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## CBDT Circulars & Notifications

- CBDT vide notification no. 98/2019, amended rule 30 to prescribe procedure for deposit of Taxes deducted under section 194M. As per the amended rules, the payment of the tax **deducted is required to be made within 30 days from the date of deduction in statement cum challan form 26QD**. Further, the deductor is required to issue Tax deduction certificate within 15 days from the due date of filing form 26QD.
- CBDT vide Notification No. 95/2019 informed that in various forms including 3CA, 3CB, 3CEB, 26AS, 15CA, 15CC, and 10DA etc. the Assessee is provided an option to quote either **PAN or Aadhar Number**.
- CBDT vide Notification No. 101/2019 has revised the form, manner and fees for filing an appeal under section 46 of the Prohibition of the Benami Transactions Act, 1988.
- CBDT released synthesized texts for MLI modified India's DTAA with Singapore, Finland and Slovakia
- CBDT has issued guidelines vide F.No. 225/333/2019/ITA-II to the revenue authorities to drop the scrutiny proceedings under Section 143(2) of the Act against the 'invalid returns' instead initiate 148 proceedings against such returns.
- In order to enable strengthen the Automatic Exchange of Information under Common reporting Standard, CBDT has created an **exchange of Information portal on the Income Tax Department website for dissemination of Information to all the stakeholders**.
- **The Taxation laws (Amendment) Bill, 2019 in order to replace the Taxation Laws (Amendment) Ordinance, 2019 is introduced in the Parliament**. The Significant changes in the amendment have been discussed below.

## Taxation Laws (Amendment) Act, 2019 vs Ordinance

### Section 115BAA:

- Additional depreciation under section 32 cannot be carried forward.
- Deduction under **section 80LA** is available for Financial Institutions under the **International Financial Service Centre** which have opted for rate of tax under section 115BAA.
- If the conditions provided under section 115BAA are violated, the benefit under section 115BAA will no longer be available

and the normal provisions of the Act would apply.

### Section 115BAB:

- Where a company has opted for beneficial tax provision under section 115BAB and **earns any income that is not incidental to manufacturing viz., income from Interest on Deposits, liquid fund interests, etc. and short term capital gain on sale of Non-depreciable assets**, the same would be taxed at the rate of 22%.

- The manufacture **does not include development of computer software, Mining, conversion of Marble blocks into slabs, bottling of gas into cylinder, printing of books or production of cinematograph.**
- Further, Central Government is empowered to notify such businesses

which do not constitute manufacture under this section.

- Board is empowered to issue guidelines in order to remove any difficulty in satisfying any conditions prescribed under the Act after obtaining assent of the both houses of the Parliament.

## Corporate Tax Rate Chart – Only for Companies

Particulars	Under Normal Provisions		Manufacturing Companies incorporate pre October 1, 2019	Manufacturing Companies incorporated post October 1, 2019	All other Companies other than 115BAB
	Turnover less than <400 Crores in FY 17-18 <sup>1</sup>	All other Cases <sup>1</sup>	115BA*	115BAB**	115BAA***
Normal Rate of Tax (Assuming total income exceeds INR 10 Crores)	29.12%	34.94%	29.12%	17.16%	25.17%
MAT (Assuming total income exceeds INR 10 Crores)	17.47%	17.47%	17.47%	NIL	NIL

### \*115BA – Specific Conditions

- The company should be set up and registered on or after 01.03.2016.
- The Company should be engaged in manufacture or production of any article or thing.
- It should not claim specified exemption, incentive or deduction.

### \*\*115BAB – Specific Conditions

- The company should be set up and registered on or after 01.10.2019.
- It should be engaged in manufacture or production of any article or thing.
- The company does not use any machinery or plant previously used for any purpose.
- The business is not formed by splitting up, or the reconstruction, of a business already in existence.
- It should commence manufacturing on or before 31.03.2023.
- It should not claim specified exemption, incentive or deduction.

### \*\*\*115BAA – Specific Conditions

- if company does not claim specified exemption, incentive or deductions.

<sup>1</sup> Eligible for incentives as per the various provisions of the Act viz., Tax holiday under section 10AA of the Act, Additional depreciation, set off and carry forward of business loss as well as unabsorbed depreciation, MAT credit eligibility etc.

## International Tax

- **India-Chile:** India & Republic of Chile entered into protocol for elimination of Double Taxation and prevention of fiscal evasion incorporating **the minimum standards and other recommendations of G-20 OECD Base Erosion Profit Shifting (BEPS) Project.**
- **India- Brazil:** India and Brazil signed the protocol amending the Double Taxation Avoidance Agreement to **implement the minimum standards and recommendations of the G-20 OECD Base Erosion Profit Shifting (BEPS) Project.**
- **Italy and Armenia** had agreed to combat international tax avoidance by establishing

work plans for the program initiated **through Tax Inspectors without borders initiative by OECD.**

- **Kenya and Oman** signs the Multilateral Convention to implement tax evasion and Base erosion.
- **Switzerland** has published guidance on adopting Tax Exchange of Information and tax transparency purposes based on the recommendations of the Global Forum. **Around 57,000 companies are expected to be affected because of the above.**

## FEMA

- Reserve Bank of India has notified the amendments to the Deposits regulations. The purposes and scope for opening a **Special Non Resident Rupee Account has been expanded to Include Foreign Investments, ECB, trade Credits etc. The maximum period (7 Years) restriction for operation of SNRR does not apply in prescribed cases like Foreign Investment, ECB etc.**

- Reserve Bank of India Amended the (Manner of Receipt and Payment) Regulations to enable receipt of Money into SNRR in Indian Rupee provided the receipt is not in violation of FEMA regulations.

## Goods and Services Tax

- **Circular No. 122 dated 05.11.2019** issued to the effect that Document Identification Number (DIN) is to be mentioned on any communication issued by the officers of CBIC to tax payers and other concerned persons with effect from 8th November 2019. **Any specified communication which does not bear DIN and is not covered by the exceptions in the Circular supra shall be treated as invalid and shall be deemed to have never been issued.**
- Removal of Difficulties Order No. 08/2019-Central Tax dated 14th November, 2019 extends the last date for furnishing of annual return/reconciliation statement in FORM GSTR-9/FORM GSTR-9C for FY 2017-

18 till 31st December, 2019 and for FY 2018-19 till 31st March, 2020

- Notification No. 56/2019 dated 14<sup>th</sup> November 2019 has amended CGST Rules wherein taxpayers are not required to provide split of Input tax credit availed on inputs, input services, Capital goods and HSN level information of output/input for FY 2017-18 and 2018-19. In Part-B with regard to certification, **the words "true and correct" are replaced by the words "true and fair"**
- CBIC vide Circular No. 123/2019 dated 11.11.2019 issued clarification on **the new rule 36(4) related to availing input tax credit under GST**, with regard to the

method & Manner of calculating the 20% Tax credit, cut-off date etc.

- With effect from November 22, 2019, taxpayer who has not filed Return GSTR3B for a period of two successive months in GST Common portal, such **tax payer will be barred from generation of e-way bill both as consignor/consignee.** For the

current month, the tax payer are alerted with a cautionary message in this regard.

- New Online refund module has been deployed by GSTN through Form RFD-01 and single disbursement functionalities. In addition, **Circular No. 125/44/2019-GST** dated 18<sup>th</sup> November 2019 has been issued on fully electronic refund process.

## Key Judicial Precedents

### A. Payment under an outside court settlement penalty?

#### Depreciation on Goodwill arising on Amalgamation?

**M/s. Mylan Laboratories Limited. vs. Dy CIT [2019] ITA No. 2335/HYD/2018 (Hyderabad ITAT):**

#### Facts:

- Assessee is a domestic company engaged in the pharmaceuticals business.
- The Assessee obtained INR 141.5 Crores from a pharma company as non-compete fees and it was offered to tax during the earlier previous years.
- The Assessee had to return that INR 141.5 Crores as per the order of the EU commission under anti-trust law because the receipt of Non-compete fees was in violation of competition laws.
- The Assessee acquired Ajila Specialties and its subsidiary Onco Therapies Ltd from an unrelated seller and the companies were immediately merged with the Assessee.
- The excess amount paid over the value of assets was recorded as Goodwill arising on amalgamation and claimed depreciation on the same

#### Issue:

- Whether payment in violation of law outside India be disallowed under section 37?

- Whether Depreciation on goodwill is allowable arising out of amalgamation?

#### Held:

- Relying on the various ruling held in the context of General Clauses Act & Patents Act, the Tribunal held payment for offence which is prohibited by law would include only **law in force in India**. And therefore, the legal expense paid for the settlement is allowable under section 37.
- Facts in the case of M/s. United Breweries Ltd<sup>2</sup> and current case are distinguished as the amalgamation of subsidiary is in nature of merger in the former and the amalgamation is in nature of purchase in the case of latter.
- Given the above, **the Hon'ble Apex ruling in the case of M/s. Smifs Securities<sup>3</sup> would be applicable** in the current case and depreciation of goodwill allowable.

### B. Can the deduction or benefit be claimed in the Appellate tribunal as an additional ground where the same is not made in return?

**M/s. Maruti Suzuki Ltd vs Dy CIT [2019] ITA No. 961/Del/2015 (New Delhi ITAT):**

#### Facts:

- The Assessee paid dividend to the Suzuki Motor Company and to other non-resident shareholders. The DDT was offered to tax at the rate of 16.61% of IT Act instead of beneficial 10% of Article 10 of DTAA.

<sup>2</sup> CIT v. United Breweries Ltd [2016] ITA No. 722/Bang/2014  
<sup>3</sup> CIT v. Smifs Securities Limited (2012) 348 ITR 302(SC)

- The Assessee raised an additional ground before ITAT – CIT (A) that AO ought to have restricted the levy of the DDT on dividend Distribution Tax to the extent given under DTAA.
- The claim was not made in the return of Income and the additional ground was raised post completion of the submission.

### Issues:

- Can the ITAT admit the additional ground?
- Since the DDT being a separate provision and does not arise out of charging section<sup>4</sup> Whether ITAT have the power to entertain a completely new ground which did not form part of the Appeal?

### Held:

- Additional Ground **can be raised at any time before disposal of the Appeal**. There is no estoppel in law.
- **Mere application and acceptance of an incorrect rate is not an estoppel for not claiming a lower rate.**
- The Income tax Act does not provide for separate adjudication with regard to liability of DDT, therefore DDT is similar to Income Tax.
- Hence, the Additional grounds raised by Assessee should be admitted.

### **C. FTC on Income exempt under Section 10A/10AA:**

**M/s. Tata Consultancy Services Ltd. v. ACIT [2019] ITA 5713/Mum/2016**

### Facts:

- Assessee is an Indian Company established in SEZ engaged in the business of software development, BPO etc. and claiming deduction under section 10AA.
- The Assessee has several overseas branches across the globe.
- The Assessee paid taxes in various countries and claimed FTC credit under section 90 & 91 of the Act, while its income is exempt under section 10AA.

### Held:

- The provisions of section 90 is applicable where the income of the Assessee is eligible to tax under the Act as well as in the corresponding law in force in the other country.
- The income earned by the units in SEZ is **chargeable to tax** and the Parliament, in order to incentivize such assessee to manufacture or provide services **has granted such exemption.**
- The Tax treaties like Indo-USA, Indo-Taiwan, Indo-Saudi etc. does not provide for mandatory payment of taxes in both contracting states in order to be eligible for claim of tax credit.
- With regard to countries where India do not have tax treaty **section 91 would operate and the Assessee will be eligible for FTC.**
- However, Indo-Canada & Indo-Finland DTAA, provides for eligibility of FTC only if the taxes are paid in both country. Hence, FTC is not available.

### **D. Interest paid on Loan for property eligible for Capital gains?**

**M/s. Dorma India Private Ltd vs. ACIT [2019] ITA No. 1644/Chny/2019 (Chennai ITAT):**

### Facts:

- The Assessee is a company in India engaged in the Business of Manufacture & Trading of Doors and accessories.
- The Assessee Company acquired business units of two private limited and the Assets were revalued and the **excess consideration is considered as Goodwill.**
- The Business transfer Agreement contained non-compete clause for a period of five years.
- Department Contended that the excess consideration is in nature of Non-compete fees and the same is not eligible for depreciation because the issue has not attained finality.

### Held:

<sup>4</sup> Section 4 of the Income Tax Act, 1961.

- The Assessee has purchased the business as a going concern basis along with all the business Assets, customers, business contracts, business intangibles, key employees, installation employees and other employees.
- The facts in the case of the Toyo Engineering India Limited<sup>5</sup> is different from facts of the current case. In the former, the land and buildings were purchased through the Business Transfer Agreement, same were recorded at book value and excess consideration was capitalized as goodwill. But in the current facts, business of the companies are acquired in going concern and **no land and buildings** were acquired.
- Given the above, the depreciation is allowable on the Goodwill.

## E. Taxability of Foreign Assignment Allowance?

**Mr. Bodhisattva Chattopadhyay vs. CIT-Kolkata [2019] ITA No, 1314/Kol/2019 (Kolkata ITAT)**

### Facts:

- Assessee is an employee of the Multi-national Company IBM was sent to Switzerland where he was stationed for 349 days during the previous year.
- The Assessee received emolument in nature of Salary amounting to INR 18,65,767/- and Foreign Assignment Allowance amounting to INR 42,97,092/-.
- The Foreign Assignment Allowance is paid to the Axis Bank Travel Card through Nostro- Account with ZurcherKantonal Bank account.
- Assessee returned income only to the extent of INR 18,65,767/- and considered the foreign assignment allowance as out of the scope of Income Tax.
- In the revision adjudication, CIT held that Income was received in India and

the same is not offered to tax in Switzerland and hence is chargeable to tax in India.

### Held:

- **The CIT's revisionary adjudication lacks jurisdiction as the Learned AO has made adequate investigation into the taxability of the Foreign Investment before adjudication.**
- As per Section 9, Salary shall be deemed to be earned in India only **if such income is paid for services rendered in India.**
- As the foreign Assignment allowance is received by the Assessee outside India in Axis Bank travel card which is outside India, the same is not subject to tax in India.

## F. Chapter X vs Chapter III

**M/s. Doshi Accounting Services Pvt Ltd v. DCIT [2019] ITA No. 1352/Ahd/2011 (Ahmedabad ITAT)**

### Facts:

- The Assessee is a private limited company engaged in the activity of Business Process outsourcing in field of Accountancy and taxation. Assessee is established in STPI and eligible for 100% tax holiday under section 10A.
- The Assessee is an Associated Enterprise of M/s. Doshi & Co based in United Kingdom.
- The Assessee provided services to the Associated Enterprise and therefore the case was referred to TPO for computation of ALP.
- TPO rejected the method of computation claimed by the Assessee (as per CUP) and computed ALP based on the TNMM.
- The computation resulted in an upward adjustment.
- Assessee contended that as there is no motive to shift profits from a no tax area to high tax country i.e. UK, the provisions of chapter X not applicable and the Income.

### Issue:

<sup>5</sup> DCIT v. Toyo Engineering India Ltd (2013) (33 Taxman.com 560) (Mumbai Trib.)

- Whether provisions of Chapter X are applicable only in the case of tax avoidance?
- Whether section 10A being a code in itself, overrides the provisions of section chapter X?

#### **Held:**

- **Language used in section 92, 92C(4) is clear, unambiguous, thus there is no need to look at the intention of the provision. The provision is clear that it is applicable for all**

#### **the international transaction with the Associated Enterprise.**

- Even if we apply purposive interpretation, the intention of the legislature under section 10A r.w.s 92C(4) is **to avoid manipulative behavior by taxpayers which affects inflow of foreign exchange reserve into India.**
- Considering the above, even if Assessee is covered under section 10A of the Act, the arms' length price is deserved to be determined.

## Other Important Precedents

- The **period of limitation** (Prescribes the timeline for Prosecution) under section 468 of the Code of Criminal Procedure will **not apply to the cases under section 276C**, as the violators can be imprisoned up to a period seven years. - **M/s. Sowparnika Projects and Infrastructure P Ltd vs ACIT [2019] C.R.P No. 456 of 2019 (Bangalore City Special Bench).**
- Investment in chit fund is in violation of section 11(5) of the Income Tax Act. However, only income violative of section 11(5) of the Act can be taxed at Maximum Marginal rate and whole exemption cannot be denied follows Hon'ble Madras High Court's Judgment on CIT vs. Working Women's Forum (2014) 365 ITR 353 (Mad)(SLP against which was dismissed by Hon'ble Apex Court). – **ADIT vs. M/s. Sree Gurukulam Educational and Medical trust [2019] ITA No. 1134/Chny/2013 (Chennai ITAT).**
- Where the transaction between a Permanent Establishment ('PE') and the Associated Enterprise is proved to be at arms' length. Further, attribution of income to the PE is not required. Follows Hon'ble Supreme Court's judgment<sup>6</sup> - **CIT vs. M/s. Honda Motors Co. Ltd [2019] ITA 945/2019 (New Delhi HC)**

## OECD

- OECD had released additional interpretative guidance to give greater certainty for the Multi-National Enterprises on the implementation and operation of Country-by-country Reporting (BEPS Action 13).
- OECD invites inputs on the Global Anti-Base Erosion (GloBE) proposal under pillar two.

## NBFC

- Reserve Bank of India had notified Liquidity Risk management Framework for NBFC and Core Investment Companies. Some of the key changes to the guidelines are as follows:
  - **Granular Maturity Buckets and Tolerance Limits:** the net negative cumulative mismatches in the Maturity buckets of 1-7 days, 8-14 days, and 15-30 days shall not exceed 10%, 10% and 20% of the cumulative cash outflows in the respective time buckets.

<sup>6</sup> DIT vs. Morgan Stanley & Co INC 292 ITR 416 (SC)

- **Liquidity Risk Monitoring Tools:** NBFCs are required to use Liquidity risk monitoring tools to identify and capture liquidity strains in the financial position.
  - **Adoption of Stock to liquidity Approach:** NBFCs are mandated to monitor liquidity risk based on the stock to liquidity approach. For Illustration Commercial paper to Total Asset ratio.
  - **Extension of Liquidity risk Management:** The Monitoring of liquidity framework is now applicable on other aspects like off-balance sheet and contingent liabilities, stress testing, intra-group fund transfers, diversification of funding, collateral position management, and contingency funding plan.
  - **Introduction of Liquidity Coverage Ratio ('LCR'):** All Non-Deposit taking NBFCs with an Assets size of More than INR 5000 Crores shall adhere to the guidelines on LCR including the disclosure standards. Separate rate of LCRs are issued for Non Deposit taking NBFCs with Asset size more 10,000 Crores or more and NBFCs with Asset Size of INR 5000 Crores or more.
- NBFC Accounts Aggregator, Financial information providers & financial information users are directed to adopt technical specification issued by Reserve Bank Information Technology Private Limited (ReBIT). The technical Specifications are published and updated from time to time in its website [www.rebit.org.in](http://www.rebit.org.in).
  - A new scheme to unburden the stressed Assets in NBFCs is expected to be introduced by the Ministry of Finance and the Reserve Bank of India.
  - RBI has increased the threshold limit for criteria to classify Qualifying Asset. The Borrowers whose household income is less than INR 1,25,000 (earlier 1,00,000) in rural areas and INR 2,00,000 (earlier 1,60,000) in Urban areas are now considered as Qualifying asset for determining classification as NBFC Micro Finance Institutions.
  - RBI has issued Guidelines for Compensation of Whole Time Directors/ Chief Executive officers/ Material Risk Takers and Control Function staff for the Banks. Though this is applicable only to the Banks, the same is expected to be extended to NBFCs.

## SEBI

- With notification of the Amendment in the SEBI (Foreign Portfolio Investors) Regulations, 2019, the Securities Exchange Board of India had issued operational guidelines for Foreign Portfolio Regulations.
- SEBI had issued a circular to enable the Authentication facility under Section 11A of the Prevention of Money Laundering Act, 2002. i.e. Aadhar E-KYC. The specific directions has been issued with regard to maintenance of the KYC records such as maintenance of personal without storage of Aadhar number etc.
- In order to enhance the integrity of the system for processing dematerialization request in respect of remaining physical shares, all the Listed Companies and their RTA's are required to provide data of the member's holding shares in physical mode as on March 31, 2019 to depositories on or before December 31, 2019.



## Companies Act, 2013 ('CA 2013')

- MCA - Compliance Monitoring System (MCACMS) is the newly introduced online Compliance censoring mechanism that works on **Artificial Intelligence**. This portal is designed to identify the non-compliance under CA 2013 and issue the show-cause notices to such non-compliant companies / directors digitally.
- MCA has extended the due date for filing e-form NFRA-2. The time limit for filing Form NFRA-2 will be 90 days from the date of deployment of this form on the website of National Financial Reporting Authority (NFRA).
- MCA has extended the due date for filing Share Capital Audit Report by unlisted Public Companies in Form PAS - 6. The time limit for filing Form PAS-6 without additional fees for the half-year ended on 30.09.2019 will be sixty days from the date of deployment of this form on the website of the Ministry.
- MCA had initiated prosecution proceedings against **11,082 Companies** for default in filing the financial statements and annual report. Further, in the last two financial years ROC has removed/struck off 3,38,963 Companies from the Register of Companies under Section 248 of the CA 2013 for non-filing of financial statements and annual returns for a period of 3 years and more.
- The Company Law Committee has released a report on November 14, 2019 pursuant to policy of the Government of India to decriminalize non-compliances of minor, technical or procedural nature and to facilitate and promote the ease of doing business for law abiding corporates in the country.

## Miscellaneous Industrial regulations

- Industrial Relations code Bill Introduced with an objective to consolidate and amend the laws relating to trade unions, conditions of employment in industrial establishment or undertaking, investigation and settlement of industrial disputes.

Title	Tax & Regulatory Update
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