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CBDT Circulars & Notifications

- CBDT **extends the due date of payment of taxes** under Income Disclosure Scheme introduced vide Finance Act, 2016. Now, the tax payers who had disclosed the Income under the scheme but have not paid **the taxes can deposit the same on or before January 31, 2020 along with interest at 1% per month or part thereof.** – Notification No. 103/2019
- CBDT issued a circular under section 119(2) of the Income Tax Act, 1961 for **extension of due date for payment of TDS under section 194M (Certain Payment by Individuals & HUF) for the Months of September and October to December 31, 2019.** Consequently the due date for issue of **certificate in form 16D has also been extended to January 15, 2020.** – Circular No. 31/2019.
- **CBDT amends form 10DA in line with the amended section 80JJAA.** The new form provides additional rows for disclosure of employees employed during the preceding previous year for less than 240/150 days as the case may be and continued to remain employed in the previous year for more than 240 days.
- The Taxation Amendment Bill, 2019 received the presidential assent on December 11, 2019.
- Under E-Assessment scheme – 2019, the due date for **submission of response for notice issued under Section 142(1)** of the Income Act issued up to December 24, 2019, **has been extended up to January 10, 2019.**
- Electronic submission of documents through e-proceedings was closed **by December 29, 2019 for the time barring cases.**
- As per section 269SU every person carrying on business is required to **provide facilities for accepting payment through electronic mode if his turnover exceeds INR 50 Crores** during the immediately preceding previous years. CBDT had inserted a new rule 119AA which prescribes the facilities for electronic payment for the purpose of section 269SU. The following facilities has been prescribed - **Debit card payments powered by Rupay, Unified Payment Interface (UPI) and Unified Payments Interface Quick Response Code.**
- With a view to streamline the process of application by deductor **under section 195(2) of Act, CBDT proposed a new form 15E.** Currently, it is now placed for consultation to obtain comments from the stakeholders.
- With a view to unlock revenue and improve litigation management, CBDT has directed officials to dispose of cases which are pending at the level of CIT(A) for more than Five years.
- CBDT extends due date for linking PAN with Aadhar from December 31, 2019 to March 31, 2020.

International Tax

- **Jordan** signed the Multilateral Convention to implement Tax related measures to prevent Base Erosion and Profit Shifting.
- **Honduras and Montenegro** joins the inclusive BEPS Framework.
- **USA** issued final regulations on the Foreign tax Credit ('FTC'). The final regulations provide guidance on determination of FTC as a result of changes in various Tax regulations.
- **Singapore & Germany** have signed the protocol for amendment of their tax treaty in line with MLI.

FEMA

- Reserve Bank of India ('RBI') had granted **exemption from submission of declaration under Foreign Exchange Management (Export of Goods & Services) Regulations, 2015 in the case of re-export of lease aircrafts, helicopters, engines, auxiliary powers units re-possessed by Overseas lender subject to permission granted by DGCA/ Ministry for Civil Aviation.**
- Government of India had amended the Foreign Exchange Management (Non-debt Instrument) Rules, 2019 which came into effect from October 17, 2019. The key amendment in the rules are as follows:
 - A Resident can gift shares to a non-resident whether or not the shares held on non-repatriation basis **only after obtaining approval from RBI.**
 - The Mutual Funds are removed from the definition of the Investment Vehicles. Therefore, **only Non-resident Indian/overseas Citizen of India or Foreign portfolio Investors can only invest in the Mutual funds through automatic route.**

Indian Stamp Act, 1899

Ministry of Finance with the power conferred by section 73A of the Indian Stamp Act, 1899, had introduced Indian Stamp (Collection of Stamp Duty through stock exchanges, Clearing Corporation and depository) Rules 2019, which comes into force on January 9, 2020. The key excerpts of these rules are as follows:

- Stock exchange or clearing corporation is required **to collect stamp duty on the issue or transfer of securities at the time of settlement;**
- The stamp duty shall be **collected on the entire sale value even if consideration is paid in parts or in instalments;**
- Depository is required to collect stamp duty from the transferor on execution of all off market transfers of shares in dematerialized form;
- Depository shall collect stamp duty on creation of new securities from the issuer;
- The person collecting the stamp duty is required to file **a monthly return on or before Seven days from the end of the Month either manually or electronically to the concerned state Government.**
- The person collecting the stamp duty is required to file **Annual return on or June 30 of the Succeeding year either manually or electronically to the concerned state Government.**

Goods and Services Tax

- **Notification no. 68, 69, 70, 71 & 72/2019 –Central Tax all dated 13th December, 2019** issued on e-invoicing under GST effective 1st April 2020 whereby Taxpayers with turnover of over ₹500 crore can implement it on voluntary basis from January 1, 2020 and those with turnover of over ₹100 crore can adopt it on voluntary basis) from February, 1 2020. **It shall be made mandatory for all taxpayers with a turnover of over ₹100 crore from April 1, 2020. Refer above Notifications for detailed workflow on e-invoicing in GST.**
- **Notification No. 73/2019 – Central Tax dated 23rd December, 2019** whereby the due date to file GSTR-3B return for November, 2019 was extended to 23rd December, 2019.
- **Notification No. 74/2019 – Central Tax dated 26th December, 2019** (deemed to have come into force effective 19th December, 2019) whereby late fee payable under Section 47 of CGST Act shall stand waived for registered persons who failed to furnish the details of outward supplies in FORM GSTR-1 for the months/quarters from July, 2017 to November, 2019 by the due date but furnishes the same in FORM GSTR-1 between the period from 19th December, 2019 to 10th January, 2020.

- Removal of Difficulties Order No. 10/2019-Central Tax dated 26th December, 2019 **extended the last date for furnishing of annual return/reconciliation statement in FORM GSTR-9/FORM GSTR-9C for FY 2017-18 till 31st January, 2020.**
- **E-way bill generation shall be blocked if GSTR-1 not filed for any two months or quarters**, as the case may be (**effective 11th January, 2020**, vide Rule 138E of CGST Rules, 2017).
- **Rule 36(4) of CGST Rules relating to availment of Input Tax Credit amended to restrict ITC to 10%** (earlier - 20%) of eligible credit reflected in GSTR-2A.
- Rule 86A inserted to CGST Rules, 2017 to impose conditions for use of amount available in electronic credit ledger.
- **Circular No. 129/48/2019 – GST dated 24th December 2019 (Standard Operating Procedure**

for non-filers of returns) has been issued wherein inter-alia no separate notice is required to be issued for best judgment assessment under Section 62 and in case of failure to file return within 15 days of issuance of FORM GSTR3A, the best judgment assessment in FORM ASMT-13 can be issued without any further communication.

- **Circular No. 127/46/2019 – GST dated 4th December, 2019** has withdrawn ab-initio Circular No. 107/26/2019-GST dated 18.07.2019 wherein certain clarifications were given in relation to various doubts related to export supply of Information Technology enabled Services (ITeS services) under GST.
- CBIC has extended due date for filing declaration under **Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (SVS)** to 15th January 2020 (vide Press Release dated 31st December 2019).

Key Judicial Precedents

A. Whether Consideration for Software used for providing Services to end customer is in nature of royalty?

ACIT v. M/s. Saipem India Projects Private Ltd [2019] ITA No. 1210/Chny/2019 (Chennai ITAT)

Facts:

- The assessee is a domestic company engaged in the business of engineering and procurement assistance services, design and execution of large scale oil & gas onshore and offshore projects, cryogenic tanks, etc.
- The assessee had purchased certain software licenses from M/s. Saipem SPA, Italy (parent company), which is used for providing services to customers.
- The Assessee did not deduct TDS on the above mentioned payment on the ground that being a business Income, the profit is not chargeable to tax in the absence of Permanent Establishment in India.
- However, Department contended that the above payments were subject to TDS and the

disallowed the same under section 40(a)(i) of the IT Act.

Held:

- Relying on Hon'ble Karnataka High Courts' rulings¹ and Hon'ble Madras High court², held that **grant of license in computer software with no right to sub-lease or transfer shall fall within the definition of "Royalty" under India-Italy DTAA as well as u/s 9(1)(vi) of IT Act.**
- Hence, the payments made to the Parent company is disallowable under section 40(a)(i) of the Act.

B. Valuation of equity shares under Rule 11UA to include Preference share capital for such computation purposes.

Mr. Nilu Analjit Singh vs. Addl. CIT [2019] I.T.A. No. 2172/Del/2018 (Delhi ITAT)

Facts:

¹ CIT vs Synopsis International Old Limited[2019] (ITA No. 1565/Bang/2017)
² Zylog Systems Limited v. ITO [2019] TCA No. 2184 of 2006 (Madras HC)

- The Assessee had declared an income under the head Capital gains which was bifurcated into short term and long term capital gains.
- The Assessee had opted to compute fair market value of the Shares under NAV method as prescribed under rule 11UA of the Income tax rules, 1962.
- The value of the shares were computed under rule 11UA by the AO but without considering preference shares as a liability.

Held:

- According to Rule 11UA(1)(b) of Income tax Rules, 1962, **only the paid up capital in respect of the Equity Shares should not be considered as a liability.**
- While valuing Equity shares of an unlisted Entity to include **preference share capital in total liability of the company and to exclude only Paid up Value of equity share capital issued and free reserve.** That is how, **the net book value assets representing book value of equity shares of that company can be derived.**
- Thus, it is found that the value of the Equity shares has been wrongly plotted and the Assessee had been directed to put forth the above before AO and get it rectified.

C. Income tax Procedures vs. NCLT sanctioned Amalgamation scheme

M/s. Dalmia Power Limited & Another vs. ACIT [2019] Civil Appeal No. 9496-99 of 2019 (SC)

Facts:

- Dalmia power and Dalmia cements were amalgamated pursuant to a scheme of amalgamation. The scheme sanctioned provided for the filing of revised return claiming losses, benefits etc. without any additional compliances/cost.
- As the revised return was time-barred, the same was not accepted by the E-filing portal, therefore, the companies filed its return manually which was rejected by the Income tax authorities on the following grounds:
 - i) As per section 139(5) of IT Act and Circular dated 9/2015, the revised return beyond the due date shall not be accepted without condonation order from the Board.

ii) Further, as per rule 12(3) of the IT Rules, return has to be furnished electronically and not manually.

- Single member bench of Hon'ble Madras High Court ruled in the favour of the Assessee, which was discussed in our newsletter for the month of May 2019.³
- On an appeal by revenue the divisional bench of the Hon'ble High Court ruled in favour of the revenue. The issue was reported in our newsletter for the month of July 2019⁴

Held:

- The provisions of section 139(5) of the Act are not applicable as the fact in this case is not revision on account of omission or error.
- The provisions of section 119(2)(b) grants relief **by way of condonation of delay in case of genuine hardship to admit an application or claim any deduction. The facts of the case being Business restructuring, the above will not be applicable.**
- According to section 170(1) of the Act, it is incumbent upon the department to assess the total income of the successor Company in the previous year after the date of succession. In view of the above, the department is required to assess the income of the Appellants after taking into account the revised return post amalgamation.
- Thus, the order of the single bench Judge is restored and the order of Division bench is set aside accordingly.

D. Whether Depreciation as per section 43(6) of the IT Act for computation of WDV pertains only to Depreciation allowed or includes unabsorbed depreciation?

M/s. JSW Steel Limited vs. DCIT [2019] C.O No. 59/Mum/2012 (Mumbai ITAT):

Facts:

- The Assessee is a company engaged in the business of Steel manufacturing.

³ http://vcmv.in/wp-content/uploads/2019/07/VCMV_Newsletter_May_2019.pdf
⁴ <http://vcmv.in/wp-content/uploads/2019/08/Newsletter-July-2019.pdf>

- The Assessee Company in order to integrate its business operations had amalgamated with Euro coke w.e.f April 1, 2005.
- However, owing to net tax loss, the depreciation claimed by both the companies was unutilized during the Assessment year 2005-06.
- Therefore, the Assessee had computed the WDV in respect of the Assets by reducing the Actual Depreciation allowed as against the total depreciation and claimed depreciation on the same in accordance with section 43(6) of the Act.
- However, Learned AO rejected the tax position of the Assessee and recomputed the WDV after considering full depreciation in accordance with explanation 3 to Section 43(6) of the IT Act and disallowed the excess claim.

Issue:

- Where unabsorbed depreciation cannot be carried forward by the Amalgamated Company under section 72A, Whether WDV computed in accordance with 43(6) should contain such unabsorbed depreciation?

Held:

- **Intent of the legislature has been clearly espoused in Explanation 2 to the section 43(6) viz., “depreciation actually allowed”.**
- Relying on the Hon'ble Apex Court Decision⁵, the Tribunal held that the depreciation actually allowed means **effective benefit or advantage the Assessee had claimed and not merely which is notionally available.**
- The unabsorbed depreciation was never allowed to be set off. It was just a notional depreciation allowed.
- Though the unabsorbed depreciation can be carried forward by the Amalgamating Company under section 72A, it has no relevance to the Amalgamated Company.⁶
- Given the above, the WDV in the hands of the Amalgamated Company was to be calculated without considering the unabsorbed

depreciation which was never allowed to be set off.

E. Test of residential status in the case of Tax transparent entities for Treaty Benefit.

M/s. ING Bewaar Maatschappij I BV vs. DCIT [2019] ITA no. 7119/Mum/2014

Facts:

- Assessee is a fund established in Netherlands and registered with SEBI as Foreign Institutional Investor. The Assessee is a tax transparent entity with all the ultimate beneficiaries domiciled in Netherlands.
- The Assessee earned a short term capital gains of INR 23.38 crores which was claimed as not taxable as per Article 13(5) of India-Netherlands DTAA.
- The Assessee contended that the Fund is similar to the Trust set-up in India and therefore, provision of section 160 to 164 would be applicable and taxed in the same manner.
- However, the learned AO dismissed the view of the Assessee and denied benefit under India - Netherland DTAA on the following grounds:
 - a. The Assessee is not a tax entity in Netherland.
 - b. Equating foreign fund to a trust is a far-fetched thought and cannot be accepted legally.

Held:

- **Relying on the earlier Decision of Mumbai Tribunal Linklaters LLP Vs Income Tax Officer [(2010)9 ITR (Trib) 217 (Mum)], held that when an assessee is a representative assessee of the tax transparent Entity, it is the ultimate beneficiary or constituents of the tax transparent entities which is relevant for the purpose of treaty protection.**
- In the given case, the ultimate beneficiaries are taxable entities in Netherlands.
- Therefore, the Assessee is entitled to treaty protection.

F. Section 144C- Prospective or Retrospective?

M/s. Vedanta Limited vs. ACIT [2019] W.M.P No. 22415 of 2019]

⁵ CIT vs. Doom Dooma India Ltd. (2009) 310 ITR 392 (SC)
⁶ EID Parrys India vs CIT (2012) ITA No. 1311 & 1312/2005 (Madras HC)

Facts:

- The Assessee is a company engaged in the business of manufacturing of copper and generation & distribution of electricity.
- The Assessee case being covered under section 92C(4) of the IT Act, the learned AO proceeded to issued Draft Assessment Order in accordance with section 144C of the Act.
- The draft Assessment order was passed on December 30, 2010.
- Assessee contends that the section 144C was introduced on October 1, 2009 and therefore applicable only from AY 2010-11.
- Department contends that circular No. 9/2013 provides instruction that all the cases pending

on October 1, 2009 is required to follow the regulations prescribed under section 144C of the Act.

Issue: Whether provisions of section 144C applicable for cases pending as on October 1, 2009 or for the cases pertaining to AY 2010-11 onwards?

Held:

- **The introduction of section 144C is a change in the form of Assessment itself. It is not a mere deviation in procedural aspect. Therefore, section 144C is applicable prospectively.**
- **The circular will not bind the AO as it does not lay down the correct position of law.**
- Thus, the order passed by the Learned AO is invalid.

Other Important Precedents

- The Hon'ble Apex Court held that **there is no reason to deny interest on refund for erroneous deposit of excess TDS by the Assessee.** Thus, reversed the decision of Hon'ble Madhya Pradesh High Courts' – **M/s. Universal Cables Ltd v. CIT [2019] Civil Appeal No. 3826 of 2012 (SC)**
- The Hon'ble Apex Court held that dismissal of SLP against a decision of a lower court without a speaking order is not an affirmation of the decision. **It does not constitute a declaration of law under article 141 of the Constitution or attract doctrine of merger– Mr. P. Singaravelan vs. the District Collector [2019] Civil Appeal No. 9538-9546 of 2019(SC).**
- **Mismatch between disallowance as per Income Tax Return and disclosure of related party Transaction between Tax Audit report** as conveyed by CASS does not trigger the risk parameters for reference to TPO as defined in CBDT instruction 3/2016. Hon'ble Kolkata ITAT Dismisses the Revisionary proceedings initiated by CIT on the above ground – **M/s. Eveready Industries India Ltd v. PCIT [2019] ITA No. 805/Kol/2019 (Kolkata ITAT)**
- PE has to be determined for each year separately on the basis of scope, extent, nature and duration of activity, which requires careful consideration of contract. **AO is not bound to undertake such an exhaustive PE examination for proceedings under Section 197 of the Act – M/s. National Petroleum Construction Company v. DCIT [2019] W.P. 8527/2019 & CM Appl. 35220/2019 (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 had sought the public comments on the (Global Anti Base Erosion) GloBE proposal under pillar two and a public consultation meeting focused on the public comments received on the above proposal.
- OECD released **Tax Debt Management Maturity Model and Tax Compliance Burden Maturity Model** to assist tax administrators to tackle tax debts and administrative burdens.

NBFC

- **RBI on review of the Master directions issued for NBFC – Peer to peer lending platform direction, 2017, had amended the following:**

- Aggregate exposure of the lender to all the borrower shall be subject to a cap of INR 50,00,000/-.
- Lender investing more than INR 10,00,000 is required to produce a certificate from the Chartered Accountant that their net-worth is more than INR 50,00,000/-
- The transfer of funds between participants on P2P shall be carried only through Escrow Account operated by Bank promoted Trustee. However, the Escrow accounts need not be maintained with the Bank that promoted the trustee.

- **RBI placed restrictions on the Asset Reconstruction Companies ('ARC') from acquisition of Financial Assets from the following person on Bilateral basis:**

- A Bank/financial Institution which is a sponsor of ARC.
- A Bank/financial institution which is either a lender to the ARC or a subscriber to the fund.
- An entity in the group to which the ARC belongs.

However, **exemption have been provided for such ARCs to participate in the auction for acquisition of such assets subject to the auction being conducted in a transparent Manner on Arms' length Basis.**

- Union Cabinet approved a partial Credit Guarantee Scheme for Non-Banking Financial Companies and Housing Finance

companies to allow Public Sector Banks to purchase the pooled assets from financially sound entities. **The window for one-time partial credit guarantee offered by the Government of India will remain open till 30 June, 2020, or till such date by which INR 1 trillion assets get purchased by the banks, whichever is earlier**

- Relaxation with respect to Minimum Retention requirement for the purposes of securitization/asset assignment for originating NBFCs has been further extended till June 30, 2020.
- RBI released guidelines on the licensing of the small Finance Banks ('SFB') in the Private Sector. The Major changes are as follows:
 - The licensing window will **be open on-tap.**
 - for Primary (Urban) Co-operative Banks (UCBs), desirous of voluntarily transiting into SFB initial requirement of net worth shall be at ₹ 100 crore, which will have to be increased to ₹ 200 crore within five years from the date of commencement
 - Minimum paid-up voting equity capital/net worth requirement shall be ₹ 200 crore.
 - SFBs will be given scheduled bank status immediately upon commencement of operations.**
 - SFBs will have general permission to open banking outlets from the date of commencement of operations
 - Payments Banks can apply for conversion into SFB after five years of operations.**

Secretarial Corner

Companies Act, 2013 ('CA 2013')

- MCA vide circular No. 17/2019 extends due date for furnishing cost Audit report in form CRA-4 for the Financial Year 2018-19 to February

29, 2020 without payment of any additional fees.

- MCA extends due date for filing of a declaration with regard to Significant Beneficial

M & A

A. Merger of LLP with a company:

MCA, Chennai & Anr VS M/s Real Image LLP, & Anr [2019] Company Appeal (AT) No. 352 of 2018 (NCLAT New Delhi)

Facts:

- In June 2018, the Hon'ble National Company Law Tribunal (NCLT), Chennai Bench sanctioned a merger of M/s Real Image Limited Liability Partnership (LLP) with Qube Cinemas Private Limited on the following grounds:
 - There is no express legal bar on merger of LLP with a company (Principle of Casus Omissus).
 - The intention for the introduction of Companies Act, 2013 and Limited Liability Partnership Act 2008 is to promote ease of doing of business.

SEBI

- As a measure to strengthen the conduct of the Investment Advisors (IA). SEBI has mandated IA to comply with the following norms:
 - ✓ **Restriction on free-trial: IA shall not provide free trial for any products/services to the prospective clients.** IA shall not accept part payment in advance for any products or service.
 - ✓ **Proper risk profiling and consent of client on risk profiling:** The complete risk profile of the client should be prepared and the consent of the client on the same should be obtained.
 - ✓ **IA shall accept fees through proper banking channels only.**
 - ✓ **IA are required to display the complaint lodged on them in their website.**
- SEBI has notified SEBI (Foreign Portfolio Investors) Regulations 2019 on December 16, 2019 pertaining to the Restrictions on the business

ownership in form BEN-2 upto March 31, 2020 without payment of any additional fees.

- Aggrieved by the order of NCLT Chennai Bench, the Regional Director, Southern Region and Registrar of Companies, Chennai had filed an appeal with the NCLAT, New Delhi.

Held:

- NCLAT relying on the Hon'ble Supreme Court's decision in the case of Union of India Vs Rajiv Kumar (2003), Appeal Civil 5007 of 2003 held that the principle of casus omissus cannot be applied by courts except in the case of clear necessity and when reason for it cannot be found in the four corners of the statute itself.
- The Legislature has enacted the provisions in Companies Act 2013 for conversion of Indian LLP into Indian Company and vice versa. Thus, there is no question of infringement of constitutional right.
- LLP has to apply for conversion into a Private Limited Company and then file an application for amalgamation.

activities of the Asset Management Company (AMC) wherein the management and advisory services shall be provided only to the following category of Foreign Portfolio Investor (FPI)

- ✓ Government and Government related investor
- ✓ Regulated Entities
- ✓ FPI wherein the Government and Government related investor and Regulated Entities holds more than 50% of shares/units.

Existing AMC agreements with other categories of FPI shall continue to prevail for the period mentioned in the agreement or 1 year from the date of this circular, whichever is earlier.

- SEBI vide its circular dated December 24, 2019 has issued Stewardship Code applicable for all Mutual Funds (MF), AMC and Alternative Investment Funds (AIF)

MFs/AMC/ AIFs shall formulate and adopt the following policies:

- ✓ Policy on Discharge of Stewardship Responsibility;
- ✓ Policy on management of conflict of interest;
- ✓ Policy on monitoring the investee company;
- ✓ Policy on collaboration with other institutional investors;

- ✓ Policy on voting and disclosure of voting activity;
- ✓ Periodic reporting of their stewardship activities.

- SEBI has streamlined the process for investment in mutual funds in the name of the minor.
- SEBI has granted relief vide circular dated December 24, 2019 to the existing listed issuers of Commercial Papers who are in compliance with Annexure II of the CP Circular. The existing issuers may file un-audited financial results with limited review for the subject period in the current financial year.

Title	Tax & Regulatory Update
Month Year	December 2019
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