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CBDT Circulars & Notifications

- CBDT issued clarification vide Circular No. 29/2019 that Companies opting for section 115BAA will **not be eligible to claim MAT credit and unabsorbed depreciation of the earlier years arising due to additional depreciation.** Further, it is advised that as there are no prescribed timelines under section 115BAA the companies can remain in normal tax bracket and utilize such MAT credit and unabsorbed

depreciation before opting for lower tax rate under section 115BAA.

- CBDT vide notification no. 80/2019 notifies that the provisions of the **Section 194N shall not be applicable to Authorized dealer**, its agents, Full Fledged Money Changer & its agents for purchase of Foreign currency provided a separate bank account is maintained and specified direction issued by RBI is adhered to.

International Tax

India-Morocco: India & Republic of Morocco entered into protocol to amend the tax convention between the Countries to strengthen the Exchange of Information ('EOI') between the Nations.

Montenegro, Jordan Bosnia and Herzegovina signed the Multi lateral instrument to tax transparency and inclusive Framework on BEPS.

European Union: Members of European Union passed resolution for making the Country by

Country ('CbC') reporting public to boost transparency in such reporting.

Latvia, has deposited its Multi-lateral instrument on October 30, 2019.

Mauritius deposits its instrument of ratification of Multilateral BEPS convention. It is important to note that Mauritius **excluded India-Mauritius DTAA** from the Covered Tax Agreements.

FEMA

- Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 & Foreign Exchange Management (Debt Instruments)

Regulations, 2019 has been notified which supersedes the relevant clauses of the FEMA (Transfer or Issue of Securities to a person resident Outside India) Regulations, 2017.

Goods and Services Tax

- **Notification No. 04/2019-** Integrated Tax dated 30th September, 2019- The place of supply of R&D services relating to the pharmaceutical sector of the specified nature provided by a person located in taxable territory to a person located in the non-taxable territory would be the location of the **recipient of service**, subject to specified conditions.

- **Circular No. 105/24/2019-GST dated 28.06.2019** wherein certain clarifications were given in relation to treatment of secondary or post-sales discounts under GST are **withdrawn ab-initio**.
- Form GSTR-3B which was introduced in July 2017 as a stop-gap measure, is **officially a monthly tax return** vide Notification No. 49/2019-CT dated 9th October, 2019 through amendment

of CGST Rule 61, retrospectively from July 1, 2017.

- ITC Claim only against Invoices reflecting GSTR-2A: Rule 36(4) of CGST Rules - Documentary requirements and conditions for claiming input tax credit limits taxpayers from availing Input Tax Credit in their GSTR-3B if their Suppliers have not uploaded details of Invoices in their GSTR-1. Recipient can take credit only up to 20% above ITC reflecting in GSTR-2A.
- Notification 47/2019-CT, notified relaxation in filing of GST Annual Return and waiver of the requirement of filing Annual Return GSTR-9A for Composition Taxpayers for the years 2017-18 and 2018-19. In effect, filing of Annual Return GSTR-9 and Reconciliation Statement GSTR-9C is required only for Tax Payers with annual aggregate turnover above INR 2 Crores.
- Transition Returns - Due dates extended: The last dates for filing Transition return forms GST TRAN-1

and GST TRAN-2 extended to 31, December 2019 and 31, January 2020 respectively.

- Rule 142 (1A) inserted effective 9th October 2019 whereby The proper officer shall, before service of notice to the person chargeable with tax, interest and penalty, under Section 73(1) or 74(1), communicate the details of any tax, interest and penalty as ascertained by the said officer, in Part A of FORM GST DRC01A. Taxpayer will be able to take advantage of nil or reduced penalty under section 73(5) and 74(5), by filing a submission against the proposed liability in Part B of FORM GST DRC-01A.
- Due dates of GSTR-1 and GSTR-3B Returns: The Government announced due dates for GSTR-1 and GSTR-3B returns for filing periods October 2019 through March 2020 vide Notification No. 44/2019-CT to 46/2019-CT.

Key Judicial Precedents

A. Applicability of Article 12(5) of the India-Germany DTAA?

M/s. Lahmeyer International GmbH vs. ACIT, Circle 2(1) - International Taxation [2019] ITA No. 4960/DEL/2004 (Delhi ITAT):

Facts:

- Assessee company is a non-resident company incorporated in Germany.
- The Company is engaged in the business of Engineering consultancy etc. viz. planning, designing and consulting to complex infrastructures.
- The Company is providing engineering consultancy services in ten projects in India of which one project constituted PE.
- The Income from project which constitute PE is offered to tax at 20% under section 115A of the Act and income from other projects are offered to tax at 10% as per Article 12 of India-Germany DTAA.

Department's Contention:

- The Assessee has split the project conveniently to escape the PE.

- The words in the treaty are to be given their general meaning, general to lawyer and layman alike the meaning of the diplomat rather than the lawyer.
- The term or expression 'effectively connected' although present in Art. 12[5] is absent in Art. 7. Because the use of this term takes away the ambit of taxation from Art. 12 and vests the same with Art. 7

Held:

- Twin conditions: (i) **presence of permanent establishment;** (ii) **effective connection between the payment of royalty or Fees for technical services with the Permanent Establishment** is required to invoke force of attraction under Article 12(5) of India-Germany DTAA.
- Hence, in the absence of effective connection the Company has rightly offered the respective amounts to tax.

B. Can the Writ petition be entertained against the direction of DRP?

M/s. PDR Solutions FDC vs Dispute Resolution Panel [2019] W.P. 10387/2019 (Delhi HC):

Facts:

- The Assessee Company is a tax resident in of UAE engaged in business of web presence, sale of web domain to other business.
- The Company contended that the income from above activity not in nature of Royalty or FTS not taxable in India as there is no PE under India- UAE DTAA.
- The Learned AO passed the order relying on GoDaddy.com LLC (ITA No.No.1878/Del/2017 (A.Y 2013-14) and ITA. No. 7123/ DELI 2017.
- The objection was raised before DRP by the Company that it was resident of UAE and Godaddy.com LLC (Supra) will not be applicable but DRP upheld the order of the AO.
- Given the above, the Company filed a writ against the direction of the DRP.

Held:

- If DRP has considered the relevant materials and it was labeled as wrong by the Assessee, the Writ petition cannot be maintained due to presence of alternate statutory appeal remedy.
- However, if the decision of DRP betrays the non-consideration of relevant material, the only inference is DRP has failed to exercise its jurisdiction.
- Not Every order where there is non-application of mind would become amenable to Writ under Article 226 but **where there is a fundamental error relating to exercise of jurisdiction which is glaring and noticeable** will fall within the exceptions.

C. Can a company transfer capital asset as gift?

M/s. Direct media Ventures P Ltd. v. PCIT [2019] ITA No. 2211/Mum/2019

Facts:

- Assessee is an Indian Company engaged in the media distribution via cable network or satellite systems.
- During the relevant previous year, the company gifted the shares of Dish TV India Ltd to its sister concern.
- The gifting of shares was authorized by the MoA and all the required corporate law compliances were adhered to.

- The matter was not examined during the Assessment and the Learned PCIT therefore invoked revisionary powers u/s 263 and held the order passed by AO is erroneous. Consequently, considered the FMV as on date of transfer for computation of capital gain.

Department's Contention:

- Gift of shares were a colorable device to evade taxes.
- "Natural love and affection" is a pre-requisite for a gift and therefore, a Corporate cannot make gifts.

Held:

- Conjoint reading of section 5, 122, 123 of the Transfer of Property Act, 1882, **there is no requirement that gift can be made between natural persons out of natural love.**
- Section 47(iii) contemplates gifting of shares by company to its employees under ESOP. Hence, legislation in its wisdom is **conscious of the fact there might be situation wherein company would have to resort to gifting of shares.**
- Considering the above, Hon'ble ITAT allowed the appeal of the Assessee and same was in favour of the assessee.

D. Allowability of Management & Technical Fees paid to members of JV (AOP) structure.

L&T Hochtief Seabird Joint Venture Vs. DCIT [2019] ITA No. 2901/Mum/2008 (Mumbai HC):

Facts:

- L & T & Hochtief formed a JV for construction of Breakwater, Dredging and Land Reclamation to execute contract awarded by Ministry of Defense.
- The ratio of share in JV between L & T and Hochtief is 90:10.
- JV paid management & technical fees to the person in JV, in professional capacity.
- During the Assessment, the above fees paid to the members of JV were disallowed by AO under section 40(ba).

Held:

- Section 40(ba) wide enough to cover any payments made to the member of AOP.

- The agreement between the parties cannot override the provisions of the Act.
- The statute must be construed in plain language unless there are adequate grounds to justify the inference legislative so intended.
- Considering the above, section 40(ba) is applicable **even if the payment were made as in professional capacity** and not as members of AOP.

E. Whether registration u/s 12A be withdrawn where the Activities of the Trust are outsourced to Non-Charitable Companies?

Devki Devi Foundation vs. DIT(E) ITA No. 1027/Del/2012.

Facts:

- The Assessee is a registered Society with main object of providing medical relief through operation of Hospital & medical research.
- The Assessee was granted registration u/s 12A of the Act vide order dated June 23, 1994.
- The Assessee was allotted land and for construction & maintenance of hospital for Assessee, it entered into an agreement with a Company in Max medical Group of companies.

- The Company entered into agreements with Max group for various services such as Medical services, Equipment charges etc. where Max group of company has the power to terminate the contract.
- Further, maintenance and running of hospital is outsourced to M/s. Fortis Healthcare for a 35% share in revenue.
- Also, Department observed that the discount and free treatment provided constituted only around 5% of total revenue.

Contention of Department:

- The Assessee society has not been operating a charitable institution as it was virtually overtaken by various Companies by creation of various financial and legal obligations. Hence, the Society is carrying on commercial activity and the registration is required to be withdrawn.

Held:

- The overall Management of the Trust continues to remain with the trustees and the decisions taken are subject to approval of the Trustees.
- No Material had been brought on record by the Department that provisions of Section 11 & 13 are violated. **In absence of such material, exemption under section 11 cannot be denied.**

Other Important Precedents

- The Hon'ble Apex Court held that the date July 1, 2015 has been substituted to April 1, 2016 to enable person to claim benefit under section 59 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and penal provisions u/s 50 & 51 of the said Act are **applicable only from April 1, 2016.** – **Union of India and others v. Gautam Khaitan (SC) [2019] SLP No. 2911 of 2019.**
- Hon'ble Apex Court held as follows "Filing of Form 18 and mere mentioning of the new address in the return of income without specifically intimating the Assessing Officer with respect to change of address and without getting the PAN database changed, **is not enough and notice served to the previous address is valid** and quashed the Order passed by HC, ITAT & CIT(A)" – **I-Ven Interactive Ltd vs. PCIT [2019] (SC) Civil Appeal No. 8132 of 2019)**
- Hon'ble NCLT (New Delhi) held that Income Tax Department is an **aggrieved party** within the meaning of section 252(1) of the Companies Act, 2013 and great prejudice will be caused to revenue and hence, ordered restoration of Struck off Company. **Income Tax Officer vs. The Registrar of Companies [2019] (NCLT-New Delhi) Appeal No. 1239/252/ND/2018**

OECD

- OECD published public consultation document on pillar one of the BEPS Action-1. Introduces a **new unified Approach for nexus and re-allocation of profits rules**. The key highlights of the public consultation documents are as follows:
 - a. New permanent Establishment rules: the Permanent Establishment rules are to be implemented on the **basis of turnover as against functionality**. i.e. Permanent Establishment criteria based on satisfaction of a certain level of turnover in a country.
 - b. Profit Attribution Rules:
 - i. The Normal profits are attributed **based on the functionality as per existing ALP computation model** ;
 - ii. The remaining residual profits are attributed based **on the turnover in each country**.
- OECD released the sixth round of peer review report on improving Tax Dispute Resolution mechanism and mutually Agreed Procedures.

Companies Act, 2013

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| <ul style="list-style-type: none"> • MCA extended the due date for filing e-form CRA 4 up to 31.12.2019 without the payment of additional fees. • MCA has extended the due date for filing e-form IEPF-2 up to 30.11.2019 and e-form IEPF-1A up to 31.12.2019 without the payment of Additional fees. • MCA has extended the due date for filing e-form AOC 4 / AOC-4 (CFS) and AOC-4 XBRL up to 30.11.2019 and e-form MGT-7 upto 31.12.2019 without the payment of additional fees for the FY 2018-2019 • Companies (Accounts) Rules, 2014 had been to include the statement containing the opinion of the Board with regard to integrity, experience | <ul style="list-style-type: none"> • and expertise of the Independent Directors in its Board report with effect from December 1, 2019. • MCA notifies Institute of Corporate Affairs to create and maintain database containing details of person who are willing to Act as independent Directors. The interested person enrolling themselves in the database is required to pass a self Assessment test conducted by the Institute. (This exam is not applicable for the individuals who served as Managerial Personnel in such specified Companies.) • MCA Expands the scope of CSR contribution to include the Contributions made to the Incubators. |
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SEBI

Securities and Exchange Board of India issued circular clarifying the responsibilities of Auditor and the listed entities in the case of resignation of Auditors. As per the circular the key implications are as follows:

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| <ul style="list-style-type: none"> • In case of where an Auditor before 45 days from the end of the Quarter of a Financial year, the Auditor is required to issue a limited review report for such quarter and • In case where the Auditor resigns after 45 days from the end of the Quarter of a financial year, the auditor is required to | <ul style="list-style-type: none"> • issue limited review report for current quarter and the subsequent quarter. • In the case where the Auditor issues limited review report for three financial quarters, then the Auditor is required to issue Audit report along with limited review report for the financial year. • The listed company is required to obtain prescribed information before resignation by Auditors. • The listed company is required to disclose the comments of the Audit Committee in |
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relation to resignation of Auditor to the Stock Exchange.

Transfer Pricing Compliances – Due dates

Section	Applicability	Due Date	
92E	All Assesses (including Branch and Project Office), having international transaction with its Associated Enterprises, irrespective of value of international transaction.	Form 3CEB to be filed before November 30, 2019	
92 D	If the value of international transaction is more than INR One Crore, transfer pricing documentation needs to be maintained.	TP Documentation to be prepared before November 30, 2019 - Indian and Overseas benchmarking studies to be completed	
Rule 10 DA (2) & (3)	Every Constituent Entity of the International Group. Applicable to all Assesses, irrespective of value of international transaction.	Only Part A of Form 3CEAA before November 30, 2019	
Master File			
Particulars	Form	Due Date	
Constituent Entity	Rule 10DA Conditions satisfied	Form No.3CEAA	November 30, 2019
	Rule 10DA Conditions not satisfied	Only Part A of Form No. 3CEAA	November 30, 2019
Multiple Constituent Entities Resident in India	Yes	Form No. 3CEAA	November 30, 2019
		Form No. 3CEAB	October 31, 2019
	No	Form No. 3CEAA	November 30, 2019

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