

# TAX Bulletin

September, 2018 Volume - 23



## THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)

[www.icmai.in](http://www.icmai.in)

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

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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

*“Perfection is not attainable, but if we chase perfection we can catch excellence.”*

*- Vince Lombardi*

Namaskar and Best Wishes!

Our organisation values lie in the happiness of our stakeholders and appreciation from our members! As one of most important driving forces in developing modern society, organisations have become the backbone of the communities they belong to. To build a happy and harmonious society, it is a worthwhile attempt for us to build a happy learning environment. We strive to fully undertake our responsibility, building a congenial environment of learning and deliberations, leading as an example of a happy, content and successful organisation.

Last month a few noteworthy initiatives were taken up by Tax Research Department. Some are enumerated as below:

- ✓ Launching of Guidance note on GST audit at the hands of Shri Shiv Pratap Shuklaji, Hon’ble State minister of Finance, Government of India
- ✓ Launching of Handbook on E-way Bill at the hands of Shri Surjya Narayan Patra, Hon’ble Cabinet Minister Co-operation, Government of Odisha
- ✓ Seminar at South Orissa Chapter *themed “Progressive economy, supporting business laws – CMA as a Catalyst”*
- ✓ Closing ceremony celebrations of 1<sup>st</sup> batch of GST Course held across PAN India
- ✓ Submitting suggestions to GST Council on “Simplification of GST returns”.

I acknowledge the contributions of all the executives of TRD and Resource persons.

We hope to serve our fraternity and stakeholders the best.

**CMA Niranjan Mishra**  
Chairman - Taxation Committee  
3<sup>rd</sup> September, 2018

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

Please send the articles to

*trd@icmai.in / research.ad1@icmai.in*



## TAXABILITY OF CO OPERATIVE SOCIETIES UNDER GST

**CMA (Dr.) Ashish Thatte**  
Practicing Cost Accountant



**CMA Parag Gujar**  
Practicing Cost Accountant

### Definitions under GST Act which attracts the taxability to co-operative societies

#### Section 2(84) “Person” includes

a co-operative society registered under any law relating to co-operative societies or Society as defined under the Societies Registration Act, 1860

#### Sec 2(31) “Consideration”

in relation to the supply of goods or services or both includes (a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government

#### Sec 2(17) “Business” includes

provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;

A co-operative society (being a person as defined above) provides services to its member in the form of facilities or benefits to its member (in course of business) for a consideration. Hence based on above definition and concept of supply co-operative society also gets covered under GST.

### Whether Cooperative Society is liable for registration under GST?

When the aggregate turnover of a Cooperative Societies in a financial year exceeds twenty lakh rupees, such Cooperative Societies become liable for Registration under GST as per Sec 22.(1) of CGST Act. That means the collection of money maintenance charges by society exceeds Rs 20 Lakhs per annum then the Society need to be Registered under GST.

It means that if the aggregate turnover (**total receipts**) of the Housing Societies which generally includes society maintenance charges from its members, receipts from investments, income receipts from advertisement board, receipts from mobile towers in premises, Share transfer fee from members, receipts from special purpose use of common area by member (marriage function etc) etc. Housing Society is liable to register if total of all the receipts (including exempted receipts) exceeds Rs. 20 Lakh in a financial year.

Thus Co-operative Housing Society or Residential Welfare Association who’s Turnover (collection money) crosses Rs 20 Lakhs per annum become liable for Registration under GST and should charge GST (CGST + SGST) from its members.

### Chargeability and payment of tax on monthly subscription

Further, if the aggregate turnover of such Housing Society/ Residential Welfare Association is **up to Rs 20 lakh in a financial year**, then such supplies would



be exempted from GST even if charges per member are more than Rs 7500.

A Housing Society / Residential Welfare Association shall be required to pay GST on monthly

subscription / contribution charged from its members if such subscription is more than Rs 7500 per member and the annual turnover of Residential Welfare Association by way of supply of services and goods is also Rs 20 lakh or more.

Scenario	Contribution (Per Member Per Month)	Total Contribution by Members	Receipts other than Contribution Receipts (Exempted) Like Interest Income	Receipts (Taxable) Like Rental for Advt Hoarding	Total Receipts (Total Aggregate Turnover Per Year)	Registration Needed (Yes/No)	Taxable Income
A	4000	18,00,000	0	0	18,00,000	No	0
B	7501	18,00,000	0	0	18,00,000	No	0
C	4000	24,00,000	0	0	24,00,000	No	0
D	4000	18,00,000	9,00,000	0	27,00,000	No	0
E	7501	18,00,000	9,00,000	0	27,00,000	Yes	18,00,000
F	7501	18,00,000	0	9,00,000	27,00,000	Yes	27,00,000
G	4000	18,00,000	0	9,00,000	27,00,000	Yes	9,00,000
H	0	0	27,00,000	0	27,00,000	No	0
I	0	0	0	27,00,000	27,00,000	Yes	27,00,000
J	7501	24,00,000	0	0	24,00,000	Yes	24,00,000
K	4000	18,00,000	0	0	19,00,000	No	0
	7501	1,00,000	0	0	19,00,000	No	0
L	4000	18,00,000	0	0	27,00,000	Yes	9,00,000
	7501	9,00,000	0	0	27,00,000	Yes	9,00,000
M	4000	18,00,000	50,000	2,00,000	21,50,000	Yes	3,00,000
	7501	1,00,000	0	0	21,50,000	Yes	3,00,000

**Inclusion and exclusion of expenses under the limit of Rs.7500**

Property Tax- Society is merely an agent to collect it and deposit the same to Govt. Authorities

Property Tax on Private Space/Parking Area Etc- Society is acting as agent and services for the same to be considered accordingly

Property Tax on Common Area- The Limit of Rs. Seven Thousand five hundred to be utilized for this purpose

Sinking Fund- Kind of Service Provided to members and hence it is taxable and to be counted for limit of Rs. Seven thousand five hundred

Maintenance Charges- Society may be paying for some security, admin, accounts audit etc. And hence it is taxable subject to limit of Rs. Seven thousand five hundred

Non Occupancy Charges- These are typical charges for let out Property. These are not for Common Purposes and to be Taxed to GST.

Parking Charges- Generally charged to members for using space on Parking. Its purely one to one basis and not for common use, it is chargeable to Tax and not counted in Exemption Fees

Share Transfer Fees- It is usually charged for share transfer especially in case of sale of Property. It is taxable and not counted in Rs. Seven thousand five hundred Limit as No Third Party is Involved

Water Charges Individual- If water charges are collected Society on behalf of Member then it is not counted for Exemption and also not chargeable to tax. Chances that it will be already taxed by Govt. Arms at source.

Water Charges Common- If it is for common use then included in Rs. Seven thousand five hundred Limit and Taxable too.

Common Services like Club House, Swimming Pool- These charges are chargeable to Tax and covered in Limit of Rs. Seven thousand five hundred

Interest on Default – It is not for any common use but its individual charges and hence taxable and also not covered under limit of Rs. Seven thousand five hundred

Use of Common Space for Member or Outsider- Since these are charges liable to taxes, Society must collect GST and there is no question of Exemption Limit.

Income on Renting Mobile Tower etc.- Since these are not common services and mostly to be given to

Business etc then these are chargeable to Tax and in case Society is not under GST then subject to RCM also (after 1<sup>st</sup> April 2018)

Scenario	1	2	3	4	5	6	7	8	9
Repairs and Maintenance	7200	7200	7200	7200	7200	7200	7200	7200	7200
Water Charges Agent Service	0	500	500	500	500	0	0	0	0
Contribution to sinking fund	0	0	500	500	500	500	0	0	0
Parking Charges	0	0	0	500	500	500	500	0	0
Club house	0	0	0	0	500	0	0	500	100
Total receipt	7200	7700	8200	8700	9200	8200	7700	7700	7300
Exemption Eligible	7200	7200	7700	7700	8200	7700	7200	7200	7300
Exemption Amount	7200	7200	0	0	0	0	0	0	0
Non Taxable	0	500	500	500	500	0	7200	0	7300
Taxable	0	0	7700	8200	8700	8200	500	7700	0

### **Rate of Tax**

The society is liable to collect tax at the rate of 18% if the aggregate turnover exceeds 20 lakhs

### **Input Tax Credit (ITC) Allowed:**

If the Society becomes liable to pay GST, it is allowed to take Input Tax Credit under Sec 16 (1) of CGST Act subject to conditions for taking input tax credit. Housing Society is entitled to ITC in respect of taxes paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fillings etc.) and input services such as repair and maintenance services – Lift AMC, Housekeeping, Security, Fire AMC, Repairs & Maintenance, Contract staff, Accounting & Auditing Services and other such services.

### **Applicability of Reverse Charge Mechanism**

Tax liability under Reverse Charge as defined under Sec 2(98) of CGST Act also applicable. That means tax shall be payable by the Housing Society when supplies are received which are notified Services as per Sec 9(3) of CGST Act like services of Goods Transport Agency, Advocate Services etc and also supplies from Un-registered Person under Sec 9(4) of CGST Act. The society can claim ITC on tax paid under RCM.

### **Whether Eligible for Composition Scheme?**

Housing Society is not eligible for Composition Scheme.

### **Statutory Compliances:**

**Returns:** Society are also liable to file monthly returns i.e. GSTR-1, GSTR-2, GSTR-3

**Invoices:** Society is required to change the invoice format of monthly/quarterly/yearly bills invoiced to the members. Society should mention the GSTIN No, the tax collected and so on in the invoice issued by it.

**Books of Accounts:** Society is liable to prepare and maintain proper books of accounts. It would also be liable to audit if the aggregate turnover exceeds the threshold limit of audit. Also to maintain proper Records of Supply & Expenses and preserve such records for 72 Months.

### **Conclusion**

If the aggregate turnover exceeds 20 Lakhs co-operative society are compulsorily required to get registered, there is no other exemption for registration. Also in GST regime housing society are eligible to claim ITC on inward supply made by it which was not allowed earlier, this would benefit the society in the form of reduction in cost. The society can transfer this benefit to its member in the form of reduction of maintenance charges collected from its member after due a detailed cost benefit analysis available to the society under GST.



## ZERO RATED SUPPLIES UNDER GST

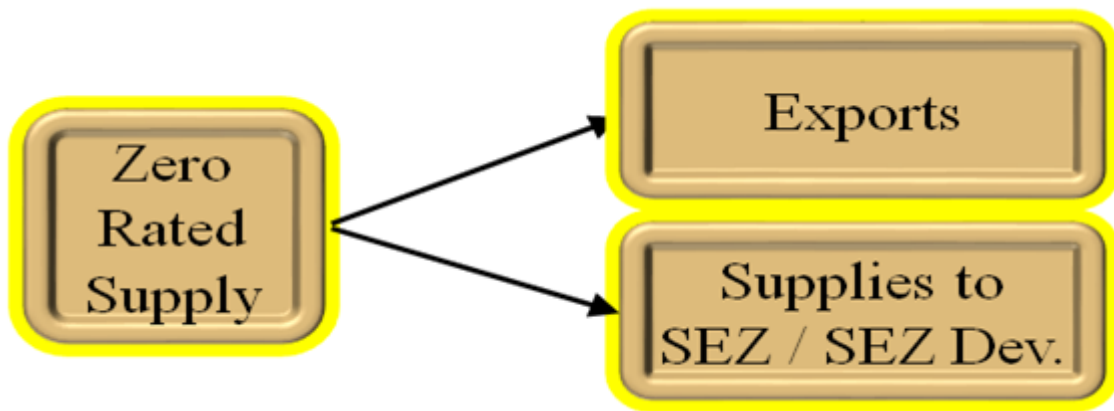
**CA Sachin Kumar Jain**  
Senior Partner, Sachin K Jain & Co



**CA Anu Mittal**  
Practicing Chartered Accountant

### INTRODUCTION

As per sec 16(1) of IGST Act any supplies made by a registered dealer as an export (Both goods or services) or supply to an SEZ qualifies for Zero Rated Supplies in GST. The supply to a developer of an SEZ is also covered under Zero-Rated Supplies in GST as no tax is levied on these supplies as well.



There are certain supplies on which there is no incidence of GST. It is important to understand the underlying difference among all such supply criteria:

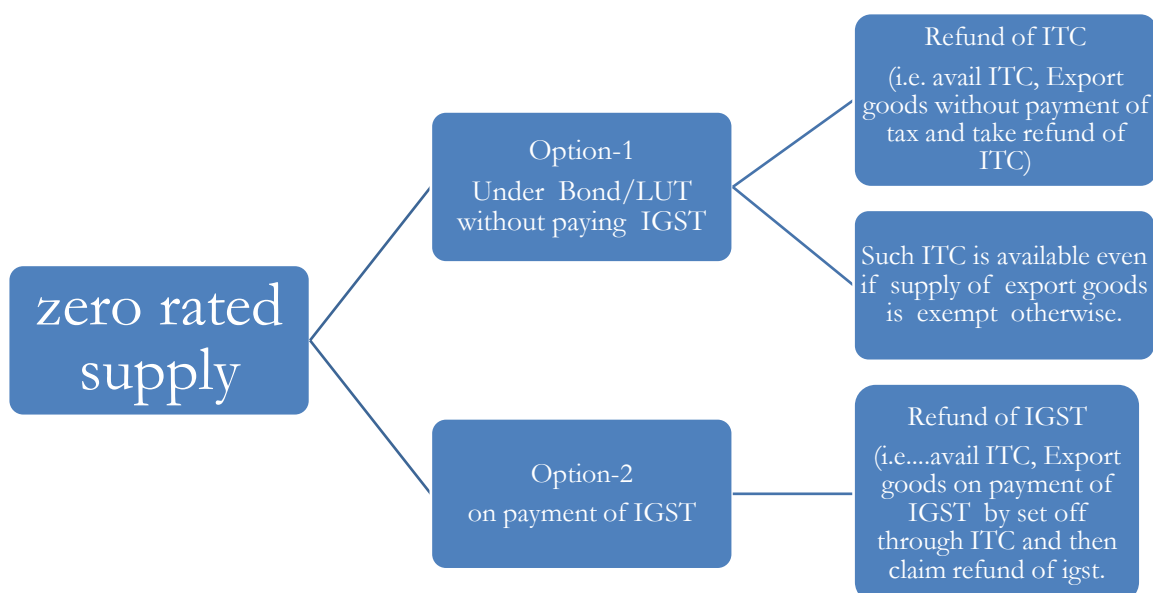
Particulars	Exempt Supplies	NIL Rated Supplies	Zero-Rated Supplies
Meaning	Supplies which are exempt from payment of GST	Goods and services on which 0% GST is applicable	Goods or services which are exported or supplied to SEZ
Input credit availability	Not available	Not available	Available
Payment of Tax	Not Mandatory	Not Mandatory	Once make payment and after that claim Refund.
Example	Transport services provided	Hotel accommodation	Export of shoes to South Africa

	by a GTA, where the gross amount charged is less than Rs. 1,500 for a consignment in a single carriage or Rs 750 for a single consignee.	with tariff below Rs. 1,000	
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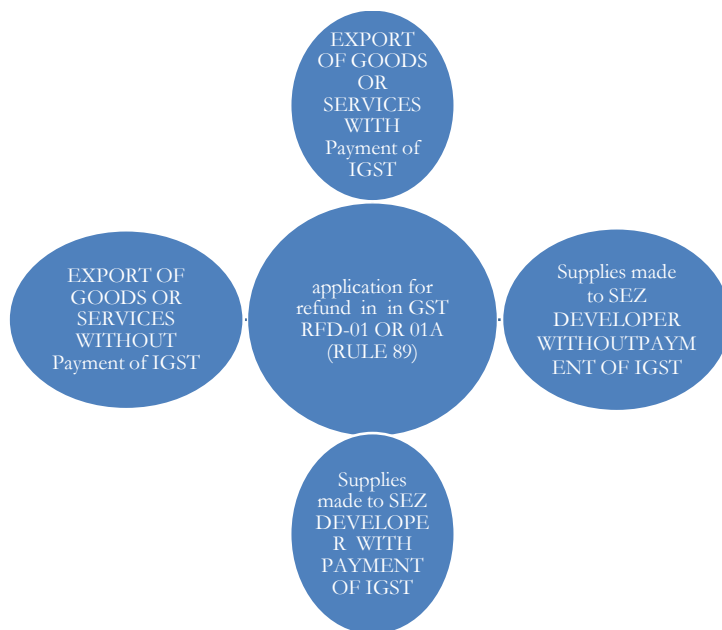
## REFUND OF ZERO RATED SUPPLIES

The suppliers making Zero-rated supplies are entitled to claim refunds. The refunds are for the input tax paid on the goods and services which are used for such Zero-rated supplies (including non-taxable and exempt supplies). There are two options available with a dealer to claim refunds:

- I. The dealer can export under Bond or LUT (Letter of Undertaking) and claim a refund of the accumulated Input credit of tax; or
- II. The dealer can pay IGST while making the supplies and claim refund of the same.



Without payment of Integrated Tax (IGST) (LUT/BOND -A ROUTE)	With Payment of IGST (PAYMENT & REFUND - B ROUTE)
Supply Goods or Services or both	Supply Goods or Services or both
Under LUT or BOND as prescribed in Rules 96 A of CGST Rules 2017	And claim Refund of IGST paid as per Rule 96 of CGST Rules 2017
Refund of Input Tax Credit will refunded as per formula under Rule 89(4) of CGST Rules 2017 by prescribed Application. (GST-RFD 01)	No Separate Application is required, Shipping Bill EGM or Export Report by conveyance carrying the export goods and FORM GSTR-3 / 3B



### Export and Realization of consideration

Actual receipt of consideration (in any form whether in INR, Convertible foreign currency or any other currency) is not necessary for treating a supply of goods as export of goods. This equally applies on supply of goods to SEZ Unit/developer.

However actual receipt of consideration and that too in convertible foreign exchange is necessary to treat supply of service as export of service and thereby necessary for refund in case of export of services. This equally applies on supply of services to SEZ Unit/developer.

### STEPS TO FURNISH LUT ONLINE

To apply LUT, you need to:

- Login to GST website
- Click on User Service
- Click on Furnish Letter of Undertaking (LUT)
  - ✚ After opening application online, you need to first select the financial year for which you are filing LUT.
  - ✚ After selecting financial year, next option is to attach offline application if you made earlier. If you have not applied offline then you need not to submit any document here.
  - ✚ Third step is to agree with all points give in application.
  - ✚ Fourth step is to fill the details of witnesses.
  - ✚ Fifth step is to select authorized signatory and place of filling application.
  - ✚ Last step is to submit your application.
- Submit your application with EVC or DSC

### PROVISIONAL REFUND

The exporters and suppliers of SEZ are entitled to a 90% refund on a provisional basis. Provisional refund is granted within seven (7) days of the refund claim. The amount of provisional refund is credited directly to the claimant's bank account.

There is a condition attached to provisional refunds. The provisional refund is not granted if the applicant has been prosecuted for any offense under the GST law or earlier law within past five (5) years. The amount of tax evaded in such prosecution shall be more than Rupees Two Hundred and Fifty Lakhs (**Rs. 2.5 Crores**).



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

**CMA Mrityunjay Acharjee**

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

This part of the article is written in continuation with 'Part 1' published in the Tax Bulletin dated 18.08.2018.

## OUTLOOK FOR 2017-18

### Introduction

Necessary steps have been taken in the recent past to gain confidence of the investors over Indian tax system and implementation of tax laws. The tax issues are foremost in the mind of the investors, both domestic/international, and confidence in the Indian economy will get dampened by adverse tax environment in the country.

Over the past few years, the government has improved its engagement with taxpayers and have also provided clarity on various controversial issues. The present economic and global environment offers huge opportunity to the government and the budget for 2017 can be a platform for the government to announce and implement long term systematic reforms that could also assure stability, certainty and predictability in the Indian regime. There are various controversial issues which can be revisited and revised in order to provide taxpayer friendly and effective policy implementation.

In the backdrop of developments of year 2016, both at India and outside India, economic activities in year 2017 will have many tax issues that would require adequate consideration. We have provided in the subsequent paragraphs, a broad overview of tax issues and challenges for selected activities/transactions.

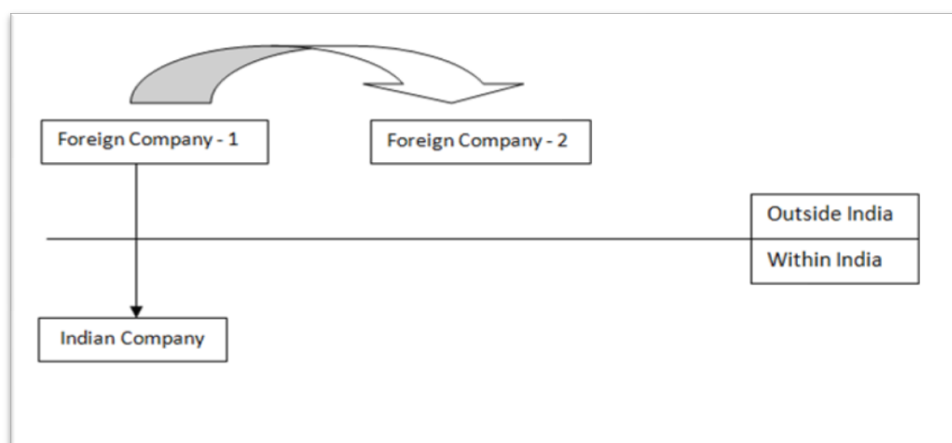
### A. Cross Border M&A

#### Introduction

- Tax issues arise in cross border deals when two different jurisdictions seek to tax the same sum of money or income or the same legal person thereby resulting in double-taxation. Many countries are aware that double taxation acts as a disincentive for engaging in any cross border trade or activity. Therefore, with the primary view to encourage mutual cooperation, trade and investment, the countries enter into bilateral Double Taxation Avoidance Agreements ("DTAA") to limit their taxing jurisdictions voluntarily through self-restraint.
- The availability of such benefits and the ultimate tax liability often drives or breaks cross border transactions. Particularly in the Indian context, where the tax administration is perceived to be aggressive and the laws uncertain, any protection offered by a treaty jurisdiction is important. It is important for the buyer in the context of whether there is any withholding obligation while making a remittance to the seller.

#### Diagram Explaining Cross Border M&A

- The Diagram below depicts a Cross Border M&A where a Foreign company and domestic company expands its operations by merger/acquisition



### Provisions for Cross-border Mergers

- The merger of two foreign companies involving the transfer of shares of an Indian company, is normally tax exempt provided that the merger satisfies the criteria for an amalgamation and, at least 25% of the shareholders of the merging company remain shareholders in the merged company, and such transfer does not attract capital gains tax in the country in which the merging company is incorporated.
- The demerger involving the transfer of shares of an Indian company by a demerged foreign company to the resulting foreign company is also tax exempt provided that,
  - The shareholders holding not less than 3/4 of the shares in the demerged foreign company remain shareholders in the resulting company and
  - Such transfer does not attract capital gains in the country in which the demerged foreign company is located. The merger of an Indian company with a foreign company is also tax exempt, provided the resulting company is an Indian company.

### Current/Likely Tax Issues

- India now levies a tax on the gains arising on the transfer of shares or an interest in a foreign company, if the share or interest derives its value substantially from assets (tangible or intangible) located in India. This tax on indirect transfers of Indian assets is one of the most important tax challenges that investors will have to factor.

- **Withholding Tax**

The Finance Act, 2016 has introduced a tax at the rate of 10% on dividends in excess of INR 1 million (approx. USD 15,000) declared by a domestic company and received by a resident individual, LLP or partnership firm. This is in addition to the DDT paid by the distributing company. Such tax will affect the ability of non-residents to claim foreign tax credit in its home jurisdictions on DDT paid by the distributing company. The normal withholding tax rate on royalties and fees for technical services is 10%, and lower rates may apply if provided for in a tax treaty.

Under Section 195 of the ITA, any person making a payment of a sum to a non-resident that is chargeable to tax under the ITA (read with relevant provisions of the applicable DTAA) would be required to withhold tax on such sum at the appropriate rate. Such withholding is required to be made either at the time of payment or at the time of credit of income to the account of the non-resident. However, if the amount paid is not taxable in India, there is no requirement to withhold tax on such payments. However, if the amount paid has an element of income that is taxable in India, then even a non-resident who making such remittance is obligated to withhold as per the ITA.

- **Credit for Taxes**

The normal withholding tax rate on interest is 40%. However, more beneficial rates (ranging from 5% – 20%) of withholding are available to non-resident creditors depending on the nature of the security involved, the status of the non-resident creditor, etc.



- **Treaty Benefits**

India levies a tax on capital gains arising from the transfer of an asset located in India. In the case of capital gains arising from the transfer of shares of an Indian company, the tax on such gains is typically eliminated through the use of structures involving a Mauritian or Singaporean holding company, since under the provisions of erstwhile DTAA's in place between India and the aforementioned countries, subject to certain criteria being fulfilled (e.g., absence of a permanent establishment in India) only the country of residence of the transferor is entitled to levy a tax on capital gains arising from the transfer of shares of an Indian company, and importantly, these countries do not tax capital gains.

- **LOB Article**

In certain scenario, eligibility to claim relief under a DTAA may be conditional upon the satisfactions of certain “substance” requirements. For example, the India- Mauritius/Singapore DTAA incorporates a “Limitation on Benefits” clause, which requires a Mauritius/Singapore resident company to demonstrate the following, before it can claim benefits under the DTAA. The primary purpose of its incorporation in Mauritius/Singapore should not be to take advantage of the treaty benefits. It should not be a shell/conduit company and it must have bona fide business activities. It will be deemed not to be a conduit company if: Its total annual expenditure on operations in Singapore is at least \$200,000 during 2 years prior to share transfer, or it is listed on a stock exchange in Singapore.

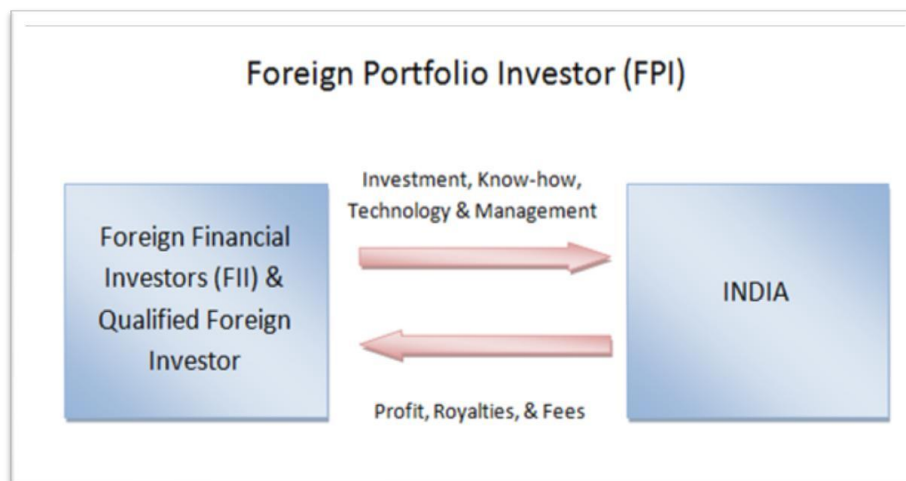
## B. Foreign Portfolio Investor (FPI)

### Introduction

- In the year 2016, considerable developments have taken place on the Foreign Portfolio Investors (“FPI”) front. There have been changes to the norms governing FPIs that have impacted the permitted investments by them in India.
- The changes/amendments made in DTAA's & Indirect Transfer rules, the Foreign Portfolio Investors are expected to face challenges, whereby making them liable to pay higher tax.

### Diagram Explaining how Foreign Portfolio Investor (FPI) invest in India

- Foreign Portfolio Investors (FPI) makes investments in India by acquiring shares/assets of the Indian company, Know-how, Technology & Management etc and earns by the way of Profit, Royalty & Fees.



### Current/Likely Tax Issues

- **Clarification on Indirect Transfer of Shares:**

A High Level Committee to be constituted which would be chaired by Revenue Secretary and will consist of CBDT chairman and an expert from outside to oversee fresh cases where assessing officer applies retrospective amendment in relation to indirect transfer of shares. However, the CBDT constituted a working group on 15 June 2016, after it received queries about indirect transfer provisions raised by offshore funds registered as FPIs. After considering the comments of the working group, CBDT issued clarification through a set of 19 questions and answers depicting various scenarios under which offshore



funds may have invested in companies in India. For example, in case a fund is set up in an offshore jurisdiction pools money from retail/institutional investors and invests in shares of Indian listed companies, if the fund on request of its unit holders/shareholders, redeems their units/shares, then CBDT clarified that it will be liable to pay taxes in India.

- **Treaty Amendments:**

Recently India has also amended the DTAA with Mauritius and Singapore. While this allows India to tax capital gains on investments in the nature of shares, made by an FPI, this will not impact investments made by them in debentures & derivatives in India.

However, further rationalization can be done by the government with respect to the taxation of derivatives; FPIs should be given the option of categorizing their income from derivative transactions as business income, if this is more beneficial to them. The short-term capital gain tax on derivatives should be made on a par with that on equities.

Under the Indian income tax law, shares of listed Indian companies held by FPIs are deemed to be capital assets irrespective of the holding period or the frequency of trading equity carried out by the concerned FPI. As such, income from sale of shares results in capital gains and at present, FPIs enjoy the benefits of the capital gains provisions under the Singapore Treaty. Since investments until March 31, 2017 have been exempted from capital gains tax, there is no risk of an immediate outflow of funds. However, the amendment impacts all prospective investments with effect from April 1, 2017.

As per the amended India – Mauritius treaty, FPIs (including P-note holders) who invest in securities listed on the Indian stock exchange but exit before 12 months from the date of purchase will be impacted since they will be required to pay short term capital gains tax in India @ 15%. During the transition period (i.e. during 01.04.2017 to 31.03.2019), and subject to the satisfaction of the limitation of benefits clause, this rate may be reduced to 7.5%. However, gains accruing to the investors who invest in listed securities for more than 12 months will continue to remain exempt since long-term capital gains tax from sale of listed securities is exempt in India, where the transaction is effected on Stock Exchange in India.

- **General Anti-Avoidance Rules:**

The Finance Minister announced in his budget speech that General Anti-Avoidance Rules (GAAR) will be effective from April 1, 2017. The current Rules contain subjective tests around commercial substance, main purpose, misuse / abuse, etc.. As per the Memorandum to the Finance Bill, 2015, investments made up to March 31, 2017 would be protected from the applicability of GAAR provisions.

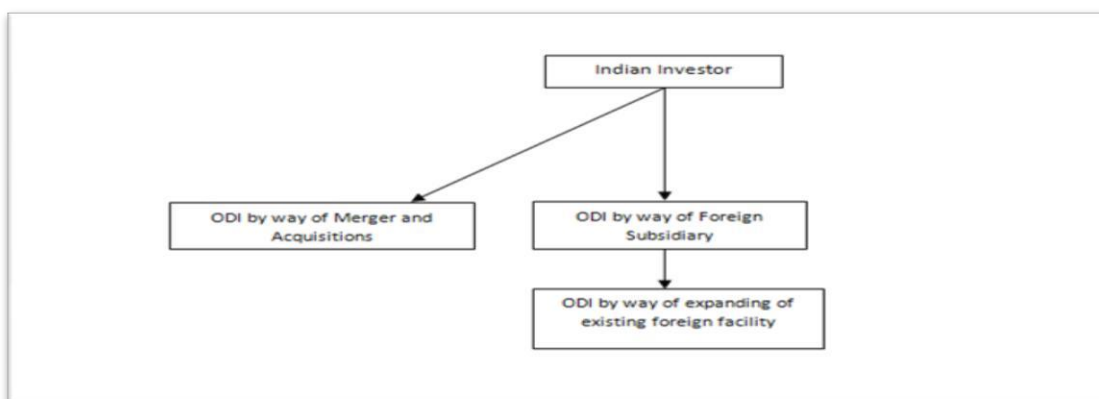
## C. Outbound Investments

### Introduction

- Outbound investments from India have undergone a considerable change not only in terms of magnitude but also in terms of geographical spread and sectoral composition. Analysis of the trend in direct investments over the last decade reveals that while investment flows, both inward and outward, were rather muted during the early part of the decade, they gained momentum during the latter half.
- There has been a perceptible shift in Overseas Investment Destination (OID) in last decade or so. While in the first half, overseas investments were directed to resource rich countries such as Australia, UAE, and Sudan, in the latter half, OID was channelled into countries providing higher tax benefits such as Mauritius, Singapore, British Virgin Islands, and the Netherlands.
- Indian firms invest in foreign shores primarily through Mergers and Acquisition (M&A) transactions. With rising M&A activity, companies will get direct access to newer and more extensive markets, and better technologies, which would enable them to increase their customer base and achieve a global reach.
- For countries like India, which have exchange control restrictions and tax their residents on worldwide income, the relevance of an Offshore Holding Company (OHC) is very significant. An OHC gives an Indian company sufficient amount of flexibility and speed in structuring and expanding its overseas operations by setting up subsidiaries or joint ventures in other jurisdictions.

### Diagram depicting Outbound Direct Investments

- The Diagram below depicts a typical Outbound Direct Investment where a domestic firm expands its operations to a foreign country either via a Foreign Wholly Owned Subsidiary, merger/acquisition and/or expansion of an existing foreign facility.



## Current/Likely Tax Issues

- **Credit for Foreign Tax**

From taxation point of view, direct investment from India completely distorts the dividend repatriation back into India. In many cases, only 40 to 45 percent of the earnings of the foreign company are available to the Indian parent. There is double taxation of the same income: once in the hands of the foreign company and then in the hands of Indian company. In order to address such situation, many countries and tax treaties allow tax credit for the corporate taxes paid on profits in the country of source against taxes payable on dividends in the country of residence of the recipient company. Under these provisions, the recipient of dividend could claim tax credit, for taxes paid in the other countries by the subsidiary companies on profits from which such dividends are distributed. Such tax credit is known as "underlying tax credit". Underlying tax credit is over and above tax credit for taxes withheld on dividend distributed by the subsidiary companies. It reduces the final tax incidence by eliminating double taxation of the same income in the country of source as well as residence. Since underlying tax credit is not available in India, except under some tax treaties like India - Mauritius, the net result is higher incidence of tax.

As per existing provisions of the Income Tax Act, 1961 ("ITA"), income of an Indian company is subject to tax at the rate of 30% in addition to 3% cess, subject to 12% surcharge if income exceed 1 crore.. Therefore dividends received by an Indian company from an overseas company will be subject to tax in India at the rate of 30% in addition to 3% cess, subject to 12% surcharge if income exceed 1 crore. ITA does not provide for underlying tax credits, however, an Indian company could claim such underlying tax credit if the double taxation avoidance agreement ("DTAA") that India has entered into with the country of residence of the company paying such dividends provides for the same. Indian company can claim tax credit in India for the taxes that have been withheld by the foreign company on such distribution. Long- term capital gains realized by an Indian company from sale of shares of a foreign company will be subject to tax in India at the rate of 21%, whereas short-term capital gains would be subject to tax at normal corporate tax rates of 30% in addition to 3% cess, subject to 12% surcharge if income exceed 1 crore. As such, there is no golden rule for a preferred structure for outbound investments as it depends on the country in which the investment is sought. However, countries like Mauritius, U.K., and Netherlands etc. are close contenders for location of OHC out of India for holding investments worldwide.

- **Place of Effective Management**

The parties most impacted by the amended PoEM rule shall be Indian individuals and companies which have set up foreign JV's and or WOS and routinely take decisions for such entities from India, also affected will be groups where the executives of the Indian entity are also on the board of the foreign subsidiary. These companies shall soon see that their legitimate foreign companies are now deemed to be Indian residents and are subject to taxation in India, this imposes a huge cost in the form of taxes (incomes of foreign companies are taxable at 40% in India) on such companies and the group as a whole.

The consequence of this provision, unless amended or clarified, is going to be a large uptick in tax disputes, where the department will invariably look at a foreign entity owned by Indians and tax it at the maximum marginal rates. That there is no established jurisprudence on this matter in India also means that litigation on this matter will only increase. Start-ups and established Indian players have few options by way of recourse, one option would be to decouple ownership and management/Control and ensure that such management is situated only outside of India and no overlaps exist. This is easier said than done and will certainly be a challenge for all businesses looking to go global.

## D. Payment to Foreign Collaborator

### Introduction

- The globalisation of economic reforms throughout the world has led to an increasing degree of inter-dependence between countries in the field of technology, manpower, finance, etc. The Indian economy too has been and is continuing to be liberalised by successive Governments through the mode of reducing custom duties and of other levies, relaxing foreign exchange regulations and by encouraging boost in exports.
- The survival and growth of the industrial sector depends to a great extent upon technological advancement. This is possible through collaborations with developed countries to import their expertise and aid. While drafting foreign collaboration agreements both parties have to necessarily take into consideration the tax laws in the respective countries.
- This is necessary so as to ensure, on the one hand, that the statutory requirements under the various tax laws in India and the other country are met, as also, on the other hand, to minimise the burden of tax which falls on the income, profits and gains arising from the collaboration.

### E. Sensitivity Analysis

The Table below summarizes the sensitivity analysis on the identified economic activity having regard to the relevant provisions of Income tax law

Parameters	Provision of GAAR	Impact of BEPS	Provision of Treaty	Impact of POEM	Transparency and Exchange of Information
Cross Border M&A	High	High	Moderate	High	High
Foreign Portfolio Investors	High	Moderate	High	Low	Low
Outbound Investments	Moderate	High	High	High	High
Payment to Foreign collaborator by way of Dividend, Royalty and Fees for technical service	Low	Moderate	High	High	Moderate
Financing by way of Debt	High	High	High	Low	High
Provision on Indirect Transfer	High	High	Low	High	High

### Conclusion

The government has announced number of initiatives that will change the future of the investment, tax and regulatory landscape in India. The opening up of the commodities market to institutional investors and permitting of FPI investments in unlisted debt securities as well as securitized debt instruments are being actively considered.

We can expect from the government further steps in this direction of providing the adequate direction and certainty in tax policy/regulation & its implementation. Budget 2017 would offer one opportunity to government in this regard. In the post BEPS environment, MNEs would welcome unambiguous, transparent & clear tax rules and policy from the government. Such positive steps by the government will further support its ambitious and inclusive growth oriented schemes like Make in India, Digital India, etc.

# IMPLEMENTATION OF E-WAY BILL IN EACH STATE

TEAM TRD

E-way bill provision of GST, first introduced on 1 February 2018 was initially made mandatory for inter-state transportation of goods, having consignment value of more than Rs. 50,000 through road, railways, airways and vessels. However, due to some technical glitches, the government had to extend the deadline. Thereafter, the Central Government has substituted Rule 138 of the Central Goods and Services Tax Rules, 2017 (“CGST Rules”) vide Notification No. 12/2018- Central Tax, dated March 7, 2018 and notified **April 01, 2018** as the date from which **E-way bill Rules shall come into force for all inter-state movement of goods, having consignment value more than Rs. 50,000** vide Notification No 15/2018–Central Tax dated March 23, 2018. Further, E-way bill has also been made applicable in phased manner for intra-state movement of goods by June 3, 2018 and has been notified in each state. The table below contains the Notification issued by each state in respect of E-way Bill on intrastate movement of Goods.

<u>States</u>	<u>Inter-State Waybill (Appointed Date)</u>	<u>Legal Reference of Inter-state Waybill</u>	<u>Intra State Waybill (Appointed Date)</u>	<u>Legal Reference of Intra-state Waybill</u>
<u>Andaman and Nicobar Islands</u>	<b>1-Apr-18</b>	<p><b>Notification No 15/2018–Central Tax dated March 23, 2018 –</b></p> <p>The following Explanation shall be inserted, with effect from the 1st of April, 2018, namely:-</p> <p>“Explanation - For the purposes of this Chapter, the expressions ‘transported by railways’, ‘transportation of goods by railways’, ‘transport of goods by rail’ and ‘movement of goods by rail’ does not include cases where leasing of parcel space by Railways takes place.”.</p>	25-May-18	Notification No. 10/2018 – Union Territory Tax, Dated: 21.05.2018
<u>Andhra Pradesh</u>			15-Apr-18	Circular No. CCT/CCW/GST/74/2015, Dated: 11/04/2018
<u>Arunachal Pradesh</u>			25-Apr-18	Notification No. GST/50/2017/396, Dated: 23.04.2018
<u>Assam</u>			16-May-18	Notification No. 7/2018-GST Dated: 07.05.2018
<u>Bihar – Note 1</u>			20-Apr-18	Notification No. S.O 180 Dated: 19.04.2018
<u>Chandigarh</u>			25-May-18	Notification No. 07/2018 – Union Territory Tax, Dated: 18.05.2018
<u>Chhattisgarh</u>			1-Jun-18	Notification No. F/0117/2018CT/V(31), Dated: 28.03.2018
<u>Dadar &amp; Nagar Haveli</u>			25-May-18	Notification No. 08/2018 – Union Territory Tax, Dated: 18.05.2018
<u>Daman and Diu</u>			25-May-18	Notification No. 09/2018 – Union Territory Tax, Dated: 18.05.2018
<u>Delhi</u>			16-Jun-2018	-
<u>Goa – Note 2</u>			1-Jun-18	Notification No. CCT/26-2/2018-19/36 Dated: 28.05.2018
<u>Gujarat – Note 3</u>			15-Apr-18	Notification No. GSL/GST/Rule -138 (14)/B.12 Dated: 11.04.2018
<u>Haryana</u>			20-Apr-18	Notification No. 49/ST-2 Dated: 19.04.2018
<u>Himachal Pradesh – Note 4</u>			5-May-18	Notification No. 12-4/78-EXN-Tax, Dated: 01.05.2018
<u>Jammu and</u>			1-Jun-18	Press Release Dated: 31.05.2018

<u>Kashmir</u>				
<u>Jharkhand</u>			20-Apr-18	Notification No. S.O. No. 35, Dated: 17.04.2018
<u>Karnataka</u>			1-Apr-18	-
<u>Kerala</u>			15-Apr-18	Press Release Dated: 10.04.2018
<u>Lakshadweep Island</u>			25-May-18	Notification No. 11/2018 – Union Territory Tax, Dated: 21.05.2018
<b>Madhya Pradesh – Note 5</b>			25-Apr-18	Notification No. F-A-3-08-2018-1-V (43), Dated: 24.04.2018
<u>Maharashtra</u>			25-May-18	Notification No. 15D/2018-State Tax [NO. JC(HQ)-1/GST/2018/NOTI/1/E-Way Bill/ADM-8] Dated: 24.05.2018
<u>Manipur</u>			25-May-18	Press Release Dated: 24.05.2018
<u>Meghalaya</u>			25-Apr-18	Notification No. ERTS (T) 84/2017/20, Dated: 20.04.2018
<u>Mizoram</u>			1-Jun-18	Notification No. J.21011/2/2018-Tax/Part, Dated: 28.05.2018
<u>Nagaland</u>			1-May-18	Notification No. 6/2018. Dated: 19.04.2018
<u>Odisha</u>			1-Jun-18	Press Release Dated: 31.05.2018
<u>Puducherry</u>			25-Apr-18	Notification No. [F.NO. 3240/CTD/GST/2018/3], Dated: 24.04.2018
<u>Punjab</u>			1-Jun-18	Press Release Dated: 31.05.2018
<u>Rajasthan</u>			20-May-18	Notification No. [NO. F.17 (131) ACCT/GST/2017/354] Dated: 16.05.2018
<u>Sikkim</u>			25-Apr-18	Press Release Dated: 23.04.2018
<b>Tamil Nadu – Note 6</b>			2-Jun-18	Notification No. 09/2018. Rc 46/2018/Taxation/AI, Dated: 31.05.2018
<u>Telangana</u>			15-Apr-18	Press Release Dated: 10.04.2018
<u>Tripura</u>			20-Apr-18	Notification No. F.1-11(91)-Tax GST/2018 (Part –I), Dated: 17.04.2018
<u>Uttarakhand</u>			20-Apr-18	Notification No. 239/CSTUK/GST-VIDHI/2017-18, Dated:17.04.2018
<u>Uttar Pradesh</u>			20-Apr-18	Press Release Dated: 10.04.2018
<b>West Bengal – Note 7</b>			3-Jun-18	Notification No. 11/2018-C.T./GST, Dated: 30.05.2018

**Note 1:** In case of Bihar, the E-way Bill is required to be generated if the consignment value exceeds ₹ 2 Lakhs.

**Note 2:** In case of Goa, the e-way bill for movement of goods within the state of Goa is required only for following 22 types of goods.

- Iron and steel
- Ferrous and Non Ferrous Metal and scrape thereof
- All type of wall and flooring tiles
- Processed tobacco and products thereof
- Cigarette, Gutkha and Pan masala
- All types of Plywood, block board, Decorative and Laminated Sheets
- Coal including Coke in all its forms
- Timber and Timber products
- Cement and all type of cement products
- Marble and Granite
- Kota Stones

- Naptha
- FMCG
- Namkins & Sweetmeats
- I.T Products
- Electronic Goods
- Pipes and Fittings of all kinds
- Plumbing and Sanitary items
- Cashew Nuts
- Electrical Goods
- Readymade Garments
- Furniture of all kinds.

**Note 3:** In case of Gujarat, the e-way bill for movement of goods within the State of Gujarat is required only for following 19 types of goods.

- Edible oils
- Taxable Oil Seeds
- Oil cakes
- Iron and steel
- Ferrous and Non Ferrous Metal and scrape thereof
- Ceramic tiles
- Brass parts and Brass items
- Processed tobacco and products thereof
- Cigarette, Gutkha and Pan masala
- All types of Yarns
- All types of Plywood, block board, Decorative and Laminated Sheets
- Coal including Coke in all its forms
- Timber and Timber products
- Cement
- Marble and Granite
- Kota Stones
- Naptha
- Light Diesel Oil
- Tea (in leaf or powder form)

**Note 4:** In case of Himachal Pradesh, the e-way bill for movement of goods within the State of Himachal Pradesh is required only for following 17 types of goods:

- Soft drinks including aerated drinks
- Iron and steel
- Edible oils
- Ferrous and Non Ferrous Metal and scrape thereof
- Marble, granite and Kota Stone
- Timber and Timber products
- Sugar
- Processed tobacco and products thereof
- Cigarette, Gutkha and Pan masala
- Furniture including upholstered furniture

- All kind of tiles including roofing tiles, ceramic tiles and paver blocks
- All kind of bricks
- Plywood and Sunmica
- Electrical items
- All kinds of drugs and medicines
- Sanitary goods including fitting thereof
- Readymade garments and hosiery products

**Note 5:** In case of Madhya Pradesh, the e-way bill for movement of goods within the State of Himachal Pradesh is required only for following 11 types of goods:

- Pan Masala
- Confectionery
- Plywood and Laminated Sheets
- Iron and steel
- Edible oils
- Auto Parts
- Cigarettes/tobacco and tobacco products
- Electric and Electronic Goods
- All types of Furniture
- Lubricants
- Tiles, Ceramic goods, Ceramic Blocks, Ceramic pipes etc.

**Note 6:** In case of Tamil Nadu, the e-way bill is required to be generated if the consignment value exceeds ₹ 1 Lakh. Further, the Govt. has also prescribed 100 types of goods for which E-way bill is required to be generated irrespective of the value of Consignment.

**Note 7:** As per Notification No. 13/2018 C.T./GST, Dated: 06.06.2018, the E-way Bill is required to be generated for the movement of goods in the state of West Bengal, if the consignment value exceeds ₹ 1 Lakh instead of ₹ 50,000. This notification will be effective from June 6, 2018.

# UPDATE ON AMENDMENTS TO CGST ACT, 2017

TEAM TRD

August 31, 2018

Dear Person,

**An amendment to CGST Act, 2017 has been introduced on 29<sup>th</sup> August, 2018 with the following objective by The Central Government:-**

- To remove the certain difficulties faced by the tax payers.
- To propose new return filing system envisages quarterly filing of return and tax payment for small taxpayers along with minimum paperwork.
- To implement the new return filing system.

**Given below is the gist of important amendments to CGST Act, 2017**

Clause 3 of the Bill seeks to amend section 7 of the principal Act relating to "Scope of Supply" in order to clarify the scope of supply.

## **1. Amendment to section 9 of the principal Act relating to restriction on purchase from unregistered suppliers under Reverse Charge Mechanism:-**

Sec. 9(4) of CGST Act, 2017, in respect of payment of GST by registered person on supplies received by him from unregistered person on reverse charge basis is amended to restrict the levy of tax on reverse charge basis to receipt of supplies of certain specified categories of goods or services or both by notified classes of registered persons from unregistered suppliers on the recommendations of the Council.

## **2. Amendment to Section 10 of the principal Act relating to Composition levy:-**

Sec. 10 of CGST Act, 2017 is amended to increase the statutory threshold of turnover for the composition scheme from One Crore Rupees to One Crore and Fifty Lakh Rupees. Thus, a person whose turnover is below Rs. 1.50 Crore is eligible to obtain the composition scheme for payment of GST.

Further a provision is made to allow the composition taxpayer to supply the services other than restaurant services up to a value not exceeding ten per cent. of turnover in the preceding financial year, or five lakh rupees, whichever is higher.

Earlier, a composition tax payer was not allowed to supply any services except restaurant services.

## **3. Amendment to Section 12 of the principal Act relating to "Time of supply of goods":-**

Time of Supply of goods was earlier of the following:-

The date of issue of invoice by the supplier or the last date on which he is required, under sub-section (1) of section 31, to issue the invoice with respect to the supply;

Sub-section (1) of Section 31 of CGST Act, 2017 covers only issuance of tax at the time of movement of goods.

Now, amendment has been made to provide that, Time of Supply of goods is the date of issue of invoice by the supplier or the last date on which he is required, under Section 31 of CGST Act, 2017 to issue the invoice with respect to the supply.

Thus, last date of issuance of tax invoice; invoice when goods sent on approval basis, revise invoice, invoice in case of continuous supply of goods needs to be considered for determination of time of supply of goods.



#### 4. Amendment to section 13 of the principal Act relating to "Time of supply of services":-

Time of Supply of services was earlier of the following:-

The time of supply of services shall be the earliest of the following dates, namely: -

- a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or
- b) the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or
- c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

Vide amended CGST Act, 2017, the words "sub-section (2)" are omitted to widen the scope of time of supply of services.

Now, last date of issuance of tax invoice; revised invoice, invoice in case of continuous supply of services needs to be considered for determination of time of supply of goods.

#### 5. Amendment to Sec. 17(5) of CGST Act, 2017 to provide inadmissible list of goods or services for availment of Input Tax Credit:-

Given below the amended list of inadmissible goods or services :-

“(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:-

- (A) further supply of such motor vehicles; or
- (B) transportation of passengers; or
- (C) imparting training on driving such motor vehicles;

(aa) vessels and aircraft except when they are used-

(i) for making the following taxable supplies, namely:-

- (A) further supply of such vessels or aircraft; or
- (B) transportation of passengers; or
- (C) imparting training on navigating such vessels; or
- (D) imparting training on flying such aircraft;

(ii) for transportation of goods;

(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

Provided that the input tax credit in respect of such services shall be available-

(i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;

(ii) where received by a taxable person engaged-

- (I) in the manufacture of such motor vehicles, vessels or aircraft; or
- (II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

(b) the following supply of goods or services or both-

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre; and

(iii) travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide to its employees under any law for the time being in force.”.



**6. Amendment to section 16 of the principal Act relating to deemed provision of receipt of services in case of provision of services to third party and introduction of provisions relating to the new return format as specified in the proposed new section 43A, for availment of input tax credit:-**

In case of supply of goods and services on the direction of third person, it was provided that to consider that goods are deemed to be received to such third person for availing the input tax credit by third person.

Now, deemed provision of receipt of services is made applicable to supply of services to recipient on the direction of third person also. In other words, if services are supplied to recipient on the direction of third person then it is deemed that such third person has received the services.

Further New Sec. 43A is inserted to provide new return formats for matching concept. Format of the return will be notified.

A registered person can avail the input tax credit only if supplier of goods has filed the new prescribed returns as per Sec. 43A of CGST Act, 2017.

**7. Amendment to section 17 of the principal Act relating to the scope of determination value of exempt supply for determination of common ITC:-**

An Explanation is inserted to Sec. 17 (3) of CGST Act, 2017 i.e. determination of value of exempt supply for apportionment of input tax credit used for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies.

Following explanation is inserted:-

*For the purposes of this sub-section, the expression “value of exempt supply” shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule.;*

In other words, following activities or transactions which shall be treated neither as a supply of goods nor a supply of services as per Schedule III shall not be treated as exempt supply for apportion/ reversal of ITC used for taxable supply including zero rated supply and exempt supply.

1. Services by an employee to the employer in the course of or in relation to his Employment.
2. Services by any court or Tribunal established under any law for the time being in force.
3. (a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;  
(b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or  
(c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5. Actionable claims, other than lottery, betting and gambling.

However, sale of land shall be treated as exempt supply for apportionment/reversal of common input tax credit used for supplying taxable supply including zero rated supply as well as exempt supply.

**8. Amendment to section 20 of the principal Act relating to determination of value of turnover for the purposes of distribution of credit by ISD:-**

It has been clarified that for determination of state turnover for distribution of input tax credit by Input Service Distributor, the amount of tax levied under Entry 92A of List I of the Seventh Schedule of the Constitution i.e. Central Sales Tax on goods other than newspapers shall be excluded.

**9. Amendment to section 22 of the principal Act relating to increase the threshold limit of turnover for registration in special category States:-**

Vide amendment to Sec. 22 of CGST Act, 2017, the threshold turnover for registration under GST Act in special category States of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand has been increased from ten lakh rupees to twenty lakh rupees

**10. Amendment to section 24 of the principal Act relating to mandatory registration for only those e-commerce operators who are liable to collect tax at source under section 52 of the principal Act:-**

Amendment in Section 24 of CGST Act, 2017, to provide that compulsory registration is required for those e-commerce operators who are liable to collect tax at source under section 52 of the principal Act.

**11. Amendment to section 25 of the principal Act relating to separate registration for each such place of business, and for separate registration for Special Economic Zone:-**

A proviso has been inserted for separate registrations to a person having a unit(s) in a Special Economic Zone or being a Special Economic Zone developer, distinct from his other units located outside the Special Economic Zone.

A proviso to Sec. 25 of CGST Act, 2017 is inserted to allow separate registrations to a person having multiple place of business for each place of business in a state or union territory. Thus, multiple registrations for each place of business within a state can be obtained.

By making this amendment and by omitting clause (18) of Sec. 2, the concept of business vertical has been removed. Now any taxpayer having multiple place of business can have option to obtain separate registration for each premise.

**12. Amendment to section 29 of the principal Act relating to temporary suspension of registration while cancellation of registration is under process:-**

Provided that registration may be suspended during the proceedings related to Cancellation of registration by the registered person who is no longer required to be registered.

**13. Amendment to section 34 of the principal Act relating to Credit and debit notes.**

Sec. 34 is amended to allow registered persons to issue consolidated credit or debit notes in respect of multiple invoices issued in a Financial Year.

**14. Amendment to section 35 of the principal Act relating to Accounts and other records.**

A proviso is inserted in Sec. 35 of CGST Act, 2017 to provide that GST audit by Chartered Accountant or Cost Accountant of a registered person whose turnover is more than 2 crores is not required to any Department of the Central or State Government or local authority which is subject to audit by the Comptroller and Auditor-General of India.

**15. Amendment to section 39 of the principal Act relating to furnishing of returns:-**

Specific provision for due date of payment of taxes and filing of GST return on or before the twentieth day of the month succeeding such calendar month or part thereof is omitted.

So that Central government may notify certain class of person who shall furnish their return quarterly and pay taxes quarterly.

Government may notify form and manner for rectification of omission or incorrect particulars in GST return.

**16. Insertion of new section 43A relating to the procedure for furnishing return and availing input tax credit:-**

New Sec. 43A is inserted to prescribe the procedure for furnishing return and availing input tax credit. As per Sec. 43A, government may prescribe the procedure for furnishing the return and avail the input tax credit after matching.

**17. Amendment to section 48 of the principal Act relating to Goods and Services Tax Practitioners:-**

Amendment is made in Sec. 48 of CGST Act, 2017 to allow Goods and Services Tax Practitioners to perform other functions such as filing refund claim, filing application for cancellation of registration, etc. on behalf of registered person.

**18. Amendment to section 49 of the principal Act relating to payment of tax, interest, penalty and other amounts:-**

Proviso is inserted in Sec. 49 of CGST Act, 2017 to provide that Input Tax Credit of State Tax and Union Territory Tax can be utilized against the payment of IGST only when there is no balance of Central Tax Credit.

In other words, ITC of Central Tax to be utilized first for payment of CGST then IGST and then ITC of State Tax or Union Territory tax can be utilized for payment of IGST.

**19. Insertion of two new sections, namely, section 49A and section 49B to prescribe specific order of utilisation of input tax credit and for payment of any tax**

Section 49A is inserted to provide that IGST shall be utilized fully first for payment of IGST, Central Tax, State Tax or Union Territory Tax as the case may be.

Section 49B seeks to empower the Government to prescribe any specific order of utilisation of input tax credit of any of the taxes for payment of any tax i.e. cross utilization of Central tax and State Tax or Union Territory Tax.

**20. Amendment to section 52 of the principal Act relating to Collection of tax at source:-**

If the details of outward supplies furnished by the operator in his return do not match with the corresponding details furnished by the supplier under section 37 (return for outward supply) and under Sec. 39 i.e. GST return, the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed.

**21. Amendment to section 54 of the principal Act relating to appliance of principle of unjust enrichment in case of refund claim arising out of supplies to SEZ and to allow receipt of payment in Indian rupees, where permitted, by the Reserve Bank of India in case of export of services:-**

In Sec. 54 (8) of CGST Act, 2017 it has been provided that the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies.

Now, thus this provision is applicable to export of goods or services or on inputs or input services used in making such exports and not applicable to supplies to SEZ Units or SEZ Developers.

In other words, principle of unjust enrichment will be applicable to refund claims arising out of supplies to SEZ unit or SEZ Developer.

Amendment in explanation to Sec. 54 of CGST Act, 2017 is made to provide the refund claim on account of export of services on receipt of foreign exchange as well as receipt of Indian Rupees whenever permitted by the Reserve Bank of India.

Relevant date for refund claim in case of inverted duty structure shall be the due date for furnishing the GST return for the period in which such claim for refund arises.

Refund claim shall be filed within 2 years from relevant date.

**22. Amendment to section 79 of the principal Act relating to recovery of tax:-**

Sec. 79 of CGST Act, 2017 relating to "Recovery of tax", to enable recovery to be made from distinct persons registered in different States or Union territories in order to ensure speedy recovery from other establishments of the registered person.

**23. Amendment to section 107 of the principal Act relating to payment of pre-deposit before filing an appeals before Appellate Authority"**

Maximum cap of Rs. 25 Crore is provided for payment of pre-deposit before filing an appeal to Appellate Authority (i.e. 1<sup>st</sup> Appeal).

As per Sec. 107 of CGST Act, no appeal can be filed before Appellate Authority unless the appellant pre-deposit the following amounts:-

In full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, **subject to maximum of Rs. 25 crore**, in relation to which the appeal has been filed.

**24. Amendment to section 112 of the principal Act relating to payment of pre-deposit before "Appeals to Appellate Tribunal"**

Maximum cap of Rs. 50 Crore is provided for payment of pre-deposit before filing an appeal to Tribunal

As per Sec. 112 of CGST Act, no appeal can be filed before Appellate Tribunal unless the appellant pre-deposit the following amounts:-

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and

(b) a sum equal to twenty per cent. of the remaining amount of tax in dispute, in addition to the amount paid at the time of filing appeal before Appellate Authority under sub-section (6) of section 107 (i.e. 10% of amount of tax in dispute), **subject to maximum of Rs. 50 crore**, arising from the said order, in relation to which the appeal has been filed.

**25. Amendment to section 129 of the principal Act relating to "Detention, seizure and release of goods and conveyances in transit"**

Time limit for payment of taxes, interest and penalty on goods detained or seized in order to release of goods is extended from 7 days to 14 days.

**26. Amendment to section 140 of the principal Act in respect of carry forward of Cesses in Transitional ITC**

Amended Section 140 of CGST Act, 2017 in respect of carry forward of closing balance Cenvat Credit on inputs and input services to GST to clarify with retrospective effect from 1st July, 2017 that the cesses and additional duty of excise (on textile and textile articles) levied under the pre-Goods and Services Tax laws shall not be a part of transitional input tax credit under the goods and services tax.

In other words, it is clarified that Cenvat Credit balance pertaining to cesses and additional duty of excise (on textile and textile articles) levied under Central Excise, Service tax or Sales tax was not eligible to carry forward in GST regime.

**27. Amendment to section 143 of the principal Act relating to extension of time limit for return of inputs and capital goods sent on job work:-**

Provision to Section 143 of CGST Act, 2017 is inserted to empower the Commissioner to extend the time limit for return of inputs and capital goods sent on job work, upto a period of one year and two years, respectively.

In other words, time limit one year for return of inputs sent on job work can be extended by Commissioner upto further one year and time limit of three years for return of capital goods sent on job work can be extended by Commissioner for further two years.

**28. Amendment to Schedule I of the principal Act relating to "Activities to be treated as supply even if made without consideration":-**

As per paragraph 4 of Schedule I of CGST Act, 2017, Import of services by a **taxable** person from a related person or from any of his other establishments outside India, in the course or furtherance of business even if made without consideration was to be treated as taxable supply.

An amendment is made in Paragraph 4 of Schedule I to omit the words taxable person.

In other words, a person **even if he is not registered under GST** is liable to pay GST on import of services from a related person or from any of his other establishments outside India, in the course or furtherance of business even if made without consideration

**29. Amendment to Schedule III of the principal Act relating to "Activities or transactions which shall be treated neither as a supply of goods nor a supply of services":-**

Following activities or transaction shall be treated neither as a supply of goods nor a supply of services as per Schedule III of CGST Act, 2017.

7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.
8. (a) Supply of warehoused goods to any person before clearance for home consumption;  
(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.”;

“Explanation 2.- For the purposes of this paragraph, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962.”.

# TAX UPDATES, NOTIFICATIONS AND CIRCULARS

## INDIRECT TAX

### GOODS AND SERVICES TAX

#### CENTRAL TAX

##### **Notification No. 36/2018 – Central Tax Dated: 24.08.2018**

Extension in the due date for filing GSTR 3B for the month of July, 2018 and August, 2018 for –

- I. registered persons in the State of Kerala;
- II. registered persons whose principal place of business is in Kodagu district in the State of Karnataka;
- III. and registered persons whose principal place of business is in Mahe in the Union territory of Puducherry.

The last date for filing GSTR 3B for the month of July, 2018 has been extended till 5<sup>th</sup> October, 2018

The last date for filing GSTR 3B for the month of August, 2018 has been extended till 10<sup>th</sup> October, 2018

##### **Notification No. 37/2018 – Central Tax Dated: 24.08.2018**

Extension in the due date for filing GSTR 1 for the month of July, 2018 and August, 2018 for those taxpayers with aggregate turnover of more than Rs. 1.5 crores for the months of July, 2018 and August, 2018–

- I. registered persons in the State of Kerala;
- II. registered persons whose principal place of business is in Kodagu district in the State of Karnataka;
- III. and registered persons whose principal place of business is in Mahe in the Union territory of Puducherry.

The last date for filing GSTR 1 for the month of July, 2018 has been extended till 5<sup>th</sup> October, 2018

The last date for filing GSTR 1 for the month of August, 2018 has been extended till 10<sup>th</sup> October, 2018

##### **Notification No. 38/2018 – Central Tax Dated: 24.08.2018**

Extension in the due date for filing GSTR 1 for the month of July, 2018 and August, 2018 for those taxpayers with aggregate turnover of less than Rs. 1.5 crores for the months from July - September, 2018–

- I. registered persons in the State of Kerala;
- II. registered persons whose principal place of business is in Kodagu district in the State of Karnataka;
- III. and registered persons whose principal place of business is in Mahe in the Union territory of Puducherry.

The last date for filing GSTR 1, on or before the 15th November, 2018

## CIRCULARS

### **Circular No. 56/30/2018-GST Dated: 24.08.2018**

The Circular clarifies regarding removal of restriction of refund of accumulated ITC on fabrics

In the 28<sup>th</sup> GST Council meeting, it was decided to remove the restriction of not allowing refund of ITC accumulated on account of inverted duty structure on fabrics.

Please follow the link to get the circular in detail [http://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular\\_No.56.pdf;jsessionid=58C394AB89C0A8241A464E65671794D7](http://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_No.56.pdf;jsessionid=58C394AB89C0A8241A464E65671794D7)

## **CUSTOMS**

### **TARIFF**

#### **Notification No. 59/2018 – Customs Dated: 21.08.2018**

It has been notified to exempt all goods falling under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) when imported into India and intended for donation for the relief and rehabilitation of the people affected by the recent floods in the State of Kerala from

- (a) The whole of the duty of customs leviable thereon under the First Schedule to the said Customs Tariff Act; and

The whole of integrated tax leviable thereon under sub-section (7) of section 3 of the said Customs Tariff Act

### **NON TARIFF**

#### **Notification No. 74/2018 – Customs (N.T.) Dated: 16.08.2018**

According to this Notification Central Board of Indirect Taxes and Customs has determined the rate of exchange of conversion of each of the foreign currency into Indian currency or vice versa, shall, with effect from 22nd June, 2018 be the rate mentioned in this Notification.

#### SCHEDULE-I

SL. No	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
		(For Imported Goods)	(For Export Goods)
1	Australian Dollar	52.25	49.95
2	Bahrain Dinar	192.40	180.40
3	Canadian Dollar	54.60	52.60
4	Chinese Yuan	10.30	10.00

Go to the link for the complete list of currencies <http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2018/cs-nt2018/cstnt74-018.pdf;jsessionid=F1B45456079CBC4030BB8EDB97E31FCC>

### **ANTI DUMPING DUTY**

#### **Notification No. 39/2018 – Customs (ADD) Dated: 20.08.2018**

Extension of Anti dumping Duty on imports of 'Paracetamol' originating in or exported from China PR to India

#### **Notification No. 41/2018 – Customs (ADD) Dated: 24.08.2018**

Import of 'Jute Products' namely, Jute Yarn/Twine (multiple folded/cabled and single), Hessian fabric, and Jute sacking bags originating in, or exported from Bangladesh and Nepal and imported into India will continue imposition of definitive anti-dumping duty on imports of the subject goods originating in, or exported from, the subject countries.

## DIRECT TAX

### INCOME TAX

#### CIRCULARS

**Circular No. 5/2018**

**Dated: 16.08.2018**

Clarification on the immunity provided u/s 270AA of the Income-tax Act, 1961

Section 270AA of the Income-tax Act, 1961 (the Act) inter alia provides that w.e.f. 1st April, 2017, the Assessing Officer, on an application made by an assessee, may grant immunity from imposition of penalty under section 270A (not being penalty for misreporting) and initiation of proceedings under section 276C or section 276CC, subject to the conditions specified therein.

**Circular No. 6/2018**

**Dated: 17.08.2018**

Order under section 119 of the Income-tax Act, 1961

Section 44AB of the Income-tax Act, 1961 ('the Act') read with rule 6G of the Income-tax Rules, 1962 ('the Rules') requires prescribed persons to furnish the Tax Audit Report along with the prescribed particulars in Form No. 3CD. The existing Form No. 3CD was amended vide notification no. GSR 666(E) dated 20th July, 2018 with effect from 20th August, 2018.

**Circular No. F. No. 279/Misc. 142/2007-ITJ**

**Dated: 20.08.2018**

The monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court have been revised by Board's Circular No.3 of 2018 dated 11.07.2018.

Para 10 of the said Circular provides that adverse judgments relating to the issues enumerated in the said para should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 thereof or there is no tax effect. Para 10 of the Circular No.3 of 2018 dated 11.07.2018 is hereby amended as under:

*"10. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect:*

- a) Where the Constitutional validity of the provisions of an Act or Rule is under challenge, or*
- b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or*
- c) Where Revenue Audit objection in the case has been accepted by the Department, or*
- d) Where addition relates to undisclosed foreign income/ undisclosed foreign assets (including financial assets)/ undisclosed foreign bank account.*
- e) Where addition is based on information received from external sources in the nature of law enforcement agencies such as CBI/ ED/ DRI/ SFIO/ Directorate General of GST Intelligence (DGGI).*
- f) Cases where prosecution has been filed by the Department and is pending in the Court. "*



# PRESS RELEASE

## Central Board of Indirect Taxes and Customs

21<sup>st</sup> August, 2018

### Extension of last date for filing GST returns by taxpayers in Kerala, Mahe and Kodagu

In view of the disruption caused due to severe floods in Kerala, Mahe (Puducherry) and Kodagu (Karnataka), the competent authority has extended the due dates for filing of the following GST returns by taxpayers registered in these areas:

Sl No	Return	Class of taxpayers registered in Kerala, Mahe (Puducherry) and Kodagu (Karnataka)	Extended due date
1	FORM GSTR-3B for the Month of July, 2018	All taxpayers	5 <sup>th</sup> October, 2018
2	FORM GSTR-3B for the Month of August, 2018	All taxpayers	10 <sup>th</sup> October, 2018
3	FORM GSTR-1 for the quarter July to September, 2018	Taxpayers having turnover upto Rs. 1.5 crore	15 <sup>th</sup> November, 2018
4	FORM GSTR-1 for the Month of July, 2018	Taxpayers having turnover above Rs. 1.5 crores	5 <sup>th</sup> October, 2018
5	FORM GSTR-1 for the Month of August, 2018	Taxpayers having turnover above Rs. 1.5 crores	10 <sup>th</sup> October, 2018

# JUDGEMENTS

## INDIRECT TAX

### GST on One-Time Premium: Supreme Court issues Notice to Govt.

**Builders Association of Navi Mumbai vs. Union of India**

**Case No. – 25203/2018**

**Date – 20.08.2018**

#### Fact of the Case:-

1. The builders association of Navi Mumbai is the petitioner in the present case.
2. The petitioner was given a plot of land on lease basis by the central industrial & development corporation of Maharashtra. The later party charged one time lease premium for letting out plots of land on lease basis to the former.
3. The allottee was called upon to pay one time lease premium amount and GST separately by a demand draft.
4. The assessee challenged the above order. The special leave petition filed before the court stating that the GST has not replaced the stamp duty which is chargeable on a transaction of transfer of immovable property.

#### Decision of the case:-

1. This is a clear and unequivocal indication that a transaction of transfer of immovable property which attracts stamp duty cannot possibly be considered to also attract GST. GST has been implemented for avoiding cascading effect of multiple levies of taxation on the very same subject matter.
2. This basic object of the levy of GST will itself be completely frustrated and defeated if the impugned Judgment of the Bombay High Court which upholds the double levy of stamp duty as well as GST on a transfer of immovable property.
3. The High Court has completely failed to appreciate that the provisions of the GST Act necessarily have to be so construed as to avoid such a double levy of both stamp duty as well as GST.
1. On the basis of special leave petition, the honourable justice of supreme court issued notice to the central government in connection with the above matter.

### No Input Tax Credit on Goods not Resold within a Period of 6 Months: Bombay HC

**Axis Mutual Fund vs. The State of Maharashtra Sales Tax Tribunal**

**Case No. - 710 of 2018**

**Date – 6.08.2018**

#### Fact of the Case:-

1. Axis Mutual Fund is the petitioner in the present case.

2. As per terms of the Scheme Information Document, the investment objective of the Gold ETF Scheme launched by the petitioner is to generate returns that are in line with the performance of gold.
3. In the A.Y. 2012-13, the petitioner purchased gold worth Rs.522,48,59,036/- from a registered dealer located in the State of Maharashtra.
4. On purchase of the gold, the petitioner has claimed set-off of the tax amount of Rs.5,17,31,276/- under the provisions of section 48 of the MVAT Act
5. The petitioner duly adjusted the set-off claimed of Rs.3,10,79,343/- against its output VAT liabilities in accordance with the provisions of Rule 55 of the MVAT Rules.
6. Consequently, the petitioner applied for refund of excess input tax credit amounting to Rs.2,06,51,993/-.

#### Decision of the case:-

1. During the course of assessment, the assessing authority has alleged that the petitioner is not eligible to claim any input tax credit as the goods purchased by the petitioner on which input tax credit is claimed are not resold within a period of six months from the date of purchase.
1. The petitioner was levied with interest and penalty and hence has preferred the present appeal.

### Error in E-Way Bill due to Technical Glitches not a ground for avoiding Penalty & Detention: Kerala HC

**GARUDA TIMBER TRADERS vs. THE ASSISTANT STATE TAX OFFICER**

**Case No. -W.P.(C). No.26848 of 2018**

**Date – 9.08.2018**

#### Fact of the Case:-

1. Garuda Timber Traders is the assessee in the present case.
2. The petitioner, Garuda Timber Traders contented before the High Court that it could not upload part B of the e-way bill. But Garuda took a printout of the e-way bill and began its transportation.
3. The petitioner also pleaded the Court to declare “the provisions empowering the GST officials” to demand tax and penalty and to detain goods and vehicles, as unconstitutional “till the smooth, efficient and glitches free functioning of the GST network system is guaranteed to assesseees.”

#### Decision of the case:-

1. The Kerala High Court has held that the omission to fill Part-B of the E-Way Bill due to technical glitches in the GST portal cannot be treated as a valid ground for avoiding penalty and detention under the Goods and Services Tax (GST) law.
2. Justice Dama Sesadri Naidu rejected the plead of the petitioners.

**Modelling dough' for use by children classifiable under CTH 3407, not as toys under CTH 9503**

**M/S A.W Faber Castell (India) Pvt Ltd. vs. Maharashtra AAR**

**Case No. – GST-ARA/-31/2017-18/B-39**

**Date – 23.05.2018**

**Fact of the Case:-**

1. In the instant case A.W. Faber-Castell (India) Pvt. Ltd. is the applicant.
2. The applicant stated that modeling dough consisting of maida, water and chemicals for use by children falls under chapter 34 u/s VI of CTA which covers “Products of the Chemical or Allied Industries. So the applicant demands 12% tax to be imposed.
3. But it is contended by Maharashtra AAR holds that applicant’s product is neither a chemical nor a product of such allied industry but is classified as “Toys” under chapter heading 9503.

**Decision of the case:-**

Maharashtra AAR holds that “Modelling Dough” consisting of maida, water & chemicals for use by children is classified as “Modelling Paste “ including those put up for children’s amusement under chapter heading 3407 of Customs Tariff Act 1975(CTA), taxable @ 18% and rejected the applicant’s contention.

**Salary Paid for Services by Firm to its Branch Offices in Other States attract GST: Karnataka AAR**

**M/s COLUMBIA ASIA HOSPITALS PRIVATE LIMITED KARNATAKA AAR**

**Case No. - Advance Ruling No. KAR ADRG 15 / 2018**

**Dated : 27.07. 2018**

**Fact of the Case:-**

1. The applicant, a private limited company engaged in providing health care services categorizing them as In-patient (IP) and Out-patient (OP) services. The applicant sought for a clarification regarding its tax liability on the activities performed by the employees at the corporate office in the course of or in relation to employment such as accounting, other administrative and IT system maintenance for the units located in the other states.
2. The Authority noted that any activities made between related persons made or agreed to be made without a consideration shall be covered under supply of goods or services.
3. The activities performed by the employees at the corporate office in the course of or in relation to employment, the employees employed in the Corporate Office are providing services to the Corporate Office and hence there is an employee-employer relationship only in the IMO.
4. The other offices are distinct persons and therefore the employees in the IMO have no employer employee relationship with other offices.

**Decision of the case:-**

1. The corporate office by the persons employed by the corporate office are in the nature of the employee-employer relationship.
2. Further, since the corporate office and the units are distinct persons under the Act, there is no such relationship between the employees of one distinct entity with another distinct entity, at least as per the Goods and Service Tax Acts, even if they are belonging to the same legal entity.
1. The Authority for Advance Ruling (AAR), Karnataka has recently held that the salary for services like accounting, IT, human resource, provided by the head office of a company to its branch offices in other states will attract 18 per cent tax under the present Goods and Services Tax (GST) regime.

**DIRECT TAX**

**Sale of a running Hotel is ` Slump Sale `: ITAT(Cochin ITAT)**

**The Asst. Commissioner of Income-tax vs. M/s.Ooty Gate Hotel C/o. Davis Kuriakose Pathadan House**

**Case No. - 384/Coch/2017**

**Date – 14.08.2018**

**Fact of the Case:-**

1. The assessee is the seller of a running hotel in the present case.
2. The assessee had sold land & building for a total consideration of Rs. 20 crores. The assessee contended that such sale was not a slump sale as per section 2(42C) of the act for the reason that there was no liability transferred to the purchaser as on the date of sale.

**Decision of the case:-**

1. Rejecting the claim of the assessee, the Tribunal bench noted that as per the sale deed, the assets of the assessee, including the license for boarding, lodging, bar etc. were also transferred to the purchaser along with land and building as a going concern.
2. The entire business was sold for a total consideration of Rs.20 crore consisting of land and building which includes furniture, equipment, kitchen equipment, telephone instruments, television, computer, etc. The building and other amenities are valued as a whole, without assigning the value to any item of the assets.
1. Therefore, it is clear from the sale deed executed, the intention of the parties was to sell the hotel business as a going concern and the same is nothing but a slump sale.

**Contribution to Fishermen’s Welfare Fund though held as Unconstitutional, eligible for IT Deduction: Kerala HC**

**The Commissioner of Income Tax vs. Abad Exim pvt. Ltd.**

**Case No. – 197,205,213 of 2010**

Date – 7.08.2018

**Fact of the Case:-**

1. In the instant case Koluthara Exports Ltd. is the assessee.
2. The petitioner made contribution to the fisherman's welfare fund & claimed for income tax deduction.
3. As per operation of the division bench the fund contributed for fisherman's welfare fund was declared unconstitutional by the judgement of Supreme Court.

**Decision of the case:-**

The Kerala High Court issued order that the contribution made to the fishermen's welfare fund is eligible for income tax deduction though the same has been held as unconstitutional by the supreme court.

**One-Time Non-Refundable Upfront Charges paid for Acquisition of Leasehold Right not subject to TDS: ITAT follows CBDT Circular (Delhi ITAT)**

**Paramount Villas Pvt. Ltd. vs. ITO (TDS).**

Case No. - 6540/DEL/2015

Date – 13.08.2018

**Fact of the Case:-**

1. The assessee had purchased land from UPSIDC which was a lease hold land taken for 99 years from farmers. Assessee has paid one-time lease premium to UPSIDC and 1% of the cost of the land purchased by UPSIDC was treated as lease rent.
2. Entire purchase of land has treated as stock-in-trade and it was contended by the assessee that same should not be treated as rent.
3. However, the Assessing Officer treated the assessee as 'Assessee-in-Default' for not deducting TDS from the above said amount.
4. On second appeal, the Tribunal noted that the UPSIDC had submitted its account where it has duly confirmed that the amount paid by the assessee has been credited in the statement of P&L account and income tax has been paid thereon on the taxable profit.
5. The Tribunal further noted that the CBDT Circular No.35 of 2016 said that one-time non-refundable upfront charges paid by the assessee for acquisition of leasehold rights over an immovable property cannot be constituted as rental income and assessee is not obliged to deduct tax at source under section 194I.

**Decision of the case:-**

1. Relying on the CBDT circular, the Tribunal held that "From the aforesaid circular, it is absolutely clear from the CBDT circular that such a one-time non-refundable upfront charge paid by the assessee for acquisition of leasehold right or lump sum payment of lease premium for acquisition of over an immovable property for 99 years, no TDS is required to be deducted u/s.194-I.
2. Thus, in view of the CBDT Circular and also the fact that the deductee has shown the amount paid

as income and also paid taxes thereon, therefore, the assessee cannot be treated as 'assessee-in-default' and consequently, no interest u/s.201(1A) can be charged. Accordingly, Revenue's appeal is dismissed.

**Actual Sale Consideration shall be subjected to Tax when an Affidavit Declaration is made by Assessee (Ahmedabad ITAT)**

**Shri Jafrudin Kaji vs. Ahmedabad ITAT**

Case No. - I.T.A. No.1058/Ahd/2015

Date -20.06.2018

**Fact of the Case:-**

1. In the instant case, assessee is an individual who declared income from salary and other sources.
2. He deposited an amount in his bank account. During the assessing procedures, he submitted that he has sold an agricultural land during the year and sale consideration was received in cheque as well as cash.
3. He claimed that the said agricultural land is not a capital asset as per definition of Section 2(14) of the Income Tax Act, 1961.
4. During the year, assessee had withdrawn a sum from his bank account and had subsequently deposited an amount back. He had claimed that he had agricultural income during the year.
5. A.O also observed that there wasn't any question of having income from agricultural activity as assessee had sold agricultural land at the beginning of financial year. He added that money has been withdrawn on regular basis which must have been used for household purposes.
6. A.O treating cash deposit amount as unexplained cash credit under Section 68 of the act added it to the total income of the assessee.
7. Aggrieved by A.O's decision assessee appealed to the CIT (A) which dismissing the claims of assessee upheld the A.O's decision.

**Decision of the case:-**

1. The Tribunal bench of Ahmedabad held that, "it's an undisputed fact that assessee had sold the land for the amount shown in sale deed only and the additional amount of cash deposits is without any substance.
2. They added that an affidavit has been furnished by the assessee stating the additional amount of money received in cash and directed the A.O to verify the purchase consideration from the purchasers.
3. Again they added that if assessee had paid tax for the sale consideration shown in the sale deed which is not the actual amount of sale consideration, affidavit shown by the assessee can be considered.

# TAX COMPLIANCE CALENDAR AT A GLANCE

## GST CALENDAR

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

## DIRECT TAX CALENDAR - SEPTEMBER, 2018

**07.09.2018**

- Due date for deposit of Tax deducted/collected for the month of August, 2018. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan

**14.09.2018**

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

**15.09.2018**

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

**30.09.2018**

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

## **DIRECT TAX CALENDAR - OCTOBER, 2018**

**07.10.2018**

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

**15.10.2018**

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

**30.10.2018**

- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of September, 2018
- Quarterly TCS certificate (in respect of tax collected by any person) for the quarter ending September 30, 2018

31.10.2018

- Intimation by a designated constituent entity, resident in India, of an international group in Form no. 3CEAB for the accounting year 2017-18.
- Country-By-Country Report in Form No. 3CEAD by a parent entity or an alternate reporting entity or any other constituent entity, resident in India, for the accounting year 2017-18.
- Quarterly statement of TDS deposited for the quarter ending September 30, 2018
- Due date for furnishing of Annual audited accounts for each approved programmes under section 35(2AA)
- Quarterly return of non-deduction of tax at source by a banking company from interest on time deposit in respect of the quarter ending September 30, 2018
- Copies of declaration received in Form No. 60 during April 1, 2018 to September 30, 2018 to the concerned Director/Joint Director

## WEBINAR CALENDAR 1<sup>st</sup> TO 15<sup>th</sup> SEPTEMBER, 2018

Sl. No	Date	Time	Topic of the Webinar	Name of the Faculty
1.	10.09.2018 (Monday)	4:00 - 5:00 PM	Tax Audit	CMA Niranjana Swain
2.	14.09.2018 (Friday)	4:00 - 5:00 PM	Specified Financial Transaction Reporting	CMA Mritunjyay Acharjee

**Please Note:** One CEP hour awarded for attending each webinar



# GST CERTIFICATE COURSE - 3<sup>rd</sup> BATCH

## Course Eligibility

- Qualified Cost & Management Accountants
- Other Professionals (CS,CA,MBA, M.Com, Engineers, Lawyers, etc)
- Executives from Industries
- GST Practitioners
- Students who are either CMA qualified or CMA Final pursuing

## Course Duration, Fees, Examination and other Modalities

Details	Classroom Learning/Offline Mode	Online Classes
<b>Course Duration</b>	72 hours (to be conducted on Quarterly basis)	72 Hours
<b>Classes</b>	Class room sessions on Saturday - 2 Hrs & Sunday - 4 Hrs	Internet Connection is required and classes can be attended from your place.
<b>Assessment:</b>	Online mode (Assessment to be conducted in the last week of the following month of every quarter)	Online mode (Assessment to be conducted in the last week of the following month of every quarter)
<b>Course Fee:</b>	Rs. 10,000 + GST *	Rs. 10,000 + GST *
<b>Examination Fee</b>	Rs. 1,000 + GST	Rs. 1,000 + GST
<b>Award of Certificate</b>	Candidates with at least 70% attendance in the classes and also passing the online examination with at least 50% Marks will be awarded a Certificate by the Institute	Candidates passing the online examination with at least 50% Marks will be awarded a Certificate by the Institute
<b>Date of Registration</b>	03.09.2018 – 30.09.2018	03.09.2018 – 30.09.2018
Study Materials & Model Question Bank to be provided to all participants Experienced faculties from Industry and practice		

## Places

Locations	Classroom Learning	Online Classes
<b>North</b>	✓ Delhi ✓ Noida	<b>From anywhere in India</b>
<b>South</b>	✓ Chennai ✓ Mysore ✓ Bangalore ✓ Hyderabad ✓ Coimbatore	<b>From anywhere in India</b>
<b>East</b>	✓ Kolkata ✓ Ranchi	<b>From anywhere in India</b>
<b>West</b>	✓ Mumbai ✓ Pune ✓ Ahmedabad	<b>From anywhere in India</b>

## \* Other Criterion

- Minimum batch size:20; Maximum 40; - Per Location for Classroom Session
- Classroom Batches will be started subject to fulfilling the minimum batch size
- **20% discount for the Members and Students of the Institute**
- Special Discount for Corporates:-
  - If Number of employees registered for the course are between 5 to 10 - 15%
  - If Number of employees registered for the course are more than 10 - 20%



## Course Contents

1. Constitutional Background of GST, Concepts of GST & Definitions in GST.
2. Taxable event, Time of Supply and Place of Supply, Composite & mixed supply, non taxable supply, exempt supply, works contract, exempted supply.
3. Classification, HSN,SAC
4. Valuation under GST, Valuation rule
5. Input Tax Credit
6. Basic Procedures- Registration, Invoice, Bill of supply, E way Bills etc.
7. Records and Returns
8. Zero Rated Supplies , Imports and Exports
9. Payment and Refunds
10. Assessment
11. Audit
12. Demands
13. Adjudication and appeal
14. Penalties and Prosecutions
15. Advance Ruling
16. Job Work
17. Anti profiteering
18. Miscellaneous Provisions
19. Case studies on specific Chapters involving real life scenarios

**Online Assessment for the 2<sup>nd</sup> Batch: October, 2018**

**Mock Test Module: Mock Test paper will be uploaded in the website for 2<sup>nd</sup> Batch within September, 2018**

**Special Crash Course for the Corporates - For details contact: [trd2@icmai.in](mailto:trd2@icmai.in)**

## Launching of Handbook on "E-way Bill"



Launching of Handbook on E-way Bill at the hands of Shri Surjya Narayan Patra, Hon'ble Cabinet Minister Co-operation, Government of Odisha, along with CMA N.C. Kar Chairman, ICAI - SOC, CMA Niranjn Mishra, Chairman - Taxation Committee, CMA Amit Anand Apte, President, ICAI, CMA Balwinder Singh, Vice-President, ICAI, CMA Ch. Venkata Ramana, Chairman ICAI - EIRC

## Launching of "Guidance Note on GST Audit"



Launching of "Guidance Note on GST Audit" at the hands of Shri Surjya Narayan Patra, Hon'ble Cabinet Minister Co-operation, Government of Odisha, along with CMA N.C. Kar Chairman, ICAI - SOC, CMA Niranjn Mishra, Chairman - Taxation Committee, CMA Amit Anand Apte, President, ICAI, CMA Balwinder Singh, Vice-President, ICAI, CMA Ch. Venkata Ramana, Chairman ICAI - EIRC

## TAXATION COMMITTEE - PLAN OF ACTION

### Proposed Action Plan:

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

### Disclaimer:

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

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