

# KrayMan™

*Demystifying Complexities*

## TAX EDGE

Monthly Tax & Regulatory Updates



*Audit*



*Tax*



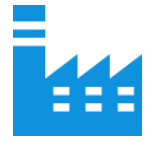
*Regulatory*

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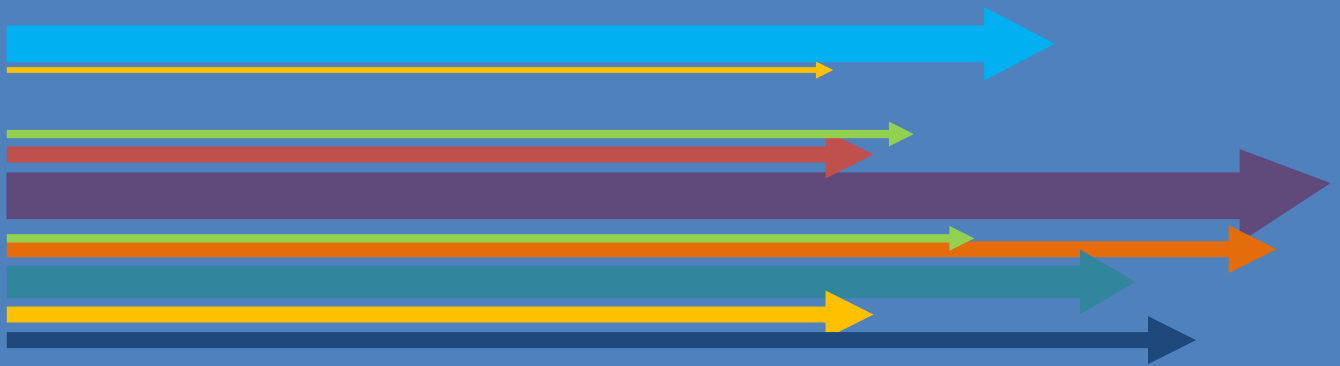


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# Goods & Services Tax (GST)



# Goods & Services Tax

The GST Council in its 33rd Meeting at New Delhi on 24th February, 2019 made recommendations to address the concerns of real estate sector regarding low off-take of under-construction houses.

## Key Recommendations of the 33rd GST Council Meeting

### **GST Rates effective from 1st of April, 2019:**

- GST @ 1% without Input Tax Credit (ITC) on affordable housing properties
- GST @ 5% without ITC on other residential properties (i.e. outside affordable segment);

Affordable housing for the aforesaid rates means a residential house having value upto Rs. 45 lacs of carpet area:

- upto 90 sqm in non-metropolitan cities / towns; and
- 60 sqm in metropolitan cities (i.e. Bengaluru, Chennai, National Capital Region (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai Metropolitan Region)

The new tax rate in principle was approved by the GST Council taking into consideration the following advantages:-

- Homebuyers gets a fair price;
- Interest of the homebuyer / consumer should get protected since passing of ITC benefits will not be an issue anymore;
- Better pricing anticipated as unutilized ITC, which used to become cost at the end of the project, gets removed; and
- Ease in tax structure and tax compliance for the builders

### **GST exemption on Transferable Development Rights (TDR) / Joint Development Agreement (JDA), Long Term Lease (premium), Floor Space Index (FSI):**

Intermediate tax on the above development rights (i.e. TDR, JDA, lease premium, FSI) shall be exempted only for such residential property on which GST is payable. Details of the scheme shall be worked out by an officers committee and shall be approved by the GST Council.

The above recommendation attempts to resolve the cash flow issues of the real estate sector.

The requisite Notifications / Circulars for implementing the above recommendations of the GST Council shall be issued shortly.

### **GST rate on lottery**

GST Council decided that the issue of tax rate on lottery needs further discussion in the Group of Ministers constituted in this regard.

Please [Click Here](#) to read Press Release on the recommendations of the GST Council

# Goods & Services Tax

## GST Amendment Act, 2018 applicable from 1 February, 2019

The Central Government has provided that the provisions of the Central GST ('CGST') (Amendment) Act, 2018 (31 of 2018), except the following section shall be applicable from 1st February, 2019.

Sections	Amendment relating to
<b>8(b), 17, 18, 20(a)</b>	New return filing system
<b>28(b)(i), 28(c)(i)</b>	Transitional provisions

Please [Click Here](#) to read notification dated 29 January, 2019.

## Extension of time limit for filing GST returns in Forms GSTR-7 and GSTR-3B

Due dates for filing GST returns have been extended as below:

Returns	Tax Period	Due Dates
<b>GSTR-7 (TDS Return)</b>	October, 2018 to January, 2019	28 February, 2019
<b>GSTR-3B (Monthly summary return)</b>	<b>January, 2019</b>	22 February, 2019 (for states other than Jammu & Kashmir)
		28 February, 2019 (for Jammu & Kashmir)

Please [Click Here](#) to read notification dated 31 January, 2019 for GSTR-7 from October-December, 2018.

Please [Click Here](#) to read notification dated 8 February, 2019 for GSTR-7 for January, 2019

Please [Click Here](#) to read notification dated 20 February, 2019 for GSTR-3B for January, 2019

# Goods & Services Tax

## Notification to exempt tax on goods / services received from unregistered person withdrawn

The Central Government has withdrawn the notifications which exempts intra-State supplies received by a registered person from unregistered supplier from the GST chargeable thereon. Therefore, from 1 February 2019 onwards, such transaction has become taxable in the hands of recipient.

However, as per CGST Amendment Act, 2018, Government by notification will specify a class of registered persons who shall pay the tax on reverse charge basis in respect of supply of specified categories received from an unregistered supplier. However, no notification in this regard has been issued yet, therefore, no tax is chargeable on such transactions till any notification specifying the categories of such supply comes into force.

Please [Click Here](#) to read Notification No. 1 dated 29th January, 2019 for CGST.

Please [Click Here](#) to read Notification No. 1 dated 29th January, 2019 for IGST.

## Mentioning details of inter-state supplies made to unregistered persons in Table 3.2 of Form GSTR-3B and Table 7B of Form GSTR-1

### Background:

A registered supplier is required to mention the details of inter-state supplies made to unregistered persons, composition taxable persons and UIN holders in Table 3.2 of Form *GSTR-3B*. Further, the details of all inter-state supplies made to unregistered persons where the invoice value is up to Rs 2.5 lakh (rate-wise) are required to be reported in Table 7B of Form *GSTR-1*.

It has been brought to the notice of Central Board of Indirect Taxes & Customs ('CBIC') that a number of registered persons have not reported the details of inter-state supplies made to unregistered persons in Table 3.2 of Form *GSTR-3B*. Instead, the said details have been mentioned in Table 7B of Form *GSTR-1*.

### Clarification by CBIC regarding reporting of inter-state supplies by registered persons to unregistered persons:

- Apportionment of IGST collected on inter–state supplies made to unregistered persons in the state where such supply takes place is based on the information reported in Table 3.2 of Form *GSTR-3B* by the registered person. As such, non-mentioning of the said information results in:
  - I. non-apportionment of the due amount of IGST to the State where such supply takes place; and
  - II. a mismatch in the quantum of goods or services or both actually supplied in a State and the amount of integrated tax apportioned between the Centre and that State, and consequent non-compliance of section 17(2) of the Integrated Goods and Services Tax Act, 2017.
- Accordingly, CBIC has instructed that the registered persons making inter-state supplies to unregistered persons shall report the details of such supplies along with the place of supply in Table 3.2 of Form *GSTR-3B* and Table 7B of Form *GSTR-1* as mandated by the law. Contravention of the Act or rules attracts penal action under section 125 of the CGST Act (general penalty upto Rs.25,000).

Please [Click Here](#) to read circular dated 18 February, 2019.

# Goods & Services Tax

## **Compliance of Rule 46(n) of CGST Rules, 2017 while issue of invoices in case of inter- state supply (i.e, mention of place of supply)**

A registered person supplying taxable goods / services / both is required to issue a tax invoice as per section 31 of CGST Act, 2017. Rule 46 of the CGST Rules specifies the details which are required to be mentioned in a tax invoice.

Given that a number of registered persons (especially in the banking, insurance and telecom sectors, etc.) are not mentioning the place of supply along with state in case of inter-state supply in contravention of rule 46(n) of the CGST Rules, the CBIC has issued the following clarification / instruction:

- After introduction of GST, which is a destination-based consumption tax, it is essential to ensure that the tax paid by a registered person accrues to the State in which the consumption of goods / services / both takes place. In case of inter-State supply of goods / services / both, this is ensured by capturing the details of the place of supply along with the name of the State in the tax invoice.
- It has been therefore, instructed by CBIC that all registered persons making inter-state supply of goods / services / both shall specify the place of supply along with State in the tax invoice. The provisions of sections 10 and 12 of the IGST Act, 2017 may be referred to in order to determine the place of supply in case of supply of goods and services respectively.
- Contravention of any of the provisions of the Act or the rules made there under attracts penal action under the provisions of sections 122 (penalty for certain offences) or 125 (general penalty) of the CGST Act.

Please [Click Here](#) to read the circular dated 18 February, 2019.

## **Clarification regarding tax payment made for supply of warehoused goods while being deposited in a customs bonded warehouse for the period July, 2017 to March, 2018**

### Background:

Vide Circular No. 3/1/2018-IGST dated 25 May 2018, the Government had clarified applicability of integrated tax on goods transferred/sold while being deposited in a warehouse ('warehoused goods'), declaring that from 1 April, 2018 the supply of warehoused goods before their clearance from the warehouse would not be subject to the levy of integrated tax.

As per CBIC, it has been brought to notice that during the period from 1 July, 2017 to 31 March, 2018, the common portal did not have the facility to enable the taxpayer to report payment of integrated tax, in the details required to be submitted in Form GSTR-1, for such supplies especially where the supplier and the recipient were located in the same State or Union territory.

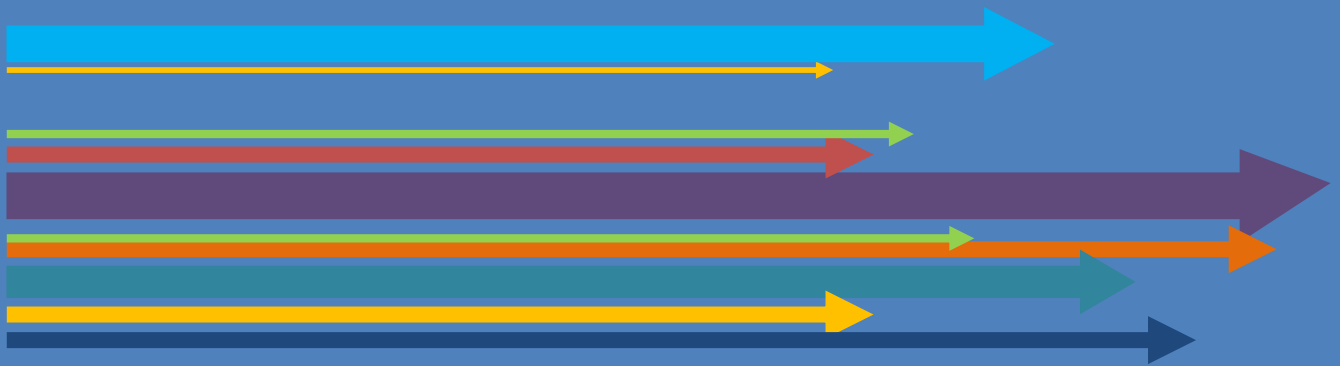
Hence taxpayers making such supplies have reported such supplies as intra-State supplies and discharged central tax and state tax instead of integrated tax accordingly. Now, representations have been received by CBIC from the industry to clarify the same.

### Clarification issued by CBIC:

Considering the practical challenge faced by the industry, as a one-time exception, suppliers who have paid central tax and state tax on such supplies, during the said period, would be considered to have complied with law as far as payment of tax on such supplies is concerned, provided that the amount of tax paid as central tax and state tax is equal to the due amount of integrated tax on such supplies.

Please [Click Here](#) to read circular dated 18 February, 2019.

# Customs





# Customs

## Procedure to be followed in cases of manufacturing or other operations undertaken in bonded warehouses under section 65 of the Customs Act

### Background:

Representations have been received by CBIC from the industry with regard to Circular 38/2018 dated 18 October, 2018 issued on the subject, stating that they were until now permitted to undertake certain operations to fulfil a statutory obligation such as labelling / affixing RSP, etc. u/s 65 of the Customs Act, 1962 in a public bonded warehouse, licensed u/s 57 of the Act. However, the said circular has clarified that those operations u/s 65 should be undertaken in private bonded warehouses licensed u/s 58 of the Act thereby disallowing such operations in a public bonded warehouse. Industry has requested for relief in this regard.

### Operations such as labelling / fixing RSP, etc. now allowed in customs bonded warehouse without requirement of taking permission u/s 65 of Customs Act

On the ground of convenience, economies of scale, reducing transaction cost and past practices, CBIC has now allowed labelling / fixing RSP etc. to fulfill statutory compliance requirements in all customs bonded warehouse without the requirement of taking permission u/s 65 of Customs Act. Circular 38/2018 stands modified to the said extent.

Please [Click Here](#) to read circular dated 31 January, 2019.

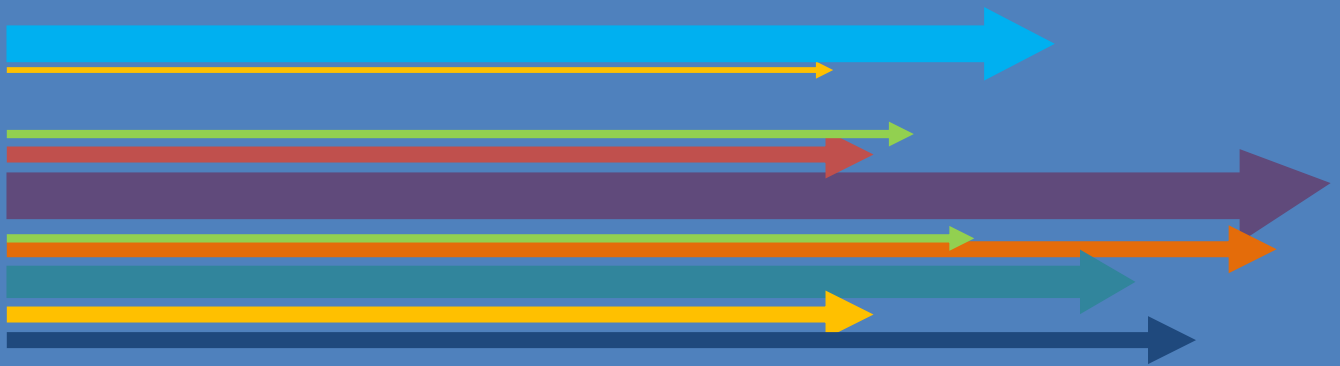
## 200% import duty on goods imported from Pakistan

The Central Government has hiked the custom duty on goods imported from Pakistan to 200% with immediate effect.

Please [Click Here](#) to read notification dated 16 February, 2019



# Direct Tax



# Direct Tax

## Interim Union Budget for 2019-20 presented by Minister of Finance on 1 February 2019

The Hon'ble Minister of Finance, Shri Piyush Goyal, presented the Interim Budget for the financial year ('FY') 2019-20 on 1 February 2019.

The Budget emphasized on upliftment of the poor and backward classes; cleanliness; steps against corruption; farmer's progress & increase in their income; labor & workers dignity; women led development; empowering youth, MSMEs & traders; strengthening defense & national security; infrastructure development; and digital India revolution.

The Government aims to set the stage for a 'New India' by 2022 in the 75<sup>th</sup> year of independence - an India which is clean & healthy, where everybody would have a house with universal access to toilets, water & electricity; where farmers' income would have doubled; youth and women would get ample opportunities to fulfil their dreams; an India free from terrorism, communalism, casteism, corruption and nepotism.

Most remarkable announcements of this Budget include rebate to individual taxpayers with annual income up to Rs. 5 lakh; proposed electronic assessment of all tax returns without any personal interface; assured income support of Rs. 6,000 per year to small and marginal farmers; increase in gratuity limit to Rs. 30 lakh; and pension scheme for unorganized sector workers

These reforms are in tandem with the Prime Minister's pledge to the people of India to give the nation an honest, clean and transparent Government. By taking difficult decisions and restoring strong performance of Indian economy, India stands out among the fastest growing economies of the world.

Please [Click Here](#) to read our detailed report on Interim Union Budget 2019.



## Relaxation in conditions for exempting start-ups from angel tax under section 56(2)(viib)

### Highlights:

The Department for Promotion of Industry and Internal Trade ('DPIIT'), Ministry of Commerce & Industry, has come up with further relaxations in definition of 'start-up' conditions and procedure for availing exemption from angel tax u/s 56(2)(viib) of the Income-tax Act, by way of new notification dated 19 February 2019.

The following relaxations have been made in definition of 'start-up' from a regulatory perspective, which resultantly widens scope of exemption from angel tax as well.

- Threshold on annual turnover increased from Rs.25 crore to Rs.100 crore, and
- Time-limit for which an entity (i.e, private limited company, partnership firm or limited liability partnership) can retain status as 'start-up' increased from 7 years to 10 years from date of incorporation / registration.

From tax perspective, conditions and procedure for exemption from angel tax for start-up companies has been changed from an approval-based process to a 'green channel' process as below:

- Threshold on aggregate share capital and share premium as a result of past or proposed issue of shares raised from Rs.10 crore to Rs.25 crore. While computing the enhanced threshold, shares issued to non-residents, venture capital company (VCC) or a venture capital fund (VCF) or a specified listed company have been excluded.
- Self-declaration by a start-up company of compliance with conditions for exemption from 'angel tax' is now sufficient. Requirement of obtaining approval from Central Board of Direct Taxes ('CBDT') through DPIIT done away with.
- Net worth and income criteria for resident investors as also justification for valuation of shares has been dispensed with.
- As anti-abuse safeguard, exemption made conditional upon start-up company not investing in certain non-qualifying assets for upto 7 years from end of latest financial year (FY) in which shares were issued at a premium.

The new notification supersedes the earlier notifications on the matter and is applicable from 19 February 2019 onwards.

# Direct Tax

## Background:

In order to qualify as 'start-up' there are certain conditions to be fulfilled by an entity as per DPIIT guidelines. Such qualification is relevant for the purpose of availing following benefits under the Income-tax Act, 1961:

### ***I. Profit-linked deduction u/s 80-IAC of Income-tax Act***

Tax holiday on profits derived by an eligible start-up from eligible business for 3 (out of 7) years from date of incorporation. For availing this benefit, a taxpayer is required to fulfil following conditions: (a) The taxpayer should be a company or an LLP incorporated on or after 1 April 2016 but before 1 April 2021, (b) Total turnover from business < Rs.25 crore in the year in which the deduction is claimed, (c) Taxpayer should hold a certificate of eligible business from Inter-Ministerial Board (IMB) notified by the Central Government, and (d) 'Eligible business' is defined as a business carried on by an eligible start-up engaged in innovation, development or improvement of products or processes or services or a scalable business model with a high potential of employment generation or wealth creation.

### ***II. Angel tax exemption as per section 56(2)(viib) of Income-tax Act***

Section 56(2)(viib) of the Income-tax Act provides for charging 'angel tax' on issue of shares at premium to a resident by a closely held company. The exception to this are,

- ✓ shares issued by a venture capital undertaking to venture capital fund or venture capital company, and
- ✓ shares issued to class or classes of persons notified by the Central Government. In this regard, the Central Government vide notification No. 45/2016 dated 14 June 2016 notified that angel tax shall not apply in case shares are issued to a resident by a 'startup' company which fulfils conditions specified in the notification issued by Department of Industrial Policy & Promotion ('DIPP') on 17 February 2016 (2016 Notification). This is because of the obvious reason that valuation based on conventional methods would not necessarily reflect 'fair value' of shares in case of start-ups.

Consequent to representations received from start-up industry, CBDT issued administrative instruction on 6 February 2018 to tax department to relieve start-up companies from hardship of angel tax. Department of industrial Policy & Promotion (DIPP) issued Notification on 11 April 2018 which set out revised eligibility conditions and procedure for recognition as 'start-up' and revised conditions and procedure for availing tax benefits. Similarly, the CBDT issued a new Notification on 24 May 2018 exempting 'start-ups' who have obtained approval from IMB as per the 2018 Notification. However, this Notification did not address the exemption for past issue of shares made before 2016.

As per media reports, in absence of any specific direction for past issue of shares, tax department continued to challenge the valuations causing wide spread discomfort within the start-up fraternity. Responding to the concerns raised, DIPP issued Press Release on 19 December 2018 clarifying that the DIPP has taken up the matter with Department of Revenue to protect bonafide investments into 'start-ups'.

CBDT on 24 December 2018 issued fresh direction to tax department to refrain from taking any coercive measures to recover outstanding demand till further instructions are given by the CBDT. In pursuance thereof, DIPP issued Notification on 16 January 2019 amending the prior 2018 notification with regard to conditions and procedure to obtain exemption from angel tax.

# Direct Tax

## [New Notification dated 19 February 2019 issued by DPIIT](#)

While the start-up fraternity continues to push the Government for withdrawal of angel tax provisions in entirety, the DPIIT on 19 February 2019 has issued the new notification superseding the January 2019 notification. The new notification amends the definition of start-ups and relaxes the conditions linked to angel tax exemption resulting in a green channel exemption for start-up companies, as explained above. The relaxations introduced by the new notification are a welcome move in this direction. At the same time, Government has tried to have sufficient anti-abuse safeguards in place.

Please [Click Here](#) to read the notification dated 19<sup>th</sup> February 2019.

## [Union Cabinet approves abolition of Institution of Income-tax / Indirect tax Ombudsman](#)

The Union Cabinet approved the proposal for abolition of Institution of Income-Tax Ombudsman and Indirect Tax Ombudsman. The approval comes in the wake of alternative complaint redressal mechanisms chosen by public and the institution of Ombudsman could not prove to be more effective than regular existing parallel channels of grievance redressal.

### [Background:](#)

The Institution of Income-Tax Ombudsman was created in the year 2003 to deal with grievances of public related to settlement of complaints relating to Income-tax. However, the Institution of Ombudsman failed to achieve its objectives. It was observed that institution of new complaints have in turn fallen to single digits. Also, tax payers started preferring alternate methods of grievance redressal like Centralized Public Grievance Redress and Monitoring System (CPGRAMS), AaykarSevaKendras etc.

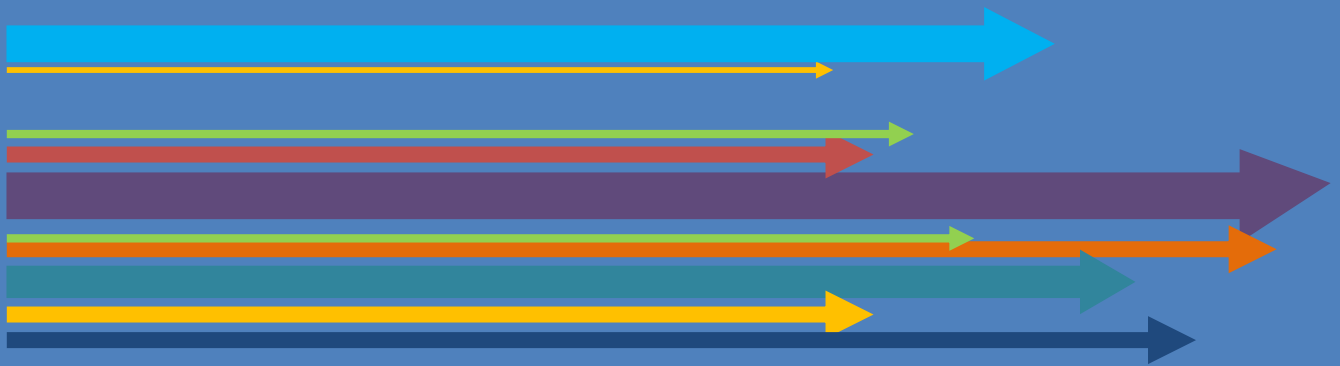
Please [Click Here](#) to read the Press Release dated 06<sup>th</sup> February 2019

## [CBDT forms panel to examine issues and suggestions for better litigation management](#)

As per the media reports, CBDT has constituted a 5-members' committee to examine the suggestions and issues on litigation management that emerged from a judicial conference held in January 2019. The panel has been tasked with examining cases where the appellate tribunal (ITAT) has passed irrational or irregular orders. Additionally, the committee will also examine the feasibility of creating a separate bench of the ITAT for international tax in places where the pendency is high. The CBDT further announced a 4-members' panel to examine international good practices on the tax litigation management. Both committees are expected to submit their report in a month.



# International Taxation



# International Taxation

## Tax collection by way of Equalization levy and introduction of Significant Economic Presence rules in India

The Ministry of Finance in a written reply to a question raised in upper house of Parliament on 12 February 2019, stated the following in relation to tax collection by way of Equalization levy and introduction of Significant Economic Presence ('SEP') rules in India.

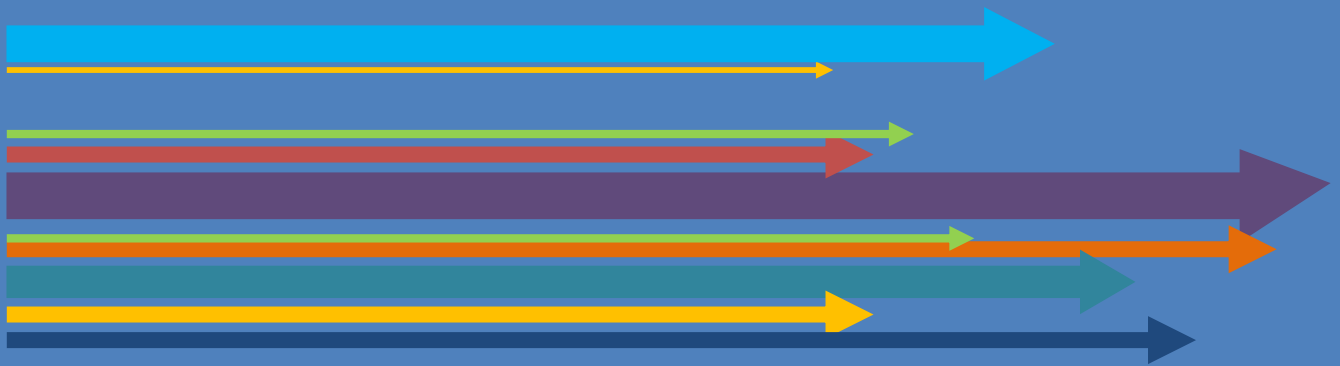
This is relevant for enterprises who conduct their business through digital means and carry-out activities in India remotely.

- A new levy by the name of 'Equalisation Levy' was introduced by Finance Act, 2016. The introduction of the levy was based on the recommendations of a Committee, comprising of officers of the Income-tax Department and member of the general public to deliberate on the issue of taxation of the digital economy in the light of the report on Action Plan 1 of the OECD Base Erosion and Profit Shifting (BEPS) project and suggest possible measures.
- Presently, the levy is charged @ 6% of the amount of consideration for specified services received or receivable by a non-resident not having permanent establishment ('PE') in India, from a resident in India who carries out business or profession, or from a non-resident having permanent establishment in India, where the aggregate amount of such consideration exceeds Rs.1 lakh in a previous year.
- Section 9(1)(i) of the Income-tax Act was amended to bring in the concept of SEP for establishing 'business connection' in the case of non-resident in India. Accordingly, significant economic presence means –
  - I. Any transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India if the aggregate of payments arising from such transaction or transactions during the previous year exceeds the prescribed amount; or
  - II. Systematic and continuous soliciting of its business activities or engaging in interaction with such number of prescribed users in India through digital means.
- In order to prescribe the thresholds as mentioned above, suggestions from general public were invited, the suggestions so received are under consideration.
- If digital businesses operated by non-residents are structured to artificially avoid establishment of a 'business connection' or 'permanent establishment' in India, including by way of claiming the activities carried out in India to be preparatory or auxiliary in nature, the General Anti Avoidance Rules ('GAAR') provisions under the Income-tax Act may become applicable to the income of such digital businesses in India. Signing of the Multilateral Instrument is unlikely to address the broader tax challenges of digitalisation of economy owing to the redundancy of physical presence-based nexus.
- The imposition of Equalization Levy has led to increase in tax collection. The collection under the Equalisation levy exceeded Rs. 550 crore for FY 2017-18. Further, the introduction of taxation based on significant economic presence is also expected to increase tax collection as it seeks to widen the tax base in India by establishing business connection and charging to tax income earned by digital businesses which operate out of jurisdictions with which India has not entered into a Double Taxation Avoidance Agreement (DTAA). However, in respect of digital businesses operating out of jurisdictions with which India has already entered into a DTAA, significant economic presence will only be effective after renegotiation of such DTAA which will be based on international consensus.

Please [Click Here](#) to read the Press Release dated 12 February 2019.



# Companies Act, 2013



# Companies Act, 2013

## Disclosure of details of Significant Beneficial Ownership (SBO)

MCA through notification dated 8 February, 2019 has notified Companies (Significant Beneficial Owners) Amendment Rules, 2019

### a. Background:

MCA by its notification dated 13 June 2018, had notified the Companies (Significant Beneficial Owners) Rules, 2018 to eradicate money laundering and to unmask the hidden owners of certain companies which were engaging in multi-layered corporate structure with the main objective to flout laws of the country. In order to bring further clarity, MCA has now notified certain amendments to the previously notified rules.

### b. Definitions

Government has come up with certain definitions such as 'Majority stake', 'Partnership entity' and 'Significant Beneficial Owner' which are given below;

- "Majority stake" means:
  - I. Holding > 50% equity share capital in the body corporate; or
  - II. Holding > 50% of the voting rights in the body corporate; or
  - III. Having the right to receive or participate in > 50% of the distributable dividend or any other distribution by the body corporate.
  
- "Partnership Entity" means:
  - I. A partnership firm registered under the Indian Partnership Act, 1932; or
  - II. A Limited Liability Partnership registered under the LLP Act, 2008.
  
- "Significant Beneficial Owner" means:

Individual— alone or together, through one/ more natural persons, through trust possess one or more of the following rights:

- I. Holds indirectly or together with any direct holdings, not < 10% of the shares of the reporting company.
- II. Holds indirectly or together with any direct holdings, not < 10% of the voting rights in the shares of the reporting company.
- III. Has right to receive / participate in not < 10% of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings.
- IV. Has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct-holdings alone.

# Companies Act, 2013

## c. Key points to be checked:

Where Member is a body corporate (except LLP) then check if Individual

- Holds majority stake in that member;
- holds majority stake in the ultimate holding company (whether incorporated or registered in India or abroad) of that member;

Where Member is a HUF then check if

- Individual is the karta of the KUF

Where Member is a partnership entity then check if the individual is a partner

- Holds > 50% stake in body corporate which is a partner
- Holds > 50% stake in ultimate holding company of the body corporate which is a partner

Where Member is a trust then check if individual

- is a trustee
- is a beneficiary
- is a author or settlor in case of revocable trust

Where member is a Pooled investment vehicle/Entity controlled by pooled investment vehicle then Check if Individual

- is a general partner
- is an investment manager
- is a Chief Executive Officer where the investment manager of such pooled vehicle is a body corporate or a partnership entity

# Companies Act, 2013

## d. Steps Involved:

### 1. Notice seeking information about SBO:

Physical form	Time Period	By Whom	To Whom
<b>BEN-4</b>	Not Specified. Hence, Must be made within a reasonable time from the date of notification of these rules in Gazette.	By the Reporting company	To the Member (other than an individual), who holds not less than 10% of its;- (a) shares, or (b) Its voting rights, or (c) right to receive or participate in the dividend or any other distribution payable in a financial year, give notice to such member, seeking information in accordance with subsection (5) of section 90, in Form No. BEN-4.

### 2. Declaration of SBO in shares:

Physical Form	Time Period	By Whom	To Whom
<b>BEN-1</b>	90 days from commencement date. i.e from 8 <sup>th</sup> February 2019 & Within 30 days in case of any change in his SBO	Every SBO	Reporting Company in which he holds the SBO
<b>BEN-1</b>	Within 30 days in case of acquiring such SBO or In case of any change in such ownership.	Every individual who acquires shares after the commencement date i.e. 13 June 2018	Company in which he is going to hold the SBO

### 3. Return of SBO in shares::

E-Form	Time Period	By Whom	To Whom
<b>BEN-2</b>	Within 30 days from the date of receipt of declaration by the company.	The company shall file a return in the prescribed form.	With the Registrar of Companies

Please [Click Here](#) to read SBO amendment rules dated 8 February, 2019.

# Companies Act, 2013

## Filing of New E-Form ACTIVE (Active Company Tagging Identities and Verification)

MCA through notification dated 21st February, 2019 has notified Companies (Incorporation) Amendment Rules, 2019.

### Applicability:

Every company incorporated on or before 31<sup>st</sup> December, 2017 is required to file details of the company and its registered office in e- form ACTIVE (INC-22A), except the following:

- Companies which have failed to file financial statements or annual returns or both with the Registrar shall be restricted from filing e-Form-ACTIVE, unless such company is under management dispute and the Registrar has recorded the same on the register.
- Companies which have been struck off or are under process of striking-off or under liquidation, amalgamation or dissolution, shall not be required to file the form.

### Due Date:

- The said form is required to be filed on or before 25 April, 2019, post which an additional fee of Rs.10,000 shall be applicable.

### Consequences of non-compliance:

If a Company has failed to file this e-form by the due date, the company shall be marked as "ACTIVE- non-compliant" and also the following e-forms shall not be accepted until the default is made good.

- SH-07 (Change in Authorized Capital)
- PAS-03 (Change in Paid up Capital)
- DIR-12 (Changes in Director except cessation)
- INC-22 (Change in Registered Office)
- INC-28 (Amalgamation, de-merger)

Please [Click Here](#) to read the rule dated 21 February, 2019.

# Companies Act, 2013

## Exemption from issue of securities in dematerialized form by certain companies

Ministry of Corporate Affairs ('MCA') through notification dated 22 January, 2019 and 19 February, 2019 has notified Companies (Prospectus and Allotment of Securities) Rules, 2014.

### Highlights:

1. Following classes of unlisted public companies are exempted from issue of securities in dematerialized form:

- Nidhi Company
- Government Company
- Wholly owned subsidiary

E-Form PAS-3 i.e. return of allotment has been revised to the effect that going forward it is not mandatory to declare that the company has not allotted securities with an application size < Rs.20,000 per person in case of preferential allotment or private placement.

Please [click here](#) to read the notification dated 22<sup>nd</sup> January, 2019.

Please [click here](#) to read the notification dated 19<sup>th</sup> February, 2019.

## Companies (Adjudication of Penalties) Amendment Rules, 2019

MCA has notified Companies (Adjudication of Penalties) Amendment Rules, 2019 dated 19<sup>th</sup> February, 2019, wherein the Central Government may appoint any of its officers not below the rank of Registrar, as adjudicating officer for pronouncing penalty. The adjudicating officer for this purpose shall issue a written notice indicating (non-compliance, relevant penal provisions and the maximum penalty) to the relevant person to show cause why the penalty should not be imposed. Further, reply to this notice shall be filed only in electronic mode.

Please [click here](#) to read the circular dated 19<sup>th</sup> February, 2019.

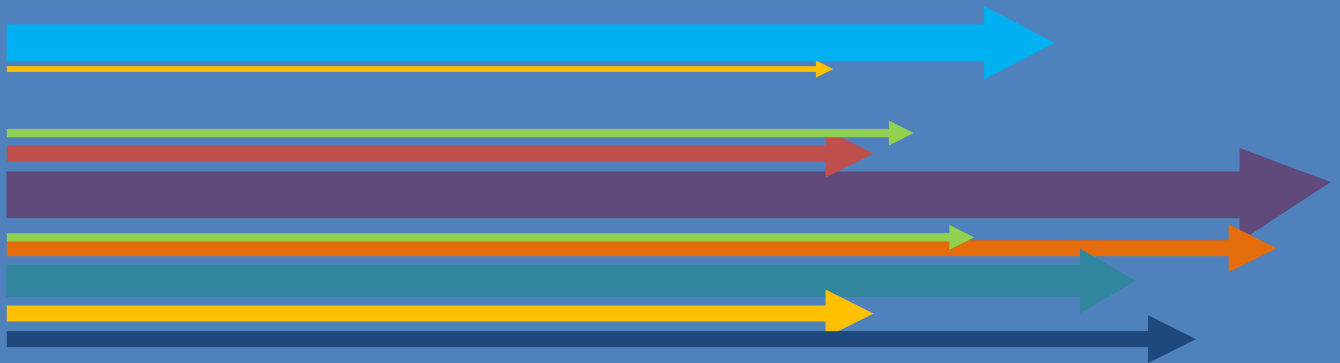
## Extension of due date for filing Micro Small and Medium Enterprises (MSME) Form I

Through notification dated 22 January 2019, Government came up with Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019. As per the said notification, all companies who get supplies of goods or services from micro and small enterprises and whose payment to micro and small enterprises suppliers exceed 45 days from the date of acceptance of goods or services as per section 9 of MSME Development Act, 2006 ('specified companies'), shall submit a half yearly return to the MCA stating amount of payment due and reason for delay.

The time limit to file initial form was 30 days from the date of publication of the notification (which is 22 January 2019). Pending deployment of the above form on MCA portal, the time limit has been extended to 30 days from the *date on which the form is deployed on the portal* (instead of 30 days from 22 January 2019).

Please [click here](#) to read the circular dated 21 February, 2019.

# Reserve Bank of India (RBI)



# Reserve Bank of India (RBI)

## **External Commercial Borrowings (ECB) – Relaxation of end-use restrictions for Resolution Applicants under Corporate Insolvency Resolution Process (CIRP)**

### Background:

As per the changes made in ECB regulations last month, ECB proceeds cannot be utilized for repayment of domestic Rupee loans, except when the ECB is availed from a Foreign Equity Holder.

### Relaxation provided for Resolution Applicants under CIRP:

Government has decided to relax the end-use restrictions for resolution applicants under the CIRP and allow them to raise ECBs from the recognized lenders, except the branches/ overseas subsidiaries of Indian banks, for repayment of Rupee term loans of the target company under the approval route. Accordingly, the resolution applicants, who are otherwise eligible borrowers, can forward such proposals to raise ECBs, through their AD bank, to the Reserve Bank for approval.

Please [Click Here](#) to read the notification dated 07<sup>th</sup> February, 2019.

## **Investment by Foreign Portfolio Investors (FPI) in Debt – relaxation of restriction on having more than 20% exposure in single corporate**

### Background:

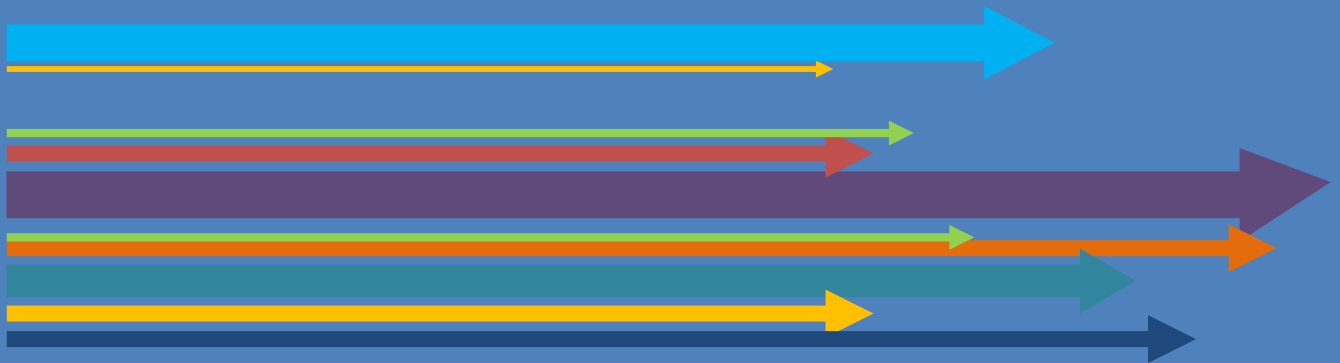
As per erstwhile regulations dated 15 June 2019, no FPI shall have an exposure of more than 20% of its corporate bond portfolio to a single corporate (including exposure to entities related to the corporate). In order to encourage a wider spectrum of investors to access the Indian corporate debt market, Government has withdrawn this provision from 15 February 2019 onwards.

Please [Click Here](#) to read the notification dated 15<sup>th</sup> February, 2019.





# Securities and Exchange Board of India (SEBI)



## Annual secretarial audit report and compliance report for listed entities and their subsidiaries

Securities and Exchange Board of India (SEBI) has issued a circular dated 8 February, 2019 regarding format for annual secretarial audit report and compliance report for listed entities and their material subsidiaries.

- Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex with its annual report, a secretarial audit report given by a practicing company secretary ('PCS'), in prescribed form with effect from year ended 31 March 2019.
- In order to avoid duplication, the listed entity and its unlisted material subsidiaries shall continue to use the same Form No. MR-3 for Annual Secretarial Audit Report.
- While the Annual Secretarial Audit shall cover a broad check on compliance with all laws applicable to the entity, listed entities shall additionally, on an annual basis, require a check by the PCS on compliance of all applicable SEBI Regulations and circulars/ guidelines issued thereunder, consequent to which, the PCS shall submit a report to the listed entity.

The Annual Secretarial Compliance Report in the aforesaid format shall be submitted by the listed entity to the stock exchanges within 60 days of the end of the financial year.

Please [Click Here](#) to read the notification dated 8 February 2019.



# Editorial Team



Editor



Direct Tax



Indirect Tax



Regulatory



Communications

## About KrayMan

KrayMan is an Accounting and Advisory Firm specializing in Assurance, Tax, Regulatory, Compliance & Outsourcing, Corporate Secretarial, Transaction Advisory and HR Advisory services. We cater to International & Domestic Clients.

We are a team of professionals comprising of Chartered Accountants, Company Secretaries, Cost and Management Accountants and MBAs who are truly committed in providing timely, professional and quality services to our Clients thereby building a long term relationship with them.

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