" means the Customs Act, 1962 (52 of 1962);  
b) "e-commerce" means buying and selling of goods through the internet on an e-commerce platform, the payment for which shall be done through international credit or debit cards and as specified by the Reserve Bank of India from time to time";  
c) "Form" means the Form appended to these regulations.

(2) The words used and not defined in these regulations but defined in the Act, shall have the same meanings respectively assigned to them in the said Act.

**4. Entry to be made for export goods.** - In case of goods to be exported through a foreign post office, an entry shall be required to be presented to the proper officer at the foreign post office of clearance, in the forms appended to these regulations.

**For Details, please follow the link –**

<http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfnns-2018/cs-nt2018/csnt48-2018.pdf;jsessionid=D809E61546B9F11BF5F336809C599B09>



**Notification No. 49 /2018-Customs (N.T.)**  
**Government of India**  
**Ministry of Finance**  
**Department of Revenue**  
**Central Board of Indirect Taxes and Customs**

**Date -7<sup>th</sup> June, 2018**

The Central Board of Indirect Taxes and Customs determines the rate of exchange of conversion of each of the foreign currencies into Indian currency or *vice versa*, relating to imported and export goods.

Sl. No	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
		(a)	(b)
1	2	3	
		(For Imported Goods)	(For Export Goods)
1	Australian Dollar	52.60	50.25
2	Bahrain Dinar	183.40	171.65
3	Canadian Dollar	52.80	50.90
4	Chinese Yuan	10.65	10.30
5	Danish Kroner	10.80	10.40

For Details, please follow the link –

<http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2018/cs-nt2018/csnt49-2018.pdf>

**Notification No. 50 /2018-Customs (N.T.)**  
**Government of India**  
**Ministry of Finance**  
**Department of Revenue**  
**Central Board of Indirect Taxes and Customs**

**Date-8<sup>th</sup> June, 2018**

The Central Board of Indirect Taxes and Customs hereby confers power for the purpose of adjudging confiscation or penalty on the customs officer -

SI No.	Customs Officer	Value of goods liable for confiscation
1	2	3
(1)	Assistant Commissioner of Customs or Deputy Commissioner of Customs	Above rupees one lakh but not exceeding rupees ten lakhs
(2)	A Gazetted Officer of Customs lower in rank than an Assistant Commissioner of Customs or Deputy Commissioner of Customs	Not exceeding rupees one lakh

**Notification No. 51 /2018-Customs (N.T.)**  
**Government of India**  
**Ministry of Finance**  
**Department of Revenue**  
**Central Board of Indirect Taxes and Customs**

**Date-8<sup>th</sup> June, 2018**

The Central Board of Indirect Taxes and Customs makes the following further amendments in the Notification No. 61/94(NT)-CUSTOMS dated the 21st November, 1994, in the Table, against serial number 6 relating to the State of Gujarat, after item (b) and the entries relating thereto, in columns (3) and (4), the following item and the entries shall respectively be inserted, namely:-

SI No.	State/Union Territory	Airport	Purpose
1	2	3	4
		“© Surat	Unloading of Baggage and Loading of Baggage

**Notification No. 52/2018-Customs (N.T.)**  
**Government of India**  
**Ministry of Finance**  
**Department of Revenue**  
**Central Board of Indirect Taxes and Customs**

**Date-13<sup>th</sup> June, 2018**

The Central Board of Indirect Taxes and Customs makes the following further amendments in the Notification No. 62/1994 ,dated the 21st November, 1994, namely:-

In the said notification in the TABLE, against serial number 8 relating to the State of Maharashtra, in column (3) and (4), after item (17) and the entries relating thereto, the following item and entries shall be inserted, namely, -

(1)	(2)	(3)	(4)
		“(18)Karanja Terminal	Unloading of imported goods and loading of export goods or any class of such goods.”

**Notification No. 53/2018-Customs (N.T.)**  
**Government of India**  
**Ministry of Finance**  
**Department of Revenue**  
**Central Board of Indirect Taxes and Customs**

**Date-14<sup>th</sup> June, 2018**

The Central Board of Indirect Taxes & Customs makes the following amendment in the Notification No. 36/2001-Customs (N.T.), dated the 3rd August, 2001, namely:- In the said notification, for TABLE-1, TABLE-2, and TABLE-3 the following Tables shall be substituted namely: -

**Table - 1**

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$Per Metric Tonne)
(1)	(2)	(3)	(4)
1	1511 10 00	Crude Palm Oil	644
2	1511 90 10	RBD Palm Oil	664
3	1511 90 90	Others – Palm Oil	654
4	1511 10 00	Crude Palmolein	670
5	1511 90 20	RBD Palmolein	673
6	1511 90 90	Others – Palmolein	672

For Details, please follow the link –

<http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2018/cs-nt2018/cst53-2018.pdf>

**Notification No. 7/2018-Customs (N.T./CAA/DRI)**  
**Government of India**  
**Ministry of Finance**  
**Department of Revenue**  
**Central Board of Indirect Taxes and Customs**  
**Directorate of Revenue Intelligence**

**Date-6<sup>th</sup> June, 2018**

The Government of India, Ministry of Finance, Department of Revenue the Director General, Revenue Intelligence makes the amendment in the Notification No. 1/2018-Customs (N.T./CAA/DRI) dated 23th February 2018 in the Table, for the existing entry, “DRI/AZU/SRU-24/2017-Samiksha dated 12.06.2017” shall be substituted.

## **CUSTOMS**

## **CIRCULAR**

**Circular No. 14/2018 – Customs**  
**Government of India**  
**Ministry of Finance**  
**Department of Revenue**  
**Central Board of Indirect Taxes and Customs**

**Date-4<sup>th</sup> June, 2018**

**Procedure for E-Commerce Exports through Post & clarification on Personal Imports**

In order to facilitate exports and specifically give a fillip to the global outreach of India’s exporters via E-Commerce, all IEC Holders have been permitted to export goods through FPOs. Any IEC Holder exporting goods through the FPO will be eligible for Zero Rating of exports by way of IGST Refund or discharge of LUT. Those who do not wish to avail this facility or fall in the category of Exempted/Non-Taxable are also permitted to export

under the same procedure. In order to cater to E-Commerce exports through post, the board has prescribed the declaration forms under “Exports by Post Regulations, 2018”.

For Details, please follow the link –

<http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2018/circ14-2018cs-updated.pdf>

**Circular No. 15/2018 – Customs**  
**Government of India**  
**Ministry of Finance**  
**Department of Revenue**  
**Central Board of Indirect Taxes and Customs**

**Date-6<sup>th</sup> June, 2018**

**Refund of IGST on export of Goods-Extension of date in SB005 alternate mechanism cases and Clarification in other cases -reg.**

CBIC has issued Circular No’s 05/2018-Customs dated 23.02.2018 and 08/2018- Customs dated 23.03.2018 wherein an alternative mechanism with officer interface to resolve invoice mismatches was provided for the shipping bills filed till 28.02.2018. Although the cases having SB005 error have now ebbed due to continuous outreach done by the Board and increased awareness amongst the trade, however, some exporters nevertheless, continue to make errors in filing invoice details in the shipping bill and the GST returns. Therefore, keeping in view the difficulties faced by the exporters in respect of SB005 errors, Board has decided to extend the facility of officer interface to Shipping bills filed up to 30.04.2018. However, the exporters are advised to align their export invoices submitted to Customs and GST authorities for smooth processing of refund claims.

For Details, please follow the link –

<http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2018/circ15-2018cs.pdf>

**Circular No. 16/2018 – Customs**  
**Government of India**  
**Ministry of Finance**  
**Department of Revenue**  
**Central Board of Indirect Taxes and Customs**

**Date-8<sup>th</sup> June, 2018**

**Powers of adjudication of the officers of Customs- reg**

In order to improve the disposal rate in deciding cases falling under Chapter XIV, it has been decided that for cases where value of the goods liable for confiscation is above 10 lakhs, the adjudication powers shall be exercised as under:



Rank of Adjudication Officer	Value of goods liable for confiscation
Principal Commissioner/ Commissioner	above 50 lakhs - without limit
Additional Commissioner/ Joint Commissioner	between 10 lakhs to 50 lakhs

**Circular No. 17/2018 – Customs**  
**Government of India**  
**Ministry of Finance**  
**Department of Revenue**  
**Central Board of Indirect Taxes and Customs**

Date-13<sup>th</sup> June, 2018

**Powers of adjudication of the officers of Customs- reg.**

In this notification, monetary limits for adjudication by various ranks in cases liable to confiscation has been specified.

In pursuance of the circular 16/2018-customs, the immediate implication would be to issue corrigenda so as to make the SCNs answerable to the authority given in the said Circular. This would delay the adjudication proceedings. Board desires that adjudication of causes should not be delayed. It has been therefore, decided to withdraw the instructions in the Board's Circular No. 16/2018- Customs dated 08.06.2018.

**Circular No. 18/2018 – Customs**  
**Government of India**  
**Ministry of Finance**  
**Department of Revenue**  
**Central Board of Indirect Taxes and Customs**

Date-13<sup>th</sup> June, 2018

**Procedure for E-Commerce Exports through Post and clarification regarding personal imports**

Circular No. 14/2018 – Customs dated 4<sup>th</sup> June 2018 refers

There are large numbers of cases where low value small shipments, which characterize E-Commerce environment are shipped through post. In such cases, single payments are received by exporters from E-Commerce portal companies through normal banking channels. It has been represented that multiple shipments addressed to multiple consignees should be permitted under Postal Bill of Export –II.

**CENTRAL EXCISE**

**CIRCULAR**

**Circular No.1065/4/2018-CX**  
**Government of India**  
**Ministry of Finance**  
**Department of Revenue**  
**Central Board of Indirect Taxes & Customs**

Date- 8<sup>th</sup> June, 2018

**'Place of Removal' under Section 4 of the Central Excise Act, 1944, the CENVAT Credit Rules, 2004 and the CENVAT Credit Rules, 2017 - reg.**

**General Principle:** As regards determination of 'place of removal', in general the principle laid by Hon'ble Supreme Court in the case of CCE vs Ispat Industries Ltd 2015(324) ELT670 (SC) may be applied. Apex Court, in this case has upheld the principle laid down in M/s Escorts JCB (Supra) to the extent that 'place of removal' is required to be determined with reference to 'point of sale' with the condition that place of removal (premises) is to be referred with reference to the premises of the manufacturer.

**Exceptions:**

- (i) The principle referred to in para 3 above would apply to all situations except where the contract for sale is FOR contract in the circumstances identical to the judgment in the case of CCE, Mumbai-III vs Emco Ltd 2015(322) ELT 394(SC) and CCE vs M/s Roofit Industries Ltd 2015(319) ELT 221(SC). To summarise, in the case of FOR destination sale such as M/s Emco Ltd and M/s Roofit Industries where the ownership, risk in transit, remained with the seller till goods are accepted by buyer on delivery and till such time of delivery, seller alone remained the owner of goods retaining right of disposal, benefit has been extended by the Apex Court on the basis of facts of the cases.
- (ii) Clearance for export of goods by a manufacturer shall continue to be dealt in terms of Circular no. 999/6/2015-CX dated 28.02.2015 as the judgments cited above did not deal with issue of export of goods. In these cases otherwise also the buyer is located outside India.

For Details ,please follow the link –

[http://www.cbic.gov.in/resources//htdocs-cbec/excise/cx-circulars/cx-circulars-2018/Circular1065\\_11062018.pdf](http://www.cbic.gov.in/resources//htdocs-cbec/excise/cx-circulars/cx-circulars-2018/Circular1065_11062018.pdf)

**DIRECT TAX NOTIFICATION**

**Notification No.26/2018/F.No.370142/3/2018-TPL**  
**MINISTRY OF FINANCE**  
**Department of Revenue**  
**Central Board of Direct Taxes**

Date-13<sup>th</sup> June, 2018

The Central Government makes the following further amendments in the Notification of 5th June, 2017, In the said notification, in the Table, after serial number 17, the following serial number and entries relating thereto, shall be inserted, namely:-

Sl. No.	Financial Year	Cost Inflation Index
(1)	(2)	(3)
"18	2018-19	280".

# PRESS RELEASE

## INDIRECT TAX

12<sup>th</sup> June, 2018

14<sup>th</sup> June, 2018

### **Extension of Special Refund Fortnight till 16.6.2018**

The Government has launched the second "Special Drive Refund Fortnight" from 31.5.2018 to 14.6.2018. During the first Refund Fortnight from 15<sup>th</sup> to 29<sup>th</sup> March an amount of Rs. 5350 Crore was sanctioned and during this fortnight over Rs 7500 Crore has been sanctioned. In view of overwhelming response from exporters and pending claims, the period of Refund fortnight is being extended by two more days i.e up to 16th June, 2018.

All exporters whose refunds have been held up on account of short payment are required to make the payment of IGST equal to short payment and follow the instructions of Circular No.12/2018-Customs dated 29.5.2018.

In IGST short payment cases, small exporters whose aggregate IGST refund amount for the period July, 2017 to March, 2018 is up to Rs. 10 Lakhs are required to submit self-certified copies of proof of payment of IGST to the concerned Customs office at the port of export. Others are required to submit a certificate from a Chartered Accountant including the proof of payment.

All GST refund claimants, whose claims are still pending, are being encouraged to approach their jurisdictional Tax Authority for disposal of their refund claims submitted on or before 30.04.2018. In case the jurisdiction (i.e. Centre or State) has not been defined for a particular claimant, he/she can approach either of the jurisdictional tax authorities.

All claimants may note the refund application in FORM GST RFD-01A will not be processed unless a copy of the application, along with all supporting documents, is submitted to the jurisdictional tax office. Mere online submission is not sufficient.

All IGST refund claimants may register on ICEGATE website, if not already done, to check their refund status. Customs field formations have been informed about the extension of the Refund Drive. Exporters are requested to make the best of this extended drive and avail of the opportunity to get the refunds sanctioned during this special drive. In case of any problem, exporters are advised to approach the Commissioner of Customs /Jurisdictional Tax Authorities. The Government is committed to clear all the remaining refund claims filed upto 30.04.2018 are still pending.

### **Change of email and mobile number of the authorized signatory by taxpayers with assistance from the jurisdictional tax officer**

Complaints are being received from taxpayers that the intermediaries who were authorized by them to apply for registration on their behalf had used their own email and mobile number during the process. They are now not sharing the user credentials with the taxpayer on whose behalf they had done the registration in the first place and the taxpayer is at their mercy.

With a view to address this difficulty of the taxpayer, a functionality to update email and mobile number of the authorized signatory is available in the GST System. The email and mobile number can be updated by the concerned Jurisdictional tax authority of the taxpayer as per the following procedure:

#### **Steps to be followed:-**

1. Taxpayer is required to approach the concerned jurisdictional Tax Officer to get the password for the GSTIN allotted to the business. <Jurisdiction can be checked through Search Taxpayer option available on <https://www.gst.gov.in>>. Allotted jurisdiction is displayed in red text>
2. Taxpayer would be required to provide valid documents to the tax officer as proof of his/her identity and to validate the business details related to his GSTIN.
3. Tax officer will check if the said person is added as a Stakeholder or Authorized Signatory for that GSTIN in the system.
4. Tax officer will upload necessary proof on the GST Portal in support to authenticate the activity.
5. Tax officer will enter the new email address and mobile phone number provided by the Taxpayer.
6. After upload of document, Tax officer will reset the password for the GSTIN in the system.
7. Username and Temporary password reset will be communicated to the email address as entered by the Tax Officer.
8. Taxpayer need to login on GST Portal <https://www.gst.gov.in/> using the **First time login** link.
9. After first time login with the Username and Temporary password that was emailed to him, system would prompt the taxpayer to change username and password. The said username and password can now be used by the taxpayer.

## **DIRECT TAX**

**Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes**

**Date - 7<sup>th</sup> June, 2018**

### **CBDT dedicates fortnight for pending appeal effect – rectification matters**

Redressal of public grievances and taxpayer service is an area of top priority for the CBDT and the Income Tax Department. In this connection, a fortnight from 1st June to 15th June, 2018 has been dedicated for expeditious disposal of pending appeal effect and rectification matters. The Assessing Officers have been directed to accord top priority to such matters and to give special attention to this area of work so that grievances arising on this count may be resolved at the earliest.

All taxpayers, local chapters of ICAI and Bar Associations are requested to use this opportunity to get their pending issues under appeal effect and rectification resolved during this fortnight.

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**Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes**

**Date - 3<sup>rd</sup> June, 2018**

### **CBDT issues clarification about loss/ damage to records in the Scindia House fire at Income Tax Office, Mumbai**

News reports have been appearing in some sections of the media alleging that records & documents relating to investigation into the Nirav Modi/ Mehul Choksi case have been destroyed in the Scindia House fire in Income Tax Office in Mumbai.

It is hereby clarified that the said reports are completely false & misdirected.

It is further clarified that the records/ documents of the ongoing investigations into the Nirav Modi/ Mehul Choksi case had already been transferred to the assessment units housed in different buildings, as part of the assessment process.

Apprehensions about any loss/ damage to the records/ documents relating to the Nirav Modi/ Mehul Choksi case in the said fire at the IT Office, Mumbai are, therefore, misplaced.

**Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes**

**Date - 13<sup>th</sup> June, 2018**

### **Proposed amendments to Income-tax Rules, 1962 - Inviting comments of stakeholders**

Income-tax Rules, 1962 (I.T.Rules) prescribe Form No.36 for filing an appeal to the Income Tax Appellate Tribunal (ITAT). Further, a memorandum of cross-objections to the ITAT can be filed in Form No.36A.

The existing Form No.36 and Form No 36A have not been revised since long. These Forms are required to be rationalised to make them more informative and also to capture information regarding amount disputed in pending appeals before ITAT, which is vital for formulating the policy of the department for litigation management.

In view of the above, a draft notification proposing amendments in Form No. 36, Form No.36A and Rule 47 of the IT Rules has been uploaded on the website of the Income Tax Department [www.incometaxindia.gov.in](http://www.incometaxindia.gov.in) for comments from stakeholders and general public.

The comments and suggestions on the draft notification may be sent by 2nd July, 2018 electronically at the email address [ts.mapwal@nic.in](mailto:ts.mapwal@nic.in).

# JUDGEMENTS

## INDIRECT TAX

### **Construction Services by Individual Service Provider not Taxable prior to 01.05.2006**

**Shri Bakthiyar Ahmed vs. CCE & ST, Chennai**  
**Case No. - 41704/2018**  
**Date of Pronouncement - 01.06.2018**

#### Fact of the Case

- 1) In the instant case, the department observed that the assessee, an individual, failed to take out registration nor made any payment of service tax even though he provided construction service to various customers.
- 2) The assessee, who failed to get relief from the first appellate authority, approached the Tribunal on the second appeal.
- 3) Before the Tribunal, the assessee contended that the definition of construction service was made applicable only for service rendered by “a commercial concern”. The appellant was an individual and cannot be considered as a commercial concern.

#### Decision of the Case

- 1) After hearing both sides, the division bench noted that the activities carried out by the appellant fall within the definition of Commercial or Industrial Construction Service. “However, the definition was applicable only to a “commercial concern” up to 01.05.2006.
- 2) Consequently, the levy of service tax cannot be sustained for the period up to 30.04.2006, and is set aside,” the bench said.
- 3) Before concluding, the bench observed that with effect from 01.05.2006, the definition stands amended and has been made applicable to “any person”. Consequently, the appellant will be liable for making payment of service tax w.e.f. 01.05.2006.

### **5% GST leviable on Carry Bags made of Polypropylene Non-Woven Fabrics (Authority for Advance Ruling, Kerala)**

**M/S JJ Fabrics vs. Authority for Advance Ruling, Kerala**  
**Case No. - CT 15492/18-C3**  
**Date - 29/05/2018**

#### Fact of the Case

- 1) In the instant case, the applicant JJ Fabrics is a manufacturer of carry bags made of polypropylene non-woven fabrics and has

preferred for advanced ruling on the rate of tax of the same.

- 2) Applicant asserted that said bags are used by big industrial units, big retail outlets and textile shops for packing their commodities and has been granted registration by the office of textile commissioner for manufacturing of textile based products.
- 3) It added that various authorities under textile ministry had examined the products and have certified that they are technical textile fabrics.
- 4) The applicant had further submitted a test report from Centre for Biopolymer Science and Technology, wherein it was certified that non woven carry bags made by the applicant is a polypropylene product with a filler content of 42.29%.

#### Decision of the Case

- 1) Learned Members on the facts disclosed and submission made at the time of hearing admitted the application.
- 2) They accepted the test report submitted by the applicant and added that in Custom Tariff Act, snacks and bags made of polypropylene strip.
- 3) The AAR ruled that carry bags made of polypropylene non-woven fabrics is taxable at 5%.

### **Cancellation of registration under GST cannot take place without issuing any notice or providing an opportunity of being heard as the GST law provides for the procedure to be followed for cancellation of registration – (Allahabad High Court)**

**Background:** The Petitioner-Assessee preferred this petition before the Honourable High Court of Allahabad on the grounds that the website depicts the registration as cancelled whereas cancellation order has not been issued and an opportunity of being heard was not provided.

**Disputes involved / Points of dispute:** The registration of the Petitioner-Assessee is depicted as cancelled on the GST portal without having received the order of cancellation and without providing an opportunity of being heard.

#### Arguments

**On behalf of the Assessee:** The Petitioner-Assessee contends that their registration was cancelled without providing a copy of the order cancelling the registration and without providing an opportunity of being heard.

**Scope of decision:** The Honourable High Court directed the Counsel representing the Respondent-Department to seek instructions whether the Petitioner-Assessee's registration has been cancelled. If yes, then it was also directed to the furnish the details of the Authority and the reasons for cancellation. The matter was posted for hearing on 05.10.2017. However, the status of the case, presently, is not known.

**Conclusion:** The GST law provides for the procedure to be followed for cancellation of registration. It is specified that, before cancellation of the registration an opportunity of being heard should be provided and thereafter, an order cancelling the registration should be issued to the assessee.

## DIRECT TAX

### **25% Depreciation allowable on Intangible Asset of License for running Container Trains on Indian Railways**

**M/s Container Corporation of India Ltd. vs. DCIT, Circle 3(1), New Delhi**

**Case No. - ITA No. 5098/Del/2014 & ITA No. 5101/Del/2014**

**Date of Pronouncement - 31/05/ 2018**

#### **Fact of the Case**

- 1) In the instant case, the assessee is a Government of India undertaking working under the administrative control of ministry of railways engaged in handling and transportation of containerized cargo.
- 2) The assessee had claimed depreciation on intangible assets for the years under consideration.
- 3) The assessee claimed for depreciation @25% according to Part B of new Appendix 1 to the Income Tax Rules, 1962.
- 4) The A.O observed that it was deferred revenue expenditure and the claim of depreciation was not allowed in entirety.
- 5) Aggrieved by the order of Ld.CIT(A), the assessee approached the ITAT.

#### **Decision of the Case**

- 1) It was held that intangible assets used for business purpose which enables the assessee to access the market and has economic and money value is license which does fall under Section 32(1)(ii) of the act.
- 2) The ITAT held that " we are of the view that specified intangible assets acquired under slump sale agreement were in the nature of business or commercial rights of similar nature specified in Section 32(1)(ii) and were accordingly eligible for depreciation under that section".

- 3) The intangible asset acquired by assessee is eligible for depreciation @25% under Section 32(1)(ii) of the IT Act,1961.

### **Addition based on mere Statements during Survey is Invalid without Tangible Materials(Ahmedabad ITAT)**

**DCIT vs. M/s. Real Strips Ltd.**

**Case No.- I.T.A. No.2255/Ahd/2016**

**Date of Pronouncement - 31/05/2018**

#### **Fact of the Case**

- 1) In the present case M/S Real Strips Ltd. is the assessee who engaged in the manufacturing business of S. S. Cold Rolled Coils/Strips and generation of power.
- 2) As per production manager statement it was revealed that there was maximum loss of 5.6% in the manufacturing process of the material consumed on account of invisible loss as well as scrape loss. However the assessee has shown processing loss 6.9% of the material consumed .Due to excess loss shown by assessee (6.9%-5.6%=1.3%) suppressed production and sale.
- 3) In addition to this the A.O also observed that there was a suppression of G.P due to above reason.So the higher amount of disallowance was treated as suppressed sale or income and added to the total income.
- 4) The aggrieved Assessee preferred an appeal to CIT(A). The Assessee contended that the statement recorded u/s 133-A do not have any evidentiary value in the assessment.
- 5) The Assessee argued that the statement given by the Production Manager cannot be relied upon as it was based on the production sheet which was made for internal purposes and internal discussion and no other person have admitted any suppressed production or suppressed sale.

#### **Decision of the Case**

- 1) As per the Ld. CIT (A), the addition was based merely on the statement obtained under section 133A of the Act during survey proceedings without any corroborative evidence and the addition is not sustainable.
- 2) The ITAT observed that the AO did not highlight any defects in the books of accounts of the Assessee and therefore the addition made by AO was merely on the basis of the statement of Production Manager recorded u/s 133A of the Act.
- 3) The addition solely based on statement u/s 133A is invalid.

- 4) The ITAT Ahmedabad Bench held that any addition based on mere statements during the survey are invalid without tangible materials.

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**Penalty paid to Stock Exchange is a regular Business Expenditure: ITAT allows Deduction (ITAT,Indore)**

**ACIT vs. M/s Arihant Capital Markets Ltd.**

**Case No. - ITA No.370/Ind/2017**

**Date of Pronouncement - 31.5.2018**

**Fact of the Case**

- 1) The assessee has made investments in shares and also incurred expenditure on interest. However, no expenditure was disallowed u/s 14A of the Act.
- 2) Hence, the AO made a disallowance of the expenditure which included interest disallowance and administrative expenses.
- 3) The assessee contended that no expenditure was incurred in relation to earning exempt income. The investments were made out of own capital and reserves and the assessee has no effective borrowing. Further, major investments were brought forward from earlier years and they majorly included unlisted shares of subsidiary companies which never yielded any income.
- 4) The assessee relying upon a case held that if both funds are available with the assessee i.e. interest bearing funds and interest-free funds then the presumption would arise that investment made would be out of interest-free funds available with the company if the interest-free funds are sufficient to meet the investments.

**Decision of the Case**

- 1) After considering the arguments of both the parties, the Tribunal considered that it was nowhere mentioned that the penalty paid by the assessee levied by the Stock Exchange was paid for infringement of any law.
  - 2) The Indore Bench of Income Tax Appellate Tribunal (ITAT) has held that penalty paid to stock exchange is regular business expenditure.
  - 3) Hence, the assessee made no offence prohibited by law which can be contemplated to be covered under Explanation to Section 37 of the Act and therefore, the payment of penalty made by the assessee to the Stock Exchange is regular business expenditure and the impugned disallowance has rightly been deleted by the learned Commission of Income Tax (CIT).
- .....

**Sale Consideration once Taxed u/s 45 can't again assessable as Unexplained (ITAT,Delhi)**

**ITO vs. SMT. SHIKHA KHANDELWAL**

**Case No. - ITA No. 3513/Del/2014**

**Date of Pronouncement - 04/06/2018**

**Fact of the Case**

- 1) The assessee, in the instant case, received the shares as a gift from her husband.
- 2) The assessee further sold the shares within 5 months of acquisition of shares for a consideration of Rs. 99,20,000/-. The department held that the consideration is assessable under section 68 as an unexplained cash credit.
- 3) The entire sale consideration has been offered as gross income and thereafter deduction under section 54F of the Act has been claimed. Thus, it was held that taxing sale consideration once under section 45 and again under section 68 amounts to double taxation.

**Decision of the Case**

- 1) Therefore, in view of such facts and circumstances, the addition u/s. 68 is not called for as such because it is a case where one asset gets replaced by another asset and not of cash credit.
  - 2) The AO has raised the issue of taxability of income u/s. 64 as evident from the impugned order.
  - 3) The assessee received shares through the gift from her husband as detailed in the assessment order; thus, the income derived from the transfer of such shares has to be assessed in view of the provisions of section 64(1)(iv) and not 68, which the Ld. CIT(A) has done.
  - 4) Thus, there in the assessee's case, the issues relating to the working of LTCG and deduction u/s. 54F loses relevance, therefore, Ld. CIT(A) refrained himself in deciding these issues."
- .....

**No TDS since Commission Income of Foreign Agent not Taxable in India(Ahmedabad ITAT)**

**DCIT vs. M/s. Gujarat Microwax Pvt. Ltd.**

**Case No.- I.T.A. No.2503/Ahd/2016**

**Date of Pronouncement - 24/05/2018**

**Fact of the Case**

- 1) In the instant case, the assessee is a private limited company engaged in manufacturing business. The assessee, in the year under consideration had claimed commission expenses of Rs. 54,06,265/- for services



rendered by foreign commission agents in connection with its business..

- 2) The AO, during assessment required the assessee to furnish details of the foreign commission agents. He was of the opinion that payment of commission was subjected to TDS.
- 3) AO disallowed the same and added to the total income of the assessee.
- 4) The assessee preferred an appeal to Ld. CIT(A) and submitted that foreign agents do not have a permanent establishment in India and there was no liability on the part of assessee to deduct TDS .

#### **Decision of the Case**

The Learned CIT(A) observed the followings-

- 1) The agents had carried out all the activities on the foreign soil and not in India, so it cannot be said that income has accrued or arisen in India and the source of income was in India.
- 2) The appellant relied upon various judgments on various courts on the identical facts.
- 3) It is apparent from the observations of the AO in his assessment order itself that the agents had rendered services outside India. It was held by the Ld.CIT(A) that the appellant was not liable to deduct tax on the commission paid to foreign agents.
- 4) The ITAT held that the same cannot be taxed in India as income was received by foreign agents on account of services rendered by them in their respective countries and income was not accrued in India.
- 5) The vicarious liability of payer to deduct tax does not arise, the ITAT held that assessee was not liable to deduct TDS under section 195 of the act.
- 6) The appeal raised by revenue is dismissed.

.....  
**ITAT Allows Remuneration to Lady Directors though they are not involved in Pure Managerial or work of Company (ITAT, Kolkata)**

**Betterman Engineers Pvt. Ltd. Vs I.T.O.  
Case No.- ITA.No.2001/Kol//2014  
Date of Pronouncement - 06.06.2018**

#### **Fact of the Case**

- 1) The assessee, Betterman Engineers Pvt. Ltd., has three production units to run and four male directors remain involved in supervising production, marketing and visiting customers office, collection and procurement of raw materials etc in those units.
- 2) The company has engaged four female directors for adequate surveillance and supervising of official works including for duly timely compliance with statutory obligations in

running the business and therefore claimed expenses of Rs.12,80,000/- on Directors' remuneration.

- 3) The Assessing Officer (AO) disallowed a total remuneration of Rs.6,40,000/- and added in the total income as he relied upon the statement made by another Director of the company that these lady directors are involved in organising functions, doing puja etc. and they do not come to the office regularly which do not come under the purview of business activities according to the AO. And thus observed this as a sort of a bogus expenditure and an arrangement to reduce the tax liability.

#### **Decision of the Case**

The Bench observed the following-

- 1) Judicial member partly disallowed the claims of the AO and held, "We find that even if the lady directors are not involved in pure managerial or supervising work of the assessee company their contribution to some extent cannot be denied.
- 2) It is indirectly accepted that to certain extent the women directors are rendering services to the benefit of the assessee company.
- 3) Furthermore, taking into consideration the return of income of these lady directors it can also not be said that the income has escaped taxation.
- 4) It is justified to allow 30% of the remuneration given to these lady directors."

# TAX COMPLIANCE CALENDAR AT A GLANCE

## GST CALENDAR

Date	Return Type
June 20 <sup>th</sup> , 2018	GSTR-3B for the month of May 2018
June 20 <sup>th</sup> , 2018	GSTR-5 for the month of May 2018
June 20 <sup>th</sup> , 2018	GSTR-5A for the month of May 2018
June 30 <sup>th</sup> , 2018	GST TRAN-2
July 18 <sup>th</sup> , 2018	GSTR-4 for April - June, 2018
July 31 <sup>st</sup> , 2018	GSTR-1 for the month of April - June, 2018 (for persons with Turnover up to 1.50 crore)
July 31 <sup>st</sup> , 2018	GSTR-6 for July '17 - June '18

## DIRECT TAX CALENDAR - JUNE, 2018

### 07.06.2018:

- Due date for deposit of Tax deducted/collected for the month of May, 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

### 14.06.2018:

- Due date for issue of TDS Certificate for tax deducted under Section 194-IA & section 194-I Bin the month of April, 2018

### 15.06.2018:

- Due date for furnishing of Form 24G by an office of the Government where TDS for the month of May, 2018 has been paid without the production of a challan
- Quarterly TDS certificates (in respect of tax deducted for payments other than salary) for the quarter ending March 31, 2018
- First instalment of advance tax for the assessment year 2019-20
- Certificate of tax deducted at source to employees in respect of salary paid and tax deducted during 2017-18

### 29.06.2018:

- Due date for issue of TDS Certificate for tax deducted under Section 194-IA & section 194-IB in the month of April, 2018
- Due date for e-filing of a statement (in Form No. 3CEK) by an eligible investment fund under section 9A in respect of its activities in financial year 2017-18.

### 30.06.2018:

- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA & Section 194-IB in the month of May, 2018
- Return in respect of securities transaction tax for the financial year 2017-18
- Quarterly return of non-deduction of tax at source by a banking company from interest on time deposit in respect of the quarter ending March 31, 2018
- Statement to be furnished (in Form No. 64C) by Alternative Investment Fund (AIF) to units holders in respect of income distributed during the previous year 2017-18
- Report by an approved institution/public sector company under Section 35AC(4)/(5) for the year ending March 31, 2018
- Due date for furnishing of statement of income distributed by business trust to its unit holders during the financial year 2017-18. This statement is required to be furnished to the unit holders in form No. 64B [As prescribed under Rule 12CA inserted by the Income-tax (First Amendment) Rules, 2015, w.e.f. 19-1-2015.]



## DIRECT TAX CALENDAR - JULY, 2018

### 7.07.2018

- Due date for deposit of Tax deducted/collected for the month of June, 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
- Due date for deposit of TDS for the period April 2018 to June 2018 when Assessing Officer has permitted quarterly deposit of TDS under section 192, 194A, 194D or 194H.

### 15.07.2018

- Due date for issue of TDS Certificate for tax deducted under Section 194-IA in the month of May, 2018 and Section 194-IB in the month of May, 2017
- Due date for furnishing of Form 24G by an office of the Government where TDS for the month of June, 2018 has been paid without the production of a challan
- Quarterly statement in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for quarter ending June, 2018
- Quarterly statement of TCS deposited for the quarter ending 30 June, 2018
- Upload the declarations received from recipients in Form No. 15G/15H during the quarter ending June, 2018.

### 30.07.2018

- Quarterly TCS certificate in respect of tax collected by any person for the quarter ending June 30, 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 June, 2018
- Quarterly statement of TDS deposited for the quarter ending June 30, 2018

### 31.07.2018

- Quarterly statement of TDS deposited for the quarter ending June 30, 2018
- Annual return of income for the assessment year 2018-19 for all assessee other than (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 or (d) an assessee who is required to furnish a report under section 92E.
- Quarterly return of non-deduction of tax at source by a banking company from interest on time deposit in respect of the quarter ending June 30, 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 July 31, 2018)
- 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 or before July 31, 2018)
- Statement in Form no. 10 to be furnished to accumulate income for future application under section 10(21) or 11(2) (if the assessee is required to submit return of income on or before July 31, 2018)
- 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 the assessee is required to submit return of income on or before July 31, 2018.)

## NOTES

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## 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.

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