DTPA-J

Direct Taxes Professionals' Association Journal

Volume 1 - 2018-19 | February 2019

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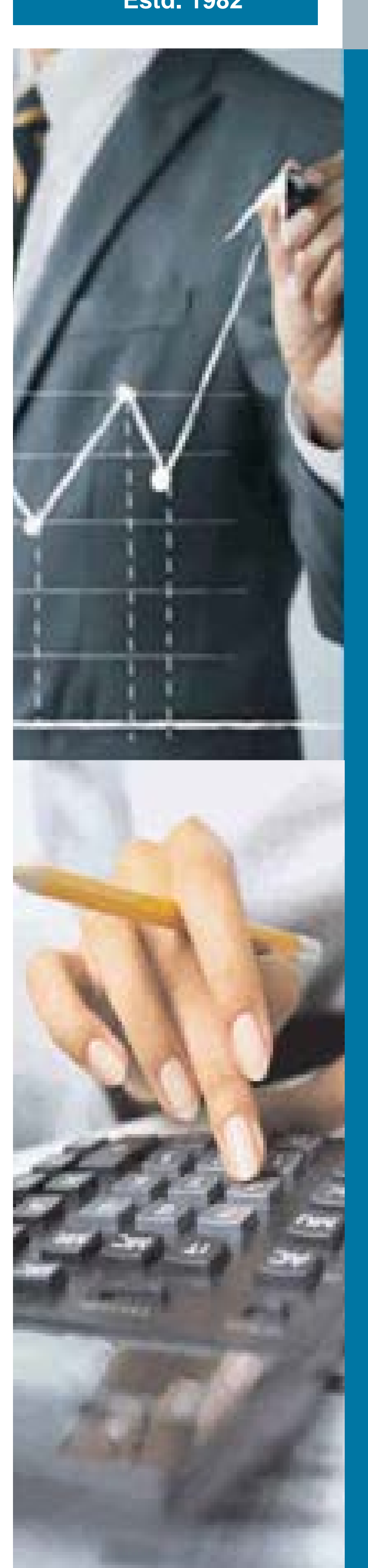

2019

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DISCLAIMER

Views expressed in the articles of this journal are contributor's personal views and DTPA and its Journal Sub-Committee do not accept any responsibility in this regard. Although every effort has been made to avoid any error or omission in the Journal, the DTPA and its journal Sub-Committee shall not be responsible for any kind of loss or damage caused to any one on account of any error or omission which might have occurred

EDITORIAL

Dear DTPAians,

With immense delight and happiness, we present you with the issue of DTPA Journal for the month of February 2019.

On behalf of the Journal Editorial Board, I would like to extend very warm wishes to the readers of the Journal. I take this opportunity to thank our President Shri Vikash Parakh for giving me the responsibility of heading the Journal and other Publication Committee of DTPA. Moreover, I would also like to sincerely thank Shri P. R. Kothari (Advisor), Shri D. S. Agarwala (Secretary), Shri Ashish Rustagi (Co-Chairman) and Ms. Aditi Jhunjhunwala (Member), who volunteered in contributing to the success of the Journal. I am also grateful to all our experts, who gave their valuable contribution in the form of articles for the Journal and the other members to be a part of our Editorial Board.

The Finance Minister has presented the Interim Budget, 2019 on 1st February, 2019. This publication provides an overview of key announcements and proposals made in the Interim Budget and its likely impact. The Bill includes a wide range of reforms for different sectors. Some of the proposals range from changes in names of departments to amendments, all geared to enhance the economy.

Likewise, for this month we have tried to cover articles on topics pertaining to initiation of the CIRP by Operational Creditor, discussion of EPC contracts, GST with respect to Public Charitable Trusts, recent NCLT Order with respect to recasting of Financial Statements being first of its kind amongst other. Our Journal's focus is to explore and expand the frontiers of knowledge that cover business decision-making applications through intellectual research.

Sharing knowledge has helped mankind survive and evolve into the intelligent and productive species he is today. Here I will quote from a homiletic commentary, Deuteronomy Rabbah, *"In vain have you acquired knowledge if you have not imparted it to others"*. Under the shadow of this Quote, I would request all the Members to share their observation and feedback on this Issue which will help us to improve the construction and contents of the Journal and will also serve as a tool for continued learning. We welcome contributions from all the Members, who intend to share their knowledge and experience with us for publication in the Journal. We have also requested our IT Committee to upload the copy of Journal on our website and to share on Facebook, so that you all can share the same with your colleagues.

We wish to encourage more contributions / suggestion / feedback from the Members to ensure a continued success of our Journal.

Thank you. We hope you will find this Issue informative.

CA Niraj Harodia

Chairman

DTPA Journal and Other Publication
E-mail : nharodia@gmail.com
Phone : 80174-67202
7th February, 2019

FROM THE DESK OF
THE PRESIDENT

My Dear Professional colleagues,

I would like to start with a quote of one of the greatest leaders of our country - Shri Mahatma Gandhi

"Live as if you were to die tomorrow. Learn as if you were to live forever"

In recent times, we have been witnessing great dynamism in various laws of the country – be it Income Tax, Company Law, Goods & Service Tax or any other enactment of the land. Numerous changes and clarifications have been issued by way of notifications, amendments and circulars that require us to be updated and keep our team members and clients updated too. What is required is a continuous learning process for professionals. Our Association has been striving to organize Seminars on a regular basis for knowledge sharing amongst Members.

The Interim Budget, presented by Hon'ble Finance Minister Piyush Goyal, makes an effort to balance the short to medium-term objectives of the economy with a long-term vision for 2030. It is a proud moment for professionals that a Chartered Accountant has presented the Budget this time. While presenting the Budget, the Finance Minister laid down 10 point vision for the next decade. The major focus areas in this Budget have been on empowerment of farmers and labourers, strengthening of domestic manufacturing, and tax relief to common man.

On the Association front, we have been regularly organising Study Circle Meetings, Workshops and Group Discussions on pertinent topics with an endeavor to keep our Members abreast of regular changes in various laws. We also conducted a Group Discussion on practical issues in e-assessment and CPC related matters and also requested Members to share with us the problems being faced by them. We conducted a Residential Conclave at Ibiza Resort, Kolkata comprising of various technical sessions with eminent speakers. We also organised Student Training Programme with a view to impart practical training to articled students. On the fellowship front, we celebrated our Diwali cum Bijoya get together at Ideal Banquets, which was attended by many Members and their families. We also celebrated our new year musical evening with Pr.CCIT, CCITs, DGIT & CITs at Shisha Banquets which was attended by many Members. The Income Tax Appellate Tribunal recently celebrated its 78th Foundation day. The Income Tax Department also celebrated Republic day at Aaykar Bhawan. We particpated in both these events and represented our Association.

We are pleased to inform that National Stock Exchange of India Ltd. (NSE) has associated with our Association as our knowledge partner and we will plan and organise a knowledge session jointly with them very soon.

I on behalf of DTPA congratulate all the elected leaders of the Central Council and Regional Council of the Institute of Chartered Accountants of India. We hope that in these challenging times, they would look into problems faced by professionals and keep the flag of the Institute fluttering high. I would also like to welcome new Members who have joined the Association during this period. Their details are also published in this Journal.

As you are aware that DTPA Mobile App has been launched both on android and iphone platforms. All of you who have not yet installed the App are requested to download and install the same. Also, those who are not yet having DTPA Membership Card are requested to obtain the card from DTPA office.

I am grateful to Shri P. R. Kothari, Advisor, Journal sub-committee, Shri Niraj Harodia, Chairman, Journal Sub-Committee, Shri Ashish Rustagi, Co-Chairman, Journal Sub-Committee and Ms. Aditi Jhunjhunwala, Member, Journal Sub-Committee for publishing this Journal.

I welcome your thoughts, suggestions and your opinions. Request you to provide your suggestions from time to time and share your grievances, if any to **president@dtpa.org**

Lets DREAM MORE – LEARN MORE – DO MORE

With Warm Regards

CA VIKASH PARAKH
PRESIDENT - DTPA
4th February, 2019

Direct Taxes Professionals' Association

Members at the Helm
2019-2021

Elected to Central Council, ICAI

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CA Sushil Goyal

CA Debasish Mitra

Elected to Regional Council, ICAI

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CA Sumit Binani

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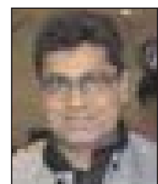
CA Ravi Patwa

Winner of Kettlebell Championship

CA Shivani Shah

Elected as President of ACAE

CA Vasudeo Agarwal

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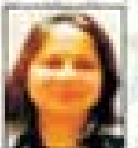

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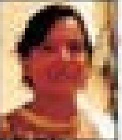

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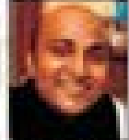

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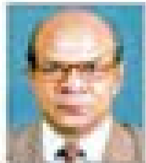
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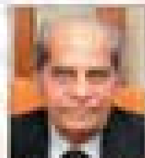
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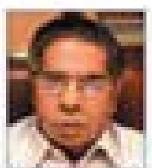
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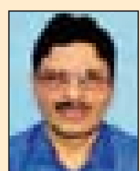

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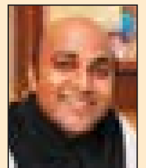

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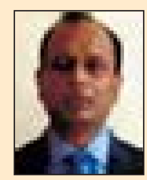


D S Agarwala
(Gen. Secretary) (Ex. Officio)

Aditi Jhunjhunwala
(Member)

DTPA CA Study Circle - EIRC

Knowledge Partner :

Bombay Chartered Accountants Society

Date : Saturday, 16th March 2019

Venue : The Lalit Great Eastern, Kolkata

Time : 10 AM to 5 PM

6 CPE Conference

PROGRAMME SCHEDULE

Registration	:	9.30 AM to 10.00 AM
Inaugural Session	:	10.00 AM to 10.15 AM
FIRST TECHNICAL SESSION	**:**	**10:15 AM TO 1.15 PM**

Topic	Speaker
Tax Planning though Business Structuring (Amalgamation, Demerger, Slump Sale, Buy Back, Conversion to LLP)	**CA Milin Mehta**, Baroda
Recent Important Amendments in GST (Including changes in Real Estate)	**Adv K. Vaitheeswaran**, Chennai

PROGRAMME SCHEDULE

(Contd.)

LUNCH BREAK : 1.15 PM TO 2.00 PM

SECOND TECHNICAL SESSION : 2.00 PM TO 5.00 PM

THREE DIMENSIONAL PANEL DISCUSSION on
PRACTICAL CASE STUDIES Covering aspects of
Accounting, Income Tax & GST on each case study

Moderators	:	**CA Sunil Gabbhawala, Mumbai**
Panelists	:	**Adv K. Vaitheeswaran**
		CA Sudhir Soni
		CA Milin Mehta

Key changes proposed in the Finance Bill, 2019

Narayan Jain, LL.M., Advocate

The interim Budget, 2019, presented by the Union Minister, Mr.PiyushGoyal, Acting Finance Minister, is a progressive budget particularly for small taxpayers and real-estate sector. The proposals made in the interim budget would provide immediate relief to small taxpayers and incentivize the salaried taxpayers, who have continuously been acknowledged as the most honest taxpayer. The incentives proposed for the taxpayers would be beneficial both for revenue department as well as taxpayers. The taxpayers would save upto Rs.12,500 from their tax outgoes and the revenue would get the opportunity to reduce its administrative cost. Low-income groups and senior citizens generally have pension income, interest income and rental income. The budget has either extended the tax benefits or reduced the compliance burden. The Government Intends to keep the small taxpayers out of tax ambit.

The key changes proposed in the interim Budget are as follows:

1. **Rebate under Section 87A increased** :

   At present Section 87A provides rebate of up toRs. 2,500 to a resident individual if his total income does not exceed Rs.3,50,000.The relief under Section 87A is proposed to be increased to Rs.12,500 with effect from assessment year 2020-21. It shall be available to those resident individuals whose total income does not exceed Rs. 5,00,000 during the Financial Year 2019-20 (Assessment Year 2020-21). The change is explained with the help of following comparative tax liability in case of Resident Individuals.There is no tax upto exemption limit of **Rs. 2,50,000.**

   Taxable Income: Rs. 3,50,000 Tax for asst year 2019-20 Rs.2,500; Tax Post Budget for asst year 2020-21 Rs.NIL

   Taxable Income: Rs. 5,00,000 –Tax for asst year 2019-20 Rs.12,500; Tax Post Budget for asst year 2020-21 Rs.NIL

   Taxable Income: Rs. 6,00,000 –Tax for asst year 2019-20 Rs. 32,500; Tax Post Budget for asst year 2020-21 Rs.32,500

   Taxable Income: Rs.10,00,000 –Tax for asst year 2019-20 Rs.1,12,500; Tax Post Budget for asst year 2020-21 Rs.1,12,500

   In addition to the amount of Income Tax as indicated above, there will be Health and Education Cess of 4 per cent.

   From the above example it is clear that if the taxable income exceeds even marginally the limit of Rs.5 Lakhs, the tax liability increases substantially as the exemption limit has not been increased and the change has been proposed by way of Rebate under section 87A. It may be noted that when income exceeds marginally from the level of Rs.50 Lakhs or Rs.1 Crore, the marginal relief is allowed to nullify the impact of high tax burden upto certain income. The FM may consider similar marginal reliefin case of taxpayers whose income marginally exceeds Rs.5 Lakhs for financial year 2019-20.

2. **Income Tax Return required to be filed even if there is no tax payable due to increased tax rebate under section 87A:**

   It may be noted that the Income Tax Act provides that to claim rebate under section 87A or deductions under section 80C as also other sections of Chapter VIA, one has to file his Income tax Return. So, 30 million taxpayers who are going to be out of tax bracket will still have to file Income tax Return.

3. **Standard deduction for the salaried taxpayers and pensioners increased:**

   It has been proposed to increase the limit of standard deduction under section 16(ia) for the salaried taxpayers from existing Rs.40,000 to Rs.50,000. The benefit of increased standard deduction shall be available to salaried persons as well as pensioners with effect from assessment year 2020-21.

4. **No deemed rental income on having two self-occupied house properties**:

   If an individual owns more than one house property for his own residence then only one house property, as per his option, is presently treated as self-occupied and its annual value is

deemed as nil. The other house property is deemed to be letout as per Section 23 and notional rent in respect of such house is taxed under the head 'Income from House Property'. The Finance Bill, 2019 has proposed to amend this provision by allowing an option to the assessee to claim nil annual value in respect of any two houses declared as self-occupied by the assesse with effect from assessment year 2020-21. In other words, a taxpayer can now claim that he has two self-occupied house properties. Considering the socio-economic need of middle-class families to maintain houses at two locations on account of their job, children's education, care of parents, etc., this relief would address the genuine concerns of the house owners.

5. **Annual value of unsold property held as stock in tarde to be taken at Nil for the period upto 2 years from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority:**

   Section 23(5) at present provides that where the property consisting of any building or land appurtenant thereto is held as stock in trade and the property or any part of the property is not let during the whole or any part of the previous year, the annual value of such property for the period upto one year from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority shall be taken to be Nil. The Finance Bill, 2019 has proposed to amend section 23(5) to provide relief to the taxpayer that **notional rent in respect of unsold inventory shall not be charged to tax upto 2 years, instead of existing one year** from the end of the financial year in which the certificate of completion is obtained from the competent authority.

6. **Deduction under section 24 in respect of borrowed capital can be claimed for 2 house properties :**

   Consequent to proposed amendment of section 23, deduction with respect to interest on borrowed capital under section 24 can be claimed with respect to two houses with effect from assessment year 2020-21. However, the aggregate monetary limit for the deduction of interest on housing loan would remain the same, i.e., Rs.2,00,000.

7. **Option to claim deduction under Section 54 for investment in two houses but only once:**

   Any long-term capital gains, arising to an Individual or HUF, from the sale of residential house property can be claimed as deduction under section 54 to the extent such capital gains are invested in another residential house property within specified time frame or deposited in capital gain account scheme. At present the taxpayer is allowed to invest only in one residential house in India to claim deduction under section 54. The Finance Bill, 2019 has proposed to extend the said deduction for investment made, by way of purchase or construction, in two residential houses with effect from assessment year 2020-21 provided the amount of capital gains does not exceed Rs.2 crores. If the assessee exercises this option, he shall not be subsequently entitled to exercise the option for the same or any other assessment year, that means, the assessee can exercise this option only once in lifetime.

8. **Extension of time limit for approval of housing project to claim deduction under section 80-IBA :**

   Deduction under section 80-IBA is presently allowed in respect of profits and gains derived from the business of developing and building affordable housing projects subject to certain conditions, inter-alia, the housing project should be approved on or before 31st March, 2019. It has now been proposed to extend the time limit with effect from assessment year 2020-21 for approval of such housing projects by one year, i.e., till 31st March, 2020.

9. **Threshold limit for deduction of tax at source from interest on deposits Increased:**

   The threshold limit for deduction of tax at source under Section 194Afrom interest (other than interest from securities) paid or payable by a banking company or Co-operative bank or Post office has been proposed to be increased from present Rs.10,000 to Rs.40,000. From April 1, 2019, the deductor (i.e., banks, post-office, etc.) shall be liable to deduct tax if the interest payable on deposits (i.e., term deposits, recurring deposits, fixed deposits, etc.) exceeds the new limit. If Payee is Senior Citizen the limit is Rs. 50,000.

   It may be noted that in case the payer of interest is a company, firm or any person (other than

banking company or Co-operative bank or Post office then in that case the limit for the purpose of TDS is Rs.5,000, this limit should also have been revised upwards to at least Rs.20,000 to minimise compliance burden.

10. **Increase in monetary limit for deduction of tax at source from rent:**

    Every person (including an individual or HUF who are subject to tax audit) shall be required to deduct tax at source under Section 194-I from payment of rent. As per existing provisions, the tax is deducted at source if the amount of rent paid or payable during the financial year exceeds Rs.1,80,000. This threshold limit, for deduction of tax, has been proposed to be increased from Rs.1,80,000 to Rs.2,40,000. It is a welcome move.

11. **Processing of Returns :**

    All Income Tax Returns will be processed in 24 hours and Refund will be issued simultaneously. It has been announced in Budget Speech para 59 by the FM and it is a welcome move.

12. **Scrutiny assessment in all cases electronically :**

    Within the next 2 years almost all verification and assessment of Returns selected for scrutiny will be done electronically through anonymised back office, manned by tax experts and officials without any personal interface between taxpayers and tax officers. It has been announced in Budget Speech para 59 by the FM and it is also a welcome move.

13. **Government to designate collecting agencies to collect stamp duty on instruments of transaction in stock exchange**s:

    The Finance Bill, 2019 has proposed amendment to the Indian Stamp Act, 1899 for better administration of stamp duty collection on Securities market instruments. It has proposed that Stamp duties would be levied on one instrument relating to one transaction and would be collected at one place through the Stock Exchanges. The duty so collected will be shared with the State Governments on the basis of place of domicile of buying client.

14. **Time limit for attachment of property under Prevention of Money Laundering Act,2002(PMLA) to be hiked from 90 days to 365 days**:

    The Finance Bill, 2019 has proposed to amend Section 8(3) of the Prevention of Money Laundering Act, 2002 (PMLA) so as to extend the period of investigation from 90 days to 365 days during which the attachment shall remain valid. It also provides that in computing the period of 365 days, the period during which the investigation is stayed by any court shall be excluded.

15. **Customs Duty abolished on 36 Capital Goods** :

    To promote **"Make in India"**campaign, the Finance Bill, 2019 has rationalized customs duty and procedures. The Custom Duty has been abolished on 36 Capital Goods.

16. **Conclusion :**

    The Finance Bill, 2019 has offered relief to small taxpayers and it has also announced measures to boost Real-estate sector, which has witnessed a prolonged down the hill cycle owing to high inventory, lesser demand and high tax implications. Demand in real estate has been declining since 2013. It is expected that the Budget proposals will help in revival of real estate sector as well as it will help people to buy or acquire the flat.

- *Narayan Jain is a leading tax consultant, former President of DTPA and visiting Faculty in Taxation at the National University of Juridical Sciences, Kolkata (NUJS). Mr. Jain and CA DilipLoyalka are the co-authors of the famous books "How to handle Income Tax Problems" and "Income Tax Pleading & Practice". He can be contacted by email at npjainadv @gmail.com.*

"A learned man is honoured by the people. A learned man commands respect everywhere for his learning. Indeed, learning is honoured everywhere."

— Chanakya

Gist of latest CBDT Circulars and Notifications

CA Ramesh Kumar Patodia
assisted by **CA Ritika Lath**

Circulars :

Circular No.	Subject matter
1/2019 dated 01-01-2019	This circulation is annual circular which is issued every year regarding Clarification on deduction of tax at source from Salaries under section 192 of the Income-tax act, 1961 during the financial year 2018-19 relevant to AY 2019-20.
4/2019 dated 28-01-2019	**Clarification regarding liability and status of official assignees under the Income-tax Act,1961** Under the provisions of Presidency Insolvency Act, 1909, Official Assignees are being appointed against any insolvent debtor wherein the appointed official assignee releases the property of the insolvent debtor and pay off its creditors. In this respect, a doubt arose in connection with the Income Tax Act that whether the appointed official assignee under the insolvency law would be the ‘representative assessee’ under Section 160 of the Income Tax Act. Also, what would be the status of that official assignee as a person under section 2(31) of the Income tax Act. This circular clarifies that under the Insolvency law, it is unambiguously stated that when any official assignee is being appointed against an insolvent debtor, the insolvent ceases to have an ownership interest in the estate once an order of adjudication is made under section 17 of the Insolvency Act. Thus, it is clarified that since Official Assignee does not receive the income or manage the property on behalf of the debtor, they cannot be considered as a 'Representative Assessee' of the debtor under the Act while computing the tax-liability arising from the estate of the debtor. Also, it is clarified that the official assignee has to be treated as a 'juristic entity' for purposes of the income-tax Act and hence for purpose of discharge of tax-liability under the Act, the status of Official Assignees is that of an 'artificial juridical person' as prescribed in section 2(31)(vii) of the Act, not being one of the 'persons' falling in sub-clauses (i) to (vi) of section 2(31) of the Act and therefore is required to file income-tax return electronically in the ITR Form applicable to 'artificial juridical person' separately for each of the estate of the insolvent and the income shall be taxed as per the rates applicable in a particular year to an 'artificial juridical person
6/2018 dated 17-08-2018	In view of the representation received, this circular has clarified that the reporting in Clause No 30C and Clause No 44 relating to GAAR and GST in the Tax Audit Report (Form No. 3CD) issued after 20th August, 2018 till 31st March,2019 is not required to be done.
7/2018 dated 20-12-2018	**Condonation of delay under Section 119(2)(d) of the Income-tax Act,1961 in filing of form no 10 and form no 9A for AY 2016-17** In view of amendment being made to Section 11 and Section 13 with effect from 1/4/2016 relevant for AY 2016-17 being the first year of e-filing of Form 9A and Form 10 referred to section 11 of the Income Tax Act in respect of application for non-utilisation of fund for charitable purpose during the previous year and accumulation of fund for five years for any specific purpose, respectively, , the Central Board of Direct Taxes authorized the Commissioners of Income-tax, to admit belated applications in such Forms provided there is sufficient cause and the compliance is made with the other provisions of the Act particularly Section 11(5) of the Income-tax Act,1961.

Circular No.	Subject matter
8/2018 dated 26-12-2018	The said circular contains the Explanatory Notes to the provision of the Finance Act, 2018.
9/2018 dated 26-12-2018	As per Section 286 dealing with furnishing of report in respect of an international group, a report has to be furnished in respect of international group. The due date for furnishing such report is referred to in sub section (4) of Rule 10DB (CbCR) read with Section 286(4) and the samehas been extendedfrom February 28th,2018 to March 31st,2019 on the ground of being not plausible to submit the report by February 28th,2018.

Notifications:

No 8/2019 Dated 31-01-2019.	**Recognised Association for Section 43(5)** Some of the transactions as specified under proviso to section 43(5) of the Income Tax Act has been excluded from the ambit of being considered as a speculative transaction for the purpose of 'profit and gain of business or profession'. However, the proviso to Section 43(5) excludes an eligible transaction in respect of commodity derivative carried out in a recognised association from being a speculative transaction . M/s BSE Ltd. Mumbai (PAN: AACCB66721) has been notified as a recognised association for the purpose of clause (iii) of the explanation 2 to Section 43(5)of the Income Tax Act,1961.
No 5/2019 - dated 30-01-2019	**Centralised Verification Scheme 2019** Vide Section 133C of the Income Tax Act, the Income Tax Authority for the purpose of verification of information in possession with him in respect of any person can ask from such person for further information or documents and can also make such information available to the assessing officer. A scheme- "Centralised Verification Scheme, 2019" for centralised issuance of notice and for processing of information or documents and making available the outcome of such processing to the Assessing Officer as stated above and referred to in section 133C(3) of the Income Tax Act, has been notified by the CBDT vide this notification.
No. 8/2018 dated 31-12-2018	**Procedure, format and standards for filing an application for grant of certificate for deduction of income-tax at any lower rate or no deduction of income-tax u/s 197(1)/collection of tax at any lower rate u/s 206©(9) of the Income-tax Act,1961 though TRACES** Under Section 197(1) and Section 206C(9) lower TDS and TCS respectively is liable to be deducted of any assessee if such assessee makes an application for such purpose in the prescribed form which was notified via Notification No. 74/2018 dated 25-10-2018 and such application has to be made electronically in Form No.13. Now, for the purpose of the above a procedure, formats and standards have been prescribed for such electronic filing of Form No. 13 referred to in Notification No. 74/2018 dated 25-10-2018 for application for lower deduction of TDS or TCS.

<table>
<tr><td>No. 74/2018 dated 25-10-2018</td><td>Income-tax(eleventh amendment) Rules, 2018

Under Section 197(1) and Section 206C(9), lower TDS and TCS respectively is liable to be deducted of any assessee if such assessee makes an application for such purpose in the prescribed form.

Now, such application for lower deduction of tax or lower collection tax under section 197(1) and section 206(C)(9) respectively has been said to be made electronically in form No. 13 in accordance to the procedures, formats and standards for ensuring secure capture and transmission of data and uploading of documents to be laid down by the Principal Director General of Income-tax (Systems).</td></tr>
<tr><td>No.7 of 2018 dated 27-12-2018</td><td>Procedure, formats and standards of issue of PAN
Under Rule 114(6) of Income tax Rules, it has been said that to provide with the formats and standards along with the procedures for verification of documents filed with the application for PAN or intimation of Aadhaar and others as stated therein.
Such procedures, formats and standards have been prescribed vide this notificationfor the purpose referred to in Sub Rule (6) of Rule 114 of the Income Tax Rules.</td></tr>
<tr><td>No.88/2018 dated 18-12-2018</td><td>Income-tax (14th Amendment) Rules, 2018
Under Section 286 of the Income Tax Act there is a requirement in respect of international group to furnish a report in the manner as prescribed in Form 3CEACto Form 3CEAE. Earlier, the time period for furnishing such report asstated in Section 286(4)was said to be ‘time as may be prescribed’ for which Rule 10DB(4) of the Income Tax Rules was relevant. Via this notification such time period has been said to be twelve months from the end of the accounting year via substituting such Rule with the following Rule:

In the Income-tax Rules, 1962, in Part II, in rule 10DB, for sub-rule (4), the following sub-rule shall be substituted, namely:

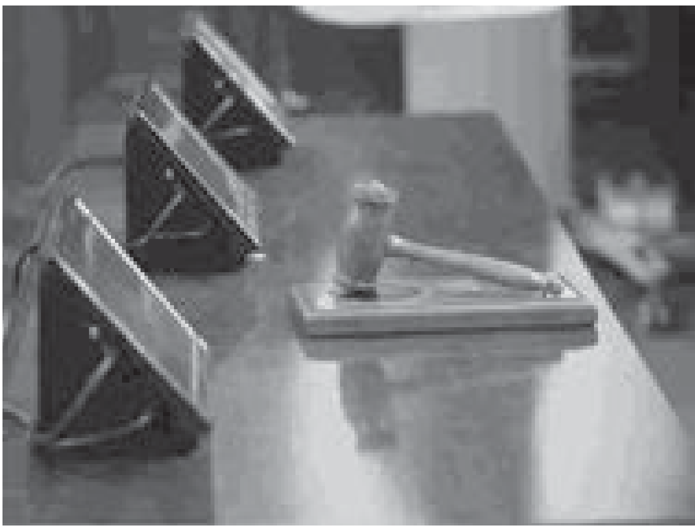
“(4) The period for furnishing of the report under sub-section (4) of section 286 by the constituent entity referred to in that sub-section shall be twelve months from the end of the reporting accounting year:
Provided that in case the parent entity of the constituent entity is resident of a country or territory, where, there has been a systemic failure of the country or territory and the said failure has been intimated to such constituent entity, the period for submission of the report shall be six months from the end of the month in which said systemic failure has been intimated”.</td></tr>
<tr><td>No. 6/2018 dated 06-12-2018</td><td>Clarification regarding Section 194A
1. Clarification regarding non deduction of TDS under section 194A in the case of senior citizen where the amount of such income or the aggregate amount paid or credited during the financial year does not exceed Rs. 50,000/-.

2. Clarification in respect of sub-rule (5) of Rule 31A of the Income-tax Rules, 1962, that the Director General of Income-tax (Systems) is authorized to specify the procedures, formats and standards for the purposes of furnishing and verification of the statementsor claim for refund in Form 26B and shall be responsible for the day-to-day administration in relation to furnishing and verification of the statements or claim for refund in Form 26B in the manner so specified.</td></tr>
</table>

No. 86/2018 dated 06-12-2018.	**Income-tax (13th Amendment)Rules, 2018** In determination of period of holding of a capital asset prescribed under Rule 8AA of the Income Tax Rules the following sub Rule (4) has been inserted : In the case of a capital asset which became the property of the Indian subsidiary company in consequence to conversion of a branch of a foreign company referred to in subsection (1) of the section 115JG, there shall be included the period for which the asset was held by the said branch of the foreign company and by the previous owner, if any, who has acquired the capital asset by a mode of acquisition referred to in clause (i) or clause (ii) or clause (iii) or clause (iv) of sub-section (1) of section 49 or sub-section (1) of section 115JG.".
No.85/2018/F.No.370133/34/2016-TPLdated 06-12-2018	Vide Section 115JG of the Income Tax Act, a foreign company engaged in the business of banking in India through its branch situatedin India converts Indian branch into its subsidiary company, capital gain arising from such conversion has been said to be not chargeable to tax subject to the conditions as may be notified by the Central Government. Also, it has been stated that provisions in the Act relating to unabsorbed depreciation, set off or carry forward or set off of losses, tax credit in respect of tax paid on deemed income in the case of the foreign company and Indian Subsidiary Company shall apply with such modifications and adaptations as may be specified. Therefore, vide this notification the following has been notified: 1. Some conditions which are required to fulfilled for claiming exemption of capital gain stated above. 2. Modifications and adaptations in the provisions relating to unabsorbed depreciation, set off or carry forward or set off of losses, tax credit in respect of tax paid on deemed income stated above have been specified.
No. 82/2018/F.No. 370142/40/2016-TPL (Part-I) dated 19-11-2018.	**Income-tax (12th Amendment)Rules, 2018** the application for allotment of PAN as referred to Rule 114(3) has also been made in the following two cases: "(v) in the case of a person, being a resident, other than an individual, which enters into a financialtransaction of an amount aggregating to two lakh fifty thousand rupees or more in a financial yearand which has not been allotted any permanent account number, on or before the 31st day of Mayimmediately following such financial year; (vi) in the case of a person, who is the managing director, director, partner, trustee, author, founder,karta, chief executive officer, principal officer or office bearer of the person referred to in clause (v)or any person competent to act on behalf of the person referred to in clause (v) and who has not beenallotted any permanent account number, on or before the 31st day of May immediately following thefinancial year in which the person referred to in clause (v) enters into financial transaction specified therein."; In addition to the above, Rule 114(6) of the income Tax Rulesprovides for procedures for verification of documents filed for certain applications which has now been made applicable for verification of documents filed for application of PAN No.

No. 81/2018/F.No.370149/194/2017-TPL dated 12-11-2018	In exercise of powers conferred by section 30 of the Prohibition of Benami Property Transactions Act, 1988 (45 of 1988), an Appellate Tribunal at New Delhi has been established by the Central Government to hear appeals against the orders of the Adjudicating Authority under the said Act.
No. 80/2018 dated 12-11-2018	In exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Prohibition of Benami Property Transactions Act, 1988 (45 of 1988), the Central Government hereby specifies that the New Delhi Bench of the Adjudicating Authority appointed under section 7 of the said Act shall exercise jurisdiction under the said Act over the whole of India except the State of Jammu and Kashmir.
No. 76/2018 dated 31-10-2018	**Recognised Association for Section 43(5)** Some of the transactions as specified under proviso to section 43(5) of the Income Tax Act have been excluded from the ambit of being considered as a speculative transaction for the purpose of 'profit and gain of business or profession'. However, the proviso to Section 43(5) excludes an eligible transaction in respect of commodity derivative carried out in a recognised association from being a speculative transaction. Indian Commodity Exchange Ltd. (PAN: AABCI9479D) has been notified as a recognised association for the purpose of clause (iii) of the explanation 2 to Section 43(5) of the Income Tax Act, 1961.
No. 74/2018 dated 25-10-2018	**Income-tax(11th Amendment) Rules, 2018** For The Purpose Making E-Application In Form No. 13 For Lower Deduction Of TDS, Rule 28 Of Income Tax Rule Has Been Substituted By The Following Rule: *28. (1) An Application By A Person For Grant Of A Certificate For The Deduction Of Income-Tax At Any Lower Rates Or No Deduction Of Income-Tax, As The Case May Be, Under Sub-Section (1) Of Section 197 Shall Be Made In Form No. 13 Electronically, ___* *(I) Under Digital Signature; Or* *(II) Through Electronic Verification Code.* *(2) The Principal Director General Of Income-Tax (Systems) Or The Director General Of Income-Tax (Systems), As The Case May Be, Shall Lay Down Procedures, Formats And Standards For Ensuring Secure Capture And Transmission Of Data And Uploading Of Documents And The Principal Director General Of Income-Tax (Systems) Or The Director General Of Income-Tax (Systems) Shall Also Be Responsible For Evolving And Implementing Appropriate Security, Archival And Retrieval Policies In Relation To The Furnishing Of Form No.13.";*
	Amendment of Rule 28AA Earlier under Rule 28AA of the Income Tax Rules , for the purpose of issuing certificate for lower deduction of TDS in determining the existing and estimated liability of tax, the Assessing officer had been said to consider the 'tax payable on assessed or returned, as the case may be, income for the last three years'.

	Now, it has been amended and stated that the assessing officer shall to consider the 'tax payable on assessed or returned or estimated income, as the case may be, for the last four years'. Therefore, now in case if the income had not been assessed neither return had been filed, the estimated income has to be considered. Also, instead of considering the income of last three years, income of last four years has been said to be assessed. The certificate for lower deduction of TDS shall now only be issued to the person liable for deduction of TDS under advice to the person who has made an application for issue of such certificate. It has now been provided that where the number of person responsible for deducting tax exceeds 100 and details are not available at the time of making application, the certificate may be issued to the person authorising him to receive income without deduction of tax at source. This is a welcome provision. Points as given under Rule 28AA to be considered by the assessing officer for the purpose of issue of certificate for lower deduction TDS, has also been said to be considered for issue of certificate for lower deduction of TCS under Rule 37H of the Income Tax Rules.
No. 73/2018 dated 23-10-2018	Appeal against the direction of Dispute Resolution Panel has to be filed in Form No.36. Earlier it was said to be filed in a separate Form-36B.



"In this world nothing can be said to be certain, except death and taxes".

— Chanakya

UDIN- A Unique No. to secure your Signature

CA Ranjeet Kr. Agarwal, Chairman, PDC of ICAI

Originality and **Authenticity** are the key elements when people rely and trust documents which have been certified by an expert. These two attributes are pervasive across the globe and encompass products and services consumed. Over the period, various cases have been reported as regards forged or false certificate, non-professional representing as professional, signed documents becoming invalid since they were fake, date mismatch making the document non reliable, etc. An analysis of 100 Bank Frauds has been done and it was found that in most of these Bank Frauds, forged Certificates and Documents were the highlights.

It has been noticed that Financial Documents/ Certificates attested by third person misrepresenting themselves as CA Members are misleading the Authorities and Stakeholders. ICAI is also receiving number of complaints of signatures of CAs being forged by non CAs.

There are numerous examples and cases where forged signature of the experts (CAs) are being used to carry out illegal and misleading activities because there is no mechanism available to third parties (Stakeholders) to verify/cross checks these documents and certificates on real time basis.

Some of the examples are;

1. Forged Signature are used to process Bank Loans

2. Forged Signature are being used to sign Financial Statements to be submitted to Regulators

3. Surrogated Firms are being created with forged Signature to bid for tenders with the connivance of authorities to win tenders and work is completed as there is no Audit of the same.

4. Different Financial Statements are submitted with forged Signature to separate Regulators to meet the requirements of respective regulators.

5. Forged Signature of one Partner is made by another Partner in the same firm without his knowledge.

6. Non Existant Partners are being added in Firms in the absence of proper KYC of Members at ICAI.

7. Forged Signatures are rampant in Certificates

Why UDIN

To curb these kind of malpractices, the **Professional Development Committee of ICAI** has come out with an innovative and unique concept called UDIN (Unique Document Identification Number) wherein every documents/certificate/reports will have an unique no called UDIN and generation of UDIN for every documents/certificates/reports attested by Practising Chartered Accountants is mandatory.

It has been long pending demands of the various Regulators that ICAI should come out with a mechanism wherein third party can verify Chartered Accountant's Reports/Certificates on real time through a portal.

What is Unique about UDIN

1. There is no requirement of uploading of any Report/Certificates.

2. There is no requirement of mentioning Clients Name

3. Members data are automatically verified with the data with ICAI

4. OTS (One Time Password) based mechanism which will be delivered to the registered Mobile and Email of the Member generating UDIN

5. Registered Mobile and Email of the Members not visible to third parties verifying UDIN at portal.

6.Enitre Process in Encrypted.

Applicability

To make the process familiar and to have awareness among Membership it was decided to implement UDIN in phase manner as per the Council decision taken at its 379th Meeting held on 17th – 18th December, 2018;

1st February,2019 : All Certificates

1st April,2019 : All Tax Audit and GST Audit Reports

1st July,2019 : All attest function performed by Practising CAs

Some important FAQ on UDIN (Detail FAQ are at udin.icai.org)

1. What is Unique Document Identification Number (UDIN)?

Unique Document Identification Number (UDIN) is 18-Digits system generated unique number for every document certified/attested by Practicing Chartered Accountants.

2. What is the objective of UDIN?

It has been noticed that financial documents/ certificates attested by third person misrepresenting themselves as CA Members are misleading the Authorities and Stakeholders. ICAI is also receiving number of complaints of signatures of CAs being forged by non CAs.

To curb such malpractices, the Professional Development Committee of ICAI has come out with an innovative concept of UDIN i.e. Unique Document Identification Number which is being implemented in phased manner. It will secure the certificates attested/certified by practicing CAs. This will also enable the Regulators/Banks/Third parties to check the authenticity of the documents.

3. What is the reference of 18-Digits of UDIN?

The 18- digits UDIN (YY MMMMMM AANNNAANNN) will be like;

19304576AKTSBN1359

Wherein;

First 2 Digits are YY - Last 2 digits of the Current Year (19 in this case)

Next 6 Digits are MMMMMM – ICAI's Membership No. (304576 in this case)

Next 10 Digits are AANNNAANNN –Alpha-numeric generated randomly by the system (AKTSBN1359).

4. When to generate UDIN?

UDIN is to be generated at the time of signing the Certificate. However, the same can be generated within 15 days of the signing of the same (i.e within 15 days from the date mentioned at Certificates and not beyond that)

5. From 1st February 2019 UDIN is mandatory for all the certificates? What is meant by Certificates?

It is mandatory to obtain UDIN for all Certificates* issued where the Financial Information/related contents is certified as True and Fair / True and Correct Members attention is drawn that AASB (Auditing and Assurance Standard Board) of ICAI has already issued Guidance Note on Reports or Certificates for Special Purposes (Revised 2016) with illustrative formats, to be followed by the Practicing Chartered Accountants.

A dropdown illustrative list is appearing on the Portal (udin.icai.in) from which the Member can select the certificate they are going to issue. In case their certificates are not matching with the list provided,Members are advised to select **Others.**

6.What will not be covered under Certificates for UDIN which is being made mandatory w.e.f. 1st February 2019?

In the 1st phase, requirement of obtaining UDIN is **Not Applicable** for ;

Auditor's Opinion/Reports issued by the Practicing Chartered Accountant under any Statute w.r.t. any entity or any person (e.g.: Tax Audit, Transfer Price Audit, VAT Audit, GST Audit, Company Audit, Trust Audit, Society Audit, etc.),

Valuation Reports,

Quarterly Review Reports,

Limited Review Report

Information System Audit,

Forensic Audit,

Revenue / Credit / Stock Audit,

Borrower Monitoring Assignments,

Concurrent / Internal Audit and the like ;

Any report of what so ever nature issued including Transfer Price Study Report, Viability Study Report, Diligence Report, Due Diligence Report, Management Report, etc.

7. Who can register on UDIN Portal?

All Practicing CAs having full-time Certificate of Practice (CoP) can only register on the UDIN portal to generate UDIN.

8. Can a Partner generate UDIN for the Certificate signed by another Partner?

No, Only signing Partner has to generate UDIN.

9. Whether a Firm can register on UDIN Portal?

No, only members of ICAI having full-time Certificate of Practice can register on UDIN Portal.

10. Who will generate UDIN for the assignment carried out by CA firm?

Only the Partners signing the document for such assignment will have to generate UDIN.

11. Whether UDIN will be applicable only for manually signed documents or also for digitally signed certificates being uploaded online such as Form 15 CB?

UDIN will be applicable both for manually as well as digitally signed Certificates / uploaded online. In case of digitally signed / online certificates, UDIN has to be generated and retained for providing the same on being asked by any third party/ authority.

12. Is UDIN to be generated for the assignments awarded before 1st February, 2019 as UDIN for certificates being made mandatory wef 1st February, 2019?

UDIN is to be generated for all Certificates that are signed on or after 1st Feb., 2019.

13. Does a member have to register on UDIN Portal

for generating UDIN?

For generating UDIN, a member has to register on UDIN Portal first time compulsorily. Thereafter, he can just login and generate UDIN.

14. How UDIN generated earlier by me can be tracked? Can it be sorted assignment-wise for our records?

Yes, UDIN generated by the members can be tracked through "Search" from your UDIN account

15. How to Revoke UDIN?

The UDIN once generated can be withdrawn or cancelled with narration. If any user searches for this UDIN, appropriate narration indicated by Member with the date of revocation will be displayed.

16. What happens if the information is not accepted or the password is not sent?

It will happen only when the credentials do not match with the database as maintained by the Regional Offices of ICAI. In such cases, the query may be lodged at UDIN portal.

17. How to Change/update /verify the mobile no. or email id in ICAI database.

It can be done by contacting to the concerned Regional Office of ICAI to change / update/ verify the email and mobile number.

18. Sometimes there are multiple reports in one assignment. Is separate UDIN is to be generated for all such reports?

No. UDIN is to be generated for an assignment and same UDIN is to be used in all documents signed under that assignment.

19. Is it possible to generate UDIN before issuing the certificate?

There is no option to generate UDIN in advance.

20. What is the consequence of not generating UDIN which are made mandatory by ICAI in respective phases?

UDIN is being made mandatory as per the Council Decision hence not generating UDIN for mandatory documents will amount to non-adherence of the Council Decision and may attract disciplinary proceedings as per the Second Schedule Part II of The Chartered Accountants Act, 1949.

21. How do Authorities/Regulators/Banks/Others can search UDIN?

The UDIN so indicated on certificate can be searched through the search option on UDIN Portal by sharing few details such as Name, Mobile number and email-id. They are not required to register themselves on the Portal.

Current Statistics:

UDIN has been made mandatory for all Certificates from 1st February, 2019. The last 5 days datas of the UDIN Portal (udin.icai.in) is as below;

Date	Member Registered	UDIN Generated
01.02.19	5416	2285
02.02.19	2575	2105
03.02.19	293	204
04.02.19	2383	4058
05.02.19	1934	4805

Roadmap

ICAI is very concern and serious to eliminate the cases of fake certificates/reports to bring more credibility of the Profession. UDIN is the first step in that direction. Many more steps are in the pipeline. PDC of ICAI has already made KYC of Members mandatory to be captured in this year MEF (Multi Purpose Empanelment Form)

For any UDIN Related issues pleae visit **udin.icai.in**

"One whose knowledge in confined to books and whose wealth is in possession of others can use neither knowledge nor books when the need for them arises."

— Chanakya

Initiation of the CIRP by Operational Creditor

Dr. Rajeev Babel, FCS & IP

SUMMARY

With the enactment of the Insolvency and Bankruptcy Code, 2016, a new way of right has been put in the pocket of the operational creditor. Prior to this, the right to recover the dues from the debtor was limited upto filing of the civil suit. The initiation of the CIRP by the operational creditor against the corporate debtor is a new game changer.

1. Introduction: The Insolvency and Bankruptcy Code, 2016 (Code) was enacted with a view to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons. The Corporate Insolvency Resolution Process (CIRP) are contained in Part II of the Code. Section 7 deals with the matter relating to initiation of CIRP by financial creditor, Section 8 deals with the matter relating to the initiation of CIRP by operational creditor and under Section 10, the Corporate Debtor itself may initiate the CIRP.

2. Classification of creditors into Financial and Operational Creditor & constitutional validity of such classification:

2.1. Financial creditor: In terms of section 5(7) of the Code, financial creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.

2.2. Operational creditor: In terms of section 5(20) of the Code, operational creditor means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.

2.3. Constitutional validity of classification of creditors as financial creditor and operational creditor: In the case of AkshayJhunjhunwala *v.* Union of India, W.P. No. 672 of 2017, February 2, 2018, the Calcutta High Court opined that classification made under the Code amongst creditors of a company to financial creditor and operational creditors is constitutionally valid. While opining in the matter the High Court stated that classification amongst similarly situated persons is permissible if the classification is based on reasonable differentia. If the classification is on reasonable differentia it does not offend the principle of equality. Consequently, creditors of a company can be classified, provided the classification is on reasonable differentia. Financial and operational creditors are defined in the Code of 2016. The definitions of a financial and an operational creditor as obtaining in the Code of 2016 can be said to have certainty and exactitude. The classification made by the Code of 2016 amongst the creditors of a company is on reasonable differentia. The differentia introduced by the Code of 2016 in respect of a creditor of a company does not offend any provisions of the Constitution of India. At least the same is not the argument of the parties before Court. What has been argued is that, the differentiation between the two creditors is such that, one of the classified creditors, that is to say, the financial creditor takes precedence over the operational creditor. Whether the treatment of a financial creditor on pedestal higher than an operational creditor and bestowing a higher or better right, so to speak, to a financial creditor is just and proper or whether the same offends any provisions of the Constitution of India requires consideration.

3.Insolvency resolution by operational creditor:

3.1. Section 8 of the Code read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016(the Rules) provides that an operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in Form 3 or a copy of an invoice attached with a notice in Form 4.

Sub-section (2) further provides that the corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice, bring to the notice of the operational creditor that:

a. existence of a dispute, *if any, or* record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

b. the *payment* of unpaid operational debt:

   (i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank

account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

Explanation to section 8 specifies the meaning of "demand notice", which means a notice served by an operational creditor to the corporate debtor demanding *payment* of the operational debt in respect of which the default has occurred.

4. Analysis of section 8: The following points emerged:

4.1. For filing insolvency resolution by the operational creditor:

- There should be occurrence of a default by the operational debtor to the operational creditor.
- The operational creditor has made a demand by delivering a demand notice in Form 3 or a copy of an invoice attached with a notice in Form 4 as prescribed under the Rules.

What is default: The word 'default' has been defined vide section 3(12) of the Code which means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not *paid* by the debtor or the corporate debtor, as the case may be.

4.2. Points to be raised in defence by the Corporate debtor within 10 days of receipt of such notice from the operational creditor:

- The payment to the operational creditor has already been made with proof of the payment.
- If the payment has not made, there is **existence of dispute**.

What is dispute: Section 5(6) of the Code provides inclusive definition of the word 'dispute'. It state that "dispute" includes a suit or arbitration proceedings relating to

- the existence of the amount of debt;
- the quality of goods or service; or
- the breach of a representation or warranty.

4.3. Existence of dispute prior to issue of demand notice: In the case of **Sanjay Jijabalandge*v.* Core Energy Systems (P.) Ltd.**, CP No. 1664/I&BP/NCLT/MAH/2018, November 16, 2018, NCLT, Mumbai opined that where there was a dispute about unpaid operational debt between parties which was supported by abundant evidence, and said dispute existed before serving of demand notice and operational creditor had notice of existence of such dispute, instant petition by operational creditor was to be rejected

4.4. Dispute raised after the demand notice: In the case of **Rajeev K Aggarwal*v.* Panipat Texo Fabs (P.) Ltd.,** Company Appeal (at) (Insolvency) No. 715 of 2018, November 27, 2018, the NCLAT, New Delhi observed and opined that where **corporate debtor had not raised dispute as regards defective goods prior to issue of demand notice**, dispute raised as defence to triggering of Corporate Insolvency Resolution Process at instance of operational creditor was just a sham designed to defeat petition under section 9 and, therefore, petition under section 9 was rightly admitted.

4.5. Thus, the Corporate Debtor in its defence may take the plea that the dispute was in existence prior to service of the demand notice by the corporate creditor. The dispute may relate not even to the existence of the amount of debt, but on account in inferior quality of the goods / service supplied by the corporate creditor or there was a breach of warranty.

5. Application for initiation of Corporate Insolvency Resolution Process (CIRP) by operational creditor:

5.1. Section 9(1) of the Code provides that after the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

The application shall be filed in Form No. 5 along with the fee of Rs. 2000.

Sub-section (3) of Section 9 of the Code provides that the operational creditor shall, along with the application furnish—

a. a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;

b. an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;

c. a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt *by the corporate debtor, if available;*

d. a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and

e. any other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information, as may be prescribed.

5.1.1. In the case of **Macquarie Bank Ltd.*v.*Shilpi Cable Technologies Ltd.,** Civil Appeal Nos. 15135, 15447 AND 15481 of 2017, December 15, 2017, the Supreme Court opined that in relation to an operational debt, provision contained in section 9(3)(c) is directory and not mandatory. The Apex Court also opined that ademand notice under section 8 of an unpaid operational debt can be issued by a lawyer/advocate on behalf of operational creditor.

5.2. Sub-section(5) of section 9 provides that the Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order:

(*i*) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—

- (*a*) the application made under sub-section (2) is complete;
- (*b*) there is no *payment* of the unpaid operational debt;
- (*c*) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;
- (*d*) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and
- (*e*) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.

(*ii*) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—

- (*a*) the application made under sub-section (2) is incomplete;
- (*b*) there has been *payment* of the unpaid operational debt;
- (*c*) the creditor has not delivered the invoice or notice for payment to the corporate debtor;
- (*d*) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or
- (*e*) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (*a*) of clause (*ii*) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the Adjudicating Authority.

5.2.1. In the case of **Mobilox Innovations (P.) Ltd. *v.* Kirusa Software (P.) Ltd.,** R. F. Narimanand SanjayKishan Kaul, JJ., Civil Appeal No. 9405 OF 2017, September 21, 2017, the CIRP was initiated by the operational creditor. Kirusa Software, respondent in the matter is an operational creditor issued a demand notice on appellant Mobilox Innovations P. Ltd., the corporate debtor demanding payment of certain dues. Mobilox pointed out that Kirusa had breached Non-Disclosure Agreement (NDA) and divulged appellant's confidential information. The breach of NDA amounted to a 'dispute' within meaning of section 8(2)(a), and therefore demand was not liable to be met. Kirusa approached NCLT by filing application for insolvency resolution process against Mobilox under section 9 but the said application was dismissed by NCLT on grounds that a notice of dispute had been issued by the Mobilox, hence, claim was hit by section (9)(5)(ii)(d). The NCLAT however allowed appeal of Kirusa holding that NCLT had acted mechanically and rejected application under sub-section (5)(ii)(d) of section 9 without examination.

When the matter reached to the Supreme Court, the Apex Court opined that once operational creditor has filed an application, which is otherwise complete, NCLT must reject application under section 9(5)(ii)(d) if notice of dispute has been received by operational creditor or there is a record of dispute in information utility.

The Apex Court further stated that NCLT is to see at this stage is whether there is a plausible contention which requires further investigation and that dispute is not a patently feeble legal argument or an assertion of fact unsupported by evidence, however, in doing so, Court does not need to be satisfied that defence is likely to succeed. Thus claim of corporate debtor that there existed a dispute in relation to breach of Non-Disclosure Agreement was sufficient to refuse entertainment of insolvency application by operational creditor. The NCLAT was wholly incorrect in characterizing defense as vague, got-up and motivated to evade liability.

6. Summing up: The classification of creditor into financial creditor and operational creditor is constitutionally valid. For initiation of the CIRP by the operational creditor, certain pre-conditions are required as mentioned in section 8 and 9 of the Code. Before the enactment of the Code the operational creditor was only having the civil right to file a civil case for recovery of the dues, but the Code has opened up new horizons not even for the banks and financial institutions, but for the operations creditors too.

"There is no jewel without some distortion."

— Chanakya

EPC contracts – A Vexed Issue

CA S. Venkataramani

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A. Introduction

Engineering, Procurement and Construction (EPC) is a form of contract wherein the contractor is responsible for all the activities right from designing, procurement, construction, commissioning and handover of the project to the end-user or owner. EPC contracts are generally a single turnkey contract which embody several agreements such as:

1. Engineering and design;
2. Procurement and supply;
3. Development including civil works;
4. Assembly, erection, testing and commissioning

EPC contracts under the erstwhile Value Added Tax regime had its own share of litigation as to whether the contracts should be classified as 'works contract' or it is consists of two elements i.e. sale simplicitor and service element.

In almost all the State Value Added Tax Act, the words "works contract" was defined to include any agreement for carrying out for cash, deferred payment or other valuable consideration, the building, construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of ***any movable or immovable property***.

In this paper an attempt has been made to analyse and understand such transactions under GST law.

B. Central Goods and Services Tax Act, 2017 (CGST Act, 2017):

1. **Some important terms / references relevant for this discussion**

   a. Composite supply is defined to mean a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply (Section 2(30) of CGST Act, 2017).

   b. Mixed supply us defined to mean two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply (Section 2(74) of CGST Act, 2017).

   c. Works contract is defined to mean a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of ***any immovable property*** wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract (Section 2(119) of CGST Act, 2017).

   d. Paragraph 6 (a) to Schedule II of CGST Act, 2017 provides that composite supply of works contract as defined under Section 2(119) of CGST Act, 2017 will be treated as supply of service.

2. On a comparison of meaning of works contract under the erstwhile Value Added Tax Law and CGST Act, 2017, it may be noted that under Value Added Tax Law the ambit of works contract included contracts resulting in moveable or immovable property in execution of contract whereas under the CGST Act, 2017 it covers only contracts resulting into immovable property in execution of contract.

3. EPC contracts generally envisages usage of goods and application of labour. While analyzing an EPC contract, the terms of contract play a very vital role under the GST law. The contractee sometime demands split in contract for better execution; or for pricing purposes or the nature of contract involves several engagement of several contractors and therefore the split becomeessential. Therefore, where contracts are split, it needs to be analysed whether the contracts still retains the characteristics of an EPC and falls within the meaning of works contract under the GST law.

4. Common understanding would be that EPC would tantamount to works contract under GST law. However, this understanding is not fully correct.

Under the GST law definition of "works contracts" is relatable to immovable property only. GST law has not defined an immovable property and therefore, reliance will have to be placed on allied laws say Transfer of Property Act, 1882. Factually,it should be understood as to whether there would be any element of permanency in the civil works, plant & machinery and whether such works would become an immovable property (affixed to earth and which cannot be dismantled without damage). There is no straight jacket answer, however,some tests that can be considered to determine whether the execution of the contract results in the emergence of an immovable property are as under:

a. If a chattel is movable to another place **as such then** it is a movable but if it has to be dismantled and moved then it becomes an immovable;

b. Permanency test – attach to earth permanently and not by nuts and bolts; degree of permanency;

c. Marketability test – if attached to earth then it becomes an immovable and cannot be held to be goods that are marketable;

d. If custom built to stay put in one place then possibly immovable property;

e. Fact finding is required as to whether the equipment can be dismantled and shifted without damage;

f. Fact finding is required that even if it can be dismantled and moved whether it can be made to work with the same amount of efficiency?

5. One more aspect that needs to be determined is, whether the supply is a composite supply or a mixed supply.

   1. **Composite supply :** A contract may be single contract or multiple contract. What needs to be checked for a supply to be construed as composite supply is that supply should consists of two or more taxable supplies of goods or services or both, or any combination thereof, which are ***naturally bundled and supplied in conjunction*** with each other in the ordinary course of business, ***one of which is a principal supply***.

      Further, it needs to be determined whether the composite supply is a supply resultinginto supply of goods or works contract. The composite supply whether it is naturally bundled in conjunction with each other requires a thorough analysis, as the concept of composite and mixed supply is in a nascent stage and needs to see the test of law before the Courts.

      Assuming, that the supply constitutes a composite supply, one has to analyse whether the supply results into an immovable property to fall within the meaning of works contract or not under GST law.

      The next question which would arise in case of a composite supply is that, what would be the principal supply – whether principal supply should be determined in value terms; or volume terms; or time consumed etc.. Normally – value of predominant supply could be the deciding factor for determining the principal supply and the classification / rate of tax etc.

      The contract should be analysed to see whether the split in contract is colourable device for availment of lower rate of tax. If the contracts reflects adoption of colourable device, then one has to determine the classification based on normal understanding.

      In author view, generallyEPC contracts will be a composite supply resulting into an immovable property viz. procurement of materials and installation and commissioning of blast furnace; procurement, installation and commissioning of wind turbines.

      If all the tests for determining immovable property are satisfied resulting in the emergence of an immovable property the transaction would be a composite supply of "works contract covered under paragraph 6 of schedule II read with section 2(119) and would be classified under chapter 9954 (Construction services) as Supply of Services.

      Composite supply involving supply of machine and installation of CNC machines in author view would not result in an immovable property and CNC machine being the principal supply, the supply and installation of CNC machine would be liable to GST at the rate applicable to CNC machine.

   2. **Mixed supply:**

      Mixed supplies means two or more taxable supplies made in conjunction with each other (not being a composite supply) for a single price; It means:

      i. First and foremost rule out "works contract" and "composite supply";

      ii. There must be NO NATURAL BUNDLING in a mixed supply;

      iii. Determine whether there are two or more taxable supplies and importantly in conjunction with each other for a single price;

iv. If there are two prices then the test of mixed supply fails.

If all the above tests are cumulatively satisfied then it could result in a mixed supply attracting the highest rate of tax of any particular supply.

In author view, EPC contracts would generally fall within the ambit composite supply unless separate contracts have been issued to different contractors for supply of goods and installation and commissioning of projects.

6. **Rate of tax on renewable energy devices**

1. Sl. No. 234 of Schedule I to Notification No.1/2017-Central Tax (Rate) dated 28.06.2017 provides rate of tax at 2.5% CGST (effective rate 5% - 2.5% CGST+2.5% SGST) on following renewable energy devices and parts for their manufacture:

   (a) Bio-gas plant

   (b) Solar power based devices

   (c) Solar power generating system

   (d) Wind mills, Wind Operated Electricity Generator (WOEG)

   (e) Waste to energy plants / devices

   (f) Ocean waves/tidal waves energy devices/plants

   (g) Solar lantern / solar lamp

   (h) Photo voltaic cells, whether or not assembled in modules or made up into panels

   Explanation to the said entry (inserted vide Notification No. 24/2018-Central Tax (Rate) dated 31.12.2018) provides that ***if the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services***, ***one of which being a taxable service*** specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28.06.2017 (i.e.Service by way of construction or engineering or installation or other technical services in respect of a to h above), ***the value of supply of goods*** for the purposes of this entry ***shall be deemed as 70% of the gross consideration charged for all such supplies***, and ***the remaining 30% of the gross consideration charged*** shall be deemed as ***value of the said taxable service***.

2. Sl. No. 38 of Notification No.1/2017-Central Tax (Rate) dated 28.06.2017 inserted vide Notification No. 27/2018-Central Tax (Rate) dated 31.12.2018 provides rate of tax at 9% CGST (effective rate 18% - 9% CGST+9% SGST)***for service by way of construction or engineering or installation or other technical services***, ***provided in relation of setting up of following*** -

   (a) Bio-gas plant

   (b) Solar power based devices

   (c) Solar power generating system

   (d) Wind mills, Wind Operated Electricity Generator (WOEG)

   (e) Waste to energy plants / devices

   (f) Ocean waves/tidal waves energy devices/plants

C. Some Advance Rulings in the context of EPC are provided below:

1. **Frizo India Private Limited - 2018 (10) TMI 1144 - Authority for Advance Ruling, Rajasthan**: The scope of work in instant case was of supply of solar power generating system and its installation at the site which involves simultaneous supply of goods and services under a single contract where Applicant has to inter alia, design, engineer, procure, transport, deliver, develop, erect, install, test , commission and at times maintain & service the project after installation. Applicant intended to undertake an " EPC contract" and not a "Supply Contract". It is held that the impugned transaction for EPC Contract for the Solar Power generating system which includes engineering, design, procurement, supply, development, testing and commissioning is a "works contract" in terms of clause (119) of section 2 of the GST Act - Since the impugned transaction for EPC Contract for the Solar Power generating system is a works contract under section 2(119) as supply of services hence question of principal supply does not arise and so GST tax rate of Solar power Generating System under notification No 01/2017-CT (Rate) dated 28.06.2017, at S. No. 234, under HSN Classification 84, 85 and 94 is not applicable.

   Ruling:- The nature of work is of Erection, Procurement and Commissioning of Solar Generating System which falls under the ambit "Works Contract Services" (SAC 9954) of Notification no. 11/2017 Central Tax (Rate) dated 28 June, 2017 and shall attract 18% rate of tax under IGST Act, or 9% each under the CGST and SGST Acts, aggregating to 18%.

   Similar ruling was held in the case of Solairedirect India LLP (Solai Redirect India LLP)- 2018 (10) TMI 1046 - Authority For Advance Ruling, Rajasthan

2. **Giriraj Renewables Private Limited - 2018 (9) TMI 1341 - Appellate Authority for Advance Ruling, Karnataka:**It was held as follows -

The supply of the PV module which is the major component of the Solar Power Plant is not naturally bundled with the supply of the remaining components & parts of the Solar Power Plant and the supply of the services of Erection, Installation and Commissioning of the Solar Power Plant.

The supply of PV module is a distinct transaction from the supplies in contract in question as it is the owner whose responsibility it is to procure and supply the PV module. This PV module is to be supplied as free issue material over and above the plant being supplied by the contractor. The owner is responsible for transportation of the PV module from the point of origin till plant site and he bears the other risks and rewards of ownership. The PV module which is procured by the Project owner on High Sea Sale basis and imported by availing Customs duty exemptions and later supplied to the Appellant as a free issue for use in the setting up of the Solar Power Plant.

The supply of the remaining portion of the contract in question by the Appellant Which involves the supply of the balance components and parts of the Solar Power Plant and the supply of services of Erection, Installation and Commissioning of the Solar Power Plant is viewed as a 'composite supply' as the supply of goods and services are naturally bundled.

The tax liability on this portion of the contract in question (other than PV module) which is termed as a 'composite supply' will be determined in terms of Section 8 of the CGST Act, 2017 wherein the rate applicable to the dominant nature of the supply will prevail.

3. **Giriraj Renewables Private Limited - 2018 (9) TMI 1183 - Appellate Authority for Advance Ruling Maharashtra -** Whether contract for supply of/construction of a solar power plant, wherein both goods and services are supplied, can be construed to be a composite supply in terms of Section 2(30) of the Central Goods and Services Tax Act, 2017 as claimed by the appellant or the same is works contract services as per the ruling made by the AAR? - Challenge to AAR decision.

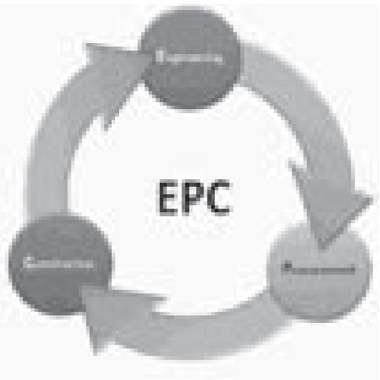
   Whether benefit of concessional rate of 5% of solar power generation system and parts thereof would also be available to sub-contractors? - Held that:- The ARA has held that no details were brought before them and therefore in the absence of documents they have expressed their inability to deal with the question. As no fresh documents were produced before us and also there being no original ruling of the ARA, we hold that we will not deal with the question in the present proceedings.

   Order: Supply of the said turnkey EPC contract is a 'composite supply' u/s.2(30) of the CGST Act, 2017. The said composite supply falls within the definition of works contract u/s.2(119) of the CGST Act, 2017.

   We have treated the transaction as a 'Composite supply' and a works contract falling u/s. 2(119) of the CGST Act, 2017 and Para 6 of SCHEDULE II [ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES] treats “works contracts” u/s 2(119) as supply of 'services. In view thereof, there arises no occasion to go into the issue of 'principle supply'.

Conclusion

An attempt has been made in this paper to make a reader understand the basics of EPC contracts under the GST law. This paper is written with a view to incite the thoughts of a reader who could have different views of interpretation. Disparity in views, would only result in better understanding of the underlying principles of law and lead to a healthy debate or discussion. The views written in this article is as on 08.01.2019.



“Once you start working on something, don't be afraid of failure and don't abandon it. People who work sincerely are the happiest.”

— Chanakya

Public Charitable Trusts And GST

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Background

Whenever the question of applicability of GST in the context of the activities carried out by a public charitable trust is raised, the immediate response is a reference to the exemption Notification No.12/2017-CTR and a view is expressed that only the activities specified in Entry No.1 qualifies for exemption. However, what is critical is whether a step taken or an activity carried out to generate revenue for furthering the objects of a trust can be considered as a supply 'in the course or furtherance of business' for GST to apply.

Notification No.12/2017-CTR

This Notification exempts services provided by entity registered under Section 12AA of the Income-tax Act, 1961 by way of charitable activities from whole of GST through Entry No.1 of the notification, which refers to *"services by an entity registered under Section 12AA of Income-tax Act, 1961 by way of charitable activities"* are exempt from whole of the GST. In terms of this notification, exemption is given to the charitable trusts or entities only if they are registered under Section 12AA and the services or activities pertain to charitable activities. However, the scope of charitable activities as per the Notification is very limited and is confined to the following:

(i) Public health by way of:
- Care or counseling of terminally ill persons or counseling for physically or mentally disabled
- persons affected with HIV or AIDS
- persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or
- public awareness of preventive health, family planning or prevention of HIV infection;

(ii) Promoting of religion, spirituality, or yoga

(iii) Advancement of educational programmes or skill development relating to,
- abandoned, orphaned or homeless children;
- physically or mentally abused and traumatized persons;
- prisoners; or
- persons over the age of 65 years residing in a rural area;

(iv) preservation of environment including watershed, forests and wildlife;

Concept of supply

An exemption Notification for few segments cannot create a liability for other segments.

Section 7(1)(a) of the CGST Act, 2017 covers all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Primarily the activity must be a supply referred to in Section 7 for GST to apply. In other words, the question is whether the *supply is in the course or furtherance of business or not.*

Concept of business

Section 2(17) of the CGST Act, 2017 defines "business" to include—

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;

(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;

(f) admission, for a consideration, of persons to any premises;

(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

(h) services provided by a race club by way of

totalisator or a licence to book maker in such club; and

(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

When a trust registered under Section 12AA of the Income Tax Act is engaged in carrying out activities for which it has obtained registration, even assuming the said trust renders services, the question is whether the same is in the course or furtherance of business. One possible view is that the activities carried out or services rendered by the trust whether in the form of say running a hostel or mess or any other revenue generation activity are only for the furtherance of the objects of the trust and are not *in the course or furtherance of business.*

Decisions under Sales Tax / VAT / Income Tax

Principle	*Decision*
Sale of publications spreading the message of Sai Baba cannot be considered as business. The main activity of the Trust does not amount to business. The activity of publishing and selling literature, books is obviously incidental or ancillary to the main activity of spreading message of Sai Baba and not to any business as such. If the main activity is not business, then the incidental and ancillary activity would not normally amount to business unless an independent intention to carry on business in the incidental or ancillary activity is established. **Thus, if the main activity of a person is not trade, commerce, etc. ordinarily incidental or ancillary activity may not come within the meaning of business.**	***Commissioner of Sales Tax Vs. Sai Publication Funds (2002) 126 STC 288 - SC***
Temple is not a dealer and the sale is not a commercial activity undertaken in the course of any business though prima facie a sale was involved. The sale was not connection with the business much less as a dealer under the provisions of the Act. Purchase tax cannot be imposed on the purchase of jaggery.	***Arulmigu Dhandayuthapani Swami Thirukkoil Vs. CTO (1998) 108 STC 114(Mad)***
Sale of food in canteen run by temple is not taxable. If the dominant activity of a religious or a charitable institution is not a business activity, the secondary activity which has elements of commerce or trading activity would be exempt.	***Shree Bhramaramba (1989) 73 STC 321 (AP)***
A charitable and social service organisation cannot be considered as carrying on business. The activity of construction of latrines would not make them a dealer under the TNGST Act.	***Sulabh International Social Service Organisation Vs. State of Tamil Nadu (2012) 53 VST 248 (Mad)***
Providing accommodation to devotees by Trust of temples without profit motive is not business	***Palani Dhandayuphabani Devesthanam (1998) 108 STC 114(Mad)***
Sale of gold bullion offered by devotees through auction is religious in nature. The sale of offerings is incidental and is not a business or trading activity. The Adinam is not a dealer and not liable to sales tax.	***Sri Velur Devasthanam Vaitheeswaran Koil Dharmapuram Adinam Vs. State of Tamil Nadu (2012) 53 VST 235 (Mad)***
Where an educational institution lets out property as an activity for fulfilling the object of the trust, the income derived is not 'business income' and is eligible for exemption.	***CIT Vs. Sri Rao Baghadur ADK Dharmaraja Educational Charity Trust (2008) 300 ITR 365 (Mad)***
Where the objects of the assessee was education and other objects of general publicity utility, the letting out of the Kalyana Mandapan was not an object of the assessee, but an activity carried on to fulfil the objects of the trust. The income from the Sabha was not business income.	***CIT Vs. Samyuktha Gowda Saraswatha Sabha (2000) 245 ITR 242 (Mad)***

Applying the analogy of these decisions, when a trust has been formed for charitable purposes and is engaged in carrying out its objects and has also obtained Section 12AA registration, the activities carried out by way of sale of goods or provision of services cannot be considered to be activities in the course or furtherance of business.

Whether exemption can create tax liability?

A question can then arise as to the relevance of Entry 1 providing for exemption in respect of certain charitable activities. The Privy Council in the case of ***CIT Vs. Shaw Wallace (1932 SCC OnLine PC 16)*** **has held that the object of the Indian Income Tax Act, 1932 is to tax 'income' a term which it does not defined. It is expanded, no doubt into 'income profit and gains', but the expansion is more a matter of words than of substance. Any of the sums mentioned in clause (v) of Section 4(3) of the Indian Income Tax Act, 1922 apart from their exemption cannot be regarded in any scheme of taxation as an income.** ***The clause is probably due to the over anxiety of the draftsman to makes it clear beyond possibility or doubt. It cannot be construed as enlarging the word 'income' so as to include receipts of any kind which are not specially exempted.***

Applying the analogy of this decision, merely because there is an entry in the exemption Notification treating certain transaction as 'exempt supply', it does not pre-suppose that the activity is primarily a supply.

Concept of profit

Tests were laid down by the Supreme Court in ***Additional CIT Vs. Surat Art Silk Cloth Manufacturers Association (1980) 120 ITR 1; Aditanar Educational Institution Vs. Additional CIT (1997) 224 ITR 310;*** and in ***American Hotel and Lodging Association Educational Institute Vs. CBDT (2008) 301 ITR 86***.

The Supreme Court in the case of ***Sole Trustee Loka Shikshna Trust (1976) 1 SCC 254*** has held that *if the profits must necessarily feed a charitable purpose under the terms of the trust, the mere fact that the activities of the trust yield profit would not alter the charitable character of the trust.*

The Supreme Court in the case of ***Queen's Educational Society Vs. CIT (2015) 372 ITR 699*** has held in the context of Section 10(23C), the fact that the institution makes a surplus while carrying on the activity of education does not lead to the conclusion that it is an institution for the purpose of making profit. The purpose of education should not be submerged by a profit-making motive and a distinction must be drawn between making of surplus and that of an institution being carried on 'for profit'. If after meeting expenses there was a surplus, the institution will not cease to be one existing solely for educational purposes.

GST

There are many public charitable trusts registered under Section 12AA which derive revenue for carrying out the objects of the trust. The revenue may arise out of sale of publications, books, music, letting out of property, running hostel, etc. In order to meet the objects of the trust and to spend money on charitable activities, these trusts carry out activities that generate revenue and in some cases surplus. A reading of the exemption Notification alone *dehors* the concept of supply and the concept of business may not be the right approach. However, given the fact that GST is a new law, these concepts will have to be tested and over a period of time the past decisions will pave way for a better understanding of the new law.

"One, who wishes to get milk, would not buy an Elephant."

— Chanakya

Warranty and Allied Activities and their Implications Under GST

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Supply of goods are most of the time identified and captured in indirect taxes, however, services being intangible, they get neglected and often miss the attention of the tax compliance officer of the organisation, moreso, when such organisation is engaged in manufacturing or has goods as its dominant supply. One of the service which gets ignored by the shine of its product is warranty. Services of warranty raises many questions in indirect taxes. Such questions range from the applicability of rate of tax on the services, reimbursement of such costs to third party service providers, their treatment between branches etc. This article tries to address certain important questions on warranty and their fate under Goods and Services Tax ("GST") in India.

What is warranty?

Warranty has been defined as a written guarantee, issued to the purchaser of an article by its manufacturer, promising to repair or replace it if necessary within a specified period of time. Thus, in other words it is an assurance of provision of post sale service in form of repair or maintenance and if such product is not corrected even after that, then the replacement of such piece of product. It is pertinent to note that warrant encompass provision of repair / maintenance service to customer and thus, is a supply of service by its very nature. While warranty seems to be a mere post sale service, it is determining factor in determining nature of supply as well. In the case of WalchandnagarInds. Ltd. v. Commissioner - 2015 (324) E.L.T. A197 (S.C.), Hon'ble Supreme court while determining supply of electronic panel and motor as part of supply of centrifugal machine relied also on the fact that the assessee had undertaken to ensure performance of electric motor and electric panel and the warranty for the purchased items were co-terminus with the warranty of the equipment supplied.

Is Warranty a different Supply?

Warranty is a separate supply from supply of product. It is an assurance of continued use of product in working condition for a specified period of time. However, usually the industry charges no separate price for such warranty but the price is inbuilt in the price of the product. Thus, warranty supply to customer is a part of sale of goods and is conferred no different treatment. The understanding is clarified by FAQ dated 31.3.2017 which reads as under:

Q 6. What are composite supply and mixed supply? How are these two different from each other?

Ans. Composite supply is a supply consisting of two or more taxable supplies of goods or services or both or any combination thereof, which are bundled in natural course and are supplied in conjunction with each other in the ordinary course of business and where one of which is a principal supply. For example, when a consumer buys a television set and he also gets warranty and a maintenance contract with the TV, this supply is a composite supply. In this example, supply of TV is the principal supply, warranty and maintenance service are ancillary.

Thus, warranty, even though, being a different supply, is considered as an intrinsic part of supply of goods and the rate of tax shall be same as applicable on the goods. For eg., if someone sells a Television set of screen size exceeding 74 cm but not exceeding 87 cm, the same is taxable at the rate of 28% and thus, even when the television comes with the warranty provision, such supply of service is part of composite supply of television and it shall be taxable at same rate. Further, it has been held in the case of Fanuc India P. Ltd. v CCE, Bangalore that additional amount collected towards international warranty for sale of the assessee's machines from its overseas customers is part of warranty collected by reason of sale or in connection with sale of the goods manufactured by the assessee.

It is important to mention that while inherent warranty is a composite supply, the option warranty when sold as extended warranty is not a composite supply and shall be exigible as a separate supply. The understanding was affirmed in the case of Maruti Udyog Ltd. [(2006 (199) E.L.T. 482 (Tribunal)] wherein Hon'ble Tribunal had held that the sale of extended warranty made under a separate agreement, when its purchase was purely optional and when dealer was not required to make any payments towards such warranty, the sale of the car and sale of extended warranty were held to be two different supplies.

Warranty and GST

Having understood that warranty though a different supply but being a part of the composite supply of the product does not command a different price and thus, one should not be bothered about its application.

However, in GST, the entire problem starts when the warranty is extended by a company having its presence across more than one state. And thus, this leaves the customer with the choice to avail the warranty service from any of the service centre of the Company across country. Thus, for such a company, mapping the entire warranty expense on such product sale across country with its warranty service is not an easy job. While the company has already charged GST on the warranty price which is included in the product at the rate of tax as applicable on the product, the warranty service cost might be incurred in some other state. The provision of service in a third state becomes an event of levy of GST for the Company in cases as discussed below.

Warranty Service provided by third party

If such cost is charged by a third party centre, there is not much to worry as the third party would raise an invoice on the manufacturing company with GST charged on it and the company can take a credit of such tax charged from it. The only precaution which must be followed by the Company is that the credit of the tax charged by the third party vendor must be taken under the same GSTIN in which tax was paid on the supply of the product originally as the manufacturer. If the credit is taken by another GSTIN, the same is not available as credit as such input service is not used in the provision of any outward supply of such distinct person. In such case, the receiving location would require registration as Input Service distributor and it shall be distributing such credit to the manufacturing location.

Warranty Service provided by branched in different states

When services are provided by the service branch of another GSTIN, the same shall be considered as if it is supply of service provided by another person. Accordingly, the provision of such supply shall be taxable and requires the supplying branch to raise invoice on the manufacturing unit. The situation shall get further complicated when the company has more than one manufacturing unit and servicing of each unit shall be required to be correlated to its manufacturing location. The above supply is not an easy exercise to determine.

The above position has also been clarified in their FAQs on IT and ITES sector by the government as under:

Question 23: What is the tax liability in a scenario where supplies are made from multiple locations (in different States) of the supplier to the recipient under a single contract?

Answer: Delivering services from various locations and integrated pricing for the contract as a whole is the norm in IT/ITES industry. Normally the contract or agreement with the recipient is entered into by one of the branches (let us say "Main Branch"). Therefore, in such cases of service delivery from multiple locations of the supplier to the recipient, the supply could be visualized as consisting of two distinct supplies. First supply- the different branches of the supplier locatedacross different States are making the supply to the main branch which entered into a contact or an agreement with the recipient for the supply of such service. Second supply- main branch is making a supply to the customer. GST is to be levied accordingly. In such as cenario, the main branch would get input tax credit of GST paid by the other branches on supplies made by them to the main branch.

Treatment of other associated expenses

While repair might also be linked to the product by tracking the product code, there are other services which are linked to warranty services only and cannot be allocated to any particular product code. For eg, a call centre where all calls of customer are recorded, such customer call centre shall be linked to the manufacturing centre as a service provider and if it is located in different GSTIN, appropriate tax invoice with tax should be raised on the manufacturing location for provision of such services. Things would get complicated when such call centre also record calls for AMCs and other paid repair activities of the customers of the company. Appropriation of such costs shall pose a challenge.

Valuation to third party service providers

Services under warranty when provided on behalf of an entity by third party service providers are supply to the entity and not customers. Though customers are beneficiaries, they are not the recipient of services. Any service given at the behest of the manufacturer shall be supply from such service provider to manufacturer, however, any promise made the service provider in its own capacity to increase his own sales (as done by some car dealers) shall not be a supply to the manufacturer. It has been held in the case of Commissioner v. Confident Dental Equipments Ltd. - 2016 (337) E.L.T. A43 (S.C.) that free after sales services when given by dealer on their own during warranty period for which they are not reimbursed by the manufacturer and when said dealer is not related person and price payable is the sole consideration, any discount on supply of product paid by the manufacturer to the dealer cannot be said to be remuneration for free services given by dealer.

Valuation of such inter GSTIN services

Valuation of such inter GSTIN services would not be an issue for a company having taxable products since second proviso to Rule 28 of CGST Rules provides relief to valuation of such supplies. The Rule provides that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services. In other cases, the value shall be determined as provided in Rule 28.

Movement of goods for repair under warranty

Government vide its FAQs on IT and ITES sector has clarified that the defective parts shall be sent for repair on a delivery challan accompanied by such e-way bill as may be prescribed. GSTshall be chargeable on the repair amount, including the cost of parts, charged by the repairing centre.

Replacement of product

Servicing under warranty was a supply, however, in case of replacement of product, the complication might pose more challenge. It requires proper maintenance of records as units supplied by branches under different GSTIN would constitute supply to manufacturing unit as bill to ship to supply. The credit of such units supplies shall be available to the manufacturing unit, however, pricing shall always be a matter of debate. With Second proviso of Rule 28 coming to the rescue of the assessee, it is still foreseen that difference in value of product supplied and replaced would still have to run through series of litigations before settling down. Further, replacement may also be compensated by corresponding number of free units by the manufacturing units as was the practise in past in VAT days. However, somewhere it is suggested that the old practise be changed in the GST era as the earlier practise used to address the issue of Sale between units, however, in this new era it might become a problem.

Warranty on under scheme or FOC products

There are no free lunches in business and the concept applies aptly on FOC supplies. FOC supplies are nothing but inducements whose price is built in the precedent supplies. Accordingly, though prima facie warrant services of under scheme supplied products or free of cost supplied products appears to be services used in products for which no consideration was charged, and thus, should not be allowed, however, price of such products also are inherently built in and charged in the products supplied for consideration. Accordingly, services of warranty on such products should also be eligible for all credits.

Input tax credit

Input tax credit on input and input services used for provision of warranty services are available to the supplier. Since price of warranty services are inherently imbibed in the supply price of the product, therefore, such warranty services have suffered output tax and thus, input tax credit against such services are fully available. The understanding has been clarified by the government vide their FAQ on IT and ITES sector as under :

Question 20 : What would be the tax liability on replacement of parts(no consideration is charged from a customer) under a warranty and whether the supplier is required to reverse the input tax credit?

Answer : As parts are provided to the customer without a consideration under warranty, no GST is chargeable on such replacement. The value of supply made earlier includes the charges to be incurred during the warranty period. Therefore, the supplier who has undertaken the warranty replacement is not required to reverse the input tax credit onthe parts/components replaced.

Conclusion :

The GST regime requires a clear and transparent system of records to determine a clear correlation of inputs and output supplies. The regime is based on the thought of accruing proper taxes to the State government while running a single tax regime in the country. However, the proper accretion of the taxes to the States seems to be a distant thought as this distribution require a perfect understanding of supply, credit distribution and cross charge to both the tax payer and the administrator and in my view, it is now a much need of the hour that the administrator spell out the intent of law on this and many more issues as the liability shall become an unwanted liability on the assessee in the coming years.

"The wise man should restrain his senses like the crane and accomplish his purpose with due knowledge of his place, time and ability."

— Chanakya

Recent GST Notifications and Circulars

CA Ankit Kanodia

Notification No. 55/2018 – Central Tax, Dated 21st October 2018

The central Government vide this notification extends the date of filling return in **FORM GSTR-3B** for the month of September 2018, from 20th October 2018 to 25th October 2018.

Notification No. 56/2018 – Central Tax, Dated 23rd October 2018

The central Government vide this notification specifies the categories of casual taxable persons who shall be exempted from obtaining registration under the said Act:-

(i) such persons making inter-State taxable supplies of handicraft goods as defined in the "Explanation" in notification No. 21/2018 -Central Tax (Rate), dated the 26th July, 2018.

(ii) such persons making inter-State taxable supplies of the products mentioned in the table of the given notification.

1. Provided that such persons are availing the benefit of notification No. 03/2018 – Integrated Tax, dated the 22nd October, 2018,
2. Provided further that the aggregate value of such supplies, to be computed on all India basis, does not exceed the amount of aggregate turnover above which a supplier is liable to be registered in the State or Union territory in accordance with sub-section (1) of section 22 of the said Act, read with clause (iii) of the Explanation to that section.
3. Such persons mentioned in the preceding paragraph shall obtain a Permanent Account Number and generate an e-way bill in accordance with the provisions of rule 138 of the Central Goods and Services Tax Rules, 2017.

Notification No. 57/2018 – Central Tax, Dated 23rd October 2018

The Central Government, on the recommendations of the Council, hereby makes the following amendment in the notification 50/2018-Central Tax dated the 13th September, 2018.

In the paragraph of the notification, the following proviso shall be inserted, namely:-

"Provided that with respect to persons specified under clause (a) of sub-section (1) of section 51 of the Act, nothing in this notification shall apply to the authorities under the Ministry of Defence, other than the authorities specified in the Annexure mentioned in the notification and their offices, with effect from the 1st day of October, 2018."

Notification No. 58/2018 – Central Tax, Dated 26th October 2018

The Central Government, on the recommendations of the Council, notifies the persons whose registration under the said Act has been cancelled by the proper officer on or before the 30th September, 2018, as the class of persons who shall furnish the final return in FORM GSTR-10 of the said rules till the 31st December, 2018.

Notification No. 59/2018 – Central Tax, Dated 26th October 2018

The Commissioner, vide this notification extends the time limit for furnishing the declaration in FORM GST ITC-04 of the said rules, in respect of goods dispatched to a job worker or received from a job worker or sent from one job worker to another, during the period from July, 2017 to September, 2018 till the 31st day of December, 2018.

Notification No. 61/2018 – Central Tax, Dated 5th November 2018

The Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 50/2018-Central Tax, dated the 13th September, 2018

In the said notification, after the proviso, the following proviso shall be inserted, namely:-

"Provided further that nothing in this notification shall apply to the supply of goods or services or both from a public sector undertaking to another public sector undertaking, whether or not a distinct person, with effect from the 1st day of October, 2018." .

Notification No. 62/2018 – Central Tax, Dated 29th November 2018

The Commissioner, on the recommendations of the Council, vide this notification extends the date of filling return in FORM 3B of the said rules:

For the month of September, 2018 and October, 2018 for registered persons whose principal place of business is in Srikakulam district in the State of Andhra Pradesh shall be furnished electronically through the common portal, on or before the 30th November, 2018 and,

For the month of October, 2018 for registered persons whose principal place of business is in Cuddalore, Thiruvarur, Puddukottai, Dindigul, Nagapatinam, Theni, Thanjavur, Sivagangai, Tiruchirappalli, Karur and Ramanathapuram in the State of Tamil Nadu shall be furnished electronically through the common portal, on or before the 20th December, 2018.

Notification No. 63/2018 – Central Tax, Dated 29th November 2018

The Commissioner, on the recommendations of the Council, vide this notification gives the following extensions in filling the details :-

1. Of outward supply of goods or services or both in FORM GSTR-1 of the Central Goods and Services Tax Rules, 2017 for the month of September, 2018 for registered persons whose principal place of business is in Srikakulam district in the State of Andhra Pradesh shall be furnished electronically through the common portal, on or before the 30th November, 2018
2. Of outward supply of goods or services or both in FORM GSTR-1 of the Central Goods and Services Tax Rules, 2017 for the month of October, 2018 for registered persons whose principal place of business is in Srikakulam district in the State of Andhra Pradesh shall be furnished electronically through the common portal, on or before the 30th November, 2018.
3. Of outward supply of goods or services or both in FORM GSTR-1 of the Central Goods and Services Tax Rules, 2017 for the month of October, 2018 for registered persons whose principal place of business is in in Cuddalore, Thiruvarur, Puddukottai, Dindigul, Nagapatinam, Theni, Thanjavur, Sivagangai, Tiruchirappalli, Karur and Ramanathapuram in the State of Tamil Nadu shall be furnished electronically through the common portal, on or before the 20th December, 2018.

Notification No. 64/2018 – Central Tax, Dated 29th November 2018

The Commissioner, on the recommendations of the Council, vide this notification extends the date of filling return of outward supply of goods or services or both in FORM GSTR-1 of the Central Goods and Services Tax Rules, 2017 for the quarter from July, 2018 to September, 2018 for registered persons whose principal place of business is in Srikakulam district in the State of Andhra Pradesh shall be furnished electronically through the common portal, on or before the 30th November, 2018.

Notification No. 65/2018 – Central Tax, Dated 29th November 2018

The Commissioner vide this notification extends the time limit for furnishing the return in FORM GSTR-4 of the Central Goods and Services Tax Rules, 2017 for the quarter July to September, 2018 by a registered person paying tax whose principal place of business is in Srikakulam district in the State of Andhra Pradesh, till the 30th day of November, 2018.

Notification No. 66/2018 – Central Tax, Dated 29th November 2018

The Commissioner vide this notification extends the time limit for furnishing the return by a registered person required to deduct tax at source under the provisions of section 51 of the said Act in FORM GSTR-7 of the Central Goods and Services Tax Rules, 2017 for the months of October, 2018 to December, 2018 till the 31 st day of January, 2019.

Notification No. 67/2018 – Central Tax, Dated 31st December 2018

The Central Government, on the recommendations of the Council, makes the following amendments in the Notification No. 31/2018-Central Tax dated 6th August, 2018-

(i) In paragraph 2, in clause (i), "31st August, 2018" has been substituted with 31st January, 2019

(ii) In paragraph 2, in clause (iv), "30th September, 2018" has been substituted with 28th February, 2019

Notification No. 68/2018 – Central Tax, Dated 31st December, 2018

The Commissioner, on the recommendations of the Council, makes the following amendments in the

Notification No. 21/2017-Central Tax dated 8th August, 2017 and in the Notification No. 56/2017-Central Tax dated 15th November, 2017-

(i) In the first paragraph, in the proviso, "July 2017 to November 18" has been substituted with July 2017 to February 2019

(ii) In the first paragraph, in the proviso, "31st day of December 2018" has been substituted with 31st day of March, 2019

Notification No. 69/2018 – Central Tax, Dated 31st December 2018

The Commissioner, on the recommendations of the Council, makes the following amendments in the Notification No. 35/2017-Central Tax dated 15th September, 2017 and in the Notification No. 16/2018-Central Tax dated 23rd March, 2018-

(i) In the first paragraph, in the proviso, "July 2017 to November 18" has been substituted with July 2017 to February 2019

(ii) In the first paragraph, in the proviso, "31st day of December 2018" has been substituted with 31st day of March, 2019

Notification No. 70/2018 – Central Tax, Dated 31st December 2018

The Commissioner, on the recommendations of the Council, makes the following amendments in the Notification No. 34/2018-Central Tax dated 10th August, 2018-

(i) In the first paragraph, in the third proviso, "July 2017 to November 18" has been substituted with July 2017 to February 2019

(ii) In the first paragraph, in the third proviso, "31st day of December 2018" has been substituted with 31st day of March, 2019

Notification No. 71/2018 – Central Tax, Dated 31st December 2018

The Central Government, on the recommendations of the Council, makes the following amendments in the Notification No. 43/2018-Central Tax dated 10th September, 2018-

(i) In paragraph 2, in the second proviso, "July 2017 to September 18" has been substituted with July 2017 to December 2018

(ii) In paragraph 2, in the second proviso, "31st day of December 18" has been substituted with 31st day of March, 2019

Notification No. 72/2018 – Central Tax, Dated 31st December 2018

The Commissioner, on the recommendations of the Council, makes the following amendments in the Notification No. 44/2018-Central Tax dated 10th September, 2018-

(i) In the first paragraph, in the first proviso, "July 2017 to November 18" has been substituted with July 2017 to Februart 2019

(ii) In the first paragraph, in the first proviso, "31st day of December, 2018" has been substituted with 31st day of March, 2019

Notification No. 73/2018 – Central Tax, Dated 31st December 2018

The Central Government, on the recommendations of the Council, inserts the following proviso, after the second proviso, in the Notification No. 50/2018-Central Tax dated 13th September, 2018-

"Provided also that nothing in this notification shall apply to the supply of goods or services or both which takes place between one person to another person specified under clauses (a), (b), (c) and (d) of sub-section (1) of section 51 of the said Act".

Notification No. 74/2018 – Central Tax, Dated 31st December 2018

The Central Government makes rules further to amend the Central Goods and Services Tax Rules, 2017.

Please refer the notification for detais.

Notification No. 75/2018 – Central Tax, Dated 31st December 2018

The Central Government, on the recommendations of the Council, inserts the following proviso, after the proviso, in the Notification No. 4/2018-Central Tax dated 23rd January, 2018-

"Provided further that the amount of late fee payable under section 47 of the said Act shall stand waived for the registered persons who failed to furnish the details of outward supplies in FORM GSTR-1 for the months/quarters from July, 2017 to September, 2018 by the due date but furnishes the said details in FORM GSTR-1 between the period from 22nd December, 2018 to 31st March, 2019."

Notification No. 76/2018 – Central Tax, Dated 31st December 2018

The Central Government, on the recommendations of the Council, and in supersession of the Notification No. 28/2017 – Central Tax, dated 1st September, 2017, Notification No. 50/2017 – Central Tax, dated 24th October, 2017 and Notification No. 64/2017-Central Tax

dated 15th November, 2017 waives the amount of late fee payable for failure to furnish GSTR-3B for July 2017 onwards by the due date under section 47 of the said Act, which is in excess of an amount of twenty-five rupees for every day during which such failure continues:

Provided that where the total amount of central tax payable in the said return is nil, the amount of late fee payable by such registered person for failure to furnish the said return for the month of July, 2017 onwards by the due date under section 47 of the said Act shall stand waived to the extent which is in excess of an amount of ten rupees for every day during which such failure continues:

Provided further that the amount of late fee payable under section 47 of the said Act shall stand waived for the registered persons who failed to furnish the return in FORM GSTR-3B for the months of July, 2017 to September, 2018 by the due date but furnishes the said return between the period from 22nd December, 2018 to 31st March, 2019.

Notification No. 77/2018 – Central Tax, Dated 31st December 2018

The Central Government, on the recommendations of the Council, inserts the following proviso, after the first proviso, in the Notification No. 73/2017-Central Tax dated 29th December, 2017-

"Provided further the amount of late fee payable under section 47 of the said Act shall stand waived for the registered persons who failed to furnish the return in FORM GSTR-4 for the quarters from July, 2017 to September, 2018 by the due date but furnishes the said return between the period from 22nd December, 2018 to 31st March, 2019."

Notification No. 78/2018 – Central Tax, Dated 31st December 2018

The Commissioner, hereby extends the time limit for furnishing the declaration in FORM GST ITC-04 in respect of goods dispatched to a job worker or received from a job worker, during the period from July, 2017 to December, 2018 till the 31st day of March, 2019.

Notification No. 79/2018 – Central Tax, Dated 31st December 2018

The Board hereby inserts the following Paragraph 3 in the Notification No. 02/2017-Central Tax dated 19th June, 2017-

"Notwithstanding anything contained in this notification, the central tax officer specified in column (3) of Table I and the officers subordinate to him shall exercise powers under sections 73, 74, 75 and 76 of Chapter XV of the said Act throughout the territorial jurisdiction of the corresponding central tax officer specified in column (2) of the said Table in respect of those cases as may be assigned by the Board".

Order No. – 1/2018-Central Tax, dated 11.12.2018

The Government has vide this Order clarified the the Annual Return for the period 01.07.2017 to 31.03.2018 shall be furnished on or before 31.03.2019. Since the electronic system for furnishing Annual Return, is at the advanced stage of its development and is likely to be made operational by 31.01.2019.

Circular No. – 72/46/2018-GST, dated 26.10.2018

The Government has vide this circular clarified regarding Notifications issued under CGST Act, 2017 applicable to Goods and Services Tax (Compensation to States) Act, 2017. Notification No. 16/2017-Central Tax (Rate) dated 28.06.2017 shall be applicable for refund of Compensation Cess to UN and specified international organizations, foreign diplomatic missions or consular posts in India, or diplomatic agents or career consular officers posted therein.

Circular No. – 73/47/2018-GST, dated 05.11.2018

The Government vide this circular clarified regarding Notifications issued under CGST Act, 2017 applicable to Goods and Services Tax (Compensation to States) Act, 2017. Notification No. 16/2017-Central Tax (Rate) dated 28.06.2017 shall be applicable for refund of Compensation Cess to UN and specified international organizations, foreign diplomatic missions or consular posts in India, or diplomatic agents or career consular officers posted therein.

Circular No. – 74/48/2018-GST, dated 05.11.2018

The Government vide this circular clarified that TCS shall be collected by the Tea Board of India from-

(i) Sellers (i.e. tea producers) on the net value of supply of tea and

(ii) Auctioneers on the net value of brokerage

Circular No. – 75/49/2018-GST, dated 27.12.2018

The Government vide this circular provides the guidelines for processing of applications for financial assistance under the central sector scheme named "SevaBhoj Yojana" of ministry of culture in the following manner.

1. Background
2. Application for obtaining SevaBhoj Yojana - Unique Identity Number (SBYUIN)
3. Application for claiming reimbursement of the said taxes in FORM SBY-03
4. Processing of the application filed in FORM SBY-03
5. Reporting of the reimbursement claims filed and processed.

Circular No. – 76/50/2018-GST, dated 31.12.2018

The Government vide this circular gives clarification on various issues to GST, such as:

Sl. No.	Issue	Clarification
1.	Whether the supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by Government departments are taxable under GST?	a. It may be noted that intra-State and inter State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by the Central Government, State Government, Union territory or a local authority is a taxable supply under GST. b. If such supplies are made to a registered person by the government than the recipient is liable to pay tax on reverse charge basis. c. If such supplies are made to an unregistered person than the government is liable to take registration and charge tax on supply of such goods.
2.	Whether penalty in accordance with section 73 (11) of the CGST Act should be levied in cases where the return in FORM GSTR-3B has been filed after the due date of filing such return?	a. The provisions of section 73 of the CGST Act are generally not invoked in case of delayed filing of the return in FORM GSTR-3B because tax along with applicable interest has already been paid but after the due date for payment of such tax. It is accordingly clarified that penalty under the provisions of section 73(11) of the CGST Act is not payable in such cases. It is further clarified that since the tax has been paid late in contravention of the provisions of the CGST Act, a general penalty under section 125 of the CGST Act may be imposed after following the due process of law
3.	In case a debit note is to be issued under section 142(2)(a) of the CGST Act or a credit note under section 142(2)(b) of the CGST Act, what will be the tax rate applicable – the rate in the pre-GST regime or the rate applicable under GST?	a. It is accordingly clarified that in case of revision of prices, if any supplementary invoice, debit note or credit note is being issued after the appointed date, then the rate as per the provisions of the GST Acts (both CGST and SGST or IGST) would be applicable.
4.	Applicability of the provisions of section 51 of the CGST Act (TDS) in the context of notification No. 50/2018-Central Tax dated 13.09.2018.	a. It is clarified that the provisions of Sec 51 of CGST Act are applicable only to such authority or board or any other body set up by an Act of parliament or a State legislature or established by any Government in which fifty one per cent. or more participation by way of equity or control is with the Government.
5.	What is the correct valuation methodology for ascertainment of GST on Tax collected at source (TCS) under the provisions of the Income Tax Act, 1961?	a. Section 15(2) of CGST Act specifies that the value of supply shall include “any taxes, duties cess, fees and charges levied under any law for the time being in force. b. From the above provision it is clarified that, taxable value for the purposes of GST shall include the TCS amount collected under the provisions of the Income Tax Act since the value to be paid to the supplier by the buyer is inclusive of the said TCS.
6.	Who will be considered as the „owner of the goods for the purposes of section 121) of the CGST Act?	a. It is hereby clarified that if the invoice or any other specified document is accompanying the consignment of goods, then either the consignor or the consignee should be deemed to be the owner. b. In any other case the proper officer should determine who should be declared as the owner of the goods.

Circular No. – 77/51/2018-GST, dated 31.12.2018

The government through this circular clarifies the effective date of denial of composition option by tax authorities that is where in, the taxpayer has sought withdrawal from the composition scheme, the effective date shall be the date indicated by him in his intimation/application filed in FORM GST CMP-04 but such date may not be prior to the commencement of the financial year in which such intimation/application for withdrawal is being filed.

If at any stage it is found that he has contravened any of the provisions of the CGST Act or the CGST Rules, action may be initiated for recovery of tax, interest and penalty.

Circular No. – 78/52/2018-GST, dated 31.12.2018

The government through this circular clarifies that if an exporter of services outsources a portion of the services contract to another person located outside India, then

a. The supplier of services located in India would be liable to pay integrated tax on reverse charge basis on the import of services on that portion of services which has been provided by the supplier located outside India to the recipient of services located outside India.

b. Even if the full consideration for the services as per the contract value is not received in convertible foreign exchange in India due to the fact that the recipient of services located outside India has directly paid to the supplier of services located outside India (for the outsourced part of the services), that portion of the consideration shall also be treated as receipt of consideration for export of services in terms of section 2(6)(iv) of the IGST Act.

Circular No. – 79/53/2018-GST, dated 31.12.2018

The Government vide this circular gives clarification on various issues related to refund such as:

1. Physical submission of refund claims with jurisdictional proper officer
2. Calculation of refund amount for claims of refund of accumulated Input Tax Credit (ITC) on account of inverted duty structure
3. Disbursal of refund amounts after sanction
4. Issues related to refund of accumulated Input Tax Credit of Compensation Cess`
5. Non-consideration of ITC of GST paid on invoices of earlier tax period availed in subsequent tax period
6. Misinterpretation of the meaning of the term “inputs”
7. Refund of accumulated ITC of input services and capital goods arising on account of inverted duty structure

Circular No. – 80/54/2018-GST, dated 31.12.2018

The government vide this circular clarifies the rate of below mentioned goods and their classification:

1. Sattu if unbranded attracts nil GST, however if branded and packed it will attract 5% GST
2. Fish meal, meat cum bone mill etc. attracts 5%GST under S. No. 103 in notification No. 1/2017- Central Tax (Rate) dated 28.6.2017
3. The GST rate applicable on LPG supplied by refiners/Fractionators to OIL Marketing Companies (OMC) for ultimate supply to household domestic consumers in terms of Ministry of Petroleum and Natural Gas is 5%
4. It is clarified that Polypropylene Woven and Non-Woven Bags and PP Woven and Non-Woven Bags laminated with BOPP would be classified as plastic bags under HS code 3923 and would attract 18% GST.
5. Representation has been received seeking clarification on applicability of GST rate on wood log for pulping. Wood in the rough (whether or not stripped of bark or sapwood, or roughly squared) is classified under heading 4403 and attracts 18% GST.
6. Bagasse falling under chapter 44 will attract concessional GST rate of 12%.
7. Fabrics are classifiable under chapters 50 to 55 and 60 of the First Schedule to the Customs Tariff Act, 1975 on the basis of their constituent materials and attract a uniform GST rate of 5%.
8. The goods used in setting up of Waste to Energy Plants (WTEP) in term of Sr. No. 234 of Schedule I of Notification No 1/2017-Central Tax (Rates) dated 28th June, 2018 attracts a GST rate of 5%.
9. The Turbo chargers supplied to railways is classified under heading 8414 and attracts 18% GST.

Circular No. – 81/55/2018-GST, dated 31.12.2018

Through this circular government clarifies, that the term “Sprinklers” in entry 195B of notification No. 1/2017-Central Tax (Rate) covers sprinkler irrigation system. Accordingly, sprinkler system consisting of nozzles, lateral and other components would attract 12% GST rate.

Notification No. 25/2018- Integrated Tax Rate, dated 31.12.2018

The government in the given notification had made the

following changes in the Notification No.1/2017-Integrated Tax (Rate), dated the 28th June, 2017

(a) in the opening paragraph, after the brackets, words and figures "(13 of 2017)", the words, brackets and figures "read with sub-section (5) of section 15 of the Central Goods and Services Tax Act, 2017 (12 of 2017)", shall be inserted;

(b) Various changes have been made in the rates of various items of the different schedules i.e.,

i. Schedule I - 5%,

ii. Schedule II - 12%

iii. Schedule III - 18%

iv. Schedule IV - 28%

Notification No. 26/2018- Integrated Tax Rate, dated 31.12.2018

The government in the given notification had made the following changes in the Notification No.2/2017-Integrated Tax (Rate), dated the 28th June, 2017 relating to the following entries of the schedule

i. S. No. 43A relating to vegetables

ii. S. No. 121 relating to music, printing and manuscripts

iii. S. No. 152 relating to Supply of gift items received by the President, Prime Minister, Governor or Chief Minister of any State or Union territory, or any public servant.

Notification No. 27/2018- Integrated Tax Rate, dated 31.12.2018

The government vide this notification on the recommendations of the Council, hereby exempts the inter-State supply of gold falling in heading 7108 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when supplied by Nominated Agency under the scheme for "Export Against Supply by Nominated Agency" , from the whole of the integrated tax leviable thereon, under section 5 of the Integrated Goods and Services Tax Act, 2017, subject to following conditions, namely:

i. the Nominated Agency and the recipient shall follow the conditions and observe the procedures as specified in the Foreign Trade Policy read with Handbook of Procedures;

ii. the recipient shall export the jewellery made out of such gold within a period of 90 (ninety) days from the date of supply of gold to such recipient and shall provide copy of shipping bill or bill of export containing details of Goods and Services Tax Identification Number (GSTIN) alongwith the invoice for exports to the Nominated Agency within a period of 120 (one hundred and twenty) days from the date of supply by the Nominated Agency;

iii. wherever such proof of export is not produced within the period mentioned in condition (ii), the Nominated Agency shall pay the amount of integrated tax payable on the quantity of gold not exported, along with interest from the date when the said tax on such supply was payable, but for the exemption.

Notification No. 28/2018- Integrated Tax Rate, dated 31.12.2018

The government vide this notification brings following changes in the notification No. 8/2017- Integrated Tax (Rate), dated the 28th June, 2017:

(i) in the Table, -

(a) against serial number 3, in column (3), in item (xii), after the brackets, figures and word "(xi) above", the word and number "and serial number 38 below" shall be inserted;

(b) against serial number 7, in column (3), in item (i), in Explanation 1, the words "school, college" shall be omitted;

Various entries have been made in columns (3), (4), (5), of the aforesaid notification relating to leasing, renting, goods carriage, transportation of passengers, services by way of constructions and etc.

Notification No. 29/2018- Integrated Tax Rate, dated 31.12.2018

The government vide this notification brings changes in the notification No. 9/2017- Integrated Tax (Rate), dated the 28th June, 2017, in the following entries,

i. S. No. 22A relating to Services provided by a goods transport agency, by way of transport of goods in a goods carriage

ii. S. No. 28A relating to Services provided by a banking company to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY).

iii. against serial number 35A, in the entry in column (3), after the letters and words "PSUs from the", the words "banking companies and" shall be inserted;

iv. against serial number 69, for the entry in column (2), the following entry shall be substituted namely: - "Heading 9992 or Heading 9963";

v. serial number 70 and the entries relating thereto, shall be omitted

vi. S. No. 77A relating to Services provided by rehabilitation professionals recognised under the Rehabilitation Council of India Act, 1992 (34 of 1992).

Notification No. 30/2018- Integrated Tax Rate, dated 31.12.2018

The government vide this notification brings changes in the notification No. 10/2017- Integrated Tax (Rate), dated the 28th June, 2017, in the following entries,

i. In the table against serial number 2, in the entry in column (2), after item (g), the following proviso shall be inserted, namely:

“Provided that nothing contained in this entry shall apply to services provided by a goods transport agency, by way of transport of goods in a goods carriage by road, to-

(a) a Department or Establishment of the Central Government or State Government or Union territory; or

(b) local authority; or

(c) Governmental agencies,

ii. after serial number 13 and the entries relating thereto, the following serial numbers and entries shall be inserted, namely: -

(a) S. No. 14 relating to Services provided by business facilitator (BF) to a banking company

(b) S. No. 15 relating to Services provided by an agent of business correspondent (BC) to business correspondent (BC).

(c) S. No. 16 relating to Security services (services provided by way of supply of security personnel) provided to a registered person

Notification No. 31/2018- Integrated Tax Rate, dated 31.12.2018

The government vide this notification brings changes in the notification No. 8/2017- Integrated Tax (Rate), dated the 28th June, 2017, hereby inserts the following Explanation in the said notification, in the Table, against serial number 9, in column (3), in item (vi), namely:-

“Explanation 2.-Nothing contained in this item shall apply to supply of a service other than by way of transport of goods from a place in India to another place in India”.

The existing Explanation in the above item shall be renumbered as Explanation 1.

Notification No. 24/2018- Central Tax Rate, dated 31.12.2018

The government in the given notification had made the following changes in the Notification No.1/2017- Central Tax (Rate), dated the 28th June, 2017

a. in the opening paragraph, after the brackets, words and figures “(13 of 2017)”, the words, brackets and figures “read with sub-section (5) of section 15 of the Central Goods and Services Tax Act, 2017 (12 of 2017)”, shall be inserted;

b. Various changes have been made in the rates of various items of the different schedules i.e.,

i. Schedule I –2.5%

iii. Schedule II - 6%

iv. Schedule III - 9%

v. Schedule IV - 14%

Notification No. 25/2018- Central Tax Rate, dated 31.12.2018

The government in the given notification had made the following changes in the Notification No.2/2017- Integrated Tax (Rate), dated the 28th June, 2017 relating to the following entries of the schedule

i. S. No. 43A relating to vegetables

ii. S. No. 121 relating to music, printing and manuscripts

iii. S. No. 152 relating to Supply of gift items received by the President, Prime Minister, Governor or Chief Minister of any State or Union territory, or any public servant.

Notification No. 26/2018- Central Tax Rate, dated 31.12.2018

The government vide this notification on the recommendations of the Council, hereby exempts the inter-State supply of gold falling in heading 7108 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when supplied by Nominated Agency under the scheme for "Export Against Supply by Nominated Agency" , from the whole of the integrated tax leviable thereon, under section 5 of the Integrated Goods and Services Tax Act, 2017, subject to following conditions, namely:

i. the Nominated Agency and the recipient shall follow the conditions and observe the procedures as specified in the Foreign Trade Policy read with Handbook of Procedures;

ii. the recipient shall export the jewellery made out of such gold within a period of 90 (ninety) days from the date of supply of gold to such recipient and shall provide copy of shipping bill or bill of export containing details of Goods and Services Tax Identification Number (GSTIN) alongwith the invoice for exports to the Nominated Agency within a period of 120 (one hundred and twenty) days from the date of supply by the Nominated Agency;

iii. wherever such proof of export is not produced

within the period mentioned in condition (ii), the Nominated Agency shall pay the amount of integrated tax payable on the quantity of gold not exported, along with interest from the date when the said tax on such supply was payable, but for the exemption.

Notification No. 27/2018- Central Tax Rate, dated 31.12.2018

The government vide this notification brings following changes in the notification No. 8/2017- Central Tax (Rate), dated the 28th June, 2017:

(i) in the Table, -

(a) against serial number 3, in column (3), in item (xii), after the brackets, figures and word "(xi) above", the word and number "and serial number 38 below" shall be inserted;

(b) against serial number 7, in column (3), in item (i), in Explanation 1, the words "school, college" shall be omitted;

Various entries have been made in columns (3), (4), (5), of the aforesaid notification relating to leasing, renting, goods carriage, transportation of passengers, services by way of constructions and etc.

Notification No. 28/2018- Central Tax Rate, dated 31.12.2018

The government vide this notification brings changes in the notification No. 9/2017- Central Tax (Rate), dated the 28th June, 2017, in the following entries,

i. S. No. 21A relating to Services provided by a goods transport agency, by way of transport of goods in a goods carriage
ii. S. No. 27A relating to Services provided by a banking company to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY).
iii. against serial number 34A, in the entry in column (3), after the letters and words "PSUs from the", the words "banking companies and" shall be inserted;
iv. against serial number 66, for the entry in column (2), the following entry shall be substituted namely: - "Heading 9992 or Heading 9963";
v. serial number 67 and the entries relating thereto, shall be omitted
vi. S. No. 74A relating to Services provided by rehabilitation professionals recognised under the Rehabilitation Council of India Act, 1992 (34 of 1992).

Notification No. 29/2018- Central Tax Rate, dated 31.12.2018

The government vide this notification brings changes in the notification No. 10/2017- Central Tax (Rate), dated the 28th June, 2017, in the following entries,

i. In the table against serial number 2, in the entry in column (2), after item (g), the following proviso shall be inserted, namely:

"Provided that nothing contained in this entry shall apply to services provided by a goods transport agency, by way of transport of goods in a goods carriage by road, to-

(d) a Department or Establishment of the Central Government or State Government or Union territory; or
(e) local authority; or
(f) Governmental agencies,

ii. after serial number 11 and the entries relating thereto, the following serial numbers and entries shall be inserted, namely: -

(d) S. No. 12 relating to Services provided by business facilitator (BF) to a banking company
(e) S. No. 13 relating to Services provided by an agent of business correspondent (BC) to business correspondent (BC).
(f) S. No. 14 relating to Security services (services provided by way of supply of security personnel) provided to a registered person

Notification No. 30/2018- Central Tax Rate, dated 31.12.2018

The government vide this notification brings changes in the notification No. 8/2017- C entral Tax (Rate), dated the 28th June, 2017, hereby inserts the following Explanation in the said notification, in the Table, against serial number 9, in column (3), in item (vi), namely:-

"Explanation 2.-Nothing contained in this item shall apply to supply of a service other than by way of transport of goods from a place in India to another place in India".

The existing Explanation in the above item shall be renumbered as Explanation 1.

Notification No. 4/2018- Integrated Tax, dated 31.12.2018

The government vide this notification makes the following rules to further amend the Integrated Goods and Services Tax Rules, 2017, namely:-

i. In the Integrated Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), in rule 3 in clause (h), after the words "in the case of advertisements over internet" the words "the service shall be deemed to have been provided all over India and" shall be inserted.

ii. In the said rules, after rule 3, the following rules shall be inserted, namely:

    The supply of services attributable to different States or Union territories, under sub section (3) of section 12 of the Integrated Goods and Services Tax Act, 2017 in the case of-

    a. services directly in relation to immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or

    b. lodging accommodation by a hotel, inn, guest house, homestay, club or campsite, by whatever name called, and including a houseboat or any other vessel ; or

    c. accommodation in any immovable property for organising any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or

    d. any services ancillary to the services referred to in clauses (a), (b) and (c),

iii. The supply of services attributable to different States or Union territories, under subsection (7) of section 12 of the said Act, in the case of:

    a. services provided by way of organisation of a cultural, artistic, sporting, scientific, educational or entertainment event , including supply of services in relation to a conference, fair exhibition, celebration or similar events; or

    b. services ancillary to the organisation of any such events or assigning of sponsorship to such events , where the services are supplied to a person other than a registered person, the event is held in India in more than one State or Union territory.

iv. The supply of services attributable to different States or Union territories, under sub section (11) of section 12 of the said Act, in the case of supply of services relating to a leased circuit where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged shall be determined in the following manner, namely:-

    a. The number of points in a circuit shall be determined in the following manner

        i. in the case of a circuit between two points or places, the starting point or place of the circuit and the end point or place of the circuit will invariably constitute two points;

        ii. any intermediate point or place in the circuit will also constitute a point provided that the benefit of the leased circuit is also available at that intermediate point;

    b. the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the number of points lying in the State or Union territory

v. The supply of services attributable to different States or Union territories, under subsection (7) of section 13 of the said Act, in the case of services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, shall be determined in the following manner, namely:-

    a. in the case of services supplied on the same goods, by equally dividing the value of the service in each of the States and Union territories where the service is performed

    b. in the case of services supplied on different goods, by taking the ratio of the invoice value of goods in each of the States and Union territories, on which service is performed, as the ratio of the value of the service performed in each State or Union territory;

    c. in the case of services supplied to individuals, by applying the generally accepted accounting principles.

vi. The proportion of value attributable to different States or Union territories, under subsection (7) of section 13 of the said Act, in the case of supply of services directly in relation to an immovable property, including services

supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators, where the location of the supplier of services or the location of the recipient of services is outside India, and where such services are supplied in more than one State or Union territory

vii. The proportion of value attributable to different States or Union territories, under subsection (7) of section 13 of the said Act, in the case of supply of services by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, where the location of the supplier of services or the location of the recipient of services is outside India

Notification No. 24/2018- Union Territory Tax (rate), dated 31.12.2018

The government in the given notification had made the following changes in the Notification No.1/2017- Union territory Tax (Rate), dated the 28th June, 2017

i. in the opening paragraph, after the brackets, words and figures "(13 of 2017)", the words, brackets and figures "read with sub-section (5) of section 15 of the Central Goods and Services Tax Act, 2017 (12 of 2017)", shall be inserted;

j. Various changes have been made in the rates of various items of the different schedules i.e.,

i. Schedule I – 2.5%,

ii. Schedule II - 6%

iii. Schedule III - 9%

iv. Schedule IV - 14%

Notification No. 25/2018- Union Territory Tax (rate), dated 31.12.2018

The government in the given notification had made the following changes in the Notification No.2/2017- Union territory Tax (Rate), dated the 28th June, 2017 relating to the following entries of the schedule

i. S. No. 43A relating to vegetables

ii. S. No. 121 relating to music, printing and manuscripts

iii. S. No. 152 relating to Supply of gift items received by the President, Prime Minister, Governor or Chief Minister of any State or Union territory, or any public servant.

Notification No. 26/2018- Union Territory Tax (rate), dated 31.12.2018

The government vide this notification on the recommendations of the Council, hereby exempts the inter-State supply of gold falling in heading 7108 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when supplied by Nominated Agency under the scheme for "Export Against Supply by Nominated Agency" , from the whole of the integrated tax leviable thereon, under section 5 of the Integrated Goods and Services Tax Act, 2017, subject to following conditions, namely:

i. the Nominated Agency and the recipient shall follow the conditions and observe the procedures as specified in the Foreign Trade Policy read with Handbook of Procedures;

ii. the recipient shall export the jewellery made out of such gold within a period of 90 (ninety) days from the date of supply of gold to such recipient and shall provide copy of shipping bill or bill of export containing details of Goods and Services Tax Identification Number (GSTIN) alongwith the invoice for exports to the Nominated Agency within a period of 120 (one hundred and twenty) days from the date of supply by the Nominated Agency;

iii. wherever such proof of export is not produced within the period mentioned in condition (ii), the Nominated Agency shall pay the amount of union territory tax payable on the quantity of gold not exported, along with interest from the date when the said tax on such supply was payable, but for the exemption.

Notification No. 27/2018- Union Territory Tax (rate), dated 31.12.2018

The government vide this notification brings following changes in the notification No. 8/2017- Union Territory Tax (Rate), dated the 28th June, 2017:

(i) in the Table, -

(a) against serial number 3, in column (3), in item (xii), after the brackets, figures and word "(xi) above", the word and number "and serial number 38 below" shall be inserted;

(b) against serial number 7, in column (3), in item (i), in Explanation 1, the words "school, college" shall be omitted;

Various entries have been made in columns (3), (4), (5), of the aforesaid notification relating to leasing, renting, goods carriage, transportation of passengers, services by way of constructions and etc.

Notification No. 28/2018- Union Territory Tax (rate), dated 31.12.2018

The government vide this notification brings changes in the notification No. 9/2017- Union Territory Tax (Rate), dated the 28th June, 2017, in the following entries,

i. S. No. 21A relating to Services provided by a goods transport agency, by way of transport of goods in a goods carriage

ii. S. No. 27A relating to Services provided by a banking company to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY).

iii. against serial number 34A, in the entry in column (3), after the letters and words "PSUs from the", the words "banking companies and" shall be inserted;

iv. against serial number 66, for the entry in column (2), the following entry shall be substituted namely: - "Heading 9992 or Heading 9963";

v. serial number 67 and the entries relating thereto, shall be omitted

vi. S. No. 74A relating to Services provided by rehabilitation professionals recognised under the Rehabilitation Council of India Act, 1992 (34 of 1992).

Notification No. 30/2018- Union Territory Tax Rate, dated 31.12.2018

The government vide this notification brings changes in the notification No. 10/2017- Union Territory Tax (Rate), dated the 28th June, 2017, in the following entries,

i. In the table against serial number 2, in the entry in column (2), after item (g), the following proviso shall be inserted, namely:

"Provided that nothing contained in this entry shall apply to services provided by a goods transport agency, by way of transport of goods in a goods carriage by road, to-

(g) a Department or Establishment of the Central Government or State Government or Union territory; or

(h) local authority; or

(i) Governmental agencies,

ii. after serial number 11 and the entries relating thereto, the following serial numbers and entries shall be inserted, namely: -

(g) S. No. 12 relating to Services provided by business facilitator (BF) to a banking company

(h) S. No. 13 relating to Services provided by an agent of business correspondent (BC) to business correspondent (BC).

(i) S. No. 14 relating to Security services (services provided by way of supply of security personnel) provided to a registered person

Notification No. 30/2018- Union Territory Tax Rate, dated 31.12.2018

The government vide this notification brings changes in the notification No. 8/2017- Union Territory Tax (Rate), dated the 28th June, 2017, hereby inserts the following Explanation in the said notification, in the Table, against serial number 9, in column (3), in item (vi), namely:-

"Explanation 2.-Nothing contained in this item shall apply to supply of a service other than by way of transport of goods from a place in India to another place in India".

The existing Explanation in the above item shall be renumbered as Explanation 1.

"Beware of little expenses; a small leak will sink a great ship."

— Benjamin Franklin

Debut of Section 130 of the Companies Act, 2013 : NCLT orders recasting of Financial Statements of ILFS

Smriti Wadehra
Vinod Kothari & Company

Introduction

As the first instance of regulatory recasting of financial statements, the National Company Law Tribunal, Mumbai has directed the reopening of the books of accounts of IL&FS Group ('Company') and some of its subsidiaries. The rationale behind such direction is that the Tribunal considers that the accounts of the Company and its specific subsidiaries are fraudulently prepared in the last five years and are not reliable.

The ruling[1] may be a trailblazer as there may be several instances in future of either voluntary recasting or regulatory recasting of financial statement. This article is a general discussion of the law and the global practice in this regard.

Provisions of Law

Sections 130 and 131 of Companies Act, 2013 ('CA, 2013') deals with re-opening and revision of accounts of companies. One of the major difference between the two is that the former section can be enforced by an order of any Court or NCLT based on an application made by any authority. On the other hand, the latter section provides for voluntary revision in the accounts of the company if there is any inconsistencies as per law by making an application to the Tribunal.

Both these sections were notified by the Ministry on 1st June, 2016. The concept of re-opening and revisiting the financial statements was introduced for the first time in India by 2013 Act as there was no corresponding section in the Companies Act, 1956 Act ('Erstwhile Act'). Though, there was no corresponding section under the Erstwhile Act for re-opening the books of accounts of the Company, there were various department circulars dealing with the issue of re-opening of accounts after their adoption by members in the general meeting. The department circulars on the subject provided that in case of technical requirements or requirement of any specific law, the company can be directed to re-open its books of accounts subject to the condition that the shareholders approve the said event in the general meeting. The list of department circulars is enlisted in the table mentioned at the end of this write up.

Difference between Section 130 and 131 of the CA, 2013.

The difference between the two sections can be presented as below :

Sl. No.	Basis of difference	Provisions of section 130 of the Companies Act, 2013	Provisions of section 131 of the Companies Act, 2013
1.	Applicant	The accounts of the company can re-opened only when an application is made by any statutory regulatory authority to the Tribunal.	If the company is of the view that financial statement and Board's report do not comply with the provisions of Act, it may apply for revision of accounts to the Tribunal.
2.	Grounds for revision	The accounts of the company can be reopened under this section if: a) the accounts are prepared in fraudulent manner; or b) affairs of the Company are mismanaged during the said period for which the financial statements seem to be unreliable.	The accounts of the Company can be revised if the following is not prepared as per the provisions of section 129 and 134 of the CA, 2013 : a) Financial statements b) Board's report

3.	Financial Year for which revision can be made.	Reopening of books of accounts can be made for the maximum period of upto eight preceding financial years.	The application for revising the financial statement can be made for a maximum period of for three preceding financial years.
4.	Number of times application can be made	No such restriction	The revision of financial statements can be prepared or filed only once in a financial year.
5.	Element of fraud	Element of fraud is necessary for section 130 of the CA, 2013.	No such thing

Background of Section 130 and 131 of the CA, 2013

The Companies Act, 2013 was introduced by way of Companies Bill, 2011, which was first introduced on 3rd August, 2009 as the Companies Bill, 2009. Further, based on the report of the Standing Committee on 31st August, 2010, the Government withdrew the Bill and re-introduced the Companies Bill, 2011 ('Bill, 2011') on 14th December, 2011. Based on the recommendations of the Standing Committee the revised Bill was introduced in the year 2011. Even though, the report of the Standing Committee did not recommend for enforcement of any section for reopening or revision of the financial statements by the companies, Bill, 2011 introduced the new provisions in under the CA, 2013.

The rationale behind such inclusion of provision for re-opening of accounts was that the present law i.e. Erstwhile Act was silent with respect to re-opening or recasting of accounts. However, in cases of fraud or mismanagement, re-opening or recasting of accounts becomes important for reflecting true and fair view of the accounts. This section was introduced after the occurrence of the Satyam case in India, where recasting of accounts was mandated. The text of Para II(6) of the Committee report is reproduced below:

"The change proposes to provide procedural requirement in respect of revision in accounts in certain cases. The present law is silent in respect of re-opening or re-casting of accounts. In certain cases, particularly, ***in cases relating to fraud****, there may be need to reopen/ re-cast accounts to reflect* ***true and fair accounts****. In case of* ***Satyam case, such recasting was ordered by Court****. The provisions in the Bill mandate such re-opening on the order of Court or Tribunal. In other cases the re-opening is being permitted, through order of Tribunal, with adequate safeguards."*

Further, in case of revision of accounts the Bill permitted that for specific purposes the companies may revise their financial statements subject to the condition that approval of the Tribunal is obtained. The proposal for introduction of section 130 and 131 of the Bill was accepted by the Ministry on 1st June, 2016where the section were notified for the first time under CA, 2013.

To summarize, we may conclude that the provisions of these two sections provides that companies may revisit their financial statements in two situations:

a) In cases where the company receives any application or order from any regulatory authority for the accounts being fraudulent or the company being mismanaged; or

b) Voluntarily by the companies in cases any revision is required in the statements and Board's Report of the Company after making an application to the Tribunal.

In this regard, we would specifically like to point out that the provisions of this section provided that the court or Tribunal may give opportunity to any concerned authority of being heard. However, the Standing Committee suggested that as principle of natural justice all concerned parties like the Company or Auditor/ Chartered Accountant or any other concerned person should also be given an opportunity of being heard. Accordingly, the Companies (Amendment) Act, 2017 amended the provisions of proviso to section 130(1) of the Act to specifically include 'any other person concerned' to be entitled to receive notice from court or Tribunal and that of having an opportunity of being heard.

Even though, the provisions of section 130 of the CA, 2013 is a couple year old, however, the Government till date never ordered for re-opening of books of accounts of any company. However, for the first time in India, the National Company Law Tribunal of India, Mumbai Bench has invoked its powers under section 130 of the Act and ordered reopening of books of the Company and its two listed subsidiaries namely ITNL and IL &FS Financial Services for the past five years.

In this regard, the Serious Fraud Investigation Office (SFIO) and Institute of Chartered Accountants of India (ICAI) initiated investigation against the Company. Before analyzing the matter further, we have to first understand the power of SFIO to investigate the affairs of the Company.

Power of SFIO to investigate

The provisions of section 212 of the CA, 2013 provides:

"(1) Without prejudice to the provisions of section 210, ***where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company*** *by the Serious Fraud Investigation Office —*

(a) on receipt of a report of the Registrar or inspector under section 208;

(b) on intimation of a special resolution passed by a company that its affairs are required to be investigated;

(c) in the public interest; or

(d) on ***request from any Department of the Central Government or a State Government****, the Central Government may, by order, assign the investigation into the affairs of the said company to the Serious Fraud Investigation Office and its Director, may designate such number of inspectors, as he may consider necessary for the purpose of such investigation."*

As mentioned above, the provisions of section 212 of the CA, 2013 provides that SFIO shall investigate the affairs of the company if Government opines that the affairs of the company is required to be investigated. Accordingly, in the case of the Company, the Government had directed SFIO to investigate the affairs of the Company. The SFIO has also provided its report to the Government based on its investigation.

The Government ordered for re-opening of accounts of IL&FS and its two listed companies i.e. ITNL and IL&FS Financial Services after the analyzing the reports received from SFIO and ICAI respectively. However, presently, the Government, do not confirm that the auditors of the Company and the directors were involved in the mismanagement of the accounts of Company and accordingly, has ordered for re-opening of the accounts. Further, the Government has received no objection from all the authorities whom notices were served for the purpose of reopening of accounts. Accordingly, in this regard, NCLT directed to appoint an independent chartered accountant to restate the accounts and revise the balance sheets.

It is important to mention that the provisions of the CA, 2013 is being amended day-by-day to make the provisions of law more stringent for the statutory auditors considering their responsibilities. With the enforcement of the provisions of NFRA and subsequent application of section 130 of the CA, 2013 it can be interpreted that auditors are under the radar of investigation. Though, the provisions of NFRA has been enforced the same is not completely functional, accordingly, in the present case, ICAI has conducted the investigation along with SFIO.

International Scenario

As mentioned earlier, it is the first time in India that NCLT has ordered for re-opening of accounts under this Act. However, the same is not the case outside India i.e. there are many companies outside India who have re-casted their financial statements:

Sl No	Financial Year	Country	Company/Corporation	Reason for recasting/reopening
1.	2017-18	USA	Loop Industries Inc. Read More	Restated its previously issued consolidated financial statements for the fiscal year ended February 28, 2017 to correct an error in the accounting for stock-based compensation and consequently adjusting its consolidated balance sheet and statement of shareholders' equity in the quarterly periods ended May 31, 2017 and August 31, 2017.
2.	2017-18	USA	Kellogg Company Read More	As the Pension and Cash Flow ASUs are required to be adopted on a retrospective basis and the Company elected to adopt the Revenue Recognition ASU on a full retrospective basis. Accordingly, the Company opted for recasting its statements
3.	2005-06	USA	Time Warner Inc. Read More	To comply with the Commission's rules which require the most recently filed annual financial statements be recast to reflect any subsequent changes in accounting principles
4.	2017-18	USA	Graham Holdings Co (GHC) Read More	To reflect New FASB Guidance
5.	2016-17	USA	Northrop Grumman Corporation Read More	For adoption of Accounting Standard Codification (ASC) Topic 606

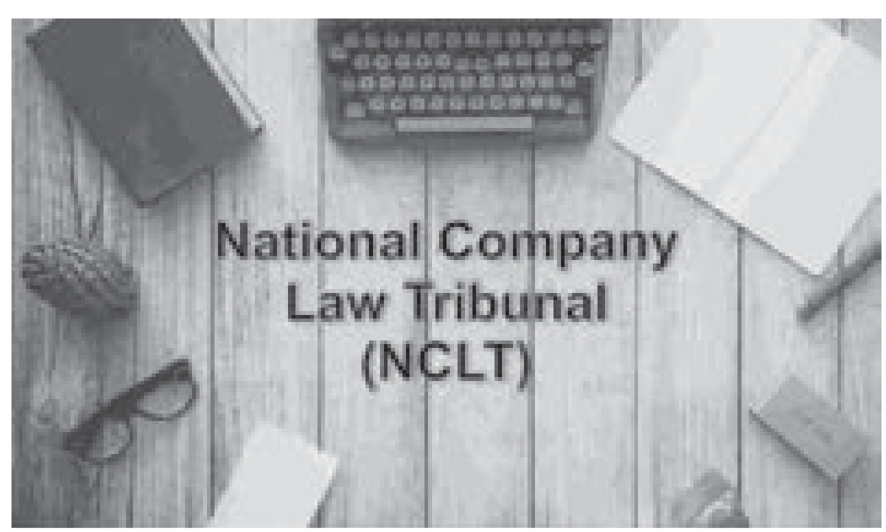
6.	2016-17	USA	IBM Read More	To adopt the new FASB guidance on presentation of net periodic pension and non pension postretirement benefit costs
7.	2017-18	Canada	Kingsway Financial Services Inc. Read More	Recasted as per the SEC's rules applicable to s reporting companies.
8.	2017-18	USA	Dell Technologies Inc. Read More	To recast the associated financial results as discontinued operations in the Consolidated Statements of Income (Loss).
9.	2014-15	USA	Gramin Ltd. Read More	The operating results for the 52-weeks ended December 26, 2015 and December 27, 2014 have been recast to conform to the current year presentation

Conclusion

As we understand that the Government of India intends to curb the occurrence of fraud and corruption, the sections 130 and 131 of the CA, 2013 seem to be instrumental in achieving this objective to a certain extent as far as the companies are concerned. We will have to wait and see how many companies are obligated / allowed to re-open their accounts as a matter of implementing the aforesaid sections.

(Footnotes)

[1]For viewing the order, click



"Education is the Best Friend. An Educated person is respected everywhere. Education beats the beauty and the youth."

— Chanakya

Recent Important Amendments in the Companies Act, 2013 and Rules

CS Uma Agarwal
Garv & Affiliates

Companies (Acceptance of Deposits) Amendments Rules, 2019 [FILING OF E-FORM DPT-3]

- It is mandatory for every company (other than Govt. company) to file Form DPT-3 to report about receipt of money or loan (not considered as deposit) on or after 1st April 2014 and outstanding as on 22nd January 2019. The form is required to be filed on or before **22nd April, 2019** i.e. 90 days from the date of notification (22.01.2019).
- **Every company** (other than Govt. company) shall file DPT-3 for reporting such amounts outstanding as on 31st march of every year. This form is required to be filed on or before 30th June of every year.
- Hence two forms to be filed in this year – one-time reporting on or before 22nd April, and annual reporting for balance outstanding as on 31st March, 2019 on or before 30th June 2019.
- The reporting requires information about details of amounts received and not considered as deposits for the purpose of Companies Act, 2013
- CA Certificate is required to be attached in form DPT-3.

Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019 [FILING OF E-FORM MSME-1]

- Any company who gets supplies from a Micro and Small Enterprises and the payments thereon to such enterprises exceed **45 days from the date of acceptance or date of deemed acceptance** of the goods or services shall file a return form MSME-1.
- As per notification dated 22/01/2019, all specified companies are required to file a return in MSME-1, the details of amounts outstanding as on 22nd January, 2019 to the such enterprises and the reasons thereon within 30 days of issuance of notification i.e. **within 20th February, 2019**.
- Furthermore every specified company shall submit a **half-yearly return** to MCA in MSME-1 stating the amount of payments due and the reasons for such delay. (By April 30 for the period ended March 31 & by October 30 for the period ended September 30)
- As per the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 the definition of micro & small enterprises is as under:

  Enterprises engaged in the manufacture or production, processing or preservation of goods as specified below:

  A micro enterprise is an enterprise where investment in plant and machinery does not exceed Rs. 25 lakh;

  A small enterprise is an enterprise where the investment in plant and machinery is more than Rs. 25 lakh but does not exceed Rs. 5 crore;

  Enterprises engaged in providing or rendering of services are as specified below.

  A micro enterprise is an enterprise where the investment in equipment does not exceed Rs. 10 lakh;

  A small enterprise is an enterprise where the investment in equipment is more than Rs.10 lakh but does not exceed Rs. 2 crore;

The registration requirements of Micro and Small Enterprises are discretionary.

Companies (Significant Beneficial Owners) Amendment Rules, 2019. [FILING OF FORM BEN-2]

APPLICABILITY:

Every reporting company shall take necessary steps to find out if there is any individual who is a significant beneficial owner in relation to that reporting company, and if so, identify him and cause such individual to make a declaration in Form No. BEN-1.

These rules shall come into force on the date of their publication in the Official Gazette.

Not applicable to direct individual shareholders.

COMPLIANCES :

FORM NUMBER	TIME PERIOD	BY WHOM	TO WHOM
BEN-4	Not Specified. Hence, Must be made within a reasonable time from the date of notification of these rules	**Reporting Company in which any individual is holding significant beneficial owner (SBO)**	To the Member (other than an individual), who holds not less than ten per cent. of its;- (a) shares, or (b) its voting rights**.**
BEN-1	**Ninety days** from the commencement date. AND within **thirty days** in case of any change in his significant beneficial ownership	**Every SBO**	**Reporting Company in which he/she holds significant beneficial ownership**
BEN-2	Within a period of **thirty days** from the date of receipt of a declaration by the company.	Where any declaration is received by the **Reporting company**, the company shall file a return in the prescribed form.	**With MCA.**
BEN-3		The company shall maintain a **register of significant beneficial owners** in the format as prescribed by the central government.	

SIGNIFICANT BENEFICIAL OWNER:

- Individual- alone /together, through one/ more persons, through trust possesses one or more of the following rights in the reporting entity:
- holds indirectly or together with any direct holdings, **Not less than ten percent of the shares/voting rights in the shares of the reporting company.**
- has right to receive or participate in not less than ten per cent. of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;
- has right to exercise or actually exercises, significant influence or control in any manner other than through direct-holdings alone.

  -If any individual is just fulfilling the last point then he shall not be considered to be a significant beneficial owner.

An Individual shall be considered to hold individually right indirectly in the reporting company if he satisfies any of the following:-

WHEN BODY CORPORATE (OTHER THAN LLP AND THE INDIVIDUAL) IS A MEMBER:

THE SBO IS:

- holds **MAJORITY stake*** in that member;
- holds a majority stake in the ultimate holding company (whether incorporated or registered in India or abroad) of that member.

WHEN THE HUF IS A MEMBER:

THE SBO IS:

The Karta of HUF

WHEN PARTNERSHIP FIRM/LLP IS A MEMBER-THE SBO IS:

- is a partner
- holds a majority stake in the body corporate which is a partner of the partnership firm/LLP
- holds a majority stake in the ultimate holding company of the body corporate which is a partner of the partnership firm/LLP.

  There may be SBO where the member of the reporting entity is a trust/a pooled investment

vehicle or an entity controlled by the pooled investment vehicle as per the rules.

***MAJORITY STAKE:**

(i) holding more than one-half of the equity share capital in the body corporate; or

(ii) holding more than one-half of the voting rights in the body corporate; or

(iii) having the right to receive or participate in more than one-half of the distributable dividend or any other distribution by the body corporate;

APPLICATION TO THE TRIBUNAL:

The reporting company shall apply to the Tribunal:-

(i) where any person fails to give the information required by the notice in Form No. BEN-4, within the time specified therein; or

(ii) where the information given is not satisfactory, in accordance with sub-section (7) of section 90, for order directing that the shares in question be subject to restrictions, including –

(a) restrictions on the transfer of interest attached to the shares in question;

(b) suspension of the right to receive dividend or any other distribution in relation to the shares in question;

(c) suspension of voting rights in relation to the shares in question;

(d) any other restriction on all or any of the rights attached with the shares in question

NON-APPLICABILITY OF THE RULES:

- the authority constituted under sub-section (5) of section 125 of the Act (IEPF);
- its holding reporting company:

(Provided that the details of such holding reporting company shall be reported in Form No. BEN-2)

- the Central Government, State Government or any local Authority;

(i) a reporting company, or

(ii) a body corporate, or

(iii) an entity, controlled by the Central Government or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments;

- Securities and Exchange Board of India registered Investment Vehicles such as mutual funds, alternative investment funds (AIF), Real Estate Investment Trusts (REITs), Infrastructure Investment Trust (InVITs) regulated by the Securities and Exchange Board of India,

  Investment Vehicles regulated by Reserve Bank of India, or Insurance Regulatory and Development Authority of India, or Pension Fund Regulatory and Development Authority.

Companies (Amendment) Ordinance, 2019. [FILING OF FORM INC 20A]

- A company incorporated after the commencement of the Companies (Amendment) Ordinance, 2019 and having a share capital **shall not commence any business or exercise any borrowing powers** unless a declaration is filed by a director within a period of one **hundred and eighty days of the date of incorporation of the company** in such form INC 20 A prescribed in the Companies Act 2013 and rules thereon.

APPLICABILITY:

- -Every Company having share capital
- -Incorporated after 02.11.2018

RESTRICTIONS BEFORE FILING THE FORM:

- Shall not commence business
- Not exercise borrowing powers

TIME LIMIT FOR FILING:

180 days from the incorporation of Company

PENALTY:

✓ The Company shall be liable to a penalty of fifty thousand rupees.

✓ Every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues up to rupees one lakh.

✓ The Registrar may initiate action for the removal of the name of the company from the register of companies i.e. mandatorily striking off the Company under Section 248 of the Companies Act, 2013.

"The best things in life are free, but sooner or later the government will find a way to tax them."

— anonymous

SME Platform

Introduction of SME Platform

As of March 2017, the MSME sector in India comprises 63 million units. This sector provides employment to over 80 million people. Through over 6,000 products, this sector contributes about 8% of the GDP. Additionally, it contributes 45% of the country's total manufacturing output and 40% of the exports. The MSME sector has the potential to lead to the spread of industrial growth across the country, and it can be a major partner in the process of inclusive growth. The health of this sector is of tremendous importance, as the livelihood of a majority of Indians depends on the sector. In today's globalized world, where almost all large corporations are converting themselves into assembly lines, corporate India need more SMEs to feed them.

It is a well-established fact that SMEs play a very important role in a developing the local economy. They have been a key engine of economic growth, job creation, wealth distribution and effective mobilization of resources (capital and skills). Due to their small size and entrepreneurial spirit, they are able to adapt to changes quickly, use innovation as a key competitive strategy and have high growth prospects. Indian SMEs operate in diverse sectors, from those that are very traditional to the most modern and cutting-edge industries competing with the best in the world. The SMEs in new economy sectors such as IT, IT-enabled services, organized retailing, education, entertainment, and media represent the new and modern face of Indian SMEs.

The sustained high growth in Indian economy has opened windows of opportunities to a large number of SME companies across different sectors and geographical locations. However, availability of capital for growth is one of the key requirements to enable the deserving SMEs to exploit opportunities and grow exponentially. While India today can boast of a very large banking sector which meets a reasonable level of the debt requirements of the SME sector, the avenues of risk capital for smaller companies are still limited, especially for companies in the new economy sectors which do not have sufficient assets.

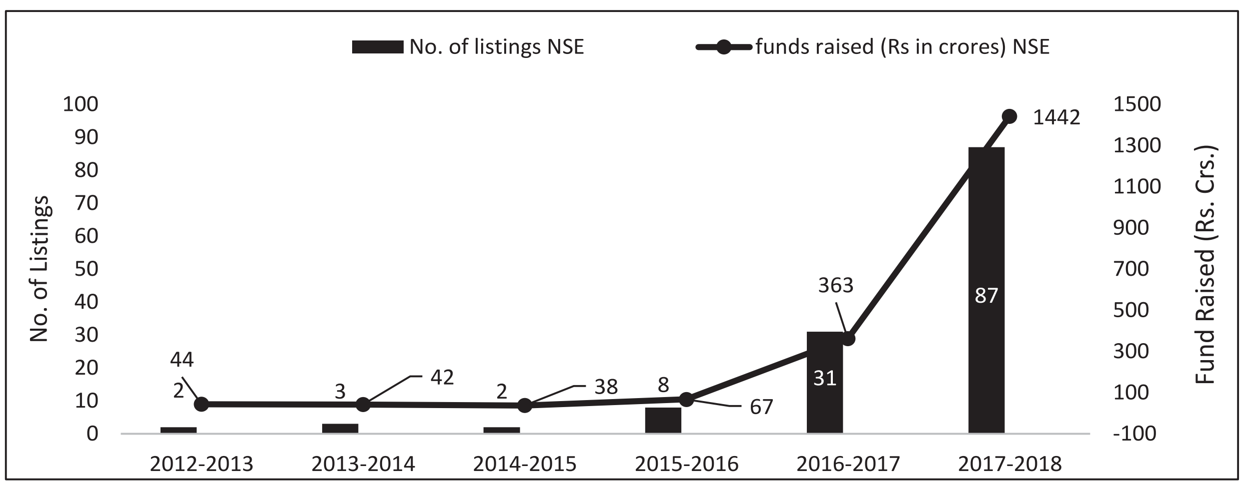
It is universally accepted that an SME Platform provides a new source of capital to SMEs and reduces their dependence on debt financing. As is well known, every company, whether large, medium or small, should have an appropriate debt-equity ratio to enable maintaining an ideal capital structure. Heavy dependence on debt capital from banks and financial institutions would definitely bring distortions in the capital structure in addition to increasing the vulnerability of the SMEs' cash flows in adverse economic conditions. Besides, there are several problems in over-leveraging through loans from banks. It was, therefore, essential that SMEs should be enabled to access the capital market for raising equity capital.

In view of the same the SME platform was introduced and it is a regulated platform under the purview of SEBI. A new chapter (XB) was added to the ICDR to define the regulations applicable to the SME platforms in 2010. Pursuant to the same, NSE launched its SME platform, NSE-EMERGE in September 2012.

In addition to the criteria specified by SEBI for eligibility of a company to list on an SME Platform (any company with a post issue paid up capital of less than Rs.25 crs), NSE has specified the following criteria:

- The company should have a track record of at least 3 years.
- The company should have positive cash accruals (earnings before depreciation and tax) from operations for at least 2 financial years, preceding the application, and
- Its net-worth should be positive.

As of end-March 2018, 133 companies have been listed on NSE EMERGE; most of them in the last two years (See chart). Together, these companies have raised about Rs. 20 billion.



As a segment of NSE, EMERGE enjoys all the benefits of a well-established exchange, such as the trading terminals of the main exchange, its risk management and surveillance systems and the existing infrastructure. While NSE's aim is to create an enabling environment and attract more and more SMEs to tap the public markets, it has tightened for SMEs the eligibility criteria beyond those set by SEBI to access EMERGE. Thus, only SMEs with some basic minimum financial soundness and track record can list on EMERGE.

Aside from giving opportunities to more and more SMEs to make public issues, NSE also envisages EMERGE as a means to expand its main board, as SMEs that grow beyond a certain threshold level are allowed to migrate to the main board.

FROM THE DESK OF GENERAL SECRETARY - ACTIVITIES SINCE 18.09.2018 TILL DEC'18

Date	Name of Programme	Speaker
18.09.2018	DTPA 35th Annual General Meeting	
25.09.2018	S. C. Meeting on " GST Audit, Annual Return and issues to take care while filing GST return for Sept'18"	CA Jayesh Gupta, Bengaluru
04.10.2018	S. C. Meeting on " Re-asstproceedings Issues in Tax Audit report, E-filing and E-Asst	CA Anand Kr. Tibrewal CA Sanjay Bhattacharya
10.10.2018	1st Executive Committee Meeting	
23.10.2018	(Student Training Programme) DTPA Student Training Programme on "Practical Overview of MCA Annual Filing Forms AOC-4 & MGT-7" (Including Comprehensive Checklist)	CS. Ravi Verma
31.10.2018	S. C. Meeting on "Recent judicial pronouncements and Advance Ruling under GST" and "Recent Amendments in GST Law"	Advocate Vinay Shroff CA Anki Kanodia
13.11.2018 14.11.2018	GST Annual Return (Form 9) and GST Audit (Form 9C)	CA Venugopal Gella, Bengaluru CA T. R. Rajesh, Bengaluru
22.11.2018 26.11.2018	GST Annual Return (Form 9) and GST Audit (Form 9C)	CA Abhishek Agarwal, Kolkata CA Ankit Kanodia, Kolkata CA Shubham Khaitan, Kolkata
01.12.2018	Contours of Section 56 & 50CA read with Rule 11UA Government Dues vis-à-vis Insolvency Proceedings Opportunities in Insolvency Profession	CA BHUPENDRA SHAH, Mumbai CA AMIT GUPTA, Mumbai
02.12.2018	GST Audit – Key Action Points & Auditor's Responsibilities Digital Reputation & Risks: Practical Approach	CA GAURAV GUPTA, New Delhi MR. SRISH AGRAWAL, Kolkata
18.12.2018	Group discussion on Practical Issues in E-assessment and CPC related matters	CA D. N. Agrawal, Kolkata
19.12.2018	2nd Executive Committee Meeting	
21.12.2018	Conversion of Firm & Company to LLP - Income Tax, Corporate law and Other issues (Including impact of recent Mumbai ITAT judgement of Celerity Power Pvt. Ltd.)	CA Mohit Bhuteria

LIST OF OTHER ACTIVITIES

Date	Name of Programme
18.09.2018	DTPA 35th Annual General Meeting
13.11.2018	Felicitation of Shibani Shan (Gold Medal winner of Kettle Bell Championship)
16.11.2018	Bijoya & Diwali Get Together at IDEAL BANQUET
22.11.2018	Felicitation of Mr. P.M.Jagtap and Sri N. Vasudevan, Vice-Presidents -ITAT at Hotel JW Marriott, Kolkata in association with IT Bar association & Accountants Library
24.11.2018	Felicitation of Hon'ble Justice Mr. Ajay Rastogi
11.12.2018	Farewell to Mr. M. Balaganesh at MV Ahalya Ship jointly with IT Bar Association and Accountants Library
23.12.2018	DTPA joins CAREOTHON being organised by Care Kankurgachi

NEW MEMBERS

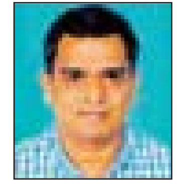
Abhishek Saraf

Aditya Banshal

Ajay Kumar Patodia

Bharat Goel

Bhavik Agarwal


Bikash Bathwal

Khem Chand Khowala

Khushboo Goyal

Pooja Nankani Das

Pratik Daga

Rakesh Kumar Singhi

Sandip Chorarza

Shivani Shah

Siddharth Agarwal

Vinod Kumar Kakrania

Vithal Jhawar

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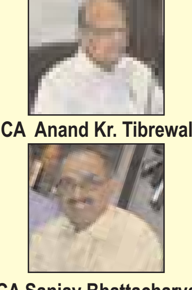
DTPA 35th Annual General Meeting on 18th September 2018

S. C. Meeting on " GST Audit, Annual Return and issues to take care while filing GST return on 25th September 2018

CA Jayesh Gupta
Bengaluru

S. C. Meeting on " Re-asst. proceedings Issues in Tax Audit report, E-filing and E-Asst on 4th October, 2018



CA Anand Kr. Tibrewal

CA Sanjay Bhattacharya

Executive Committee Meeting on 10th October, 2018

DTPA Student Training Programme on "Practical Overview of MCA Annual Filing Forms AOC-4 & MGT-7" on 23rd October, 2018

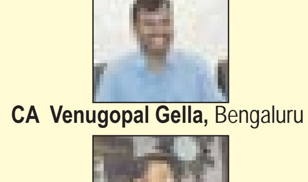
CS. Ravi Verma

S. C. Meeting on "Recent judicial pronouncements and Advance Ruling under GST" and "Recent Amendments in GST Law" 31st October, 2018

Adv. Vinay Shroff

CA Anki Kanodia

GST Annual Return (Form 9) and GST Audit (Form 9C) on 13th & 14th November 2018



CA Venugopal Gella, Bengaluru

CA T. R. Rajesh, Bengaluru

Felicitation of Ms. Shivani Shah on winning IGSF WORLD KETTLEBELL CHAMPIONSHIP

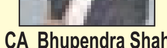
GST Annual Return (Form 9) and GST Audit (Form 9C) on 22nd & 26th November 2018

CA Abhishek Agarwal

RESIDENTIAL CONCLAVE AT IBIZA RESORT

Contours of Section 56 & 50CA read with Rule 11UA
Government Dues vis-à-vis Insolvency Proceedings
Opportunities in Insolvency Profession 1st December, 2018

CA Amit Gupta

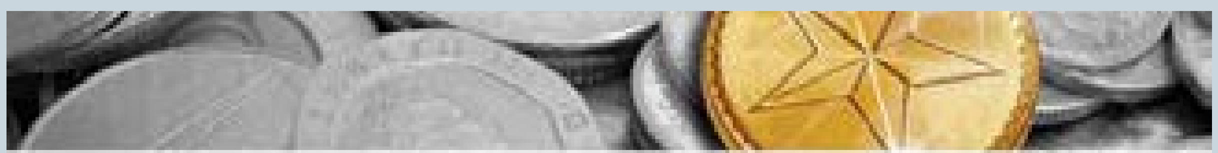


CA Bhupendra Shah

Audit – Key Action Points & Auditor's Responsibilities
Digital Reputation & Risks: Practical Approach on 2nd December, 2018

CA Gaurav Gupta

Mr. Srish Agrawal



ARE YOU AN EMERGING ENTERPRISE

Every step, a milestone

NSE's SME platform "**EMERGE**", symbolizes the aspirations of a large number of entrepreneurs in different sectors and geographical locations, who are actively contributing to growth in India. These companies have the potential to unlock value and emerge on a bigger stage. EMERGE can play the critical role of significantly improving access to risk capital for emerging companies. At the same time, this platform will provide investors with exciting opportunities to invest in promising SMEs.

EMERGE offers India's best emerging businesses a new and viable option for raising risk capital from a diversified set of investors in an efficient manner.

Emerge eligibility criteria

- Post issue paid up capital (face value) upto Rs.25 crore
- Track record of atleast 3 years
- Positive cash accruals from operations for 2 years
- Positive networth

Why NSE EMERGE

- Credible admission process
- State-of-the-art trading system
- High quality investor information
- SME Mentoring

Benefits

- Higher visibility and profile
- Higher credibility with stakeholders like customers, vendors, employees, etc
- Alternate asset class for investors
- Unlock value of ESOPs to attract and retain talent
- Alternate valuations: Liquidity /exit for investors
- Seamless migration to Main board in future

How do I get started?

- Develop an understanding of the capital markets
- Weigh the IPO option vis-à-vis other options of raising funds
- Make a realistic assessment of your readiness for listing
- Strengthen your internal processes and systems required for a publicly listed company
- Crystallise your project and capital raising plans
- Engage with a merchant banker

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Email: dmitra@nse.co.in

Prosenjit Pal
Mob: +91 [illegible]
Email: ppal@nse.co.in

For more details, visit **www.nseindia.com/emerge**

Conversion of Firm & Company to LLP - Income Tax, Corporate law and Other issues (Including impact of recent Mumbai ITAT judgement of Celerity Power Pvt. Ltd.) on 21st December, 2018

Republic Day Celebration at Aayakar Bhavan

Deepawali Celebration on 7th November, 2019

DTPA joins CAREOTHON being organised by Care Kankurgachi on 23rd Dec'18

Direct Taxes Professionals' Association

(Registered under Societies Registration Act, 1961. Registration No. S/60583 of 1988-89)

3, Govt. Place West, Income Tax Building, Kolkata - 700 001

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