

NOVEMBER, 2020

# TAX Bulletin

★ ★ VOLUME - 75 ★ ★



**THE INSTITUTE OF COST ACCOUNTANTS OF INDIA**

Statutory Body under an Act of Parliament

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“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.”

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### Objectives of Taxation Committees:

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 and also Crash Courses on GST for Colleges and Universities.

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**CMA Rakesh Bhalla**  
Chairman, Direct Taxation Committee



**CMA Chittaranjan Chattopadhyay**  
Chairman, Indirect Taxation Committee

## FROM THE DESK OF CHAIRMAN

Dear Friends and Professional Colleagues,

**W**e wish you all a Happy Dussehra and a Subho Bijoya Dashami. May God bless you with good health and prosperity.

Dussehra this time was special and was celebrated with a conduct of Webint on Faceless Assessment and Benami Property Transaction Act by eminent Tax Expert Dr. Girish Ahuja.

We would like to start by wishing all the examinees of the Taxation Courses their very best for their upcoming examination scheduled on 8<sup>th</sup> November, 2020. This time the exam would be conducted through Remote Proctoring so that the candidates can undertake the exam maintaining the social distancing norms. Mock Tests would be carried on 5<sup>th</sup> and 6<sup>th</sup> of November to align the students with the new procedure of conducting the exam. We are there to help you for any hindrances you face.

Webinars have been conducted on (i) Interplay between GST and Customs by CMA Saravana Prabhu, (ii) Benefits for Senior Citizens under IT Act 1961 by and (iii) Section 206C(1H) TCS provision on sale of Goods by CMA S. Venkanna.

Beside this Taxation portal is being updated time to time with latest amendments in DT & IDT. Tax Bulletin has been released. The Taxation Courses are also conducted seamlessly.

Jai Hind.



(Rakesh Bhalla)

**CMA Rakesh Bhalla**  
2<sup>nd</sup> November 2020



**CMA Chittaranjan Chattopadhyay**  
2<sup>nd</sup> November 2020

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### SPECIAL ACKNOWLEDGEMENT

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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***



# E-INVOICING UNDER GST REGIME: TRANSFORMING PROCURE TO PAY CYCLE

**CMA Tarun Devtalla**

DGM - Finance & Accounts (Controller), Blackberrys Menswear

**A**fter the rollout of GST in July 2017, E-Invoicing seems to be a game changer not only in GST related compliances but also to the whole “Procure to Pay” & “Order to Cash” business cycles.

The GST Council on 20th September 2019, has recommended introduction of electronic invoice, while the initial date for roll out was 1st April, 2020, the Government has deferred by notifying it 1st October, 2020, as revised date for implementation of e-invoicing for taxpayers whose aggregate turnover (PAN based) in a financial year is exceeding Rs 500 crore. Although few sectors are exempted like Banking, SEZ Units, Insurance, GTA, Multiplex.

E-invoicing means reporting details of specified GST documents like GST Invoices, Credit notes & Debit notes to a Government-notified portal (At present NIC) and obtaining an Invoice reference number (IRN), Taxpayers will continue to create billing on their own ERP Systems, B2B invoices will be reported to ‘Invoice Registration Portal (IRP)’, further on reporting IRP returns e-invoice with unique ‘Invoice Reference Number (IRN)’ along with a QR Code. A GST invoice will be valid only with a valid IRN.

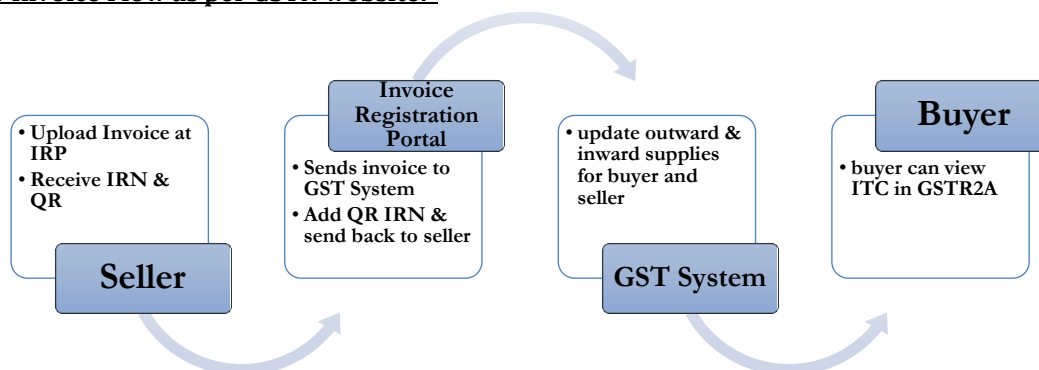
As per Government below are the needs for E-Invoicing

- Ensures Digitization, Standardization, Interoperability and Paperless mode in invoice communication
- Eliminates data re-entry and reconciliation errors
- Improves payment cycles
- Reduces processing costs
- Reduces disputes among transacting parties
- GST reporting will be a lot more easier and indeed a by-product
- No further reporting to e-way portal.

There are several countries in the world who have implemented E-Invoicing like Brazil, Germany, France, New Zealand, and Malaysia.

Central Board of Indirect Taxes and Customs has issued below notification for giving legality for the purpose of generating E-Invoicing e.g notification No. (Central Tax) 68/2019 Dt. 13-12-2019 , 69/2019 Dt. 13-12-2019, 70/2019 Dt. 13-12-2019, 60/2020 Dt. 30-7-2020, 61/2020 Dt. 30-7-2020

## **E-Invoice Flow as per GSTN website:-**



Source: [einvoice1.gst.gov.in](http://einvoice1.gst.gov.in) portal



Further there are multiple modes are made available to the seller for uploading invoices to IRP like API based, Mobile app based, Offline tool based & GSP based modes.

E-Invoice schema has been introduced which is a JSON formatted (JavaScript Object Notation) machine readable, machine to machine language, there are total 133 fields out of which 45 are mandatory 88 are optional.

IRP will also generate a QR code containing the unique IRN along with key particulars like

- GSTIN of supplier
- GSTIN of Recipient
- Invoice number as given by Supplier
- Date of generation of invoice
- Invoice value (taxable value and gross tax)
- Number of line items
- HSN Code of main item (the line item having highest taxable value)
- Unique Invoice Reference Number

Android based QR code will enable Offline verification of invoices using Mobile App

Based on above we can say that the way business is dealing with other business entity is going to see a big structural changes after implementation of E-Invoicing, it will impact positive changes to whole procure to pay & order to cash business cycle as buyer will get to know that seller has raised the invoices and with the sophisticated used of technology there will be faster reconciliation activity, GST credits availment, working capital cycle improvement & there will be reduction in the processing costs & overall reduction in disputes among the transacting parties.

As shared in Bhagwat Gita by Lord Krishna who motivates Arjuna that **“Changes are only Constant”** so take the above changes under GST regime positively as changes are the only constant for improvement, Let's see & be part of that **“best is Yet to come for Indian Economy post implementation of E-Invoicing”**

### ***Bibliography***

1. *Press release E-Invoicing announcement made by CBIC*
2. *<https://einvoice1-trial.nic.in/>*
3. *CBIC website & relevant notifications*
4. *Bhagwat Gita*



# ROYALTY – WE KNOW WHAT IT IS, BUT NOT WHAT IT MAY BE

**Mohd. Saim Aziz**  
Tax Consultant

This article is an endeavour to make its readers understand that ‘**Royalty on minerals**’ does not attract GST in all cases. There has been various articles/resources/AAR doing rounds on the internet that make these ‘Royalty’ transactions taxable, based on which the tax payer takes a decision to pay tax under Reverse Charge Mechanism (‘RCM’).

Apparently, what they fail to consider is the facts of the case that is prevalent in their company with that of the facts that has been stated in the article/resources/ AAR. So, it would be correct to say, “Misery acquaints a man with strange bedfellows” – William Shakespeare [Tempest]

Now, before diving into the topic and putting forward my views on these transactions, we take two scenarios:

**Scenario 1:** M/s XYZ Limited is in the business of mining and exploring minerals and supplies the same to the prospective customers and pays royalty at specified rates to the respective State mines departments.

**Scenario 2:** M/s XYZ Limited is in the business of construction of roads and bridges. It employs various contractors to construct road and bridges at an agreed value. The contractors use the minerals in the execution of the project that has been awarded and raises the RA Bills upon completion of each milestone.

When the RA Bill is presented for payment, M/s XYZ Limited deducts 3% (say) from the bill in the name of royalty due to non-presentation of e-challan by the contractor and deposits the same to the State mines department, as per instruction received from the State mines department so as to prevent revenue leakage of the State ex-chequer since the contractor has not paid royalty on the minerals that has been used in the execution of the project.

In the above two scenarios, it would be quite evident as to what is the subtle difference between the two. In both the scenarios, Royalty is being paid but the payer is different.

**Scenario 1:** Payer – The person who is into the business of mining and actually uses the minerals – The actual user

**Scenario 2:** Payer – The entity that has awarded the contract to the contractor – Not an actual user

So, RCM is applicable in both the scenario. But, its payer would be different:

**Scenario 1:** Payer – The person who is into the business of mining and actually uses the minerals – The actual service recipient.

**Scenario 2:** Payer – The contractor who has actually procured and used the minerals – The actual service recipient.

How did we reach to this conclusion? For ease of understanding, we take the rules of one State Government say, The State of Bihar and analyse what it says about royalty and its payment.

As per sub-rule (1) of Rule 57 of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 read as:

“When a **Mineral Concession** is granted:-

(a) .....

(b) **Royalty shall be charged** at the rates specified in Schedule III (A); and

(c) .....

And, as per sub-rule (4) of Rule 57 of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 read as:

**‘Notwithstanding anything contained in any instrument of lease the Mineral Concession Holder shall pay rent/royalty** in respect of any minor mineral own, extracted and removed at the rate specified from time to time in Schedule II and III(A).’

Now as per clause (xvii) of Rule 2 of the rules ‘**Mineral Concession Holder/ Settlee/Lessee**’ is defined to “**means a person**(as defined in these rules) **holding a valid Mineral Concession** for quarrying/raising stone, sand and other minor minerals from the settled/ lease hold area and would also include the plural there of”

Now as per clause (xvii) of Rule 2 of the rules ‘**Mineral Concession**’ is defined as “**means** a mining lease or settlement in respect of minor minerals and includes quarrying permits, permitting the mining of minor mineral(s) in accordance with the provisions of these rules”

If we read the above provision as mentioned in the rules as laid down above, it could be construed that the **person who is liable to pay the royalty** is the **mineral concession holder**.

#### **On liability to pay tax in GST:**

As per GST law, any service provided by the State Government to any business entity is liable to reverse charge mechanism (Sl. No. 5 of Notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017).

Herein, the definition of recipient of service is to be noted. As per clause (93) of section 2 of the CGST Act, 2017 recipient of service means –

- a) Where a **consideration is payable** for the supply of goods or services or both, the **person who is liable** to pay that consideration.

Herein, the person who is liable to pay the consideration (i.e Royalty) is the mineral concession holder and the liability to pay tax under RCM is casted upon that person as that person/ contractor is engaged in the activity of the mining and procurement of minerals.

In Scenario 2, the payment of 3% is also a payment of royalty by the contractor to the state mines department and accordingly RCM shall be applicable in the hands of the contractor and not in the hands of the entity i.e M/s XYZ Limited

#### **Conclusion:**

Thus, in scenario 2, the mines department has shifted the liability to pay Royalty on the entity due to non-presentation of e-challan by the contractor. It might be an argument that since, since no e-challan is presented the responsibility to pay royalty is now on M/s XYZ and thus RCM shall be applicable in such cases.

This argument may not be valid as the rule already provides for penal action on person engaged in illegal mining of minerals (Rule 56), and in my humble view this measure is to only safeguard the revenue of the Mines Department. This in no case makes the entity '**liable**' to pay consideration, as the entity is not a mineral concession holder as defined above, to pay royalty on the same and be subjected to RCM.

So it is advised to look into the contract what they are supplying, and mere debit of profit and loss account with 'Royalty' would not make it exigible to RCM.

**Disclaimer:**

This 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.



# UNDERSTANDING THE TRANSFER PRICING STUDY

**CMA Virendra Chaturvedi**  
Practicing Cost Accountant

Since 1991, with the liberalization of trade and foreign exchange policy India has started integrating its economy with global economy. With the growing MNEs interested in India, it has become imperative for tax authorities in India to take cognizance of transfer pricing issues. The Transfer pricing Regulations (TPR) were introduced in India vide introduction of new sections 92A to 92F in the Income Tax Act ('Act') and relevant rules 10A to 10E in the Income Tax Rules, 1962.

All income acquired by the company by means of any international transaction shall be calculated at arm's length price. There are various methods like resale price method, cost plus method, comparable uncontrolled price method, and transactional net margin method to calculate the arm's length price depending on the nature and type of the transaction, the nature of the group or the association involved, or any other features of the transactions involved.

## Transfer Pricing Study

A transfer pricing study examines the pricing of transactions between related two or more associates. By applying and documenting various test methods, it is determined whether the transactions are conducted under market conditions and survive the scrutiny of tax authorities. A study of transfer pricing shall justify how a particular method is selected for enterprises and transactions being reviewed. We can understand the concept of Transfer pricing Study with following Example:

Suppose Mr X who's son just have qualified CA, looking for Brides for his son came to you and ask to search daughter in law for his son, Before you search for bride, Very Firstly you will know about Family of Mr X or Say Grooms family, what Grooms father and mother do, in which part of country do they live, what is their income, what is their profession from where actually they belong, how many relatives are there in their family etc, once you know about Grooms family, you will try to know about groom like what is his profession of Groom, how much he earn, what is his expectation about Bride etc. Once you aware about Groom and Groom Family, you will check with internal relatives or nearby areas first to find any Girl (Bride) comparable for Boy and if internal comparable is not there than you will go to matrimonial site and other external sources to find match for groom.

There are very few chances to find exact comparable as some features of Bride will not be liked by Boy itself, some factors will not be liked by Boy's parents or boy's Grand parents so if you go for exact match there are very little chances to find exact match, so one has to compromise on some features, and in this way you will be able to find most Appropriate match.

Same fundamentals are there in case of transfer pricing study. In case of Transfer pricing, MNE client come to you and ask you to find the most appropriate comparable for its product and make Transfer Pricing Study. In Transfer pricing, term "Match making exercise" is called "FAR Analysis" and term "Bride family" you searched for is called "Tested Party".

## FAR Analysis

In FAR Analysis we try to understand FUNCTION, ASSETS AND RISK borne by our customer first, once we understand FAR of our customer, we find out the tested party and method of arms Length Price. There are three part of FAR Analysis:

1. Functional Analysis

2. Asset Analysis
3. Risk Analysis

### **FUNCTIONAL ANALYSIS**

In functional Analysis we make categorization and sub categorization of entity function it do, once we understand the business/ function we can know lot about the value chain of organization. Whether entity is Manufacturer, Distributor or Service Provider , If it is a **manufacturer** – whether it is full fledge manufacturer, contract manufacturer, and licensed manufacture.....etc. If it is a **distributor** – whether it is a dealer, sub dealer, Retailer, limited risk distributor, local /state/ National level / International level Distributor.... etc

Once you complete such type of categorization / sub categorization, one can understand the value chain / supply chain of functions performed

### **ASSET ANALYSIS**

In Asset Analysis it is evaluated about Assets Deployed by MNE for international Transaction or Specified domestic Transaction , If Entity has small set-up or large set-up, Once you aware about assets deployed and size of setup of Entity , one can search comparable or say tested party easily , one can't compare small set-up entity with large set-up entity . Typically Business Assets (List is illustrative not exhaustive) an entity employ are

Tangible	Intangible
Building	Goodwill
Plant/ Machinery	Patents / Trademark
Office Equipment	Customer List
Vehicles	License/ Copyright
Receivable	
Inventory	
Working Capital	

### **RISK ANALYSIS / RISK ASSESSMENT**

“Higher the risk – Higher the profit”, no one understand this quote better than study of transfer pricing. Risk analysis is the integral part of Transfer pricing, An enterprise accept and manage risk with a view to generate economic benefits/ profits thus assuring its continuity , The assumption of higher risk would arguably be compensated by a greater return expectations, actual return depend on the actual realization of risk. While a company (MNE Group) is compared to other independent entity, it is important that both companies are at the same level of risk or such risks are adjusted to eliminate any material differences else the return on both the transactions would be incomparable.

So we can find the tested party who assume the same level of risk, if risk assumed does not match or we don't find entity assuming same level of risk we have to make adjustments because Profit of higher risk entity can't be compared with profit of lower risk entity . Following are some typical risk assumed by an entity:

- I. Market Risk
- II. Environment Risk/ Business Risk
- III. Technology risk
- IV. Credit Risk
- V. Foreign Exchange Risk
- VI. Warranty/ performance risk
- VII. Manpower risk
- VIII. Capacity utilization risk

During Risk Analysis one also check if Entity itself is capable of taking such risk or anybody else is taking risk on its behalf, whether Entity is the self authority for own decision making or anybody else is taking its decision .

### **Documentation of FAR Analysis**

Whatever documents, financials, information you have reviewed to do FAR Analysis, whatever analysis or Working you did to reach conclusion during FAR Analysis , all working you have done to arrive at ALP which will be the most important part of Transfer Pricing study, all such documentation and information should be kept properly and will be important part of Transfer pricing study. All these document and information will be submitted to Transfer Pricing Offer while Income tax assessment,

### **What is Tested Party**

A Participants in an international transaction with whose reference the international transaction is tested, Selection of tested party influences the most appropriate method to be selected .Entity performing the least complex function and not owning any valuable intangible is normally selected as the tested party. Normally least complex entity selected as the tested party as testing of margin of such entity would require least adjustment. Selection of comparable is based on economic characterization of the tested party

In case of Resale Price and Cost Price Method we compare Gross Margin with third Party and in Profit Spilt Method and Transaction Net Margin Method we compare net Margin to reach Arms length Price. For Comparing profit, it is very necessary that party with which we are comparing must be of similar Nature. If It is not of similar nature, comparison of Profit is not feasible. For Example if your Multinational Entity Client has turnover of INR 100 cr and you are comparing its Profit with Entity having turnover of INR 1000 Cr , It is not feasible , if you will compare it you have to make so many assumptions /Adjustments to reach on conclusion , Similarly if your MNE Client is full fledge Manufacturer and seller and you are comparing with Entity who is a Distributer , it will not be feasible as Functional Analysis is not possible with Tested party at all and in such case Profit comparison will become so complex , it will become too difficult to justify your assumptions at time of Assessment in front of Transfer Pricing officer and you will not be able to justify your arms length price. Hence we should select Tested party in such way that

- It should be least complex
- It is possible to have reliable comparable
- It can justify Profit in front of Transfer Pricing officer
- Function ,Assets and Risk should be of similar Nature and have least complex FAR analysis

You can avoid litigations if you make simplified comparable. The more complex comparable, the more chances are there to go in to litigation.

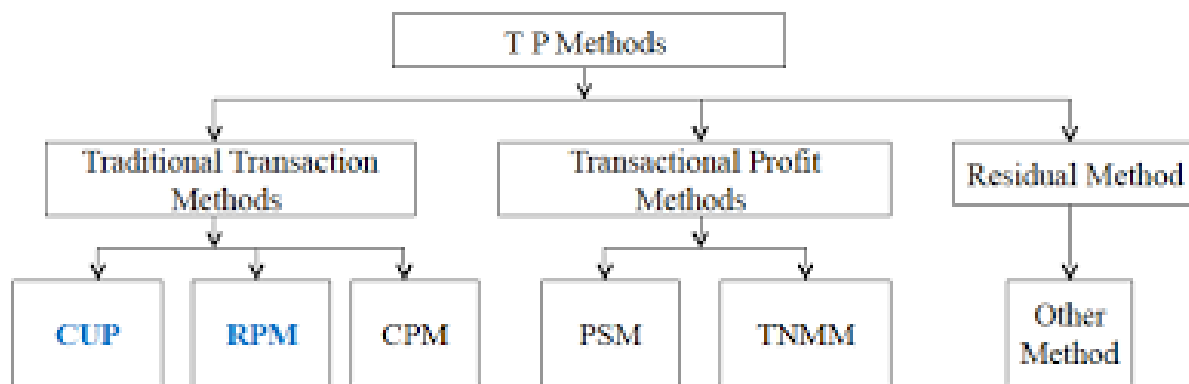
### **Method of Transfer Pricing** u/s Section 92C/10B/AB

The Organization for Economic Co-operation and Development (OECD) outlines five main transfer pricing methods that MNEs and tax administrations can use. The Indian TP Regulations require computation of ALP based on the prescribed TP methods.

OECD said there are case where earlier five methods are not suitable to justify the transaction, in that case assesses should be allowed to use other method through which it can justify its arm's length price suppose any new brand of USA come to India for which no comparable is there, in such case Entity can use any other method to justify its arms length price. In TP Study it is compulsory to mention the justification / reason of acceptance or rejection of method.

1. Comparable Uncontrolled Price Method ( CUP Method)
2. Resale Price Method
3. Cost Plus Method

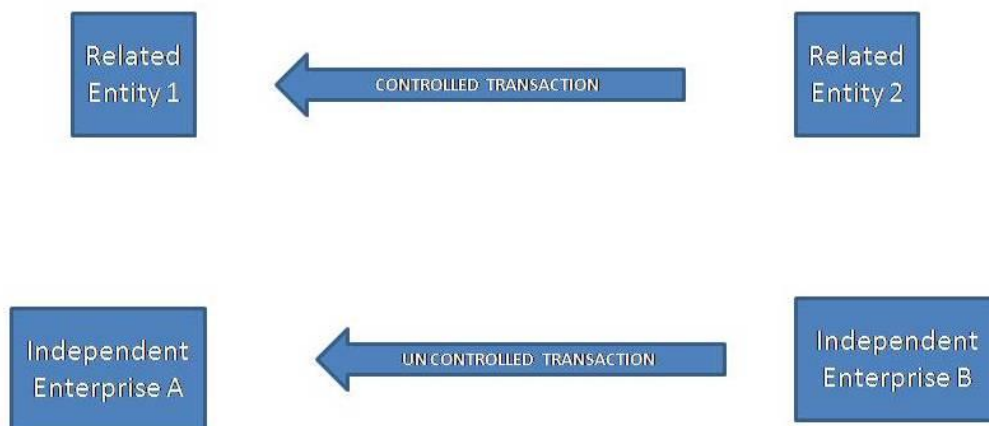
4. Profit Split Method
5. Transaction Net Margin Method



**CUP Method** 10B (1) (A) / OECD TP Guideline para 2.14.

CUP Method compare the two to reach on Arms Length Prices:

- The price charged for property or services Transferred into a controlled Transaction  
**To**
- The prices charged for property or services transferred in a comparable uncontrolled transaction in comparable circumstances



### **Types of CUP**

CUP can be either 'Internal' or 'External'

**Internal CUP:** – Internal CUP is available when the tax payer enters into a similar transaction with unrelated parties, as is done with related party.

**External CUP:** – External CUP is available if a transaction between two independent enterprises takes place under comparable conditions involving comparable goods or services. As per OECD TP guidelines, Internal comparable is preferred over External comparable.

### **CUP Method is most reliable method**

In other method we start to drive price but in CUP Method, price is already there we just have to compare it . In case where CUP Method can be applied with other transfer pricing methods, CUP Method is preferable , but while using CUP Method , first condition which should be fulfilled is “Product and



market conditions should be of similar nature, if product and market condition are not similar than it will impact price of product and price will not be comparable. Example of some attributes are:

- I. Branded Vs Generic Product
- II. Geographical difference ( Price in Delhi may differ than price in Mumbai)
- III. Warranty product vs. non Warranty product
- IV. After sales support and duration of after sales support
- V. Quantity ( Buying one laptop Vs buying 100 laptops)
- VI. FOB Value Vs CIF Value
- VII. Credit Terms ( One month Credit Vs 3 months Credit)

If there are differences in similarities , Market condition or any other terms and conditions than one should check whether reasonable adjustment can be done to uncontrolled prices , if yes than use CUP method if attributes are not similar and reasonable adjustment can't be done that one should use any other method. Practical examples where CUP Method can be used are

- Interest rate charged on group loan
- Royalties
- Sale of listed securities,
- Back office services where hourly rate could be compared

### **Resale Price Method**

As it appears from name, in this method one compare its prices with price at which Associated Enterprise resale the product to third party and find out the margin getting from this sale to third party and that margin is reduced from resale price between two or more associated enterprise to reach on Arms length prices

In Resale price method, one compare gross profit margin, For comparing gross profit margin it is necessary to have same function and same scale , similar assets and Risk of Tested party. Here it is the point to note that functional comparability is more important than product comparability in this method. If you compare the GP Margin of Distributor with Manufacturer than it is not comparable at all. Material differences which will/can affect GP Margin are:

- a. Sales volume
- b. Lever of Risk undertaken
- c. Contractual Terms
- d. Marketing / Advertising Services
- e. Accounting Practices
- f. Inventory level

We can understand it with following Example;

Sale Price to NON AE	<b>100</b>	Sale Price to NON AE	120
Purchase from AE	80	Purchase from NON AE	85
GP in controlled Transaction	20	GP in controlled Transaction	35
Percentage	20%	Percentage	<b>29.16%</b>

### **COMPUTATION OF ARMS LEGNTH PRICE**

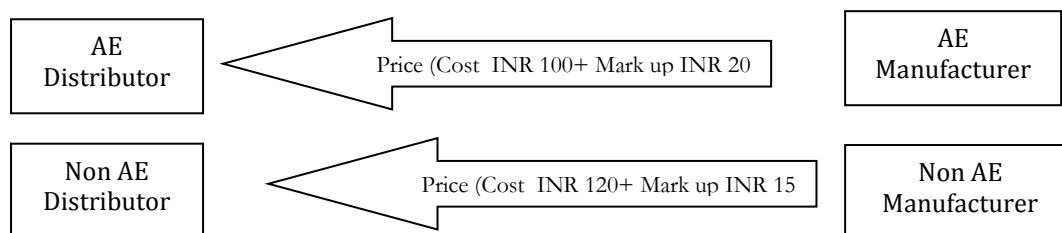
Sale Price to NON AE	100
Arms length GP Margian	29.16
Arms length Purchase Price	70.84

Note: The amount that remains after the margin has been subtracted and fair adjustments have been made (e.g. expenses like customs duty have been taken into account) is the arm's length price for the original transaction between related entities. If a distributor offers a warranty and sells the product at a higher price to account for that warranty, then they will make a higher gross profit margin than a distributor that does not offer a warranty and sells the product at a lower price. For the two transactions to be comparable, the taxpayer must make accurate adjustments to the transaction cost to account for the margin discrepancy

**APPLICABILITY:** Resale price method is the Most Appropriate Method for distributor to benchmark international transaction under trading activity involving purchase of goods and reselling the same without adding value to such goods. The tribunal also held that comparable set should be to such comparable companies for which GP Margin can be computed without allocation / truncations

**COST PLUS METHOD:**

As it appears from name, In this method organization margin charges by third party and add that margin to cost charges to Associated Enterprises to reach Arm's length prices



In this case Arms Length Price will be 100+15 i.e. 115

CP Method often used where semi-finished goods are transacted between AEs or when related entities have long term arrangement for buy and supply. The supplier's costs are added to a markup for the product or service so that the supplier makes an appropriate profit that takes into account the functions they performed and the current conditions of the market. The combined price is the arm's length price for the transaction.

**TRANSACTION NET MARGIN METHOD:**

TNMM Method assess the Net Profit against an appropriate base such as sale or assets and use the same net profit indicator for comparable transaction for Example – An independent enterprise sale IT Equipment with technical support , Price of technical support is included in price of IT Equipment which can't be separated , An AE sell the same product but does not offer support so the GP Margin is not comparable . It this case AE will assess net margin to sale of that Independent enterprise and find the transfer price/ Arms length price

This method is often used for low risk routine like services such as manufacturer and provision of Administrative support services, we can understand it with one more example :

Company X provide administrative support service such as invoicing and book keeping , company Y which is AE of company X Ask to provide invoicing services, Company X know its cost of one hour of services Rs 125000 for 1000 Hours, but company X wondered what transfer price is should charge to Company Y . There are many companies who provide such services including company B Who provide exact same services and same business model so company X look at Enterprise B to determine a good arms length price and find the cost plus margin of company B.

**Profit & Loss of Enterprises B**

Revenue		500000
Labour cost	225000	

Office Exp	100000	
Selling & Advt Exp	75000	400000
EBITA ( Net Profit to Sale)		100000
Net Profit Percentage		25%

**Computation of Arms Length Price**

Cost of Company X	125000
Net Profit Percentage @25%	31250
Cost	156250

**So Arms Length Price will be 156.250 per hour**

**Comparison of three methods**

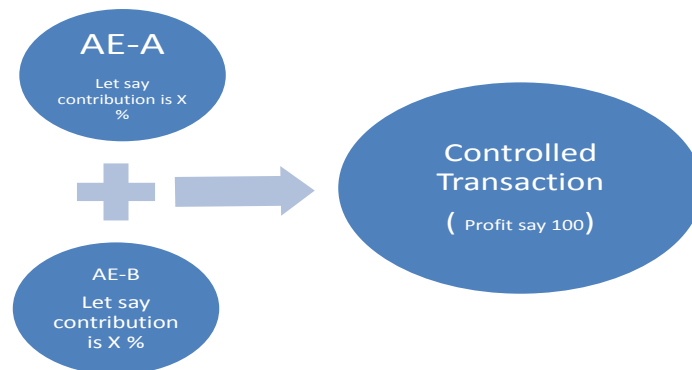
Particular	RPM	CPM	TNMM
Profit Level	GP/Sale	GP/Cost	Operating Margin/ Sale
Tested Party	Purchase from AE , Resale to Non AE without significant value addition	Supply to AE done not carry routine tangible	Least complex
Comparison at	Gross level	Gross Level	Net Level

If Tangible are comparable than you can go for TNMM Method but if comparable is too complex than TNMM is not advisable.

**PROFIT SPILT METHOD (PSM)**

In this method we check how independent enterprise split this profit in uncontrolled transaction and on the basis of that we reach of arms length price. There are two approach that can be taken for splitting profit :

- o Contribution Analysis ; Combined profit are divided based on relative value of function performed , asset used or Risk Assumed
- o Residual Analysis ; Firstly each entity allocate arms length computation and residual profit divided based on analysis of Facts and circumstances



**Profit of AE-B : (100\* Y%)**

**Profit of AE-A : (100\* X%)**

## **Use of Multiple Year Data**

Originally, the TP Regulations did not provide for using data of years other than the year in which transactions were undertaken (except in certain specific cases). The CBDT has amended the Rules and now permitted use of 'multiple year data' while performing a benchmarking analysis. If certain conditions are satisfied, the taxpayer shall be permitted to use comparable data of 2 years preceding the relevant fiscal year along with that of the relevant fiscal "current" year.

These are the five transfer pricing methods, and the one favored by the OECD. The option that an organization chooses to use depends on the particular situation. It should take into account the amount of relevant comparables data that is available, the level of comparability of the uncontrolled and controlled transactions in question, and whether a method is appropriate for the nature of a particular transaction (determined through a functional analysis). The OECD states that it is not necessary to use more than one transfer pricing method when determining the arm's length price for a particular transaction.

# RECENT UPDATES IN DIRECT AND INDIRECT TAX

Team TRD

## Direct Tax

**CBDT has issued Press Release for extension of due dates for filing Income-tax Returns and Tax Audit Reports under the Income-tax Act, 1961 for AY 2020-21**

**For more details, please follow-**

[https://www.incometaxindiaefiling.gov.in/eFiling/Portal/StaticPDF\\_News/PressRelease\\_Extension\\_of\\_due\\_date\\_of\\_furnishing\\_of\\_IITR\\_and\\_Audit\\_Reports\\_24\\_10\\_20.pdf](https://www.incometaxindiaefiling.gov.in/eFiling/Portal/StaticPDF_News/PressRelease_Extension_of_due_date_of_furnishing_of_IITR_and_Audit_Reports_24_10_20.pdf)

**CBDT has issued Clarification in respect of the Direct Tax Vivad se Vishwas Act, 2020**

**For more details, please follow-**

[https://www.incometaxindiaefiling.gov.in/eFiling/Portal/StaticPDF\\_News/Circular\\_18\\_2020.pdf](https://www.incometaxindiaefiling.gov.in/eFiling/Portal/StaticPDF_News/Circular_18_2020.pdf)

**Income-tax Exemption for payment of deemed LTC fare for non-Central Government employees**

**For more details, please follow-**

<https://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/870/Press-Release-IT-Exemption-for-payment-of-deemed-LTC-dated-29-10-2020.pdf>

**Payment Date Extended for Vivad se Vishwas Scheme without additional amount till March 31, 2021.**

**For more details , please follow-**

[https://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/866/PressRelease\\_Payment\\_Date\\_Extended\\_for\\_Vivad\\_se\\_Vishwas\\_Scheme\\_28\\_10\\_20.pdf](https://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/866/PressRelease_Payment_Date_Extended_for_Vivad_se_Vishwas_Scheme_28_10_20.pdf)

## Indirect Tax

**CBIC has issued Guidebook for 'Faceless Assessment' under Custom.**

**For more details, please follow-**

[https://www.cbic.gov.in/resources//htdocs-cbec/deptt\\_offcr/Guidebook\\_Faceless\\_Assessment\\_29Oct2020.pdf;jsessionid=5F6A725D46A74003BE2D63B8F4E5598B](https://www.cbic.gov.in/resources//htdocs-cbec/deptt_offcr/Guidebook_Faceless_Assessment_29Oct2020.pdf;jsessionid=5F6A725D46A74003BE2D63B8F4E5598B)

**CBIC has extended due dates for GST Annual Return (GSTR-9) and Reconciliation Statement (GSTR-9C) for 2018-19 till 31st December 2020. Previously due date was 31st October 2020**

**For more details, please follow-** <https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-80-central-tax-english-2020.pdf>

**Withdrawal of EVC facility extended to companies for filing GSTR1 and GSTR3B.**

**For more details, please follow-** <https://www.gst.gov.in/newsandupdates/read/408>

**Filing NIL Form CMP-08 statement through SMS on GST Portal**

**For more details, please follow-** <https://www.gst.gov.in/newsandupdates/read/409>

# TAX UPDATES, NOTIFICATIONS AND CIRCULARS

## INDIRECT TAX

### GST NOTIFICATIONS & CIRCULARS

#### Central Tax

##### Notification No. 80/2020 – Central Tax Dated – 28<sup>th</sup> October, 2020

##### Seeks to amend notification no. 41/2020-Central Tax dt. 05.05.2020 to extend due date of GST Annual Return and Audit under Section 44 till 31.12.2020

On the recommendations of the Council, Commissioner has made the amendment in the notification No. 41/2020 - Central Tax which was issued on 5th May, 2020.

In this notification, due date of GSTR 9, 9A and 9C under Section 44 has been extended till 31st December, 2020.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-80-central-tax-english-2020.pdf>

### CUSTOMS NOTIFICATIONS & CIRCULARS

#### Tariff Notification

##### Notification No. 37/2020 - Customs Dated – 20<sup>th</sup> October, 2020

##### Seeks to further amend notification no. 152/2009 dated 31.12.2009, regarding the rate of duty of customs on imports of "Polybutadiene Rubber" originating in Korea RP and imported under the India-Korea Comprehensive Economic Partnership Agreement

Central Government has made the amendments in No.152/2009-Customs which was issued on 31st December, 2009. In this notification, against serial number 342A, for the entry in column (3) of Table, the entries "Polybutadiene Rubber excluding titanium and lithium grades", shall be substituted and after serial number 342A and the entries relating thereto, the following serial number and entries shall be inserted:

(1)	(2)	(3)	(4)
342B	400220	All goods other than those mentioned against serial number 342A	0.00

In the second proviso, in clause (b), for the word, figures and letter "number 342A", the word, figures and letter "numbers 342A and 342B", shall be substituted.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-tarr2020/cs37-2020.pdf>

**Notification No. 38/2020 - Customs**

**Dated – 21<sup>st</sup>October, 2020**

**Notification regarding exemption of duties of Customs against scrips issued under the RoSL scheme for apparel and made-ups sectors.**

Central Government has exempted goods when imported into India against a duty credit scrip issued by the Regional Authority under the Scheme for Rebate of State Levies on export of garments and made-ups in accordance with paragraph 4.01(d) of the Foreign Trade Policy read with paragraphs 4.97 and 4.98 of the Handbook of Procedures from the whole of the duty of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the whole of additional duty leviable under sub sections (1), (3) and (5) of section 3 of the Customs Tariff Act.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-tarr2020/cs38-2020.pdf>

**Notification No. 39/2020 - Customs**

**Dated – 28<sup>th</sup>October, 2020**

**Seeks to further amend notification No. 50/2017-Customs dated 30.06.2017 so as to extend the concessional Basic Customs Duty on Lentils (Mosur) till 31st December 2020**

Central Government has amended in the notification No. 50/2017- Customs, was issued on 30th June, 2017. In this notification, against item (ii) of clause (e) of in the first proviso for the figures, letters and words “31st day of October, 2020.”, the figures, letters and words “31st day of December, 2020.” shall be substituted.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-tarr2020/cs39-2020.pdf>

**Notification No. 40/2020 - Customs**

**Dated – 28<sup>th</sup>October, 2020**

**Seeks to prescribe concessional Basic customs duty rate on potato imports with the prescribed quota (TRQ) till the 31st January, 2021**

Central Government has exempted the goods of the description specified in column (3) of the Table and falling within the sub-heading or tariff item of the First Schedule to the said Customs Tariff Act, 1975, when imported into India, from so much of the duty of customs leviable under the First Schedule as is in excess of the amount calculated at the rate specified in the corresponding entry, subject to any of the conditions which is mentioned in the corresponding entry in column (6) of the below Table:

S.No.	Sub- heading or tariff item	Description of goods	Tariff rate quota quantity	In-quota tariff rate	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
1	0701	Potatoes	10,00,000 MT	10%	1

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-tarr2020/cs40-2020.pdf>

**Non-Tariff Notification**

**Notification No. 101/2020-Customs (NT)**

**Dated – 16<sup>th</sup> October, 2020**

**Notification in relation to the road connecting Jaigaon Bazar in India and Phuentsholing in Bhutan and Asian Highway 48 connecting Torsha tea garden in India and Ahllay in Bhutan by amendment of Principal Notification No. 63/1994-Customs dated 21st November, 1994**

CBIC has made the following further amendments in the notification No. 63/1994-Customs dated 21st November, 1994. In this notification, against serial number 3 relating to land frontier of Bhutan, for column (4) corresponding to item (4) in column (3) of the table, the following entry shall be substituted.

- a) The road connecting Jaigaon Bazar in India and Phuentsholing in Bhutan; and
- b) The Asian Highway 48 connecting Torsha tea garden in India and Ahllay in Bhutan.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-nt2020/csnt101-2020.pdf>

## **Anti-Dumping Duty**

**Notification No. 31/2020- Custom (ADD)**  
**Dated – 16<sup>th</sup> October, 2020**

**Seeks to amend notification No. 49/2015-Customs (ADD), dated 21st October, 2015 to extend the levy of ADD on imports of “Front Axle Beam and Steering Knuckles meant for heavy and medium commercial vehicles” originating in or exported from China PR, for a period upto and inclusive of the 30th November, 2020**

In matter of continuation of anti-dumping duty on imports of Front Axle Beam and Steering Knuckles meant for heavy and medium commercial vehicles originating in, or exported from, the People's Republic of China, Government CBIC has issued a notification.

In this notification, after paragraph 2 and before the Explanation, the following paragraph shall be inserted:

*“3. Notwithstanding anything contained in paragraph 2, the anti-dumping duty imposed under this notification shall remain in force up to and inclusive of the 30<sup>th</sup> November, 2020, unless revoked, superseded or amended earlier.”*

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-add2020/csadd31-2020.pdf>

**Notification No. 32/2020- Custom (ADD)**  
**Dated – 19<sup>th</sup> October, 2020**

**Seeks to amend notification No. 51/2015-Customs (ADD) dated 21st October, 2015 to extend the levy of ADD on All Fully Drawn or Fully Oriented Yarn/Spin Draw Yarn/Flat Yarn of Polyester imported from China and Thailand till 30th November, 2020**

In the matter of continuation of anti-dumping duty on All Fully Drawn or Fully Oriented Yarn/Spin Draw Yarn/Flat Yarn of Polyester originating in, or exported from People's Republic of China and Thailand, Central Government has made an amendment in the notification No. 51/2015-Customs (ADD) which was issued on 21st October, 2015. In this notification, after paragraph 2, the following paragraph shall be inserted:

*“3. Notwithstanding anything contained hereinabove, this notification shall remain in force up to and inclusive of the 30<sup>th</sup> day of November, 2020.”*

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-add2020/csadd32-2020.pdf>



**Notification No. 33/2020- Custom (ADD)**

**Dated – 27<sup>th</sup> October, 2020**

**Seeks to further amend notification No. 6/2019-Customs (ADD) dated 28th January, 2019 to extend the levy of Anti-Dumping duty on Fluoroelastomers (FKM) originating in or exported from China PR up to and inclusive of 27th November, 2020.**

Government has made the amendment and extends the levy of Anti-Dumping duty on Fluoroelastomers (FKM) originating in or exported from China PR up to and inclusive of 27th November, 2020.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-add2020/csadd33-2020.pdf>

**Circulars - Customs**

**Circular No. 47/2020-Customs**

**Dated – 20<sup>th</sup> October, 2020**

**Contactless delivery of international courier consignments**

In the view to maintain the required social distancing considering the COVID-19 pandemic, it was needed for contactless delivery and also considering that the OTP based validation gives secure confirmation of delivery to the intended consignee through his registered mobile number, which also has the necessary KYC, Board, has decided to allow the delivery of international courier shipments, based on the OTP validation.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2020/Circular-No-47-2020.pdf>

**Circular No. 48/2020-Customs**

**Dated – 20<sup>th</sup> October, 2020**

**Manufacturing and other operations undertaken in bonded warehouses under Section 65 of the Customs Act, 1962**

Board has clarified that the objective of Section 65 is to enable manufacture and other operations in customs bonded warehouses. For this purpose, the units should be able to procure required raw materials, consumables, capital goods etc., imported or procured from domestic market. There are no restrictions imposed on sourcing of goods by units operating under Section 65. Moreover, the units are GST registrants, which are also allowed to procure goods from SEZ/FTWZs. In view of the foregoing, it is clarified that a Section 65 unit may source capital goods or inputs from a SEZ/FTWZ, following the applicable procedures.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2020/Circular-No-48-2020.pdf>

## **DIRECT TAX**

### **Notifications & Circulars**

**Notification No. 83/2020**  
**Dated – 19<sup>th</sup> October, 2020**

#### **Variation between Arm's length price and International transaction or specified domestic transaction**

Central Government has notified that where the variation between the arm's length price determined under section 92C of the said Act and the price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed one per cent. of the latter in respect of wholesale trading and three per cent. of the latter in all other cases, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price for assessment year 2020-2021.

Explanation - For the purposes of this notification, "wholesale trading" means an international transaction or specified domestic transaction of trading in goods, which fulfils the following conditions.

For more details, please follow:

[https://www.incometaxindia.gov.in/communications/notification/notification\\_83\\_2020.pdf](https://www.incometaxindia.gov.in/communications/notification/notification_83_2020.pdf)

**Notification No. 84/2020**  
**Dated – 22<sup>nd</sup> October, 2020**

#### **Income-tax (23rd Amendment) Rules, 2020**

CBDT amended in sub-rule (2) of rule 67 of the Income-tax Rules, 1962. These rules may be called the Income-tax (23rd Amendment) Rules, 2020 and it shall come into force from the 1st April, 2021.

For more details, please follow:

[https://www.incometaxindia.gov.in/communications/notification/notification\\_84\\_2020.pdf](https://www.incometaxindia.gov.in/communications/notification/notification_84_2020.pdf)

**Notification No. 85/2020**  
**Dated – 27<sup>th</sup> October, 2020**

#### **Direct Tax Vivad se Vishwas Act, 2020 (3 of 2020)**

Central Government has issued the following notification:

- a) As per provisions of section 4 of this Act in respect of tax arrear, declaration shall be filed to the designated authority by the declarant on or before 31st December, 2020.
- b) 31st March, 2021 shall be the date on or before which the amount payable under this Act shall be paid as per third column of the Table to section 3 of Act; and
- c) 1st April, 2021 shall be the date on or after which the amount payable under this Act shall be paid as per fourth column of the Table to section 3 of the said Act.

For more details, please follow:

[https://www.incometaxindia.gov.in/communications/notification/notification\\_85\\_2020.pdf](https://www.incometaxindia.gov.in/communications/notification/notification_85_2020.pdf)

**Notification No. 86/2020**  
**Dated – 28<sup>th</sup> October, 2020**

#### **Designated as a Special Court to Court of Munsiff**

In consultation With the Chief Justice of the Gauhati High Court, Central Government has designated as a Special Court to Court of Munsiff No. 3 - cum-Judicial Magistrate, 1st Class, Kamrup (M), Guwahati as the, Nagaland, Mizoram and Arunachal Pradesh.

For more details, please follow:

[https://www.incometaxindia.gov.in/communications/notification/notification\\_86\\_2020.pdf](https://www.incometaxindia.gov.in/communications/notification/notification_86_2020.pdf)

**Notification No. 87/2020**

**Dated – 28<sup>th</sup>October, 2020**

**Equalisation levy Rules, 2016**

Central Government has made the following rules to amend the Equalisation levy Rules, 2016

In rule 2 of the Equalisation levy Rules, 2016, after clause (a), the following clause shall be inserted: '(aa) "electronic verification code" means a code generated for the purpose of electronic verification of the person furnishing the statement of specified services as per the data structure and standards laid down by the Principal Director- General of Income-tax (Systems) or Director General of Income-tax (Systems), as the case may be;

In rule 3 of this rules, -

- a) in the heading, the words "for specified services" shall be omitted;
- b) for the words "The amount of consideration, for specified services and", the words, "The amount of consideration" shall be substituted.

For more details, please follow:

[https://www.incometaxindia.gov.in/communications/notification/notification\\_87\\_2020.pdf](https://www.incometaxindia.gov.in/communications/notification/notification_87_2020.pdf)

**Circular No. 18/2020**

**Dated – 28<sup>th</sup> October, 2020**

**Clarifications in respect of the Direct Tax Vivad se Vishwas Act, 2020**

Central Government by notification No. S.O. 3847(E), issued on 27th October, 2020, has extended the date for payment without additional amount under Vivad se Vishwas from 31st December, 2020 to 31st March, 2021. The said notification also notified the last date for filing declaration under Vivad se Vishwas as 31st December, 2020.

For more details, please follow:

[https://www.incometaxindia.gov.in/communications/circular/circular\\_18\\_2020.pdf](https://www.incometaxindia.gov.in/communications/circular/circular_18_2020.pdf)

# PRESS RELEASE

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## DIRECT TAX

**21<sup>st</sup> October, 2020**

### **Income Tax Department carries out searches in Bihar**

The Income Tax Department carried out searches on 19.10.2020 in the cases of two Government contractors having premises in Purnea, Katihar and Saharasa and a silk trader in Bhagalpur in Bihar. The searches were based on intelligence gathered, which indicated that large scale unaccounted cash was being generated and used for various purposes.

The contractors were making bogus claims of labour, transportation and fuel expenses, which were found to be not supported by any document. Further, they have been found to be withdrawing money in cash from the bank accounts of fictitious parties. Incriminating documents including signed blank cheques have been seized during the searches. In some cases, the liabilities were shown to be continuing in the books of accounts for bogus expenses. They were also maintaining undisclosed bank accounts, in which unaccounted cash was being deposited which was used for making fixed deposits, which in turn were pledged to Government departments as security for getting contracts. Large cash withdrawals have also been noticed in these bank accounts. The assesseees could not explain the purpose of these cash withdrawals. The transactions in the undisclosed bank accounts are being examined.

During the search, unaccounted cash, fixed deposits and bullion of more than Rs. 2.40 crore have been seized/restrained. In the case of the silk trader, unaccounted stock has also been detected. Evidences indicating suppression of income of about Rs. 10 crores, alongwith documents showing large unaccounted investments in immovable properties have been found and seized. These properties are in the process of being valued and attached. Further investigations are in progress.

**22<sup>nd</sup> October, 2020**

### **Income Tax Department conducts searches in J&K**

The Income Tax Department carried out search and seizure actions on 22/10/2020 on a group of three assesseees, based in Srinagar. Searches were conducted at 15 residential and business premises, out of which 14 were in Srinagar and 1 in Delhi.

The group is engaged in multiple businesses including real estate, construction and renting of commercial and residential complexes in Srinagar, hotel industry, handicrafts, carpet trading, etc. The search has led to a seizure of unaccounted cash amounting to Rs. 1.82 crore and jewellery/bullion worth Rs. 74.00 lakh. Total undisclosed investments and cash transactions of Rs. 105 crore of the group, have been unearthed during the search.

The group owns a huge mall of 75,000 sq. ft. in Srinagar. However, the corresponding income tax returns have not been filed. The land was acquired under the Jammu and Kashmir State Lands (Vesting of Ownership to the Occupants) Act, 2001 (popularly known as 'RoshniAct') from the State Govt. at a throwaway price. The search has uncovered evidences of unexplained investment of more than Rs. 25.00 crore in this mall.

The group is also constructing 6 residential towers in Srinagar, out of which 2 towers, of around 50 flats each, have already been completed and remaining are under construction, for which also income tax returns have not been filed. Prima-facie, there is an unexplained investment of Rs. 20.00 crore in this project.

The group is also running a school, under a trust which is not registered under the Income - tax Act, 1961. One of the trustees has admitted to having withdrawn substantial cash from the said trust which has been diverted towards other business purposes and personal expenses of the group. Prima-facie, there is unexplained investment of around Rs.10.00 crore in this school building.

The search has lead to recovery of incriminating evidences regarding receipt and payment of cash amounting to more than Rs. 50 crore from various premises. Three lockers have been found, which have been put under restraint. All the properties are being referred for valuation.

An engineering consultant firm, which had valued almost all immovable properties of the assessee group, was also covered under the search. It has been found that this firm has not filed any income tax return, even though more than 100 valuations have been done by it, with consultancy receipts of more than Rs. 4.00 crore, in the last six financial years. This engineering consultant firm had valued the properties of various assessees of the Valley in such a way that they could mortgage those properties to avail maximum loans from J&K Bank. Most of such loans have become NPA as per the bank. Details of such properties have been seized for making further enquiries.

Further investigations are in progress.

**24<sup>th</sup> October, 2020**

### **Extension of due date of furnishing of Income Tax Returns and Audit Reports**

In view of the challenges faced by taxpayers in meeting the statutory and regulatory compliances due to the outbreak of COVID-19, the Government brought the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 ('the Ordinance') on 31st March, 2020 which, inter alia, extended various time limits. The Ordinance has since been replaced by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act.

2. The Government issued a Notification on 24th June, 2020 under the Ordinance which, inter alia, extended the due date for all Income Tax Returns for the FY 2019-20 (AY 2020-21) to 30th November, 2020. Hence, the returns of income which were required to be filed by 31st July, 2020 and 31st October, 2020 are required to be filed by 30th November, 2020. Consequently, the date for furnishing various audit reports including tax audit report under the Income-tax Act, 1961 (the Act) has also been extended to 31st October, 2020.
3. In order to provide more time to taxpayers for furnishing of Income Tax Returns, it has been decided to further extend the due date for furnishing of Income-Tax Returns as under:
  - A. The due date for furnishing of Income Tax Returns for the taxpayers (including their partners) who are required to get their accounts audited [for whom the due date (i.e. before the extension by the said notification) as per the Act is 31st October, 2020] has been extended to 31st January, 2021.
  - B. The due date for furnishing of Income Tax Returns for the taxpayers who are required to furnish report in respect of international/specified domestic transactions [for whom the due date (i.e. before the extension by the said notification) as per the Act is 30th November, 2020] has been extended to 31st January, 2021.
  - C. The due date for furnishing of Income Tax Returns for the other taxpayers [for whom the due date (i.e. before the extension by the said notification) as per the Act was 31st July, 2020] has been extended to 31st December, 2020.
4. Consequently, the date for furnishing of various audit reports under the Act including tax audit report and report in respect of international/specified domestic transaction has also been extended to 31st December, 2020.
5. Further, in order to provide relief to small and middle class taxpayers, the said notification dated 24th June, 2020 had also extended the due date for payment of self-assessment tax for

the taxpayers whose self-assessment tax liability is up to Rs. 1 lakh. Accordingly, the due date for payment of self-assessment tax for the taxpayers who are not required to get their accounts audited was extended from 31st July, 2020 to 30th November, 2020 and for the auditable cases, this due date was extended from 31st October, 2020 to 30th November, 2020.

6. In order to provide relief for the second time to small and middle class taxpayers in the matter of payment of self-assessment tax, the due date for payment of self-assessment tax date is hereby again being extended. Accordingly, the due date for payment of self-assessment tax for taxpayers whose self-assessment tax liability is up to Rs. 1 lakh has been extended to 31st January, 2021 for the taxpayers mentioned in para 3(A) and para 3(B) and to 31st December, 2020 for the taxpayers mentioned in para 3(C).
7. The necessary notification in this regard shall be issued in due course.

**27<sup>th</sup> October, 2020**

### **Income Tax Department conducts searches in Delhi- NCR, Haryana, Punjab, Uttarakhand and Goa**

The Income Tax Department has carried out a search and seizure action on 26.10.2020 on a large network of individuals running the racket of entry operation and generation of huge cash through fake billing. The search operations have been conducted on 42 premises across Delhi- NCR, Haryana, Punjab, Uttarakhand and Goa.

The search has led to seizure of evidences exposing the entire network of the entry operators, intermediaries, cash handlers, the beneficiaries and the firms and companies involved. So far, documents evidencing accommodation entries of more than Rs. 500 crore have already been found and seized.

Several shell entities/firms were used by the searched entry operators for layering of unaccounted money and cash withdrawals against fake bills issued and unsecured loans given. The personal staff/employees/associates had been made dummy directors/partners of these shell entities and all bank accounts were managed and controlled by these entry operators. Statements of such entry operators, their dummy partners/employees, the cash handlers as well as the covered beneficiaries have also been recorded clearly validating the entire money trail.

The searched persons were also found to be controller and beneficial owners of several bank accounts and lockers, opened in names of their family members and trusted employees and shell entities, which they were managing in collusion with the bank officials, through the digital media. The same are being further investigated.

The beneficiaries have been found to have made huge investments in real estate properties in prime cities and in fixed deposits to the tune of several hundred crores of rupees.

During the search, cash of Rs. 2.37 crore and jewellery worth Rs. 2.89 crore has been found along with 17 bank lockers, which are yet to be operated.

Further investigations are in progress.

**27<sup>th</sup> October, 2020**

### **Payment Date Extended for Vivad se Vishwas Scheme: Finance Secretary urges IT Department to Reach Out to the Taxpayers**

In order to provide further relief to the taxpayers desirous of settling disputes under Vivad se Vishwas Scheme, the Government today further extended the date for making payment without additional amount from 31st December 2020 to 31st March 2021. The last date for making declaration under the

Scheme has also been notified as 31st December 2020. As per the notification issued today, the declaration under the Vivad se Vishwas Scheme shall be required to be furnished latest by 31st December 2020, however, only in respect of said declarations made by 31st December 2020 the payment without additional amount can now be made up to 31st March 2021.

Meanwhile, Finance Secretary Dr. Ajay Bhushan Pandey today reviewed the progress made so far by the Income Tax Department on Vivad se Vishwas Scheme in a high level meeting through video conferencing along with CBDT Chairman and Board members with all Principal Chief Commissioners of Income Tax across the country to expedite the Scheme which, he said, is highly beneficial to the taxpayers, adding further that "We need to advance the Vivad se Vishwas Scheme with greater persuasion and perseverance and must reach out to the taxpayers to facilitate all necessary handholding."

In the meeting, suggestions and comments of the Field Officers were also discussed regarding the action plan for successful implementation of the Scheme in a time bound manner.

Finance Secretary Dr. Pandey said, "This is a scheme for the benefit and convenience of the taxpayers as they would get instant disposal of the dispute with no further cost of litigation besides monetary benefits in the form of waiver of penalty, interest and prosecution. With this Scheme, on the one hand, a taxpayer would be benefitted with stress-free time to put her/his efforts for more meaningful daily life/routine or expanding business activities while on the other, the government would be getting its due long pending revenue and also, savings on the huge cost on resources that these disputes consume."

In the meeting, the Chairman CBDT, Sri P C Mody mentioned the importance of cleaning up of demand for facilitating and persuading the taxpayers for filing declarations under the Scheme. He emphasized on Pr. Chief Commissioners of Income Tax to carry out all possible actions such as disposing pending rectifications, giving pending appeal effects, removing duplicate demands, etc. so as to arrive at a final demand for each assessee so that whenever a taxpayer files Form 1 or 2 under the Vivad se Vishwas Scheme, the Pr. Commissioner of Income Tax concerned is in a position to issue Form 3 promptly.

It was also decided in the meeting to adopt a proactive approach for implementation of the Scheme by approaching taxpayers directly, guiding and facilitating them in filing of declarations and removing any difficulties or problems faced by them in availing the Scheme. It was further decided to have periodic review of the progress of the Scheme every fortnight.

It is pertinent to mention here that the Direct Tax Vivad se Vishwas Act, 2020 was enacted on 17th March, 2020 with the objective to reduce pending income tax litigation, generate timely revenue for the Government and to benefit taxpayers by providing them peace of mind, certainty and savings on account of time and resources that would otherwise be spent on the long-drawn and vexatious litigation process. In order to provide more time to taxpayers to settle disputes, earlier the date for filing declaration and making payment without additional amount under Vivad se Vishwas was extended from 31st March 2020 to 30th June, 2020. Later again, this date was extended further to 31st December, 2020. Therefore, earlier both the declaration and the payment without additional amount under the Vivad se Vishwas were required to be made by 31st December, 2020.

**29<sup>th</sup> October, 2020**

### **Income Tax Department conducts searches in Tamil Nadu**

The Income Tax Department has carried out searches on 28.10.2020 at 22 premises in Coimbatore, Erode, Chennai and Namakkal on a group engaged in the running of Educational Institutions and their associates, including a civil contractor. The search was carried out on the basis of information that fees collected from students were not fully accounted for in the regular books of accounts.

Evidences found during the search reveal that the allegations regarding suppression of fees received are true and the unaccounted receipts are siphoned off to the personal accounts of the trustees, which in turn are invested in real estate through a company. The other shareholders of the company, viz., an

architect from Tirupur and a textile businessman were also covered. Electronic devices seized during the course of search are being examined.

During the searches in the case of the civil contractors from Namakkal, inflation of expenditure by booking bogus expenses under labour charges, material purchase, etc. has been found.

The search has led to identification of unaccounted investments and on-money payments to the extent of around Rs.150 crore. Cash amounting to Rs.5 crore has been seized. Some lockers are yet to be operated.

Search is still continuing.

**29<sup>th</sup> October, 2020**

### **Income Tax Department conducts searches in Uttar Pradesh**

A search action was started by the Income Tax Department on 28.10.2020 in the case of a Bijnor based group engaged in real estate business and its associates. There were allegations that the group companies were having huge security premium reserves and massive liabilities in the form of loans and advances from related parties/others and other payables, even then they had advanced substantial loans to others. The sales of the group were not commensurate with the loans and advances shown.

During the search unexplained cash of more than Rs. 50 lakh and unexplained jewellery weighing approximately 2.5 kg has been found, so far. The allegations regarding share premium have been found to be correct during the search. They are not commensurate with the income of the concerned shareholders, who could not explain their sources.

During the search, more than 20 companies were found to be running from a single premise out of which many companies are dummy companies and do not show any operations. Companies are not having any worth but are showing significant amounts of share premium. The dummy companies are being used as conduit for layering of funds.

One of the group members has financial interest in one UK based foreign company and one property in London, the sources of investment therein is being examined. Apart from this, incriminating documents relating to investments in many properties have also been recovered from several premises and the same are being investigated. The sources of investment in properties owned by the group are being verified. Hand-written papers relating to certain payments/receipts have also been found during the search and are being examined.

So far 6 bank lockers have been found and further investigations are going on.

**29<sup>th</sup> October, 2020**

### **Income-tax Exemption for payment of deemed LTC fare for non-Central Government employees**

In view of the Covid-19 pandemic and resultant nationwide lockdown as well as disruption of transport and hospitality sector, as also the need for observing social distancing, a number of employees are not able to avail of Leave Travel Concession (LTC) in the current Block of 2018-21.

- 2) With a view to compensate Central Government employees and incentivise consumption, thereby giving a boost to consumption expenditure, the Government of India allowed payment of cash allowance equivalent to LTC fare to Central Government employees subject to fulfilment of certain conditions vide OM No F. No 12(2)/2020-EII (A) dated 12th October 2020. It has also been provided that since the cash allowance of LTC fare is in lieu of deemed actual travel, the same shall be eligible for income-tax exemption on the lines of existing income-tax exemption available for LTC fare.
- 3) In order to provide the benefits to other employees (i.e. non-Central Government employees) who are not covered by the above mentioned OM, it has been decided to provide similar



income-tax exemption for the payment of cash equivalent of LTC fare to the non-Central Government employees also. Accordingly, the payment of cash allowance, subject to maximum of Rs 36,000 per person as Deemed LTC fare per person (Round Trip) to non-Central Government employees, shall be allowed income tax exemption subject to fulfilment of conditions specified in para 4.

- 4) The income-tax exemption to receipt of deemed LTC fare by a non-Central Government employee ('the employee') shall be allowed subject to fulfilment of the following conditions:-
  - a) The employee exercises an option for the deemed LTC fare in lieu of the applicable LTC in the Block year 2018-21.
  - b) The employee spends a sum equals to three times of the value of the deemed LTC fare on purchase of goods / services which carry a GST rate of not less than 12% from GST registered vendors / service providers ('the specified expenditure') through digital mode during the period from the 12th of October, 2020 to 31st of March, 2021 ('specified period') and obtains a voucher indicating the GST number and the amount of GST paid.
  - c) An employee who spends less than three times of the deemed LTC fare on specified expenditure during the specified period shall not be entitled to receive full amount of deemed LTC fare and the related income-tax exemption and the amount of both shall be reduced proportionately as explained in Example-A below.
5. The DDOs shall allow income-tax exemption subject to fulfilment of the above conditions after obtaining copies of invoices of specified expenditure incurred during the specified period. Further, as this exemption is in lieu of the exemption provided for LTC fare, an employee who has exercised an option to pay income tax under concessional tax regime under section 115BAC of the Income-tax Act, 1961 shall not be entitled for this exemption.
6. The clarifications issued by the Department of Expenditure, Ministry of Finance for the Central Government employees vide OM F. No 12(2)/2020-EII (A) Dated 20th October, 2020 and subsequent clarification, if any, issued in this regard shall apply mutatis mutandis to non-Central Government employees also subject to fulfilment of conditions specified in the preceding paras. 7. The legislative amendment to the provisions of the Income-tax Act, 1961 for this purpose shall be proposed in due course.

Example -

A Deemed LTC Fare : Rs.20,000 x 4 = Rs. 80,000  
Amount to be spent : Rs. 80,000 x 3 = Rs. 2,40,000

Thus, if an employee spends Rs. 2,40,000 or above on specified expenditure, he shall be entitled for full deemed LTC fare and the related income-tax exemption. However, if the employee spends Rs. 1,80,000 only, then he shall be entitled for 75% (i.e. Rs. 60,000) of deemed LTC fare and the related income-tax exemption. In case the employee already received Rs. 80,000 from employer in advance, he has to refund Rs. 20,000 to the employer as he could spend only 75% of the required amount.

# JUDGEMENTS

## INDIRECT TAX

### National Anti-Profitteering Authority (NAA) finds Signature Builders guilty for not passing the benefit of additional ITC to Homebuyers

Appeal Number: Case No. 72/2019  
Date of Judgement/Order: 13/12/2019

#### Fact of the Case

The applicant, Mr. Abhishek alleged that the Respondent, Signature Builders had not passed on the benefit of additional Input Tax Credit (ITC) to the above Applicant as well as other home buyers who had purchased flats in his Project "Orchard Avenue-93" as per the provisions of Section 171 (1) of the CGST Act, 2017.

#### Decision of the Case

- The DGAP reported that the Respondent builder had denied the benefit of ITC to the Applicant and other buyers amounting to Rs. 2,58,80,927, pertaining to the period w.e.f 1.07.2017 to 31.12.2018 and had thus indulged in profiteering and violation of the provisions of Section 171(1).
- The Authority held that the Respondent builder had not passed on the benefit of additional Input Tax Credit (ITC) to the Applicant as well as other homebuyers who had purchased flats in his Project "Orchard Avenue-93" during the period from 01.07.2017 to 31.12.2018 and hence, the Respondent has violated the provisions of Section 171 (1) of the CGST Act, 2017.
- The authority also clarified that Section 112 of the Finance Act, 2019 specific penalty provisions have been added for violation of the provisions of Section 171 (1) of the CGST Act, 2017 which have come in to force w.e.f. 01.01.2020 vide Notification No. 01/2020 Central Tax dated 01.01.2020, by inserting Section 171 (3A) in the CGST Act, 2017.
- The Authority held that since no penalty provisions were in existence between the period w.e.f. 01.07.2017 to 31.12.2018 when the Respondent had violated the provisions of Section 171 (1), the penalty

prescribed under Section 171 (3A) cannot be imposed on the Respondent retrospectively.

*The National Anti-Profitteering Authority (NAA) has held Signature Builders guilty for not passing the benefit of additional ITC to the homebuyers but did not impose the penalty.*

### Supply of Dress, School Bag, Boots etc. to students without consideration to Govt/Govt Aided schools exempted under GST

Appeal Number: Order No. 30/Aar/2020  
Date of Judgement/Order: 12/05/2020

#### Fact of the Case

- The applicant, Tamil Nadu Textbook and Educational Services Corporation is controlled by the Government of Tamil Nadu and therefore they are a government entity. They have been entrusted with the responsibility by the Government for printing and distributing textbooks to students studying in government schools and government-aided schools, besides selling textbooks at a price fixed by the government to self-financing private schools.
- They are also entrusted with the responsibility of handling the procurement and distribution of free kits such as school bags, footwear, geometry box, wooden colour pencils, crayons and woollen sweaters to government and government aided schools only based on the instructions from the Education Department, Government of Tamil Nadu.

The applicant has sought advance ruling for the following questions:

- Whether the supply of educational aids to students such as school bags, footwear, geometry box, wooden colour pencils, crayons, woollen sweater to government and government aided schools based on the State Government educational policy for which the consideration is paid to Tami

Nadu Text Book and Educational Services Corporation by the State Government by means of a budgetary allocation constitutes a supply.

- If the answer to the above is in the affirmative then is Tamil Nadu Text Book and Educational Services Corporation is entitled to avail of corresponding input tax Credit on the procurement made.
- Whether the supply of Rain Coats, Ankle Boots and Socks to students without consideration to Government/Government Aided schools located in Hilly areas is a supply.
- If the answer to the above is in the affirmative then is Tamil Nadu Text Book and Educational Services Corporation is entitled to discharge its tax liability on such outward supplies at Cost +10% and avail of corresponding Input Tax Credit on the procurement made.
- Whether Tamil Nadu Text Book and Educational Services Corporation is eligible for exemption from payment of GST in respect of services it receive from printers engaged by them for printing of text books.
- Whether the Tamil Nadu Text Book and Educational Services Corporation is required to pay GST on Penalty and Liquidated damages levied by them on suppliers due to violation of the contract terms for supply and if so the rate at which such GST is payable.

#### Decision of the Case

- The two-member bench of Ms. Manasa Gangotri Kata and Thiru Kurinji Selvaan V.S ruled that The above activities of the applicant constitutes a supply; but exempt with effect from October 13, 2017, vide entry Sl.No.150 in the Notification No. 2/2017-C.T.(Rate) dated 28th June 2017 as amended by Notification No. 35/2017-C.T. (Rate) dated 13th October 2017 and therefore the applicant is not entitled to claim credit of tax paid on the related purchases of goods and services.

***The Tamil Nadu Authority of Advance Ruling (AAR) ruled that GST is exempted on the supply of Dress, School Bag, Boots etc. to students without consideration to Government and Government Aided schools.***

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#### 18% GST applicable on Supply of Soft Beverages or Aerated Water by the Restaurant: AAR

**Appeal Number: Order No. 28/ARA/2020  
Date of Judgement/Order: 12/05/2020**

#### Fact of the Case

The applicant, MFAR Hotels & Resorts Private Ltd. has stated that they own and manage the Hotel and resorts. They offer a variety of services to their customers such as rooms and suites, banquet, dining, spa, etc. Their hotels are located in the prime urban cities of Chennai and Ernakulum. They sell Tobacco (Cigarettes), soft beverages to the guests. They supply Non-GST items of liquor to the guests and provide free supply of food to their employees.

The applicant sought the advance ruling on various issues.

- Firstly, what is the rate of tax applicable on the supply of ***Soft Beverages (Aerated Water) and Tobacco (Smokes)*** when these items are supplied independently and not as composite supply in the restaurant?
- Whether ***supply of liquor is deemed to be the "exempt supply"*** under GST Act as per Section 2(47) of CGST Act for the purpose of proportionate reversal of ITC as per Rule 42 of CGST rules 2017?
- It is obligatory on the part of employer to ***supply free food to the employees.*** Whether such free supply of food is liable to reverse ITC on inputs as per Rule 42 of CGST Rules 2017?

#### Decision of the Case

- The two-member bench of Manasa Gangotri Kata and Kulinjee Selvaan ruled that the supply of soft beverages/aerated water, whether in person or room service, by the restaurant located in the premises of the hotel of the applicant is taxable to CGST at the rate of 9% as per Notification No. 11/2017-C.T. (Rate) dated 28.06.2017 and SGST at the rate of 9% as per Notification No. as per Notification No.II (2)/ CTR/ 532(d14)/2017 dated 29.06.2017 as amended.
- Secondly, whether supply of liquor is deemed to be the "exempt supply" under GST Act as per Section 2(47) of CGST Act

for the purpose of proportionate reversal of ITC as per Rule 42 of CGST rules 2017.

- The Authority ruled that ***the supply of cigarettes by the restaurant***, in person or room service, is taxable at 14% CGST and 14% SGST.
- Thirdly, is it obligatory on the part of the employer to supply free food to the employees. Whether such free supply of food is liable to reverse ITC on inputs as per Rule 42 of CGST Rules 2017.
- The AAR ruled that ***The supply of free meals to the employees at a canteen located in the premises of the hotel of the applicant*** is a supply under CGST / TNGST Act 2017 and liable to 18% of GST.
- ***“The Supply of alcoholic liquor for human consumption*** by a restaurant will not be taxable under CGST/TNGST Act 2017,” the AAR clarified.

***The Tamil Nadu Authority of Advance Ruling (AAR) ruled that 18% GST is applicable to the supply of soft beverages or aerated water by the restaurant.***

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**ITC to be restricted on Medicines used in Supply of Health Care Services provided to patients, says AAR**

**Appeal Number: Advance Ruling No. KAR  
ADRG 51/2020  
Date of Judgement/Order: 08/10/2020**

**Fact of the Case**

The applicant, M/s Ambara is a partnership firm registered under the provisions of the Goods and Services Act, 2017. The applicant states that they are engaged in the business of providing health care services and also run a Hospital in the name of CURA Hospital. The applicant provides the services relating to Health Care Services which are in the nature of diagnostic and treatment services.

In view of the above, the applicant has sought advance ruling in respect of the following questions:-

1. Whether input tax credit is required to be restricted on medicines supplied to patients admitted in hospital?
2. Whether input tax credit is required to be restricted on medicines supplied to patients treated as out-patients?

3. Whether input tax credit is required to be restricted on medicines supplied to other than inpatients and out-patients?
4. Whether input tax is required to be restricted on supply of food and beverages to the patients admitted in hospital?

**Decision of the Case**

The two-member bench of Dr. M.P. Ravi Prasad and Mashood ur Rehman Faruqooi ruled that The input tax credit is required to be restricted on medicines used in the supply of health care services provided to patients.

- **Answer to the First Question:** The input tax credit is required to be restricted on medicines used in the supply of health care services provided to inpatients.
- **Answer to the Second Question:** The input tax credit is required to be restricted on medicines used in the supply of health care services provided to outpatients. Further in case medicines are supplied independent of health care services, then the applicant is eligible to claim input tax credit subject to payment of taxes on such independent supply of medicines.
- **Answer to the Third Question:** The input tax credit is not required to be restricted on medicines supplied to others i.e. customers, who are neither inpatients nor outpatients, as there is no health care services provided and is liable to pay tax on such outward supply of medicines.
- **Answer to the Fourth Question:** The input tax credit is to be restricted on supply of food & beverage supplied to inpatients and is part of the health care services.

***The Karnataka Authority of Advance Ruling (AAR) ruled that the Input Tax Credit is restricted on medicines used in the supply of health care services provided to patients.***

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**Pure Consultancy Services provided to local bodies are Exempted but 18% GST applicable on Consultancy Services provided to private individuals, says AAR**

**Appeal Number: Advance Ruling No. KAR  
ARDG 52/2020  
Date of Judgement/Order: 9/10/2020**

## Fact of the Case

The Applicant, Vimos Technocrats Pvt Ltd is a private limited company rendering pure consultancy services like project management consultancy services including construction, supervision, quality control, rejuvenation, and development of lakes.

The Applicant presently is rendering the following consultancy services:-

1. Providing consultancy services for the preparation of DPR for the work of sewage treatment plant of Seegehalli Lake to BBMP.
2. Preparation of DPR for the construction of Kanaka NayakanaMandira to BBMP
3. Preparation of DPR for construction of sports complex at Terrace level of PalikeSoudha in Ward No. 128 Nagarabhavi to BBMP
4. Providing the consultancy services for construction, supervision, project management and Quality Control for renovation of Auditorium near Hampinagar City Central Library building, Vijayanagara Division in Ward 133 to BBMP
5. Consultancy services for project management and quality assurance for the work of rejuvenation and development of Puttenahalli Lake in Yelahanka, Bangalore Urban District to Forest Department
6. Providing project management consultancy services to BBMP including construction, supervision and quality control for the work of Package-L7 work of,-
  - a. Development of Sarakki / Jaraganahalli / Puttenahalli Lake
  - b. Development of Annappanakere Lake / Yelchenahalli Lake Phase-land
  - c. Development of Subramanyapura Lake Phase-1
7. Preparation of DPR for pumping treated water from Jakkur Lake to Thirumenahalli Lake and Kogilu Lake in Byatarayanapura Assembly Constituency to BBMP
8. Preparation of detailed project report for scientific landfill at Bengaluru Quarry, at Survey No. 176 and 271, to BBMP and
9. Project management consultancy service for preparation of DPR for Construction of Raja Nala and Other Development Civil Works in Sindhanur Municipal Limit.

In this background, the applicant had sought Advance Ruling on,-

1. Whether pure consultancy services provided to the Municipalities and Corporations are exempt from GST as per the serial number 3 of the notification 12/2017-Central tax (Rate) dated 28.06.2017?
2. ii. Whether pure consultancy services provided to the private individuals is taxable? If yes, what is the rate of tax and relevant notification?
3. iii. Whether the input tax paid on the purchase of capital goods like furniture, computer, lab equipments, drone cameras, total station, auto level instruments, etc., and on certain services can be claimed to the extent of taxable supply of services?

## Decision of the Case

- The two-member bench of Dr. M.P. Ravi Prasad and Mashood ur Rehman Faruqooi ruled that pure consultancy services without supply of goods provided by the applicant to the Municipalities and Corporations (local bodies) and State Government Departments, as enumerated in the application, are exempt from GST as per the serial number 3 of the Notification No. 12/2017-Central Tax (Rate) Dated 28.06.2017.
- The Authority further said that pure consultancy services provided to the private individuals are taxable 9% under CGST and 9% under GST as per the entry No.21 of the Notification No. 11/2017 Central Tax (Rate) Dated 28/06/2017.
- "Input tax paid on the purchase of capital goods like furniture, computer, lab equipments, drone camera, total station, auto level instruments, etc., and on certain inputs services shall be restricted to so much of the input tax as is attributable to the taxable supplies made by the applicant as per subsection 2 of section 17 of the CGST Act 2017," the AAR said.

***The Karnataka Authority of Advance Ruling (AAR) ruled that the pure consultancy services provided to Municipalities and Corporations are exempted but 18% GST applicable on consultancy services provided to private individuals.***

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## DIRECT TAX

### Transfer of Intangible Assets for a valuable consideration by way of allotment of Shares is entitled to Depreciation

#### Fact of the Case

- M/s Padmini Products is assessee in the present case
- It is a Private Limited Company and engaged in the business of manufacturing, dealing and exporting incense sticks and allied products. The assessee succeeded in the business of partnership firm, 'Padmini Products'.
- Before the firm was converted into a private limited company, the partnership firm had revalued all its intangible assets and arrived at a value of Rs.65,26,40,150 using standard valuation methods. All assets and liabilities of Padmini Products i.e., the erstwhile partnership firm, including the aforesaid intangible assets were transferred to the assessee.
- In consideration, the assessee allotted shares at the face value of Rs.1,000/- and premium of Rs.13,500 per share each to the partners of the erstwhile partnership firm
- The assessee filed return of income for Assessment Year 2006-07 and 2008-09 declaring the income as 'NIL'. The A.O reopened the file for A.Y 2005-06 u/s 147 of the Act on the ground that the case of the assessee for the Assessment Year 2005-06 was reopened under Section 147 of the Act on the ground that during the course of the proceeding for Assessment Year 2007-08, it was noticed by the Assessing Officer that assessee had made claim of depreciation on intangible assets, which was not in accordance with Section 32(1) of the Act. The assessee had made claim of depreciation on the intangible assets which was not in accordance with the section 32(1) of the act.
- A notice under Sections 143(2) and 142(1) of the Act was issued to the assessee. The Assessing Officer by an order held that intangible assets valued in the hands of the company at the time of succession, were valued as per assessee's own valuation and not for any actual consideration. The Tribunal dismissed the appeal preferred by the assessee.

#### Decision of the Case

- The judges of division judge observed that the assessee and the erstwhile partnership firm are different entities and there was transfer of intangible assets by the partnership firm to the assessee for a valuable consideration that is by way of allotment of shares.
- Thus the court said that the aforesaid transaction is squarely covered under Section 47(xiii) of the Act and therefore, the assessee under Section 32(1) of the Act was entitled for depreciation with reference to actual cost incurred by it with reference to intangible assets.

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### TPA required to deduct TDS on payments made to hospitals under Section 194J of the Income Tax Act

#### Fact of the Case

- In the present case TTK Healthcare TPA Private Limited is the assessee
- The company is company engaged in the business of providing Third Party Administration services on medical or health insurance policies issued by insurance companies.
- The assessee makes payment to the hospitals under the cashless scheme in fulfillment of contractual obligations between the insurance companies and the policy holders on one hand and the insurance companies and the assessee on the other hand and not in consideration of any professional services rendered by the hospital.
- The Deputy Commissioner of Income Tax (TDS) passed orders wherein it was held that payments made by the assessee to the hospitals constituted fees for professional services liable for tax deduction at source under Section 194J of the Act.
- The assessee submitted that a hospital does not carry on the profession of medicine as it is not a professional and does not wholly earn professional income and the profession can be carried on by an individual or groups of individuals because the profession requires expertise and professional skills.

### Decision of the Case

- The judges of division bench clarified that the incidental or ancillary services, which are connected with carrying on Medical Profession are included in the term Professional Services for the purpose of Section 194J.
- In the light of Section 35AD(8)(C), 44AA and 80-IB, the court said that it cannot be inferred that the hospitals carry on business and not profession. The submission of TPAs that when they make payments to the hospitals, they are not liable to deduct tax at source as hospitals carry on a business activity under Section 194J, is not worthy of acceptance.

### Long Term Capital Gain Tax is not applicable to indirect transfer of Indian Assets

#### Fact of the Case

- Augustus Capital PTE Ltd. , the applicant is in the business of incubation of companies i.e. providing new businesses, with necessary financial support and technical services. During the course of its business, the appellant made investments in Accelyst Pte Ltd, is a company incorporated in and resident of Singapore.
- The Assessing Officer asked the assessee to explain as to why capital gains arising from the sale of shares from Accelyst to Jasper Infotech Private Limited should not be brought to tax in India under section 9(1)(i) of the Act.
- The Assessing Officer disregarded the submissions of the assessee, since it has been inserted by the Finance Act, 2015 and made effective from April 1, 2016 and, therefore, not applicable in the year under consideration.
- Accordingly, AO proposed the addition of Rs. 36,33,15,969.
- The issue revolves around the sale of Singapore-based Accelyst Pte Ltd (Freecharge) by Singapore startup incubator Augustus Capital PTE Ltd to Snapdeal's holding company Jasper Infotech Pvt Ltd (JIPL) in the Financial Year 2016.

### Decision of the Case

- The two-member bench of Amit Shukla and N.K. Billaiya while providing relief to foreign funds and entities being subjected to tax demands for earlier years directed the Assessing Officer to read Explanation 7 as applicable for the year under consideration and delete the impugned addition.
- The Delhi bench of Income Tax Appellate Tribunal (ITAT) has held that indirect transfer of Indian assets will not attract Long Term Capital Gains Tax (LTCG).

### Leasehold Rights can't be computed as Capital Gains in respect of transactions in land or building under Section 50C

#### Fact of the Case

- In this case the assessee, is Noida Cyber Park Pvt. Ltd.
- The applicant stated that Section 50C, being a deeming provision, has to be strictly interpreted, a proposition which is quite acceptable and, according to the assessee, Section 50C(1) covers a capital asset being "land or building or both" whereas in the instant case, what is transacted is merely leasehold rights in land and building, which is a distinct 'Capital Asset'.

#### Decision of the Case

- The two-member bench clarified that ostensibly, in Section 54D(1) of the Act, the 'capital asset' has been understood to be 'land or building or any right in land or building', thereby supporting the distinction sought to be canvassed before us.
- Thus, the expression 'land or building' in its coverage is quite distinct from the expression 'any right in land or building'. The legislature, in its wisdom, has used the expression 'land or building or both' in Section 50C(1) of the Act, and not the expression 'any right in land or building'.
- The tribunal opined that the point sought to be raised by the assessee deserves to be upheld.
- The Income Tax Appellate Tribunal (ITAT), Delhi Bench held that the leasehold rights can not be computed as capital gains in

respect of transactions in land or building under Section 50C of the Income Tax Act.

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**Income received during negotiation for Transfer of Capital Asset as 'Other Income'. Usage of Fund can't be a Reason to impose Tax Liability**

**Fact of the Case**

- In the present case the assessee is a big business person who filed his return of income for the assessment year returning an income under the heads 'income from business and profession, capital gains and other sources'. The assessment was completed under section 143(3) of the Act.
- While framing the assessment, the AO observed that the assessee had received advances of Rs.21,89,22,200 from the various parties.
- After enquiry the A.O came to know that the assessee received money from Metro Corp vide agreement for procuring lands at Dodaballapur and Chikkaballapur.
- The AO observed that as per the contents of the agreement the assessee is not required to refund the advance money received and the question of performing the obligation does not arise when the other party is not traceable as per the address stated by the assessee and assessee himself could not locate the Metro Corporation and Metro Corp Infrastructure Ltd.
- Though the stated amount received advance in 2007 but till date the negotiations have not resulted in transfer of capital asset and the assessee could not produce/trace the other party and as such the AO considered that such sum was forfeited.
- Thus, the AO added the advances received from M/s. Metro Corp and M/s. Metro Corp Infrastructure Ltd. totaling Rs.21,11,00,000 to the income of the assessee by invoking the provisions of Section 56(2)(ix) of the Income Tax Act.
- The CIT(A) observed that though the assessee claimed that he is liable to return these advances but the facts of the case indicate that there has been virtual forfeiture of the amount as the promoters have made no attempt to recover the same.
- According to the CIT(A), these advances were in the nature of trade advances and

not having returned the same and have utilized them for making investments in his own name, these amounts had acquired the nature of income in the hands of the assessee.

- The usage of said funds by the assessee cannot change the character of the source of funds received by the assessee and it will remain as received towards procurement of land on behalf of the lender for procuring land which is stock in trade to the assessee.

**Decision of the Case**

- The two-member bench of the Beena Pillai and Chandra Poojari opined that there is no forfeiture of the amount so received by the assessee and it is outstanding in the books of account of the assessee and also confirmed by the lenders.
- The tribunal held that there is also no negotiation for the transfer of capital assets by the assessee with these two parties. Thus, the assessee's case is not hit by the provisions of section 56(2)(ix) of the Income Tax Act. Accordingly, the addition sustained by the CIT(A) is deleted.



# TAX COMPLIANCE CALENDAR AT A GLANCE

## GST CALENDAR

Due Date for GSTR-3B			
State	Turnover in Preceding F.Y.	Month	Due Date
For All State	Turnover is more than Rs. 5 Crore	October, 2020	20 <sup>th</sup> Nov, 2020
Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, Daman & Diu and Dadra & Nagar Haveli, Puducherry, Andaman and Nicobar Islands, Lakshadweep	Turnover is upto Rs. 5 Crore	October, 2020	22 <sup>nd</sup> Nov, 2020
Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand, Odisha, Jammu and Kashmir, Ladakh, Chandigarh, Delhi	Turnover is upto Rs. 5 Crore	October, 2020	24 <sup>th</sup> Nov, 2020

Due Date for		
Form	For the month of	Date
GSTR-1	October (Monthly)	11 <sup>th</sup> November, 2020

Composition Scheme Due Dates		
From	Description	Extended Due Date
CMP - 08	Return for Composite Supplier for Oct to Dec, 2020	18 <sup>th</sup> January, 2021

Others Returns		
From	Description	Due date for the month of August, 2020
GSRT - 5 & 5A	Filed by Non-resident taxable person and OIDAR respectively ( For October, 2020)	20 <sup>th</sup> November, 2020
GSTR - 6	For input Services Distributor who are required to furnish details of invoice on which credit has been received ( For October, 2020)	13 <sup>th</sup> November, 2020
GSTR - 7	Filed by person required to deduct TDS under GST (For October, 2020)	10 <sup>th</sup> November, 2020
GSTR - 8	E-commerce operator who are required to deduct TDS ( For October, 2020)	10 <sup>th</sup> November, 2020

Annual Return				
From	Description	Original Due Date for F.Y. 2018-19	Extended Due Date Extended Due Date for F.Y. 2018-19	Late Fee
GSRT-9/9A	Annual Return	31 <sup>st</sup> December, 2019	31 <sup>st</sup> December, 2020	Liability is Rs. 200 per day of default (CGST+SGST). This is subject to a maximum of 0.25% of the taxpayer's turnover in the relevant state or union territory
GSTR - 9C	Reconciliation Statement & Certificate	31 <sup>st</sup> December, 2019	31 <sup>st</sup> December, 2020	

### DIRECT TAX CALENDAR – NOVEMBER, 2020

#### 07.11.2020

- Due date for deposit of Tax deducted/collected for the month of October, 2020. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan

#### 14.11.2020

- Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB and 194M in the month of September, 2020\*

#### 15.11.2020

- Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending September 30, 2020
- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of October, 2020 has been paid without the production of a challan
- 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 October, 2020

#### 30.11.2020

- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, IB, 194M, and 92E in the month of October, 2020
- Report in Form No. 3CEAA by a constituent entity of an international group for the accounting year 2019-20
- Statement of income distribution by Venture Capital Company or venture capital fund in respect of income distributed during previous Year 2019-20 (Form No. 64)
- Statement to be furnished in Form No. 64D by Alternative Investment Fund (AIF) to Principal CIT or CIT in respect of income distributed (during previous year 2019-20) to units holders
- Due date to exercise option of safe harbour rules for international transaction by furnishing Form 3CEFA
- Due date to exercise option of safe harbour rules for specified domestic transaction by furnishing Form 3CEFB

- Due date for filing of statement of income distributed by business trust to unit holders during the financial year 2019-20. This statement is required to be filed electronically to Principal CIT or CIT in form No. 64A
- Application in Form 9A for exercising the option available under Explanation to section 11(1) to apply income of previous year in the next year or in future (if the assessee is required to submit return of income on November 30, 2020)
- Statement in Form no. 10 to be furnished to accumulate income for future application under section 10(21) or 11(1) (if the assessee is required to submit return of income on November 30, 2020)
- Submit copy of audit of accounts to the Secretary, Department of Scientific and Industrial Research in case company is eligible for weighted deduction under section 35(2AB) [if company has any international/specified domestic transaction]
- Statement by scientific research association, university, college or other association or Indian scientific research company as required by rules 5D, 5E and 5F (if due date of submission of return of income is November 30, 2020)
- Due date for claiming foreign tax credit, upload statement of foreign income offered for tax for the previous year 2019-20 and of foreign tax deducted or paid on such income in Form no. 67. (if due date of submission of return of income is November 30, 2020)
- Due date for e-filing of report (in Form No. 3CEJ) by an eligible investment fund in respect of arm's length price of the remuneration paid to the fund manager. (if the assessee is required to submit return of income on November 30, 2020)
- Annual return of income for the assessment year 2020-21 for all assessee  
The due date for filing of return has been extended from July 31, 2020, October 31, 2020 to November 30, 2020 vide the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020.
- Annual return of income for the assessment year 2019-20 for all assessee  
The due date for filing of return of income under section 139 for the assessment year 2019-20 has been extended to November 30, 2020 vide Order under section 119(2)(a), dated 30-09-2020.

# COURSES OFFERED BY TAX RESEARCH DEPARTMENT

## Eligibility criterion for admission in TRD Courses

- The members of the Institute of Cost Accountants of India
- Other Professionals (CS, CA, MBA, M.Com, Lawyers)
- Executives from Industries and Tax Practitioners
- Students who are either CMA qualified or CMA pursuing

## EXISTING COURSES

### CERTIFICATE COURSE ON TDS

**Course Fee -** Rs. 10,000 + 18% GST  
*20% Discount for Members, CMA Final Passed Candidates and CMA Final pursuing Students*

**Exam Fees -** Rs. 1,000 + 18% GST  
**Duration –** 30 Hours  
**Mode of Class –** Online

### CERTIFICATE COURSE ON INCOME TAX RETURN FILLING

**Course Fee -** Rs. 10,000 + 18% GST  
*20% Discount for Members, CMA Final Passed Candidates and CMA Final pursuing Students*

**Exam Fees -** Rs. 1,000 + 18% GST  
**Duration –** 30 Hours  
**Mode of Class –** Online

### CERTIFICATE COURSE ON GST

**Course Fee -** Rs. 10,000 + 18% GST  
*20% Discount for Members, CMA Final Passed Candidates and CMA Final pursuing Students*

**Exam Fees -** Rs. 1,000 + 18% GST  
**Duration –** 72 Hours  
**Mode of Class –** Online

*\* Special Discount for Corporate*

### ADVANCED CERTIFICATE COURSE ON GST

**Course Fee -** Rs. 14,000 + 18% GST  
*20% Discount for Members, CMA Final Passed Candidates and CMA Final pursuing Students*

**Exam Fees -** Rs. 1,000 + 18% GST  
**Duration –** 40 Hours  
**Mode of Class –** Online

### CRASH COURSE ON GST FOR COLLEGE AND UNIVERSITY

**Batch Size –** 50 (Minimum)

**Eligibility criterion -** B.COM/B.B.A pursuing or completed  
M.COM/M.B.A pursuing or completed

**Course Fee -** Rs. 1,000 + 18% GST  
**Exam Fees -** Rs. 200 + 18% GST  
**Course Duration -** 32 Hours

## NEW COURSES

### ADVANCED COURSE ON GST AUDIT AND ASSESSMENT PROCEDURE

**Course Fee -** Rs. 12,000 + 18% GST [Including Exam Fee]  
**Duration –** 30 Hours  
**Mode of Class –** Online

### ADVANCED COURSE ON INCOME TAX ASSESSMENT AND APPEAL

**Course Fee -** Rs. 12,000 + 18% GST [Including Exam Fee]  
**Duration –** 30 Hours  
**Mode of Class –** Online

For enquiry about courses, mail at – [trd@icmai.in](mailto:trd@icmai.in)

# E-PUBLICATIONS OF TAX RESEARCH DEPARTMENT

Impact of GST on Real Estate	Handbook on GST on Service Sector
Insight into Customs - Procedure & Practice	Handbook on Works Contract
Input Tax Credit & In depth Discussion	Handbook on Impact of GST on MSME Sector
Exemptions under the Income Tax Act, 1961	Insight into Assessment including E-Assessment
Taxation on Co-operative Sector	Impact on GST on Education Sector
Guidance Note on GST Annual Return & Audit	Addendum_Guidance Note on GST Annual Return & Audit
Sabka Vishwas-Legacy Dispute Resolution Scheme 2019	An insight to the Direct Tax- Vivad se Vishwas Scheme 2020
Guidance Note on Anti Profiteering	International Taxation and Transfer Pricing
Advance Rulings in GST	Handbook on E-Way Bill
Handbook on Special Economic Zone and Export Oriented Units	Taxation on Works Contract

For E-Publications, Please visit Taxation Portal -  
<https://icmai.in/TaxationPortal/>

# NOTES

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## TAXATION COMMITTEES - 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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