KrayMan

Demystifying Complexities

Taxation

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TAX EDGE

Monthly Tax & Regulatory Updates

May 2018

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Goods & Services Tax

GST 27th Council Meeting

The GST Council in its 27th meeting held on 4th May 2018 approved principles for filing of new GST Returns, incentives on digital payments amongst others in order to provide relief to the taxpayers.

Simplification of GST Return: GST Council approved the principles for filing of new Return design based on the recommendations of the Group of Ministers on IT simplification.

The key elements of the new Return design are as follows:

***One Return per month*:**
All taxpayers with few exceptions (like composition dealer and dealers having nil transaction) will be required to file single return in a month. Return filing dates shall be determined on the basis of turnover of the registered person to manage the load on GST IT system. Composition dealers and dealers having nil transaction shall have the facility to file quarterly returns.

Unidirectional Flow of invoices:
Buyer will be able to claim Input Tax Credit (ITC) on the basis of unidirectional invoices uploaded by the seller anytime during the month. Buyer will not be required to upload the purchase invoice. Invoices for B2B transaction shall need to use HSN at four digit level only.

Simple Return design and easy IT interface:
B2B dealers will have to fill invoice-wise details of the outward supply made by them, based on which the IT system will automatically calculate his tax liability. ITC for a buyer will be calculated automatically by the IT system based on invoices uploaded by his sellers. Taxpayer shall be also given user friendly IT interface and offline IT tool to upload the invoices.

No automatic reversal of credit:
ITC will not be reversed automatically from a buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller. However reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc.

Due process for recovery and reversal:
Formal process of recovery of tax or reversal of ITC by issuing notice and order will be introduced. The process would be online and automated to reduce the human interface.

GST 27th Council Meeting

***Supplier side control*:**
Unloading of invoices by the seller to pass ITC who has defaulted in payment of tax above a threshold amount shall be blocked to control misuse of ITC facility. Similar safeguards would be built with regard to newly registered dealers also. Analytical tools would be used to identify such transactions at the earliest and prevent loss of revenue.

Transition:
New system of Return will be implemented in three stages. Present system for filing GSTR 3B and GSTR 1 is Stage 1. GSTR 2 and GSTR 3 shall continue to remain suspended. New Return software would be ready within 6 months of time and till then stage 1 will continue. In stage 2, the new Return will have facility for invoice-wise data upload and also facility for claiming ITC on self-declaration basis, on the same line as GSTR 3B. During this stage 2, the dealer will be constantly fed with information about gap between credit available to them as per invoices uploaded by their sellers and the provisional credit being claimed by them. In stage 3 (i.e. after 6 months of stage 2) the facility of provisional credit will get withdrawn and ITC will only be limited to the invoices uploaded by the sellers from whom the dealer has purchased goods.

Content of the Return and implementation:
In line with ease of doing business, Government is planning to reduce the content / information required to be filled in the GST Return at earliest. The details of the design of the Return form, business process and legal changes would be worked out by the law committee based on these principles.

Goods & Services Tax

Incentive to promote Digital Transactions: With an idea to move towards a less cash economy and to promote digital payment, the Council has discussed in detail for providing a concession of 2% in GST rate (where the GST rate is 3% or more, 1% each from applicable CGST and SGST rates) on B2C supplies made to consumers, for which payment is made through cheque or digital mode subject to a ceiling of INR 100 per transaction.

Imposition of Sugar Cess over and above 5% GST and reduction in GST rate on ethanol: Having record production of sugar in the current sugar season and consequent decline in sugar prices and build-up of sugarcane arrears, the Council discussed the issue of imposition of sugar cess and reduction in GST rate on ethanol in detail.

Conversion of Goods and Services Tax Network (GSTN) into Government Company: The Goods and Services Tax Network - Special Purpose Vehicle (GSTN-SPV) was created as a private limited, not-for-profit company under Section 25 of the Companies Act, 1956 on 28th March, 2013. Its purpose is to provide shared IT infrastructure and services to Centre and States Governments, tax payers and other stakeholders for implementation of GST.

Central Government and State Government are holding 24.5% equity shares respectively and the remaining 51% are held by non-Governmental institutions and through various mechanisms.

GST Council in its meeting decided to acquire the entire 51% of equity held by the Non-Governmental Institutions in GSTN equally by the Centre and the States Governments and allow GSTN Board to initiate process for acquisition of equity held by the private companies.

GSTN Board shall be allowed to continue the existing staff at existing terms and conditions for the a period up to five years and shall have the flexibility of hiring people through contract on the terms and conditions similar to those used by GSTN till now while hiring regular employees.

Please Click Here to read Press Release on simplification of GST Return

Please Click Here for the Press Release on imposing Sugar Cess and Incentive to promote Digital Transactions

Please Click Here for the Press Release on change of shareholding pattern of GSTIN

Goods & Services Tax

Canteen supplies provided by outside vendors to attract 18% GST

The Authority of Advanced Ruling (AAR) for the GST has ruled that firms supplying food and beverages to canteens of other organisations are 'outdoor caterers' and the service would attract an 18% GST.

The ruling was delivered by Gujarat AAR on an application filed by Rashmi Hospitality Services. The firm is engaged in supplying food, beverages and other eatables at various places of their customers having in-house canteens at their factories. The authority said the assessee provides services from other than its own premises to the recipient. So, the nature of service provided by the applicant is that of an outdoor catering service.

AAR said the applicant was providing service to the recipient and not to workers/employees of the recipient. Thus, the services were not in the nature of those provided by a restaurant, eating joints including mess and canteen, and hence can't levy a 5% GST.

Damages paid for cancellation contract to attract 18% GST

The AAR has ruled that payments in respect to non-performance of a contract would be liable to GST. This has made multinational companies, especially those executing infrastructure projects, and the mining sector jittery, and it could have implications on mergers and acquisitions, franchise arrangements too.

Liquidated damages are payments in lieu of non-performance of a contract. The Contract Act envisages these damaged under a contract as genuine pre-estimate so as to avoid hassles of computation of damages and possible contractual disputes, or litigations, in case of non-performance.

The Maharashtra AAR has stated that liquidated damages paid on operation & maintenance and erection & commissioning contracts, entered by the applicant -Maharashtra State Power Generation Company -- shall be taxable under GST at 18%. The Authority has concluded liquidated damages to be a deemed service, covered under the phrase 'agreeing to tolerate an act or situation', under Para 5 of Schedule II of GST Acts.

Please Click here to read the copy of order

GST Revenue collection in the month of April 2018 exceeds Rs. 1 Lakh Crore

The total Gross GST revenue collected in the month of April 2018 is Rs.1,03,458 crore of which CGST is Rs18,652 crore, SGST is Rs.25,704 crore, IGST is Rs. 50,548 crore (including 21,246 crore collected on imports) and Cess is Rs.8554 crore (including Rs.702 crore collected on imports). The total number of GSTR 3B Returns filed for the month of March up to 30th April, 2018 is 60.47 lakh as against 87.12 lakh, who are eligible to file the Return for the month of March, which is 69.5%.

The buoyancy in the tax revenue of GST reflects the upswing in the economy and better compliance. However, it is usually noticed that in the last month of the Financial Year, people also try to pay arrears of some of the previous months also and, therefore, this month's revenue cannot be taken as trend for the future.

Please Click here to read the press release

Direct Tax

All about Statement of Financial Transactions

What is the legal framework for reporting Statement of Financial Transactions (SFT)?

SFT is a concept that helps the Tax Authorities to collect information on high value transactions (specified financial transactions) undertaken by a person during the year. SFT is governed by Section 285BA and Rule 114E of the Income Tax Act, 1961.

Who is required to file Statement of Financial Transactions (SFT)?

Following persons are required to furnish statement of financial transactions.

1. Any person who is liable for audit under section 44AB of the Income –tax Act
2. A Banking Company
3. A Co-operative Bank
4. Post Master General of Post office
5. A Nidhi referred to in sec 406 of the Companies Act 2013
6. A Non-banking Financial Company (NBFC)
7. Any Institution issuing Credit Card
8. A Company or Institution issuing bonds or debentures
9. A Company issuing shares
10. A company listed on a recognized stock exchange purchasing its own securities
11. A Trustee of a Mutual Fund or such other person authorized by the trustee
12. Authorized Dealer, Money Changer, Off-shore Banking Unit or any other person defined in FEMA, 1999
13. Inspector-General or Sub-Registrar appointed under Registration Act, 1908

What is the due date of furnishing SFT?

The statement in Form No. 61A shall be furnished on or before 31st May immediately following the financial year in which the transaction is registered or recorded.

What are different parts of Form 61A?

Form 61A has two parts. Part A, which contains statement level information, is common to all transaction types. The report level information has to be reported in one of the following parts (depending of the transaction type):
Part B (Person Based Reporting)
Part C (Account Based Reporting)
Part D (Immovable Property Transaction Reporting)

Direct Tax

What is Person Based Reporting (Part B)?

Part B shall be used for person based reporting which is relevant to following transactions:

- SFT- 001: Purchase of bank drafts or pay orders in cash
- SFT- 001: Purchase of bank drafts or pay orders in cash
- SFT- 005: Time deposit
- SFT- 006: Payment for credit card
- SFT- 007: Purchase of debentures
- SFT- 008: Purchase of shares
- SFT- 009: Buy back of shares
- SFT- 010: Purchase of mutual fund units
- SFT- 011: Purchase of foreign currency
- SFT- 013: Cash payment for goods and services

For determining reportable persons and transactions, the reporting person/entity is required to aggregate all the transactions of the same nature recorded in respect of the person during the financial year.

What is Account Based Reporting (Part C)?

Part C shall be used for account based reporting which is relevant to following transactions:

- SFT- 003: Cash deposit in current account
- SFT- 004: Cash deposit in account other than current account
- SFT- 014: Cash deposits during specified period (9th Nov to 30th Dec, 2016)

For determining reportable persons and accounts, the reporting person/entity is required to take into account all the accounts of the same nature maintained in respect of that person during the financial year and aggregate all the transactions of the same nature recorded in respect of the person during the financial year.

What is Immovable Property Transaction Reporting (Part D)?

Part D shall be used for reporting of purchase or sale of immovable property (SFT- 012) exceeding the threshold limit of Rs 30 Lakh

Direct Tax

What is the penalty for Non Compliance?

- Failure to furnish the statement will attract penalty of Rs.100/- per day of default.
- Tax authority may issue a notice directing person to file the statement within 30 days from the date of service of such notice, failure to do so may attract a penalty of Rs.500/- per day of default.
- Penalty of Rs. 50,000/- for providing inaccurate information in the statement.

Please Click here to read the recent Notification dated 5 April 2018 on Procedure for registration and submission of Statement of Financial Transactions.

Central Board of Direct Taxes (CBDT) directs income tax department to hold grievance redressal fortnight for taxpayers in June

The CBDT has directed the Income Tax department to hold a special 'grievance redressal fortnight' next month to address taxpayers disputes regarding rectification and adjustments made in tax demands. The policy-making body for the tax department has asked the regional chiefs of the department to organize this country-wide session at their designated offices between June 1-15.
During this period, the CBDT member said all assessing officers shall accord top priority to the work of giving appeal effect and passing the rectification orders and shall earmark the first half of the day to meet applicants/counsel who seek to have a hearing to explain their case.

The CBDT has also asked the taxman to give special attention to those demands which are disputed by the taxpayer in response to proceedings under section 245 Of the Income Tax Act (that empowers the assessing officer to adjust refund or a part of refund against any tax demand) as delay in such cases was creating widespread dissatisfaction amongst taxpayers.

Please Click here to read the full directions.

Direct Tax

Draft notification pertaining to new Rule 11UAB of IT Rules, 1962

Finance Act, 2018 has inserted clause (via) to section 28 of the Income-tax Act, 1961 (‘the Act’) so as to provide that any profit and gains from conversion of inventory into capital asset or its treatment as capital asset shall be charged to tax as business income. It has also been provided that for this purpose the fair market value of inventory on the date of conversion or treatment determined in prescribed manner shall be deemed to be the full value of consideration.
Accordingly, rules are to be framed for providing the manner in which fair market value of the inventory shall be determined. In view of the above, it is proposed to insert a new rule 11UAB in the Income-tax Rules, 1962 for prescribing the manner of determination of fair market value of the inventory which has been converted into, or treated as, capital asset. In order to have wider consultation in this matter, the draft of notification proposed to be issued for amending the Income-tax Rules, 1962 has been issued.

Please Click here to read the draft of notification.

CBDT signs its 200th Unilateral Advance Pricing Agreement (UAPA)

CBDT has entered into one UAPA during the month of April, 2018. With the signing of this Agreement, the CBDT has achieved another milestone of having signed its 200th UAPA.
The total number of APAs entered into by CBDT has gone up to 220, which, inter alia include 20 Bilateral APAs. The UAPA signed in this month also happens to be the first APA in the current financial year. The UAPA entered into during April, 2018 pertains to provision of sourcing support services.

Please Click here to read the Press release.

International Taxation

International Taxation

The tax department has notified the amendments of Double Taxation Avoidance Agreement (DTAA) between India and Kuwait

India and Kuwait had on June 15, 2006, signed an agreement for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income. Both the countries had later on January 15, 2017, signed a protocol to amend the tax treaty.

The protocol updates the provisions in the DTAA for exchange of information as per international standards. Further, the Protocol enables sharing of the information received from Kuwait for tax purposes with other law enforcement agencies with authorization of the competent authority of Kuwait and vice versa. The protocol was notified on May 4, 2018.

Please Click here to read the Press Release.

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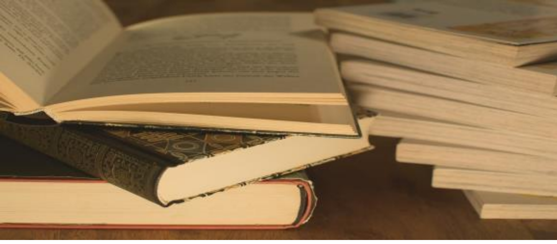
Cabinet approves tax information exchange pact with Brunei

The Cabinet approved signing of tax information exchange agreement between India and Brunei. The agreement enables the competent authorities of India and Brunei to provide assistance through exchange of information, relevant to the administration and enforcement of the domestic laws of the two countries concerning taxes.

The information received under the agreement will be treated as confidential and may be disclosed only to persons or authorities (including courts or administrative bodies) concerned with assessment, collection, enforcement, prosecution or determination of appeals in relation to taxes covered under the agreement. The information may be disclosed to any other person or entity or authority or jurisdiction with the prior written consent of the information sending country. It will also enable assistance in collection of tax revenue claims between both countries and mutual agreement procedure for resolving any difference or for agreeing on procedures under the agreement.

Please Click here to read the Press Release.

Company Law



Form FC-4 to be filed by Foreign companies in India, within 60 days of end of financial year

Foreign company is a company or body corporate incorporated outside India which

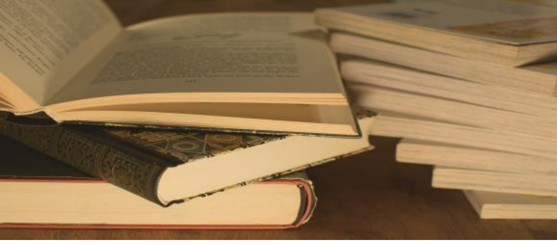
a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
b) conducts any business activity in India in any other manner

Legal forms in which a foreign company can set up its establishment in India are:-

- Branch Office
- Liaison Office
- Project Office

Every such company is required to file Annual Return in Form FC-4 within 60 days of end of financial year The Form FC-4 is filed with the following attachments:-

I. Details of Promoters, Directors and Key managerial personnel and changes therein since close of previous financial year.
II. Details of directors and key managerial personnel and their remuneration.
III. Details of the meeting of the members or class thereof, board and its various committees along with attendance details.
IV. Particulars of members and debenture holders along with changes therein since the close of previous financial year.
V. Particulars of Holding, subsidiary and associate companies and firms.
VI. Particulars of Holding, subsidiary and associate companies and firms.
VII. Any other information can be provided as an optional attachment(s).



Company Law

New structure for additional fee on delayed filing vide Companies (Registration Offices and Fees) Second Amendment Rules, 2018 notified

The Government revised the additional fee payable on delayed filing of forms with the Ministry of Corporate Affairs vide a notification dated 7 May 2018.

Key Highlights:-

- 15 days period to be allowed by the Registrar of Companies for resubmission of application for name through RUN service, to rectify the defects (if any)

- For forms other than increase in nominal share capital and filing of annual return & financial statements (i.e. Form SH-7, MGT-7 & AOC-4) the period within which the same can be filed without additional fee is reduced to 15 days from 30 days. From 30 days till 60 days, additional fee shall be 2 times the original fee, and shall be increased accordingly with further delay.

- For delay in filing of Form AOC-4 & MGT-7, additional fee shall be applicable at the rate of Rs. 100 per day with effect from 1 July 2018

For detailed notification please Click here

Companies (Audit and Auditors) Amendment Rules, 2018 notified

The Ministry of Corporate Affairs notified amendments in the Companies (Audit and Auditors) Rules, 2014.

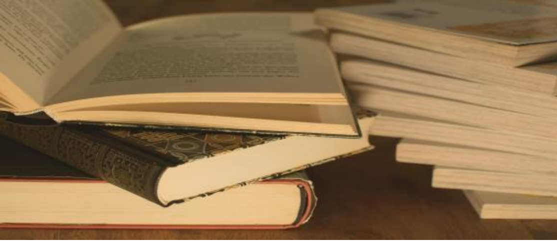
Key highlights:-

- Provisions regarding ratification of statutory auditors in each Annual General Meeting have been deleted.

- Provisions regarding criminal liability on the concerned partner or partners in case of any fraud by audit firm, has been omitted.

- Now, a Cost Accountant / Cost Accountant firm can be appointed as Cost Auditor instead of earlier requirement of Cost Accountant in Practice.

Please Click here to read the notification.



Company Law

Amendments related to meetings notified

Companies (Meetings of Board and its Powers) Amendment Rules, 2018 notified on 7 May 2018.

Key Highlights:-

- Certain matters like approval of Board Report, Financial Statements etc. were restricted to be discussed and approved in the Board Meeting where directors were present through audio-visual mode. Now such discussion is allowed and any other director can participate in such discussion if the quorum is present through physical presence of directors.

- The requirement to constitute Audit Committee and a Nomination and Remuneration Committee of the Board is now for 'listed public companies' (instead of listed companies), with specified conditions.

Please Click here to read the notification.

Eligibility for Independent Director and Resident Director slightly modified

Additional condition for eligibility of Independent Director is notified *vide* Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2018. The notification adds to the current eligibility that relatives of proposed Independent Director should not be indebted or provided any guarantee/ security to the company/ holding/ subsidiary/ directors etc. for an amount of Rs. 50 lakh at any time during 2 immediately preceding financial years or current financial year.

Also, earlier a resident director was required to stay in India for a minimum of 182 days during previous calendar year. Now, the he/ she is required to stay in India for a minimum of 182 days during *financial year*. For newly incorporated companies, the condition shall apply proportionately.

Please Click here for the notification.

New provisions under section 185 of the Companies Act 2013 (Loan to Directors) notified

The government notified new provisions related to the Loan to Directors under Companies Act, 2013.

Key highlights:-
A company **cannot** provide Loan/ Security/ Guarantee to:-

- any director of the company or its holding company
- any partner/ relative of such director
- any firm in which any such director/relative is a partner

A company **can** provide Loan/ Security/ Guarantee to other private company or body corporate, as specified, in which its director is interested by passing a special resolution. Such loan should be utilized by the borrowing company for its principle business activities. Loan/ Security/ Guarantee can be given by the company to its wholly owned subsidiary, provided such Loan/ Security/ Guarantee is utilized for principle business activities.

Please Click here for notification.

Foreign Exchange Regulations (FEMA)

External Commercial Borrowings (ECB) Policy – Rationalisation and Liberalisation

Reserve Bank has further liberalized the ECB Policy.

Key Highlights:-

1. **Rationalisation of all-in-cost for ECB under all tracks and Rupee denominated bonds (RDBs)**

   A uniform all-in-cost ceiling of 450 basis points over the benchmark rate stipulated.

   The benchmark rate will be 6 month USD LIBOR (or applicable benchmark for respective currency) for Track I and Track II, while it will be prevailing yield of the Government of India securities of corresponding maturity for Track III (Rupee ECBs) and RDBs.

2. **Revisiting ECB Liability to Equity Ratio provisions**

   ECB Liability to Equity Ratio for ECB raised from direct foreign equity holder under the automatic route increased to 7:1.

   This ratio will not be applicable if total of all ECBs raised by an entity is up to USD 5 million or equivalent.

3. **Expansion of Eligible Borrowers' list for the purpose of ECB:**

Following are now permitted:-

- Housing Finance Companies, regulated by the National Housing Bank, as eligible borrowers to avail of ECBs under all tracks. Such entities shall have a board approved risk management policy and shall keep their ECB exposure hedged 100 per cent at all times for ECBs raised under Track.
- Port Trusts constituted under the Major Port Trusts Act, 1963 or Indian Ports Act, 1908 to avail of ECBs under all tracks. Such entities shall have a board approved risk management policy and shall keep their ECB exposure hedged 100 per cent at all times for ECBs raised under Track I.
- Companies engaged in the business of Maintenance, Repair and Overhaul and freight forwarding to raise ECBs denominated in INR only.

Foreign Exchange Regulations (FEMA)

4. Rationalisation of end-use provisions for ECBs:

Currently, a positive end-use list is prescribed for Track I and specified category of borrowers, while negative end-use list is prescribed for Track II and III.

It has now been decided to have only a negative list for all tracks. The negative list for all Tracks would include the following:

a) Investment in real estate or purchase of land except when used for affordable housing as defined in Harmonised Master List of Infrastructure Sub-sectors notified by Government of India, construction and development of SEZ and industrial parks/integrated townships.

b) Investment in capital market.

c) Equity investment.

Additionally, for Tracks I and III, the following negative end uses will also apply except when raised from Direct and Indirect equity holders or from a Group company, and provided the loan is for a minimum average maturity of five years:

d) Working capital purposes.

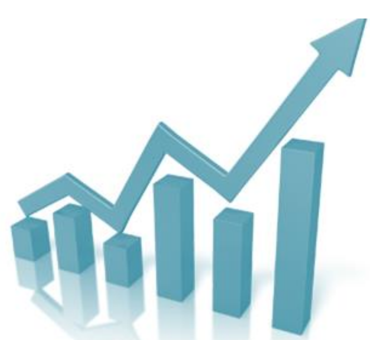
e) General corporate purposes.

f) Repayment of Rupee loans.

Finally, for all Tracks, the following negative end use will also apply:

g) On-lending to entities for the above activities from (a) to (f).

Please Click here to read the notification.



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.

We are members of following associations:

- **Japan Chamber of Commerce and Industry in India (JCCII)** – an organization of more than 400 Japanese companies working towards the welfare of Japanese companies in India
- **Prime Advisory Network (PAN), United Kingdom -** a network of Accountants and Lawyers with presence in more than 60 countries
- **Cross Border Associates (CBA), Germany -** specializing in mergers & acquisitions activities having presence in more than 95 countries
- **TiE Delhi -** world's largest entrepreneurial organization with 62 chapters in 18 countries

For any assistance, please write to us at:
communications@krayman.com