

KrayMan

Demystifying Complexities

TAX EDGE

Monthly Tax & Regulatory Updates

November 2017



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Goods & Services Tax

Decisions made in the 23rd GST Council Meeting

The 23rd GST Council Meeting was held at Guwahati on 10th November 2017 wherein decisions and changes pertaining to revision in due dates of GST return filing, deferment of GSTR 2 & GSTR 3, increasing the limit for opting composition scheme were taken and recommended.

Further, council has recommended reduction in GST rate from 28% to 18% on goods falling in 178 headings resulting only 50 items will attract GST rate of 28% to facilitate the trade and industry.

Notification / circulars required for above have been issued on 14th November 2017 in order to make these amendments effective from 15th November 2017.

Please [Click Here](#) to read our detailed newsletter on the above.

Clarification on movement of goods on approval basis

Central Government has clarified that goods which are taken for supply on approval basis can be moved from the place of business of the registered supplier to another place within the same State or to a place outside the State on a delivery challan along with the e-way bill wherever applicable and the invoice may be issued at the time of delivery of goods.

It is further clarified that all such supplies, where the supplier carries goods from one State to another and supplies them in a different State, will be inter-state supplies and will attract IGST.

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

Waiver of late fee on filing of GSTR-3B for August and September, 2017

In view of the difficulties being faced during the return filing process and in order to further facilitate taxpayers, Central Government has waived the late fee on filing of GSTR- 3B for the months of August and September, 2017.

The necessary software changes are being carried out in the IT system. Electronic cash ledger of the taxpayers who have already paid the late fee on filing of GSTR-3B either for the month of August or September, 2017 or those who pay such fee before the necessary changes are carried out in the IT system will be credited with the amount of late fee so paid by them.

Please [Click Here](#) to read the notification

Authorized officer for enrollment of Goods and Services Tax Practitioner

Central Board of Excise & Customs ('CBEC') has clarified that Assistant Commissioner / Deputy Commissioner, having jurisdiction over the place is the officer authorized to approve or reject the said application for enrolment as Goods and Service Tax Practitioner submitted by applicant.

It is also clarified than the applicant shall be at liberty to choose either the Centre or the State as the enrolling authority. The choice will have to be specified by the applicant in Item 1 of Part B of FORM GST PCT-1

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

IGST Rate in case Export on supply of taxable goods by a registered supplier to a registered recipient

W.e.f 23rd October, 2017, the Central Government has exempted the intra-State supply and inter-state supply of taxable goods in excess of the amount calculated @0.05 % and @ 0.1% respectively by a registered supplier i.e. Merchant Exporter to a registered recipient i.e. Ultimate Exporter for export is subject to fulfillment of certain conditions.

Further, the Supplier shall not be eligible for the above-mentioned exemption if the registered recipient fails to export the said goods within a period of 90 days from the date of issue of tax invoice.

Please [Click Here](#) to read the notification for CGST

Please [Click Here](#) to read the notification for IGST

Please [Click Here](#) to read the notification for UTGST

Additional goods under Reverse Charge Mechanism ('RCM') under section 9(3) of CGST Act

Section 9 of CGST Act 2017 specifies categories of supply of goods or services, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

Central Government w.e.f 15th November, 2017 has notified to include "supply of raw cotton by agriculturist" under the reverse charge and tax will be liable to be paid by the recipient of such supply under reverse charge

Please [Click Here](#) to read the notification for CGST

Please [Click Here](#) to read the notification for IGST

Evidences for Claiming Refund under Deemed Export

The Central Government has notified the following as evidences which are required to be produced by the supplier of deemed export supplies for claiming refund, namely:-

1. Acknowledgment by the jurisdictional Tax officer of the Advance Authorisation holder or Export Promotion Capital Goods Authorisation holder, as the case may be, that the said deemed export supplies have been received by the said holder, or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient Export Oriented Unit that said deemed export supplies have been received by it.
2. An undertaking by the recipient of deemed export supplies that no input tax credit on such supplies has been availed of by him.
3. An undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and the supplier may claim the refund.

Please [Click Here](#) to read the notification

Exemption to Supply of services having place of supply in Nepal and Bhutan, against payment in Indian Rupees

The Central Government has added a new entry in the exemption notification, namely, Supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees.

Please [Click Here](#) to read the notification

Permanent transfer of Intellectual Property is a supply of goods or service

To obviate dispute and litigation, CBEC notified that irrespective of whether permanent transfer of Intellectual Property is a supply of goods or service, the following rates shall be applicable: -

Description	Rate of GST
Permanent transfer of Intellectual Property other than Information Technology software	12%
Permanent transfer of Intellectual Property in respect of Information Technology software	18%

Please [Click Here](#) to read the notification

Manual filing and processing of refund claims in respect of zero-rated supply

Due to the non-availability of the refund module on the common portal, Central Government, on the recommendations of the Council, has instructed that the applications / documents / forms pertaining to refund claims on account of zero-rated supplies shall be filed and processed manually till further orders.

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

No GST on advance received against supply of goods for all assesseees

All persons (below or above Rs. 1.5 cr limit) shall not be required to pay tax on advance received against future supplies of goods. This facility was allowed only to persons below the Rs. 1.5 cr limit which will continue to enjoy the relaxation from 13th October 2017 but all other taxable persons (other than composition) will now enjoy the benefit from 15th November 2017 onwards.

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



Direct Tax

Delhi High Court strikes down various Income-Computation and Disclosure Standards ('ICDS') provisions which are against settled principles of taxation

In March 2015, Central Board of Direct Taxes ('CBDT') notified 10 ICDS for taxpayers (other than Individuals and Hindu Undivided Family [HUF] not liable to tax audit) following mercantile system of accounting while computing income under the heads 'Profits and gains of business or profession' and / or 'Income from other sources' with effect from 1 April 2015.

In December 2015, Chamber of Tax Consultants (CTC) filed representation with CBDT requiring clarification, guidance or dispensation of specific provisions of ICDS. However, CBDT deferred the applicability of ICDS in light of other impending regulatory changes and that a detailed study of ICDS implications was required before its implementation.

In September 2016, Old ICDS were rescinded and 10 updated ICDS notified through notification No. 87/2016.

Again CTC filed a writ petition before the Delhi High Court challenging the constitutional validity of ICDS itself and many of its provisions which were contradicting rationale laid down by the settled judicial precedents.

Considering the petition and submissions on behalf of CTC and that of the respondents (i.e. Union of India and CBDT), the Delhi High Court held under:

1. As per income tax act the power of the Central Government ('CG') is limited to only notify ICDS that do not seek to override binding judicial proceedings or provisions of the Act.
2. To the extent that specific ICDS have been struck down as ultra vires the Act, the updated ICDS and clarifications issued by the CBDT are also held to be ultra vires the Act and struck down as such

Please [Click Here](#) to read the specific observations of the Delhi High Court on individual ICDS

Central Government approves ICRISAT as Scientific Research Association

M/s International Crops Research Institute for the Semi-Arid Tropics ('ICRISAT') (PAN:- AAAJIO282L) has been approved by the Central Government as scientific research association for the purpose of clause (ii) of sub-section (1) of section 35 i.e. deduction as per Income Tax Act will be available for the contribution made to ICRISAT.

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

Draft Notification on conversion of Indian Branch of Foreign Bank into Indian Subsidiary company

The Finance Act, 2012 inserted a new Chapter XII-BB consisting of Section 115JG in the Income-tax Act, 1961 which contains “Special provisions relating to conversion of Indian Branch of a Foreign Bank into a Subsidiary Company”. Section 115JG of the Act, inter alia, provides that in case the conversion of Indian Branch of foreign bank fulfills the conditions notified by the Central Government, the capital gains arising from such conversion shall not be chargeable to tax and the provision relating to unabsorbed depreciation, set off or carry forward and set off of losses, tax credit in respect of tax paid on deemed income relating to certain companies and the computation of income in case of foreign company and Indian subsidiary shall apply with such modification, exception etc. as may be specified in the notification.

In view of the above, a draft notification has been issued under Section 115JG (1) of the Act specifying the conditions to be fulfilled by the conversion and also specifying modifications, exceptions, in applicability of certain provisions of the Act to such conversion.

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

Clarification on Cash sale of agricultural produce by cultivators / agriculturist

Section 40A (3) of the Income-tax Act, 1961 provides for the disallowances of expenditure exceeding Rs. 10000 made otherwise than by an account payee cheque / draft or use of electronic clearing system through a bank account. However there are certain exceptions from application of the provisions of section 40A (3) in some specific cases and circumstances, which inter alia include payments made for purchase of agricultural produce to the cultivators of such produce. Therefore, no disallowance under section 40A (3) of the Act can be made if the trader makes cash purchases of agricultural produce from the cultivator

In view of the. above, it is clarified that cash sale of the agricultural produce by its cultivator to the trader for an amount less than Rs 2 Lakh will not:–

- a) Result in any disallowance of expenditure under section 40A (3) of the Act in the case of trader.
- b) Attract prohibition under section 269ST of the Act in the case of the cultivator; and
- c) Require the cultivator to quote his PAN/ or furnish Form No. 60.

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

International Tax / Transfer Pricing

Clarification on India's position on the acceptance of MAP and bilateral APA in respect of TP cases

CBDT, vide press release dated 27th November 2017, has clarified India's position on acceptance of applications for Mutual Agreement Procedure ('MAP') and bilateral Advance Pricing Agreement ('APA') in respect of transfer pricing matters. It has been clarified that for the purpose of acceptance of such application, it is not mandatory to have a specific adjustment clause in the relevant Double Taxation Avoidance Agreement ('DTAA'). Till now, one of the conditions for acceptance of any application for Bilateral APA/ MAP in respect of TP matters was the mandatory presence of Article 9(2) (clause for corresponding adjustment) in India's DTAA with the other country involved in such dispute. This requirement restricted taxpayers from placing a request for bilateral APA/ MAP in such cases, even if their domestic tax law permitted such request.

This is a welcome step especially for TP cases involving countries like France, Germany etc., where earlier a bilateral APA/ MAP was not possible earlier due to absence of Article 9(2) in the relevant DTAA. Further, it also reflects Government's commitment to adoption of OECD's recommendations on improved MAP access under Base Erosion and Profit Shifting ('BEPS') scheme.

Please [click here](#) to read the Press Release dated 27 Nov 2017.



CBDT notifies rules for Country-By-Country Report and Master File rules

In line with OECD Base Erosion and Profit Shifting (BEPS) Project, section 286 of the Income-tax Act, 1961 was inserted vide Finance Act, 2016, providing for furnishing of a Country-by-Country report in respect of an international group by its constituent or parent entity.

Rules for maintenance and furnishing of transfer pricing documentation in the Master File and Country-by Country report have been notified on 31st October 2017.

These rules will be applicable to the persons having consolidated group revenue of the international group, of which such person is a constituent entity, as reflected in the consolidated financial statement of the international group for the accounting year, exceeds five hundred crore rupees; and aggregate value of international transactions,

- a. during the accounting year, as per the books of accounts, exceeds fifty crore rupees, or
- b. in respect of purchase, sale, transfer, lease or use of intangible property during the accounting year, as per the books of accounts, exceeds ten crore rupees,

The above person shall keep and maintain the various information and documents of the international group, such as the below.

- a) list of all entities of the international group along with their addresses;
- b) a chart depicting the legal status of the constituent entity and ownership structure of the entire international group;
- c) a description of the business of international group during the accounting year

Please [Click Here](#) to read the complete list of documents required to be maintained.

CBDT extends due date for filing of Country-by-Country Report for 2016-17

Keeping in view that it is the first reporting year for furnishing of the Country-by-Country report, the due date for filing the Country-by-Country report for reportable accounting year 2016-17 has been extended to 31st of March, 2018.

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

Indirect Transfer provisions in case of redemption of share or interest outside India.

It has been decided that the income accruing or arising to a non-resident on account of redemption or buyback of its share or interest held indirectly in the specified funds shall not be deemed to accrue or arise in India provided such income accrues or arises from or in consequence of transfer of shares or securities held in India by the specified funds and such income is chargeable to tax in India.

However, this provision shall be applicable only in those cases where the proceeds of redemption or buyback arising to the non-resident do not exceed the pro-rata share of the non-resident in the total consideration realized by the specified funds from the said transfer of shares or securities in India.

It is further clarified that a non-resident investing directly in the specified funds shall continue to be taxed as per the extant provisions of the Act.

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



Companies Act, 2013

No need to separately upload Forms 49A & 49B after filing eSpice Forms for Permanent Account No. ('PAN') & Tax Deduction Account No. ('TAN')

As part of its continuous efforts for simplifying Incorporation related process for providing Ease of Doing Business to stakeholders, the Government dispensed with the requirement of separately uploading Forms 49 A& 49B after filing SPICe e-forms with effect from 4 November 2017.

Accordingly, stakeholders will not be required to upload signed 49A/49B using "Submit application for PAN/TAN" service. PAN and TAN will continue to be issued as before based on the details submitted in the eSpice forms itself.

Relaxation of additional fee and extension of last date of filing Form AOC-4 under Companies Act, 2013

Government vide circular no. 14 dated 27 Oct 2017, relaxed additional fee for filing of Form AOC-4 for the financial year ending 31 March 2017 as below:-

1. For Form AOC-4 (XBRL E-forms using Ind AS): till 31 March 2018;
2. For Form AOC-4, AOC-4 (XBRL non-IndAS) & AOC-4 CFS: 28 November 2017.

Please [Click Here](#) for the Circular dated September 5, 2017

Government notifies Companies (Filing of Documents and Forms in Extensible Business Reporting Language), Amendment, Rules, 2017

As per Companies (Filing of Documents and Forms in Extensible Business Reporting Language), Amendment, Rules, 2011, only following companies were required to file Financial Statements with the Registrar in Form AOC-4 XBRL:-

1. Companies listed with stock exchanges in India and their Indian subsidiaries;
2. Companies having paid up capital of 5 crore rupees or above;
3. Companies having turnover of 100 crore rupees or above;

Non-banking financial companies (NBFCs), housing finance companies and companies engaged in the business of banking and insurance sector were exempted.

New rules mandated XBRL filings for such companies also, which are required to prepare their financial statements in accordance with Companies (Indian Accounting Standards) Rules, 2015.

Please [Click Here](#) for the Notification dated November 6, 2017



Foreign Exchange Regulations

Guidelines for foreign investment in India revised

Reserve Bank revised guidelines for foreign investment in India in supersession of earlier Notification No.FEMA.20 dated 3 May 2000 (Foreign Investments in Indian companies & LLPs) and Notification No.FEMA.24 dated 3 May 2000 (Investments in firm or proprietary concerns in India).

Key changes:-

1. Definition of 'Capital' for the purposes of FDI has been widened. Share warrants and party-paid up shares were earlier not considered as 'Capital'. Now, these instruments form part of Capital 'Instruments'
2. Time-limit of 180 days for issue of capital instruments has been reduced to 60 days. Limit for refund of application money has been reduced from 180 days to 75 days
3. In case of transfer of shares on deferred payment or installment basis, the resident transferor/transferee is required to submit form FC-TRS within 60 days from the date of receipt of each tranche of payment.
4. Provision for late submission fee has been inserted in case of delay in reporting
5. Definition of 'Downstream Investment' widened to include investment by an Indian company or LLP or Investment Vehicle in another downstream Indian company or LLP
6. FDI now defined under RBI regulations
7. General permission granted for transfer of capital Instruments to a non-resident, pursuant to liquidation, merger, de-merger and amalgamation of foreign companies

Please [Click Here](#) for the Notification dated November 7, 2017.

[Click Here](#) to read our detailed newsletter on the revised regulations.

Reserve Bank (RBI) introduces Legal Entity Identifier for large corporate borrowers

The Legal Entity Identifier (LEI) code is conceived as a key measure to improve the quality and accuracy of financial data systems for better risk management post the Global Financial Crisis. LEI is a 20-digit unique code to identify parties to financial transactions worldwide.

LEI system for all borrowers of banks having total fund based and non-fund based exposure of Rs. 5 crore and above will be introduced in a phased manner. The banks shall advise their existing large corporate borrowers having total exposures of Rs. 50 crore and above to obtain LEI as per the schedule prescribed

Borrowers who do not obtain LEI as per the schedule are not to be granted renewal / enhancement of credit facilities. A separate roadmap for borrowers having exposure between Rs. 5 crore and upto Rs. 50 crore would be issued in due course.

Banks should encourage large borrowers to obtain LEI for their parent entity as well as all subsidiaries and associates. Entities can obtain LEI from any of the Local Operating Units (LOUs) accredited by the Global Legal Entity Identifier Foundation (GLEIF) – the entity tasked to support the implementation and use of LEI.

In India, LEI code may be obtained from Legal Entity Identifier India Ltd (LEIIL), a subsidiary of the Clearing Corporation of India Limited (CCIL), which has been recognised by the Reserve Bank as issuer of LEI under the Payment and Settlement Systems Act, 2007 and is accredited by the GLEIF as the Local Operating Unit (LOU) in India for issuance and management of LEI.

Please [Click Here](#) for the Notification dated November 2, 2017

RBI issues Master Directions on issuance and operation of prepaid payment instruments (PPIs)

Prepaid Instruments (PPI's) are defined as payment instruments that facilitate purchase of goods and services against the value stored on such instruments. Applications of PPI instruments today range from popular uses like payroll and travel cards to emerging uses like m-wallets. PPIs that can be issued in the country are classified under three categories viz. (i) Closed system prepaid payment instruments (ii) Semi-closed system prepaid payment instruments and (iii) Open system prepaid payment instruments.

Master Directions were issued by the Reserve Bank on 11 October 2017 on issuance and operation of PPIs. It aims to:-

- provide a framework for authorization, regulation and supervision of entities operating payment systems for issuance of PPIs in the country;
- foster competition and encourage innovation in this segment in a prudent manner while taking into account safety and security of transactions.

The Master Direction lays down the eligibility criteria and the conditions of operation for payment system operators involved in the issuance of semi-closed and open system PPIs in the country.

No entity can set up and operate payment systems for issuance of PPIs without prior approval / authorization of RBI.

The Memorandum of Association (MOA) of the applicant non-bank entity shall cover the proposed activity of operating as a PPI issuer.

All existing non-bank PPI issuers (at the time of issuance of this Master Direction) shall comply with the minimum positive net-worth requirement of Rs. 15 crore for the financial position as on March 31, 2020 (audited balance sheet). This shall be reported to RBI, along with CA certificate in the prescribed format and audited Balance Sheet, by September 30, 2020. Thereafter, the minimum positive net-worth of Rs. 15 crore shall be maintained at all times. Till such time, the existing PPI issuers shall continue to maintain the capital requirements applicable to them at the time of their authorisation.

Banks and non-bank entities issuing PPIs in the form of prepaid meal instruments, shall be issued only as semi-closed PPIs, and in electronic form and reloadable. No cash withdrawal or funds transfer shall be permitted from such instruments. Such PPIs need not be issued as a separate category of PPI. No prepaid meal instruments in paper voucher form shall be issued after December 31, 2017.

7.14 There shall be no remittance without compliance to KYC requirements. PPI issuers, including their agents, shall not create new PPIs each time for facilitating cash-based remittances to other PPIs / bank accounts. PPIs created for previous remittance by the same person shall be used.

All PPIs issued in the country shall have a minimum validity period of one year from the date of last loading / reloading in the PPI. PPI issuers are free to issue PPIs with a longer validity.

Please [click here](#) to read the Master Direction

Employees' Provident Fund/ Social Security

Procedure for Auto-Transfer of Accounts revised.

Ministry vide notification dated 15 Nov 2017, launched the necessary functionality required to carry out Auto Transfer of Accounts of a member on change of employment in Unified Portal/ EPFO (Employees' Provident Fund Organization) Application Software.

Members satisfying the specified preconditions and whose UAN and Aadhaar number is entered and matched by the present employer against the existing details as available against the UAN would be marked for auto transfer.

SMS and e-mail (if registered) will be sent to the member once the transfer is auto initiated.

Please [click here](#) to read the notification.

Linking of Aadhaar number with Insurance policies is mandatory

Under the Prevention of Money Laundering (Maintenance of Records) Second Amendment Rules, 2017, the Insurance Regulatory and Development Authority of India (IRDAI) clarified that it is mandatory to link Aadhaar number with the Insurance Policies.

It is applicable to both, Life Insurance and general insurance policies like travel, home, health and motor. Lately, Aadhaar has been made necessary for a host of financial services like PPF, NSC, and KVP apart from bank accounts, mobile numbers and to avail numerous social security schemes like pension, scholarship and LPG connection. In case Aadhaar is not generated, one need to provide the proof of application for enrolment into Aadhaar.



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