

# KrayMan

*Demystifying Complexities*



## **TAX EDGE**

Monthly Tax & Regulatory Updates

March 2018

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# Goods & Services Tax

## **Recommendation made in GST 26th Council Meeting**

The GST Council in its 26th Meeting on 10th March, 2018 held at New Delhi recommended significant facilitative changes in order to provide relief to the taxpayers including the exporters.

Some of the major announcements include extension of tax exemptions on exports for six months, e-way bill for inter-state movement of goods to be rolled out from 1st April, 2018, liability to pay tax on reverse charge basis deferred till 30th June, 2018 and continuation of current system of filing GST returns for further three months i.e. April to June, 2018.

Please [Click Here](#) to read our newsletter on the topic

## **Taxable services provided by the members of the Joint venture (JV) to the JV and vice versa and inter se between the members of the JV**

The Central Government clarified that levy of GST on services supplied by member of an unincorporated Joint venture to joint venture or other members of joint venture or by joint venture to members will be determined as per circular no. 179/5/2014 of ST dated 29th April, 2014 .The circular clarified that cash calls, sometimes, could be in the nature of advance payments made by members towards taxable services received from JV; and that payments made out of cash calls pooled by a JV towards taxable services received from a member or a third party is in the nature of consideration and hence attracts Service Tax.

Please [Click Here](#) to read circular

## Clarifications regarding GST in respect of certain services

The Central Government has clarified certain issues regarding classification as goods or service which are as follows:

Sr. No.	Issue	Clarification
1.	Whether activity of bus body building, is a supply of goods or services?	Classification of this composite supply as goods or service would depend on which supply is the principal supply which may be determined on the basis of facts and circumstances of each case.
2.	Whether retreading of tyres is a supply of goods or services?	<p>Retreading of tyres is a composite supply, the predominant element is the process of retreading which is a supply of service. Rubber used for retreading is an ancillary supply. Which part of a composite supply is the principal supply, must be determined keeping in view the nature of the supply involved. Value may be one of the guiding factors in this determination, but not the sole factor.</p> <p>The primary question that should be asked is what is the essential nature of the composite supply and which element of the supply imparts that essential nature to the composite supply. Supply of retreaded tyres, where the old tyres belong to the supplier of retreaded tyres, is a supply of goods (retreaded tyres under heading 4012 of the Customs Tariff attracting GST @ 28%)</p>

Sr. No.	Issue	Clarification
3.	Whether Priority Sector Lending Certificates (PSLCs) are outside the purview of GST and therefore not taxable?	<p>In Reserve Bank of India FAQ on PSLC, it has been mentioned that PSLC may be construed to be in the nature of goods, dealing in which has been notified as a permissible activity under section 6(1) of the Banking Regulation Act, 1949 vide Government of India notification dated 4th February, 2016. PSLC are not securities. PSLC are akin to freely trade able duty scrips, Renewable Energy Certificates, REP license or replenishment license, which attracted VAT.</p> <p>In GST there is no exemption to trading in PSLCs. Thus, PSLCs are taxable as goods at standard rate of 18% under the residuary S. No. 453 of Schedule III of notification No. 1/2017-Central Tax(Rate). GST payable on the certificates would be available as ITC to the bank buying the certificates.</p>



Sr. No.	Issue	Clarification
4.	Whether the activities carried by DISCOMS against recovery of charges from consumers under State Electricity Act are exempt from GST?	<p>1) Service by way of transmission or distribution of electricity by an electricity transmission or distribution utility is exempt from GST under notification No. 12/2017.</p> <p>The other services such as, -</p> <ol style="list-style-type: none"> <li>i. Application fee for releasing connection of electricity;</li> <li>ii. Rental Charges against metering equipment;</li> <li>iii. Testing fee for meters/ transformers, capacitors etc.;</li> <li>iv. Labour charges from customers for shifting of meters or shifting of service lines;</li> <li>v. charges for duplicate bill; provided by DISCOMS to consumer are taxable.</li> </ol>
	Whether the guarantee provided by State Government to state owned companies against guarantee commission, is taxable under GST?	<p>2) The service provided by Central Government/State Government to any business entity including PSUs by way of guaranteeing the loans taken by them from financial institutions against consideration in any form including Guarantee Commission is taxable.</p>

## **Facility to provide details of amendment, in Form GSTR 4, has now been provided to composition taxpayers**

Composition taxpayers can now file amendment details of advance of reverse charge or advances for which invoice is received in current period in various tables of Form GSTR 4 , such as table 5A (for supply) , Table 5C (for debit/credit notes) , Table 7 (for tax on outward supply made ) and Table 8(II).

## **Non-transition of CENVAT credit in certain cases**

The Central Government has clarified that transition of CENVAT credit is not admissible in following cases:

- **Non-utilization of Disputed credit carried forward**

CENVAT credit pertaining to which a show cause notice was issued CENVAT credit Rules, 2004 ,which has been adjudicated and where in the last adjudication order or the last order-in-appeal, as it existed on 1st July, 2017, it was held that such credit is not admissible, then such CENVAT credit is not admissible and shall not be utilized by a registered taxable person to discharge his tax liability under this Act or under the IGST Act, 2017, till the order-in-original or the last order-in-appeal, as the case may be, holding that disputed credit as inadmissible is in existence.

If such disputed credit is utilised, it shall be recovered from the tax payer, with interest and penalty as per the provisions of the Act.

- **Non-transition of Blocked Credit**

CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day which is not eligible under the Act in terms of sub-section (5) of section 17 such as telecommunication towers and pipelines laid outside the factory premises. If blocked credit is carried forward and credited to the electronic credit ledger in contravention of CGST Act / IGST Act, it shall not be utilized by a registered taxable person to discharge his tax liability under this Act or under the IGST Act, 2017, and shall be recovered from the tax payer with interest and penalty as per the provisions of the Act.

In cases, where the disputed credit or blocked credit is higher than Rs. 10 lakhs, the taxpayers shall submit an undertaking to the jurisdictional officer of the Central Government that such credit shall not be utilized or has not been availed as transitional credit, as the case may be.



## **Refund of IGST on Export**

The Central Government has clarified the pre-requisites and precautions that need to be taken for successful processing of refund claims which are as follows:

1. Exporters have to file GSTR 3B with taxable value for export and IGST paid against exports indicated in appropriate fields.
2. Exporters have to file GSTR 1 or Table 6A for the exports made with correct details such as Invoice number, Taxable value, IGST paid, Shipping Bill number, Shipping Date and Port Code.
3. The aggregate IGST paid amount claimed in GSTR 1 or Table 6A should not be greater than the IGST paid amount indicated in Table 3.1(b) of GSTR 3B of the corresponding month. This check is put in the GSTN system to ensure that the refund claimed is not more than the IGST paid by the exporter.
4. Exporters may be advised to use Table 9 of GSTR 1 of the following month to amend the records of previous month so as to take care of issues mentioned in para 2 and 3 above. In cases where exporters have already filed information through Table 9 of GSTR 1, the said information is being validated by GSTN.
5. Exporters may be advised to track the refund status and errors pertaining to their shipping bills on the Indian Customs EDI Gateway (ICEGATE) website. The registration process demo, advisory and the needed IT configurations are hosted on the ICEGATE website under the following links.

6. Further, it has been decided to provide an alternative mechanism to give exporters an opportunity to rectify such errors committed in the initial stages. This envisages an officer interface on the Customs EDI System through which a Customs officer can verify the information furnished in GSTN and Customs EDI system and sanction refund in those cases where invoice details provided in GSTR 1/ Table 6A are correct though the said details provided in the shipping bill were at variance. It is pertinent to mention that refund claims would be processed only in those cases where the error code is mentioned as SB005. Further, it may also be noted that all refunds shall continue to be credited electronically through the PFMS system, and no manual payment / cheque will be issued. The procedure for processing of IGST refund claims in these cases would be as follows:
  - a) The exporter shall provide a concordance table indicating mapping between GST invoices and corresponding Shipping Bill (SB) invoices, as annexed in support of the refund claim to the designated officer in the Custom house. A scanned copy of concordance table may also be sent to dedicated email address of Customs location from where exports took place.
  - b) Customs EDI system shall display list of all the invoices pertaining to such SBs vis-a-vis the invoice data received from GSTN. The officer shall verify the following:
    - I. Duly certified concordance table submitted by the exporter as per Annexure A indicating mapping between GST invoice and corresponding Shipping Bill invoice;
    - II. IGST taxable value and IGST amount declared in the Shipping Bill.
    - III. IGST details declared in the Shipping Bill should be in proportion to the goods actually exported.
  - c) After determining the correct refund amount, the officer needs to enter the same into the Customs EDI system. The officer has the facility to edit the IGST paid details in case of short shipment or incorrect calculation by the exporter. The officer shall complete the verification by accepting or rejecting or amending the same.
    - I. Once all the invoices pertaining to Shipping Bill are verified by the officer, the system shall calculate the scroll amount against a shipping bill, after subtracting the drawback amount for each invoice where applicable, and display the refund amount to the officer for approval.
    - II. Invoices in any particular GSTR 1 where refund is sanctioned shall be disabled in the system to prevent refund against same invoice in future.
    - III. Once refund is sanctioned by the officer, the shipping bills would be available for generating scroll as per normal process.

In order to ensure smooth operation of the prescribed procedure, Custom Houses may open a dedicated cell and e-mail address for the purpose of IGST refund

Please [Click Here](#) to read circular.



# Direct Tax

## **Direct Tax collections for F.Y. 2017-2018 show growth of 19.5% up to February, 2018**

The provisional figures of Direct Tax collections up to February, 2018 show that net collections are at Rs.7.44 lakh crore which is 19.5% higher than the net collections for the corresponding period of last year. The net Direct Tax collections represent 74.3% of the Revised Estimates of Direct Taxes for F.Y. 2017-18 (Rs. 10.05 lakh crore). Gross collections (before adjusting for refunds) have increased by 14.5% to Rs.8.83 lakh crore during April 2017 to February 2018. Refunds amounting to Rs.1.39 lakh crore have been issued during April 2017 to February 2018. The growth rate for net collections for Corporate Income Tax is 19.7% and for Personal Income Tax is 18.6%.

Please [Click Here](#) to read the Press Release.

## **E-Assessment: Central Board of Direct Taxes (CBDT) Notifies Centralized Communication Scheme, 2018**

CBDT has notified a new centralized communication scheme for serving e-notices to income taxpayers in order to introduce, maintain and run paperless system of interface between the department and the assessee.

The Centralized Communication Scheme 2018 contains provisions for the electronic issuance of notices to taxpayers and prescribes the format in which the information and documents have to be furnished.

The notices to taxpayers will be issued by the centralized communication center under Section 133C of the Income-tax Act, 1961 through email or by placing a copy in the registered account on the portal, followed by an intimation through short messaging service (SMS).

Please [Click Here](#) to read the Notification.

## **Finance Bill 2018 passed in Parliament of India**

Central Government of India got the Budget for fiscal year beginning 1st April, 2018 passed in Lok Sabha (Lower House of Parliament) on 14th March, 2018. Finance Minister of India moved the Finance Bill 2018, which contains taxation proposals of his fifth and final budget tabled on 1st February 2018, as well as the appropriation bill that details spendings in various departments.

## Highlights of the Amendment in the Finance Bill 2018 at enactment stage

- **Significant Economic Presence(SEP):**

Concept of “Significant Economic Presence” (SEP) was introduced, in Finance Bill tabled on 1st Feb, 2018 which states that the transactions or activities shall constitute SEP in India, whether or not the non-resident has a residence or place of business in India or renders services in India.

The amendment at the enactment stage further provides that transactions or activities shall constitute SEP in India, whether or not the agreement for such transaction or activities is entered into in India.

- **Liberalization of conditions for availing tax holiday for Start-ups:**

Turnover cap of INR 25 crore for an eligible start-up to claim profit-linked tax holiday deduction shall apply only to the tax year for which deduction is claimed. The amendment at the enactment stage removes the anomaly by providing that turnover cap shall apply only to the year for which deduction is claimed, such that breach in a particular year shall not disqualify the taxpayer for other years.

- **Conversion of Inventory into Capital Asset**

For the purpose of calculating the Depreciation allowance in relation to Capital asset referred in section 28(via)[i.e. Inventory converted into capital asset], Fair Market Value on the date of conversion of stock- in- trade into Capital Asset shall be the actual cost.

- **Valuation of securities held by Bank or RBI:**

The securities held by a scheduled bank or public financial institution shall be valued in accordance with the Income Computation and Disclosure Standards (ICDS) notified under Section 145 after taking into account the extant guidelines issued by the Reserve Bank of India (RBI).

- **Obligation of obtaining Permanent Account Number (PAN) for non-individual entities and related individuals entering into a financial transaction:**

The Finance Bill tabled on 1st February, 2018 proposed amendment to Section 139A to provide that every person not being an individual, which enters into a financial transaction of an amount aggregating to two lakh fifty thousand rupees or more in a financial year and who has not been allotted a PAN shall within such time as may be prescribed apply to Assessing Officer (AO) for the allotment of a PAN.

At the enactment stage the scope of this provision is restricted to only non-individual resident persons.

- **Insertion of new Proviso to Section 48:**

The Third proviso has been inserted into section 48 to provide that the indexation benefit and benefit of exchange rate to be adopted for reconverting gains into Indian currency shall not be applicable to capital gains arising from the transfer of equity share or equity oriented mutual fund or unit of a business trust referred in newly inserted section 112A.

- **Withdrawal of Section 54EC exemption if the bonds are redeemed within 5 years:**

Lock-in period for investment in specified bonds for claiming exemption from LTCG arising from land or building or both extended from three years to five years.

- **Taxation of Long Term Capital Gain (LTCG):**

In the era of new LTCG Taxation regime, the Finance Bill tabled on 1st February, 2018 provided for computation of the 'Fair market value' in case of shares which were listed on 31st January, 2018. It is now proposed to provide for the determination of a 'fair market value' in case where shares were not listed as on 31st January 2018 but are listed on the date of transfer and which become the property of the taxpayer in consideration of share which is not listed on such exchange as on the 31st January, 2018 by way of transaction not regarded as transfer under Section 47 of the Act.

In the aforesaid case, the taxpayer will be allowed to consider the benefit of indexation of cost of acquisition of such unlisted equity shares for the purpose of determination of capital gains under Section 112A.

- **Fund of Funds:**

- ✓ Units of equity-oriented funds investing in other equity-oriented funds (fund of funds) shall turn long-term if held for a period exceeding 12 months.
- ✓ Due date for filing Country-by-Country (CbC) report by an Indian constituent entity, where the non-resident parent entity has no obligation to file CbC report in the home jurisdiction shall be prescribed.



# International Taxation

## **India and Hong Kong sign Double Taxation Avoidance Agreement (DTAA)**

India and the Hong Kong Special Administrative Region (HKSAR) of China signed a DTAA on 19th March, 2018, after agreeing to a framework in November, last year. The India-Hong Kong DTAA holds important tax implications for international businesses operating in both countries. It will also benefit trading companies that do not have a permanent presence in India but service to an India-based entity.

Please [Click Here](#) to read the Press Release.

## **CBDT signs 7 more unilateral Advance Pricing Agreements (APAs) with taxpayers**

CBDT entered into seven more APAs in February 2018 as it looks to reduce litigation by providing certainty in transfer pricing. The Finance Ministry in a statement said that all are unilateral APAs and pertain to pharmaceuticals, automobiles, financial and food & beverages sector. The international transactions covered in these agreements include manufacturing; provision of software development services, provision of IT enabled services, payment of royalty, provision of contract R&D services and provision of marketing support services. With this, the Indian Government has crossed the important milestone of having signed 200 APAs.

Please [Click Here](#) to read the Press Release.







# Company Law

## **Government exempts companies engaged in defence production from segment reporting**

The Government, through a notification dated 23rd February, 2018, exempted companies engaged in defence production from segment reporting under relevant Accounting Standards.

Please [click here](#) for the notification

## **Companies (Accounts) Amendment Rules, 2018 notified on 27th February, 2018**

Government notified Companies (Accounts) Amendment Rules, 2018 on 27th February, 2018. A new form AOC- 3A has been introduced by the said Amendment rules. Companies, which are required to comply with Indian Accounting Standards Rules, 2015, shall forward their statements in Form AOC-3A.

Please [click here](#) for the notification





# Securities and Exchange Board of India (SEBI)

## **Clarification issued to Investor Grievance Redressal System and Arbitration Mechanism**

SEBI vide circular dated 11th July 2017, had issued guidelines covering broad areas of Investor Grievance Redressal System and Arbitration Mechanism. On several representations received by SEBI, following clarifications were issued:-

1. The National Commodity Derivatives Exchanges (NCDEs) shall provide training of at least 1 day to every arbitrator each year.
2. With regard to speeding up grievance redressal mechanism, it is clarified that in order to discourage delayed filing by members, the additional fees payable by members who file their claim beyond the prescribed time-lines shall be non-refundable even if the arbitration award goes in favor of the member.

Please [click here](#) for the notification





# Foreign Exchange Regulations (FEMA)

## **Discontinuance of Letters of Undertaking (LoUs) and Letters of Comfort (LoCs) for Trade Credits**

Master Direction No.5 dated 1st January 2016 on 'External Commercial Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency by Authorised Dealers and Persons other than Authorised Dealers' (Master Direction), permitted the issuance of LoUs/ LoCs/ guarantees for Trade Credits for imports into India under delegated powers of AD banks.

On a review of the extant guidelines, it has been decided to discontinue the practice of issuance of LoUs/ LoCs for Trade Credits for imports into India by AD Category –I banks with immediate effect. Letters of Credit and Bank Guarantees for Trade Credits for imports into India may continue to be issued subject to compliance with the provisions contained in Department of Banking Regulations on “Guarantees and Co-acceptances”.

Please [click here](#) for the notification.



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- **TiE Delhi** - world's largest entrepreneurial organization with 62 chapters in 18 countries

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