

FEBRUARY, 2020

# TAX Bulletin

★ ★ VOLUME - 58 ★ ★



**THE INSTITUTE OF COST ACCOUNTANTS OF INDIA**

(Statutory Body under an Act of Parliament)

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

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## MISSION STATEMENT

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

## VISION STATEMENT

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

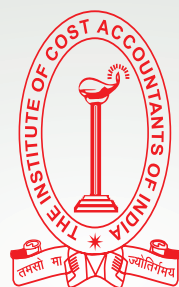
### Objectives of Taxation Committees:

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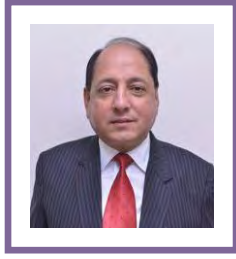
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**CMA Rakesh Bhalla**  
Chairman, Direct Taxation Committee



**CMA Niranjana Mishra**  
Chairman, Indirect Taxation Committee

## FROM THE DESK OF CHAIRMAN

Dear Friends and Professional Colleagues,

**W**e would like to congratulate the department for submission of Post Budget Review to the Hon'ble Finance Minister on 9<sup>th</sup> February, 2020 at Kolkata. We are thankful to CMA Mrityunjay Acharjee for his knowledge input in the preparation of the Review and our Council Colleague CMA Chittaranjan Chatterjee for submitting the document through the senior officials of CBDT. CMA Pallab Bhattacharya also graced the occasion. Also CMA Jyothi Satish with team SIRC met Hon'ble FM at Chennai on 8<sup>th</sup> February 2020.

Webinars were conducted on the topic "**Presentation on Block Credit U/s 86A**" on 07.02.2020 by CMA Rajendra Rathi and on "**Proposed amendments - Indirect Tax Laws**" by CMA Vishwanath Bhatt on 14.02.2020. We are optimistic that these sessions are being beneficial for the Members, Students and Stakeholders.

Budget Month is being successfully observed all across India, by conducting of Seminars by Various Chapters and Regional Councils.

We thank the EIRC, South Odisha, Faridabad, Howrah, Rajpur, Rourkela, Bhubaneswar, Jamshedpur, Jaipur, Kota, Noida, Indore – Dewas and Cuttack - Jagatsinghpur - Kendrapara Chapters for conducting Taxation seminars on "Union Budget 2020".

Apart from the above, Crash Course on GST for Colleges and Universities has been successfully conducted at Avichi College, Chennai and the exam is also going to be conducted soon. At Maharani's Commerce and Management College for Women, Mysore this course has commenced from 17.02.2020.

Admission to various courses on Taxation is also going on. Interested ones are requested to visit the website of the Institute for further details.

Training program on "Advanced Course on Goods & Service Tax" to more than 170 senior officials in each location of the "Commercial Taxes Department, Government of Tamil Nadu" to commence in Madhurai and Coimbatore in the third and fourth week of February respectively.

We congratulate our Team Members, Resource Persons and knowledge contributors for their hard work and passion. Further, we pledge our best efforts in continuing our service for highest possible level to serve our fraternity and stakeholders.

**Jai Hind**

(Rakesh Bhalla)

**CMA Rakesh Bhalla**  
18<sup>th</sup> February 2020

**CMA Niranjana Mishra**  
18<sup>th</sup> February 2020

# TAXATION COMMITTEES 2019 - 2020

## Indirect Taxation Committee

### Chairman

CMA Niranjan Mishra

### Members

1. CMA Rakesh Bhalla
2. CMA P. Raju Iyer
3. CMA V. Murali
4. CMA H. Padmanabhan
5. CMA (Dr.) Ashish P. Thatte
6. CMA B.M. Sharma (Co-Opted)
7. CMA (Dr.) Sanjay Bhargave (Co-Opted)
8. CMA V.S. Datey (Co-Opted)

### Permanent Invitees

CMA Balwinder Singh - President  
CMA Biswarup Basu - Vice-President

## Direct Taxation Committee

### Chairman

CMA Rakesh Bhalla

### Members

1. CMA P. Raju Iyer
2. CMA Niranjan Mishra
3. CMA V. Murali
4. CMA Paparao Sunkara
5. CMA (Dr.) Ashish P. Thatte
6. CMA Rakesh Sinha (Co-opted)
7. CMA Ajay Singh (Co-opted)
8. CMA Rajesh Goyal (Co-opted)

### Permanent Invitees

CMA Balwinder Singh - President  
CMA Biswarup Basu - Vice-President

### Secretary

CMA Rajat Kumar Basu, Addl. Director

## ACKNOWLEDGEMENTS

CMA Mrityunjay Acharjee	Vice-President (Accounts, Finance & Taxation), Balmer Lawrie Ltd.
CMA Amit Sarker	Director Indirect Taxation, Deloitte Haskins & Sells
CMA Vishwanath Bhat	Practicing Cost & Management Accountant
CMA Bhogavalli Mallikarjuna Gupta	Product – Evangelist, Logo Infosoft Business Technology Private Limited
CMA T K Jagannathan	Practicing Cost & Management Accountant
CMA Shiba Prasad Padhi	Practicing Cost & Management Accountant
CMA Arindam Goswami	Practicing Cost & Management Accountant
CMA Anil Sharma	Practicing Cost & Management Accountant
CMA Rajendra Rathi	General Manager, Indirect Taxation, Reliance Industries Limited
CMA Utpal Kumar Saha	AGM – Indirect Tax, McNally Bharat Engineering Co. Ltd

## TEAM - TAX RESEARCH DEPARTMENT

CMA Rajat Kumar Basu	-	Additional Director - Tax Research
CA Neelesh Jain	-	Deputy Director - Tax Research
CMA Priyanka Roy	-	Assistant Director - Tax Research
Ms. Mukulika Poddar	-	Officer - Tax Research
CMA Debasmita Jana	-	Associate - Tax Research

### SPECIAL ACKNOWLEDGEMENT

Mr. Dipayan Roy Chaudhuri	-	Graphics & Web Designer
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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***



## ADDITIONAL RESTRICTION ON ITC (BLOCK CREDIT)

**CMA Rajendra Rathi**

General Manager, Indirect Taxation, Reliance Industries Limited

Notification No / Circular / Section	Description
49/2019 CT Dated 09-Oct-2019	Insertion of new rule 36(4) To restrict ITC after matching (Maximum up to 120% of eligible amount / 110% of eligible amount W.E.F 1-1-2020)
Circular 123 Dated 11-Nov-2019	Restriction of 36(4) will be applicable only on the invoices / debit notes on which credit availed after 09.10.2019.
75/2019 CT Dated 26.12.2019	<p>New rule 86(A) inserted</p> <p>According to this rule The Commissioner or any other officer not below the rank of Assistant Commissioner authorized by him can restrict the ITC after having <b>reasons to believe</b> that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible:-</p> <ol style="list-style-type: none"> <li>1. if the input credit has been availed and the prescribed documents are not in possession of the tax payer <b>or</b></li> <li>2. the if the due tax has not paid by the supplier <b>or</b></li> <li>3. if the goods or services has actually not been received <b>or</b></li> <li>4. if the supplier is not in existence from the place it had taken registration etc.</li> </ol> <p>However, Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction.</p>
DGCI letter 587 Dated 13.01.2020	<p>Blocking of ITC under rule 86(1)(a)</p> <ol style="list-style-type: none"> <li>1. Empower → The CGST Officer to block ITC under certain circumstances.</li> <li>2. Facility: → All zonal chief commissioner have facility to block/unblock ITC availed in a situation covered under rule 86(A)(1)(A) of the CGST Rules 2017 i.e. against fake invoices or against invoices without receipts of goods or services or Both.</li> <li>3. Operationalize : → <ol style="list-style-type: none"> <li>(a) each Pr. Chief commissioner should appoint an officer of the rank of deputy commissioner /A.C , as a nodal officer , assisted by few more officers who should undertake this activity</li> <li>(b) Will submit daily report as per format to Pr DG DGCI HQ.</li> </ol> </li> </ol>
CBIC Tweet dated 07-02-2020	<p>CBIC unveils new app for exchange of information between Centre &amp; State</p> <p>CBIC (Directorate of Data Management) launches an application for sharing information between Centre and State for targeted enforcement action against GST evasion; Terms is as a big leap in intelligence sharing and cooperative federalism: CBIC</p>
Circular 131 dated 23.01.2020	<p>SOP to be followed by Exporter</p> <p>1. Several cases of monetisation of credit fraudulently obtained or ineligible credit through refund of Integrated Goods &amp; Service Tax (IGST) on exports of goods have been detected in past few months.</p> <p>On verification, several such exporters were found to be non-existent in a number of cases.</p> <p>In all these cases it has been found that the Input Tax Credit (ITC) was taken by <b>the exporters on the basis of fake invoices</b> and IGST on exports was paid using such ITC.</p> <p>2. To mitigate the risk, the Board has taken measures to apply stringent risk parameters-based checks driven by rigorous data analytics and Artificial Intelligence tools based on which certain exporters are taken up for further</p>



	<p>verification.</p> <p>Overall, in a broader time frame the percentage of such exporters selected for verification is a small fraction of the total number of exporters claiming refunds. The refund scrolls in such cases are kept in abeyance until the verification report in respect of such cases is received from the field formations.</p> <p>Further, the export consignments/shipments of concerned exporters are subjected to 100 % examination at the customs port.</p>
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From above it can be concluded that Govt. is very strict about GST compliance and made retrospective amendment to levy equal penalty for ITC on fake invoices in this budget.

Further presently huge amount of ITC as well as GST refund is under hold for verification because of such ITC.

Now CBIC launches application for sharing information between centre and state for targeted enforcement action against GST evasion.

Accordingly all assessee need to ensure strict discipline in selection of supplier with proper due diligence before executing any transaction otherwise it may create trouble in future.

Moreover, purchase condition can be modified by inserting appropriate payment clause after matching only.

From above it can be concluded that every client should keep their system as per GST compliance requirement and keep the business relation with 100% GST complied supplier to avoid such additional restriction like blockage of ITC, Blockage of e way bill etc.

Govt. action are in right direction for such targeted defaulters by introducing measures to apply stringent risk parameters based checks ,driven by rigorous data analytics’, artificial intelligence tool to taken up further verification.

The Institute of the Cost Accountants of India can become system partner in development of system base Audit tool in saving leakage of revenue by undue means and smooth compliance timely.

Business long-term survival with peace will be based on 100% GST compliance on real-time basis and CMA can help in optimization by keeping updated knowledge on GST as well as system.



# ANALYSIS OF MAJOR CHANGES OF CENTRAL GOODS AND SERVICES TAX IN UNION BUDGET 2020-2021

**CMA Utpal Kumar Saha**  
AGM – Indirect Tax, McNally Bharat Engineering Co. Ltd

Hon'ble Finance Minister Mrs. Nirmala Sitharaman has presented the union budget 2020-21 on 01<sup>st</sup> February 2020. In indirect tax area, basically Goods and Services Tax, there are no major significant changes made. However, i have tried to make a comparative chart to analyse the major important changes in the context of Central Goods and Services Tax. The details are as follows:

Clause No.	Provision	Original Provision	Amendment in Budget (Finance Bill 2020)	Analysis	Notes on clauses (Finance Bill 2020)
116	2(114)	<p>“Union territory” means the territory of—</p> <p>(a) the Andaman and Nicobar Islands;</p> <p>(b) Lakshadweep;</p> <p>(c) Dadra and Nagar Haveli;</p> <p>(d) Daman and Diu;</p> <p>(e) Chandigarh; and</p> <p>(f) other territory.</p> <p>Explanation.—For the purposes of this Act, each of the territories specified in sub-clauses (a) to (f) shall be considered to be a separate Union territory;</p>	<p>“Union territory” means the territory of—</p> <p>(a) the Andaman and Nicobar Islands;</p> <p>(b) Lakshadweep;</p> <p><b>(c) Dadra and Nagar Haveli and Daman and Diu;</b></p> <p><b>(d) Ladakh;</b></p> <p>(e) Chandigarh; and</p> <p>(f) other territory.</p> <p>Explanation.—For the purposes of this Act, each of the territories specified in sub-clauses (a) to (f) shall be considered to be a separate Union territory</p>	<p>Recently the Union Territory of Dadra and Nagar Haveli and Daman and Diu have merged in to one unit by passing of “Dadra and Nagar Haveli and Daman and Diu (Merger of Union Territories) Bill, 2019. On 9<sup>th</sup> December 2019 the Act has been published in Gazette of India. The same has been given effect in the budget. The same for creation of new territory called Ladakh. Now the taxpayers of Dadra and Nagar Haveli, Daman and Diu would be one union territory.</p>	<p>Clause 116 of the Bill seeks to amend clause (114) of section 2 of the Central Goods and Services Tax Act so as to align the definition of “Union territory” in line with the Jammu and Kashmir Reorganisation Act, 2019 and the Dadra and Nagar Haveli and Daman and Diu (Merger of Union Territories), Act, 2019.</p>
117	10(2)	<p>The registered person shall be eligible to opt under sub-section (1), if:—</p> <p>(a) he is not engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II;</p> <p>(b) he is not engaged in making any supply of goods which are not leviable to tax under this Act;</p> <p>(c) he is not engaged in making any inter-State outward supplies of goods;</p> <p>(d) he is not engaged in making any supply of goods through an</p>	<p>The registered person shall be eligible to opt under sub-section (1), if:—</p> <p>(a) he is not engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II;</p> <p>(b) he is not engaged in making any supply of goods <b>or services</b> which are not leviable to tax under this Act;</p> <p>(c) he is not engaged in making any inter-State outward supplies of goods <b>or services</b>;</p> <p>(d) he is not engaged in making any supply of goods <b>or services</b></p>	<p>Make a harmonized of sub-section 2A</p>	<p>Clause 117 of the Bill seeks to amend clauses (b), (c) and (d) of sub-section (2) of section 10 of the Central Goods and Services Tax Act to harmonise the conditions for Eligibility for opting to pay tax under sub-section (1) and subsection (2A) of the said Act.</p>

		electronic commerce operator who is required to collect tax at source under section 52; and (e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council:	through an electronic commerce operator who is required to collect tax at source under section 52; and (e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council:		
118	16(4)	A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.	A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or <del>invoice relating to such</del> debit note pertains or furnishing of the relevant annual return, whichever is earlier.	Time limit of availing of input tax credit of debit note was linked to the original invoice date. The amendment of delinking of debit note with the original invoice date will certainly remove lots of litigation and difficulties.	Clause 118 of the Bill seeks to amend sub-section (4) of section 16 of the Central Goods and Services Tax Act so as to delink the date of issuance of debit note from the date of issuance of the
119	29(1)(c)	the taxable person, other than the person registered under sub-section (3) of section 25, is no longer liable to be registered under section 22 or section 24	the taxable person is no longer liable to be registered under section 22 or section 24 or intends to opt out of the registration voluntarily made under sub-section (3) of section 25.	The proposed amendment will be enable the person who has taken registration voluntarily may opt out from registration if he is no longer is liable to register. The changes has taken care the difficulties of the person who has taken registration voluntarily even their turnover does not exceed the taxable limit.	Clause 119 of the Bill seeks to amend clause (c) of subsection (1) of section 29 of the Central Goods and Services Tax Act so as to provide for cancellation of registration Obtained voluntarily under sub-section (3) of section 25.
120	30(1)	Provided that the registered person who was served notice under sub-section (2) of section 29 in the manner as provided in clause (c) or clause (d) of sub-section (1) of section 169 and who could not reply to the said notice, thereby resulting in cancellation of his registration certificate and is hence unable to file application for revocation of cancellation of registration under sub-section (1) of section 30 of the Act, against such order passed up to 31.03.2019, shall be allowed to file	Provided that such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended,— (a) by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding thirty days; (b) by the Commissioner, for a further period not exceeding thirty days, beyond the period specified in clause (a)	Earlier through Removal of Difficulties Order, (Order no 5/2019 Dt. 23.04.2019) Government has allowed a registered person whose registration was cancelled and unable to file revocation within the time period may file application not later than 22.07.2019. Currently, there is no permanent provision of extension of filing of revocation of cancellation of registration. The proposed amendment to	Clause 120 of the Bill seeks to substitute the proviso to sub-section (1) of section 30 of the Central Goods and Services Tax Act so as to empower the jurisdictional tax authorities to extend the period provided to file an application for revocation of cancellation of registration.

		application for revocation of cancellation of the registration not later than 22.07.2019		the provision allows the limitation period of 30 days by another 30 days by the Addl. Commissioner or Jt. Commissioner and another 30 days by the commissioner. Indirectly the limitation period is extended by another 90 days in total.	
121	31(2)	Provided that the Government may, on the recommendations of the Council, by notification and subject to such conditions as may be mentioned therein, specify the categories of services in respect of which— (a) any other document issued in relation to the supply shall be deemed to be a tax invoice; or (b) tax invoice may not be issued.	Provided that the Government may, on the recommendations of the Council, by notification,— (a) specify the categories of services or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed; (b) subject to the condition mentioned therein, specify the categories of services in respect of which— (i) any other document issued in relation to the supply shall be deemed to be a tax invoice; or (ii) tax invoice may not be issued.”.	Enable the Government to notify the <i>specific class of services</i> in respect of the time line of tax invoice may be separate than the general services. Already separate time line for insurance or banking companies are specified as per rule 47 of CGST Rules without any supported provision.	Clause 121 of the Bill seeks to amend section 31 of the Central Goods and Services Tax Act so as to empower the Government to notify the categories of services or supplies in respect of which tax invoice shall be issued and to make rules regarding the time and manner of its issuance.
122	51(3)	The deductor shall furnish to the deductee a certificate mentioning therein the contract value, rate of deduction, amount deducted, amount paid to the Government and such other particulars in such manner as may be prescribed.	A certificate of tax deduction at source shall be issued in such form and in such manner as may be prescribed.	Earlier it was mandatory to mention <i>contract value, rate of deduction, mount deducted, amount paid to the Government</i> . The amendment has allowed the Government to prescribe the format of TDS certificate. Now the deductee may or may not mentioned the following details in the certificate which were earlier compulsory: a. Value of the contract b. Rate of Deduction c. Amount paid to Govt This amendment will certainly simplify the form of TDS certificate.	Clause 122 of the Bill seeks to amend section 51 of the Central Goods and Services Tax Act so as to empower the Government to make rules to provide for the form and manner in which a certificate of tax deduction at source shall be issued.
122	51(4)	If any deductor fails to furnish to the deductee the certificate, after deducting the tax at source, within five days of crediting the amount so deducted to the	Omitted	Penalty provision of delay furnish of certificate of TDS has been omitted	

		Government, the deductor shall pay, by way of a late fee, a sum of one hundred rupees per day from the day after the expiry of such five days period until the failure is rectified, subject to a maximum amount of five thousand rupees			
123	109(6)	The Government shall, by notification, specify for each State or Union territory except for the State of Jammu and Kashmir, a Bench of the Appellate Tribunal (hereafter in this Chapter, referred to as “State Bench”) for exercising the powers of the Appellate Tribunal within the concerned State or Union territory	The Government shall, by notification, specify for each State or Union territory <del>except for the State of Jammu and Kashmir</del> , a Bench of the Appellate Tribunal (hereafter in this Chapter, referred to as “State Bench”) for exercising the powers of the Appellate Tribunal within the concerned State or Union territory	Now the Government shall specify the Bench of Appellate Tribunal for the Jammu and Kashmir .	<i>Clause</i> 123 of the Bill seeks to amend sub-section (6) of section 109 of the Central Goods and Services Tax Act so as to make the provisions for Appellate Tribunal and its benches thereof applicable in the Union territories of Jammu and Kashmir and Ladakh.
123		Provided that for the State of Jammu and Kashmir, the State Bench of the Goods and Services Tax Appellate Tribunal constituted under this Act shall be the State Appellate Tribunal constituted under the Jammu and Kashmir Goods and Services Tax Act, 2017	Omitted		
124	122(1A)		Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on	The is a personal liability and the person whose instance the offences of availing input tax credit without any supply of goods or services or both, makes supply of goods or services or both without any invoice leading to evasion of tax is liable to pay penalty equal to the input tax credit availed or tax evasion.	<i>Clause</i> 124 of the Bill seeks to insert a new sub-section (1A) in section 122 of the Central Goods and Services Tax Act so as to make the beneficiary of certain transactions at whose instance such transactions are conducted liable for penalty.
125	132(1)	Whoever commits any of the following offences, namely:—	Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences	Person who causes the offences of availment of input tax credit without supply of goods or services or both, or supply of goods or services or both without issuance of any invoice shall also be punishable. Now cause of action is a punishable offence.	<i>Clause</i> 125 of the Bill seeks to amend section 132 of the Central Goods and Services Tax Act so as to make the offence of fraudulent availment of input tax credit without invoice or bill cognizable and non-bailable under sub-section (1) of section 69 and to make any
125	132(1)(c)	avails input tax credit using such invoice or bill referred to in clause (b)	avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill		
125	132(1)(e)	evades tax, fraudulently avails input tax credit or fraudulently obtains	evades tax, <del>fraudulently avails input tax credit</del> or		

		refund and where such offence is not covered under clauses (a) to (d);	fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);		person who retains the benefit of certain transactions and at whose instance such transactions are conducted liable for punishment
128	172(1)	Provided that no such order shall be made after the expiry of a period of three years from the date of commencement of this Act	Provided that no such order shall be made after the expiry of a period of <del>three</del> <b>five</b> years from the date of commencement of this Act	Extension of period of limitation by another 2 years	Clause 128 of the Bill seeks to amend section 172 of the Central Goods and Services Tax Act so as to extend the Time limit provided for removal of difficulties hereunder from three years to five years, with effect from the date of commencement of the said Act
129	Schedule II	Transfer of business assets (a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person; (b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services;	Transfer of business assets (a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, <del>whether or not for a consideration,</del> such transfer or disposal is a supply of goods by the person; (b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, <del>whether or not for a consideration,</del> the usage or making available of such goods is a supply of services;	Supply without consideration is covered under schedule I. Items of schedule II are all supplies as per provision of section 7(1). The said changes are made to harmonise with the main provision of sub section (1) of section 7.	Clause 129 of the Bill seeks to amend paragraph 4 of Schedule II to the Central Goods and Services Tax Act so as to omit the words “whether or not for consideration” so as to give clarity to the meaning of the entries (a) and (b) of said paragraph. This amendment shall take effect retrospectively from the 1st day of July, 2017.

# VIVAD SE VISHWAS ACT, 2020 UNDER DIRECT TAX REGIME

TEAM TRD

In the Budget 2020-2021 Hon'ble Finance Minister Nirmala Sitharaman has announced a New Scheme in Direct Tax "Vivad Se Vishwas" likewise "Sabka Vishwas-Legacy Dispute Resolution Scheme 2019" under Indirect Tax.

"Sabka Vishwas- Legacy Dispute Resolution Scheme 2019" was introduced with an aim for resolution and settlement of pending cases of Central Excise, Service Tax. Similarly, in Direct Tax regime "Vivad Se Vishwas" Scheme has been introduced so that taxpayers whose tax demands and disputes **related to Income Tax** pending in multiple forums **as on 31<sup>st</sup> January, 2020** [irrespective of whether the demand is pending or has been paid], can pay that taxes and settle disputes by **31<sup>st</sup> March, 2020**, and get a complete waiver of interest and penalty. In case of failure to pay tax within 31<sup>st</sup> March 2020, that defaulter taxpayer will be allowed to pay his taxes till **30<sup>th</sup> June 2020, but with 10% more on the tax**. The appeals and disputed matters might be related to any assessment years, even disputed matters might be related to the appeal against the tax determined on defaults in respect of TDS or TCS.

## Amount payable for arrear tax demand or resolution of disputes under this scheme

### Amount paid on or before 31.03.2020

<u>Type of Tax</u>	<u>Amount payable on or before 31 March 2020</u>	<u>Relief</u>
Tax arrears include disputed tax, disputed interest and disputed penalty	Amount of the disputed tax	100% relief from disputed Interest & Penalty
Tax arrears relates to only disputed interest or disputed penalty or disputed fee [Not include disputed tax]	25% of disputed interest or disputed penalty or disputed fee	75% of the disputed Interest, penalty and Fees

### Amount paid after 31.03.2020 but before 30.06.2020

<u>Type of Tax</u>	<u>Amount payable after 31 March 2020, but before 30<sup>th</sup> June 2020</u>	<u>Relief</u>
Tax arrears include disputed tax, disputed interest and disputed penalty	Amount of disputed tax + 10% thereof. The additional 10% will be restricted to the amount of interest and penalty	100% relief from disputed Interest & Penalty.
Tax arrears relates to only disputed interest or disputed penalty or disputed fee [Not include disputed tax]	30% of disputed interest or disputed penalty or disputed fee	70% of the disputed Interest, penalty and Fees.

## Definition of Appellant under this scheme

According to this Scheme, the income tax authority, or the person, or both, whose appeal is pending before any appellate forum as on 31<sup>st</sup> January, 2020 will be treated as appellant.

## Definition of Appellate Forums under this scheme

Supreme Court, the High Courts, the Income Tax Appellate Tribunals, and the Commissioner (Appeals) will be treated as appellate forum under this scheme.

However there is no clarity on the cases against which order has been passed by AO (Assessing Officer) but appeal has not been filed.

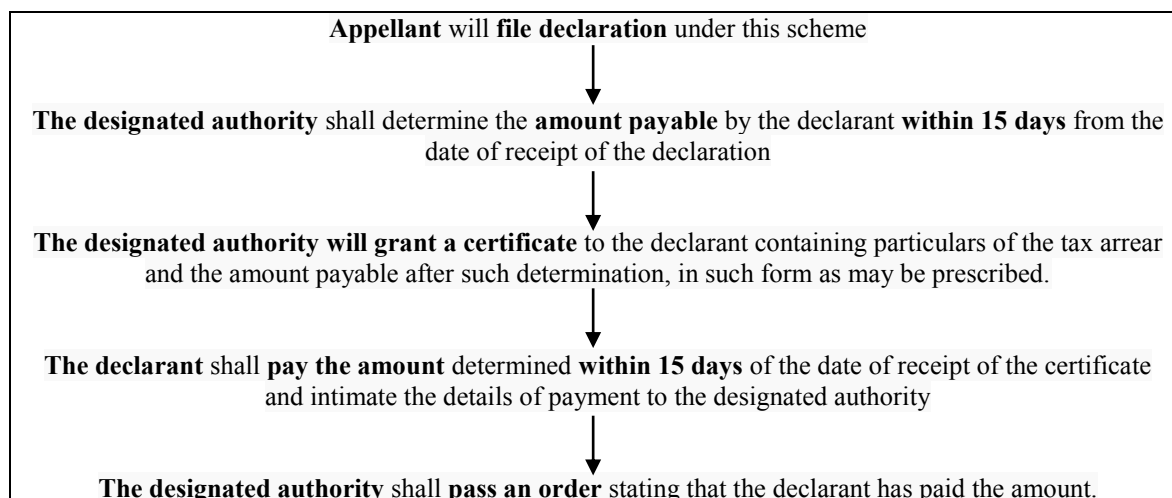
### Definition of Designated Authority under this scheme

The Principal Chief Commissioner will designate an officer, not below the rank of a Commissioner of Income Tax, as the designated authority to manage and resolve the disputed matters in Direct Tax era under this scheme

### Benefits of the Scheme

- ✓ Government will generate timely revenue
- ✓ Taxpayers will be able to utilize the time, energy and resources saved by opting this dispute resolution scheme towards their business activities.
- ✓ Once a dispute is resolved as per this scheme, the designated authority cannot levy interest or penalty in relation to that dispute.
- ✓ No appellate forum can make a decision in relation to that dispute which has been resolved already. Such matters cannot be reopened in any proceeding under any law, including the IT Act.

### Time and Manner of payment of Disputed Tax under Vivad se Vishwas Act



### Revival of disputes and claims

- ✓ If particulars submitted by the appellant are found to be false,
- ✓ The appellant violates any of the conditions referred to in the IT Act
- ✓ The appellant seeks any remedy or claim in relation to that dispute.

Therefore all proceedings and claims withdrawn based on the declaration of appellant will be deemed to have been revived.

### Exclusion of disputes from this Scheme

- Disputed tax arising out of search or seizure proceedings;

*The Income Tax Officer after getting the information that Mr. Y is in the possession of unaccounted cash of Rs. 50 Lakhs initiated search and seizure procedure u/s 132 since that unaccounted cash represents income which should be taxed. In this Case, Vivad se Viswas Scheme is not applicable*

- The prosecution has been initiated before filing of the declaration;

*An assessee had restrained and not allowed the officer authorized u/s 132 of the Act to inspect the documents maintained in electronic form and books of accounts.. In this situation assessee shall be liable for prosecution*



*u/s 275B. In this situation, Vivad se Viswas Scheme is not applicable even if the assess wants to file declaration under this new scheme*

- Tax arrears is in relation to undisclosed foreign source income

*Mr. B, an Indian Resident, has earned prize money of Rs. 20 Lakhs by winning a lottery in Canada and suppressed this income in Income Tax Return which must be taxable in India. In this case Vivad se Viswas Scheme is not applicable*

- Where an addition is based on the information received from a foreign country as part of an exchange of information u/s 90 or 90A;

*An assessee having income from Foreign Country has suppressed his foreign income partly. However , under tax credit method, the total foreign income should be taxed in the country from where income has been arised, in addition to the country of residence. In this case Vivad se Viswas Scheme is not applicable*

- Where enhancement proposed by the CIT (A).

*A.O.(Assessing officer) has disallowed certain expenses of Rs. 1,00,000 to the returned income of PQR Ltd and this has been brought to the notice by A.O to CIT(A). Then CIT(A) rectified the mistake and as per instruction of CIT(A) A.O served demand notice to assessee . In this case Vivad se Viswas Scheme is not applicable*

- Where any person who has been detained under The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, before the filing of a declaration;

*An assessee was caught red handed for smuggling of gold and detained. That assessee is not eligible to take benefit of Vivad se Viswas Scheme*

- Where, Any person, in whose case the prosecution has been initiated prior to the filing of a declaration under any of the specified acts

*An assessee against whom prosecution under Prevention of Money Laundering Act, 2002 or Prohibition of Benami Property Transactions Act, 1988, etc. are pending is not eligible to take benefit of Vivad se Viswas Scheme*

- Any person notified under Special Court (Trial of Offences Relating to Securities) Act, 1992, before the filing of a declaration

Over the years, the number of pending appeals filed by taxpayers as well as Government were increasing day by day since number of filed appeals is much higher than the number of disposed appeals. As a result, huge amount of disputed tax arrears is locked-up in these appeals. As on the 30th November, 2019, the amount of disputed direct tax arrears is Rs. 9.32 lakh crores. Therefore, there is an urgent need to provide such type of dispute resolution scheme as one time solution for long time pending disputes.

To enjoy the benefit of this Scheme to resolve disputes in Direct Tax, the appellant will have to furnish an undertaking waiving his rights to seek any remedy or claim in relation to that dispute under any law, including the Income Tax Act, 1961 (IT Act). Any claims already filed in relation to the dispute must be withdrawn before filing the declaration.

The proposed Bill shall come into the force on the date it receives the assent of the President and declaration may be made thereafter up to the date to be notified by the Government.

# TAX UPDATES, NOTIFICATIONS AND CIRCULARS

## INDIRECT TAX

### CGST Notifications

#### Notification No. 07/2020

**Date – 3rd February 2020**

Notification issued to prescribe due dates for filing of return in FORM GSTR-3B in a staggered manner.

Taxpayers having an aggregate turnover of up to Rs. 5 Crore in the previous financial year, whose principal place of business is in the States	Due date for furnishing the return through electronically in FORM GSTR3B		
	January 2020	February 2020	March 2020
Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep	22 <sup>nd</sup> February 2020	22 <sup>nd</sup> March 2020	22 <sup>nd</sup> April 2020
Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi	24 <sup>th</sup> February 2020	24 <sup>th</sup> March 2020	24 <sup>th</sup> April 2020

### Customs - Tariff Notifications

#### Notification No. 13/2020 - Customs

**Date - 14th February, 2020**

#### Notification regarding exemption of duties of Customs against scrips issued under the RoSCTL scheme and additional ad-hoc incentive for apparel and made-ups sector

CBIC has exempted goods, when imported into India against a duty credit scrip issued by the Regional Authority under the Scheme for Rebate of State and Central Taxes and Levies in accordance with paragraph 4.01(c) of the Foreign Trade Policy read with paragraphs 4.95 and 4.96 of the Handbook of Procedures from-

(a) the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and

(b) the whole of additional duty leviable thereon under sub sections (1), (3) and (5) of section 3 of the said Customs Tariff Act:

Provided that the said scrip, against which goods when imported into India are exempted from duties mentioned in clauses (a) and (b) above, may include duty credit provided under the Additional Ad Hoc Incentive in terms of paragraphs 4.95 and 4.96 of the Handbook of Procedures.

For more details, please follow: <http://cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-tarr2020/cs13-2020.pdf>

#### Notification No. 14/2020 - Customs

**Date - 14th February, 2020**

#### Notification regarding exemption of duties of Customs against scrips issued under the 2% Additional ad hoc incentive for mobile phones.

CBIC has made the following amendments in the Notification No. 24/2015- Customs, dated the 8th April, 2015, dated the 8th April, 2015,

For more details, please follow: <http://cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-tarr2020/cs14-2020.pdf>

## **Customs - Non Tariff Notifications**

### **Notification No. 11/2020 - Customs (N.T.)**

**Date - 6th February, 2020**

#### **Exchange Rates Notification No.11/2020-Custom (NT) dated 06.02.2020**

The CBIC has determined the rate of exchange of conversion of each of the foreign currencies into Indian currency or vice versa and effected from 07th February, 2020.

Sl.No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
		For Imported Goods	For Exported Goods
1	Australian Dollar	49.25	47.10
2	EURO	79.90	76.90
3	US Dollar	72.15	70.45

For more details, please follow: [http://cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-nt2020/csnt\\_11.pdf](http://cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-nt2020/csnt_11.pdf)

### **Notification No. 13/2020 - Customs (N.T.)**

**Date - 14th February, 2020**

#### **Tariff Notification in respect of Fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Silver.**

CBIC has made amendments in the Notification No. 36/2001-Customs (N.T.), dated the 3rd August, 2001. In the said notification, for TABLE-1, TABLE-2, and TABLE-3 the following Tables shall be substituted, namely: -

TABLE-1

Sl. No	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$Per Metric Tonne)
(1)	(2)	(3)	(4)
1	1511 10 00	Crude Palm Oil	770
2	1511 90 10	RBD Palm Oil	796
3	1511 90 90	Others – Palm Oil	783
4	1511 10 00	Crude Palmolein	800

For more details, please follow: <http://cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-nt2020/csnt12-2020.pdf>

### **Notification No. 14/2020 - Customs (N.T.)**

**Date - 14th February, 2020**

#### **The Central Board of Indirect Taxes and Customs Makes Regulation by further amend the Sec Cargo Manifest and Transhipment Regulations, 2018**

- (1) There Regulation may be called the Sec Cargo Manifest and Transhipment (amendment) Regulations, 2020.

- (2) In Regulation 15<sup>th</sup>, sub Regulation (1), for the Expression, “ For the period of forty-five days from the date of Commencement of regulation”, the Expression, from 15<sup>th</sup> May, 2020 till 1<sup>st</sup> August, 2020 shall be substituted.

For more details, please follow: <http://cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-nt2020/csnt14-2020.pdf>

## **Customs – Anti Dumping Duty**

### **Notification No. 04/2020 – Anti-dumping Duty**

**Date – 10th February, 2020**

**Seeks to rescind certain customs notifications which have become redundant or entries in these notifications are being merged with other similar notifications granting exemptions.**

The Central Government has made amendment in the notification No.05/2015-Customs (ADD), dated the 18th February, 2015, In the said notification, the anti-dumping duty imposed under this notification shall remain in force up to and inclusive of the 15th April, 2020, unless revoked, superseded or amended earlier.

For more details, please follow: <http://cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2020/cs-add2020/csadd04-2020.pdf>

## **Customs – Circulars**

### **Circular No. 07/2020**

**Date – 05<sup>th</sup> February, 2020**

#### **Valuation of Second Hand Machinery – reg**

The valuation of second hand machinery regarding circular No. 25/2015 – Customs dated 15<sup>th</sup> October, 2015.

For more details, please follow: <http://cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2020/Circular-No-07-2020.pdf>

### **Circular No. 08/2020**

**Date – 05<sup>th</sup> February, 2020**

**Procedure for a Pilot on Transshipment of Export Cargo from Bangladesh to third countries through Land Customs Stations (LCSs) to Kolkata Port / Airport, in containers or closed bodied trucks — Reg.**

CBIC has extended the facility till 30th June 2020

For more details, please follow: <http://cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2020/Circular-No-08-2020.pdf>

### **Circular No.09/2020**

**Date – 05<sup>th</sup> February, 2020**

#### **‘Streamlining export data to include District level details in Shipping Bills’**

Regulations states that the authorized person shall enter the electronic integrated declaration and upload the supporting documents on the ICEGATE either by affixing his digital signature or by availing the services at the service centre. The electronic integrated declaration is to be made in the electronic form provided at the website

For more details, please follow: <http://cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2020/Circular-No-09-2020.pdf>

**Circular No. 10/2020**  
**Date – 07<sup>th</sup> February, 2020**

**Electronic sealing-Deposit in and removal of goods from Customs Bonded Warehouses**

Board has decided that RFID (Radio-frequency Identification) sealing shall be extended to transport of goods for deposit in warehouse as well as removal therefrom.

For more details, please follow: <http://cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2020/Circular-No-10-2020.pdf>

**Circular No. 11/2020**  
**Date – 10<sup>th</sup> February, 2020**

**Implementation of PGA eSANCHIT – Paperless Processing under SWIFT Uploading of Licenses/Permits/Certificates/Other Authorizations (LPCOs) by PGAs**

Now, 3 more Participating Government Agencies (PGAs) with their Licenses/ Permits/ Certificates/ Other Authorizations (LPCOs) as detailed in the Annexure-I are being brought onboard eSANCHIT platform, Since the facility to upload the LPCOs is now being fully made available to these 3 new PGAs.

For more details, please follow: <http://cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2020/Circular-No-11-2020.pdf>

**DIRECT TAX**

**Notifications**

**Notification No. 11 of 2020**  
**Date – 7<sup>th</sup> February, 2020**

**Procedure of PAN allotment through Common Application Form (CAF) along with registration of Foreign Portfolio Investors (FPIs)**

A Common Application Form (CAF) for the purpose of registration, opening of bank and demat accounts and application for Permanent Account Number (PAN) has been notified for the Foreign Portfolio Investors (FPIs) in India. The Principal Director General of Income-tax (Systems) lays down the classes of persons, forms, format and procedure for Permanent Account Number (PAN) as under:

SL NO.	Particulars	
1	Classes of persons to which Common Application Forma (CAF) will apply	New Foreign portfolio investors (FPIs)
2	Applicable form	Common Application Form (CAF) for Foreign Portfolio Investors (FPIs) of Ministry of Finance, Department of Economic Affairs (SEBI) notified vide notification F. No. 4115 /20 16- ECB, dated 27/01 /2020.
3	Procedure	Application for allotment of Permanent Account Number (PAN) will be uploaded in CAF as specified by the Ministry of Finance, Department of Economic Affairs (SEBI). After due examination and generation of FPI Registration certificate, SEBI will forward data in form 49AA to prescribed Income Tax Authority through the signature of Authorised Signatories of its Designated Depository Participants (DDPs).
4	Format	XML

For more details, please follow:

[https://www.incometaxindia.gov.in/communications/notification/notification\\_11\\_2020.pdf](https://www.incometaxindia.gov.in/communications/notification/notification_11_2020.pdf)

**Notification No. 09/2020**

**Date – 12th February, 2020**

**Courts of the Chief Judicial Magistrates of the Union Territory of Jammu and Kashmir designates as Special Courts.**

CBDT in consultation with the Chief Justice of the High Court of Jammu and Kashmir, has designated the Courts of the Chief Judicial Magistrates of the Union Territory of Jammu and Kashmir as Special Courts in relation to section 84 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (22 of 2015), .

For more details, please follow:

[https://www.incometaxindia.gov.in/communications/notification/notification\\_09\\_2020.pdf](https://www.incometaxindia.gov.in/communications/notification/notification_09_2020.pdf)

**Notification No. 10/2020**

**Date – 12th February, 2020**

**Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:**

In the Income-tax Rules, 1962, after rule 21AD, the following rules shall be inserted, namely: -

“21AE. Exercise of option under sub-section (5) of section 115BAA.—

1. The option to be exercised in accordance with the provisions of sub-section (5) of section 115BAA by a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2020, shall be in Form No. 10-IC.
2. The option in Form No. 10-IC shall be furnished electronically either under digital signature or electronic verification code.
3. The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be.

For more details, please follow:

[https://www.incometaxindia.gov.in/communications/notification/notification\\_10\\_2020.pdf](https://www.incometaxindia.gov.in/communications/notification/notification_10_2020.pdf)

**Notification No. 11/2020**

**Date – 13th February, 2020**

**The Central Board of Direct Taxes makes the rules further to amend Income-tax Rules, 1962.**

In the Income-tax Rules, 1962, after rule 114AA, the following rule shall be inserted, namely:- “114AAA. Manner of making permanent account number inoperative.

Where a person, who has been allotted the permanent account number as on the 1st day of July, 2017 and is required to intimate his Aadhaar number under sub-section (2) of section 139AA, has failed to intimate the same on or before the 31st day of March, 2020 otherwise it shall become inoperative immediately after the said date.

Where a person, whose permanent account number has become inoperative, is required to furnish, intimate or quote his permanent account number under the Act, it shall be deemed that he has not furnished, intimated or quoted the permanent account number, as the case may be, in accordance with the provisions of the Act, and he shall be liable for all the consequences under the Act.

For more details, please follow:

[https://www.incometaxindia.gov.in/communications/notification/notification\\_11\\_2020\\_new.pdf](https://www.incometaxindia.gov.in/communications/notification/notification_11_2020_new.pdf)

# PRESS RELEASE

## DIRECT TAX

**Press Release**  
**Date - 4th February, 2020**

### **CBDT issues clarification on the applicability of TDS provisions on Mutual Fund dividend**

Government of India Ministry of Finance Department of Revenue Central Board of Direct Taxes New Delhi, 4th February, 2020 PRESS RELEASE CBDT issues clarification on the applicability of TDS provisions on Mutual Fund dividend The Finance Bill, 2020 proposed to remove Dividend Distribution Tax (DDT) at the level of Company/ Mutual Fund and proposed to tax the same in the hands of share/unit holder. It was also proposed to levy TDS at the rate of 10% on the dividend/ income paid by the Company/Mutual Fund to its share/unit holder if the amount of such dividend/ income exceeds five thousand rupees in a financial year. Queries have been received to the effect that whether under the proposed section 194K, the Mutual Fund would be required to deduct TDS also on the capital gains arising on redemption of units. It is hereby clarified that under the proposed section, a Mutual Fund shall be required to deduct TDS @ 10% only on dividend payment and no tax shall be required to be deducted by the Mutual Fund on income which is in the nature of capital gains. Necessary clarification, if required, shall be proposed in the relevant provision of the Law.

**Press Release**  
**Date – 6th February, 2020**

### **Income Tax Department conducts search on prominent persons in Film Industry in Tamil Nadu**

Income Tax Department conducts search on prominent persons in Film Industry in Tamil Nadu On 05-02-2020, the Income Tax Department conducted a search in the case of 4 major players in the Film Industry including a Producer, a prominent Actor, his Distributor and Financier based in Tamil Nadu. The common thread among all these entities was the success of a recent film which was a box office hit collecting around Rs. 300 crore. About 38 premises of the group were covered in search and survey actions spread over Chennai and Madurai. The highlight of the search is the seizure of unaccounted cash of about Rs. 77 crore from hideouts and secret places located at

Chennai and Madurai, purportedly belonging to the financier. Large number of property documents, Promissory notes, post dated cheques taken as collateral security were recovered during the search and have been seized. As per evidence detected during the search, it is estimated that the concealment in this case is likely to exceed Rs. 300 crore. The distributor, who is a part of the group searched, is also a builder. All documents in original, belonging to the distributor have been recovered from a hideout place, which was the house of his friend. Scrutiny of the evidence so unearthed is under progress. The producer, who is also a part of the group searched, is into film production, distribution and film exhibiting Multiplexes and has produced several films. Analysis of the accounts available in the office premises is under process. Evidences of actual receipts and expenses booked and remuneration paid to Artists is under investigation. In the context of the issues of the prominent Actor, it is stated, that, his investment in immovable properties and remuneration received from the said Producer for acting in the film is the subject matter of investigation in the present search. Searches in some of the premises are still continuing.

**Press Release**  
**Date – 13th February, 2020**

### **Searches conducted by the Income Tax Department lead to detection of unaccounted income of more than Rs. 2000 crore**

Income Tax Department carried out Search and Seizure action on 6th February 2020 at Hyderabad, Vijaywada, Cuddapah, Vishakhapatnam, Delhi and Pune. More than 40 premises were covered.

The search action included three prominent infrastructure groups based in Andhra Pradesh and Telangana. Investigations led to busting of a major racket of cash generation through bogus sub-contractors, over-invoicing and bogus billing. Several incriminating documents and loose papers were found and seized during the search, apart from emails, WhatsApp messages and unexplained foreign transactions unearthed during the search.

Search operation was also carried out on close associates including expersonal secretary of a prominent person and incriminating evidence seized.

The search operations revealed that Infrastructure companies had subcontracted work to several non-existent/bogus entities. Preliminary estimates suggest siphoning of more than Rs. 2000 crore through transactions that were layered through multiple entities with the last in the chain being small entities with turnover less than Rs. 2 crore to avoid maintenance of books of accounts and tax audits etc. Such entities were either not found at their registered address or were found to be shell entities. Several such sub-contractors were controlled by the principal contractors with all their ITR filings and other compliances being done from the IP addresses of main corporate office.

FDI receipts of several crores in the group companies of one of the Infrastructure companies is suspected to be round-tripping of its unaccounted funds.

Unexplained cash of Rs. 85 lakh and Jewellery worth Rs. 71 lakh have been seized. More than 25 bank lockers have been restrained.



# JUDGEMENTS

## INDIRECT TAX

**No Exemption on TDR or FSI for Construction of Commercial Apartments: AAR Mr. Vilas Chandanmal Gandhi vs. Maharashtra AAR Case No. – 40/2019-20/B Date – 15.01.2020**

### **Fact of the Case**

- The Applicant, Mr. Vilas Chandanmal Gandhi, was an owner of the land situated within the limits of PMC and wanted to develop the land jointly in collaboration with M/s. Amar Builders and Developers and share the profits through the distribution of sale proceeds after the development of the land by way of construction of residential/commercial projects.
- Applicant assigned/ transferred the development rights inland to the Developer and the said assignment/ transfer of rights in land was for the purpose of construction of residential/ commercial project on the land also agreed to pay consideration in the form of 45% of the sale proceeds of the developed project.
- Further, the developer had given Rs. 3,60,00,000/- (Rs. Three Crores Sixty Lakhs only) to the Applicant as a security deposit to be refunded within a month after completion of the project on the underlying land,
- Since the applicant and the developer realized that vacating/ removing reservations may possible, they decided to surrender their rights in the said land. PMC gave them R's/ Additional FSI, as consideration for surrendering the joint rights in land to PMC in terms of Development Control Regulations (DCR).
- Applicant and the Developer entered into a supplementary agreement that the TDR/ Additional FSI to be obtained would be shared between the Applicant and the Developer in the ratio of 73:27.

### **Decision of the Case**

- The Authority for Advance Ruling (AAR) observed that Goods and Services Tax(GST) on TDR or FSI (including additional FSI) is payable at the rate of 18% (9%+9%) with ITC under serial number 16.

- The Authority further observed that there is no exemption on TDR or FSI(including additional FSI) for construction of commercial apartments and Goods and Services Tax(GST)shall be payable on TDR or FSI(including additional FSI) or both used in respect of (1) carpet area of commercial apartment and (2) unbooked residential apartments as on the date of issuance of Completion Certificate or first occupation of the project for the purpose of formula.

**Provisional Attachment under GST Act to Protect Revenue is not an Omnibus Power: Bombay HC M/s. Gehna Trading LLP vs. Union of India and others Writ Petition No. -167 of 2020 Date – 04.02.2020**

### **Fact of the Case**

- M/s. Gehna Trading LLP is the petitioner in the present case
- The Deputy Commissioner, Central Goods and Service Tax (CGST) informed the Branch Manager not to allow any debt of the said petitioner's bank account
- Section 83 of the Central Goods and Services Tax (CGST) Act, 2017 relating to "Provisional Attachment power to Protect Revenue in Certain Cases.
- Primary defence of the Respondents is that even if section 62, 63, 64, 67, 73 and 74 mentioned in section 83 of the Act are not referable to the case of the Petitioner since a summons is issued to the Petitioner in pursuant to the inquiry initiated against M/s. Maps Global under section 67 of the Act, by the issuance of summons the proceedings, get extended to the Petitioner also.

### **Decision of the Case**

- The division bench comprising of Justices Nitin Jamdar and M.S. Karnik observed that the legislature has no doubt conferred power on the authorities to provisionally attach bank accounts to safeguard government revenue, but the same is within the well-defined ambit.
- Only upon contingencies provided therein that the power under section 83 can be exercised.
- This power is to be used in only limited circumstances and it is not an omnibus power.

**Homeowner Association liable to pay GST on Contributions made by Members and can avail Exemption If contribution does not exceed**

**Rs.7,500: AAR**

**M/s Vaishnavi Splendour HomeOwner**

**Association vs. AAR Karnataka**

**Case No. – KAR/ADRG/47/2019**

**Date – 17.09.2019**

**Fact of the Case**

- In this case, the applicant is M/s Vaishnavi Splendour HomeOwner Association, which is an association that comprises 88 members.
- These members maintain common areas such as gardens, corridors, pathways, swimming pools, etc. This association collects annual contributions from its members which can be calculated on the basis of the super built-up area owned by the members.
- Furthermore, they collect contributions in the name of corpus funds for future contingencies.
- The question is whether the association is liable to pay CGST and SGST on the number of contributions received from the members?

**Decision of the Case**

- The Authority of Advance Ruling (AAR) in Karnataka comprised of Sri Harish Dharnia, Additional Commissioner of Central Tax and Dr. Ravi Prasad M.P., Joint Commissioner of Commercial Tax while addressing the above issues held that, the association is liable to pay both Central Goods and Service Tax (CGST) and State Goods and Service Tax (SGST) on the sum of amount received from its members.
- The AAR also said that the benefit of exemption can be granted to the applicant only in the case when the contributions i.e. the maintenance charges are not more than Rs. 75,00 per month.
- It was held that the applicant is not liable to pay CGST or SGST in the case of corpus funds.

**Punjab HC refuses to grant Bail as creation of Fake Invoice to avail ITC are Serious Allegations**

**Sanjay Dhingra vs. Director General of Goods and Service Tax Intelligence**

**Case No. – M 50256 of 2019**

**Date – 23.01.2020**

**Fact of the Case**

- Sanjay Dhingra is the petitioner in the present case

- The petitioner was allegedly involved in the business of creating fake invoices in order to avail of the benefit of Input Tax Credit (ITC).
- The fake invoices consists of the name of the companies or firms which were controlled either by the petitioner or these companies or firms were in the name of the employees or any known person.
- The petitioner has also facilitated the irregular availment and utilized the Input Tax Credit (ITC) which has ultimately led to the wrongful and substantial loss to the government and wrongful gain to the accused.
- Therefore, in accordance with all the allegations, the petitioner was arrested on the charge of creating fake invoices and also the liability of Rs. 127 crore has been created against the accused. And hence the petitioner knocked on the door of the court for the grant of concession bail.

**Decision of the Case**

- The single bench at High Court of Punjab and Haryana comprising of Justice Vivek Puri while taking into consideration the decisions of the Supreme Court held that there are very serious charges or allegations levelled against the petitioner who has allegedly created fake invoices without the movement of goods.
- Therefore, keeping in mind the public good the court did not grant the concessional bail to the petitioner.

**NAA dismisses Profiteering allegations against**

**Xiaomi**

**M/s Local Circles India Pvt. Ltd and Director**

**General of Anti Profiteering vs. M/s Xiaomi**

**Technology India Pvt. Ltd**

**Case No. – 05/2020**

**Date – 10.02.2020**

**Fact of the Case**

- In the present case M/s Local Circles India Pvt. Ltd. is the applicant
- The M/s Xiaomi Technology India Pvt. Ltd. was engaged in selling power-bank, the Goods and Service Tax (GST) levied was at 18% before Jan 2019 and it continued to charge 18% of Goods and Service Tax (GST) even after Jan 2019 and thus it did not lead to any reduction in the rate of tax applicable to the power bank and as a consequence the price of the power bank has remained same.
- The issue raised in this case was whether the Xiaomi violated any provision of Section 171 of the Central Goods and Service Tax

(CGST) Act, 2017 or not? If in case the Xiaomi has violated, then what will be the quantum of profiteering?

### **Decision of the Case**

- The NAA bench consisting of B.N. Sharma (Chairman), J.C. Chauhan and Amand Shah (Technical Member) held that power-bank did not come under the purview of the notification as it is described as the 'Lithium-ion Batteries' and the 18% of Goods and Service Tax (GST) levied is justified.
- Hence, in the present case in no aspect pertains to the case of profiteering. Therefore the scope of investigation or proceedings is limited to the issue of profiteering and not the issue of classification.

### **DIRECT TAX**

**Land belonging to Gurudwara which is not categorized as Agricultural Land liable to TDS on Compulsory Acquisition: Delhi HC Gurudwara Sahib Patti Dhaliwal vs. Chief Commissioner of Income Tax Case No. – W.P(C) 8160/2019 Date – 16.01.2020**

### **Fact of the Case**

- The Assessee Gurudwara Sahib Patti Dhaliwal is a religious establishment in Punjab
- The land of Assessee situated in Ludhiana was compulsorily acquired by the Government.
- The Petitioner received a compensation amount of Rs. 1,66,37,460/- and 20% tax amounting to Rs. 33,24,100/- was deducted at source pertaining to AY 2012-13 under Section 194 LA of the Act.
- The revenue department based on local inquiries conducted by the jurisdictional ITO ascertained that according to the Patwari Report, land in question was not agricultural.

### **Decision of the Case**

After having gone through the case in details the division bench explained the case as follows-

- The documentary material was shown to us by the Respondent leads to the conclusion that the land in question would be categorized as a capital asset.
- Therefore, the assessee Gurudwara Sahib Patti Dhaliwal cannot claim the benefit of exemption to "agricultural land.

- So the compensation received by the assessee Gurudwara Sahib Patti Dhaliwal in pursuance of land acquisition proceedings, is subject to tax and the refund has been rightly rejected, as being barred by limitation

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**Receipts from Carbon Credit is not Business Income: ITAT disallows Deduction Claim M/s. Rajshree Sugars and Chemicals vs. The Assistant Commissioner of Income Tax Case No. – 1126/Chny/2011 Date – 05.12.2019**

### **Fact of the Case**

- In the present case M/s. Rajshree Sugars and Chemicals is the applicant
- The assessee had claimed that the receipt from the sale of carbon credits had originally been offered by the assessee as business income and the assessee had claimed the same as eligible for deduction u/s.80IA of the Income Tax Act, 1961.
- The Assessing Officer submitted that in the course of the assessment had denied the assessee's claim of deduction u/s.80IA in respect of the receipts on the sale of the carbon credits.
- In an additional ground, the assessee has raised an alternative prayer that the receipts from the sale of the carbon credit are liable to be treated as the capital receipts.

### **Decision of the Case**

- In the light of the decision of the various cases it has been stated that the receipts from the sale of the carbon credits are liable to be held as capital receipts only.
  - The Tribunal observed that the expenditure incurred by the assessee in respect of the sale of the carbon credits cannot be treated as Revenue expenditure at all.
  - The Bench comprising of Judicial Member, George Matham and Accountant Member S. Jayaraman further directed to see to it that when the capital receipt is computed, the said expenditure is reduced from the said capital receipts for determining the net capital receipt.
-

**Agricultural Lands not ‘Capital Asset’ If Buyer Company maintains the Land Character:**  
**ITAT Delhi**  
**Kushal Infra project Industries vs. DCIT, Delhi**  
**Case No. – 5348/Del/2015**  
**Date – 30.12.2019**

**Fact of the Case**

- In the present case Kushal Infra project Industries is the applicant
- The Assessee Company, Kushal Infra project Industries purchased agricultural land and sold it after a short period. The Assessing Officer(AO) rejected the claim of the assessee who treated profit on the sale of the land to be exempt under section 2(14) of the I.T. Act because it was not falling in the definition of “Capital Asset”.
- The assessee had claimed that the profit on the sale of the lands to be exempt on this ground since the agricultural operations were being carried on the said lands by the farmer.
- The status of the land in the record of the Revenue Authorities was, agricultural land and agricultural operations were being carried out which was confirmed by the Department of Land Revenue, Government of Delhi and still status of the land is agricultural land.
- The Commissioner of Income Tax (Appeals) [CIT(A)] considered the material on record in the light of various case Laws held that the land in question is agricultural land and profit earned on the sale of the said land is a capital receipt.

**Decision of the Case**

- Upholding the findings of the CIT(A), Judicial member Bhavnesh Saini and Accountant Member Dr. B.R.R. Kumar agreed that, “where intention of assessee from inception was to carry on agricultural operation on the lands in question, the gain from the sale could not be taxed as the profit arising from adventure in the nature of trade merely because of the short period of holding.”
- The Income Tax Appellate Tribunal (ITAT) Delhi in January held that agricultural lands cannot be treated as a capital asset if the company that purchases such land maintains its character as agricultural land.

**Remunerations of director not violation of 40(2) if the director is a relative and expenses not proved as excessive and unreasonable:**  
**ITAT Delhi**  
**Kushal Infra project Industries vs. DCIT, Delhi**  
**Case No. – 5348/Del/2015**  
**Date – 30.12.2019**

**Fact of the Case**

- In the present case Kushal Infra project Industries is the applicant
- Smt. Veena Rana was not an employee, but a Director of the company was paid salary instead of the Director’s remunerations in the shape of a one-time payment of Rs.2 Lakhs was made to her towards the end of the accounting period considering prospects of good income of the company and valuable contribution made by the said Director towards the business of the company.
- This payment was duly supported by the Board’s resolutions and owing to an inadvertent mistake on the part of the Accountant, this payment was shown and accounted for as salary instead of the Director’s remuneration.
- The Assessing Officer disallowed the salary payment because the recipients are relative of the Director Shri Kushal Rana and applied section 40(2) of the Income Tax Act. The applicant contended that to engage relatives for work and to pay them for the same is nowhere banned or prohibited in the Income Tax Act.
- The Commissioner of Income Tax Appeals considered the material and facts of the case and deleted the addition.
- This was challenged by the revenue before the Income Tax Appellate Tribunal (ITAT) Delhi.

**Decision of the Case**

- The bench consisting of Judicial member, Bhavnesh Saini, and accountant member Dr. B.R.R Kumar upheld the order of the CIT(A) and held, “ before applying the provisions of Section 40A(2), A.O. should have proved expenditure is excessive or unreasonable.
- The Income Tax Appellate Tribunal (ITAT) Delhi has held that remunerations given to a company director, who happens to be a relative do not fall as a disallowance under section 40(2) of the Income Tax act if such expense is not proved to be excessive and unreasonable.

**Penalty can't be levied on Erroneously Seized  
Amount: Supreme Court**  
**Kishore Jagjivandas Tanna vs. Joint Director  
of Income Tax**  
**Case No. – 625 of 2020**  
**Date – 24.01.2020**

**Fact of the Case**

- The Appellant Kishore Jagjivandas Tanna who was a resident of Mumbai had checked into a hotel in New Delhi on 25.08.1987. The revenue conducted a search and seizure operations under 132 of the Income Tax Act, 1961 and Rs. 5,00,000/- was found in a polythene bag.
- The appellant had claimed that he had collected the amount from a trader in New Delhi.
- The first income tax officer stated that there were contradictions and fabrications in the appellant's version and stand on the source of the amount and therefore it would be retained till the assessment for the Assessment Year 1988-1989 was finalized, as the estimated tax liability and penalty for concealment could exceed the seized amount.
- Since these steps were taken by the revenue without following the principle of natural justice, this order was set aside by the Bombay High Court and asked the revenue to pass a fresh order. Therefore, a fresh order was passed where it was stated that the said amount need not be retained. But, unfortunately, the seized money could not be traced, and the revenue blamed the appellant for not keeping adequate information about the seized money.
- In subsequent letters, the revenue also went to the extent to claim that the said amount was not collected by the appellant even after an opportunity to claim the seized amount was given. The Revenue was then of the opinion that the said amount can be claimed after directing penalty payment and interest as per section 132(5) of the act since it is a seized amount.

**Decision of the Case**

- Finally, on 24th of January 2020, the appellant was brought to justice after nearly 33 years Justice S. Abdul Nazeer and Justice Sanjiv Khanna who held, “. . . . Laches is this case would require sheer negligence of nature and type which would render it unjust and unfair to grant relief. . . . the appeal is allowed with the direction to the respondent

authorities to pay Rs. 4,99,900/- with interest as per law within a period of three months from the date on which the copy of this order is received.

- In case of failure to pay in time, the appellant would be at liberty to file a contempt petition against the officers concerned and also claim costs.”

# TAX COMPLIANCE CALENDAR AT A GLANCE

## GST CALENDAR

Due Date	Type of Return
20.02.2020	GSTR-5 & 5A for the month of January 2020- to be filed by the Non-Resident taxable person & OIDAR
20.02.2020	<b>GSTR 3B</b> - for the month of January 2020 for taxpayers having an aggregate turnover of more than Rs. 5 Crores in the previous financial year
22.02.2020	<b>GSTR 3B</b> - for the month of January 2020 for taxpayers having an aggregate turnover of up to Rs. 5 Crores in the previous financial year [ <i>Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep</i> ]
24.02.2020	<b>GSTR 3B</b> - for the month of January 2020 for taxpayers having an aggregate turnover of up to Rs. 5 Crores in the previous financial year [ <i>Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi</i> ]

## DIRECT TAX CALENDAR - FEBRUARY, 2020

### 07.02.2020

- Due date for deposit of Tax deducted/collected for the month of January, 2020. However, all the 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

### 14.02.2020

- Due date for issue of TDS Certificate for tax deducted under section 194-IA and section 194-IB in the month of December, 2019
- Due date for issue of TDS Certificate for tax deducted under section 194M in the month of December, 2019

### 15.02.2020

- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of January, 2020 has been paid without the production of a challan
- Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending December 31, 2019

# COURSES OFFERED BY TAX RESEARCH DEPARTMENT

## Eligibility criterion for admission in TRD Courses

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

### 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** – Offline and 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** – 40Hours  
**Mode of Class** – Online

### 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** – 30Hours  
**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** – 30Hours  
**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

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

## PUBLICATIONS OF TAX RESEARCH DEPARTMENT

Book	Amount (Rs.)
Impact of GST on Real Estate	100
Handbook on GST on Service Sector	250
Insight into Customs - Procedure & Practice	250
Handbook on Works Contract	100
Input Tax Credit & In depth Discussion	250
Handbook on Impact of GST on MSME Sector	100
Exemptions under the Income Tax Act, 1961	500
Insight into Assessment including E-Assessment	500
Taxation on Co-operative Sector	100
Guidance Note on GST Annual Return & Audit	500
Impact on GST on Education Sector	100
<b>TOTAL</b>	<b>2750</b>

Combo offer will be given for purchase of all books at a time which is  
**Rs. 2000**

For Members and Students - **15% Discount**



# SNAPSHOTS

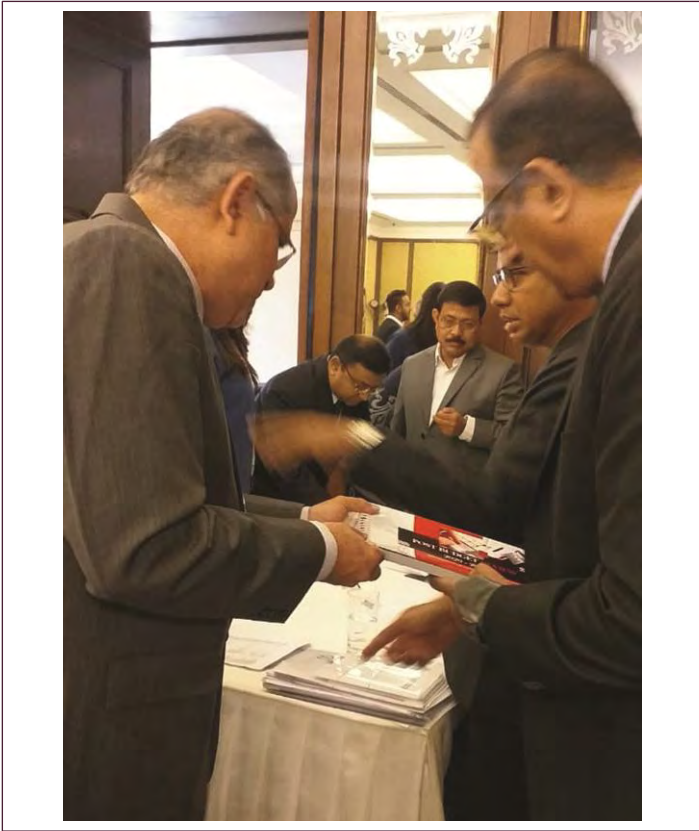
## Meeting with Hon'ble Finance Minister on Jan Jan ka Budget



Hon'ble Finance Minister, Smt Nirmla Sitharaman addressing the gathering on Jan Jan ka Budget at Kolkata on 9<sup>th</sup> February, 2020



CMA Chittaranjan Chatterjee, Central Council Member, ICAI attending the Jan Jan ka Budget meeting along with Managing Committee members of EIRC of ICAI and members of Tax Research Department.



CMA Chittaranjan Chatterjee, Central Council Member, ICAI submitting the Post Budget Review prepared by ICAI to the senior officials of CBDT.

### Glimpses of Budget Month 2020 – Conducted by various Chapters



Shri Pranab Kumar Das, IRS, Principal Chief Commissioner of Income Tax, Odisha and Shri Naresh Penumaka, IRS, Chief Commissioner, GST, Central Excise & Custom, Bhubaneswar Zone inaugurated the panel discussion session being the Special Guest.



CMA Niranjan Mishra, Chairman Indirect Taxation Committee felicitated Shri Pranab Kumar Das, IRS, Principal Chief Commissioner of Income Tax, Odisha at the start of the session.



CMA Niranjan Mishra, Chairman Indirect Taxation Committee felicitated Shri Naresh Penumaka, IRS, Chief Commissioner, GST, Central Excise & Custom, Bhubaneswar Zone at the start of the session.



Audience present at the panel discussion session of “Union Budget 2020-21” at Bhubaneswar.



The Chief Guest in the programme was Shri Nilay Baran Som, IRS, Addl. Commissioner, IT who inaugurated the seminar along with CMA Manas Kumar Thakur, Past President of the Institute.



CMA Mrityunjay Acharjee, Sr. VP (F&A) Balamer & Lawrie discussing about the direct tax proposal in the budget in the technical session.



The Howrah Chapter conducted a seminar on “Analysis of Budget 2020 on Direct & Indirect Taxes” on 08.02.2020



Cuttack-Jagatsinghpur-Kendrapara Chapter



Kota Chapter



Jamshedpur Chapter



Rourkela Chapter



EIRC



Jaipur Chapter

## 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:

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

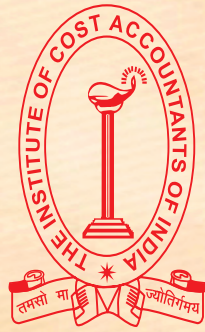
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