

APRIL, 2019

TAX Bulletin



VOLUME - 37



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)

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MISSION STATEMENT

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

VISION STATEMENT

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

Objectives of Taxation Committee:

1. Preparation of Suggestions and Analysis of various Tax matters for best Management Practices and 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 representations to the Ministry from time to time for the betterment and financial inclusion of the Economy.
4. Evaluating opportunities for CMAs to make way for further development and sustenance of the opportunities.
5. Conducting and monitoring of Certificate Courses on Direct and Indirect Tax for members, practitioners and stake holders.

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FROM TAX RESEARCH DEPARTMENT

We have been growing over the past few years. Looking back at the beginning of a new financial year, we see a few milestones that we have achieved. As on 31st March, 2019 they may be enumerated as below:

With Internet technology, it is possible to get connected with people everywhere across the globe at any time we want. A web based seminar or webinar is a presentation, lecture, workshop or a seminar conducted over the internet using video conferencing software. The Institute has successfully conducted 54 Webinars since inception of TRD on various topics on Taxation front.

Workshops and Seminars have been conducted for corporate like RINL – Vishakhapatnam, Mahindra Finance – Delhi and Bangalore. Some are still in the pipeline. 26 Seminars are also being conducted for members, learners and stakeholders to increase their knowledge and clear up their doubts. GST helpdesks are also serving the purpose of addressing queries of the masses.

Fortnightly Tax Bulletins are also being published every 15 days. A total number of 117 articles have been published by different authors from industry and academia. Even CMA Students have been given the platform to pen down articles for the bulletins. 24 articles on direct tax and 93 articles on indirect tax has been a part of the bulletins.

Certain other activities have been undertaken by Tax Research Department for knowledge development purposes like; 17 noteworthy publications on various matter of taxation has been published; Top stories section is being updated regularly with the latest Notifications, Circulars, and Judgements etc; Certificate Courses on GST, TDS, Return Filing and filing has also been provided.

The above journey would not have been possible without the support and guidance of our resource contributors and mentors. The department is thankful to all of them. We solicit support in serving our members, learner and students better.

Thank You.

Regards

Tax Research Department

2nd April 2019

TEAM - TAX RESEARCH DEPARTMENT

CMA Rajat Kumar Basu	-	Additional Director - Tax Research
CA Neelesh Jain	-	Deputy Director - Tax Research
CMA Priyanka Roy	-	Assistant Director - Tax Research
Ms. Mukulika Poddar	-	Officer - Tax Research
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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 /trd.ad1@icmai.in

SHOW CAUSE NOTICE – VOCATE, INTERROGATE AND ADJUDICATE

CMA Mohd. Saim Aziz

Cost & Management Accountant

Introduction:

Why is there a need of a Show Cause Notice?

Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam" says God, "where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat"

Article 14 of the **Indian Constitution** provides for **equality** before law and equal protection of law. It guarantee a right of hearing to the person adversely affected by an administrative powers. Supreme Court in the case of **Delhi Transport Corporation versus DTC Mazdoor Union** held

"the audi alteram partem rule, in essence, enforce the equality clause in Article 14 and it is applicable not only to quasi-judicial bodies but also to administrative order adversely affecting the party in question unless the rule has been excluded by the Act in question"

The rule of natural justice does not supplant the law of the land but only supplement it. In the absence of express provisions in any statute dispensing with the observance of the principle of natural justice, such principles will have to be observed in all judicial, quasi-judicial and administrative proceedings which involve civil consequences to the parties. [A.K.Kraipak Vs. Union of India (AIR 1970 SC 150) & Maneka Gandhi (AIR 1978 SC 597). Therefore, the purpose of following the principles of natural justice is the prevention of miscarriage of justice.

What is a Show Cause Notice? Giving of a valid notice to the proper or concerned person of the facts of the matter and nature of action proposed to be taken is a *sine qua non* of a fair hearing. In order to adhere to the principles of natural justice (as discussed above) it is a notice issued to the person asking him to show cause as to why the action proposed therein should not be taken against him.

Through this article an endeavor is made to enrich the readers about the basics of a 'Show Cause Notice' (hereinafter referred to as 'SCN') under the Indirect Tax structure, in particular, under the GST Law.

There are many scenarios under which the taxman can issue a notice to the person, such scenarios being:-

Sl. No	Section under GST Law
1	Section 37 – Notice to return defaulters
2	Section 62 – Assessment of non-filers of returns
3	Section 65 – Audit by tax authorities
4	Section 73 – Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful mis-statement or suppression of facts.
5	Section 74 – Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful mis-statement or suppression of facts
6	Section 76 – Tax collected but not paid to Government

-Section 73 and **Section 74**, as stated above, deal with the process of adjudication which eventually begins with the issuance of a 'Show Cause Notice' (SCN).

In this context, it will be useful to know and make a comparison between section 73 and section 74, which is stated below:-

Sl. No	Basis of Distinction	Section 73	Section 74
Time Limit			
1	Service of SCN	Within 2 years and 9 months from the due date of filing of annual return For the FY 2017-18, the due date for filing Annual Return is 30.06.2019. The SCN can be issued upto 30.03.2022.	Within 4 years and 6 months from the due date of filing of annual return For the FY 2017-18, the due date for filing Annual Return is 30.06.2019. The SCN can be issued upto 30.12.2023.
2	Issue of Order	3 years from the due date of filing of annual return	5 years from the due date of filing of annual return
Penalty			
3	Tax along with interest paid voluntarily before SCN	No Penalty	15% of the tax amount
4	Tax along with interest paid within 30 days from the issue of SCN	No Penalty	25% of the tax amount
5	Tax along with interest paid within 30 days from the issue of Order	10% of the tax amount or Rs. 10,000/-, whichever is higher	50% of the tax amount

Basic structure of a SCN:

1. Introduction of the case
2. Legal framework
3. Statement of Facts and evidences relied upon -
4. Discussion on limitation
5. Quantification of liability payable
6. Proposed action
7. Adjudicating authority

Judicial Pronouncements

Particulars	Reference case laws	Principle laid down
On Service of order	Jyoti Enterprise Vs. CCEX [2015 (12) TMI 804 – All. HC]	If the order is on a member of the family, it is duly served on.
On Scope of order	Himalaya Constructions Private Limited Vs. UOI [2015 (12) TMI 1055 P&H HC]	Order cannot be passed without considering overall material on record, including reply to SCN. In absence thereof, there is a violation of principles of natural justice.
	CCEX Vs. Grasim Industries limited [2015 (12) TMI 272 – Tri. Chennai]	Authorities are expected to record the material fact properly and that the same with evidence on record so that the decisions flow in accordance with the law. Failure to do so tantamount to result in mockery or miscarriage of justice.
On notice to indicate evidence being relied upon	Hi-Tron Electronics Vs. Commissioner	Even in a case where the party has waived the right to receive a SCN, the duty of disclosing the documents - on the basis of

		which order was to be passed should have been disclosed to the party and the order passed without such disclosures was liable to be set aside.
On charges framed	Petrofiles Co-operative Ltd. Vs. Collector [1992 (59) ELT144]	The notice must be with reference to the charges on which the proceedings are to be held. The person against whom proceedings are held cannot be punished for a charge different from the one for which notice had been given.

During the journey in GST era, the taxmen have started knocking doors of the taxpayers by way of -issuing notices, either being dispatched through post or sent my emails or may be by a simple text message.

The taxpayers are in receipt of notices -relating to subjects, *inter alia*, stated below:-

- ✓ Transitional Credit;
- ✓ Non-filing of returns;
- ✓ Cancellation of registration;
- ✓ Mis-match between ITC claimed in FORM GSTR 3B vis a vis auto populated in FORM GSTR- 2A;
- ✓ Mis-match between output tax liability shown in FORM GSTR-3B vis a vis FORM GSTR-1.

Suggested action points on receipt of a SCN:

- 1. Read the SCN carefully:** Generally taxpayers, upon receipt of a SCN, are found to read only the operative portion of the SCN wherein they only concentrate in the tax amount demanded, interest levied or penalty, if any, imposed thereon. Few basic questions that are required to be answered, upon receipt of a SCN are :
 - a) Has the charging section being attracted upon the allegations framed?
 - b) Is the allegation made is a settled principle of law?
 - c) Are there any contradictory statements made in the SCN?
 - d) Whether the statutory provisions quoted, are applicable in this case?
- 2. Quantification of Demand:** Even though demand has been quantified in the SCN, which has been stated for recovery from the taxpayer, the amount may be recomputed to eradicate the possibility of computation error. Even a figure of extra zero, inadvertently mentioned in the amount sought to be recovered, will make a huge difference. This may even save the taxpayer from being prosecuted.
- 3. Limitation period:** As we know there has to be a certainty in the initiation of any proceedings and this is where the law of limitation plays a vital role. Therefore the period of limitation is to be cross checked again.
- 4. Judicial Pronouncements:** There are many instances wherein the taxman proposes to initiate certain action based on certain judicial pronouncements and firmly stating in the SCN that the particular case squarely applies to the case in hand. It may be advisable to carefully study the cited case law(s) to ensure that the principles laid down in the cited case laws can squarely be applied in the case for which the SCN has been issued. In case it is found to be non-applicable, the same may help the taxpayer in response to his defense.
- 5. Jurisdiction of the Adjudicating Authority :** The jurisdiction of the taxpayer shall determine who shall be his adjudicating authority also there is a monetary limit set by the Board for each class of adjudicating authority based on which they are to exercise their jurisdiction. If the taxpayer notices any such discrepancy, he can challenge the jurisdiction but only in the 'HIGH COURT' of that State through a writ petition.

Conclusion:

When the taxpayer is in receipt of a SCN, may need to first think of the appropriate route for remedy. There are two routes available with him:

- The Regular route i.e the route as laid down in the Statute, and
- Challenge the same in the respective jurisdictional High Court.

The taxpayer, under the following circumstances, may challenge the SCN in the High Court:

- I. SCN issued is without jurisdiction
- II. SCN issued is in violation of principles of natural justice
- III. Where the remedy is not efficacious
- IV. Unconstitutional

To conclude, It is also to be kept in mind when the final order is passed by the 'Adjudicating Authority', the tax payer should check two things. Firstly, that the demand confirmed in the Order **does not exceed** the demand that was proposed to be levied by the SCN and secondly, the grounds taken in confirming the order **are not different** from the allegations as laid down in the SCN.

Disclaimer:

The publication contains information/analysis solely for informational and academic purpose. It is not a guidance note and does not constitute any professional advice at all. The author does not accept any responsibility for any loss or damage of any kind arising out of any information in this article or for any actions taken in reliance thereon.

RECOMMENDATIONS AND AMENDMENTS PROPOSED BY 31ST GST COUNCIL MEETING DATED 22ND DECEMBER 2018 IN NEW DELHI

CMA Rohit Kumar Singh

Founder of Tax Marvel Consulting Advisors LLP

The GST Council in its 31st meeting held on 22nd December 2018 at New Delhi discussed and approved: (i) Some policy recommendations; (ii) certain amendments in the GST Law; (iii) reduction in GST rates for certain category of goods and services; (iv) clarifications on GST rates for existing goods or services; and (v) Certain important issues referred to by GST Council to various Committees/ Group of Ministers (GoM).

The decisions made by GST Council on these proposals is expected to bring relief to the taxpayers while complying to the GST Law and shall also result in ease of doing business.

Below mentioned is the gist of announcements made by the GST Council categorised into below sections:

1. **Amendments in the GST Law**
2. **Reduction in GST Rate – Goods**
3. **Reduction in GST Rate – Services**
4. **Extension of migration window for taxpayers**
5. **Policy Changes in GST laws**
6. **Certain Important issues referred to by GST Council to various Committees/ GoM**

Proposed Amendments in the GST Act		
Sl. No.	Proposal Category	Gist of the recommendations made by the GST Council
1	Creation of Centralized Appellate Authority for Advance Ruling (AAAR)	Creation of a Centralized Appellate Authority for Advance Ruling (AAAR) to deal with cases of conflicting decisions by two or more State Appellate Advance Ruling Authorities on the same issue
2	Interest to be charged only on net tax liability of taxpayer, after considering admissible ITC	It has been proposed to amend Section 50 of the CGST Act to provide that interest should be charged only on the net tax liability of the taxpayer, after taking into account the admissible input tax credit, i.e. interest would be leviable only on the amount payable through the electronic cash ledger. <i>(This shall eliminate conflicting views on whether interest is to be paid on entire liability or to be paid on net liability after utilization of admissible ITC).</i>
<i>The above recommendations of the Council will be made effective only after the necessary amendments in the GST Acts are carried out</i>		

Recommendations made by the GST Council on General Matters		
Sl. No.	Proposal Category	Gist of the recommendations made by the GST Council
1	Single Cash ledger	It is proposed by the GST Council to have a single cash ledger for each tax head. The modalities for implementation would be finalized in consultation with GSTN and the Accounting authorities
2	Single authority for disbursement of refund amount	A scheme of single authority for disbursement of the refund amount sanctioned by either the Centre or the State tax authorities would be implemented on pilot basis. The modalities for the same shall be finalized shortly.
3	New Return Filing System	The new return filing system shall be introduced on a trial basis from 01.04.2019 and on mandatory basis from 01.07.2019.
4	Extension of due date for	The due date for furnishing FORM GSTR-8 by e-commerce

	furnishing GSTR 8 by E-Commerce Operators	operators for the months of October, November and December, 2018 shall be extended till 31.01.2019.
5	Extension of due date for furnishing GST ITC 04	The due date for submitting FORM GST ITC-04 for the period July 2017 to December 2018 shall be extended till 31.03.2019.
6	Extension of Due date for claiming ITC for 2017-18	<i>ITC in relation to invoices issued by the supplier during FY 2017-18 may be availed by the recipient till the due date for furnishing of FORM GSTR-3B for the month of March, 2019, subject to specified conditions.</i> This is a welcome move considering many businesses could not avail ITC for the last FY due to lapse in due date.
7	Complete Waiver of Late Fees for filing of GSTR 1, GSTR 3B & GSTR 4 from July 17 to September 2018	Late fee shall be completely waived for all taxpayers in case FORM GSTR-1, FORM GSTR-3B & FORM GSTR-4 for the months / quarters July, 2017 to September, 2018, are furnished after 22.12.2018 but on or before 31.03.2019.
8	Restriction on generation of E-Way Bill	Taxpayers who have not filed the returns for two consecutive tax periods shall be restricted from generating e-way bills. This provision shall be made effective once GSTN/NIC make available the required functionality.
9	Clarification to be issued on certain refund related matters	Clarifications shall be issued on certain refund related matters like refund of ITC accumulated on account of inverted duty structure, disbursement of refunds within the stipulated time, time allowed for availment of ITC on invoices, refund of accumulated ITC of compensation cess etc.

Note: Changes made by CGST (Amendment) Act, 2018, IGST (Amendment) Act, 2018, UTGST (Amendment) Act, 2018 and GST (Compensation to States) Amendment Act, 2018 and the corresponding changes in SGST Acts would be notified w.e.f. 01.02.2019.

Recommendations made by the GST Council on Annual Return		
Sl. No.	Proposal Category	Gist of the recommendations made by the GST Council
1	Further extension of due date for filing GSTR 9, GSTR 9A and GSTR 9C	The due date for furnishing the annual returns in FORM GSTR-9, FORM GSTR-9A and reconciliation statement in FORM GSTR-9C for the Financial Year 2017 – 2018 shall be further extended till 30.06.2019. (Earlier the due date was extended from 31st December 2018 to 31st March 2019). This extension is proposed in view of proposed changes in the format of Annual Returns and extension of time limit for claiming eligible ITC till 31 st March 2018
2	Clarificatory changes in the formats/Instructions in the Annual Return	
A	Amendment in the heading for supplies “as declared in returns filed during the year”	Amendment of headings in the forms to specify that the return in FORM GSTR-9 & FORM GSTR-9A would be in respect of supplies etc. ‘made during the year’ and not ‘as declared in returns filed during the year’;
B	All returns in Form GSTR 1, GSTR 3B and GSTR 4 to be filed	All returns in FORM GSTR-1, FORM GSTR-3B (For regular taxpayers) and FORM GSTR 4 (For composition taxpayers) have to be filed before filing of FORM GSTR-9, GSTR 9A and FORM GSTR-9C;
C	HSN Code for Inward Supplies	HSN code may be declared only for those inward supplies whose value independently accounts for 10% or more of the total value of inward supplies; (This is much needed relief for tax-payers who were finding difficult to declare HSN for inward supplies since filing of GSTR 2 was

		deferred)
D	Additional Payments in Annual Return	Additional payments, if any, required to be paid can be done through FORM GST DRC-03 only in cash;
E	ITC cannot be claimed through Annual Return or Reconciliation Statement	ITC cannot be availed through FORM GSTR-9 & FORM GSTR-9C
F	Auto Population of Invoices for Previous FY	All invoices pertaining to previous FY (irrespective of month in which such invoice is reported in FORM GSTR-1) would be auto-populated in Table 8A of Annual Return
G	Value of "Non GST Supply" to also include value of "No Supply"	Value of "non-GST supply" shall also include the value of "no supply" and may be reported in Table 5D, 5E and 5F of Annual Return
H	Verification for Upload of GST Audit Report	Verification by taxpayer who is uploading reconciliation statement would be included in FORM GSTR-9C .

Note: The changes in Annual Return and further extension is a welcome move since the businesses will get time to collate information for preparing Annual Return and Reconciliation Statement for GST Audit Report

Recommendations made by the GST Council on Refunds		
Sl. No.	Proposal Category	Gist of the recommendations made by the GST Council
1	Single authority for disbursement of refund amount	A scheme of single authority for disbursement of the refund amount sanctioned by either the Centre or the State tax authorities would be implemented on pilot basis. The modalities for the same shall be finalized shortly.
2	Refund mechanism to be completely digitized, eliminating need to visit Department	All the supporting documents/invoices in relation to a claim for refund in FORM GST RFD-01A shall be uploaded electronically on the common portal at the time of filing of the refund application itself, thereby eliminating the need for a taxpayer to physically visit a tax office for submission of a refund application. GSTN will enable this functionality on the common portal shortly. This is a welcome move since there has been delay in granting refund by Authorities for want of proper documents. If all the documents are uploaded during filing of refunds, the refund process may be expedited.
3	Additional class of refunds made available through filing of GST RFD – 01A	In addition to the existing refund applications, below applications shall also be made available through filing of GST RFD – 01A (i) Refund on account of Assessment/Provisional Assessment/ Appeal/ Any Other Order; (ii) Tax paid on an intra-State supply which is subsequently held to be inter-State supply and vice-versa; (iii) Excess payment of Tax; and (iv) Any other refund.
4	Existing refund applications filed before roll out of new refund mechanism	✓ In case of applications for refund in FORM GST RFD-01A which are generated before the roll out of the functionality described in point 1 above, and which have not been submitted in the jurisdictional tax office within 60 days of the generation of ARN, the claimants shall be sent communications on their registered email ids containing information on where to submit the said refund applications. ✓ If the applications are not submitted within 15 days of the date of the email, the said refund applications shall be summarily rejected, and the debited amount, if any, shall be re-credited to the electronic credit ledger of the claimant.

Extension of Migration Window		
Sl. No.	Proposal Category	Gist of the recommendations made by the GST Council
1	Extension of date for migration window for Tax Payers	Proposal to provide one more migration window for taxpayers, who received provisional IDs but could not complete the migration process has been approved. Similar window was granted by the GST Council in its 28th Council Meet on 21st July 2018.
2	Process for completion of migration	The due date for the taxpayers who did not file the complete FORM GST REG-26 but received only a Provisional ID (PID) till 31.12.2017 for furnishing the requisite details to the jurisdictional nodal officer shall be extended till 31.01.2019.
3	Extension of Due Dates for such Tax-Payers	The due date for furnishing FORM GSTR-3B and FORM GSTR-1 for the period July, 2017 to February, 2019/quarters July, 2017 to December, 2018 by such taxpayers shall be extended till 31.03.2019.

Formation of Group of Ministers for revenue trend, including analyzing the reasons for structural patterns affecting the revenue collection in some of the States	
✓	The GST Council in its 31st meeting held today at New Delhi has approved the proposal to form a 7 Member Group of Ministers to study the revenue trend, including analysing the reasons for structural patterns affecting the revenue collection in some of the States.
✓	The study would include the underlying reasons for deviation from the revenue collection targets <i>vis a vis</i> original assumptions discussed during the design of GST system, its implementation and related structural issues.
✓	The Group of Ministers will be assisted by the committee of experts from Central Government, State Governments and the NIPFP (National Institute of Public Finance and Planning), who would study and share the findings with GoM.
✓	The GoM in turn would give its recommendation to the GST Council.

GST on solar power generating plant and other renewable energy plants	
✓	GST rate of 5% rate has been prescribed on renewable energy devices & parts for their manufacture (bio gas plant/solar power based devices, solar power generating system (SGPS) etc) [falling under chapter 84, 85 or 94 of the Tariff]. Other goods or services used in these plants attract applicable GST.
✓	Certain disputes have arisen regarding GST rates where specified goods attracting 5% GST are supplied along with services of construction etc and other goods for solar power plant
✓	To resolve the dispute the Council has recommended that in all such cases, the 70% of the gross value shall be deemed as the value of supply of said goods attracting 5% rate and the remaining portion (30%) of the aggregate value of such EPC contract shall be deemed as the value of supply of taxable service attracting standard GST rate i.e. 18% rate of GST.

Reduction in GST Rate - Goods - From 28% to 18%	
Sl. No	Description of Goods
1	Pulleys, transmission shafts and cranks, gear boxes etc., falling under HS Code 8483
2	Monitors and TVs of upto screen size of 32 inches
3	Re-treaded or used pneumatic tyres of rubber;
4	Power banks of lithium ion batteries. Lithium ion batteries are already at 18%. This will bring parity in GST rate of power bank and lithium ion battery. Lithium-ion battery rates were reduced from 28% to 18% in the 28th Council Meeting held on 21st July 2018
5	Digital cameras and video camera recorders
6	Video game consoles and other games and sports requisites falling under HS code 9504
Reduction in GST Rate - Goods - From 28% to 5%	
Sl. No	Description of Goods
7	Parts and accessories for the carriages for disabled persons
Reduction in GST Rate - Goods - From 18% to 12%	
Sl. No	Description of Goods
8	Cork roughly squared or debagged
9	Articles of natural cork

10	Agglomerated cork
Reduction in GST Rate - Goods - From 18% to 5%	
Sl. No	Description of Goods
11	Marble rubble
Reduction in GST Rate - Goods - From 12% to 5%	
Sl. No	Description of Goods
12	Natural Cork
13	Walking Sticks
14	Fly Ash Blocks
Reduction in GST Rate - Goods - From 12% to NIL	
Sl. No	Description of Goods
15	Music Books
Reduction in GST Rate - Goods - From 5% to NIL	
Sl. No	Description of Goods
16	Vegetables, (uncooked or cooked by steaming or boiling in water), frozen, branded and put in a unit container
17	Vegetable provisionally preserved (for example by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), but unsuitable in that state for immediate consumption

Miscellaneous Exemptions/ Clarifications related to Goods	
1	→ Exemption from GST on supply of gold by Nominated Agencies to exporters of article of gold Jewellery
2	→ Exemption from GST on proceeds received by Government from auction of gifts received by President, Prime Minister, Governor or Chief Minister of a State and public servants, the proceeds of which is used for public or charitable cause
3	→ Exemption from IGST/Compensation cess on vehicles imported for temporary purposes under the Customs Convention on the Temporary importation of Private Road Vehicles (carnet de passages-en-douane).
4	→ Rate of 5%/18% to be applied based on transaction value of footwear.
5	→ Uniform GST rate of 12% on Flexible Intermediate Bulk Container (FIBC) from existing 5%/12% (depending on the value)

Clarifications related to Goods	
1	→ Sprinkler system consisting of nozzles, lateral and other components would attract 12% GST rate under S.No. 195B of notification No. 1/2017-Central Tax (Rate) dated 28.6.2018
2	→ Movement of Rigs, Tools & Spares and all goods on wheels on own account where such movement is not intended for further supply of such goods but for the provision of service does not involve a supply (e.g., movement of testing equipment etc.) and is not be liable to GST
3	→ The goods with description Bagasse Board [whether plain or laminated] falling under Chapter 44 attract GST at the rate of 12%.
4	→ Concessional GST rate of 5% applies to the LPG supplied in bulk to an OMC by refiners/fractioners for bottling for further supply to household domestic consumers
5	→ While animal/cattle/aquatic/poultry feed are exempt vide S. No. 102 of notification No. 2/2017-Central Tax (Rate), this exemption would not apply to their inputs such as fish meal, meat bone meal, bran, sharps, oil cakes of various oil seeds etc
6	Manure of determination of classification of vitamins, provitamins etc. as animal feed supplements
7	Sattu or Chattua falling under HS code 1106 and attracts the applicable GST rate
8	Polypropylene Woven and Non-Woven Bags and PP Woven and Non-Woven Bags laminated with BOPP falls under HS code 3923 and attract 18% GST rate
9	18% GST is applicable on wood logs including the wood in rough/log used for pulping
10	Turbo charger is classified under heading 8414 and attracts 18% GST and not 5% GST
11	Fabric even if embroidered or has stitching of lace and tikki etc., and even if sold in three piece fabric as ladies suit set, will be classifiable as fabric and would attract 5% GST
12	Scope of concessional rate of 5% GST rate for specified equipment for waste to energy plant

Reduction in GST Rate - Services - From 28% to 18%	
Sl. No	Description of Services
1	Cinema tickets above Rs. 100
Reduction in GST Rate - Services - From 18% to 12%	
Sl. No	Description of Services
2	Cinema tickets upto Rs. 100
3	Third party insurance premium of goods carrying vehicles

Exemption/ Reduction in GST Rate - Services		
Sl. No	Service Category	Decision taken by the GST Council
1	Basic Savings Bank Deposit under PM Jan Dhan Yojana (PMUDY)	→ Exempt Services supplied by banks to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY)
2	Services by GTA to Government Department/Local Authorities	→ Exempts services provided by GTA to Government departments/local authorities which have taken registration only for the purpose of deducting tax under Section 51 shall be excluded from payment of tax under RCM
3	Guarantee by CG/SG/UT to their undertakings or PSUs for Loan	→ Exemption on services provided by Central or State Government or Union Territory Government to their undertakings or PSUs by way of guaranteeing loans taken by them from financial institutions is being extended to guaranteeing of such loans taken from banks.
4	Air Travel of Pilgrims by Non Scheduled/Charter Operations	→ Air travel of pilgrims by non-scheduled/charter operations, for religious pilgrimage facilitated by the Government of India under bilateral arrangements shall attract the same rate of GST as applicable to similar flights in Economy class (i.e. 5% with ITC of input services)
Services brought under RCM		
Sl. No	Service Category	Decision taken by the GST Council
1	RCM extended to services to Parliament and State Legislatures	Parliament and State legislatures shall be extended the same tax treatment with regard to payment of tax under RCM (reverse charge mechanism) as available to Central and State Governments.
2	RCM on Security Services	Security services (supply of security personnel) provided to a registered person , except Government Departments which have taken registration for TDS and entities registered under composition scheme, shall be put under RCM.
3	RCM on Services by Unregistered Business Facilitator to Banks	Services provided by unregistered Business Facilitator (BF) to a bank shall be put under RCM.
4	RCM on Services by agent of Business Correspondent to a Business Correspondent	Services provided by agent of Business correspondent (BC) to a Business correspondent shall be put under RCM.
Clarifications related to services		
1		→ With effect from 31st January, 2018 degrees/ diploma awarded by IIMs under IIM Act, 2017 will be exempt

2	→ For the State of West Bengal - that services provided by Council/ Board of Primary/ Secondary/ Higher Secondary Education for conduct of examination to its students are exempt
3	→ “printing of pictures” falls under service code “998386: Photographic and video graphic processing services” of the scheme of classification of services and attract GST @18% and not under “998912: Printing and reproduction services of recorded media, on a fee or contract basis” which attracts GST @12%.
4	→ Nature of business establishment making supply of food, drinks and other articles for human consumption will not determine whether the supply by such establishments is a supply of goods or services. It will rather depend on the constituents of each individual supply and whether same satisfies the conditions / ingredients of a ‘composite supply’ or ‘mixed supply’
5	→ Under section 11(3) of the CGST Act, 2017 - the scope of entry for multi-modal transport with GST rate of 12% inserted w.e.f. date 26.07.2018, covers only transport of goods from a place in India to another place in India, that is, only domestic multi-modal transport.
6	→ GST is exempt on supply of food and drinks by an educational institution when provided by the institution itself to its students, faculty and staff and is leviable to GST of 5% when provided by any other person based on a contractual arrangement with such institutions
7	→ The banking company is liable to pay GST on the entire value of service charge or fee charged to customers whether or not received via business facilitator or the business correspondent.

Certain Important issues referred by GST Council to various Committees/ GoM		
Sl. No	Committee/GoM	Issues
1	Law Committee and Fitment Committee.	→ Extending the Composition scheme to small service providers along with the rate of tax and threshold limit → Taxation of residential property in real estate sector
2	Committee of States	Tax Rate on Lotteries
3	GoM on MSMEs	Threshold limit of exemption under GST regime

The recommendations made by the GST Council are indeed a welcome move, which shall provide some relief to small tax-payers to comply with the requirements of GST Law. We need to await for the notifications and law amendments as well as change in the GSTN portal for effective implementation and introduction of the suggestions.

It has also been observed that all the suggestions made by the earlier Council meet has not been fully implemented till now.

IMPACT OF GST ON REAL ESTATE SECTOR EFFECTIVE FROM 01.04.2019

TEAM TRD

GST rates for Ongoing Projects (Where option not exercised for old rates) and New Projects (01.04.2019 onwards)

<u>Category</u>		<u>Effective GST Rate</u>	<u>Conditions</u>	<u>Remarks</u>
Residential Projects	Affordable	1%	No ITC	Up to 15% carpet area of commercial space allowed. Rate will be same as for residential units.
	Non Affordable	5%	No ITC	
Commercial Projects		12%	With ITC	
Mix Projects (Commercial and residential projects)	Commercial	12%	Proportionate ITC	Where Commercial space exceeds 15%
	Affordable	1%		
	Non Affordable	5%		

Meaning of Affordable Housing:

- a) A Residential House/flat of carpet area of up to 90 Sqm (968.752 sq ft) in Non-metropolitan Cities/towns having value up to 45 Lacs .
- b) A Residential House/flat of Carpet area of up to 60Sqm (645.835 sq ft.) in Metropolitan cities/towns having value up to 45 Lacs.

Meaning of Ongoing Projects:

- a. Commencement certificate is issued on or before 31.03.2019
- b. Where commencement certificate is not required, It should be certified by Architect or Chartered Engineer or a licensed surveyor of the respective local body of the city or town or village or development or planning authority, that the project has started on or before 31.03.2019.
- c. Completion certificate has not been issued or first occupation has not been done before 31.03.2019.
- d. Flats/ units has been partly or wholly booked on or before 31.03.2019.
- e. The Construction of the project shall be considered as started before 31.03.2019 if the earth work for site preparation for the project has been completed and excavation for foundation has been started.

GST rates for ongoing Projects: (Where option exercised for old rates before 10th May 2019 in prescribed form)

<u>Category</u>	<u>Effective GST Rate</u>	<u>Conditions</u>
Residential Projects	Affordable	8%
	Non Affordable	12%
Commercial Projects	12%	With ITC
Mix Projects (Commercial and residential projects)	Commercial	12%
	Affordable	8%
	Non Affordable	12%

Payment mode of GST @ 1% or 5% in New Scheme-

- a. It is to be paid by Cash Ledger only.
- b. However amount of ITC attributable to construction of project whose time of supply is on or after 01.04.2019 as per prescribed formula given in notification may be used for payment of above GST liability.

- c. 80% Inputs and Input services shall be received from registered Persons till the date of completion certificate or first occupation whichever is earlier. If it fall short then at the end of financial year builder has to pay RCM @ 18%.
- d. Builder has to maintain project wise account of inward supplies and calculate RCM accordingly.
- e. Input Tax credit has to be shown as ineligible credit in FORM 3B.
- f. 80% limit has to be calculated financial year wise. A excess in Financial year cannot be adjusted against shortfall of next year.

New GST rates notified for some services related to Real estate sector

Category	Effective GST Rate
Composite Supply of works contract for affordable residential apartments on which GST @ 1% (Simply Construction Contractor)	12%
Non Affordable	12%
Any Goods other than Cement and capital Goods by an unregistered person to a promoter(Say Builder) for construction of the project on which tax is payable by the promoter as recipient of goods u/s 9(4)	18%
Cement	28%
Transfer of development rights or FSI (including Additional FSI) for construction of a project by promoter	18%
Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter	18%

Conditions

Service by way of transfer of Development rights(TDR) or FSI (including Additional FSI) or Upfront amount for leasehold rights on or after 01.04.2019 for construction of residential apartments by promoter in a project intended for sale before occupation certificate is exempt subject to certain conditions.

For Mixed projects exemption will be restricted to proportionate carpet area of residential project subject to certain conditions.

GST to be paid by promoter under RCM on the value attributable to the residential apartments remaining un booked as on the date of issuance of completion certificate. The formula is as under: (Lower of below two:-)

- i. $\text{GST payable on TDR or FSI Unbooked carpet area of residential apartment} / \text{Total carpet area of the residential apartments in the project}$
- ii. 5%/1% (Non Affordable/Affordable) on value of residential apartments remained un booked.

Some other important points

- a. Where % of invoicing is more than the % of completion and difference between % invoicing and % of completion of construction is more then 25% the value of invoicing shall be deemed to be % of completion plus 25%.
- b. Where the value of invoicing issued on or before 31.03.2019 exceeds the consideration actually received on or prior to 31.03.2019 by more then 25% then the value of such invoices shall be deemed to be actual consideration received plus 25%.
- c. Where the value of procurement of inputs and input services prior to 01.04.2019 exceeds the value of consumption of the inputs and input services used in the construction completed as on 31.03.2019 by more then 25% then Actual consumption plus 25% shall be deemed to be value of procurement.
- d. The jurisdictional commissioner Or any other officer authorized in this regard may fix the eligible ITC based on actual per unit consumption based on the documents certified by CA/CWA submitted by the builder in this regard applying accepted principles of accounting.

TAX UPDATES, NOTIFICATIONS AND CIRCULARS

INDIRECT TAX

GOODS AND SERVICES TAX

CENTRAL TAX

Notification No. – 15/2019

Date –28.03.2019

Notification to extend the due date for furnishing of FORM GST ITC-04 for the period July 2017 to March 2019 till 30th June 2019 issued.

CBIC has extended time limit for furnishing the declaration in FORM GST ITC-04 till the 30th day of June, 2019, in respect of goods dispatched to a job worker or received from a job worker, during the period from July, 2017 to March, 2019.

Notification No. – 16/2019

Date –29.03.2019

Seeks to make Second Amendment (2019) to CGST Rules

The Central Government has made amendments the Central Goods and Services Tax Rules, 2017.

1. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), in rule 41, in sub-rule (1), after the proviso, the following explanation shall be inserted, namely: -

Explanation: - For the purpose of this sub-rule, it is hereby clarified that the “value of assets” means the value of the entire assets of the business, whether or not input tax credit has been availed thereon.”

2. With effect from 1st April, 2019, in Rule 42 of the said rules,- (a) in sub rule (1),- a. in clause (f), the following Explanation shall be inserted, namely:-

Explanation:

- For the purpose of this clause, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the said Act, value of T4 shall be zero during the construction phase because inputs and input services will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date.”
- In clause (g), after the letter and figure “FORM GSTR-2”, the words, letters and figure “and at summary level in FORM GSTR-3B” shall be inserted.

CENTRAL TAX (RATE)

Notification No. – 03/2019

Date –29.03.2019

Seeks to amend notification No. 11/2017- Central Tax (Rate) so as to notify CGST rates of various services as recommended by Goods and Services Tax Council for real estate sector

The Central Government has made the amendments in the Notification of the Government of India No.11/2017- Central Tax (Rate), dated the 28th June, 2017.

In the said notification, - (i) in the opening paragraph,

- a) after the word, brackets and figures “conferred by sub-section (1),”, the word, brackets and figures “sub-section (3) and sub-section (4)” shall respectively be inserted;
- b) the word “and” after the words and figures “sub-section (5) of section 15” shall be substituted by the symbol “,”;
- c) after the word, brackets and figures “section (16)”, the words and figure “and section 148” shall be inserted;

For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-3-2019-cgst-rate-english.pdf;jsessionid=8CDF4F52270E522C08904B154319DD02>

Notification No. – 04/2019

Date –29.03.2019

Seeks to amend notification No. 12/2017- Central Tax (Rate) so as to exempt certain services as recommended by Goods and Services Tax Council for real estate sector

The Central Government has made amendments in the Notification No.12/2017- Central Tax (Rate), dated the 28th June, 2017.

In the said notification, -

(i) in the opening paragraph, for the word, brackets and figures “sub-section (1) of section 11” the word, brackets and figures “, sub-section (3) and sub-section (4) of section 9, sub-section (1) of section 11, sub-section (5) of section 15 and section 148,” shall be substituted.

For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-4-2019-cgst-rate-english.pdf>

Notification No. – 05/2019

Date –29.03.2019

Seeks to amend notification No. 13/2017- Central Tax (Rate) so as to specify services to be taxed under Reverse Charge Mechanism (RCM) as recommended by Goods and Services Tax Council for real estate sector

The Central Government has made amendments in the Notification No.13/2017- Central Tax (Rate), dated the 28th June, 2017.

In the Explanation, after clause (h), the following clauses shall be inserted, namely: -

“(j) The term “apartment” shall have the same meaning as assigned to it in clause (e) under section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2017). (j) the term “promoter” shall have the same meaning as assigned to it in clause (zk) under section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2017).

(k) the term “project” shall mean a Real Estate Project (REP) or a Residential Real Estate Project (RREP);

(l) “the term “Real Estate Project (REP)” shall have the same meaning as assigned to it in in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016).

(m) The term “Residential Real Estate Project (RREP)” shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP.

(n) “floor space index (FSI)” shall mean the ratio of a building’s total floor area (gross floor area) to the size of the piece of land upon which it is built.”

For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-5-2019-cgst-rate-english.pdf;jsessionid=D817FD67F7681DC7EE778EF0827F6F41>

Notification No. – 06/2019

Date –29.03.2019

Seeks to notify certain class of persons by exercising powers conferred under section 148 of CGST Act, 2017
The Central Government has notified the registered persons, namely:-

- i. a promoter who receives development rights or Floor Space Index (FSI) (including additional FSI) on or after 1st April, 2019 for construction of a project against consideration payable or paid by him, wholly or partly, in the form of construction service of commercial or residential apartments in the project or in any other form including in cash
- ii. a promoter, who receives long term lease of land on or after 1st April, 2019 for construction of residential apartments in a project against consideration payable or paid by him, in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name)

as the registered persons in whose case the liability to pay central tax on, -

- a) the consideration paid by him in the form of construction service of commercial or residential apartments in the project, for supply of development rights or FSI (including additional FSI);
- b) the monetary consideration paid by him, for supply of development rights or FSI (including additional FSI) relating to construction of residential apartments in project;
- c) the upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid by him for long term lease of land relating to construction of residential apartments in the project; and
- d) the supply of construction service by him against consideration in the form of development rights or FSI(including additional FSI), -

shall arise on the date of issuance of completion certificate for the project, where required, by the competent authority or on its first occupation, whichever is earlier.

For more details , please follow - <http://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-6-2019-cgst-rate-english.pdf;jsessionid=DA391B189487C7A6EC78426AE764A8FO>

Notification No. – 07/2019

Date –29.03.2019

Seeks to notify certain services to be taxed under RCM under section 9(4) of CGST Act as recommended by Goods and Services Tax Council for real estate sector

The Central Government has notified that the registered person shall in respect of supply of goods or services or both, received from an unregistered supplier shall pay tax on reverse charge basis as recipient of such goods or services or both.

For the purpose of this notification, -

- i. the term “promoter” shall have the same meaning as assigned to it in clause (zk) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);
- ii. “project” shall mean a Real Estate Project (REP) or a Residential Real Estate Project (RREP);
- iii. the term “Real Estate Project (REP)” shall have the same meaning as assigned to it in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);
- iv. “Residential Real Estate Project (RREP)” shall mean a REP in which the carpet area of the commercial apartments is not more than 15% of the total carpet area of all the apartments in the REP.
- v. the term “floor space index (FSI)” shall mean the ratio of a building’s total floor area (gross floor area) to the size of the piece of land upon which it is built.

For more details, please follow - <http://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-7-2019-cgst-rate-english.pdf;jsessionid=366470D929B967E50C5BDE4EBE41D77A>

Notification No. – 08/2019

Date –29.03.2019

Seeks to amend notification No. 1/2017- Central Tax (Rate) so as to notify CGST rate of certain goods as recommended by Goods and Services Tax Council for real estate sector

The Central Government has made amendments in the Notification No.1/2017-Central Tax (Rate), dated the 28th June, 2017.

Amendments - In the said notification, in Schedule III - 9%, after serial number 452P in column (1) and the entries relating thereto, the following serial number and entries shall be inserted.

For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-8-2019-cgst-rate-english.pdf;jsessionid=976BA5BF73721AF145DE954A16617B82>

Notification No. – 09/2019

Date –29.03.2019

Seeks to amend notification No. 02/2019- Central Tax (Rate) so as to provide for application of Composition rules to persons opting to pay tax under notification no. 2/2019- Central Tax (Rate)

The Central Government has made amendments in the Notification No.02/2019- Central Tax (Rate), dated the 7th March, 2019.

In the said notification, -

- (i) in the Table, in column 3, after clause 7, the following clause shall be inserted, namely: -

Where any registered person who has availed of input tax credit opts to pay tax under this notification, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods as if the supply made under this notification attracts the provisions of section 18(4) of the said Act and the rules made there-under and after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.”

- (ii) in paragraph 3, in the Explanation, after clause (ii), the following clause shall be inserted, namely: -
- (iii) the Central Goods and Services Tax Rules, 2017, as applicable to a person paying tax under section 10 of the said Act shall, mutatis mutandis, apply to a person paying tax under this notification.”

INTEGRATED TAX (RATE)

Notification No. – 03/2019

Date –29.03.2019

Seeks to amend notification No. 8/2017- Integrated Tax (Rate) so as to notify IGST rates of various services as recommended by Goods and Services Tax Council for real estate sector

The Central Government has made amendments in the Notification No. 8/2017- Integrated Tax (Rate), dated the 28th June, 2017.

In the said notification, -

- (i) in the opening paragraph,

- a) after the words, brackets and figures “conferred by sub-section (1),”, the words, brackets and figures “sub-section (3) and sub-section (4)” shall respectively be inserted;

- b) for the words, brackets and figures “clause (iii) and clause (iv)”, the words, brackets and figures “clauses (iii), (iv) and (xxv)” shall be substituted;
- c) the word “and” after the words and figures “sub-section (5) of section 15” shall be substituted by the symbol “.
- d) after the word, brackets and figures “section 16”, the words and figure “and section 148” shall be inserted.

For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-3-2019-igst-rate-english.pdf;jsessionid=03EE510770B4D75D92ABDE26AEACC4EB>

Notification No. – 04/2019

Date –29.03.2019

Seeks to amend notification No. 9/2017- Integrated Tax (Rate) so as to exempt certain services as recommended by Goods and Services Tax Council for real estate sector

The Central Government has made amendments in the Notification No.9/2017- Integrated Tax (Rate), dated the 28th June, 2017.

In the said notification, - (i) in the opening paragraph, for the word, brackets and figures “sub-section (1) of section 6” the word, brackets and figures “, sub-section (3) and sub-section (4) of section 5, sub-section (1) of section 6 and clause (xxv) section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), read with sub-section (5) of section 15 and section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017).

For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-4-2019-igst-rate-english.pdf;jsessionid=38246EAF463FDF55A9AC545C747ACFE2>

Notification No. – 05/2019

Date –29.03.2019

Seeks to amend notification No. 10/2017- Integrated Tax (Rate) so as to specify services to be taxed under Reverse Charge Mechanism (RCM) as recommended by Goods and Services Tax Council for real estate sector

The Central Government has made amendments in the Notification No.10/2017- Integrated Tax (Rate), dated the 28th June, 2017.

in the Explanation, after clause (h), the following clauses shall be inserted, namely: -

- (i) The term “apartment” shall have the same meaning as assigned to it in clause (e) under section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2017).
- (j) the term “promoter” shall have the same meaning as assigned to it in clause (zk) under section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2017).
- (k) the term “project” shall mean a Real Estate Project (REP) or a Residential Real Estate Project (RREP);
- (l) “the term “Real Estate Project (REP)” shall have the same meaning as assigned to it in in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016).
- (m) The term “Residential Real Estate Project (RREP)” shall mean a REP in which the carpet area of the commercial apartments is not more than 15% of the total carpet area of all the apartments in the REP.
- (n) “floor space index (FSI)” shall mean the ratio of a building’s total floor area (gross floor area) to the size of the piece of land upon which it is built.”

For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-5-2019-igst-rate-english.pdf;jsessionid=E0A083123F9F36406650345BB9761A4E>

Notification No. – 06/2019

Date –29.03.2019

Seeks to notify certain class of persons by exercising powers conferred under section 148 of CGST Act, 2017

The Central Government has notified the classes of registered persons, namely:-

- i. a promoter who receives development rights or Floor Space Index (FSI) (including additional FSI) on or after 1 st April, 2019 for construction of a project against consideration payable or paid by him, wholly or partly, in the form of construction service of commercial or residential apartments in the project or in any other form including in cash.
- ii. a promoter, who receives long term lease of land on or after 1 st April, 2019 for construction of residential apartments in a project against consideration payable or paid by him, in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name).

as the registered persons in whose case the liability to pay integrated tax on, -

- a) the consideration paid by him in the form of construction service of commercial or residential apartments in the project, for supply of development rights or FSI (including additional FSI);
- b) the monetary consideration paid by him, for supply of development rights or FSI (including additional FSI) relating to construction of residential apartments in project;
- c) the upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid by him for long term lease of land relating to construction of residential apartments in the project; and
- d) the supply of construction service by him against consideration in the form of development rights or FSI(including additional FSI).

shall arise on the date of issuance of completion certificate for the project, where required, by the competent authority or on its first occupation, whichever is earlier.

For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-6-2019-igst-rate-english.pdf;jsessionid=84C93E02F1142245AA593DA1EFF69639>

Notification No. – 07/2019

Date –29.03.2019

Seeks to notify certain services to be taxed under RCM under section 5(4) of IGST Act as recommended by Goods and Services Tax Council for real estate sector

The Central Government has notified that the registered person shall in respect of supply of goods or services or both, received from an unregistered supplier shall pay tax on reverse charge basis as recipient of such goods or services or both.

For the purpose of this notification, -

- i. the term “promoter” shall have the same meaning as assigned to it in clause (zk) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);
- ii. “project” shall mean a Real Estate Project (REP) or a Residential Real Estate Project (RREP);
- iii. the term “Real Estate Project (REP)” shall have the same meaning as assigned to it in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);
- iv. “Residential Real Estate Project (RREP)” shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP.
- v. “floor space index (FSI)” shall mean the ratio of a building’s total floor area (gross floor area) to the size of the piece of land upon which it is built.

For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-7-2019-igst-rate-english.pdf;jsessionid=DA91138445E84B436BFB1EEAFC6820A8>

Notification No. – 08/2019

Date –29.03.2019

Seeks to amend notification No. 1/2017- Integrated Tax (Rate) so as to notify IGST rate of certain goods as recommended by Goods and Services Tax Council for real estate sector

The Central Government has made amendments in the Notification No.1/2017- Integrated Tax (Rate), dated the 28th June, 2017.

For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-8-2019-igst-rate-english.pdf;jsessionid=73C9C860ABE27391442BCDDA373E6DFD>

UNION TERRITORY TAX (RATE)

Notification No. – 03/2019

Date –29.03.2019

Seeks to amend notification No. 11/2017- Union Territory Tax (Rate) so as to notify UTGST rates of various services as recommended by Goods and Services Tax Council for real estate sector

The Central Government has made amendments in the Notification No.11/2017- Union Territory Tax (Rate), dated the 28th June, 2017.

In the said notification, -

(i) in the opening paragraph,

- a) after the word, brackets and figures “conferred by sub-section (1),”, the word, brackets and figures “sub-section (3) and sub-section (4)” shall respectively be inserted;
- b) the word “and” after the words and figures “clause (iv)” shall be substituted by the symbol “.
- c) after the word, brackets and figures “clause (v)”, the words and figure “and clause (xxvii)” shall be inserted;
- d) the word “and” after the words and figures “sub-section (5) of section 15” shall be substituted by the symbol “.
- e) after the word, brackets and figures “section (16)”, the words and figure “and section 148” shall be inserted.

For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-03-2019-utgst-rate-english.pdf;jsessionid=26D092975EE7C8909ADA1925171705F7>

Notification No. – 04/2019

Date –29.03.2019

Seeks to amend notification No. 12/2017- Union Territory Tax (Rate) so as to exempt certain services as recommended by Goods and Services Tax Council for real estate sector

The Central Government has made amendments in the Notification No.12/2017- Union Territory Tax (Rate), dated the 28th June, 2017.

In the said notification, -

- i. in the opening paragraph, for the word, brackets and figures “sub-section (1) of section 8 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017)” the word, brackets and figures “, sub-section (3) and sub-section (4) of section 7, sub-section (1) of section 8, and clause (iv) and clause (xxvii) of section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017) read with sub-section (5) of section 15 and section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017),” shall be substituted;

Notification No. – 05/2019

Date –29.03.2019

Seeks to amend notification No. 13/2017- Union Territory Tax (Rate) so as to specify services to be taxed under Reverse Charge Mechanism (RCM) as recommended by Goods and Services Tax Council for real estate sector

The Central Government has made amendments in the Notification No.13/2017- Union Territory Tax (Rate), dated the 28th June, 2017.

in the Explanation, after clause (h), the following clauses shall be inserted, namely: -

“(i) The term “apartment” shall have the same meaning as assigned to it in clause (e) under section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2017).

(j) the term “promoter” shall have the same meaning as assigned to it in clause (zk) under section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2017).

(k) the term “project” shall mean a Real Estate Project (REP) or a Residential Real Estate Project (RREP);

(l) “the term “Real Estate Project (REP)” shall have the same meaning as assigned to it in in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016).

(m) The term “Residential Real Estate Project (RREP)” shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP.

(n) “floor space index (FSI)” shall mean the ratio of a building’s total floor area (gross floor area) to the size of the piece of land upon which it is built.”

For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-05-2019-utgst-rate-english.pdf;jsessionid=2641F271F6779548C8CFD6CCA806D6DA>

Notification No. – 06/2019

Date –29.03.2019

Seeks to notify certain class of persons by exercising powers conferred under section 148 of CGST Act, 2017

The Central Government has notified the classes of registered persons, namely:-

- i. a promoter who receives development rights or Floor Space Index (FSI) (including additional FSI) on or after 1st April, 2019 for construction of a project against consideration payable or paid by him, wholly or partly, in the form of construction service of commercial or residential apartments in the project or in any other form including in cash;
- ii. a promoter, who receives long term lease of land on or after 1st April, 2019 for construction of residential apartments in a project against consideration payable or paid by him, in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name),

as the registered persons in whose case the liability to pay Union Territory tax on, -

- a) the consideration paid by him in the form of construction service of commercial or residential apartments in the project, for supply of development rights or FSI (including additional FSI);
- b) the monetary consideration paid by him, for supply of development rights or FSI (including additional FSI) relating to construction of residential apartments in project;
- c) the upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid by him for long term lease of land relating to construction of residential apartments in the project; and
- d) the supply of construction service by him against consideration in the form of development rights or FSI (including additional FSI),

shall arise on the date of issuance of completion certificate for the project, where required, by the competent authority or on its first occupation, whichever is earlier.

For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-06-2019-utgst-rate-english.pdf;jsessionid=336CAD0A01574D3CF4254D86A5DEFE14>

Notification No. – 07/2019

Date –29.03.2019

Seeks to notify certain services to be taxed under RCM under section 7(4) of UTGST Act as recommended by Goods and Services Tax Council for real estate sector

The Central Government has notified the registered person shall in respect of supply of goods or services or both, received from an unregistered supplier shall pay tax on reverse charge basis as recipient of such goods or services or both.

For the purpose of this notification, -

- i. the term “promoter” shall have the same meaning as assigned to it in in clause (zk) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);
- ii. “project” shall mean a Real Estate Project (REP) or a Residential Real Estate Project (RREP);
- iii. the term “Real Estate Project (REP)” shall have the same meaning as assigned to it in in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);
- iv. “Residential Real Estate Project (RREP)” shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP.
- v. “floor space index (FSI)” shall mean the ratio of a building’s total floor area (gross floor area) to the size of the piece of land upon which it is built.

For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-07-2019-utgst-rate-english.pdf;jsessionid=FEF757FD069D40F9C0E87F75729CBC40>

Notification No. – 08/2019

Date –29.03.2019

Seeks to amend notification No. 1/2017- Union Territory Tax (Rate) so as to notify UTGST rate of certain goods as recommended by Goods and Services Tax Council for real estate sector

The Central Government has made amendments in the Notification No.1/2017- Union Territory (Rate), dated the 28th June, 2017.

For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-08-2019-utgst-rate-english.pdf;jsessionid=E8C1B1A8DDFC5DF92E31FAA1AB2DE492>

Notification No. – 09/2019

Date –29.03.2019

Seeks to amend notification No. 02/2019- Union Territory Tax (Rate) so as to provide for application of Composition rules to persons opting to pay tax under notification no. 2/2019- Union Territory Tax (Rate)

The Central Government has made amendments in the Notification No.02/2019- Union Territory Tax (Rate), dated the 7th March, 2019.

In the said notification, -

- (i) in the Table, in column 3, after clause 7, the following clause shall be inserted, namely: -

“8. Where any registered person who has availed of input tax credit opts to pay tax under this notification, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods as if the supply made under this notification attracts the provisions of section 18(4) of the said Act and the rules made there-under and after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.

- (ii) in paragraph 3, in the Explanation, after clause (ii), the following clause shall be inserted, namely: -

the Central Goods and Services Tax Rules, 2017, as applicable to a person paying tax under section 10 of the said Act shall, mutatis mutandis, apply to a person paying tax under this notification.”.

CIRCULARS - CGST

Circular No. – 94/2019

Date – 28.03.2019

Seeks to clarify certain refund related issues under GST

In order to clarify refund related issues and to ensure uniformity in the implementation of the provisions of law across the field formations, CBIC has clarified the issues as detailed hereunder-

Issue	Clarification
<p>Certain registered persons have reversed, through return in FORM GSTR-3B filed for the month of August, 2018 or for a subsequent month, the accumulated input tax credit (ITC) required to be lapsed in terms of notification No. 20/2018 - Central Tax (Rate) dated 26.07.2018 read with circular No. 56/30/2018-GST dated 24.08.2018. Some of these registered persons, who have attempted to claim refund of accumulated ITC on account of inverted tax structure for the same period in which the ITC required to be lapsed in terms of the said notification has been reversed, are not able to claim refund of accumulated ITC to the extent to which they are so eligible. This is because of a validation check on the common portal which prevents the value of input tax credit in Statement 1A of FORM GST RFD-01A from being higher than the amount of ITC availed in FORM GSTR-3B of the relevant period minus the value of ITC reversed in the same period. This results in registered persons being unable to claim the full amount of refund of accumulated ITC on account of inverted tax structure to which they might be otherwise eligible. What is the solution to this problem?</p>	<p>a) As a one-time measure to resolve this issue, refund of accumulated ITC on account of inverted tax structure, for the period(s) in which there is reversal of the ITC required to be lapsed in terms of the said notification, is to be claimed under the category “any other” instead of under the category “refund of unutilized ITC on account of accumulation due to inverted tax structure” in FORM GST RFD-01A. It is emphasized that this application for refund should relate to the same tax period in which such reversal has been made.</p> <p>b) The application shall be accompanied by all statements, declarations, undertakings and other documents which are statutorily required to be submitted with a “refund claim of unutilized ITC on account of accumulation due to inverted tax structure”. On receiving the said application, the proper officer shall himself calculate the refund amount admissible as per rule 89(5) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “CGST Rules”), in the manner detailed in para 3 of Circular No. 59/33/2018-GST dated 04.09.2018. After calculating the admissible refund amount, as described above, and scrutinizing the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the taxpayer, in writing, to debit the said amount from his electronic credit ledger through FORM GST DRC-03. Once the proof</p>

	<p>of such debit is received by the proper officer, he shall proceed to issue the refund order in FORM GST RFD-06 and the payment advice in FORM GST RFD-05.</p> <p>c) All refund applications for unutilized ITC on account of accumulation due to inverted tax structure for subsequent tax period(s) shall be filed in FORM GST RFD-01A under the category “refund of unutilized ITC on account of accumulation due to inverted tax structure”.</p>
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For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-94.pdf;jsessionid=EED05F823544365FE06B68026D50E2B5>

Circular No. – 95/2019

Date – 28.03.2019

Seeks to clarify verification for grant of new registration

Recently, a large number of registrations have been cancelled by the proper officer under the provisions of sub-section (2) of section 29 of the Central Goods and Services Act, 2017 read with rule 21 of the Central Goods and Services Rules, 2017 on account of noncompliance of the said statutory provisions.

In this regard, instances have come to notice that such persons, who continue to carry on business and therefore are required to have registration under GST, are not applying for revocation of cancellation of registration as specified in section 30 of the CGST Act read with rule 23 of the CGST Rules.

Instead, such persons are applying for fresh registration. Such new applications might have been made as such person may not have furnished requisite returns and not paid tax for the tax periods covered under the old/cancelled registration. Further, such persons would be required to pay all liabilities due from them for the relevant period in case they apply for revocation of cancellation of registration.

Hence, to avoid payment of the tax liabilities, such persons may be using the route of applying for fresh registration. It is pertinent to mention that as per the provisions contained in proviso to sub-section (2) of section 25 of the CGST Act, a person may take separate registration on same PAN in the same State.

For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-95.pdf>

Circular No. – 96/2019

Date – 28.03.2019

Seeks to clarify issues in respect of transfer of input tax credit in case of death of sole proprietor

Doubts have been raised whether sub-section (3) of section 18 of the Central Goods and Services Tax Act, 2017 provides for transfer of input tax credit which remains unutilized to the transferee in case of death of the sole proprietor. As per sub-rule (1) of rule 41 of the Central Goods and Services Rules, 2017 the registered person can file FORM GST ITC-02 electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee. Further, clarification has also been sought regarding procedure of filing of FORM GST ITC-02 in case of death of the sole proprietor. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of the law, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues raised as below.

Clause (a) of sub-section (1) of section 29 of the CGST Act provides that reason of transfer of business includes “death of the proprietor”. Similarly, for uniformity and for the purpose of sub-section (3) of section

18, sub-section (3) of section 22, sub-section (1) of section 85 of the CGST Act and sub-rule (1) of rule 41 of the CGST Rules, it is clarified that transfer or change in the ownership of business will include transfer or change in the ownership of business due to death of the sole proprietor.

For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-96.pdf;jsessionid=6566D5A1C26C50B1B17D3AB98BBFF42F>

CUSTOMS - TARIFF

Notification No.07/2019 - -Customs

Date – 15.03.2019

Seeks to amend notification No. 152/2009-Customs dated 31.12.2009 so as to grant tariff concession in respect of goods under tariff sub heading 4809 90 imported from Korea RP under the India-Korea Comprehensive Economic Partnership Agreement (CEPA)

The Central Government has amended the Notification No.152/2009-Customs, dated the 31st December, 2009, namely:-

In the said notification, in the TABLE, against serial number 384, for the entry in column (2), the entry, “480920, 480990”, shall be substituted.

Notification No.08/2019 - -Customs

Date – 25.03.2019

Seeks to extend the exemption from Integrated Tax and Compensation Cess upto 31.03.2020 on goods imported against AA/EPCG authorizations.

The Central Government has made the following further amendments in each of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), namely:-

Notification number and date	Amendments
16/2015-Customs, dated the 1 st April, 2015 [vide number G.S.R. 252(E), dated the 1 st April, 2015]	In the said notification, in the opening paragraph, in the proviso to clause (iii), for the figures, letters and word “31 st March, 2019”, the figures, letters and word “31 st March, 2020” shall be substituted.
18/2015-Customs, dated the 1 st April, 2015 [vide number G.S.R. 254 (E), dated the 1 st April, 2015]	In the said notification, in the opening paragraph, in condition (xiii), for the figures, letters and word “31 st March, 2019”, the figures, letters and word “31 st March, 2020” shall be substituted.
20/2015-Customs, dated the 1 st April, 2015 [vide number G.S.R. 256 (E), dated 1 st April, 2015]	In the said notification, in the opening paragraph, in condition (xiv), for the figures, letters and word “31 st March, 2019”, the figures, letters and word “31 st March, 2020” shall be substituted.
22/2015-Customs, dated the 1 st April, 2015 [vide number G.S.R. 258 (E), dated the 1 st April, 2015]	In the said notification, in the opening paragraph, in condition (xiii), for the figures, letters and word “31 st March, 2019”, the figures, letters and word “31 st March, 2020” shall be substituted.
45/2016-Customs, dated the 13 th August, 2016 [vide number G.S.R. 795(E), dated the 13 th August, 2016]	In the said notification, in the opening paragraph, in condition (xii), for the figures,

	letters and word “31 st March, 2019”, the figures, letters and word “31 st March, 2020” shall be substituted.
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For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2019/cs-tarr2019/cs08-2019.pdf;jsessionid=63BF91E91FD1458B08D88B0A6F96099F>

Notification No.09/2019 - -Customs
Date – 25.03.2019

Amendment to Notification No.52/2003-Customs dated 31.03.2003 for extending exemption from IGST and compensation cess to EOUs on imports till 31.03.2020

CBIC has made amendments in the Notification No. 52/2003-Customs, dated the 31st March, 2003.

Amendments - In the said notification, in the opening paragraph, in the proviso, for the figures, letters and words “1st day of April, 2019”, the figures, letters and words “1st day of April, 2020” shall be substituted.

Notification No.10/2019 - -Customs
Date – 28.03.2019

amend notification No. 69/2011-Customs dated 29.07.2011 to extend deeper tariff concessions to imports of specified goods from Japan under India-Japan CEPA (IJCEPA) with effect from 1st April, 2019.

CBIC has made amendments in the Notification No.69/2011-Customs, dated the 29th July, 2011.

For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2019/cs-tarr2019/cs10-2019.pdf;jsessionid=BD1B05468BD449FBDE6C29A143BB3728>

Notification No. – 11/2019
Date –29.03.2019

Amend notification No. 50/2017-customs dated 30th June 2017 to postpone the implementation of increased customs duty on specified imports originating in USA from 1st April, 2019 to 2nd May, 2019

The Central Government has made amendments in the Notification No. 50/2017-Customs, dated the 30th June, 2017.

Amendments - In the said notification, in the third proviso for the words and figures “1st day of April, 2019”, the words and figures “2nd day of May, 2019” shall be substituted.

CUSTOMS - NON TARIFF

Notification No.24/2019 - -Customs (N.T)
Date – 20.03.2019

Exchange Rates Notification No.24/2019-Custom (NT) dated 20.03.2019

CBIC has determined the rate of exchange of conversion of each of the foreign into Indian currency or vice versa, which has been effective from 21st March, 2019 relating to imported and export goods.

For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2019/cs-nt2019/csnt24-2019.pdf;jsessionid=28D9E27C498AF6896FDB9A60096DCD96>

Notification No.25/2019 - -Customs (N.T)

Date – 25.03.2019

Shipping bill format changes

CBIC has made the regulations to amend the Shipping Bill and Bill of Exports (Forms) Regulations, 2017, namely:-

For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2019/cs-nt2019/csnt25-2019.pdf;jsessionid=94A64A5FB7E8D2385FF505B60B80CFEA>

Notification No. – 27/2019

Date –29.03.2019

Tariff Notification in respect of Fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Silver- Reg

The Central Board of Indirect Taxes & Customs has made amendments in the Notification No. 36/2001- Customs (N.T.), dated the 3rd August, 2001.

For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2019/cs-nt2019/csnt27-2019.pdf;jsessionid=37DFB72F7E9F2F2263244656EDD20F6E>

CUSTOMS - ANTI DUMPING DUTY

Notification No.14/2019 - -Customs (ADD)

Date – 25.03.2019

Seeks to impose anti-dumping duty on 'Acetone', originating in or exported from European Union, Singapore, South Africa and United States of America

The designated authority had initiated the review in the matter of continuation of anti-dumping duty on imports of 'Acetone' falling under the tariff item 2914 11 00 of the First Schedule to the Customs Tariff Act, originating in or exported from European Union, Singapore, South Africa and United States of America imposed vide Notification No. 10/2014- Customs (ADD), dated the 11th March, 2014

After review, the Designated Authority has come to the conclusion that-

- 1) The product under consideration continues to be imported at the dumped prices from the subject countries;
- 2) The domestic industry has suffered continued injury on account of dumped imports;
- 3) The continued injury to the domestic industry in on account of dumped imports and is likely to continue if the anti-dumping duties from subject countries are ceased;
- 4) The information on record clearly shows likelihood of continuation of dumping and injury in case the ADD in force is allowed to cease at this stage;
- 5) One producer exporter has cooperated from Singapore during the review investigation. M/s Mitsui Phenols Singapore Pte. Ltd has exported to India below the normal value and dumped imports are causing the material injury to the DI;

- 6) None of the producer's exporters from European Union, South Africa and United States of America have co-operated in the present review investigation. The data available indicates that exports from these countries have been made at prices below the normal value;

and has recommended the imposition of definitive anti-dumping duty on the imports of 'Acetone, in order to remove injury to the domestic industry.

The Central Government, after considering the aforesaid final findings of the designated authority, has imposed Anti-Dumping Duty on Acetone produced by the producers and imported into India.

For more Details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2019/cs-add2019/csadd14-2019.pdf;jsessionid=8C3A40C10097DF80B608BF5FEA3D1BEA>

Notification No. – 15/2019
Date –29.03.2019

Seeks to impose definitive anti-dumping duty on 'Ethylene Vinyl Acetate (EVA) sheet for Solar Module', originating in or exported from China PR, Malaysia, Saudi Arabia and Thailand

In case of import of 'Ethylene Vinyl Acetate (EVA)' Sheet for Solar Module falling under the sub-headings 3901 30, 3920 10, 3920 62, 3920 99 and 3921 90 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) originating in or exported from China PR, Malaysia, Saudi Arabia, and Thailand and imported into India, the designated authority in its final findings vide Notification No. 6/9/2018-DGAD, dated the 21st February, 2019 has come to the conclusion that-

- "Imposition of duty is required to offset dumping and injury caused by dumped imports from China PR, Malaysia, Saudi Arabia, and Thailand. However, having found that the volume of imports from South Korea was below de-minimus level during the POI it is appropriate to terminate the investigation against South Korea in terms of Rule 14(d).
- The designated authority has also recommended the imposition of definitive anti-dumping duty on the imports of subject goods, originating in or exported from the subject countries and imported into India, in order to remove injury to the domestic industry.
- Now the Central Government, after considering the aforesaid final findings of the designated authority, has imposed an anti-dumping duty on Ethylene Vinyl Acetate (EVA).
- The anti-dumping duty imposed shall be effective for a period of five years (unless revoked, superseded or amended earlier) from the date of publication of this notification in the Official Gazette and shall be payable in Indian currency.

DIRECT TAX

Notification No. – 31/2019
Date –31.03.2019

The Central Govt. has notified that every person who has been allotted PAN No. as on 1.07.2017 and who is eligible to obtain Aadhaar No. shall intimate his Aadhaar No. to the Principal Director General of Income Tax in the form & manner specified Notification No. 7 dt. 29.06.2017 issued by Principal Director General of Income Tax by 30.09.2019.

This notification shall not be applicable to those persons or any state or part of any state who/which are/is specifically excluded under section 139AA(3) of the Act.

It has been clarified by Notification No. 6 of 2019 that with effect from 1.04.2019 it is mandatory to quote Aadhaar No. while filling the return of income as required under section 139AA(1)(ii).

PRESS RELEASE

INDIRECT TAX

DECISIONS TAKEN BY THE GST COUNCIL IN THE 34TH MEETING HELD ON 19TH MARCH, 2019 REGARDING GST RATE ON REAL ESTATE SECTOR

GST Council in the 34th meeting held on 19th March, 2019 at New Delhi discussed the operational details for implementation of the recommendations made by the council in its 33rd meeting for lower effective GST rate of 1% in case of affordable houses and 5% on construction of houses other than affordable house. The council decided the modalities of the transition as follows.

Option in respect of ongoing projects:

2. The promoters shall be given a one -time option to continue to pay tax at the old rates (effective rate of 8% or 12% with ITC) on ongoing projects (buildings where construction and actual booking have both started before 01.04.2019) which have not been completed by 31.03.2019.
3. The option shall be exercised once within a prescribed time frame and where the option is not exercised within the prescribed time limit, new rates shall apply.

New tax rates:

4. The new tax rates which shall be applicable to new projects or ongoing projects which have exercised the above option to pay tax in the new regime are as follows.
 - i. New rate of 1% without input tax credit (ITC) on construction of affordable houses shall be available for,
 - a. all houses which meet the definition of affordable houses as decided by GSTC (area 60 sqm in metros / 90 sqm in non- metros and value upto RS. 45 lakhs), and
 - b. affordable houses being constructed in ongoing projects under the existing central and state housing schemes presently eligible for concessional rate of 8% GST (after 1/3rd land abatement).
 - ii. New rate of 5% without input tax credit shall be applicable on construction of,-
 - a. all houses other than affordable houses in ongoing projects whether booked prior to or after 01.04.2019. In case of houses booked prior to 01.04.2019, new rate shall be available on installments payable on or after 01.04.2019.
 - b. all houses other than affordable houses in new projects.
 - c. commercial apartments such as shops, offices etc. in a residential real estate project (RREP) in which the carpet area of commercial apartments is not more than 15% of total carpet area of all apartments.

Conditions for the new tax rates:

5. The new tax rates of 1% (on construction of affordable) and 5% (on other than affordable houses) shall be available subject to following conditions,-
 - a. Input tax credit shall not be available,
 - b. 80% of inputs and input services (other than capital goods, TDR/ JDA, FSI, long term lease (premiums)) shall be purchased from registered persons. On shortfall of purchases from 80%, tax shall be paid by the builder @ 18% on RCM basis. However, Tax on cement purchased from unregistered person shall be paid @ 28% under RCM, and on capital goods under RCM at applicable rates.

Transition for ongoing projects opting for the new tax rate:

Ongoing projects (buildings where construction and booking both had started before 01.04.2019) and have not been completed by 31.03.2019 opting for new tax rates shall transition the ITC as per the prescribed method.

The transition formula approved by the GST Council, for residential projects (refer to para 4(ii)) extrapolates ITC taken for percentage completion of construction as on 01.04.2019 to arrive at ITC for the entire project. Then based on percentage booking of flats and percentage invoicing, ITC eligibility is determined. Thus, transition would thus be on pro-rata basis based on a simple formula such that credit in proportion to booking of the flat and invoicing done for the booked flat is available subject to a few safeguards.

For a mixed project transition shall also allow ITC on pro-rata basis in proportion to carpet area of the commercial portion in the ongoing projects (on which tax will be payable @ 12% with ITC even after 1.4.2019) to the total carpet area of the project.

Treatment of TDR/ FSI and Long term lease for projects commencing after 01.04.2019

7. The following treatment shall apply to TDR/ FSI and Long term lease for projects commencing after 01.04.2019.

Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer shall be exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them. Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses. This will achieve a fair degree of taxation parity between under construction and ready to move property.

The liability to pay tax on TDR, FSI, long term lease (premium) shall be shifted from land owner to builder under the reverse charge mechanism (RCM).

The date on which builder shall be liable to pay tax on TDR, FSI, long term lease (premium) of land under RCM in respect of flats sold after completion certificate is being shifted to date of issue of completion certificate.

The liability of builder to pay tax on construction of houses given to land owner in a JDA is also being shifted to the date of completion. Decisions from para 7.1 to 7.4 are expected to address the problem of cash flow in the sector.

Amendment to ITC rules:

8. ITC rules shall be amended to bring greater clarity on monthly and final determination of ITC and reversal thereof in real estate projects. The change would clearly provide procedure for availing input tax credit in relation to commercial units as such units would continue to be eligible for input tax credit in a mixed project.

9. The decisions of the GST Council have been presented in this note in simple language for easy understanding. The same would be given effect to through Gazette notifications/ circulars which alone shall have force of law.

CBDT refutes media report

A search action under section 132 of the Income-tax Act, 1961 was carried out on Sh. D.K Shivakumar and group of cases on 2 nd August, 2017 by the Income Tax Investigation Directorate of Karnataka & Goa. A large evidence of incriminating material against Shri D. K Shivakumar and his company were found.

During the search, some loose papers were given to the raiding party. They were a xerox copy of Karnataka Legislative Assembly, Legislator's Diary pages of 2009 with details of numerical entries against some individual names. The original of these documents was never given.

The same was confronted to Sh. D. K. Shivakumar in a statement recorded under section 131 of the Income-tax Act, 1961 on 19/10/2017.

- In response, he stated that this was a copy of diary, written by Mr. BS Yeddyurappa, and the payments paid on behalf of Mr. BS Yeddyurappa to legislators, and received from various leaders, MLAs, Ministers when they were in power.
- On being asked as to how he got possession of the said loose sheets, in response, Sh DK Shivakumar stated that, being a politician, he procures information about other parties, leaders and members and as the said loose sheets contain political information, he cannot disclose the source of information. Further, he also stated that he keeps getting such information from the general public.
- He also stated that he did not know the time period in which the said transactions have taken place and that he did not have the originals of the said loose sheets.
- In response to the question as to why the said matter was not brought to the notice of ACB or Lokayukta of Karnataka, Sh D. K. Shivakumar stated that as he did not know about the genuineness of the said loose sheets, he did not inform the same to enforcement agencies.
- He further stated that the handwriting in the loose sheets could be of Mr. B.S. Yeddyurappa on the basis of comparison between various documents written by Mr. BS Yeddyurappa and the handwriting in the loose sheets.
- The said seized material and the statements of Sh DK Shivakumar were confronted to Sh B. S. Yedyurappa on 25.11.2017 in a statement recorded under section 131 of the Income-tax Act, 1961.
- He stated that he was not in the habit of writing a dairy and that the loose sheets in question were not in his handwriting. He denied his handwriting and signatures on the loose sheets.
- Also, as the handwriting did not belong to him, he cannot have any knowledge about the contents of the said loose sheets.
- He further stated that contents of the loose sheets were false and fabricated and his name has been used to malign his political career.
- He also provided a sample of his handwriting in order to verify the genuineness of the said loose sheets. Further, he also stated that the fabricated loose sheets were politically motivated with an intention to tarnish his political image.

In view of the said facts, an enquiry was made to The Director, Central Forensic Science Laboratory, Directorate of Forensics Science Services, Ministry of Home Affairs, Government of India, Amberpet Post, Ramanthapur, Hyderabad - 500013, Telangana on availability of Document Analysis and the procedure, time period for the same on 18.04.2018.

In response, CFSL, Hyderabad replied on 24.04.2018 vide letter No. CFSL(H)/Documents/2018/410 dated 24.04.2018 that the examination of handwriting and signatures is carried out in the said laboratory and that all the disputed documents are to be sent in original. No originals were given by Shri D. K. Shivakumar.

It is clear that for a forensic analysis of the disputed writings to establish its evidentiary value, originals of the same are required. All efforts have been made by the Income Tax Office concerned to procure the originals of the disputed writings. However, the details about the place and custody of the original writings and, if the original writings exist, are not available. The same loose sheets prima-facie appear to be of a doubtful nature and were given by the person who was being raided for tax violations.

Date – 27.03.2019

Signing of Inter-Governmental Agreement for exchange of country by country reports between India and the United States of America

India and the United States of America have today, the 27th March, 2019, signed an Inter-Governmental Agreement for Exchange of Country-by-Country (CbC) Reports. The Agreement was signed by Shri P.C.Mody, Chairman, Central Board of Direct Taxes and Mr. Kenneth I. Juster, Ambassador of the United States of America to India on behalf of the two countries. This Agreement for Exchange of CbC Reports, alongwith the Bilateral Competent Authority Arrangement between the two Competent Authorities, will enable both the countries to automatically exchange CbC Reports filed by the ultimate parent entities of Multinational Enterprises (“MNEs”) in the respective jurisdictions, pertaining to the years commencing on or after 1st January, 2016. It would also obviate the need for Indian subsidiary companies of US MNEs to do local filing of the CbC Reports, thereby reducing the compliance burden.

India has already signed the Multilateral Competent Authority Agreement (MCAA) for Exchange of CbC Reports, which has enabled exchange of CbC Reports with 62 jurisdictions.

Filing of CbC Reports by the ultimate parent entity of an MNE group to the prescribed Authority in the jurisdiction in which it is a resident and exchange of such CbC Reports by the Competent Authority of the said jurisdiction with the Competent Authorities of other jurisdictions in which the group has one or more of its constituent entities, are the minimum standards required under the Action 13 Report of OECD/G20 BEPS Project in which India is an active participant.

A CbC Report has aggregated country-by-country information relating to the global allocation of income, the taxes paid, and certain other indicators of an MNE group. It also contains a list of all the constituent entities of an MNE group operating in a particular jurisdiction and the nature of the main business activity of each such constituent entity. MNE groups having global consolidated revenue of 750 Million Euros or more (or a local currency equivalent) in a year are required to file CbC Reports in their parent entity’s jurisdiction. The INR equivalent of 750 Million Euros has been prescribed as INR 5500 Crore in Indian rules. This information will enable an enhanced level of assessment of tax risk by both tax administrations.

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Date – 29.03.2019

Income Tax Department carries out more search actions in the J&K Region

Income Tax Department carried out search actions at 5 premises located in and around Srinagar on 28th March, 2019. Two groups who have connived with local officials in facilitation of absorption of undisclosed income of undesirable elements in shops, buildings and land in Srinagar were searched.

It has been found in the search that 76 shops built by Srinagar Development Authority for resettlement of vegetable and fruit vendors were sold off to influential and cash rich disrupters at a huge premium. One of the persons searched by the Department is a self-proclaimed Chairman of the Vegetable Vendors Union, Batamaloo. The magnitude and proportion of black money used in these transactions is startling. It has been found that four shops on the first floor of the market have been apparently sold by the self-styled Chairman for Rs. 1.09 crore to an individual, who paid Rs.9 lakh in cheque and the balance Rs.1 crore in unaccounted cash. He has constructed a three-storeyed budget hotel-cum-shopping complex at the New Fruit Complex, Parimpora from the black money earned by him in transactions of these shops and other real estate.

The second search operation revealed that nearly 86 Kanals of land under unauthorised occupation was sold to locally powerful persons at a high premium. The transactions have been undertaken either completely or largely in undisclosed cash. Number of original 'ikrarnamas' have been found and seized, that show possession of land being passed on in exchange of unaccounted receipt of cash. The said tax evader set up a scrap and plastic crushing unit out of the cash generated in this manner. The investment in this unit as well as income earned from it has been totally kept out of the tax net.

In the aggregate, the search actions of 28th March, 2019 have unearthed unaccounted financial transactions of more than Rs. 11 crore and undeclared investment in immovable property of more than Rs. 19 crore in and around Srinagar.

None of the persons covered in the search actions has filed an income tax return. Criminal prosecution for wilful attempt to evade tax as well as deliberate non-filing of tax returns would be filed against the tax evaders.

Date – 31.03.2019

CBDT issues clarification on linking of PAN with Aadhaar

It has been reported in some sections of the media that those PANs which are not linked with Aadhaar number by 31.03.2019 may be invalidated. The matter has been considered by the Central Government and now the cut-off date for intimating the Aadhaar number and linking PAN with Aadhaar is 30.09.2019, unless specifically exempted.

Notwithstanding the last date of intimating/linking of Aadhaar Number with PAN being 30.09.2019, it is also made clear that w.e.f. 01.04.2019, it is mandatory to quote and link Aadhaar number while filing the return of income, unless specifically exempted.

JUDGEMENTS

INDIRECT TAX

**Non-Tariff Charges except Cheque Dishonour
Fee is exempted from GST: AAAR
M/S T.P Ajmer Distribution Limited vs. Rajasthan
AAAR
Case No. – RAJ/AAAR/02/2018-19
Date – 18.10.2018**

Fact of the Case

- In the instant case the the Tata Power Ajmer Distribution (TPADL) challenged the order of the AAR wherein it was held that 18% GST is applicable on the non-tariff charges in the Electricity Bill.
- The Advance Ruling Authority explained Non-tariff charges, includes the application fee for releasing the connection, rentals charged against metering equipment and labour charges for shifting of meters and service lines, are liable to tax at 18% under the GST.
- Hearing the appeal, the Appellate authority said that the value of supply is the consideration charged by the appellants from the consumers of electricity on account of consumption of electricity by them.

Decision of the Case

The appellate Authority observed the followings –

- Electrical energy has been classified under tariff item No. 27160000 under Customs Tariff Act, 1975 and value of its supply has been exempted vide entry No.104 of the notification No. 02/2017-Central Tax (Rate) dated 28.06.2017.
- But when the cheque paid for payment of electric bill & the cheque is dishonoured, then bank collects dishonoured cheque along with GST from the applicant's i.e from Electric Supply Department.
- So under such situation the appellant is eligible to collect the dishonoured charges along with GST from the customer since the appellant's bank account is already debited by bank.
- At the time of re-considering an appeal against the advance ruling, the Appellate

Authority for Advance Ruling (AAAR) has held that the non-tariff charges are generally not taxable under the Goods and Services Tax (GST) Act, 2017, but cheque dishonor charges are not exempted from GST.

Discounts granted must be deducted from Invoice Value to avail Input Tax Credit: AAR

**M/s. MRF Limited vs. AAR Tamilnadu
Case No. - s/AAR/2019
Date - 22.01.2019**

Fact of the Case

- In the instant case the applicant is the buyer of C2FO software.
- The buyer gets discount on purchase given by the supplier of goods or services.
- According to the assessee, the invoices are all raised before the payment dates, so the time of supply is the date of raising invoices. The discount is given after the invoices are raised and supply of goods is made and no discount is recorded in the invoice.
- The C2FO platform is a marketplace model where both the Applicant/recipient and his suppliers are registered but the discounts offered are not mentioned in the supply contract between the applicant and his suppliers at the time of raising invoices or before, though the discounts are specifically linking the relevant invoices.
- So the applicant demands the ITC on full GST charged on the Invoice.

Decision of the Case

The authority of Advance Ruling observes the followings-

- In the instant case, the value of supply is the full undiscounted value indicated in the tax invoice and the recipient /Applicant only makes payment to the extent of invoice value less the discount thrown up by the C2FO software.
- As per proviso to Section 16, the recipient is entitled to avail the credit of input tax on the payment made by him

alone and if any amount is not paid as per the value of supply and the recipient has availed full input tax credit, the same would be added to his output tax liability.

- Therefore, in the instant case, the Applicant can avail Input Tax Credit only to the extent of the invoice value less the discounts as per C2FO software.
- If he has availed input tax credit on the full amount, he should reverse the difference amount equal to the discount, to avoid adding to his output liability.

Lodging along with Food to Students by a Private Boarding House is a Composite Supply, 18% GST applicable: AAR

**Sarj Educational Centre vs. AAR West Bengal
Case No. - 42 of 2018
Date – 24.12.2018**

Fact of the Case

- In the present case the applicant is a private boarding house which is engaged for offering two types of services i.e supplying of food, housekeeping charges, medical assistances & lodging facility to the students of St. Michael’s School.
- The applicant claimed exemption by relying on the CBIC Circular wherein it was clarified that the accommodation service to students in a hostel having declared tariff below one thousand rupee per day is exempt.

Decision of the Case

- The authority observed that “the combination of services is, therefore, offered as a mixed supply within the meaning of Section 2(74).
- In accordance with Section 8(b) of the GST Act it is stated that, “a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.
- As has already been discussed, each of the combinations includes services taxable at 18% rate, which is the highest rate applicable to the services being offered to vide Section 8(b) of the GST Act. Being mixed supply, the value of the

entire combination of services offered is taxable at 18% rate.

- So the Advance Ruling Authority, West Bengal has held that the lodging along with food supplied to the students by a private boarding house, being a composite supply is not eligible for GST exemption and is taxable at 18% under GST regime.

Gold Schemes Offered to Customers not eligible for GST Input Tax Credit: AAR

**Biostadt India Ltd. vs. AAR Maharashtra
Case No. – 72
Date – 23.08.2018**

Fact of the Case

- The applicant, Biostadt India Ltd is a company engaged in manufacturing and distribution of crop inputs and hybrid seeds.
- They launched a scheme, namely, Kharif Gold Scheme, 2018 under which it offers 10 gm of gold coin to anyone buying a stipulated amount of products from it.
- Anyone buying these products worth a minimum sum was offered eight grams of gold coin. Gold attracts a 3 per cent goods and services tax (GST).
- The applicant approached the authority seeking a ruling on whether the gold scheme announced by them eligible for input tax credit.

Decision of the Case

- The authority held that since the scheme amount to gift, the company cannot claim input tax credit on the procurement of gold coins, which are to be distributed to customers.
- Input tax credit on gifts will not be available when no GST is paid on its disposal.
- Input Tax credit shall not be available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.
- The Maharashtra Advance Ruling Authority (AAR) has ruled that the companies cannot avail input tax credit under the GST regime in respect of Gold Schemes offered to the customers to promote business.

DIRECT TAX

Payment to Film Distributors for Exhibition of Film not subject to TDS

**M/s. Eylex Films Pvt.Ltd. vs. ITAT, Ahmedabad
Case No. - 1808/Ahd/2017 & 388/Ahd/2018**

Date - 12/03/2019

Fact of the Case

- In the present situation, film producer is the assessee
- The film producer made payment to the film distributor in the nature of royalty without TDS.
- The A.O disallowed the expenses of Rs. 4,76,27,714 by invoking Section 40(a)(ia) of the Act by holding that the assessee failed to deduct tax at source under s.194J of the Act.
- The question before the Tribunal was that whether payments made by the assessee to the Distributors of the Films constitutes fee for professional or technical services within the ambit of Section 194J of the Act.
- The assessee contended that the revenue sharing expenses incurred by the assessee in the nature of royalty is not covered within the sweep of Section 194J of the Act.
- Thus, the payment in respect of exhibition films is specifically excluded under s.194J of the Act.

Decision of the Case

- On the basis of order issued by CIT(A) the Revenue shared by the assessee with the distributor to exhibit the cinematographic film is outside the scope of expression 'royalty' under Clause (v) to Explanation 2 to Section 9(1)(vi) of the Act referred to under the provisions of Section 194J of the Act.
- Therefore, such payment to distributor does not call for deduction of TDS.
- The Income Tax Appellate Tribunal (ITAT), Ahmedabad bench has held that the payment to the film distributors by the assessee for the exhibition of the film would not amount to Fee for Technical services and thus, not subject to TDS

under Section 194J of the Income Tax Act, 1961.

Section 28(ii)(c) would not attract merely because Agreement contains the Term 'Agency': Bombay HC

**Pr. Commissioner of Income Tax vs. M/S RST
India Ltd.**

Case No. – 1798 of 2016

Date – 12.03.2019

Fact of the Case

- The assessee had entered into an agreement with US-based company Sealand Service Inc. by name. Under such agreement after some disputes between the parties, this contract was terminated pursuant to which, the assessee received compensation of Rs.2.25 crores during the period relevant to the assessment year.
- According to the assessee, the receipt was capital in nature and therefore, not assessable to tax.
- The Assessment Officer, however, rejected such contention and held that it would be chargeable to tax in terms of section 28(ii)(c) of the Income Tax Act, 1961.
- On the first appeal, the CIT(A) and on the 2nd appeal the Tribunal held that there was no principal-agent relationship between the parties and the contract was on principal to principal basis and therefore section 28(ii)(c) would not apply.
- The department contended before the High Court that the agreement itself described the relationship between the parties as one of the agency.

Decision of the Case

- The essential requirement for application of section would therefore be that there was a correlation of agency principal between the assessee and the US based company.
- In the present case there was a mere reference of the term "Agency" in the agreement itself is not conclusive of the relationship between parties for

attracting section 28(ii)© of the Income Tax Act 1961.

- So Justices Akil Kureshi and Sarang V Kotwal rejected the contention.

Supreme Court confirms Addition for Bogus Share Application Money and Premium

Principal Commissioner of Income Tax vs. NRA Iron & Steel Pvt. Ltd.
Case No. – Civil Appeal No. of 2019
Date – 05.03.2019

Fact of the Case

- The Assessee Company in its Return showed that money aggregating to Rs. 17,60,00,000/- had been received through Share Capital/Premium during the Financial Year 2009-10 from the companies situated at Mumbai, Kolkatta, and Guwahati.
- The shares had a face value of Rs. 10 per share, were subscribed by the investor companies at Rs. 190 per share.
- The Assessing Officer held that the amount of Rs. 17,60,00,000/- allegedly raised by the Respondent through share capital/premium were not genuine transactions and made additions under section 68 of the Act.
- Before the Supreme Court, the assessee submitted that that entire Share Capital had been received by the Assessee through normal banking channels and produced documents such as income tax return acknowledgements to establish the identity and genuineness of the transaction.
- It was submitted that, there was no cause to take recourse to Section 68 of the Act, and that the onus on the Assessee Company stood fully discharged.

Decision of the Case

The learned judges of of Supreme Court noted the followings-

- The lower appellate authorities appear to have ignored the detailed findings of the AO from the field enquiry and investigations carried out by his office.
- The practice of conversion of un-accounted money through the cloak of Share Capital/Premium must be subjected to careful scrutiny.

- The Assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the AO, failure of which, would justify the addition of the said amount to the income of the Assessee.
- In a significant ruling, a two-judge bench of the Supreme Court has confirmed an addition in respect of bogus share application money and premium and bogus capital gain.

No TDS on Enhanced Compensation for Compulsory Acquisition of Agricultural Land: ITAT allows Refund

Jagmal Singh vs. ITO
Case No. – 2340/Del/2018
Date – 20.09.2018

Fact of the Case

- The assessee is an agriculturist and inherited land from his parents as an agricultural property. The land was acquired by the Government and the assessee had received enhanced compensation of Rs. 4,69,20,146/- including interest. The assessee claimed exemption under section 10(37) of the Income-tax Act, 1961 and claimed refund of Rs. 33,84,464/- in the return of income.
- During the proceedings, the AO found that the assessee had received enhanced compensation of Rs.4,69,20,146/- which includes principal amount of Rs. 2,70,33,074/- and interest amount of Rs. 1,98,85,972/- from the LAO, Panchkula, during the year and on the enhanced compensation received, TDS amounting to Rs.93,84,030/- was deducted out of which amount of Rs.74,45,433/- was refunded to the assessee and credited in his account on 1.7.2011.

Decision of the Case

- Section 10(37) exempts specifically an income chargeable under the head “capital gains” arising from the transfer of agricultural land.
- Referring the Supreme Court Decision, the Tribunal stated that the compensation was received in respect of the agricultural land, the tax deposited with the Income-tax Department shall be refunded to these depositors.

TAX COMPLIANCE CALENDAR AT A GLANCE

GST CALENDAR

Date	Return Type
10.04.2019	Form GSTR-7 - for the month of March 2019.
10.04.2019	Form GSTR-8- for furnishing statement by e-commerce companies for the month of March 2019.
11-04-2019	Form GSTR-1 - Return of outward supplies of taxable goods and/or services for the Month of March 2019 (for Assesses having turnover exceeding 1.5 Cr.) Monthly Return.
13-04-2019	Form GSTR-6 - Return for Input Service Distributor for the month of March 2019
18-04-2019	Form GSTR-4 - Quarterly return for taxpayers opting for Composition Scheme for the quarter January – March 2019.
20-04-2019	Form GSTR-3B for the month of March 2019
30-04-2019	Form GSTR-1 - Return of outward supplies of taxable goods and/or services for the Quarter Jan – Mar 2019 (for Assesses having turnover less than 1.5 Cr.) Quarterly Return.
30-04-2019	TRAN-2 - Due date of TRAN-2 is extended for certain taxpayers who could not complete filing due to tech glitch.

DIRECT TAX CALENDAR - APRIL, 2019

07.04.2019

- Due date for deposit of Tax deducted by an office of the government for the month of March, 2019. However, all sum deducted 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
- Due date for deposit of Tax deducted by an office of the government for the month of March,

14.04.2019

- Due date for issue of TDS Certificate for tax deducted under Section 194-IA & 194-IB in the month of February, 2019

15.04.2019

- Quarterly statement in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for quarter ending March, 2019
- Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of March, 2019

30.04.2019

- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of March, 2019 has been paid without the production of a challan
- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA & 194-IB in the month of March, 2019
- Due date for deposit of Tax deducted by an assessee other than an office of the Government for the month of March, 2019.
- Due date for e-filing of a declaration in Form No. 61 containing particulars of Form No. 60 received during the period October 1, 2018 to March 31, 2019.
- Due date for uploading declarations received from recipients in Form. 15G/15H during the quarter ending March, 2019.
- Due date for deposit of TDS for the period January 2019 to March 2019 when Assessing Officer has permitted quarterly deposit of TDS under section 192, 194A, 194D or 194H.

DIRECT TAX CALENDAR - MAY, 2019

07.05.2019

- Due date for deposit of Tax deducted/collected for the month of April, 2019. 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

15.05.2019

- Due date for issue of TDS Certificate for tax deducted under Section 194-IA & 194-IB in the month of March, 2019
- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of April, 2019 has been paid without the production of a challan
- Quarterly statement of TCS deposited for the quarter ending March 31, 2019
- Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of April, 2019

30.05.2019

- Submission of a statement (in Form No. 49C) by non-resident having a liaison office in India for the financial year 2018-19
- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA & 194-IB in the month of April, 2019

31.05.2019

- Quarterly statement of TDS deposited for the quarter ending March 31, 2019
- Return of tax deduction from contributions paid by the trustees of an approved superannuation fund
- Due date for furnishing of statement of financial transaction (in Form No. 61A) as required to be furnished under sub-section (1) of section 285BA of the Act respect of a financial year 2018-19.
- Due date for e-filing of annual statement of reportable accounts as required to be furnished under section 285BA (1) (k) (in Form No. 61B) for calendar year 2018 by reporting financial institutions.
- Application for allotment of PAN in case of non-individual resident person, which enters into a financial transaction of Rs. 2,50,000 or more during FY 2018-19 and hasn't been allotted any PAN.
- Application for allotment of PAN in case of person being managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer of the person referred to in Rule 114(3)(v) or any person competent to act on behalf of the person referred to in Rule 114(3)(v) and who hasn't allotted any PAN.

TAXATION COMMITTEE - PLAN OF ACTION

Proposed Action Plan:

1. Successful conduct of Certificate Course on GST.
2. Publication and Circulation of Tax bulletin (both in electronic and printed formats) for the awareness and knowledge updation of stakeholders, members, traders, Chambers of Commerce, Universities.
3. Publication of Handbooks on Taxation related topics helping stakeholders in their job deliberations.
4. Carry out webinars for the Capacity building of Members - Trainers in the locality to facilitate the traders/ registered dealers.
5. 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.
6. Tendering representation to the Government on practical difficulties faced by the stakeholders in Taxation related matters.
7. Updating Government about the steps taken by the Institute in removing the practical difficulties in implementing various Tax Laws including GST.
8. Facilitating general public other than members through GST Help-Desk opened at Head quarter of the Institute and other places of country.
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:

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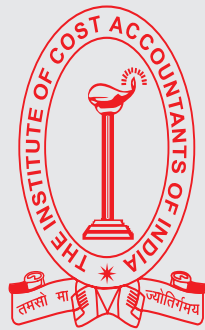
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