CORPORATE UPDATE

DIRECT TAX

INTERNATIONAL TAXATION

I. Seismic survey vessel, mobilized to India, for rendering services related to exploration of mineral oil and gas constitute fixed place PE in India

(Seabird Exploration FZ LLC [2018] 92 taxmann.com 328 (AAR - New Delhi))

Recently, the Authority of Advance Ruling ('AAR') in the instance case held that the vessels engaged in seismic surveys on the high seas, in connection with the exploration of mineral oil and gas constitutes fixed place PE in India, under Article 5(1) of the Double Taxation Avoidance Agreement ('DTAA') between India and UAE, even if the period of operation in India was only 113 days.

The applicant is a company incorporated under the laws of UAE and is engaged in the business of rendering geophysical services (seismic data acquisition and processing) to the oil and gas exploration industry. It entered into a contract with ONGC to provide such services in India and for this purpose a vessel was present in Indian territorial waters for a period of 113 days. An application was filed before the AAR to seek a ruling for the determination of tax liability in respect of revenue under the contract with ONGC. The applicant however claimed that such revenue ought not to be regarded as taxable income in the absence of its PE in India. As regards constitution of PE, it was contended that Article 5(2)(i) which deals with the constitution of service PE, is specific to the case of the applicant and therefore even for the purpose of constitution of PE under Article 5(1) [which provide for the conditions for constitution of fixed place PE] activity in India should exceed the threshold period provided under Article 5(2)(i). On the other hand, the revenue argued that satisfaction of Article 5(2)(i) is not a condition precedent for triggering of Article 5(1).

IN THIS ISSUE

The AAR held as under:

- It is evident that the vessels used by the Applicant, in the Indian Territorial waters, pass all the three tests for constituting a fixed place PE under Article 5(1), namely, permanence of duration to the extent required by the business; fixed place as vessels are located in a definite and composite geographical area from which the business of the applicant is carried on and such place is at the disposal of the applicant. Thus, if Article 5(1) of the DTAA is to be considered alone, PE of the applicant is constituted in India;

- As regards applicability of Article 5(2)(i), it was held that services to be covered under this paragraph must be rendered through employees or personnel of the tax payer. However, in the instant case, services are rendered primarily through the vessels and are not carried on by employees / personnel of the applicant.

- It was highlighted by the AAR that DTAAs are not to be interpreted like laws passed by the Parliament that encompasses a wide range of situations. DTAAs are entered into between two countries after consciously considering the business reality specific to the two countries.

- The AAR, upon examining the provisions of Article 5(2), came to a conclusion that exploration of mineral oil does not come under the purview of clause Article 5(2)(i) [Service PE clause].

- The AAR also held that even under Article 5(2)(f) the term 'exploration' has not been envisaged, but rather include 'extraction of natural resources'. Therefore, the activities performed by the applicant does not fall under this clause as well.

Accordingly, it was held that a vessel operating in the Indian Territorial waters constitute fixed place PE of the tax payer and that the provisions dealing with service PE have no application. Therefore, profits arising to the tax payer from operating of such vessel is taxable as business profits under Article 7 of the DTAA.

II. Consideration for acquisition of patent and technical information, utilised in the manufacture of products in India, is taxable as Royalty under section 9(1)(vi) of the Act

(Dorf Ketal Chemicals LLC [2018] 92 taxmann.com 222 (Mumbai - Trib.))

The Tax Tribunal, Mumbai Bench, recently has held that payment made for acquiring patents and technical information, by a tax resident in India, which is utilised in the manufacturing of products in India is taxable as Royalty even if such products are sold outside India.

The tax payer, a wholly owned subsidiary of an Indian company, was incorporated in USA. However by virtue of its control and management being in India it was considered a tax resident of India. It acquired certain patents and copyrights including technical information, related to manufacture of certain products, from another US company. By utilising such technology, the tax payer manufactured products by outsourcing (on job work basis) the same to its India holding company. The tax payer did not withhold taxes while making payment to the US Company on the premise that the payment is made in relation to the business carried on outside India and therefore it falls under the exclusionary clause of section 9(1)(vi)(b) [Royalty] of the Act. The tax officer held that the payment is taxable as Royalty under the Act and thus disallowed the amount under section 40(a)(i) of the Act.

On appeal, the Tax Tribunal held that in the given case, the patents have been utilized for the purpose of manufacture of certain products in India and therefore there is a clear business connection in India. Further, the relationship between the appellant and the holding company, which has actually manufactured the products, is not a mere relationship of contract manufacturer. The tax payer is also a resident, for the purpose of Indian Income Tax Act and therefore utilization of patent / copyright for manufacturing activity by holding company must be regarded as business carried on in India. Further, the activity of sale has to be viewed as an export of the products, for marketing in USA, though manufactured in India. Consequently, it was held that the tax payer's contention that the patents / copyright are utilized outside India and the income has been earned from a source outside India is not correct. In view thereof, the Tax Tribunal held that payment made by the tax payer to the US entity towards acquisition of such patents / copyright is taxable in India as Royalty in terms of section 9(1)(vi) of the Act and therefore exigible to withholding tax.

(Contributed by: Mr. Anuj Mathur/ Ms. Purnima Bajaj)

TRANSFER PRICING

I. Valuation under Discounting Cash Flow (DCF) Method amongst others accepted for determining ALP of used Fixed Assets imported from AE

(ACIT vs. M/s Sarens Heavy Lift (I) P Ltd. [TS-294-ITAT-2018(Del)])

In a recent decision, The Tax Tribunal, Delhi Bench, upheld the directions of the Dispute Resolution Panel, wherein valuation done by the Chartered Engineer, Custom Authorities and under DCF method was accepted as Arm's Length Price (ALP) for benchmarking the value of used cranes imported by the Assessee.

On the facts of the case, the Assessee purchased nine cranes from its Associate Enterprise (AE) and applied Transaction Net Margin Method (TNMM) to benchmark the said transaction. However, the Transfer Pricing Officer rejected the method adopted by the Assessee and applied Comparable Uncontrolled Price (CUP) method taking Written Down Value (WDV) of the cranes in the books of the AE as ALP.

Aggrieved, the Assessee filed objections before the Dispute Resolution Panel arguing that the TPO has erred in computing ALP as WDV of cranes without comparing the purchase price of cranes with fair market value which can be determined by. It was further argued that the Transfer Pricing Officer has erred in rejecting the valuation report of independent value in respect of cranes purchased from AE without giving any reasons. The Assessee furnished valuation by the customs authorities, fair market valuation under DCF method (which can be measured by capitalizing rent earned from third parties in respect of such cranes), and by chartered engineers before the DRP and submitted various case laws in favour of acceptance of such valuation.

The Dispute Resolution Panel observed that the WDV of cranes cannot be considered as ALP as it is not derived from the transactions between unrelated enterprises. Further, it observed that it is nobody's case that an old asset cannot be sold at a price exceeding net book value. The Dispute Resolution Panel also took note of various decisions of the Tax Tribunal for recognised method of valuation and particularly relied on the decision of Tecumseh Products India Private limited case [(2014) 41 taxmann.com 385 (Hyderabad-trib)] wherein it was held that the assessee justified the price paid by way of a certificate which can be considered as external CUP.

Having considered all these aspects the Dispute Resolution Panel directed the TPO to accept valuation report(s) of the assessee company and to delete the addition made on account of the ALP of cranes.

Hence, the revenue filed an appeal before the Tax Tribunal challenging such deletions.

Before the Tax Tribunal, the revenue argued that the WDV of the cranes, could be taken as internal CUP and submitted that the Dispute Resolution Panel committed an error in not considering this aspect and by proceeding with an exemption that CUP always requires the comparison of transactions between unrelated parties.

However, the Hon'ble Tax Tribunal, accepted the reasoning given by the Dispute Resolution Panel and agreed with the directions of the Dispute Resolution Panel that the Assessee justified the price paid by it with the valuation done by a independent chartered engineer/ the customs authorities/ determined under DCF method. Therefore, the appeal of the revenue was dismissed.

II. AO may exercise discretion for reference to TPO, even though TP risk is one of the selection criteria under CASS

(Prem Manohar Gupta vs. Pr. CIT [TS-218-ITAT-2018(LKW)])

In a recent decision, the Hon'ble Tax Tribunal, Lucknow bench, held that the circular requiring the Assessing Officer to mandatorily refer the matter to Transfer Pricing Officer, where Transfer Pricing risk is one of the selection criteria for scrutiny assessment, is not binding on the Assessing Officer as the circular is contrary to the provisions of statute giving discretionary power to the Assessing Officer.

On the facts of the case, for the assessment year 2014-15, the Assessee's tax return was selected for scrutiny assessment under Computer Aided Scrutiny Selection (CASS) on the grounds: a) mismatch in the amounts paid to related person under section 40A(2)(b) of the Act reported in audit report and Income Tax Return, and b) large specified domestic transaction which is related to Transfer Pricing risk.

The Assessing Officer completed the assessment and passed assessment order without referring the matter to Transfer Pricing Officer. Subsequently, the Pr. CIT holding the order of Assessing Officer to be erroneous and prejudicial to the interest of revenue passed an order under section 263 of the Act as the Assessing Officer had not referred the matter to Transfer Pricing Officer even though one of the selection criteria under CASS was TP risk parameters. Aggrieved, the Assessee filed an appeal before the Tax Tribunal against order under section 263 passed by Pr. CIT.

Before the Tax Tribunal, the Assessee argued that even though circular mandatorily required reference to TPO, income tax statute has given discretionary power and it is not mandatory for the AO to make such reference. Further, the Assessee relied on the decisions of Obulapuram Mining Company Pvt. Ltd. [TS-512-ITAT-2016(Bang)-TP] and Tata Consultancy Services Ltd [TS-521-ITAT-2015(Mum)-TP] which in turn had relied on Hon'ble Bombay High Court's Judgement in the case of Vodafone India Services Pvt. Ltd [TS-320-HC-2013(BOM)-TP] wherein it was held that the CBDT Instruction No.3 dated May 20, 2003 requiring mandatory reference to TPO departs from the provisions of law and it is not binding on the AO. Accordingly, assessee contended that since the view taken by AO of not referring the matter to TPO was a possible view, it cannot be said that the assessment order was erroneous and impugned order under section 263 is not sustainable.

The Hon'ble the Tax Tribunal on perusing the case records, found that the only basis for revisional powers invoked by the Pr. CIT under section 263 is circular requiring AO to make mandatory reference to the Transfer Pricing Officer not followed in this case. However, ITAT observed that Assessing Officer has conducted independent enquiry so far as domestic transaction were concerned and as required within the periphery of the section 40A(2)(b) of the Act. Further, relying on the decision of the Hon'ble

Bombay High Court, as followed by the Co-ordinated Tax Tribunal Bangalore Bench that Circular cannot override the statute and since, the circular is contrary to the provisions of the law, the ITAT held that assumption of revisionary power by the Pr. CIT under section 263 was not justified. Therefore, the ITAT quashed the order passed under section 263 of the Act.

(Contributed by: Ms. Shweta Kapoor)

DOMESTIC TAXATION

I. Supreme Court upholds the deduction of lease equalization charges computed in accordance with the Guidance note issued by ICAI

(Vitual Soft Systems Limited –Vs. CIT – TS-205-SC-2018)

In a recent decision, the Supreme court (SC) of India, in a batch of appeals, while upholding the decision of High Court (HC) of Delhi has held that, deduction of lease rentals which are bifurcated into depreciation and lease equalisation charge in accordance with the manner described in Guidance note issued by Institute of Chartered Accountants of India (ICAI) is allowable under the Income Tax Act.

Before the Apex Court, the main question for consideration was whether such deduction on account of lease equalization charges from the rental income can be allowed under the Act on the basis of the Guidance Note issued by ICAI.

In the instant case, Virtual Soft Systems Limited leased an asset on a finance lease and claimed a deduction of Rs. 1,65,12,077/- as lease equalization charges against the lease rental income on the basis of method prescribed in the Guidance Note issued by ICAI. However, the Assessing Officer (AO) disallowed the aforesaid deduction. CIT (A) also upheld the order of the AO. However, the Tax Tribunal of Delhi allowed the appeal in favour of assessee.

Being aggrieved by the order, Revenue took the matter before the Delhi High Court (HC) which dismissed the appeals at the preliminary stage while confirming the decision of the Tax Tribunal.

The tax department contended that lease equalization is an additional charge debited to Profit & Loss A/c in addition to depreciation claimed in books so as to make it equal to capital recovery. There is no concept of deduction of the lease equalization charges under the Income-tax Act and hence the same is not allowable.

Before examining the case, the Hon'ble SC emphasized on the significance of Guidance Note and its contents. SC observed that the Guidance note on leases issued by ICAI reflects the best practices adopted by the accountants throughout the world. Reference was also made to the relevant provisions of Companies Act, 1956 and the SC decision in the case of CIT Vs. Punjab Stainless Steel Industries [2014] 15 SCC 129 acknowledging the significance and relevance of Guidance Note issued by ICAI.

The Apex court after going through the relevant provisions of the Guidance Note on the Accounting for Leases noted that the bifurcation of the lease rental is, by no stretch of imagination, an artificial calculation and, therefore, lease equalization is an essential step in the accounting process to ensure that real income from the transaction in the form of revenue receipts only is captured for the purposes of Income tax. Further, the Income-tax Act is also silent on such deduction and therefore in such a circumstance, on the basis of the rules of interpretation, recourse could be taken to external aid when internal aid is not available.

The Apex Court thus held that the assessee is entitled for deduction for lease equalization charge, as per the accounting standards prescribed by the ICAI.

II. Delhi High Court allows the expenditure incurred towards software as revenue expenditure

(Oriental Bank of Commerce –Vs. ACIT – ITA 129/2018)

In a recent decision, the High Court (HC) of Delhi, held that, merely because the depreciation rates are spelt out in the schedule of Income-tax Act for software, it is not conclusive to identify the nature of expenditure incurred as capital or revenue.

In the instant case, Oriental Bank of Commerce ('the Appellant') had incurred expenditure towards acquiring various categories of software which were specialized and meant for optimizing the performance and streamlining the efficiency of banking operations. The Assessing Officer concluded that the software expenses charged to the revenue could not be allowed since they are capital in nature. CIT(A) and The tax tribunal upheld the order of the Assessing Officer.

Aggrieved, the assessee filed an appeal to the Delhi High Court.

The High Court took cognizance of the fact that the assets were in the nature of licenses and since such copyright licenses were being used for a specific duration, they did not confer any right of enduring nature. Moreover, the bank's objective was not to carry on the software business, rather those software were to be used to maximize the performance.

The High Court while relying upon the Supreme Court decision in case of Alembic Chemicals Works CO. Ltd. v. CIT (1989) 177 ITR 377 (SC) and Delhi HC judgement in case of CIT v Asahi India Safety Glass Ltd. (2012) 346 ITR 329, held that the mere fact that depreciation rates are spelt out in the Act would not be conclusive to determine whether the benefit derived is of enduring nature.

The High Court accordingly held in favour of the taxpayer that the expenditure on software was of revenue nature given the benefit being derived from it and the relevant life of use of such software.

(Contributed by: Ms. Ritu Gyamlani)

III. Changes in Income Tax Return Forms AY 2018-19

The Central Board of Direct Taxes has issued Notification No.16/2018 dated April 03, 2018 notifying Income Tax Returns ('ITR') forms for Assessment Year 2018-19. Income tax return is filed by a tax payer in the prescribed ITR Form, which is applicable based on the nature of the income and other criteria as prescribed.

Certain changes have been made to the return forms as prescribed vis-à-vis last year. The important changes as made are given as under:

ITR No.	ITR No. and Applicability
ITR 1 (SAHAJ)	For Individuals being a resident other than not ordinarily resident having Income from Salaries, one house property (except where there is brought forward loss or loss is to be carried forward),

	other sources (excluding loss claim, winnings from lottery, race horses or dividend under section 115BBDA, income under section 115BBE etc) and having total income upto Rs. 50 lakh. Not applicable to: a) Agricultural income exceeding Rs. 5,000/-. b) Assessees having foreign assets/ income c) Relief claim under section 90/91
ITR 2	For Individuals & HUFs not having income from profits and gains of business or profession
ITR 3	For individuals and HUFs including partner in a firm having income from profits & gains of business or profession
ITR 4 (SUGAM)	For Presumptive Income from business & profession under section 44AD, 44AE & 44ADA (excluding income from Capital Gains, winnings from lottery, race horses or dividend under section 115BBDA, income under section 115BBE etc) Not applicable to: a) Agricultural income exceeding Rs. 5,000/- b) Assessees having foreign assets/ income c) Relief claim under section 90/90A/91 d) Income from more than one House Property or where there is brought forward loss or loss is to be carried e) Income from speculative business/ agency business/ commission/ brokerage/ special income
ITR 5	For persons other than, (i) individual, (ii) HUF, (iii) company and (iv) person filing Form ITR 7 (i.e. for firm, LLPs, AOP etc.)
ITR 6	For Companies other than companies claiming exemption under section 11
ITR 7	For persons including companies required to furnish return under sections 139(4A) or 139(4B) or 139(4C) or 139(4D) or 139(4E) or 139(4F). (i.e. for charitable trust, research associations, universities etc.)

The major changes as made in the return forms are given hereunder:

1. Disclosure of fees under section 234F for delay in filing of Return

Earlier, penalty under section 271F was imposed by the Assessing Officer, if the assessee fails to file the return of income before the end of assessment year. In lieu of such penalty, the Finance Act,

2017 inserted a new section 234F as per which the assessee is required to pay late filing fees under section 234F, irrespective of any tax payable, before filing of return of income as per below details:

- Rs. 5,000, if the return is furnished after the due date but before December 31 of the assessment year [Rs. 1,000 if total income is up to Rs. 5 lakhs].
- Rs. 10,000, in any other case [Rs. 1,000 if total income is up to Rs. 5 lakhs].

All the ITR Forms [ITR 1, 2, 3, 4, 5, 6, 7] have been amended to disclose the details of late filing fees paid under section 234F.

2. Furnishing of foreign bank account particulars by non-residents

The new ITR 2, 3, 4, 5, 6 and 7 allow non-residents to furnish details of any one foreign Bank Account for the purpose of receipt of income-tax refund.

3. Reporting of income under section 115BBG from transfer of carbon credits

ITR 2, 3, 5, 6, and 7 have been amended to report the income from transfer of carbon credits and tax thereon at the rate of 10% (plus applicable surcharge and cess) under section 115BBG.

4. Disclosure of disallowance of expenditure under the head Income from other sources in case of TDS Default

A new column has been inserted in ITR 2, 3, 5 ,6 and 7 to report disallowance under section 58 under the head income from other sources, in a case where tax is not deducted or deposited in accordance with Chapter XVII-B. Similarly, disclosure is required for income under section 59.

5. Reporting of sum, property taxable as gift

A new column has been inserted in ITR 2, 3, 5, 6 and 7 under 'Schedule OS' to report any income specified in section 56(2)(x), deeming receipt of a sum of money or any property without consideration or for inadequate consideration (in excess of Rs. 50,000) by a person as income taxable under the head income from other sources.

6. Disclosure of Fair Market Value ('FMV') for computation of Capital Gains in case of transfer of unquoted shares

As per section 50CA, as introduced by Finance Act 2017, in case of sale of unquoted shares, if the sale consideration is less than its FMV, then such FMV is adopted for the purpose of computation of Capital Gains. The new ITR 2, 3, 5, 6, and 7 require the assessee to disclose fair market valuation and the following other information in respect of unlisted shares:

(i) Actual sales consideration
(ii) FMV as determined in prescribed manner
(iii) Deemed Full value of consideration as per section 50CA (higher of A or B)

7. Reporting of GST paid and received separately under the Profit & Loss Account Schedule

ITR 3, 5 and 6 have introduced new columns to report CGST, SGST, IGST and UTGST paid or received by the assessee in respect of goods/ services purchased and sold during the Financial Year. Such disclosure is to be made in para 1C and 7 of Part A- P&L Account.

8. Changes in Depreciation Schedule

In the new ITR 3,5 and 6**,** depreciation schedule has been aligned to provide revised depreciation rates (maximum rate upto 40%) instead of 50/60/80/100 percent in case of plant & machinery and Building as applicable earlier. New columns have also been inserted to enable the entities to claim proportionate depreciation in the event of business reorganisation, i.e., demerger, amalgamation, etc.

Further, a field is added to disclose the disallowance to be made in respect of depreciation under section 38(2) if an asset is not exclusively used for business purpose.

9. ICDS adjustments to be considered separately in Schedule BP for computation of income from business or profession

Schedule BP (Computation of income from business or profession) of ITR 3, 5 and 6 has been amended to take into consideration the effect of ICDS adjustments on profit/ loss, as disclosed in Schedule ICDS.

10. Transfer of TDS Credit to other person

As per Rule 37BA(2), if an income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for such TDS shall be given to the other person and not to the deductee.

Currently, Income-tax Dept. matches the TDS disclosed in ITR with the amount of TDS as shown in Form 26AS and in case of mismatch, the Department asks the assessee to reconcile the mismatch. Presently, the assessee faces difficulties in proving his claim for TDS credit for taxes deducted in the name of another person for e.g. income chargeable in the hands of the assessee but tax deducted in the name of his spouse, TDS credit in case of inheritance, etc.

To overcome this problem, the ITR 2 and 7 have introduced new columns in TDS Schedule to disclose TDS deducted in the name of other person but in respect of which income is chargeable in his hands. The assessee is required to disclose PAN of such other person alongwith the TDS and corresponding income taxable in his hands.

11. Additional details to be furnished by Individual taxpayers

New ITR Form 1 and 4 require the individual assessee to provide detailed calculation in case of income from salary and house property.

12. Changes applicable only to companies in ITR 6

a) **Break-up of payments/receipts in foreign currency**- A new schedule has been inserted in ITR 6 seeking disclosure of the amount of payment & receipts in foreign currency by an assessee who is not liable to get its accounts audited under section 44AB. The disclosure is to be given separately for payments/ receipts on capital account and on revenue account.

b) **Ownership information in case of unlisted company-** The new ITR 6 requires every unlisted company to provide details (if available) of all ultimate beneficial owners being natural persons who are holding 10% or more voting power (directly or indirectly) at any time during the year 2017-18. These companies are required to provide the name, address, percentage of shares held and PAN of the beneficial owners.

c) **Details of business transactions with registered and unregistered suppliers under GST-** A new Schedule-GST has been inserted in ITR 6 which requires every company, which is

not required to get its accounts audited under Section 44AB, to provide following break-up of total expenditure, the transactions for which were entered into during the year on or after 1st July 2017 with a registered or unregistered supplier under GST:

a) Expenditure relating to exempt goods or services
b) Transactions with composite suppliers
c) Other transactions with registered entities
d) Total sum paid to registered entities
e) Transactions with unregistered entities

d) Disclosure required for Ind AS Compliant Companies-In ITR 6, Ind AS Complaint Companies have been required to disclose in a separate schedule the Balance Sheet and Profit & Loss Account in the similar format as prescribed under Division II of Schedule III to the Companies Act, 2013 (i.e., Ind AS Financial Statements). It also incorporates the necessary changes to enable these companies to calculate the book profit in accordance with the new provision which require them to make additional adjustments to the book profit for all items credited and/or debited to "Other Comprehensive Income" and all other items specified therein.

13. Disclosure specifically required in ITR 7

a) Trusts/ Not for profit organisation to disclose more information in ITR- Following additional information are required to be disclosed by charitable or religious trusts/ organisations in ITR-7:

i) Aggregate annual receipts of the projects/institutions run by the organisation
ii) Amount utilized during the year for the stated objects out of surplus sum accumulated during earlier years.

b) Details of fresh registration upon change of objects [Section 12A]- ITR 7 has been amended to seek details of fresh registration due to change is objects of charitable or religious trust/ organisation.

c) No deduction for corpus donations made to other institutions [Section 11]- The amount of corpus donation made to another trust or institution to be specifically disclosed for addition to the taxable income, being not in the nature of permitted 'application of income'.

14. Disclosure relevant only for assessees filing ITR-4 under Presumptive Taxation Scheme

a) For the taxpayers opting for presumptive taxation under section 44AD, 44AE & 44ADA furnishing of GST related details viz GST Registration No., GST Turnover etc is now mandatory in ITR 4.

b) ITR 4 has been amended to seek more detailed information with respect to financial particulars. The taxpayers opting for presumptive taxation are now required to declare the following additional information:

- Partners/ Members Capital
- Secured Loan & Unsecured Loan
- Advances received
- Other Liabilities
- Fixed Assets
- Loans & Advances
- Bank Balance
- Other Assets

15. ITR 2 not applicable to Partners in a firm

An individual or an HUF, being a partner in a firm, was required to file ITR 2 if he did not have any income from proprietorship business. In case of income from proprietary business or profession, ITR 3 was applicable. For AY 2018-19, an individual or an HUF, being a partner in a firm, shall be required to file his ITR in Form ITR 3 only.

(Contributed by: Ms. Ankita Mehra)

INDIRECT TAX

GOODS AND SERVICES TAX (GST)

I. The key decisions taken by the GST Council in its 27th meeting held on 08th May, 2018 are as under:

(a) GST Return Simplification:

- GSTR 1 and GTR 3B will continue and GSTR-2 and GSTR-3 to remain suspended till September, 2018.
- The B2B dealers will have to fill invoice wise details of the outward supply made by them, based on which the system will automatically calculate his tax liability. The input tax credit will be calculated automatically by the system based on invoices uploaded by his sellers.
- New Single-return plan will go live after 6 months. Thus, there will be only 12 returns a year, instead of 36 returns.
- Single return on quarterly basis for Composition dealers and dealers with 'NIL' transaction.

(b) Reversal of Input Tax Credit:

- No automatic reversal of ITC for Buyer on non-payment of tax by Seller, i.e. recovery shall be made from the defaulter/ seller, till 30 Sept. 2018. From 1 Oct. 2018, this provisional system of allowing Input Tax Credit to Buyer will not be applicable and the ITC will be based on system calculation, i.e. based on sale transactions and tax details reported by the suppliers.

(c) Incentive to promote Digital Transactions:

- Keeping in view the need to move towards a less cash economy, the Council has discussed in detail the proposal of a concession of 2% in GST rate [where the GST rate is 3% or more, 1% each from applicable CGST and SGST rates] on B2C supplies, for which payment is made through cheque or digital mode, subject to a ceiling of Rs. 100 per transaction, so as to incentivize promotion of digital payment.

- The council has recommended for setting up of a Group of Ministers from State Governments to look into the proposal and make recommendations, before the next Council meeting, keeping in mind the views expressed in GST Council Incentives on digital payments.

Please note that the aforementioned recommendations of the GST Council would be effective once the official Notifications are issued by the Government.

(Contributed by: Mr. Karan Chandna)

FOREIGN EXCHANGE MANAGEMENT ACT

I. Liberalised Remittance Scheme (LRS) for Resident Individuals– daily reporting of transactions

(RBI Notification No. RBI/2017-18/161 containing A.P. (DIR Series) Circular No. 23 dated April 12, 2018)

Presently, the transactions under Liberalised Remittance Scheme (LRS) are being permitted by AD banks based on the declaration made by the remitter. The monitoring of adherence to the limit is confined to obtaining such a declaration without independent verification, in the absence of a reliable source of information.

In order to improve monitoring and also to ensure compliance with the LRS limits, it has been decided to put in place a daily reporting system by AD banks of transactions undertaken by individuals under LRS, which will be accessible to all the other ADs. Accordingly, with effect from the date of issue of this circular, all AD Category-I banks are required to upload daily transaction-wise information undertaken by them under LRS at the close of business of the next working day. In case no data is to be furnished, AD banks are required to upload a 'Nil' report.

II. External Commercial Borrowings (ECB) Policy- Rationalisation and Liberalisation

(RBI Notification No. RBI/2017-18/169 containing A.P. (DIR Series) Circular No.25 dated April 27, 2018)

Reserve Bank of India, in consultation with the Government of India has decided to further rationalise and liberalize the ECB guidelines as under:-

(i) Rationalisation of all-in-cost for ECB under all tracks and Rupee denominated bonds (RDBs) :

In order to harmonise the extant provisions of Foreign Currency and Rupee ECBs and RDBs, it has been decided to stipulate a uniform all-in-cost ceiling of 450 basis points over the benchmark rate. The benchmark rate will be 6 month USD LIBOR (or applicable benchmark for respective currency) for Track I and Track II, while it will be prevailing yield of the Government of India securities of corresponding maturity for Track III (Rupee ECBs) and RDBs.

(ii) Revisiting ECB Liability to Equity Ratio provisions:

It has been decided to increase the ECB Liability to Equity Ratio for ECB raised from direct foreign equity holder under the automatic route to 7:1. This ratio will not be applicable if total of all ECBs raised by an entity is up to USD 5 million or equivalent.

(iii) Expansion of Eligible Borrowers' list for the purpose of ECB:

It has been decided to permit:

a) Housing Finance Companies, regulated by the National Housing Bank, as eligible borrowers to avail of ECBs under all tracks. Such entities shall be required to have a board approved risk management policy and shall keep their ECB exposure hedged 100 per cent at all times for ECBs raised under Track I.
b) Port Trusts constituted under the Major Port Trusts Act, 1963 or Indian Ports Act, 1908 to avail of ECBs under all tracks. Such entities shall be required to have a board approved risk management policy and shall keep their ECB exposure hedged 100 per cent at all times for ECBs raised under Track I.
c) Companies engaged in the business of Maintenance, Repair and Overhaul and freight forwarding to raise ECBs denominated in INR only.

(iv) Rationalisation of end-use provisions for ECBs:

At present, a positive end-use list is prescribed for Track I and specified category of borrowers, while negative end-use list is prescribed for Track II and III. It has now been decided to have only a negative list for all tracks. The negative list for all Tracks would include the following:

a) Investment in real estate or purchase of land except when used for affordable housing as defined in Harmonised Master List of Infrastructure Sub-sectors notified by Government of India, construction and development of SEZ and industrial parks/integrated townships.
b) Investment in capital market.
c) Equity investment.

Additionally for Tracks I and III, the following negative end uses will also apply except when raised from Direct and Indirect equity holders or from a Group company, and provided the loan is for a minimum average maturity of five years:

d) Working capital purposes.
e) General corporate purposes
f) Repayment of Rupee loans.

Finally, for all Tracks, the following negative end use will also apply:

g) On-lending to entities for the above activities from (a) to (f).

(Contributed by: Ms. Ruchi Sanghi)

CORPORATE LAW

I. Notification of sections under Companies (Amendment) Act, 2017 and rules made thereunder

In exercise of the powers conferred by sub-section (2) of section 1 of the Companies (Amendment) Act, 2017, the Central Government vide its notification dated 7th May, 2018 has notified the following sections of the Act w.e.f 7th May, 2018.

S.No.	Section No. of Companies (Amendment) Act, 2017	Amended Section of Companies Act, 2013	Title
1.	Clause (i) and (xiii) of Section 2	Clause (6) of Section 2 and sub-clause (ii) of (87) of Section 2	Definitions
2.	Section 8	Section 26	Matter to be stated in Prospectus
3.	Section 13	Section 54	Issue of Sweat Equity Shares
4.	Section 18 and 19	Section 77 and 78	Duty to Register charges etc. and Application for registration of charge
5.	Clause (i) and (ii) of Section 21	Section 89	Declaration in respect of beneficial interest in any share
6.	Clause (iii) & (iv) of Section 23	Section 92	Annual Return
7.	Section 30 and 31	Section 117	Resolution and agreements to be filed
		Section 121	Report on Annual General Meeting
8.	Section 33	Section 129	Financial Statement
9.	Section 39 and 40	Section 137	Copy of financial statement to be filed with Registrar
		Section 139	Appointment of Auditors
10.	Section 46	Section 149	Company to have Board of Directors
11.	Section 49	Section 157	Company to inform Director identification Number to Registrar
12.	Section 52	Section 164	Disqualifications for appointment of Director
13.	Section 54 to 58 (both inclusive)	Section 167	Vacation of office of Director
		Section 168	Resignation of Director

14.		Section 173	Meetings of Board
15.		Section 177	Audit Committee
16.		Section 178	Nomination and Remuneration Committee and Stakeholders Relationship Committee
17.	Section 61 and 62	Section 185	Loan to Directors, etc.
		Section 186	Loan and investment by Company
18.	First proviso to Clause (i) and (ii) of section 80	Section 403	Fee for Filing, etc.
19.	Section 83	Section 410	Constitution of Appellate Tribunal
20.	Section 86 and 89 (both inclusive)	Section 435	Establishment of Special Courts
		Section 438	Application of Code to proceedings before special court
		Section 439	Offences to be non-cognizable
		Section 440	Transitional provisions

In view of the above notified sections, the following rules have been also notified:

S. No.	**Amendment Rules notified w.e.f. 7th May, 2018**
1.	Companies (Prospectus & Allotment of Securities) Amendment Rules, 2018
2.	Companies (Appointment & Qualification of Directors) Second Amendment Rules, 2018
3.	Companies (Meetings of Board & its Powers) Amendment Rules, 2018
4.	Companies (Audit & Auditors) Amendment Rules, 2018
5.	Companies (Share Capital & Debentures) Second Amendment Rules, 2018
6.	Companies (Specification of Definition Details) Amendment Rules, 2018
7.	Companies (Registration of Office & Fees) Second Amendment Rules, 2018

(Contributed by: Ms. Vandana Jaiswal)

IMPORTANT

DATES TO REMEMBER

Particulars	Date
Deposit of TDS for the month of May, 2018	June 7, 2018
Date of deposit of GST and filing of GSTR-3B for the month of April, 2018	May 20, 2018
Filing of GSTR I in the month of April 2018	May 31, 2018

For further information, please contact:

Mr. C. S. Mathur
Tel: 91-11-47102200 Email: csm@mpco.in

Mr. Vikas Vig
Tel: 91-11-47103300 Email: vvig@mpco.in

Ms. Surbhi Vig Anand
Tel: 91-11-47102250 Email: surbhivig@mpco.in

Main Office

New Delhi
1 A-D, Vandhna
11, Tolstoy Marg
New Delhi-110 001

MPC & CO LLP

Pune
Vadodara

Associates

Ahmedabad
Bangalore
Chennai
Hyderabad
Mumbai

DISCLAIMER

The contents of this document are for information purposes and general guidance only and do not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice.

No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication and Mohinder Puri & Co. disclaims all responsibility for any loss or damage caused by errors/ omissions whether arising from negligence, accident or any other cause to any person acting or refraining from action as a result of any material in this publication.