

At a Glance

(Brief Updates from the world of Tax and Finance)

For Private Circulation Only

February 2020

Message

Year 2020 had always got its task cut out. Slowdown in growth, fall in revenue collections, declining GST numbers, the Government had its hand full with the challenges for the coming year. The Prime Minister Mr. Narendra Modi held meeting with economists and industry leaders at the start of the month on solutions to turnaround the slowdown and achieve the target of \$5 Trillion economy. Finance Ministry propped up the GST department to ensure better collection of GST.

January, however, did bring in good numbers for the economy. Forex reserves hit a record high of \$457.46 billion. Service sector also showed promise with Services PMI showing improvement.

Globally, the spread of the coronavirus took centre stage with China locking down entire cities to contain the spread. Given the contagious nature of the virus, it is possible that international trade may get affected in the coming months if the virus is not contained quickly enough.

Under income tax, the Government proactively notified the tax forms for the financial year 2019-20 so that filing can commence from April 1, 2020. ITR-1 and ITR-4 have been notified.

Threshold for requiring a whole-time company secretary for a private company was increased to

Rs. 10 Crores from Rs 5 Crores of paid up capital. Scope of secretarial audit was extended to apply also to companies having outstanding loans from banks of Rs. 100 Crore or more. For ease of business, the Government also introduced SPICe+ form for incorporation of a company. This will allow allotment of EPFO, ESIC and GSTIN wherever applicable.

On the indirect tax front, the 'Sabka Vishwas' Scheme announced in the last budget became a great success with around Rs. 38,000 crores being collected under the scheme. The scheme envisaged reduced litigation and exemption from interest and penalty for upfront settlement of demands under the service tax regime. In GST, the due dates of filing of GSTR-3B has been staggered from January onwards to be able to manage the last minute load on the GSTN servers.

This month, the Finance Minister, Mrs. Nirmala Sitharaman presented her second budget on 1st of Feb. The Finance Minister touched upon a plethora of topics including education, agriculture, water and sanitation, disinvestment and even introduced new tax slabs. We will share these in detail in our special edition on the Union Budget 2020 coming to you shortly.

With Warm Regards
Ankit Jain

Income Tax

CBDT notified ITR Form SAHAJ and SUGAM for AY 2020-21.

CBDT notified certain Income Tax return forms in order to ensure that return filing utility is available as on 01/04/2020. Accordingly, CBDT has notified following forms:

- i. Form - 1 (SAHAJ) which is applicable for resident individuals having total income upto Rs. 50 Lacs and earning income from salary, one house property, interest income, family pension & agriculture income upto Rs. 5,000/-;

- ii. Form - 4 (SUGAM) which is applicable for resident Individuals, HUFs & Firms having income upto Rs. 50 Lacs having income from business and profession under section 44AD, 44ADA or 44AE, interest income, family pension & agriculture income upto Rs. 5,000/-.

However, above forms are not applicable for certain class of persons like persons having assets or signing authority or income outside India, director in a company, claimed relief u/s 90, 90A or deduction u/s 91, held unlisted equity shares etc.

[Notification No. 1/2020 [F. NO. 370142/32/2019-TPL] dated 03-01-2020]

CBDT extends the time limit for filing Compounding Application

With a view to mitigate unintended hardship to taxpayers in deserving cases of prosecution and to reduce the pendency of existing prosecution cases before the courts, CBDT earlier provided one time relaxation in respect of time limit of 12 months and in this regard CBDT prescribed that applications filed on or before 31.12.2019 shall be deemed to be filed within time limits, however, relaxation should not be granted in the cases which are generally not compoundable as per earlier guidelines dated 14th June, 2019.

Now, vide this circular, CBDT has further extended the time limit for filing such applications from 31/12/2019 to 31/01/2020.

[Circular No. 1/2020 [F. NO. 285/08/2014/-IT (INV. V)/639] dated 03-01-2020]

CBDT condones delay in filing of audit report by the trust or institutions in Form 10B for A.Y. 2018-19 onwards

Any trust or institution registered u/s 12A and claiming exemption u/s 11 and 12 of the Act is required to furnish Audit Report in form 10B alongwith its income tax return and delayed filing or non-filing disentitles the trust or institution from claiming exemption u/s 11 & 12 of the Act. In this regard, CBDT has earlier condoned the delay in filing of Form 10B for AY 2016-17 and AY 2017-18 with certain conditions.

Now, vide this circular, CBDT has authorized the CITs to admit the application u/s 119(2) of the Act, if delay is upto 365 days and there was reasonable cause for not filing the forms within stipulated time.

[Circular No. 2/2020 [F. NO. 197/55/2018/-ITA-I] dated 03-01-2020]

CBDT condones delay in filing of Form 9A & 10 regarding accumulation of funds by trust or institution for A.Y. 2018-19 onwards

Under the provisions of section 11 and 12 of IT Act, charitable trust or institutions are exempted from payment of income tax if 85% of total receipts are applied towards charitable activities, however, if 85% amount could not be spent on charitable activities, then the same could be accumulated under section 11(2) and explanation to section 11(1) and same is to be intimated to Income Tax department in Form no. 10 and 9A respectively and such amount is to be invested modes specified u/s 11(5) i.e. F.D.R. with scheduled bank, Government Securities etc. CBDT, w.e.f. AY 2016-17 introduced e-filing of such forms, however, being first year of e-filing, in many cases

such forms could not be filed online, therefore, CBDT earlier condoned the delay in filing of forms for AY 2016-17 and AY 2017-18 with certain conditions.

Now, for assessment year 2018-19 onwards, CBDT has authorized the CITs to admit condonation application u/s 119(2) of the Act, if, delay is upto 365 days and also satisfy themselves that amount has been invested in terms of section 11(5) of the Act and there was reasonable cause for not filing the forms within stipulated time.

[Circular No. 3/2020 [F. NO. 197/55/2018/-ITA-I] dated 03-01-2020]

Direct Tax – Judgements

SC: Appellant entitled to interest u/s 244A on amount refunded by Department

The Apex Court observed that a “tax refund” is a refund of taxes when the tax liability is less than the tax paid. As per the old section, an assessee was entitled for payment of interest on the amount of taxes refunded pursuant to an order passed under the Act, including the order passed in an appeal. The amount paid by the resident/deductor was retained by the Government till a direction was issued by the appellate authority to refund the same. When the said amount is refunded, it should carry interest in the matter of course. As held by the Courts while awarding interest, it is a kind of compensation of use and retention of the money collected unauthorized by the Department. When the collection is illegal, there is corresponding obligation on the Revenue to refund such amount with interest in as much as they have retained and enjoyed the money deposited. Even the Department has understood the object behind insertion of Section 244A, as that, an assessee is entitled to payment of interest for money remaining with the Government which would be refunded. There is no reason to restrict the same to an assessee only without extending the similar benefit to a resident/deductor who has deducted tax at source and deposited the same before remitting the amount payable to a non-resident/foreign company.

[Universal Cables Ltd. vs CIT (Civil Appeal No(s). 3826/2012) Supreme Court dated 12.12.2019]

Delhi HC: In absence of any purchase bill to prove that the deposits in the bank account were sale receipts, the addition by Tax authorities is justified.

The Hon’ble Court observed that the income tax authorities have rendered concurrent findings of fact that the assessee has failed to produce any material to authenticate his contentions that the

cash deposits in his account were on account of the sales being made by him from the Kirana business. In absence of any purchase bill to justify that the deposits in the bank account were sale receipts, the tax authorities cannot be faulted for making the addition of the unexplained cash entries in the bank account. The tax authorities upheld that the cash has been deposited merely to generate funds in the bank account, whenever payments were required to be made by cheque. Therefore, indeed there is no nexus with the gross receipts. The appellant has not produced any material in support to explain the entries of cash such as books of accounts or purchase bills, etc and we find no merit in the Appellant's contentions. In view of the above and also for the reason that there are consistent and concurrent findings of the fact by the lower tax authorities, no question of law arises for our consideration.

[INTEC CORPORATION vs. ACIT in W.P.(C) 11452/2017 Delhi High Court]

ITAT Pune held that the Loss suffered during first year of business started with husband's fund is to be clubbed entirely

The assessee's wife started new business of Futures and Options on 18-09-2013. The assessee claimed that she incurred loss of Rs.31.56 lakhs in such business which was clubbed in his hands. The Assessing Officer accepted the primary claim of the assessee, however, he did not accept the assessee's contention that entire loss of Rs.31.56 lakh be set off against the assessee's income. Considering the mandate of Explanation 3 to section 64(1), the AO held that only that part of the business loss incurred by the assessee's wife could be set off against the assessee's income which bears the proportion of amount of investment out of gift on the first day of previous year to the total investment in the business as on the first day of previous year. In case of newly set up business, the previous year shall be the period beginning with the date of setting up of the business and ending with said financial year. Thus, in the instant case, the amount of assets received by wife as invested in business and total investments in the business including assets received from assessee will be same. Therefore, going by the explanation 3 read in conjunction with section 64(1)(iv), the entire amount of loss resulting is liable to clubbed in hands of assessee.

[Uday Gopal Bhaskarwar v. Assistant Commissioner of Income Tax, Pune, [2020] 113 taxmann.com 378 (Pune - Trib.)]

International Taxation & Transfer Pricing

ITAT Mumbai Differentiates between product-promotion and brand-building; Deletes channel distributor's AMP-adjustment

ITAT deletes AMP-adjustment for assessee [channel distributor, selling advertisement airtime] for AY 2008-09 by observing that as the owner of the distribution and advertisement income, the assessee has incurred AMP expenses, which would only benefit itself through increased distribution and advertisement sales. Further, it held that in consideration for purchase of distribution and advertisement rights from the AE, the assessee has paid a fixed fee and not a share/percentage of revenue and hence, any increase in the distribution and advertisement revenues on account of AMP expenses was fully retained by the assessee itself, and no benefit could be said to accrue to the AE. The ITAT further held that assessee has incurred the AMP expenses to make the customers aware of the programs being telecast on the channels, give program time details, etc. to the viewers and these advertisements had a short shelf life (till telecast of the program) and were published by assessee only a few days prior to the telecast of the program on the channel to help create viewers/advertiser's awareness of the program. ITAT stated that "The advertisement published by the appellant is not for brand building but is focused on program being telecast. Lastly, considering assessee's own decision making in marketing strategy and quantum of AMP expenses and absence of arrangement with its AE for undertaking marketing activities, ITAT holds "...the same does not qualify as an 'international transaction".

[NGC Network (India) Pvt. Ltd. v Addl. CIT (ITA No. 6829/Mum/2012) dated 10.01.2020 – ITAT Mumbai]

Corporate Laws

Amendment to appoint a Whole-Time Company Secretary for Pvt. Cos.

MCA introduced the Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020. As per the said amendment, the threshold limit of paid-up share capital of a private limited company for compulsory appointment of a whole-time company secretary has been increased from INR 5 crore to INR 10 crore.

The said Rules are made to further amend the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 and shall be applicable on or after 1st April, 2020.

[MCA issued Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020 vide its notification dated 03.01.2020]

Amendment on applicability of Secretarial Audit

The scope of applicability of secretarial audit has been extended by Ministry of Corporate Affairs vide its notification dated 03.01.2020. As per the said amendment, every company having outstanding loans or borrowings from banks or public financial institutions of INR 100 crore or more would also require to annex a Secretarial Audit Report along with its Board's Report in form MR-3.

Earlier, this requirement was applicable only to the public limited companies having a paid-up share capital of INR 50 Cr. or more or having a turnover of INR 250 Cr. or more or to all listed companies.

[MCA issued Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020 vide its notification dated 03.01.2020 effective from 01.04.2020]

Introduction of SPICe+ (SPICe Plus) for incorporation of new companies and reservation of name.

MCA has declared that it would be shortly notifying & deploying a new Web Form christened 'SPICe+' (pronounced 'SPICe Plus') replacing the existing SPICe form. SPICe+ would be an integrated Web form offering multiple services viz. name reservation, incorporation, DIN allotment, mandatory issue of PAN, TAN, EPFO, ESIC, Profession Tax (Maharashtra) and Opening of Bank Account. It will also facilitate allotment of GSTIN wherever so applied for by the Stakeholders. After deployment of SPICe+ web form, RUN shall be applicable only for change of name of existing companies.

Upon notification & deployment, all new name reservations for new companies as well as new incorporations shall be applied through SPICe+ only.

[As per latest updates on MCA Portal dated 23rd January, 2020]

Goods & Services Tax

Finance Ministry announces 3 dates for "staggered" GST Payments, acknowledges return filing difficulties

Acknowledging difficulties faced by Trade & Businessmen in filing monthly GSTR-3B returns, Finance Ministry announces new due dates

based on turnover and State registration, so as to facilitate filing of returns in a 'staggered' manner, as below:

Category of Taxpayers	Due Date
Taxpayers having annual turnover \geq Rs 5 crore (in the previous financial year)	20 th day of the next month
Taxpayers having annual turnover below Rs 5 crore (in the previous financial year) and registered in the state/ UT of Chhattisgarh, Madhya Pradesh, Gujarat, Daman and Diu, Dadra and Nagar Haveli, Maharashtra, Karnataka, Goa, Lakshadweep, Kerala, Tamil Nadu, Puducherry, Andaman and Nicobar Islands, Telangana or Andhra Pradesh	22 nd day of the next month
Taxpayers having annual turnover below Rs 5 crore (in the previous financial year) and registered in the state/ UT other than the states mentioned above	24 th day of the next month

[Press release by Ministry of Finance, dated 22nd January, 2020]

CBIC notifies appointment of "Revisional Authority" under CGST Act

CBIC notifies the following Revisional Authority u/s 108 of Central Goods and Services Tax Act, 2017:

- Principal Commissioner or Commissioner of Central Tax for decisions or orders passed by Additional or Joint Commissioner of Central Tax; and
- Additional or Joint Commissioner of Central Tax for decisions or orders passed by Deputy Commissioner or Assistant Commissioner or Superintendent of Central Tax.

[Notification 5/2020-Central tax dated 13th Jan 2020]

Provisions of Finance (No. 2) Act, 2019 came into force

With effect from 01st January, 2020, some sections have been implemented which were amended vide Finance (No.2) Act, 2019. Major amendments are summarized as under:

• Amendment of Section 10 (Composition Scheme)

Casual taxable person and non-resident taxable person no longer eligible for composition scheme.

- **Amendment of section 22 (registration)**

There is an enhancement in aggregate turnover from twenty lakh rupees to such amount not exceeding forty lakh rupees in case of supplier who is engaged exclusively in the supply of goods.

- **Amendment of section 25 (Procedure for registration)**

Majorly every registered person shall undergo authentication, or furnish proof of possession of Aadhaar number, in such form and manner and within such time as may be prescribed.

- **Amendment of section 49 (Payment of tax, interest, penalty and other amounts)**

Inter head cash transfer facility shall be facilitated. A registered person can transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under CGST Act to the electronic cash ledger for integrated tax, State tax, Union territory tax or cess subject to the conditions prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act.

- **Amendment of section 171 (Anti-profiteering)**

Section 171 of the CGST Act is amended so as to empower the National Anti-profiteering Authority to impose penalty equivalent to 10% of the profiteered amount. It has been further clarified that penalty shall not be leviable if the profiteered amount is deposited within thirty days of the date of passing of the order by the Authority.

[Notification 01/2020- Central tax and 01/2020-Integrated tax dated 01st January 2020]

Gujarat HC strikes down levy of IGST on ocean freight

Gujarat HC quashes levy of IGST ocean freight on transportation of goods by a vessel. HC holds that "Notification No.8/2017 - Integrated Tax (Rate) dated 28th June 2017 and the Entry 10 of the Notification No.10/2017 - Integrated Tax (Rate) dated 28th June 2017 are declared as ultra vires the Integrated Goods and Services Tax Act, 2017, as they lack legislative competency". Court concludes that no tax is leviable under the Integrated Goods and Services Tax Act, 2007, on the ocean freight for the services provided by a person located in a non-taxable territory by way of transportation of goods by a vessel from a

place outside India upto the customs station of clearance in India.

[Mohit Mineral Pvt. Ltd. vs UOI]

AAAR Tamil Nadu: Allows valuation as per second proviso to Rule 28 for supply to distinct persons

Tamil Nadu AAAR modifies the order of AAR while holding the appellant to be eligible to adopt the value as per Second Proviso to Rule 28 of CGST/TNGST Rules, 2017, in respect of supply between distinct person(s). It notes appellant's plea that when distinct person is eligible for full ITC and is going to make further supply, then in respect of initial supply, it is not necessary to adopt only Open Market Value and pay higher tax and block such tax amounts. Authority observes that the second proviso provides the value declared in the invoice to be the 'open market value' (OMV) and does not restrict its application as in the first proviso, which is to be applied for cases of 'as such supply' only. It finds no specific regulation in the said rules that the rules are to be applied seriatim while noting that Proviso 2 states that, when the tax paid is available as full ITC, then the invoice value is the OMV.

[In case of Specsmaakers Opticians Pvt. Ltd.]

AAR Rajasthan: No ITC on Inputs used for setting of MRO facilities, ultimate use of property "immaterial"

Rajasthan AAR holds the applicant is not eligible to claim credit of GST charged by vendor for supply of goods and services for carrying out the activities (Civil Work and External Developmental Works) for setting up of Maintenance Repair and Overhaul (MRO) facility, which was further leased. It observes that the activity of MRO involving supply of goods and services is leading to creation of an immovable property and u/s 17(5)(d), ITC is blocked for goods or services used for the construction of an immovable property. The authority finds applicant's claim that said section deals with unavailability of credit of inputs/input services in case where output is not taxable as only one dimension of law. It further states that "this is an implicit interpretation which is not the intentional outcome of the said section. The purposive dimension of the said section is blocking of credit for construction of immovable property".

[In case of Indag Rubber Ltd]

Compliance Calendar February 2020

Compliance Particulars	Due Date
1. Income Tax	
Deposit of Tax deducted/collected for the month of January, 2020	7th February, 2020
Issue of TDS Certificate for tax deducted under section 194-IA, 194-IB and 194M in the month of December, 2019	14th February, 2020
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	15th February, 2020
Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending December 31, 2019	15th February, 2020
2. Goods & Services Tax (GST)	
GSTR-8: Summary of Tax Collected at Source (TCS) by E-commerce Operator for the month of January, 2020	10th February, 2020
GSTR-7: Summary of Tax Deducted at Source (TDS) for the month of January, 2020	10th February, 2020
GSTR-1: Details for Outward Supplies for the month of January, 2020 (with aggregate turnover exceeding Rs. 1.50 Crores)	11th February, 2020
GSTR-6: Return for a taxpayer registered as Input Service Distributor(ISD) for the month of January, 2020	13th February, 2020
GSTR-3B: Summary Return for the month of January, 2020	20th/22nd/24th February, 2020
4. Labour Laws	
Deposit of ESI for the month of January, 2020	15th February, 2020
Deposit of Provident Fund for the month of January, 2020	15th February, 2020

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