

CORPORATE UPDATE

DIRECT TAX

DOMESTIC TAXATION

I. Changes in Income Tax Audit Form AY 2019-20

(Notification No. 33/2018 dated July 20, 2018)

The CBDT has amended Income Tax Audit Form No. 3CD with effect from 20th August, 2018. The following are the major amendments made in Tax Audit Report (TAR) (Form No. 3CD):

- 1) **Primary adjustment relating to Transfer Pricing-** As per section 92CE, where primary transfer pricing adjustment is made in case of an assessee (either suo moto by the assessee, or by Assessing Officer, pursuant to an advance pricing agreement or under safe harbour rules or by way of Mutual Agreement Procedure), the assessee is required to repatriate the excess money which is available with its Associated Enterprise due to the aforesaid adjustment, failing which the same is deemed as advance after the prescribed time period and interest is imputed on such advances. The new clause 30A requires disclosure of amount of primary adjustment and the amount of imputed interest income on the excess money not repatriated within the prescribed time.
- 2) **Limitation on deduction of interest-** Section 94B of the Income-tax Act provides that where an Indian Company or PE of a foreign company in India, being the borrower, incurs any expenditure by way of interest or of similar nature exceeding Rs. 1 Crore, deductible in computing income chargeable under the head 'Profits & Gains of Business or Profession', in respect of any debt issued by a non-resident, being an AE of such borrower, the interest computed shall be disallowed to the extent of total interest paid/ payable in excess of 30% of Earning Before Interest, Taxes, Depreciation and Amortisation (EBITDA) of the borrower or interest paid/

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payable to AE whichever is lower. To report disclosure of disallowance under section 94B where interest paid to AE exceeds Rs. 1 crore during the year, clause 30B has been inserted in TAR to report the following information:

- a) Amount of expenditure by way of interest or of similar nature incurred;
- b) EBITDA during the year;
- c) 30% of EBITDA - Amount of interest incurred (referred in (a) above);
- d) Details of interest expenditure brought forward/carried forward as per section 94B(4).

3) **Impermissible avoidance arrangement-** The provisions of General Anti Avoidance Rules (GAAR) (applicable from AY 2018-19) provide that an arrangement entered into by an assessee may be declared to be an impermissible avoidance arrangement. Impermissible avoidance arrangement means an arrangement the main purpose of which is to obtain a tax benefit, and it creates rights/ obligations between the parties to the agreement, which are not ordinarily created in normal course or lacks commercial substance or results in misuse of the provisions of the Income-tax Act. In new clause 30C, the nature and amount of tax benefit arising during the year in aggregate to all the parties to such impermissible avoidance arrangement are required to be disclosed.

4) **Reporting cash receipts of Rs 2 lakh or more:** As per section 269ST, which is applicable from April 1, 2017, a person is not permitted to receive payment of an amount exceeding Rs. 2 lakh or more:

- a) in aggregate from a person in a day; or
- b) in respect of a single transaction; or
- c) in respect of transactions relating to one event or occasion from a person

otherwise than by an account payee cheque/ account payee bank draft or use of electronic clearing system. The new amendments to TAR requires disclosure of each receipt/ payment of Rs. 2 Lakh or more where the payment is not by permitted modes as per section 269ST.

5) **Reporting breakup of expenditure with respect to registered/ unregistered entities under GST-** New clause 44 requires reporting of the entire expenditure debited to Profit & Loss account giving breakup under the following heads:

i) Expenditure in respect of entities registered under GST

- relating to goods or **services exempt under GST**
- **relating to entities falling under composition scheme**
- **relating to other registered entities**
- **total payment to registered entities**

ii) Expenditure relating to entities not registered under GST

Clause 4 of TAR has also been amended to include GST number.

6) Reporting details of transactions not disclosed/ specified in Form No. 61/ 61A/ 61B- Clause 42 of TAR requires tax auditor to report date of furnishing of Form no. 61 (details of non PAN transactions) / Form no. 61A (Specified Financial Transactions)/ Form no. 61B (Statement of reportable accounts). Where all the details/ transactions required to be furnished in such forms are not contained in such forms, the tax auditor is required to report the unreported details/ transactions in TAR.

- 7) **Reporting whether assessee/ its parent entity/ alternate reporting entity is liable to furnish the report (CBCR) u/s 286(2)-** Section 286 specifies the Companies which are liable to file Country by Country Report (CbCR). The new clause 43 of TAR requires reporting of name of parent entity/ alternate reporting entity and date of furnishing of CbCR, where the entity is required to file CbCR in India.
- 8) **Reporting of deemed dividend under section 2(22)(e) of the Act-** Clause 36A has been inserted to include reporting of deemed dividend in the hands of the assessee during the year.
- 9) **Reporting of advance received forfeited on capital assets-** Under the new clause 29A, the tax auditor is required to report the nature and the amount of money received as an advance or otherwise by the assessee during the course of negotiations for transfer of capital asset, taxable under section 56(2)(ix) under the head income from other sources.
- 10) **Reporting of income of taxable gifts and properties received without/inadequate consideration exceeding Rs. 50,000-** Under the new clause 29B, the tax auditor is required to report the nature and amount of gift /property exceeding Rs. 50,000 received by the assessee (except in the case of certain exemptions i.e. gifts from relatives, receipt under a will and certain other situations such as amalgamation, demerger etc), which are taxable under section 56(2)(x).
- 11) **Details of TDS/ TCS Return-** Earlier under clause 34(b), the tax auditor was required to report whether the TDS/TCS statement submitted contains information about all transactions which are required to be reported. Such reporting was to be made where the assessee made default in timely furnishing of TDS/ TCS statement. With the amendment to clause 34(b), TAR now requires reporting of such details/ transactions which are not reported in TDS/TCS return, whether or not TDS/TCS statement was filed by the due date.
- 12) **Reporting of payments on actual payment basis-** Section 43B provides for certain deductions which can be claimed by the assessee only on their actual payment before the date of filing of return. Clause 26 of TAR has been amended to include payments covered by section 43B(f) (which is applicable from AY 2017-18), which requires disclosure of any sum payable by the assessee to the Indian Railways for use of railway assets i.e. railway siding and shunting etc.

II. Revision of monetary limit for filing appeal by the department before ITAT, High Courts and SLPs/appeals before the Supreme Court

(Circular no. 3/2018 dated July 11, 2018)

The CBDT has decided to increase the monetary threshold in respect of tax effect for filing of departmental appeals at various levels. The revised monetary limits are as under:

Appellate Forum	Present Limit (In Rs.)	Revised Limit (In Rs.)
Before ITAT	10,00,000	20,00,000
Before High Court	20,00,000	50,00,000
Before Supreme Court	25,00,000	1,00,00,000

The CBDT has also provided in the circular that the aforesaid limits shall also apply to pending SLPs/ appeals/ cross objections/ references and the same shall be persued by the department for dismissal as withdrawn/ not pressed.

(Contributed by: Ankita Mehra)

III. Penalty under section 271D leviable if assessee fails to show reasonable cause even of the transaction is bona-fide

(Deepak Sales & Properties (P.) Ltd. [2018] 95 taxmann.com 166 (Mumbai - Trib.)

In the instant case, the Hon'ble Tax Tribunal has held that for the purpose of penalty under section 271D it is not enough for the assessee to show that the transaction of taking loan/ deposit by cash is genuine or bona fide. It is also to be shown that there was reasonable cause under section 273B for the assessee being unable to take the loan/deposit by account payee cheque or account payee bank draft.

The assessee, a private limited company, during the assessment year 2008-09 has received loans in cash from its directors in order to meet the expenses relating to payment of custom duty, freight etc towards import of furniture. Since, these transactions of loans were found to be bona-fide in nature, no additions were made in the assessment order.

However, since these loans were received in cash which was in violation of section 269SS of the Income tax Act and therefore, penalty under section 271D was imposed on the assessee.

As per Section 269SS of the Income-tax Act, any loan or deposit shall only be received by way of account payee cheque or account payee bank draft or use of electronic clearing system, failing which the penalty provisions under section 271D shall be attracted.

Before the Tax Tribunal, the main issue for consideration was whether the penalty under section 271D should be levied for violation of section 269SS where the transaction of accepting loans is found to be bonafide.

The Hon'ble Tax Tribunal has held that there is no dispute that bonafide nature of transactions alone would not be sufficient to escape the clutches of section 271D of the Income-tax Act. As per the decision rendered by Hon'ble Supreme Court in the case of *Kum. A.B. Shanthi 225 ITR 258*, it is required to be established that there was some bonafide reasons for the assessee for not taking or accepting loan or deposit by account payee cheque or account payee bank draft, so that the provisions of section 273B of the Income-tax Act will come to the help of the assessee. Only in such cases, the AO is precluded from levying penalty under section 271D of the Income-tax Act.

The assessee, in the instant case, has failed to show that there was a reasonable cause for obtaining loans in violation of provisions of section 269SS and also failed to demonstrate that it was not in urgent needs of funds.

In view of the above, the Tax Tribunal held that the CIT(A) was justified in confirming the penalty under section 271D of the Act.

(Contributed by: Deepak Sharma)

INDIRECT TAX

GOODS AND SERVICES TAX (GST)

- Vide Notification No. 14/2018-Integrated Tax (Rate) dated 26th July 2018, hotel industry has been given a major relief by providing that the rate of tax on accommodation service shall be based on transaction value instead of declared tariff.
- Vide Notification No. 14/2018- Integrated Tax (Rate) dated 26th July 2018, entry relating to composite supply of food and drinks in restaurant, mess, canteen, eating joints and such supplies to institutions (educational, office, factory, hospital) on contractual basis has been Rationalize and taxable at the rate of 5%. Further, it has been clarified that scope of outdoor catering defined under entry 7(v) is restricted to supplies in case of outdoor/indoor functions that are event based and occasional in nature.
- Vide Notification No. 15/2018- Integrated Tax (Rate) dated 26th July, 2018, Services provided by an unincorporated body or a non-profit entity registered under any law for the time being in force, engaged in promotion of trade, commerce, industry, agriculture, art, science, literature, culture, sports, education, social welfare, charitable activities and protection of environment, to its own members against consideration in the form of membership fee up to an amount of one thousand rupees (Rs 1000/-) per member per year shall be liable to GST at NIL rate of Tax.
- In order to reduce compliance cost, it has been decided that Registered persons would not be liable to pay GST under Reverse charge basis, on purchases/inward supplies received from an unregistered supplier. Reverse charge mechanism on account of supplies received from Unregistered suppliers would be suspended till 30.09.2019. (Vide Notification No. 22/2018-Central Tax (Rate) dated 26th July, 2018, Suspension/Deferment of Reverse Charge Mechanism (on account of procurements from Un-registered suppliers) has been extended from 30th September, 2018 to 30th September, 2019)
- Amendments in Goods & Services Tax Rates: Tax rate change in case of number of goods and services have been proposed by the GST Council, some relevant of which are encapsulated as under:

Services: The GST Council has made numerous decisions relating to changes in GST rates and clarification on levy of GST on services.

Some of the important recommendations relating to Changes in GST rates and Newly Inserted are as follows:

Services	Old Rate	New Rate	Condition
(i) Supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied, other than those located in the premises of hotels, inns, guest houses,	18	5	Provided that credit of input tax charged on goods and services used in supplying

<p>clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of any unit of accommodation of seven thousand five hundred rupees and above per unit per day or equivalent.</p> <p>Explanation 1.- This item includes such supply at a canteen, mess, cafeteria or dining space of an institution such as a school, college, hospital, industrial unit, office, by such institution or by any other person based on a contractual arrangement with such institution for such supply, provided that such supply is not event based or occasional.</p> <p>Explanation 2.- "Declared tariff" includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit.</p>			<p>the service has not been taken</p>
<p>(ia) Supply, of goods, being food or any other article for human consumption or any drink, by the Indian Railways or Indian Railways Catering and Tourism Corporation Ltd. or their licensees, whether in trains or at platforms.</p>	<p>18</p>	<p>5</p>	

Other points of Consideration

- Exemption of GST on import of services by Foreign Diplomatic Missions/ UN & other International Organisations based on reciprocity;
- The words "declared tariff" wherever they occur, the words "value of supply" shall be substituted;
- Services provided by Individual Direct Selling Agent (DSAs), other than by a company, partnership firm or LLP, to a Banking Company or NBFC located in Taxable Territory is to be covered under Reverse Charge Mechanism (RCM) and Banking Company/NBCC shall be liable to discharge GST on reverse Charge Basis;
- Services provided by a Municipality under Article 243W not to be treated as Goods or Services under GST Laws;

New Simplified Return Format

- CBIC released a Draft format of Monthly and Quarterly Simplified GST returns. This brief note lists the salient features of the new GST return format and business process for the information of trade and industry and other stakeholders.

Government also offer to General public to leave comment or give suggestions on such new format of return.

The above stated amendments have been made effective from July 27, 2018 vide various Notifications issued by the Government.

(Contributed by: Karan Chandna)

GST @ One year of Implementation

Government of India, on July 1, 2017 launched Goods and Services Tax (GST), to bring in a unified and simplified indirect tax system in the country along the lines of "One Nation-One Tax-One Market". Acclaimed as the biggest tax reform since independence, GST has completed one year of its implementation on 30th June 2018.

Like any change, GST too had its share of difficulties and disapprovals at various stages of its implementation. Business houses faced a lot of issues while transitioning from earlier tax regime to the GST regime due to unfamiliarity with new tax regime which marked a shift from 'origin-based taxation' to 'consumption-based taxation'. GST brought in a fundamental shift in the way business transactions are taxed and business are managed.

GST compliance mechanism (like registration, returns filing, tax payments, etc.) is completely IT driven with minimal manual intervention with the GST authorities. Initially, taxpayers faced a lot of challenges in filing their GST returns, mainly due to unfamiliarity with the IT systems coupled with IT-related glitches on the part of GST Portal. Nonetheless, taking due cognizance of the problems being faced by people, the Government acted swiftly to remove most of the IT related glitches and eased off the compliance procedure by bringing in necessary changes in the law. It would be correct to state that single integrated IT system for all India compliances has substantially reduced the compliance time and cost for all assesses. Also, in its meeting held on 21st July 2018, the GST council has proposed a much-simplified return filing process as compared to the present system for both large taxpayers as well as small taxpayers. The new proposed procedure would reduce the number of returns required to be filed by large taxpayers on monthly basis and has also recommended quarterly filing for small taxpayers having turnover below INR 5 crores.

Introduction of one common E-waybill for transportation of goods 'From' and 'To' anywhere in India, proved to be a monumental shift from the earlier State specific road permits/ waybills/ check posts regime to hassle free movement of the goods throughout the country. Though the introduction of GST E-waybill was not smooth considering the IT glitches of GST Portal which resulted in deferment of implementation of E-waybill provisions from time to time, however, nationwide E-waybill provisions were introduced mandatorily w.e.f. 1st April 2018 for all inter-state movement of goods and as regards intra-State movement of goods, E-waybill was introduced in a phased manner, last being NCT of Delhi where it was introduced w.e.f. 16th June 2018.

The Government has been sufficiently proactive in addressing the difficulties faced by the taxpayers by providing 24*7 GST Helpdesk assistance and "Grievances Redressal Portal" for GST (a self-service portal to address the difficulties faced by taxpayers owing to technical glitches on the GST portal). Government, from time to time, has issued Press Releases, Clarificatory Circulars and notifications to guide the taxpayers and the field formations/officers of CBIC.

Government has organized special fortnight campaigns for speeding up the process of refund on exports. To further reduce the compliance challenges, Government has taken a lot of positive initiatives like deferment of Tax Collection at Source provisions for E-commerce entities and Reverse Charge provisions on purchase from unregistered suppliers, allowing quarterly return filing for certain category of Taxpayers, increasing the Turnover limit for opting composition scheme by taxpayers etc.

Since the introduction of GST on 1 July 2017, Government has rationalized the tax rates on various goods & services in the GST council meetings held from time to time. As a result, most of the goods

which were initially taxed at 28%, have been moved to 12% / 18% tax bracket with less than 40 to 50 goods remaining in the highest tax bracket of 28%. Taking note of increase in tax collections and tax base, Government has assured that the process of tax rate rationalization would continue. This step has sent a positive signal across the industry and common people that the Government is committed towards its objective of reducing the overall tax burden.

Most of the countries which have implemented single tax regime have faced rise in inflation. It is indeed commendable that the Indian Government has kept inflation in check despite implementation of GST.

To sum up, one can say that GST law is constantly evolving and considering that India is a federal structure, Government of India has made splendid efforts in bringing all the State Governments and the Central Government on one common platform to discuss and come up with the appropriate resolutions. It would be worthwhile to mention here that since the advent of GST, total 27 GST Council meetings have been held during the first year of implementation of GST and all the decisions have been taken by unanimity. It would be appropriate to say that with the Government's commitment to resolve the problems faced by the Taxpayers at large, GST law is on right path to be a Simple and Rational Tax regime.

(Contributed by: Shashank Goel)

The Securities and Exchange Board of India (SEBI)

I. SEBI announces mandatory dematerialization for transfer of securities of listed companies w.e.f. December 5, 2018

The Securities and Exchange Board of India (SEBI) has recently amended relevant provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, to disallow listed companies from accepting requests for transfer of securities which are held in physical form with effect from December 5, 2018. Post December 5, 2018, except in case of transmission or transposition of securities, requests for effecting transfer of securities shall not be processed, unless the securities are held in the dematerialized form with a depository.

This amendment aims to curb fraud and manipulation risk in physical transfer of securities by unscrupulous persons. Further, securities of listed companies being held in dematerialized form would provide greater convenience and safety of transactions for investors.

II. SEBI discontinues Sub-Broker as market intermediary category w.e.f. April 1, 2019

With effect from April 1, 2019, SEBI has notified discontinuation of 'Sub-Broker' as a registered market intermediary category. Further, the already registered Sub-Brokers have been granted time until March 31, 2019, to migrate to act as an Authorized Person and/or Trading Member. The Sub-Brokers who do not choose to migrate into Authorized Person and/or Trading Member, shall be deemed to have surrendered their registration with SEBI as a Sub-Broker with effect from March 31, 2019. SEBI has directed the stock exchanges to put in place an appropriate process for surrender or migration of Sub-Broker to Authorized Person/ Trading Member.

(Contributed by: Surbhi Vig Anand/Suhani Mathur)

IMPORTANT DATES TO REMEMBER

Particulars	Date
Deposit of TDS for the month of August, 2018	September 7, 2018
Date of deposit of GST and filing of GSTR-3B for the month of August, 2018	September 20, 2018
Filing of GSTR 1 in the month of August 2018	September 10, 2018

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