



Vishnu Daya & Co LLP

Chartered Accountants

Newsletter

October 2020

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Indirect Taxes

GST Circulars and Notifications

Due date for filing Annual Return and GSTR 9C extended to 31.12.2020

The due date for filing Annual Return and Form GSTR 9C for the Financial Year 2018-19 has been extended from 31.10.2020 to 31.12.2020.

[Notification No. 80/2020](#) – Central Tax dated 28.10.2020

Amendments made to GST Rules

The Govt. has given the opportunity for a registered person who is required to file Nil return Sec 39 in FORM GSTR 3B or a Nil details of Outward Supplies in FORM GSTR 1 or a Nil statement in FORM GST CMP 08 for a tax period to submit the respective returns through a Short Messaging Service using the registered mobile number.

The Govt. has extended the exemption for the registered persons having turnover less than Rs. 5 crores from getting the books of accounts audited and furnishing a reconciliation statement duly certified, in FORM GSTR-9C for the Financial Year 2018-19 and 2019-20.

As per Rule 138E, if any person fails to file GSTR 3B for the consecutive two months, such person cannot fill the PART A of E-Way bill. The Govt. has clarified that the said restriction shall not apply during the period from the 20th day of March 2020 till the 15th day of October 2020, in case where the return in FORM GSTR 3B has not been furnished for the period from February 2020 to August 2020.

[Notification No. 79/2020](#) – Central Tax dated 15.10.2020

GST Circulars and Notifications

Mandatory to mention HSN Code in the Invoice

The Govt. has mandated a registered person to mention the number of digits of HSN Code in the invoice for all the products sold from 1st of April 2021 as under:

Aggregate Turnover in the preceding Financial Year	Number of Digits of HSN Code
Up to Rupees five crores	4
More than Rupees five crores	6

The only exemption given to the registered persons having turnover less than 5 crores is that they need not mention the HSN code in the Tax Invoice in respect of supplies made to unregistered persons.

[Notification No. 78/2020](#)-Central Tax dated 15.10.2020

Exemption from filing Annual Return for the Financial Year 2019-20

The Govt. has given exemption to the registered person whose aggregate turnover is less than 2 crores from filing Annual Return for the Financial Year 2019-20.

[Notification No. 77/2020](#)-Central Tax dated 15.10.2020

GST Circulars and Notifications

Due date notified for filing the GSTR 3B for the month October 2020 to March 2021

The Govt. has notified that the due date for filing GSTR 3B for the period from October 2020 to March 2021 for the taxpayers having the turnover more than Rs. 5 crores during the previous financial year or the current financial year shall be 20th day of the month succeeding such month.

Further, the due date for filing the GSTR 3B from October 2020 to March 2021 for the taxpayers having the turnover up to Rs. 5 crores during the previous financial year is as under:

- Whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep – on or before 22nd day of the month succeeding such month.

- Whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi – on or before the 24th day of the month succeeding such month.

Notification No. 76/2020 – Central Tax dated 15.10.2020

GST Circulars and Notifications

Due date notified for filing the GSTR 1 for the month October 2020 to March 2021

The Govt. has notified the due date for furnishing the details of Outward Supplies for the period from October 2020 to March 2021 in FORM GSTR 1 for registered persons having aggregate turnover of more than 1.5 crores rupees in the preceding financial year or the current financial year, shall be 11th day of the month succeeding such month.

Notification No. 75/2020 – Central Tax dated 15.10.2020

The Govt. has notified the due date for filing GSTR 1 for registered persons having aggregate turnover of up to 1.5 crores in the preceding financial year or the current financial year shall be as under:

Quarter for which GSTR 1 is to be filed	Time period to furnish such information
Oct 2020 to Dec 2020	13th Jan 2021
Jan 2021 to March 2021	13th April 2021

Notification No. 74/2020 – Central Tax dated 15.10.2020

GST Circulars and Notifications

Clarification on Eligibility of ITC Claim under Rule 36(4) for the period February 2020 to October 2020

The CBIC has clarified that the tax payers shall reconcile the ITC availed in their form GSTR 3B for the period from February 2020 to August 2020 with the details of invoices uploaded by their suppliers of the said months, till the due date of furnishing form GSTR 1 for the month of September 2020. The cumulative amount of ITC availed for the said months in FORM GSTR 3B should not exceed 110% of the cumulative value of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers.

The excess ITC availed arising out of reconciliation during this period shall be required to be reversed in Table 4(B)(2) of form GSTR 3B, for the month of September 2020. Failure to reverse such excess availed ITC on account of cumulative application of Rule 36(4) of the CGST Rules would be treated as availment of ineligible ITC during the month of September 2020.

[Circular No. 142/12/2020-GST dated 09.10.2020](#)

Clarification on Reporting values pertaining to 2017-18 in 2018-19 in Annual Return

Press release issued to clarify that taxpayers are required to report only values pertaining to FY 2018-19 and values pertaining to FY 2017-18 which may have already been reported are to be ignored while filing Annual Return for 2018-19 and also clarifies that no adverse view would be taken in cases where there are variations in returns for taxpayers who have already filed their GSTR 9 of FY 2018-19 by including the details of supplies and ITC pertaining to FY 2017-18 in the Annual return for FY 2018-19.

GST Circulars and Notifications

Updates on the GST Portal Changes

Blocking of E-Way Bill (EWB) generation facility for taxpayers with AATO over Rs 5 crores after 15th October, 2020:

As per Rule 138 E (b), E-Way Bill generation facility is to be blocked for taxpayers who fail to file GSTR 3B for two or more tax period from October 15, 2020. Further, this rule is not applicable for registered persons who have aggregate annual turnover less than 5 crores.

Withdrawal of EVC facility given to companies for filing GSTR 1 and GSTR 3B:

The facility to file GSTR 3B and GSTR 1 with EVC for the registered person who is registered under the Companies Act, 2013, shall be withdrawn w.e.f. 1st Nov 2020. However, the facility to file NIL returns through OTP verification shall be continued for all types of registered persons.

Filing NIL Form CMP-08 statement through SMS on GST Portal:

The Composition taxpayer has been given an opportunity to file NIL statement in Form GST CMP-08 by sending SMS to '14409' number i.e., <NIL> space <Return Type> space <GSTIN> space <Return Period>.

Central Excise Circulars and Notifications

Manufacturing and Other Operations Undertaken in Bonded Warehouses under Section 65 of the Customs Act, 1962

In addition to [Notification No.69/2019-Customs \(N.T.\)](#) dated 01.10.2019 and [Circular No. 34/2019-Customs](#) dated 1st October 2019, the CBIC has given the following further clarifications:

- The registered unit can send moulds, jigs, tools, fixtures, tackles, instruments, hangers, patterns and drawings to the job workers premises for use in the job work, subject to due accounting of the goods by the Sec 65 unit in the accounts specified. Such goods will be used by the job worker exclusively for the concerned Section 65 unit.
- Under Sec 65, a unit being a GST registered unit, can perform job work operations for other units also but they shall maintain due accounting of such job work as per the provisions of GST law. In case, any imported inputs which are warehoused are consumed during the job work process, duty shall be paid on such goods (i.e. the warehoused goods) by filing Ex-Bond Bill of Entry, when such job worked goods are returned to the principal/owner. In case, the goods after job work are exported from the premises of the Sec 65 unit, the import duty on the warehoused goods used for the job work need not be paid as per Sec 69 of the Customs Act, 1962.
- The units can use the required raw materials, consumables, capital goods etc., imported or procured from domestic market for the purpose of the manufacture and other operations which is to be carried out in customs bonded warehouses. There are no restrictions imposed on sourcing of goods by units operating under Section 65. Moreover, the units are GST registrants, which are also allowed to procure goods from SEZ/FTWZs.

[Circular No.48/2020-Customs](#) dated 27-10-2020

Recent Judicial Pronouncements

GST Rate Applicable in case of variety of Services provided by the Hotels and ITC eligibility (AAR)

Facts: The applicant owns and manages hotels and resorts, and offers variety of services to the customers. The applicant seeks an advance ruling in respect of the following issues, viz., rate of tax applicable on the supply of Soft Beverages and Tobacco when these items are supplied independently and not as composite supply in the restaurant; whether supply of liquor is deemed to be the "exempt supply" under GST Act as per Sec 2(47) of CGST Act for the purpose of proportionate reversal of ITC as per Rule 42 of CGST Rules 2017; whether it is obligatory on the part of the employer to supply free food to the employees; whether such free supply of food is liable to reverse ITC on inputs as per Rule 42 of CGST Rules 2017.

Ruling:

- Supply of soft beverages or aerated water by the restaurant in person or as room service, located in the premises of the hotel is a composite supply and it is taxable at the rate of 18%.
- Supply of cigarettes or tobacco products by the restaurant in person or as room service is a mixed supply and it is taxable at 28% along with GST Compensation Cess.
- Supply of alcoholic liquor for human consumption by a restaurant will not be taxable under CGST Act, 2017.
- Supply of free meals to the employees at a canteen located in the premises of the hotel of the applicant is a supply under the Act, 2017 and liable to GST at 18% on the value determined by Rule 28 of CGST Rules, 2017.

MFAR Hotels and Resorts Pvt Ltd 2020-TIOL-275-AAR-GST

Recent Judicial Pronouncements

GST Applicability on Health Care Services (AAR)

Facts:

The applicant is engaged in the business of providing health care services and also runs a hospital in the name of CURA hospital. The applicant seeks an advance ruling in respect of the following issues, viz., whether ITC is required to be restricted on medicines supplied to patients admitted in hospital; whether ITC is required to be restricted on medicines supplied to patients treated as outpatients; whether ITC is required to be restricted on medicines supplied to other than inpatients and outpatients; whether ITC is required to be restricted on supply of food and beverages to the patients admitted in hospital.

Ruling:

- Supply of healthcare services provided by a clinical establishment is exempt from the levy of tax. Since the output supplies are exempt, the applicant is not eligible to claim the ITC paid on the inward supplies of medicines that are used for providing 'healthcare services' to the inpatients.
- While providing treatment to the outpatients, certain consumables such as medicines, bandages, cotton etc. are used. Since the same are consumed in the provision of healthcare services, it is not possible to distinguish between healthcare services and medicines, bandages, cotton etc. used for the treatment. Therefore, the impugned supply cannot be considered as a composite supply. Hence, the applicant is not eligible to claim ITC on taxes paid.

Continued.....

Recent Judicial Pronouncements

GST Applicability on Health Care Services (AAR)

Continued.....

- With regard to the supply of medicines and other goods to the customers, the applicant is selling the medicines as a trader and hence, he is liable to collect and pay the applicable tax on the goods sold and also is eligible to claim ITC like any supplier of taxable goods, subject to the restrictions in Sec 17 of the CGST Act.
- In case of supply of food and beverages to the in-patients, if the supply of food and beverages is under the prescribed diet as a part of the treatment process and if it is an integral part of the treatment, then the food and beverages loses its identity as a separate supply and merges with the supply of treatment service similar to the supply of medicines - such a supply is an ancillary to the supply of treatment service ,i.e., healthcare service which is an exempted supply under Entry no. 74 of 12/2017-CTR - in such a situation, no ITC is available.
- However, if the supply of food and beverages is at the request of the patient, in which regard the Authorised representative clarifies that in-patients are not allowed to consume outside food, since the supply becomes naturally bundled with the treatment service, i.e., healthcare service and the supply becomes composite supply which is exempted under Entry 74 of 12/2017-CTR, in which case applicant cannot claim ITC.

M/s Ambara 2020-TIOL-266-AAR-GST

Recent Judicial Pronouncements

Utilisation of unutilised Cess for the payment of Output Liability under GST

Facts:

Assessee was utilised accumulated Education Cess, Secondary and Higher Education Cess and Krishi Kalyan Cess against the payment of GST Output Liability. The appeal was filed by the Revenue to set aside the decision given by the single bench which is in favour of the assessee.

Held:

(a) Under the Cenvat Rules, cross utilisation of Input Tax Credit were not permitted for cess like Education Cess, Secondary and Higher Education Cess and Krishi Kalyan Cess.

(b) The transition of unutilised Input Tax Credit could be allowed only in respect of taxes and duties which were subsumed in the new GST Law. Admittedly, the three types of Cess namely Education Cess, Secondary & Higher Education Cess and Krishi Kalyan Cess were not subsumed in the new GST Laws, either by the Parliament or by the States. Therefore, the question of transitioning them into the GST regime and giving them credit under GST against output GST Liability cannot arise.

Vineet Kothari & Krishnan Ramasamy, JJ 2020-TIOL-1739-HC-MAD-GST

Recent Judicial Pronouncements

Service Tax applicability on commission deducted from the Invoice

Facts:

The assessee is merchant exporter and engaged in export of goods such as fabrics, scarves, sarees and dress material to various countries. The issue involved is that whether there is any commission paid by assessee to Commission Agent in relation to export of their goods exists and whether that commission is liable to service tax under head Business Auxiliary Service. It was evident from the invoice, Shipping Bill and Bank Certificate that the amount equivalent to 11%-12.5% was shown as deduction under head commission from Sales Value and therefore the net invoice value is the value after deduction of said 11%-12.5%.

Held:

Since there is transaction of sale and purchase between the assessee and buyer of the goods, whatever value shown in the invoice is a sale value and the deduction shown is nothing but discount given by the exporter to the foreign buyer. There was no evidence in the hands of Department to prove that there is a commission agent exists in this transaction and the amount is paid to third person as commission. In the absence of any provision of service, no service tax can be demanded. The trade discount even though in the name of commission was given by assessee to the foreign buyer, by any stretch of imagination cannot be considered as commission paid towards commission agent service, hence cannot be taxable.

Laxmi Exports 2020-TIOL-1451-CESTAT-AHM

Recent Judicial Pronouncements

GST Applicability on Rental Income (AAR)

Facts:

Applicant have planned to engage in the business of renting of commercial property on monthly rents and allied business – They have sought advance ruling in respect of the following questions viz. (i) For the purpose of arriving at the value of rental income, whether the applicant can seek deduction of property taxes and other statutory levies; (ii) For the purposes of arriving at total income from rental, whether notional interest on the security deposit should be taken into consideration; (iii) Whether the applicant is entitled for exemption of tax under the general exemption of Rs.20 lakhs.

Ruling:

- The only exclusions from the value of the taxable supply are the taxes, duties, cesses, fees and charges levied under the CGST Act, subject to the condition that they are charged separately by the supplier. It is observed that in the instant case, the supplier and the recipient are not related; price is the sole consideration of the supply and monthly rent is the price payable. Thus the monthly rent is the transaction value and the same would be the value of supply of the impugned service. Therefore, the property tax is not deductible from the value of taxable supply of "Renting of Immovable Property" service The applicant can't deduct the property taxes and other statutory levies for the purpose of arriving at the value of rental income.

Continued.....

Recent Judicial Pronouncements

GST Applicability on Rental Income (AAR)

Continued.....

- The notional interest on the security deposit shall be taken into consideration, for the purposes of arriving at total income from rental, only if it influences the supply value of RIS service i.e. monthly rent.
- The applicant is entitled for exemption of tax under the general exemption of Rs.20 lakhs, subject to the condition that their annual turnover, which includes monthly rent and notional interest, if it influences the value of supply, does not exceed the threshold limit.

Midcon Polymers Pvt Ltd 2020-TIOL-260-AAR-GST

Classification of Goods (AAR)

Ruling:

Pre-mix popcorn maize (corn kernels) packed with edible oil and salt supplied by applicant is classifiable under CTH 2008 1990 and not under CTH 2106 - From the packaging, it is evident that they are 'specifically packed for popcorn vending machines and not for retail sale' - Rate of tax is @12% GST w.e.f 01.07.2017.

Gourmet Popcornica Llp 2020-TIOL-272-AAR-GST

Recent Judicial Pronouncements

Writ not maintainable when alternative remedy available

Facts:

Two vehicles belonging to the petitioner company were intercepted by the Revenue. These vehicles were ferrying goods meant for intra-State transport. As per the accounting practice, the consignors had generated E-way bill for two invoices separately though the GST regime did not require E-way bill where the value of the consignment is less than Rs.50,000/-. The Revenue detained the consignment u/s 129(3) of the CGST Act. Hence the petitions were filed.

Held:

Rule 138(1) provides that every registered person who causes movement of goods of consignment having a value exceeding Rs.50,000/- in relation to supply has to generate an e-way bill. The proviso to Sub-rule 3 provides generation of the e-way bill at the option of registered person or transporter to general e-way bill when the value of the invoice is less than Rs.50,000/-. The High Court of Kerala has held that when the alternative remedy of appeal is available, writ cannot be entertained.

Bon Cargos Pvt Ltd Vs Assistant State Tax Officer (INT) 2020-TIOL-1825-HC-KERALA-GST

Recent Judicial Pronouncements

GST applicability on Reimbursement of Expenses (AAR)

Facts:

Applicant has sought a ruling on the following questions viz. whether GST is leviable on the reimbursement of expenses from the subsidiary company to its ultimate holding company located in a foreign territory outside India and, in case GST is leviable, what is the rate of GST applicable to the said reimbursement of expenses.

Ruling:

Applicant is engaged in the business of software development for the infusion system manufactured by its ultimate holding company, ICU Medical Inc.- the ultimate holding company has entered into a contract with Wells Fargo Bank through which certain employees of the applicant are extended with the credit card issued by the said bank. The card is to be used by the employees for the travel requirements on business needs. The ultimate holding company settles the amount payable with the bank and in turn raises invoices on the applicant and collects the charges used by the employees of the applicant. The Applicant does not come into the picture for any transactions with Wells Fargo. It is also seen from the agreement between Wells Fargo and ICU Medical Inc. that ICU Medical Inc. is the entity with all the financial and legal obligations. It is evident from the above that ICU Medical Inc. is making the supply of the credit cards to the applicant for use of its employees, on its own account and not as an 'intermediary'. Service imported by the applicant is, therefore, one of extension of credit for furtherance of business. Said service is appropriately classifiable under SAC 997113. Applicant is liable to pay IGST under Reverse charge, the applicable rate is 18% as per Sl. no. 15 of 8/2017-ITR.

ICU Medical India Llp 2020-TIOL-273-AAR-GST

Recent Judicial Pronouncements

Opportunity of Hearing Should be Given Before Rejecting Application

Facts:

The petitioner admitted the service tax liability as given in the notice served under Investigation, Enquiry and Audit for the FY 2016-17 and FY 2017-18 (April to June) before 30th June 2019. While making the declaration (application) under Sabka Vishwas Scheme, the petitioner has declared higher amount as Service Tax Liability for the respective period on 12th December 2019. In order to avail the benefit of the scheme, the tax liability should be quantified before 30th June 2019. The Respondant rejected the application without giving an opportunity of Hearing on the ground that the amount in the application and the amount admitted before 30th June 2019 were different and therefore, the same is not qualified for Sabka Vishwas Scheme. The Petitioner has declared wrong amount in the application due to calculation errors. Since the petitioner was not given an opportunity of Hearing, they could not inform the Respondant regarding the mistake occurred in the application filed on 12th December 2019.

Held:

The natural justice like notice and hearing must be complied with, before rejecting any application. In the present case, the respondent has not given any opportunity to the petitioner to express his views before rejecting the application. Further, the wrong amount declared in the declaration would have been clarified if the petitioner had been given an opportunity of Hearing, and the same would result in the acceptance of declaration under Sabka Vishwas Scheme. Therefore, the judgement was in the favour of petitioner and the application which was filed on 12th December considered as afresh application.

Thought Blurb V/s Union of India 2020-TIOL-1813-HC-MUM-ST

Recent Judicial Pronouncements

Admissibility of input tax credit of tax paid or deemed to have been paid (AAR)

Ruling:

Applicant supplies edible oil, electrical energy and Renewable Energy Certificate (REC). REC are traded in power exchanges with stipulated regulations and such REC are taxable under GST. Applicant is engaged in the business of generating electric energy through the solar PV cell generator under the REC scheme which entitles the applicant, REC equivalent to the electrical energy generated and uploaded in the grid for supply to the third parties. To become eligible to REC, it is necessary to generate electricity using RE sources and thus it cannot be held that the output of Photo Voltaic generator is only 'electrical energy' but REC is also an output of generation of electricity using RE source. Solar PV Cell generator being a Plant, the related credits are not blocked under section 17(5) of the Act, 2017. Proportionate claim of Input Tax Credit is available for the applicant and the provisions of Sec.7(2) applies to the case. Subject to the goods being capitalised in their books of account, the applicant is eligible to claim ITC on such goods as 'capital goods' and the provisions of rule 43 of the CGST Rules is applicable to determine the eligible credit in respect of the taxable supplies made by them In respect of inputs and input services, the attributable credit is to be arrived at by applying rule 42 of the Rules. It is further clarified that 'Total turnover of the registered person' should include the 'turnover of edible oil business' and 'total turnover of power generation business'.

Kumaran Oil Mill 2020-TIOL-278-AAR-GST

Recent Judicial Pronouncements

Power of the Commissioner to arrest before finalising the assessment

Facts:

The pivotal question which falls for consideration is whether the power to arrest as provided under section 69 read with section 132 of the CGST Act can be invoked by the Commissioner only upon completion of the adjudication process of finalising the assessment and determination of liability as per the provisions of the CGST Act?

Held:

Any person can be arrested for any offence under the section 69 of the CGST Act, 1962, by the authorised officer to whom authority to arrest is given by the Commissioner if the Commissioner has reasons to believe that such person has committed an offence punishable under the clauses (a) to (d) of the subsection (1) which is punishable under the clause (i) or Clause (ii) of the sub-section (1) or sub-section (2) of the Section 132 of CGST Act. Section 69 of the CGST Act requires certain preconditions to be fulfilled prior to the arrest. In particular, the reasons to believe have to be recorded in writing in the file. The GST department should prescribe a standardized format for the arrest memo. The format must contain all the mandatory requirements and necessary additions. The gist of the offence alleged to have been committed must be incorporated in the arrest memo. It would be the duty of the concerned Magistrate to check that an arrest memo has been prepared and duly filled. In a given case, if the Magistrate finds that the arrest memo is absent or improperly filled, then the Magistrate should decline the production of the arrested person.

Vimal Yashwantgiri Goswami Vs State Of Gujarat 2020-TIOL-1803-HC-AHM-GST



Foreign Trade Policy

Foreign Trade Policy Updates

Govt. Amends SEZ Rules to Allow Drawback or Any Other Benefit if Payments are in Foreign Currency in case of Supplies from DTA to Foreign Suppliers in FTWZ

In the Special Economic Zones Rules, 2006, in Rule 24(3), the below provision shall be inserted:

In case of supplies from Domestic Tariff Area to foreign suppliers in Free Trade and Warehousing Zone, the drawback or any other similar benefit Scheme shall be admissible where the payments are made in foreign currency by the foreign supplier to Domestic Tariff Area.



Direct Taxes

Direct Tax Circulars and Notifications

CBDT Clarifies on Requirement of 'Payment Within 15 days' Under Vivad se Vishwas Scheme

CBDT clarifies that "where a declarant files a declaration under Vivad se Vishwas on or before 31st December, 2020, the designated authority, while issuing the certificate u/s. 5 of the Vivad se Vishwas, shall allow the declarant to make payment without additional amount on or before 31st March, 2021".

The Central Government vide the notification S.O. 3847(E), dated 27th October 2020, has extended the date for payment without additional amount under Vivad se Vishwas from 31st December 2020 to 31st March, 2021. The said notification also notified the last date for filing declaration under Vivad se Vishwas as 31st December, 2020.

Considering Government's extension for making payment till March 31st, 2021 and further considering the existing provision under Vivad se Vishwas Act, CBDT issues aforesaid clarification "in order to mitigate undue hardship and remove difficulty that may be caused by the requirement of payment within 15 days from the date of receipt of certificate from the designated authority."

[Click here](#) to read and download the CBDT circular 17/2020.

Govt. Notifies Declaration Cut-off Date Under Vivad se Vishwas Act, Also Extends Payment Timeline till March 31st 2021.

Govt. notifies December 31st as the cut-off date for filing declaration under the Vivad se Vishwas Act, 2020. Also, extends timeline from December 31st, 2020 to March 31st, 2021 for making payment without additional amount.

[Click here](#) to read and download the CBDT Notification 85 of 2020.

Direct Tax Circulars and Notifications

CBDT Amends Tax Audit Report, ITR-6 Pursuant to Newly Notified Concessional Tax Regimes

CBDT notifies amendments in Tax Audit report in Form 3CD, TP audit report in Form 3CEB, Rule 5 relating to depreciation and ITR-6 for AY 2020-21 pursuant to the newly notified concessional tax regimes under Sections 115BAA [for companies], 115BAB [for manufacturing companies], 115BAC [reduced slab rates for individuals] and 115BAD [for co-operative societies], notifies the Income-tax (22nd Amendment) Rules, 2020. Also notifies Forms for exercise of concessional tax regimes u/s 115BAC / 115BAD.

[Click here](#) to read and download the CBDT Notification 82 of 2020.

CBDT Notifies the Equalisation levy (Amendment) Rules,2020

CBDT notifies the Equalisation levy (Amendment) Rules, 2020. The new Rules shall come into force on the date of their publication in the Official Gazette (i.e. October 28, 2020).

The FA 2020 amended the scope of EL with effect from 1 April 2020 to cover consideration received/receivable by NR e-commerce operators for e-commerce supply or services provided to specified persons (ESS EL) subject to certain conditions. The ESS EL is to be paid at the rate of 2% on the amount of consideration received/receivable by NR e-commerce operators.

Following the suit, in order to implement the ESS EL provisions, the existing EL rules and accompanying forms have been modified to extend their application to ESS EL related amendments and the same is notified by the CBDT on 28 October 2020.

[Click here](#) to download the Key changes introduced in EL rules.

[Click here](#) to read and download the CBDT Notification No. 87/2020.

Direct Tax Circulars and Notifications

IT Dept. Releases Updated Instructions for Filing ITR Forms for AY 2020-21

[Click here](#) to read the updated ITR instructions for AY 2020-21 issued by IT Dept.

CBDT Extends Tax-audit, Return Filing Due-dates till December 31st, January 31st respectively.

- The due date for furnishing of Income Tax Returns for the taxpayers (including their partners) who are required to get their accounts audited and taxpayers who are required to furnish report in respect of international/specified domestic transactions has been extended to 31st Jan 2021.
- The due date for furnishing of Income Tax Returns for the other taxpayers [for whom the due date (i.e. before the extension by the said notification) as per the Act was 31st July, 2020] has been extended to 31st December, 2020.
- Consequently, the date for furnishing of various audit reports under the Act including tax audit report and report in respect of international/specified domestic transaction has also been extended to 31st December, 2020.

[Click here](#) to read and download CBDT press release dated 24th October 2020.

[Click here](#) to read and download the CBDT Notification No. 88/2020.

Direct Tax Circulars and Notifications

Finance Minister Announces Tax Exemption for “LTC Cash Voucher Scheme” for Salaried Taxpayers to boost Consumer Demand- applicable for both Central and Non-Central Government Employees.

Currently Leave Travel Concession (LTC) exemption is available for two journeys in a block of four calendar years, starting from 1986 (current block being 2018-21). The exemption is available for both government and private sector employees.

Due to COVID-19 pandemic and travel restrictions imposed in the entire country, it may be difficult for the employees to avail this concession in the current block of 2018-21.

Hence, the FM has announced the Scheme for CG employees, as follows:

- a) In lieu of one LTC in the present block of four calendar years, cash payment will be made for:
 - i. Leave encashment (full payment):
 - ii. Payment of the fare in three flat-rate slabs depending on the class of entitlement. It is proposed that this payment shall be tax-free under the ITA.
- b) However, an employee opting for the Scheme will be required to fulfil the following conditions:
 - i. Buy goods/services worth three times the fare and avail one-time leave encashment on or before 31 March 2021.
 - ii. The money must be spent on goods attracting Goods and Service Tax (GST) of 12% or more from a GST-registered vendor.
 - iii. The payment must be made through digital mode and employee must produce GST invoice.

Continued....

Direct Tax Circulars and Notifications

Finance Minister Announces Tax Exemption for “LTC Cash Voucher Scheme” for Salaried Taxpayers to boost Consumer Demand- applicable for both Central and Non-Central Government Employees.

Continued...

Initially Finance Minister announced that the above provisions are applicable to Central Government employees by way of press release dated 12th October 2020. Later on CBDT issues a press release to cover employees other than central government employees for tax-exemption against LTC. Also extends the application of Office Memorandum dated 20.10.2020 and subsequent clarifications to non-central government employees.

[Click here](#) to read and download the press release as also the office memorandum as released by Ministry of Finance on 13th October 2020.

[Click here](#) to download the FAQ released by Ministry of Finance on 20th October 2020.

[Click here](#) to read and download the Press Release dated 29th October 2020 released by CBDT for applicability to Non-central government employees as well.

Direct Tax Rulings

Delhi Tribunal Rules on Interplay of Double Taxation Avoidance Agreement and Dividend Distribution Tax.

In a landmark judgement **Giesecke & Devrient [India] Pvt Ltd [TS-522-ITAT-2020(DEL)]**, Delhi ITAT rules in favour of assessee co. [an Indian co. having German parent] for AY 2013-14.

The Tribunal, after taking note of the legislative history and provisions of the Income-tax Act, 1961 (ITL), ruled that the DDT rate on dividend paid to shareholders needs to be restricted to the rates prescribed under the Germany DTAA, if the conditions for DTAA entitlement are satisfied.

The Tribunal noted that when considering the rates for dividend taxation under the Germany DTAA it may not be relevant that DDT is a liability on the payer company. DDT is effectively taxed on dividend income of the shareholders though it is tax “on the company” and not “on the shareholder”. The legislative history of DDT supports that DDT is nothing but tax on dividend income recovered at a standard rate from the company for administrative convenience and reducing compliance burden. Further, the Germany DTAA is notified in 1996 i.e. prior to introduction of DDT in 1997, and hence, the domestic law amendment to unilaterally amend DTAA is impermissible.

Further, while ruling in favor of the Taxpayer, the Tribunal restored the matter to the Tax Authority for the limited purpose of verifying factual parameters viz. whether the beneficial owner of dividend income has permanent establishment (PE) in India and income is effectively connected therewith, in which case the reduced rate under the Germany DTAA shall not be applicable.

[Click here](#) to download the copy of the Judgement.

Direct Tax Rulings

Sec. 50C Amendment allowing Preference to Stamp-Duty Valuation on 'Date of Agreement to Sell', retrospective

Madras HC rules that the proviso to Sec. 50C [inserted vide Finance Act, 2016] allowing preference to stamp-duty valuation on 'date of agreement to sell' over 'date of registration for the transfer of property' as clarificatory and thus, retrospective in case of an assessee-individual for AY 2014-15.

In 2012, assessee had entered into an agreement to sell the property for Rs. 19 Cr., however, AO adopted the guidance value fixed by the State Govt. at Rs. 27 Cr. [i.e. the stamp duty valuation] prevailing on the date of execution / registration of sale deed in subject AY 2014-15 as full value consideration and made an addition u/s 50C.

HC rules that "the authority cannot regard guidance value as last word the AO could not have based his conclusion solely based on the guideline value which had been held to be only a prima facie rate prevailing in the area to ascertain the true or correct market value."

On the insertion of first proviso to Sec. 50C(1) vide Finance Act, 2016, HC opines that "an amendment by insertion of proviso seeks to relieve the assessee from undue hardship".

Citing SC ruling in Kolkata Export Company, HC holds that "The proviso ensured reasonable interpretation and retrospective effect would serve the object behind the enactment", also refers to SC ruling in Vatika Township to exposit on principles of retrospectivity vis-a-vis prospectively and also drew strength from Easwar Committee Report on Sec. 50C.

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Direct Tax Rulings

Beneficial Treaty Rate Preference u/s. 90 applies separately to each Royalty Agreement

Karnataka HC confirms ITAT order ruling in favour of assessee for AY 2007-08, holds that the preference u/s. 90(2) for beneficial treaty rate applies separately to each royalty agreement entered pre and post June 2005.

Considering the reduced tax rate u/s.115A [i.e.10%] in respect of royalties & FTS where the agreement was entered into on or after 1st June 2005, the assessee bifurcated the income based on the date of agreement and applied beneficial DTAA rate [15%] for royalty agreements dated prior to 1st June 2005 and tax-rate u/s.115A w.r.t for royalty agreements entered pre 1st June 2005, however, AO had taxed the entire royalty income at 15% on 'aggregate' basis without allowing assessee's bifurcation based on agreement dates.

Holds that the tax on royalty income cannot be levied on an aggregate basis and taxability of royalty under the sub-clauses (A), (AB), (BB) and (C) of Section 115A(a)(b) is separate & distinct; Observes that "The contracts or agreements being source of income had been entered into on different dates and the statute recognizes such differentiation and provides for separate tax rates for each stream."

Also refers to CBDT Circular No.3/2014 explaining the amendment to Sec.115A(1)(b) vide Finance Act 2013, which corrected the "anomaly prevalent in Section 115A with regard to rates of taxes in case of non-resident tax payer".

Continued.....

Direct Tax Rulings

Beneficial Treaty Rate Preference u/s. 90 applies separately to each Royalty Agreement

Continued....

Note:

Differential rates provided in respect of royalties and fees for technical services based on the date of agreement under Sub-clauses A, AA, B, BB of Sec.115A(1)(b) prior to its amendment vide Finance Act 2013 are tabulated below:

- Period between 1.4.1976 to 31.5.1997 - rate of tax 30%
- Period between 1.6.1997 to 31.5.2005 - rate of tax 20%.
- Period on or after 1.6.2005 - rate of tax 10%

[Click here](#) to download the copy of the Judgement.

ITAT: Denies HO Expense u/s.44C against Interest Income Taxed on Gross Basis under India-Japan DTAA

Delhi ITAT rules that Head Office expense deduction u/s 44C not available against interest income arising to assessee [Japan based banking co. with Indian branches] on ECB loans [given to borrowers in India by its Indian Branch].

Notes that the said income of assessee was taxed on gross basis under Art. 11(2) of India-Japan DTAA @10% and explains that the assessee can opt for the beneficial regime between the domestic law or treaty law.

Continued...

Direct Tax Rulings

ITAT: Denies HO Expense u/s.44C against Interest Income Taxed on Gross Basis under India-Japan DTAA

Continued....

Observes that “there is no mandate that assessee can opt for lower taxes as per DTAA and claim expenses as per Domestic tax laws.”

Exposits that any further deduction will dilute the amount of tax payable on interest income in the source country; Notes that the DTAA do not grant any such deduction against income under Art.11(2).

Acknowledges Revenue’s submission that income taxed under DTAA cannot be included in the calculation of adjusted total income under Exp. (i) to Sec. 44C as the computation provisions u/s. 28 to 43CA do not apply there; Holds that assessee is not entitled to 5% deduction against interest income from ECBs.

Separately, Relies on HC ruling in assessee's own case to allow deduction u/s 37 on salary paid by overseas HO to expats in India, being incurred ‘wholly & exclusively’ for business.

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Direct Tax Rulings

Difference in Projected and Estimated Value, No Reason for Excess Share Premium Addition u/s. 56(2)(viib)

Madras HC upholds deletion of addition u/s. 56(2)(viib) with respect to shares issued at premium by assessee-company, accepts assessee's adoption of Discounted Cash Flow (DCF) method under Rule 11UA to substantiate the share valuation.

AO had discarded DCF method on the premise that assessee's actual revenue varied from the projected revenue for four years, HC holds that a 'projected value' is an 'estimate' and in any case, the variation in the estimate in the present case, was marginal.

Accepts ITAT's finding that DCF method as stipulated under Rule 11UA does provide for an estimation and merely because the AO is of the view that NAV method alone has to be adopted is not a ground to reject the DCF method. Also notes and upholds CIT(A)'s observation that assessee has an option to adopt NAV method or DCF method and unless the AO is able to bring out any evidence of abuse of benevolent provisions with an intention to defraud the revenue, the option given to the assessee shall be held to be absolute.

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Direct Tax Rulings

Assessing Officers 'Tax Evasion' finding - a Prerequisite for disallowing Bonus Payments to Director-Shareholders u/s 36(1)(ii)

Mumbai ITAT sets aside the issue of allowability of payment of bonus to the director shareholders during AY 2012-13 and directs the AO to establish tax evasion before invoking Sec. 36(1)(ii).

AO had disallowed bonus by relying on special bench ruling in Dalal Broacha Stock Broking basis that bonus to director-shareholder was in lieu of dividend and not deductible u/s. 36(1)(ii).

ITAT observes that “the said Judgement of Special Bench was based upon categorical finding that it was a tax evasion/tax avoidance scheme adopted by the assessee”.

ITAT applies the ruling of special bench and states that for invoking Sec. 36(1)(ii) AO “will have to give clear cut finding as to what was tax avoidance or tax evasion involved in this case.”.

ITAT directs the AO to examine the amount of dividend that the assessee would have declared had it not paid the bonus and “compute tax sought to be avoided by the assessee company by the so called scheme of the company.” With respect to AO's disallowance of administrative expenses u/s. 14A r.w. Rule 8D(iii) to the tune of Rs. 2.36 lakh against the exempt income of Rs. 3.99 lakh, ITAT remarks that “This at glance is not in accordance with principles of proportionality” and thus, remits this issue to the AO with a direction to assessee for details of expenditure incurred in earning exempt income.

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Direct Tax Rulings

ITAT: Stamp- Valuation in year of JDA Execution Relevant for LTCG Computation on Land-Transfer

Bangalore ITAT upholds CIT(A)'s order granting relief to assessee [land owner] in respect of LTCG [Long term capital gains] computation on land transfer under a JDA executed during subject AY 2008-09.

Assessee had entered into a joint development agreement [JDA] with developer in August, 2007, whereby assessee had to relinquish 81% of the land in favour of the developer in lieu of which assessee would get 19% of built up area as consideration.

Accepts CIT(A)'s adoption of stamp duty valuation for subject AY to determine the Fair Market Value [FMV] of the property transferred by the assessee for the purpose of arriving at the sale consideration, rejects AO's action of taking the stamp duty valuation for AY 2010-11 [i.e. year in which search was conducted].

Further accepts CIT(A)'s computation of the indexed cost of acquisition by considering the actual purchase value of the land either purchased by the assessee or by the donor of the land to the assessee, on proportionate basis.

Lastly, ITAT upholds deletion of penalty following jurisdictional HC ruling in Manjunatha Cotton & Ginning Factory Ltd. and recent ruling in Ryatara Sahakari Karkhane Niyamitha for AO's failure to specify the limb under which penalty proceedings were initiated.

[Click here](#) to download the copy of the Judgement.



October 2020

Corporate & Other Laws

Vishnu Daya & Co LLP

MCA Updates

Further extends timeline for creation of deposit repayment reserve to December 31

- MCA further extends the time limit for creation of the deposit repayment reserve of 20% u/s 73(2)(c) of the Companies Act, 2013, from September 30 to December 31, 2020, on account of requests received from various stakeholders seeking extension of time for the said compliance in the wake of COVID-19;
- Also extends the time for investing/depositing 15% of amount of debentures under Rule 18 of the Companies (Share capital and Debentures) Rules 2014, to December 31, 2020: MCA

MCA integrates with Profession Tax, Karnataka, to further ease of doing business

- MCA apprises that as part of the Govt.'s Ease of Doing Business initiative, MCA has integrated with Profession Tax [PT] - Karnataka;
- States that SPICe+ applications approved for the state of Karnataka w.e.f. October 8, 2020, shall mandatorily provide Profession Tax registration also;
- Accordingly, advises stakeholders to take note and refer to the instruction kit and FAQs in this regard: MCA

MCA: Relaxes regulations for private placement to QIBs

- MCA notifies that in case of offer or invitation of any securities to qualified institutional buyers, it shall be sufficient if the company passes a previous special resolution only once in a year for all the allotments to such buyers during the year;
- Amendment to this effect, to Rule 14 (Private Placement) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, to be effective from October 16, 2020: MCA

MCA Updates

MHA notifies procedure for opening designated FCRA account with specified SBI

- Ministry of Home Affairs appoints September 29, 2020, as the date on which the provisions of the Foreign Contribution (Regulation) Amendment Act, 2020, shall come into force;
- Also lays down the procedure for opening and operating the designated 'FCRA account' as provided under the amended Sec. 17(1) of FCRA that requires each person/NGO/association which has been granted FCRA certificate of registration or prior permission to receive such foreign contribution only in the designated FCRA account;
- Accordingly, notifies the State Bank of India, New Delhi Main Branch ('NDMB'), as the branch for the purposes of Sec. 17(1) of FCRA (i.e. for receiving foreign contribution);
- Further specifies that the existing FCRA account holders have to open the FCRA account in the NDMB upto March 31, 2021 or earlier, they shall be eligible to receive foreign contributions in the said account w.e.f. April 1, 2021 or from the date of opening of the account, whichever is earlier;
- https://fcraonline.nic.in/home/PDF_Doc/fc_notice_13102020.pdf

MCA: Extends minimum residency requirement relaxation for Directors, for FY 20-21

- MCA relaxes minimum residency requirement of 182 days in a year for resident Directors, for FY 2020-21 as well, in view of COVID-19;
- Clarifies that "...non-compliance of minimum residency in India for a period of at least 182 days in a year, by at least one director in every company, under Section 149 of the Companies Act, 2013 shall not be treated as non-compliance for the financial year 2020-2021 also.";
- According to Sec. 149 of the Companies Act, 2013, every company is required to have at least 1 Director who stays in India for a total period of minimum 182 days during the financial year: MCA

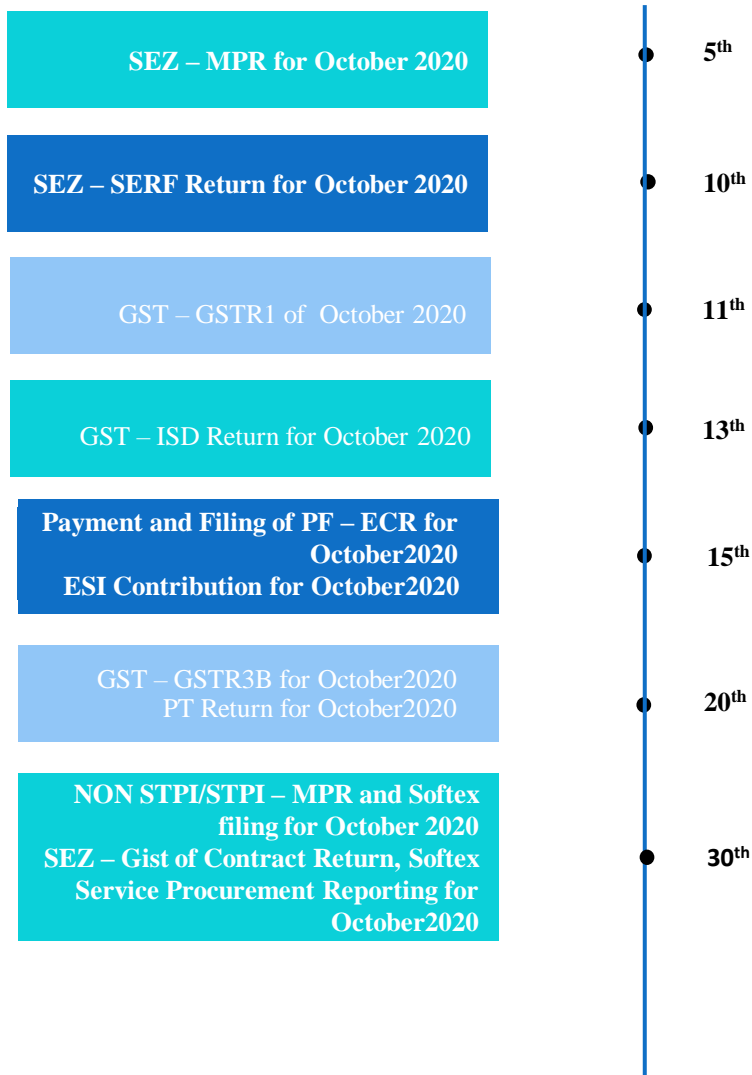


Due Dates

Due dates in November 2020 – GST, STPI, SEZ, PF, ESI

November 2020

Week	S	M	T	W	T	F	S
45	1	2	3	4	5	6	7
46	8	9	10	11	12	13	14
47	15	16	17	18	19	20	21
48	22	23	24	25	26	27	28
49	29	30	1	2	3	4	5



Due dates in November 2020 – Direct Taxes

November 2020

Week	S	M	T	W	T	F	S
45	1	2	3	4	5	6	7
46	8	9	10	11	12	13	14
47	15	16	17	18	19	20	21
48	22	23	24	25	26	27	28
49	29	30	1	2	3	4	5

Deposit of TDS/TCS for the month of October 2020

7th

Issue of TDS Certificate for tax deducted under section 194-IA/ 194-IB/ 194M in the month of September, 2020

14th

Quarterly statement of TCS deposited for the quarter ending September 30, 2020

15th

Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA/ 194-IB/ 194M in the month of October, 2020
Annual return of income for the assessment year 2019-20 for all assessee.

30th



Contact Us

About Us

Vishnu Daya & Co LLP is a Professional Services Firm under which dedicated professionals have developed core competence in the field of audit, financial consulting services, financial advisory, risk management, direct and indirect taxation services to the clients.

Started in the year 1994 as audit firm in Bangalore with an ambition to provide services in the area of accountancy and audit, our legacy of vast experience and exposures to different types of industries made us rapidly adaptable to the changing needs of the time and technology by not only increasing our ranges of services but also by increasing quality of service. With diversification, our professional practice is not only limited to Bangalore but has crossed over to the other parts of India with a motto to provide "One Stop Solutions" to all our clients.



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