

At a Glance

(Brief Updates from the world of Tax and Finance)

For Private Circulation Only

November 2019

Message

The month of October started with dilemma over the growth of the Indian economy. The numbers previously had got businesses worried. But then then the Finance Minister threw a blinder reducing tax rates. However, businesses were evaluating about the impact and benefits of the new rates. To add to the worry, the headwinds of the global trade winds seemed ominous. Another setback came in the form of the decision of the WTO asking India to withdraw its export incentives.

But where this is a challenge, there is also an opportunity. India invited Chinese Premier Mr. Xi Jinping who visited India for informal talks with Prime Minister Narendra Modi. With the nature of talks being more relaxed and casual, no announcements were made. But, various agendas were taken up for better trade and relations between the two countries.

The RBI, in its bid to stimulate the economy, reduced the interest rates given inflation being in check. The regulator also induced banks to pass on the rate cut to the consumers.

The Government also announced a dedicated desk for investors bringing in \$500Mn or more to facilitate all clearances from the Centre to the local bodies.

On the tax front, the Government clarified that it will not allow MAT credit utilisation against the reduced tax rate. Such companies will now have to opt for the reduced tax rates after utilising their complete MAT credit.

The Government also issued notifications to put into effect the decisions taken in the last GST Council Meeting, with one restricting the credit of ITC being controversial. The procedure for filing of refund claim under GST has also been moved completely online to allow greater transparency.

However, the tax collections under GST didn't fare well this time with collections falling 5% from previous year, despite this being the festive month. This maybe on account of various reduction in tax rates made in GST during the last one year.

Indian currency held ground and even improved slightly over the last month. Similar was the case for oil prices which remained stable around USD 60 per barrel.

Despite the volatility in world economics, India remains resilient and strong, having potential to unleash. Hoping the Government keeps the reforms juggernaut rolling to maximise results and reach its target of \$5Trillion economy.

With Warm Regards
Ankit Jain

Income Tax

Denial of MAT credit and clarification related to brought forward losses in respect of companies opting for paying tax at concessional rate of 22% under section 115BAA.

Taxation Laws (Amendment) Ordinance, 2019 introduced section 115BAA providing the companies an option to pay tax at concessional rate of 22% if no benefits of any exemption / incentives is claimed and such option once exercised cannot be reversed.

Further, MAT was also not applicable in such cases. Thereafter, certain queries were raised regarding utilization of available MAT Credit.

Now, CBDT vide this circular has clarified that since MAT is not applicable, therefore, MAT Credit will also not be allowed to be set off from tax liability. Accordingly, those companies who want to opt for concessional tax regime may exercise such option after utilizing their MAT Credit in normal tax regime. CBDT further clarified that brought forward loss on

account of additional depreciation will also not be allowed to be set off.

[Circular No. 29 of 2019, Dated October 02, 2019]

CBDT amends Rule 10CB related to repatriation of funds in the cases where transfer pricing adjustments has been made.

Rule 10CB of the Income Tax Rules provides the time limit within which excess money available with the Associated Enterprises (AE) as a result of adjustment to transfer price has to be brought back to India by such AEs. This rule further provides the rate of interest to be charged where AE fails to bring such excess money within the specified time. Now, vide this notification, Government has introduced certain new rules and also clarified certain matters, key highlights of which are as under:

- The rate of exchange shall be the telegraphic transfer buying rate as on the last day of the previous year in which such international transaction was undertaken.
- Interest will be charged on whole or part amount which is not repatriated from due date of filing of ITR in following cases:
 - Suo-Moto Adjustment is made in Return;
 - Advance Pricing Agreement has been entered before due date of filing of return of income;
 - Option as per Safe Harbour rules has been exercised.

[Notification No. 76 of 2019 Dated September 30, 2019]

Exemption from TDS on cash withdrawal under section 194N

After exempting Cash replenishment agencies and agents of ATM operators, the CBDT has also exempted 'authorized dealer and their franchise agent / sub-agent' and 'Full-Fledged Money Changer licensed by RBI and its franchise agent' from deduction of tax of 2% on cash withdrawals exceeding Rs. 1 Crore. Finance Minister in this year's budget had announced a tax deduction at source of 2% for cash withdrawal by any person exceeding 1 Crore from one or more accounts during any financial year.

[Notification No. 80 of 2019 Dated October 15, 2019]

Direct Tax – Judgements

SC: Loss arising from share trading (being speculative in nature for subject AY) cannot be set off against profits from business of futures & options [being non-speculative by virtue of Sec. 43(5)] for AY 2008-09.

Supreme Court has held that loss arising from share trading (being speculative in nature for subject AY) cannot be set off against profits from business of futures & options [being non-speculative by virtue of Sec. 43(5)] for AY 2008-09. The assessee's sole business during the subject AY was of dealing in shares (specifically submitted before the AO), as it also notes that prior to amendment of explanation to section 73 by Finance Act 2014, the business of trading in shares carried on by a company was not excluded from the deeming provision of speculative business. Court held that provisions of Sec. 45(3) were amended by Finance Act 2005 to exclude transactions in derivatives from the meaning of speculative transaction, thereby rejecting assessee's contention that share trading and derivative trading were a part of composite business activity and hence holds that set off of loss from share trading is not permissible against profits from derivative trading.

[Snowtex Investment Limited vs Pr. CIT (Civil Appeal No(s). 4483/2017) Supreme Court]

HC : ITAT can pass an order to Commissioner for grant of registration u/s. 12AA

High Court held that ITAT can itself pass an order directing Commissioner to grant registration u/s. 12AA on the basis of material already on record in a case where ITAT disagrees with the satisfaction of the Commissioner while denying registration u/s. 12AA. Revenue contended that unless a satisfaction on the genuineness of trust's activities as envisaged u/s. 12AA is recorded by the CIT, a direction for its registration cannot be given by the Tribunal and the matter ought to have been remanded back to CIT. HC opines that "in case where the Commissioner has refused to accept the application for registration of Trust after recording its finding on the basis of material on record before him holding that the activities and object of the Trust are not genuine and the Appellate Tribunal on the basis of the same material on record comes to the conclusion that the order of the Commissioner is perverse since it has been passed ignoring, misconstruing or misinterpreting such evidence, then it can direct registration of the Trust without remanding the matter to the Commissioner. Thus concludes that the powers of ITAT are co-extensive with that of CIT u/s. 12(AA) subject to what has been indicated herein above.

[CIT (Exemption) U.P State Cons. & Infra vs. M/S Reham Foundation Kandhari Lane Lal Bagh Lucknow in ITA NO. 37 OF 2017 Allahabad High Court]

ITAT Delhi: The valuation of the shares can be made on the basis of other factors and not merely on the basis of financial statements.

Delhi ITAT sets aside CIT(A)'s order sustaining Sec. 56(2)(viib) addition with respect to shares issued at a premium by assessee co. during AY 2014-15, rejects Revenue's FMV computation invoking Rule 11UA. Assessee had computed FMV in terms of clause (ii) to Explanation (a) to Sec. 56(2)(viib) and had considered the circle rate for land while arriving at such FMV. ITAT finds force in assessee's argument that the lower authorities have wrongly computed the FMV [fair market value] of the shares on the basis of the book value ignoring the FMV of the land held by the company. ITAT ruled that "the valuation of the shares should be made on the basis of various factors and not merely on the basis of financials and the substantiation of the fair market value on the basis of the valuation done by the assessee simply cannot be rejected where the assessee has demonstrated with evidence that the fair market value of the asset is much more than the value shown in the balance sheet.

[India Convention and Culture Centre Pvt. Ltd v. ITO in ITA No. 7262/Del/2017 – ITAT Delhi]

International Taxation & Transfer Pricing

Bombay High Court upholds quality adjustment under CUP-method while benchmarking imports; Deletes TP-adjustment on technical fees

ITAT follows co-ordinate bench ruling in assessee's own case for AY 2008-09 which applied subsequent year's (AY 2014-15) signed APA to accept selection of foreign AEs as tested party under TNMM considering it was the least complex entity. Facts being identical, ITAT opines that "we are bound to follow the same. We cannot change the stand with the view taken by the ITAT in the own case of the assessee". ITAT draws support from Hon'ble Madras HC ruling in L.G. Ramamurthi wherein it was held that to take a different opinion from earlier bench, Tribunal should place the matter before ITAT President to have the case referred to a Full Bench of Tribunal consisting of three or more members for which there is provision in the IT Act and also follows SC ruling in Ambika Parsad Mishra upholding similar view. Separately, observing that impugned issue is admitted by Gujarat HC for AY 2008-09 and is pending for hearing, ITAT holds that "therefore we do not find any reason to refer the

matter to the Special Bench as argued by the Id. AR for the assessee.

[Ranbaxy Laboratories Ltd vs DCIT (ITA No.1782 of 2014) – ITAT Ahmedabad]

Corporate Laws

Relaxation in scope of filing e-form DIR-12 by an ACTIVE-non-compliant company

Earlier, ACTIVE non-compliant companies (i.e, companies which have not filed the ACTIVE form) were not allowed to file form DIR-12 for any changes in directors except cessation.

After Eighth Amendment Rules 2019, an ACTIVE-non-compliant company can also file Form DIR-12 in the following cases:

1. Cessation of any director,
2. Appointment of directors in such company where the total number of directors are less than the minimum number (i.e. 2 in case of private company and 3 in case of public company) in on account of disqualification of all or any of the director under section 164,
3. Appointment of any director in such company where DINs of all or any its director(s) have been deactivated, or
4. Appointment of director(s) for implementation of the order passed by the Court/ NCLT/ NCLAT under the provisions of the Act or under the IBC Code, 2016).

[Companies (Incorporation) Eighth Amendment Rules, 2019 vide Notification dated 16th October, 2019]

Relaxation of additional fees and extension of last date of filing of form IEPFA-1A & IEPF-2

The Ministry of Corporate Affairs (MCA) has relaxed the additional fee payable by companies on filing form IEPF-1A up to 31/12/2019 and form IEPF-2 (for the purpose of filing Statement of unclaimed and unpaid amounts) up to 30/11/2019. After expiry of due date, the additional fee shall be payable.

[General Circular No. 11/2019 dated 25th October, 2019]

Relaxation of additional fees and extension of due date of filing form CRA-4

MCA has issued a General Circular No. 12/2019 dated 24/10/2019 in relation to relaxation of the additional fees and extension of the last date of filing Form CRA-4 (Cost Audit Report) for the financial year 2018-19 up to 31st December, 2019.

[General Circular No. 12/2019 dated 25th October, 2019]

MCA extends due date for filing Annual ROC Returns

MCA extends the due date for filing of financial statements for the financial year ended 31/03/2019 in e-forms AOC-4, AOC (CFS) or AOC-4 XBRL up to 30/11/2019 and annual return in e-form MGT-7 up to 31/12/2019 by companies without levy of additional fee.

[General Circular No. 13/2019 dated 29th October, 2019]

Goods & Services Tax

Restriction on availment of Input Tax Credit (ITC)

CBIC made a significant change regarding the availment of input tax credit on 9th October, 2019. The ITC claim of any taxpayer in respect of invoices which have not been uploaded by the vendors shall be restricted to 20% of the amount reflecting in GSTR-2A. It implies that taxpayers cannot claim full ITC if the suppliers have not furnished the details of such invoices in GSTR-1 or have not furnished their GSTR-1. More importantly, it will become important for all assesseees to ensure that they reconcile the input credits as per their books with the input credit as reflecting in their Form GSTR-2A.

[N/N 49/2019- Central Tax dated 09.10.2019]

Extension of due dates for filing Tran-1 and Tran-2 in certain cases

CBIC has extended the due dates of filling TRAN-01 till December 31, 2019 and TRAN-02 till January 31, 2020 for those registered persons who could not submit return by the due date on account of technical glitches.

[N/N 49/2019- Central Tax dated 09.10.2019]

Clarification on issue of GST on airport levies

Passenger Service Fees (PSF) and User Development Fees (UDF) are charged by airport operators (like AAI, DIAL, MIAL etc.) for providing the services to passengers, which are collected by the airlines as an agent only. Thus, the airline is not responsible for payment of GST on PSF/UDF provided it satisfies the conditions of pure agent. It is the airport operator which is liable to pay GST on PSF and UDF. The ultimate recipient of airport services may take ITC of such GST paid on the basis of pure agent invoice issued by airline to them. Further, the collection charges paid by airport operator to airlines are consideration for

the services provided by the airlines to the airport operator and airlines shall be liable to pay GST on the same under forward charge. ITC of the same will be available with airport operator.

[Circular No.115/34/2019 dated 11.10.2019]

Clarification on applicability of GST on donations or gifts received from individual donors by charitable organisations

The CBIC has issued a circular clarifying that where individual donors provide financial help or any other support in the form of donation or gift to institutions such as religious institutions, charitable organisations etc. and the recipient institutions place a name plate or similar such acknowledgement in their premises to express the gratitude, it can be said that there is no supply of service for a consideration if the name of the donor is displayed in recipient institution premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity to the donor. There is no obligation on part of the recipient of the donation or gift to do anything and therefore, there is no GST liability on such consideration.

[Circular No.116/35/2019 dated 11.10.2019]

New services introduced in Reverse Charge Mechanism

- Reverse Charge has been made applicable on the services of renting of a motor vehicle provided by a person other than a body corporate paying GST at the rate of 5% to a body corporate.
- Services of lending of securities under Securities Lending Scheme, 1997 have also been covered under RCM wherein the borrower has been held responsible to discharge the GST liability.
- Option has been provided to an author to pay tax under forward charge for the services supplied by way of transfer or permitting the use or enjoyment of a copyright relating to original literary works to a publisher. Earlier the publisher used to discharge the GST liability under RCM.

[N/N 22/2019-Central Tax (Rate) dated 30.09.2019]

Intermediary Services exempted when the principals are located outside India

An exemption has been provided to the services provided by an intermediary, when location

of both service provider and service receiver are outside taxable territory subject to the condition that the specified documents such as bill of lading, contract between supplier and receiver, commission debit note, country of origin certificate and declaration from the intermediary, shall be maintained by the intermediary for a minimum period of five years.

[N/N 20/2019-Integrated Tax (Rate) dated 30.09.2019]

Karnataka AAR disallows ITC on electrical works, pumps used in building warehouse space with all facilities

AAR denies ITC on inputs i.e. Electrical Works, Pumps, Pumping systems and tanks, Lighting system, Physical security system and Fire system to be used in industrial warehouse under section 17(5) of the CGST/ KGST Act, 2017. It notes that the relevant inputs were in the nature of works contract services. Taking note of Applicant's claim that these items were not capitalized as immovable property in its books, the AAR clarified that merely accounting an immovable property as a movable property in the books of account of the applicant does not divest the exact nature of the item. It further explains that these items do not have independent existence and are part and parcel of the entire building with infrastructure, and the entire space with infrastructure is given on rental as "building space with modern infrastructure and facilities" which is excluded from the definition of "plant and machinery" as applicable to Section 17(5).

[In the matter of Embassy Industrial Park Private Limited]

Karnataka AAR disallows ITC on free gifts/trips distributed to dealers

Karnataka AAR disallows ITC on the inward supplies of goods and services which are attributable to the incentives provided in the form of gifts of goods and services. Section 17(5)(h) of the CGST Act, 2017 does not allow credit on any goods disposed by way of gift or free samples, whether or not in the course or furtherance of business. AAR further holds that free travel services provided are without consideration and hence, do not qualify to be 'supply' in terms of Section 7(a)(1) of CGST Act and Schedule I to CGST/KGST Act, 2017. It refers to para (A)(ii) of Circular No. 92/11/2019-GST dated March 07, 2019 and clarifies that ITC shall not be available to the supplier on the

inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration. Therefore, AAR observes that ITC on the services procured for offering services of free trips is not available to the applicant.

[In the matter of Surfa Coats (India) Pvt. Ltd.]

Delhi HC quashes 'unreasoned order' rejecting refund claim, directs Revenue to grant 'personal hearing' opportunity

Delhi HC sets-aside order rejecting refund claim of the assessee stating that same has been passed without hearing the Petitioner and "is unreasoned". It notes that no prior hearing was granted to the assessee before issuing order of rejection and therefore directs Revenue to grant personal hearing to the petitioner for consideration of its claim and issue notice of hearing indicating deficiencies/ objections and pass a reasoned order.

[HCL Infosystems Ltd. vs. Union of India]

Maharashtra AAR: Supply of UPS along with installation, testing & commissioning constitutes a 'Composite supply', not a 'works-contract'

Maharashtra AAR holds that the contract entered into with Delhi Metro Railway Corporation (DMRC) for supply, installation, testing, and commissioning of UPS systems qualifies to be a 'composite supply' as the principal supply in this case is UPS units classified under Heading 8504 liable to 18% GST. The agreement clearly demarcates that separate consideration is charged for the goods and services and the goods are supplied from the Maharashtra registered GST premises and services are rendered by applicant's Delhi branch separately registered under GST. Applicant first dispatches the goods to DMRC under an invoice and E-way bill and thus the property in said goods is transferred as soon as the delivery is completed, and only thereafter installation takes place which elucidates that without supply of goods, the services cannot be supplied by the applicant and therefore, the goods and services are supplied as a combination and in conjunction and in the course of their business where the principal supply is of goods.

[In the matter of Vertiv Energy Private Limited]

Compliance Calendar November 2019

Compliance Particulars	Due Date
1. Income Tax	
Deposit of Tax deducted/collected for the month of October, 2019	7th November, 2019
Issue of TDS Certificate for tax deducted under section 194-IA & 194-IB in the month of September, 2019	14th November, 2019
Issue of Quarterly TDS Certificate (in respect of tax deducted for payments other than salary) for the quarter ended on 30th September, 2019	15th November, 2019
Furnishing of Form 24G by an office of the Government where TDS/TCS for the month of October, 2019 has been paid without the production of a challan	15th November, 2019
Furnishing of challan-cum-statement in respect of tax deducted under section 194-IA and 194-IB for the month of October, 2019	30th November, 2019
Annual return of income, Audit report u/s 44AB, and Report in Form-3CEB for the assessment year 2019-20 in the case of an assessee if he/it is required to submit a report under section 92E pertaining to international or specified domestic transactions	30th November, 2019
2. Corporate Law	
Due date to file form AOC-4, AOC-4 (CFS), AOC-4 XBRL for the FY ended 31.03.2019	30th November, 2019
3. Goods & Services Tax (GST)	
GSTR-8: Summary of Tax Collected at Source (TCS) and deposited by E-commerce Operator for the month of October, 2019	10th November, 2019
GSTR-7: Summary of Tax Deducted at Source (TDS) for the month of October, 2019	10th November, 2019
GSTR-1: Details for Outward Supplies for the month of October 2019 (with aggregate turnover exceeding Rs. 1.50 Crores)	11th November, 2019
GSTR-6: Return for a taxpayer registered as Input Service Distributor(ISD)for the month of October, 2019	13th November, 2019
GSTR-3B: Summary Return for the month of October, 2019	20th November, 2019
GSTR-9: Filing of Annual Return for FY 17-18	30th November, 2019
GSTR-9C: Reconciliation Statement and GST Audit Report for FY 17-18	30th November,2019
4. Labour Laws	
Deposit of ESI for the month of October, 2019	15th November, 2019
Deposit of Provident Fund for the month of October, 2019	15th November, 2019

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