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TAX EDGE

Monthly Tax & Regulatory Updates

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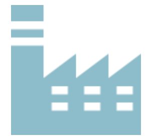

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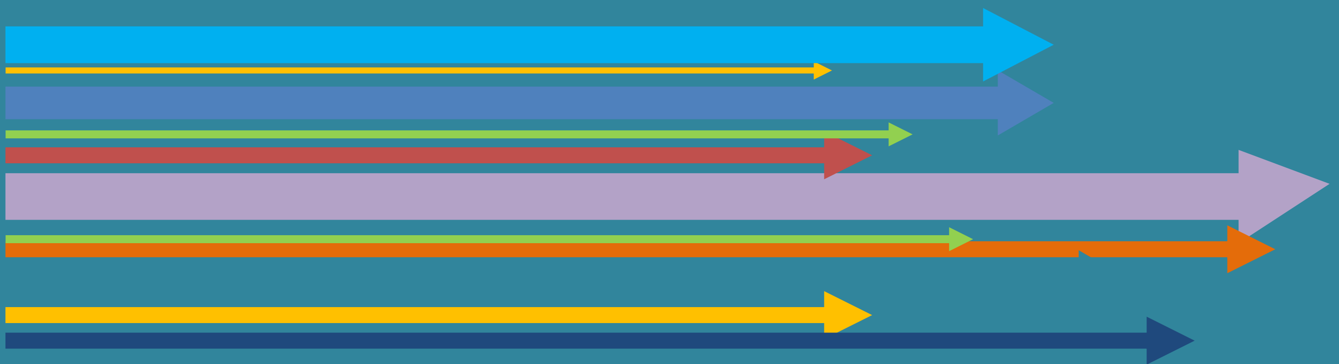
Goods & Services Tax (GST)



Goods & Services Tax

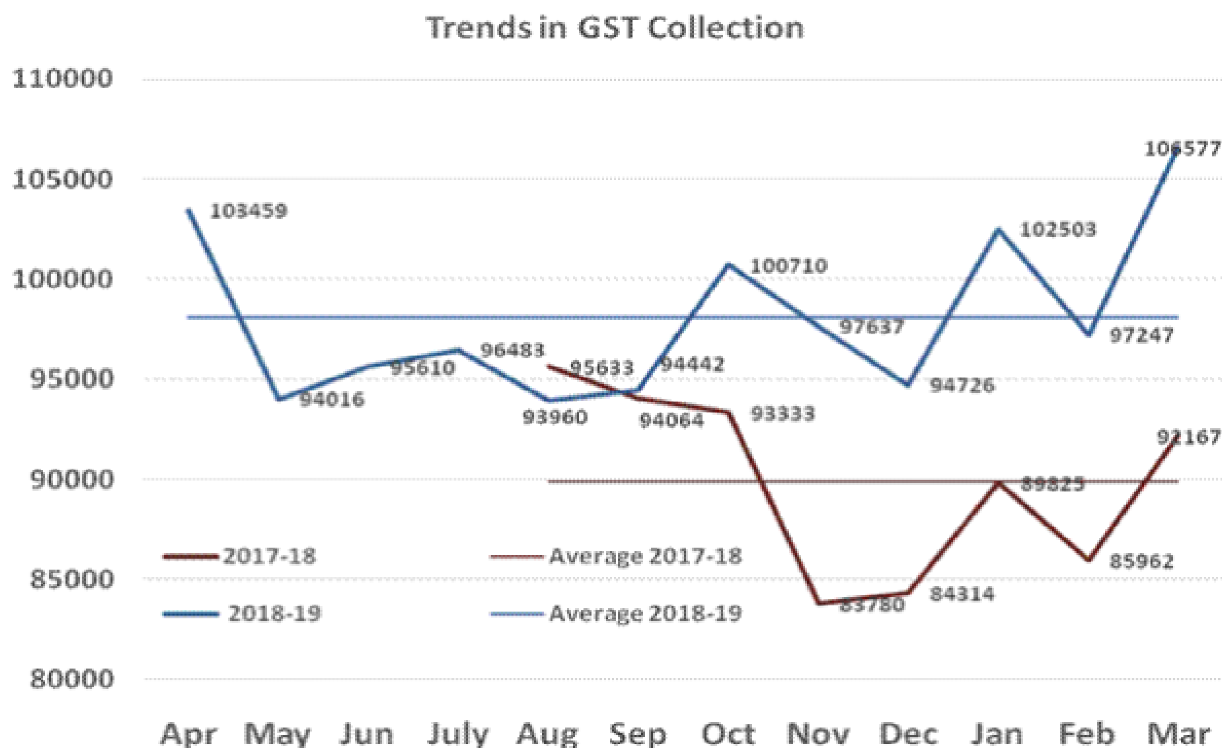
GST Revenue collection for March, 2019 crosses Rupees One Lakh Crore and records highest collections in the Financial Year ('FY') 2018-19

Total gross GST revenue collected in the month of March, 2019 is Rs. 1,06,577 crore, segregation given below:

IGST (Integrated Goods and Services Tax)	Rs. 50,418 crore
CGST (Central Goods and Services Tax)	Rs. 20,353 crore
SGST (State Goods and Services Tax)	Rs. 27,520 crore
Compensation cess	Rs. 8,286 crore

Revenue in March, 2018 was Rs.92,167 crore. Growth of revenue during March, 2019 is 15.6% over the revenue in the same month last year. Total number of GSTR 3B Returns filed for the month of February upto 31 March, 2019 is 75.95 lakh.

Please Click Here to read press release dated 1st April, 2019



Goods & Services Tax

Extension in time limit for furnishing GST Returns and Declaration

Government has extended the time limit for furnishing GST returns (GSTR) and declaration as below:

Returns/ Forms	Description	Tax Period	Due Dates
Monthly GSTR-1	For taxpayers with annual aggregate turnover > Rs.1.5 crore	March 2019	13th April, 2019
Monthly GSTR-3B	Summary Return	March 2019	23rd April, 2019
Monthly GSTR-7	TDS Return	March 2019	12th April, 2019
GST ITC-04	Declaration for goods sent to job worker or received from a job worker	July 2017 to March 2019	30th June, 2019

Please Click Here to read notification dated 10th April, 2019 for Monthly GSTR-1

Please Click Here to read notification dated 22nd April, 2019 for Monthly GSTR-3B

Please Click Here to read notification dated 10th April, 2019 for Monthly GSTR-7

Please Click Here to read notification dated 28th March, 2019 for Declaration in form GST ITC-04

Clarification in respect of transfer of input tax credit in case of death of sole proprietor

Background

Section 18(3) of the CGST Act deals with transfer of GST input under specified circumstances like sale, merger, demerger, transfer of business. Rule 41(1) of the CGST Rules provides that registered person (transferor) can file Form GST ITC-02 for transfer of unutilised GST input lying in his electronic credit ledger to the transferee. Further, section 29(1) of CGST Act provides that reason for transfer of business includes ‘death of proprietor’.

Clarification has been sought whether section 18(3) provides for transfer of GST input which remains unutilized to the transferee in case of death of the sole proprietor and also the procedure of filing of Form GST ITC-02 in case of death of sole proprietor.

The Central Board of Indirect Taxes and Customs (‘CBIC’) has issued clarification as below.

Goods & Services Tax

Clarification issued by CBIC:

- Transfer or change in the ownership of business will include transfer due to death of the sole proprietor.

- In case of death of sole proprietor if the business is continued by any person (transferee / successor), the input tax credit which remains un-utilized in the electronic credit ledger is allowed to be transferred to the transferee in the manner stated below:

✓ *Registration liability of the transferee / successor:*

As per section 22(3) of the CGST Act, the transferee / successor shall be liable to be registered with effect from the date of such transfer / succession. While filing application in FORM GST REG-01 electronically in the common portal the applicant is required to mention the reason to obtain registration as “death of the proprietor”.

✓ *Cancellation of registration on account of death of the proprietor:*

Clause 29(1)(a) of the CGST Act allows the legal heirs in case of death of sole proprietor of a business, to file application for cancellation of registration in FORM GST REG-16. In FORM GST REG-16, reason for cancellation is required to be mentioned as “death of sole proprietor”. The GSTIN of transferee is also required to be mentioned to link the GSTIN of the transferor with the GSTIN of transferee.

✓ *Transfer of input tax credit and liability:*

In case of death of sole proprietor, if the business is continued by any person being transferee or successor of business, it shall be construed as transfer of business. Section 18(3) of the CGST Act, allows the registered person to transfer the unutilized input tax credit lying in his electronic credit ledger to the transferee in the manner prescribed in rule 41 of the CGST Rules. It is clarified that the transferee / successor shall be liable to pay any tax, interest or any penalty due from the transferor in cases of transfer of business due to death of sole proprietor.

✓ *Manner of transfer of credit:*

In case of transfer of business on account of death of sole proprietor, the transferee / successor shall file FORM GST ITC-02 in respect of the registration which is required to be cancelled on account of death of the sole proprietor. FORM GST ITC-02 is required to be filed by the transferee/successor before filing the application for cancellation of such registration. Upon acceptance by the transferee / successor, the un-utilized input tax credit specified in FORM GST ITC-02 shall be credited to his electronic credit ledger.

Please Click Here to read circular dated 28th March, 2019.

Goods & Services Tax

Clarifications on refund related issues under GST

S. No.	Issue	Clarification issued by CBIC
1	Certain registered persons have reversed, through return in FORM GSTR-3B filed for the month of August, 2018 or for a subsequent month, the accumulated input tax credit (ITC) required to be lapsed in terms of notification No. 20/2018Central Tax (Rate) dated 26.07.2018 read with circular No. 56/30/2018-GST dated 24.08.2018 (hereinafter referred to as the "said notification"). Some of these registered persons, who have attempted to claim refund of accumulated ITC on account of inverted tax structure for the same period in which the ITC required to be lapsed in terms of the said notification has been reversed, are not able to claim refund of accumulated ITC to the extent to which they are so eligible. This is because of a validation check on the common portal which prevents the value of input tax credit in Statement 1A of FORM GST RFD-01Afrom being higher than the amount of ITC availed in FORM GSTR-3B of the relevant period minus the value of ITC reversed in the same period. This results in registered persons being unable to claim the full amount of refund of accumulated ITC on account of inverted tax structure to which they might be otherwise eligible. What is the solution to this problem?	• As a one-time measure to resolve this issue, refund of accumulated ITC on account of inverted tax structure, for the period(s) in which there is reversal of the ITC required to be lapsed in terms of the said notification, is to be claimed under the category "any other" instead of under the category "refund of unutilized ITC on account of accumulation due to inverted tax structure" in FORM GST RFD-01A. • The application shall be accompanied by all statements, declarations, undertakings and other documents which are statutorily required to be submitted with a "refund claim of unutilized ITC on account of accumulation due to inverted tax structure". On receiving the said application, the proper officer shall himself calculate the refund amount admissible as per rule 89(5) of Central Goods and Services Tax Rules, 2017. After calculating the admissible refund amount, as described above, and scrutinizing the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the taxpayer, in writing, to debit the said amount from his electronic credit ledger through FORM GST DRC-03. Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in FORM GST RFD-06 and the payment advice in FORM GST RFD-05. • All refund applications for unutilized ITC on account of accumulation due to inverted tax structure for subsequent tax period(s) shall be filed in FORM GST RFD-01A under the category "refund of unutilized ITC on account of accumulation due to inverted tax structure".
2	The clarification at Sl. No. 1 above applies to registered persons who have already reversed the ITC required to be lapsed in terms of the said notification through return in FORM GSTR-3B. What about those registered persons who are yet to perform this reversal?	It is hereby clarified that such persons may reverse the said amount through FORM GST DRC-03 instead of through FORM GSTR-3B.

S. No.	Issue	Clarification issued by CBIC
3	What shall be the consequence if any registered person reverses the amount of credit to be lapsed, in terms the said notification, through FORM GSTR-3B for any month subsequent to August, 2018 or through FORM GST DRC-03 subsequent to the due date of filing of the return in FORM GSTR-3B for the month of August, 2018?	• Such person shall be liable to pay interest u/s 50 (1) of the CGST Act on the amount which has been reversed belatedly. Such interest shall be calculated starting from the due date of filing of return in FORM GSTR3B for the month of August, 2018 till the date of reversal of said amount. • The registered person who has reversed the amount of credit to be lapsed in the return in FORM GSTR-3B for any month subsequent to August, 2018 or through FORM GST DRC-03 subsequent to the due date of filing of the return in FORM GSTR-3B for August, 2018 would remain eligible to claim refund of unutilized ITC on account of accumulation due to inverted tax structure with effect from 1 August 2018. However, such refund shall be granted only after the reversal of the amount of credit to be lapsed, either through FORM GSTR-3B or FORM GST DRC-03, along with payment of interest.
4	How should a merchant exporter claim refund of input tax credit availed on supplies received on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017.	• Merchant Exporter shall apply refund of accumulated ITC under rule 89(4B) of the CGST Rules under the category “any other” instead of under the category “refund of unutilized ITC on account of exports without payment of tax” in FORM GST RFD-01A and shall be accompanied by all supporting documents required for substantiating the refund claim under the category “refund of unutilized ITC on account of exports without payment of tax”. After scrutinizing the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the taxpayer, in writing, to debit the said amount from his electronic credit ledger through FORM GST DRC-03. Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order and the payment advice.

S. No.	Issue	Clarification issued by CBIC
5	Vide Circular No. 59/33/2018-GST dated 4 September 2018, it was clarified that after issuance of a deficiency memo, the input tax credit is required to be re-credited through FORM GST RFD-01B and the taxpayer is expected to file a fresh application for refund. Accordingly, in several cases, the ITC amounts were recredited after issuance of deficiency memo. However, it was later represented that the common portal does not allow a taxpayer to file a fresh application for the same period after issuance of a deficiency memo.	In such cases, the claimant may resubmit the refund application manually in Form GST RFD-01A after correcting the deficiencies pointed out in the deficiency memo, using the same Application Reference Number.

Please Click Here to read circular dated 28th March, 2019.

Verification of applications for grant of new registration

Background

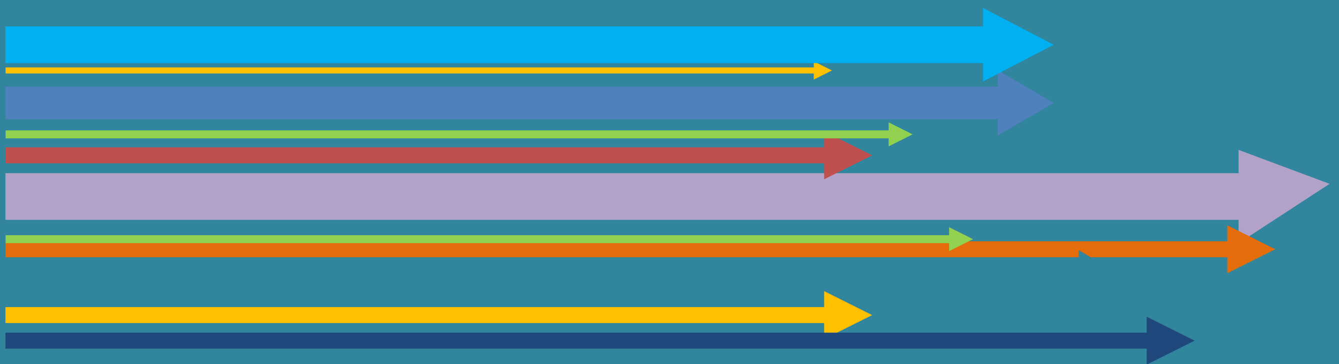
Recently, a large number of registrations have been cancelled by the authorities under u/s 29(2) of the CGST Act, 2017 on account of noncompliance of the statutory provisions. In this regard, instances have come to notice that such persons, who continue to carry on business and therefore are required to have registration under GST, are not applying for revocation of cancellation of registration as specified in section 30 of the CGST Act. Instead, such persons are applying for fresh registration. Such persons would be required to pay all liabilities due from them for the relevant period in case they apply for revocation of cancellation of registration. Hence, to avoid payment of the tax liabilities, such persons may be using the route of applying for fresh registration.

Instruction issued by CBIC:

- Authorities are instructed to exercise due caution while processing new application for registration submitted by taxpayers.
- The data may be verified by fetching the details of registration taken on the PAN (Permanent Account Number) mentioned in the new application vis-à-vis cancellation of registration obtained on the same PAN
- Further, if required, information submitted by applicant in Form GST REG-01 regarding details of proprietor, partner/Karta/Managing Directors and whole time Director/Members of Managing Committee of Associations/Board of Trustees etc. may be analyzed vis-à-vis any cancelled registration having same details
- While considering the application for registration, the proper officer shall ascertain if the earlier registration was cancelled on account of non-compliance with the specified provisions of CGST Act. If the non-compliance continues, the new application for registration may be rejected by the authorities.

Please Click Here to read circular dated 28th March, 2019.

Direct Tax



Direct Tax

Changes in Form 16 (TDS Certificate for Salary income) and Form 24Q (TDS return in respect of salary)

The Central Board of Direct Taxes (CBDT) has notified changes in Form 16 [Tax Deducted at Source (TDS) Certificate for Salary Income] and Form 24Q (TDS return in respect of salary). The changes have been made to bring TDS certificate in sync with new Income Tax Return (ITR) forms issued for Assessment Year (AY) 2019-20. The changes are as follows:

Clause-wise reporting of exempt allowances and deduction under Chapter VI-A

- In existing Form 16 (Part B), the employer had an option to provide a description of the exempt allowance. Consequently, every organization had created different formats as per their requirements, which resulted in discorded formats of Part B of Form 16. The new Form 16 (Part B) has removed this option to write-down the description of exempt allowances. Now the employers have to mention the amount of exempt allowance before earmarked fields. Similar changes have been made in respect of deduction available under Chapter VI-A and losses under the head house property. These changes would ensure that organizations follow common structure of TDS certificates and employees find it convenient to file the tax return on basis of TDS certificates. Further, it also gives a confirmation that the deductions and exemptions claimed by the employees in Income-tax return match with the information available in TDS certificate and TDS Statement.

- Similar reporting is required in Form 24Q as well. Thus, the employer is required to provide the list of all exemptions and deductions allowed to the employee while calculating the tax to be deducted from salary under Section 192. Following details have been asked by the department from the employer in Form 24Q:

✓ Exemption under Section 10:

  - Leave travel concession [Section 10(5)]
  - Gratuity [Section 10(10)]
  - Commuted Pension [Section 10(10A)]
  - Leave Salary Encashment [Section 10(10AA)]
  - House Rent Allowance [Section 10(13A)]

✓ Deduction under Chapter VI-A:

  - Life Insurance Premium or contribution to Provident fund (PF) etc. [Section 80C]
  - Contribution to Pension funds [Section 80CCC]
  - Employee's contribution to Notified Pension scheme (NPS) [Section 80CCD(1) and Section 80CCD(1B)]
  - Employer's contribution to NPS [Section 80CCD(2)]
  - Medical insurance premium [Section 80D]
  - Interest on higher education loan [Section 80E]
  - Donation to notified funds, charitable institution etc. [Section 80G]
  - Deduction in respect of interest from saving account [Section 80TTA]

Direct Tax

Standard Deduction

The Finance Act, 2018 introduced the standard deduction of up to Rs. 40,000 for the salaried persons. The new Form 16 and Form 24Q have accordingly been revised to incorporate the effect of this amendment.

Reporting of salary received from other employers

If an employee has received salary from his ex-employer or other employer during the previous year and same has been reported to the current employer for TDS purposes, then separate reporting is required for such salary income in new Form 16 and Form 24Q.

Furnishing of Permanent Account Number (PAN) of the lender in case of home loan

In new Form 24Q, it is mandatory to furnish the PAN of the lender in case any deduction has been claimed in respect of housing loan taken from a person other than a Financial Institution or the Employer. Earlier, it was optional.

Please Click Here to read notification dated 12th April 2019.

CBDT notifies Income-tax Return (ITR) forms for Assessment Year (AY) 2019- 20

The Income-tax (Second Amendment) Rules, 2019 have been issued notifying the new formats of ITRs for AY 2019-20. By Notification No. 32/2019, many changes have been made in various ITRs. Notable changes are as under:

Reporting in respect of	Relevant ITR form(s)	Amendments made
Residential status of individuals	ITR 2, 3	The new ITR form requires furnishing of data of number of days of physical stay in India during specified period, as follows: • An Ordinarily Resident individual would be required to provide details of whether he was in India for 182 days or more during the relevant period (or) whether he was in India for 60 days or more during the relevant period, and has been in India for 365 days or more within the 4 preceding years; • A Resident but not ordinarily Resident individual would be required to provide whether he has been a non-resident in India in 9 out of 10 preceding years (or) whether he has been in India for 729 days or less during the 7 preceding years; • In a case if the individual is a non-resident in India during the previous year, the new ITR form requires to provide details of the jurisdiction of his residence and the taxpayer identification number therein. Where the non-resident individual is a citizen of India or a person of Indian origin, such non-resident needs to report total period of stay in India during the tax year and during the preceding 4 years.

Direct Tax

Reporting in respect of	Relevant ITR form(s)	Amendments made
Details to be submitted by the taxpayers who are directors of companies	ITR 2, 3	• Name and PAN of the company • Whether shares of the company are listed or unlisted • Director identification number (DIN)
Reporting relating to unlisted equity shares	ITR 2, 3, 5, 7	Detailed information regarding holding of unlisted equity shares at any time during the year is to be given company wise as follows: • Name and PAN of the company • Opening balance - No. of shares and cost of acquisition • Shares acquired during the year - No. of shares, date of subscription/purchase, face value, Issue price, Purchase price • Shares transferred during the year - No. of shares and sale consideration • Closing balance - No. of shares and cost of acquisition
Disclosure in case of transfer of immovable property	ITR 2, 3, 5, 6	In case of transfer of immovable property following details are required to be submitted: • Name and PAN of the buyer • Address of property • In case of more than one buyer, percentage share and amount of each buyer
Reporting of foreign assets located outside India	ITR 2, 3, 5, 6, 7	In schedule FA in addition to details of foreign bank accounts, following details need to be provided: • Details of foreign depository account held • Details of foreign custodian accounts held • Details of foreign equity and debt interest • Details of foreign cash value insurance contract or annuity contract
Reporting of exempt income	ITR 2, 3, 5, 6	In case of agricultural income exceeding Rs.5 Lakh, additional information is required to be reported, such as • Name of district along with pin code where agricultural land is situated • Measurement in acres • Whether the land is owned or leased and whether it is irrigated or rain fed In addition, reporting of income not chargeable to tax under the tax treaty and pass-through income not chargeable to tax is also required to be reported.

Direct Tax

Reporting in respect of	Relevant ITR form(s)	Amendments made
Other Changes	Various forms	• Taxpayers engaged in the business of plying, hiring and leasing goods carriage and offering income on presumptive basis are required to provide additional details such as motor vehicle registration number and tonnage capacity of goods carriage, whether they are owned/ leased or hired and the number of months for which they have been owned/ leased or hired • In case where regular books of accounts are not maintained, details of gross receipts as bifurcated between receipts through specified banking modes and any other mode to be reported. • An individual, who either is a Director in a company or has invested in unlisted equity shares or claiming deduction from income from other sources except standard deduction for family pension, cannot file ITR-1 (Sahaj) or ITR-4 (Sugam). • The facility of paper filing is now only available to all those who are more than 80 years old and are filing ITR-1. Earlier only those with income up to Rs 5 Lakh and not seeking a refund could file in a paper form. • Details of disclosure pertaining to Alternative Minimum Tax have been introduced in ITR-2 • Now ITR-4 can be filed only by resident individuals, HUF and Firms having income upto Rs.50 Lakh. Those having income above Rs.50 Lakh will have to file ITR-3 and provide more information. • Reporting with respect to recognition as a start-up by Department for Promotion of Industry and Internal Trade (DPIIT) needs to be provided by the taxpayer along with start-up recognition number as allotted by DPIIT. Further, if certificate from inter- ministerial board is received, certificate number also needs to be provided in ITR 5/ITR 6 • Foreign company needs to report extra details such as name, address, country of residence, PAN (if allotted) and unique identification of respective country of its immediate and ultimate parent company in ITR 6 • The taxpayer needs to provide date of commencement of business in addition to the date of incorporation of the company in ITR 6 • Unlisted companies and start-ups are also required to provide exhaustive details in relation to various assets and liabilities in addition to listing of assets and liabilities in the balance sheet schedule in ITR 6. • Information regarding Turnover/Gross receipts as per GST return filed such as GSTIN and annual value of outward supplies, which was limited to ITR-4 only now made applicable to ITR-3, ITR-5 and ITR-6.

Please Click Here to read notification dated 1 April 2019.

Direct Tax

CBDT outlines Central Action Plan for April-June 2019, sets 30 June 2019 as deadline for disposal of demonetization cases

Outlining the interim action plan for April-June to its field formations, the CBDT has set a June 30 deadline for disposal of all cases related to demonetization along with directing issuance of notices to non-filers of statement of financial transactions (SFT) of high-value transactions u/s 285BA of Income-tax Act by 15 May.

U/s 285BA of the Income-tax Act, specified persons including banks, mutual funds, institutions issuing bonds, registrars and sub-registrars are required to record and report high-value financial transactions of individuals and have to file the Annual Information Report, containing details of high-value transactions, by the specified time in following year.

A 30 June deadline has also been set for filing of references before National Company Law Tribunal (NCLT) in cases of 'struck off' companies. The CBDT has already issued directions to tax offices across the country to probe financial transactions of about three lakh firms, de-registered by the Government for their dubious financial credentials, for tax evasion and money laundering, especially during demonetization and bring under their ambit the time period (over the last two years) when these companies were struck off from the records of the Ministry of Corporate Affairs (MCA).

The field officers have also been asked to identify cases of violation of cash payments of loans of Rs 5 lakh and above, as per section 269SS, for only financial years of 2016-17 and 2017-18 by June 30. As per section 269SS of Income-tax Act, a person cannot accept cash loan or deposit of Rs.20,000 or more from another person. Also, the Board has asked its field officers to identify cases of undisclosed income accruing from capital gains on sale of land or real estate as per section 50C and income from other sources as per section 56(2)(vii) and file the reports by 30 June.

It has also directed Chief Commissioners to allow disposal of appeals of more than Rs.10 lakh if a Commissioner (Appeals) does not have adequate number of appeals up-to Rs 10 lakh, so as to meet the target of 150 appeals by 30 June. For verification of non-PAN or demonetization/ Foreign Accounts Tax Compliance Act (FATCA) / Common Reporting Standard (CRS)/Special Pilot Project related data, the CBDT has set a target of verification of minimum 8 cases per month for each Deputy Director or Assistant Director of Income-tax and 17 cases per month for each Income Tax Office, the action plan stated.

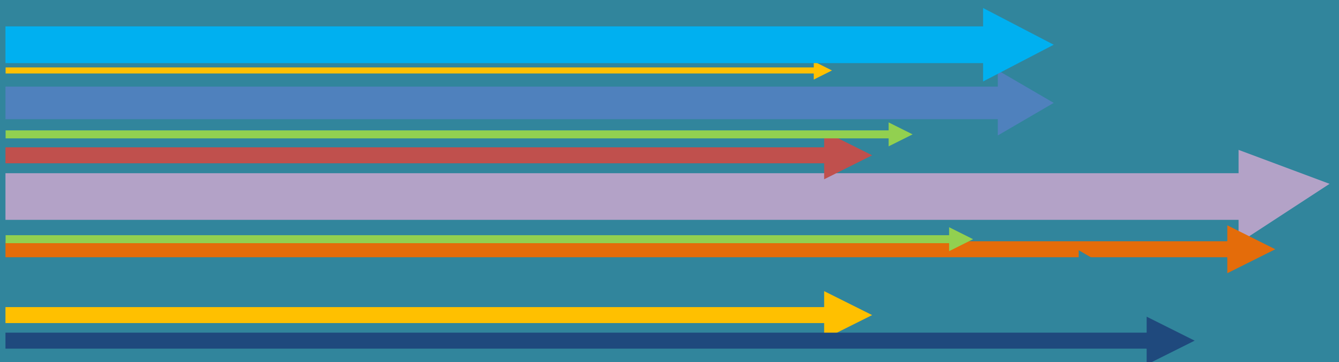
The Board has set the 30 June deadline for disposal of assessments in at least 25 cases (20 in international taxation) per assessing officer of limited scrutiny, reopened assessment under Section 147 and demonetisation related cases. It has asked the officers to complete these assessments through the e-proceeding facility.

Please Click Here to read the detailed Action Plan for April-June 2019 released by CBDT.

Taxman to go after 65,000 non-filers for 2016-17

As per the media reports the Income Tax Department will initiate recovery of tax along with penalty from approximately 65,000 assessees who deposited Rs.10 lakh or more in their bank account during demonetization, but did not file return for the assessment year 2017-18 (financial year 2016-17). These 65,000 plus are part of nearly 3 lakh non-filers with large deposit. After getting notice from the tax department, nearly 2.1 lakh filed their return by 31 March, 2018, while other nearly 25,000 only responded after that.

International Taxation



Public Consultation on the proposal for amendment of Rules for Profit attribution to Permanent Establishment (PE)

Background:

- Taxation of non-residents in India is governed by the provisions of Income-tax Act and provisions of Double Taxation Avoidance Agreement ('DTAA') between India and the respective country. As per the Act, income tax is chargeable for the assessment year in respect of the total income of the previous year of every person. In respect of a person who is non-resident, the total income includes all income from whatever source derived which is received or deemed to be received or accrues or arises or deemed to accrue or arise in India. The income that shall be deemed to accrue or arise in India are specified in section 9 of the Act, which provides, amongst others, that all income accruing or arising, directly or indirectly, through or from any business connection in India shall be deemed to accrue or arise in India. However, in cases where DTAA is applicable, taxes on business income of non-resident can be levied to the extent the same is permissible under such agreement. Thus, business income of a non-resident can be taxed in India if it satisfies the requisite thresholds provided under the Act as well as the threshold provided in applicable DTAA by a concept of PE as defined in Article 5 of the Model Tax Conventions and DTAAs.

- Under Article 7 in the DTAAs, profits are to be attributed to the PE as if it were a distinct and separate entity on the basis of accounts of the PE. Where such accounts are not available to enable determination of profits attributable to the PE, the profits attributable to the PE can be determined under the domestic laws. For the application of this method, the Assessing Officer in India can resort to Rule 10 of the Income-tax Rules, 1962.

- Recognizing the significance of issues relating to attribution of profits to a PE as well as the need to bring greater clarity in the applicable tax regime, a Committee was formed to examine the exiting scheme of profit attribution to PE under Article 7 of DTAAs and recommend changes in Rule 10 of Income-tax Rules. The Committee has submitted its report (enclosed herewith) and it has been decided to seek stakeholder's comments on the Report of the Committee within 30 days of the publication of the document on website of income-tax department.

International Taxation

Highlights of the Proposal

Section	Contents	Summary / Committee's Observations
1	Constitution and Mandate of the Committee	The Committee was accorded the following mandate: • Examine the existing scheme of profit attribution to PE under Article 7 of DTAAs. • Examine the contribution of demand side and supply side factors in profit attribution • Recommend the changes needed in rule 10 of Income-tax Rules to provide specific rules on how profits are to be attributed to a non-resident person having PE in India.
2	Taxation of Business Profits under Act and DTAAs	• Once it has been established that an enterprise satisfies the taxable threshold nexus of business connection under the Act as well as the taxable threshold nexus of PE under the applicable tax treaty, its profits become taxable in India. • However, such profits are taxable only to the extent they are attributable under the relevant provisions of the Act as well as the tax treaty. • Article 7 provides the applicable rules in the model tax conventions and the tax treaties, whereas the domestic law rules are contained in rule 10. • The provision in Indian tax treaties is similar to Article 7 of UN model tax convention, and it has significant similarities with the pre-2010 version of Article 7 in OECD model tax convention except the force of attraction rule and the limitation of deductibility of expenses.
3	Evolution of the Three Different Standards of Article 7 in Model Tax Conventions and its Implications	• The Committee observes that at present three standard versions of Article 7 exist in tax treaties and model tax conventions, the two versions that existed in the OECD model convention before and after 2010 and the one that continues to be a part of UN model convention. • The Committee further observes that one of the primary implications of the revisions introduced in Article 7 of the OECD model tax convention, of necessitating reliance upon FAR for profit attribution and excluding the option of apportion, was that in cases where business profits could not be readily determined on the basis of accounts, the same were required to be determined by taking into account function, assets and risk, and completely ignoring the sales receipts derived from that tax jurisdiction. • This was a major deviation from the generally applicable accounting standards for determining business profits, where business profits cannot be determined without taking sales into account.

Section	Contents	Summary / Committee's Observations
4	Economic Basis for Allocation of Taxing Rights in respect of Income from Business	• The Committee observes that business profits are contributed by both demand and supply of the goods, and hence a jurisdiction that contributes towards demand by facilitating the economy and the ability of their resident to pay or by maintenance of markets that enable sales as well as the jurisdiction that contributes to the production or supply of goods, contribute towards the business profits of an enterprise. • This gives rise to a valid justification of taxation by them of the profits to which their economies have contributed. Where, the economies of both Contracting States in a tax treaty contribute to the business profits, there exists sufficient economic justification for profits to be allocated among them in a manner that avoids double taxation.
5	Different Approaches to Profit Attribution and International Practices	• The Committee observes that there are three possible approaches for profit attribution ✓ the purely supply approach that allocates all business profits exclusively to the jurisdiction where factors of production are deployed and supply side activities are undertaken; ✓ the purely demand side approach that allocates all business profits exclusively to the jurisdiction where the consumer is located; and ✓ a mixed or a balanced approach that allocates profits between the jurisdiction where the consumers are located and the jurisdiction where factors or production are located and where supply side activities are undertaken. • The analysis of international practices shows that among these the mixed approach is most commonly adopted, though there are also instances of purely demand approach, especially in certain US states. The purely supply side approach does not appear to be practiced within any of these countries. • The Committee also observes that the revision of Article 7 by OECD in 2010 amounted to a shift from a broader approach that permitted either of the three approaches followed under the domestic law of a Contracting State, to a purely supply approach, by seeking to determine profits exclusively with reference to functions, assets and risks, and thereby completely excluded the role of demand. This approach taken by the OECD is, however, not observed in international practices even among the OECD countries and regions, which either opt for a mixed approach or a purely demand approach.

Section	Contents	Summary / Committee's Observations
6	Views of Academicians and Experts on Profit Attribution	• The Committee observes that there is a wide acceptance among academicians and experts that demand side factors, as represented by sales can be a valid ground for attribution of profits. • On the question whether OECD approach for profit attribution (AOA) can be considered appropriate, there appears to be no agreement among experts and a number of international authors completely disagree with it, and have been critical of it. • The Committee further notes that the OECD approach of revising Article 7 by adopting the purely supply approach of profit attribution and exclusion of sales as a contributing factor is neither supported by the views of renowned experts, nor has it been able to generate a theoretical basis that is supported by contemporary academicians and experts till date.
7	Position of India on Inadequacies of Revised Article 7, AOA & FAR based Profit Attribution	• The Committee observes that the AOA approach restricts the taxing rights of the jurisdiction that contributes to business profits by facilitating demand, and thereby has the potential to break the virtuous cycle of taxation that benefits all stakeholders in the global economy. Instead, it can set a vicious cycle in place that is destined to lead to losses for all stakeholders. Thus, while AOA approach may be favorable to the interests of certain countries that are net exporters of capital and technology, it is likely to have a very significant adverse impact on all other stakeholders, especially the developing economies like India, which are primarily importers of capital and technology. • The Committee also observes that India has documented its disagreement with the revised Article 7 by not only reserving its right not to include it in its tax treaties, but also documented the rejection of the approach inherent in it. Further, India has consistently communicated and shared its view that since business profits are dependent on sale revenue and costs, and since sale revenue depends on both demand and supply, it is not appropriate to attribute profits exclusively on the basis of function, assets and risks (FAR) alone. Lastly, since the revised Article 7 recommended by OECD since 2010 onwards has not been incorporated in any of the Indian tax treaties, the question of applying AOA for attribution of profits does not arise. • The Committee takes into account the fact that the additional guidance issued by OECD with reference to AOA in respect of the changes in Article 5 introduced by the Action 7 of the BEPS project on Artificial Avoidance of Profit Attribution, cannot apply to Indian tax treaties, since they do not incorporate the revised Article 7 of OECD model tax convention in respect of which AOA has been developed as a guidance. Though this position of India has been clearly communicated to the OECD, the Committee considers that there may be a need for bringing further clarity on how the profits will be attributed to the PEs under the Indian tax treaties, especially in consequence to the changes introduced as a result of Action 7.

International Taxation

Section	Contents	Summary / Committee's Observations
8	Court Decisions on Profit Attribution in India	• The Committee observes that the Courts have repeatedly endorsed the right of the Assessing Officer to attribute profits under rule 10 of the Rules, even in cases where tax treaties were applicable, thereby confirming that application of rule 10 is permissible for attribution of profits in such cases. The Committee also observes that in several of these cases, the Courts have also upheld the right of India to attribute profits by apportionment, as permissible under Indian tax treaties. • The Committee notes with concern that very diverse methodologies seem to have been adopted in different cases in attributing profits to the PEs. In the view of the Committee, this may be a result of the wide scope of discretion accorded under rule 10 in terms of methodology for attribution of profits. Since lack of a universal rule can create uncertainties for taxpayers as well as result in more tax disputes, there appears to be a case for providing a simple and universally applicable rule to bring in greater certainty and predictability among the stakeholders and prevent avoidable tax litigation on this account.
9	Need for Clarity in India's Approach on PE Attribution: Various Options for More Specific rules	• After taking into account the preceding details and the analysis of methods for profit attribution, the Committee unanimously agreed that there is a need to consider possible options that can be adopted as a uniform method of profits attribution by apportionment under rule 10, in accordance with India's position and views. Accordingly, the Committee considered the possible options. • Regarding the option of Formulary Apportionment, the Committee was of the view that since it requires an apportionment of consolidated profits of the enterprise derived from different jurisdictions, it may not be feasible due to practical constraints in obtaining details related to operations in other jurisdictions. • The Committee considered the option of Fractional Apportionment based on apportionment of profits derived from India and observed that such an approach is permissible under paragraph 4 of Article 7 of Indian tax treaties as well as rule 10 of the Rules and being based largely on information related to Indian operations, is also practicable. For this purpose, the Committee found considerable merit in a three factor method based on equal weight accorded to sales, representing demand, and manpower and assets, which represent supply including marketing activities. • In view of the principle laid down by the Hon'ble Supreme Court in the case of DIT Vs Morgan Stanley, as well as the need to avoid double taxation of such profits in the hands of a PE as well as an Indian subsidiary participating in the integrated business, the Committee arrived at a view that profits derived from Indian operations that have already been subjected to tax in India should be deducted from the apportioned profits. The Committee observed that in a case where no sales takes place in India, and the profits that can be apportioned to the supply activities have already been taxed in the hands of an Indian subsidiary, no further taxes would need to be paid by the PE. • The Committee observes that the profits derived from India need to be defined objectively, and considers that the same can be arrived at by multiplying the revenue derived from India with the global operational profit margin. However, acknowledging the contribution of market jurisdictions, where the enterprise is having global losses or where its global operational profit margin is less than 2%, the same can be arrived at by deeming the global operational profit margin to be 2%.

International Taxation

Section	Contents	Summary / Committee's Observations
10	Profit Attribution in Significant Economic Presence Nexus	• The Committee, after detailed deliberation, considered the various aspects of users' contribution in the digital economy and also the fact that the role of user has blurred the traditional demand and supply functions. Taking these factors into consideration, the Committee arrived at a unanimous view that user contribution can be a substitute to either assets or employees, and supplement their role in contributing to profits of the enterprise. However, putting users together with either manpower or assets can pose significant challenges in distributing their respective shares within the assigned weight for their category (i.e. 33% for manpower or 33% for assets). Accordingly, the Committee found it reasonable that for business models in which users contribute significantly to the profits of the enterprise, they should also be taken into account for the purpose of attribution of profits, as the fourth factor for apportionment, in addition to the other three factors of sales, manpower and assets. • The Committee also noted that in its recent amendment of the 2016 proposal for CCCTB90, the European Commission has now proposed a new four factor formula, that includes users as the fourth factor, in addition to sales, manpower/wages and assets and is given equal weight of 25% as given to other factors. • The Committee considered the option of following the approach of the EU in CCCTB and assigning users the same weight as other three. However, the Committee also considered that different weights are to be ascribed to different categories of digital businesses depending upon the level of user intensity. The Committee decided to assign a lower weight of 10% to the users for those business models involving low or medium user intensity and assigning a weightage of 20% to users in those business models involving high user intensity. The Committee also decided that since the users carry out the work of employees and are also assets to the company, the relative weightage of employees and assets will be adjusted downwards, keeping the weightage of sales fixed at 30% in both the cases.

Section	Contents	Summary / Committee’s Observations
11	Conclusions and Recommendations of the Committee	• Rule 10 may be amended to provide that in the case of an assessee who is not a resident of India, has a business connection in India and derives sales revenue from India by a business all the operations of which are not carried out in India, the income from such business that is attributable to the operations carried out in India and deemed to accrue or arise in India under clause (i) of sub-section(1) of section 9 of the Act, shall be determined by apportioning the profits derived from India by a three equally weighted factors of sales, employees (manpower & wages) and assets, as under: • Profits attributable to operations in India = ‘Profits derived from India x [SI/3xST + (NI/6xNT) +(WI/6xWT) + (AI/3xAT)] Where, SI = sales revenue derived by Indian operations from sales in India ST = total sales revenue derived by Indian operations from sales in India and outside India NI =number of employees employed with respect to Indian operations and located in India NT = total number of employees employed with respect to Indian operations and located in India and outside India WI= wages paid to employees employed with respect to Indian operations and located in India WT = total wages paid to employees employed with respect to Indian operations and located in India and outside India AI = assets deployed for Indian operations and located in India AT = total assets deployed for Indian operations and located in India and outside India For the above purpose, ‘Profits derived from India’ = Revenue derived from India x Global operational profit margin • The amended rules should provide that ‘profits derived from Indian operations’ will be the higher of the following amounts: ✓ The amount arrived at by multiplying the revenue derived from India x Global operational profit margin, or ✓ Two percent of the revenue derived from India

Section	Contents	Summary / Committee's Observations
11	Conclusions and Recommendations of the Committee	• The amended rules should provide an exception for enterprises in case of which the business connection is primarily constituted by the existence of users beyond the prescribed threshold, or in case of which users in excess of such prescribed threshold exist in India. In such cases, the income from such business that is attributable to the operations carried out in India and deemed to accrue or arise in India u/s 9(1)(i) of the Act, shall be determined by apportioning the profits derived from India on the basis of four factors of sales, employees (manpower & wages), assets and users. The users should be assigned a weight of 10% in cases of low and medium user intensity, while each of the other three factors should be assigned a weight of 30%, as under: • Profits attributable to operations in India in cases of low and medium user intensity business models= 'Profits derived from India' x [0.3 x SI/ST + (0.15 x NI/NT) +(0.15 x WI/WT) + (0.3 x AI/3xAT)] + 0.1] In case of digital models with high user intensity, the users should be assigned a weight of 20%, while the share of assets and employees be reduced to 25% each after keeping the weight of sales as 30%, as under: Profits attributable to operations in India in cases of high user intensity business models = 'Profits derived from India' x [0.3 x SI/ST + (0.125 x NI/NT) +(0.125 x WI/WT) + (0.25 AI/3xAT)] + 0.2] • The amended rules should also provide that where the business connection of the enterprise in India is constituted by the activities of an associate enterprise that is resident in India and the enterprise does not receive any payments on accounts of sales or services from any person who is resident in India [or such payments do not exceed an amount of Rs.10,00,000] and the activities of that associated enterprise have been fully remunerated by the enterprise by an arm's length price, no further profits will be attributable to the operation of that enterprise in India. • However, where the business connection of the enterprise in India is constituted by the activities of an associate enterprise that is resident in India and the payments received by that enterprise on account of sales or services from persons resident in India exceeds the amount of Rs. 10,00,000 then profits attributable to the operation of that enterprise in India will be derived by apportionment using the three factors or four factors as may be applicable in his case and deducting from the same the profits that have already been subjected to tax in the hands of the associated enterprise. For this purpose, the employees and assets of the associated enterprise will deemed to be employed or deployed in the Indian operations and located in India. The Committee recommends the amendment of rule 10 accordingly. The Committee also recommended that an alternative can be amendment of the IT Act itself to incorporate a provision for profit attribution to a PE.

Inference

Attribution of profits to PE is a very complex and subjective exercise. Separate analysis is required in each case. In the Indian context a number of disputes have arisen in this matter. In this background, CBDT's intention to provide guidance on the subject is a welcome move from the Government's side, although some refinements and modifications need to be considered to the recommendations in order to better align the outcome with international tax principles.

Please Click Here to read the detailed Proposal dated 18 April 2019.

Indian Advance Pricing Agreement (APAs) regime moves forward with signing of 18 APAs in March, 2019

The Central Board of Direct Taxes (CBDT) has entered into 18 APAs in the month of March 2019, which includes 3 Bilateral APAs (BAPAs). With the signing of these APAs, the total number of APAs entered into by the CBDT in the year 2018-19 stands at 52, which includes 11 BAPAs. The total number of APAs entered into by the CBDT as of now stands at 271 (including 31 BAPAs).

The BAPAs entered into during the month of March 2019 were with the following treaty partners:-

- Australia – 1
- Netherlands - 1
- USA – 1

The BAPAs and Unilateral APAs (UAPAs) entered into during the month of March 2019 pertain to various sectors and sub-sectors of the economy like antifriction bearings, risk management solutions platforms, BPO, IT/ITeS, ATMs, industrial and institutional cleaning and hygiene products, etc.

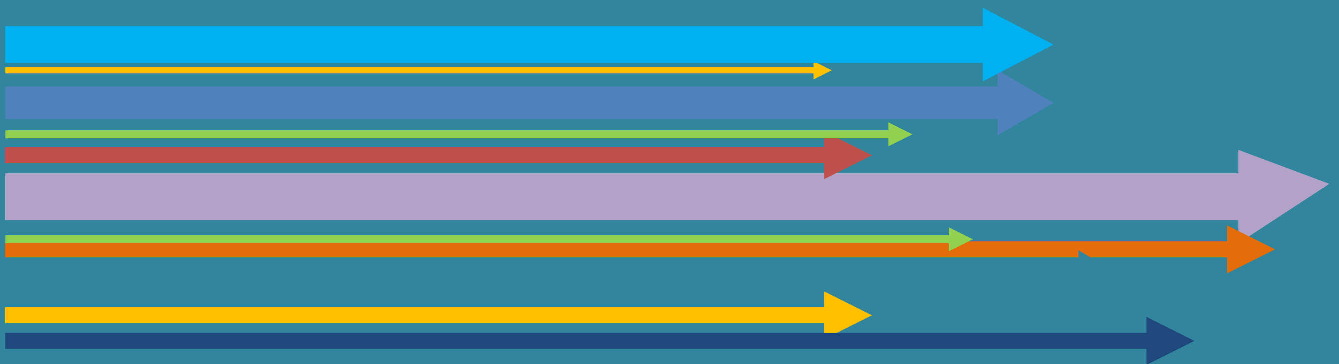
The international transactions covered in all these agreements, amongst others include the following -

- contract manufacturing
- provision of software development services
- back office engineering support service
- provision of back office (ITeS) support services
- provision of marketing support services
- payment of royalty for use of technology and brand
- trading
- payment of interest

The progress of the APA scheme strengthens the Government's resolve of fostering a non-adversarial tax regime. The Indian APA programme has been appreciated nationally and internationally for being able to address complex transfer pricing issues in a fair and transparent manner.

Please Click Here to read the Press Release dated 3 April 2019.

Corporate Law



Corporate Law

Single window clearance for company registration in India (e-form AGILE)

The Ministry of Corporate Affairs (MCA) through notification dated 29 March, 2019 has notified e-form known as AGILE -Application for Registration of the Goods and Services Tax Identification Number (GSTIN), Employees' State Insurance Corporation (ESIC) registration plus Employees Provident Fund Organization (EPFO) registration.

Background:

Earlier, registrations under GST, ESI, EPF law could be applied for only after incorporation of company in India. Going forward, by filing e-form AGILE along with SPICE (Simplified Performa for incorporation of Companies Electronically) form at the time of registration, the company would be automatically enrolled for GST, ESI and EPF registration – another more towards ease of doing business in India.

Highlights:

Particulars	e-Form AGILE (INC-35)
Applicability	Any applicant who intends to incorporate company on or after 31 March 2019.
Effective date	• GSTIN with effect from 31 March 2019 • EPFO with effect from 8 April 2019 • ESIC with effect from 15 April 2019
Details required	• Proof of principle place of business • Proof of Appointment of authorized signatory PS: Note that the Director cum authorized signatory must have valid PAN and he must be Citizen & Resident of India.

Please Click Here to read the notification dated 29 March, 2019.

Corporate Law

Relaxation of additional fee and extension of last date of filing e form CRA-2 (Form for intimation of appointment of Cost Auditor)

MCA has issued a circular on 4 April, 2019 and has provided relaxation of additional fee and extension of last date of filing of e-form CRA-2 up to 31 May, 2019, wherever additional fees is applicable.

Background:

MCA vide notification dated 3 December 2018 had mandated for the specified company to get its cost records audited for the first time under Companies Act, 2013 on account of Companies (Cost Records and Audit) Amendment Rules, 2018.

Relaxation provided:

Ministry has decided to extend the last date for filing of e-form CRA-2 (Form of intimation of appointment of cost auditor by the company to Central Government) in the abovementioned cases without payment of additional fees up to 31 May 2019.

Please Click Here to read the circular dated 4 April, 2019.

Filing of one time return in form DPT-3 (return of outstanding receipt of money or loan by companies)

Background:

MCA vide notification dated 22 January 2019 has mandated for specified companies to file a one-time return of outstanding receipt of money or loan by a company but not considered as deposits, from 1 April, 2014 to 22 January 2019, in Form DPT-3 within 90 days from the date of said publication of the notification along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.

Circular issued by MCA:

- Post the aforesaid circular, all Companies other than Government Companies that have outstanding receipts of money or loan (which are not classified as deposits) as on 31st March, 2019, from any entity/ individual will get covered under this notification. The money/ loan should be received during the period 1 April, 2014 to 31 March, 2019.

- Pending the deployment of DPT-3 Form on MCA 21 portal and in order to avoid inconvenience to stakeholders on account of various factors, it is stated that the additional fee shall be levied after 30 days from the date of deployment of the DPT- 3 form on MCA 21 portal.

Please Click Here to read the circular dated 12th April, 2019.

Clarification on filing Director details in e form DIR-3 KYC

MCA has issued a message on the MCA 21 portal on 13 April, 2019 in respect of filing of director details in e form DIR-3 KYC.

Background:

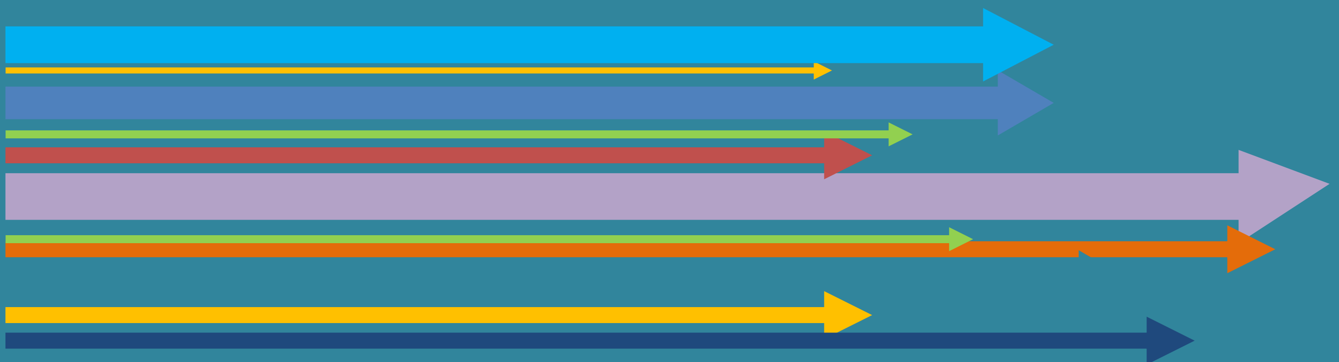
- MCA vide notification dated 5 July 2018 has mandated for every person who has been allotted a Director Identification Number (DIN) as on 31st March of a financial year to submit e-form DIR-3-KYC to the Government on or before 30th April of immediate next financial year.
- Accordingly, initially every individual holding DIN as at 31st March, 2018 was required to submit e-form DIR-3 KYC on or before 31st August, 2018.
- Now, it is clarified that DIN holders who had filed DIR-3 KYC form earlier and complied with the said provisions are required to file the DIR-3 KYC on annual basis.

Clarification provided:

- DIN holders who had filed DIR-3 KYC form earlier and complied with the said provisions to await the deployment of the modified form for fulfilling their compliance requirements.
- The revised form, which will be shortly deployed, can be filed without any fee within 30 days from the date of deployment.

Please Click Here to read the message dated 13 April, 2019.

Reserve Bank of India (RBI)



Reserve Bank of India (RBI)

Relaxation for opening Branch Office / Liaison Office / Project Office in India by foreign entities in Defence, Telecom, Private Security, Information and Broadcasting sector

RBI has issued a notification dated 28 March, 2019 under the Foreign Exchange Management (Establishment in India of a Branch Office or a Liaison Office or a Project Office or any Other Place of Business) Regulations, 2016

Background:

As per the existing regulations, for opening of a Branch Office (BO) / Liaison Office (LO) / Project Office (PO) or any other place of business in India, where the principal business of the applicant falls in the Defence, Telecom, Private Security and Information and Broadcasting sector, prior approval of the Reserve Bank of India (RBI) is required.

Relaxation Provided:

- Going forward, for opening of a BO/LO/PO or any other place of business in India, where the principal business of the applicant falls in the Defence, Telecom, Private Security and Information and Broadcasting sector, no prior approval of the Reserve Bank of India shall be required, if Government approval or license/permission by the concerned Ministry/ Regulator has already been granted.

- Further, in the case of proposal for opening a PO relating to defence sector, no separate reference or approval of Government of India shall be required if the said non-resident applicant has been awarded a contract by/entered into an agreement with the Ministry of Defence or Service Headquarters or Defence Public Sector Undertakings.

It has been clarified that the term “permission” used in the Notification does not include general permission, if any, available under Foreign Direct Investment in the automatic route, in respect of the above 4 sectors.

Please Click Here to read the notification dated 28 March, 2019.

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