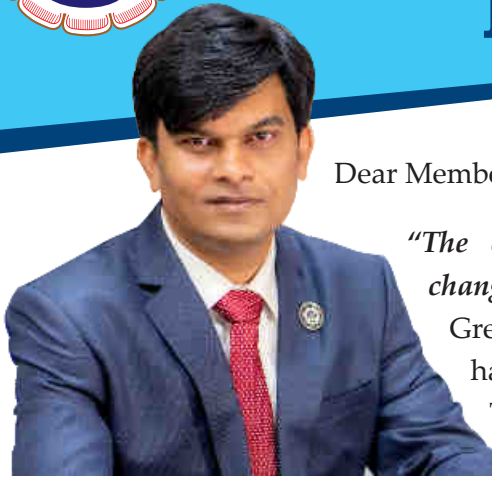




Western India Chartered Accountants Newsletter



Dear Members,

"The only constant in life is change", the words by great Greek Philosopher Heraclitus has been true since ages.

Time and again, the world have faced innumerable challenges but have always managed to adapt to the changes and situations and move forward as stronger and better.

Currently, the world is facing another such challenge in Covid 19, and we need to make sure we come out of this grave situation as an improved version of ourselves. One of the best ways to do so is to adapt to the changes.



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Message from Chairman's Desk

Knowledge sharing and skill development through webinars

To ensure that our members continue to remain at the cutting edge professionally, WIRC has invested lot of time and effort towards creating webinars with erudite speakers. These webinars provide all the information which a Chartered Accountant needs to provide the best client service as well grow professionally.

I am pleased to state that WIRC has listed over 40 webinars and we have already completed more than half webinars. The webinars has been widely appreciated by members and we have recorded large participations in these new age seminars.

Apart from webinars on technical areas like direct tax, indirect tax, corporate laws, auditing etc., we have emphasized on holistic growth of our members as well. Having, this in mind, we have organized session for improving new soft and hard skills for members. This is the perfect time for everyone to work towards self-improvement and I entreat members to work on areas of professional interest which can be strengthen.

WIRC Covid 19 Economic Response Study Group

We understand the Covid-19 pandemic has disrupted the economy at large and the impact will be long lasting and multi-sectoral. We, Chartered Accountants, are the guardians not only of wealth but have responsibility for our constructive contributions towards nation building.

In order to identify, study and suggest solutions for economic issues arising due to pandemic, we have formed the WIRC Covid 19 Economic Response Study Group. The study group shall identify, study, and suggest solutions to ICAI - Accounting Research Foundation (ICAI-ARF) for onward representation to various departments of the Government of India. Further the submissions will also be made to the Governments of Maharashtra, Gujarat and Goa.

Members are requested to fill in the online Form at following link- (<https://forms.gle/n8RLFBA728mGkBVo6>) with your suggestions. In case there are suggestions in more than one category, kindly fill separate form for each category. You are also requested to kindly circulate the form to your clients and your network so that we can get maximum inputs can be generated and assist the Government in their efforts to stabilize and grow the economy through right policies and incentives in the months to come.

Helpdesk for members/ students

As professionals, while working from home we may come across certain situations which need clarifications. I am pleased to state that WIRC has taken a step towards proactively clearing doubts and clarifying any issues you may have. WIRC has created a helpdesk where you can post your all queries to be resolved at one go. Your queries would be channelized to the concerned person for necessary action / response. The queries can be posted at <https://helpdesk.wirc-icai.org>.

Free access to e-publication

With a view to share knowledge amongst members and students and help them improve professionally, we have decided to provide e-publications which will be freely accessible to all members and students through our website. Further, all resources published during last 2 years has already been uploaded on the website. This step will go a long way towards helping our fraternity strengthen their foundations theoretically and practically through studying of relevant cases.

Consolidated speakers pool

In order to engage members and students at branch level, we have compiled a consolidated speakers pool. The database comprises list of over 425 eminent speakers with their area of expertise and details of seminars/webinars given by them. The database will help branches to conduct webinars for sharing the expertise of speakers with our members and students.

Industry specific research papers

WIRC has taken the initiative to prepare and submit research papers focusing on 5 industries viz. Technology, Food Processing, Logistics, Hospitality and Health care.

Under this initiative, research papers prepared and sent by members of our Branches shall be compiled and further refined before being submitted for publication. I am pleased to state that we have already received many research papers on the above mentioned topics and we look forward to creating insightful publications on behalf of WIRC members in the near future.

I take this opportunity to thank the Central Council Members, my colleagues in the Regional Council and Branch Committee Members for providing leadership and guidance during this period, enabling us to craft high quality webinars which are much appreciated by members and students.

I am confident that we have found the best formula to continue to keep our members at the cutting edge of professional knowledge for the foreseeable future. I promise you that we will continue to do the stellar work which we began in March for the greatest good of the entire Western India Region.

I entreat all members and students to practice social distancing, be safe and take care.

Yours sincerely



Lalit Bajaj

Chairman

Webinar for Members

Date	Time	Day	Topic	Name of the Speaker
6.05.2020	2.00 p.m. to 4.00 p.m.	Wednesday	CFOs guide to Surviving and Thriving through COVID	<p>Keynote Address : CA Nihar Jambusaria, Vice President, ICAI</p> <p>Special Address : CA. Prafulla Chhajed, Past President, ICAI</p> <p>Eminent Speakers: Mr. G Sambasivan, CFO Tatasky Mr. Ashutosh Dhawan, Group CFO, Mankind Pharma Mr. Pradip Menon, CFO, Pidilite CA. B R Jaju, Executive Director and CFO, DB Power Limited</p> <p>Moderator: Mr.S. Venkat, Founder Director Practus, MyCFO</p>
15.05.2020	2.00 p.m. to 5.00 p.m.	Friday	<p>Anti Avoidance Tools - understanding GAAR and Interplay with PPT UNDER MLI</p> <p>Directors' Perspective - Impact of COVID -19</p>	<p>Address by CA. Atul Gupta, President, ICAI CA. Nihar Jambusaria, Vice President, ICAI</p> <p>CA. Pinakin Desai</p> <p>CA. Bhavna Doshi</p>
16.05.2020	3.00 p.m. to 5.00 p.m.	Saturday	New Code of Ethics & Practical Aspects	<p>CA. Kemisha Soni, CCM, Chairperson - Ethical Standard Board</p> <p>CA . Amarjit Chopra, Past President, ICAI</p>
17.05.2020	11.00 p.m. to 1.00 p.m.	Sunday	Economy way forward - Post Covid 19	<p>Address by: CA. Atul Gupta, President, ICAI CA. Nihar Jambusaria, Vice President, ICAI</p> <p>Panelist CA. Ramesh D. Chandak, Former MD, KEC International Ltd. CA. Anand Rathi Chairman Anand Rathi Group CA. Mahesh Gupta Group MD Ashok Piramal Group CA. Ajit Ranade President & Chief Economics Aditya Birla Group</p> <p>Moderator CA Durgesh Kabra, CCM</p>
<i>Jointly with Corporate Laws and Corporate Governance Committee of ICAI</i>				
18.05.2020	3.00 p.m. to 5.30 p.m.	Monday	<p>Critical issues in Annual return and GST Audit</p> <p>ITC Scope and Issues including COVID 19 related challenges</p>	<p>CA. S. S. Gupta</p> <p>Advocate K. Vaitheeswaran</p>

Law Updates

DIRECT TAX – LAW UPDATE

CA. Haresh P. Kenia, CA. Deepak Lala



Announcements of relief measures relating to statutory and regulatory compliance matters across sectors made by Union Finance Minister vide Press Release dated 24.03.2020 in view of COVID-19 outbreak

The outbreak of Novel Corona Virus (COVID-19) across many countries of the world has caused immense loss to the lives of people, and accordingly, it has been termed as pandemic by the World Health Organisation and various Governments including Government of India. Social distancing has been unequivocally accepted to be the best way to contain its spread, leading to announcement of complete lockdown in the country. Keeping in view the challenges faced by taxpayers in meeting the compliance requirements under such conditions, the Union Finance Minister had announced several relief measures relating to statutory and regulatory compliance matters across sectors in view of COVID-19 outbreak on 24.03.2020 vide a press release.

Some of the important features and time limits which get extended by this PRESS NOTE are as under :-

- Due date extension: The last date to file ITRs for FY 18-19, extended to 30th June 2020 instead of 31st March 2020. For delayed payments of tax made till 30th June 2020, penal interest reduced from 12% to 9%.
- Aadhaar-PAN linking due date extended to the 30th June 2020.
- The date for making various investment/payment for claiming deduction under Chapter-VIA-B of IT Act which includes Section 80C (LIC, PPF, NSC etc.), 80D (Mediclaime), 80G (Donations), etc. has been extended to 30th June, 2020. Hence the investment/payment can be made up to 30.06.2020 for claiming the deduction under these sections for FY 2019-20.
- The date for making investment/construction/purchase for claiming roll over benefit/deduction in respect of capital gains under sections 54 to 54GB of the IT Act has also been extended to 30th June 2020. Therefore, the investment/construction/ purchase made up to 30.06.2020 shall be eligible for claiming deduction from capital gains arising during FY 2019-20
- The date for commencement of operation for the SEZ units for claiming deduction under deduction 10AA of the IT Act has also extended to 30.06.2020 for the units which received necessary approval by 31.03.2020.
- Due dates for issue of notice intimation/notification/ approval order/sanction order/filing of appeal/applications/ reports any other documents and time limit for completion of proceedings by the authority and any compliance by the taxpayer including investment in saving instruments or investments for roll over benefit of capital gains under Income Tax Act, Wealth Tax Act, Prohibition of Benami Property Transaction Act, Black Money Act, STT law, CTT Law, Equalization Levy law, Vivad Se Vishwas law where the time limit is expiring between 20th March 2020 to 29th June 2020 shall be extended to 30th June 2020.
- It has provided that reduced rate of interest of 9% shall be charged for non-payment of Income-tax (e.g. advance tax, TDS, TCS) Equalization Levy, Securities Transaction Tax

(STT), Commodities Transaction Tax (CTT) which are due for payment from 20.03.2020 to 29.06.2020 if they are paid by 30.06.2020. Further, no penalty/ prosecution shall be initiated for these non-payments.

- Under Vivad se Vishwas Scheme, the date has also been extended up to 30.06.2020. Hence, declaration and payment under the Scheme can be made up to 30.06.2020 without additional payment.

In order to give effect to the announcements made by the Union Finance Minister vide Press Release dated 24.03.2020, regarding several relief measures relating to statutory and regulatory compliance matters across sectors in view of COVID-19 outbreak, the govt has brought in an Ordinance on 31.03.2020 which provides for extension of various time limits under the Taxation and Benami Acts. It also provides for extension of time limits contained in the Rules or Notification which are prescribed/issued under these Acts.

- The Ordinance also made the another important announcement with respect to PM CARES FUND as under :-

A special fund "Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES FUND)" has been set up for providing relief to the persons affected from the outbreak of Corona virus. The Ordinance also amended the provisions of the Income-tax Act to provide the same tax treatment to PM CARES Fund as available to Prime Minister National Relief Fund. Therefore, the donation made to the PM CARES Fund shall be eligible for 100% deduction under section 80G of the IT Act. Further, the limit on deduction of 10% of gross income shall also not be applicable for donation made to PM CARES Fund.

As the date for claiming deduction u/s 80G under IT Act has been extended up to 30.06.2020, the donation made up to 30.06.2020 shall also be eligible for deduction from income of FY 2019-20. Hence, any person including corporate paying concessional tax on income of FY 2020-21 under new regime can make donation to PM CARES Fund up to 30.06.2020 and can claim deduction u/s 80G against income of FY 2019-20 and shall also not lose his eligibility to pay tax in concessional taxation regime for income of FY 2020-21.

The press note dated 24.03.2020 and Ordinance dated 31.03.2020 also contained the similar relief measures with respect to indirect taxes and the same are not dealt with here.

DIRECT TAX – RECENT JUDGMENT

CA. Paras K. Savla, CA. Hemant R. Shah



HIGH COURT DECISIONS

Jindal ITF Ltd. Vs. Union of India (Delhi High Court)

[Appeal Number:WP (C) No.2949 of 2020, Date of Order : 08/04/2020]

It is seen that the entities M/s Glebe Trading Pvt. Ltd. and M/s Danta Enterprises Pvt. Ltd. have been used as conduits in availing unsecured loans covered U/s 68 of the Act. The identity and creditworthiness of the above companies and genuineness of the transactions of unsecured loans received from them is not established. Based on initial submissions of the assessee on the issue, independent field enquiries were caused to be

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carried out and the findings were confronted to the assessee. The assessee in response, has failed to discharge its onus regarding establishing the identity and creditworthiness of the entities and the genuineness of the transaction of unsecured loans in the given case.

Undoubtedly, as held by the Supreme Court in LG Electronics (India) Pvt. Ltd., it is open to the statutory authorities to grant relief to deposit an amount lesser than twenty per cent if the facts of the case so warrant. However, on the facts of the present case, as determined by the Assessing Officer, a prima facie case is not made out and such a relief is not warranted.

ACIT Vs Alfran Construction Pvt. Ltd. (Bombay at Goa High Court)

There can not be any disallowance U/s 40(a)(ia) where there is no applicability of TDS provisions:

[Appeal No. Tax Appeal No.13 of 2012, Date of Judgement/ Order : 02/12/2019]

The Assessee, vide two separate agreements, had agreed with the owners, to undertake the projects of construction of Mount Mary's Complex and M/s Alfran Plaza. The terms of these agreements do not indicate that the Assessee was appointed as merely a contractor to construct these projects. Rather, the Assessee was to be allotted premises/area in the said project. The Assessee was given the full liberty to thereafter sell, transfer and convey these areas in favour of third party. Accordingly, it is not correct to say that the original status of the Assessee was that of a contractor and, consequently, the Assessee was incapable of assigning any rights better than that of a contractor of M/s Prabhu Construction.

The provisions of Section 194C of the IT Act can not be said to be attracted. Section 194 C of the IT Act deals with deduction of tax at source when it comes to payment to contractors. In the present case, since neither the Assessee nor M/s Prabhu Construction can be styled as contractors, it is obvious that the provisions of Section 194C of the IT Act were not attracted and consequently provisions of section 40(a)(ia) would also not be applicable. Accordingly, both the substantial questions of law are liable to be answered against the Revenue and in favour of the Assessee.

INTERNATIONAL TAXATION

CA. Hinesh Doshi, CA. Ronak Soni



JCDecaux S.A. vs. ACIT, International Taxation [TS-183-ITAT-2020(DEL)] dtd. 20th March, 2020

Facts:

- The assessee, a company incorporated in France, is engaged in the field of outdoor advertising.
- The assessee is owner of all intellectual property rights including copyrights in 'drawings and models', 'trademarks', 'patents', 'domain names' and 'know-how' developed and used by the JCDecaux group across the globe.
- AO treated the corporate guarantee fee received by the assessee from its Indian AE as Fees for Technical Services which was held as actually received in lieu of services rendered in the guise of corporate guarantee fee.
- Aggrieved, the assessee filed an appeal before Delhi ITAT

Issue:

- Whether the corporate guarantee fee can be taxed as FTS either under Sec. 9(1)(vii) or under India-France DTAA?

Held:

- ITAT noted that the assessee charged a corporate guarantee fee for provision of corporate guarantee to foreign banks for money borrowed by its Indian AE.
- ITAT rejected AO's stand on account of lack of evidence.
- ITAT opined that services provided for corporate guarantee were not in the nature of managerial, technical or consultancy services.
- ITAT held that corporate guarantee fees received cannot be termed as Fee for Technical Service either under Sec. 9(1)(vii) or under India-France DTAA.
- Accordingly, ITAT ruled in favour of the assessee.

Triton Communications Pvt Ltd vs. ACIT [TS-122-ITAT-2020(Mum)] dated 28th February, 2020.

Facts:

- The assessee made payments in the nature of subscription fees to a US based entity the services of integrated communication resources received by it.
- AO observed that the assessee had not withheld tax while making payment for the services rendered.
- AO held that the services availed by the assessee are technical in nature and accordingly stated that these payments were liable to be taxed in India as per section 9(1)(vii) of the Income Tax Act.
- Aggrieved, the assessee filed an appeal before ITAT.

Issue:

- Whether the subscription fees paid to US entity for services availed were FTS as per Sec. 9 (1) (vii) of the Income Tax Act?

Held:

- ITAT stated that the overseas entity offered services only to its members and these services were subject to only those members.
- ITAT held that the availing of net based services was outside the ambit of FTS provisions.
- ITAT further stated that the assessee had utilized these information outside India.
- Relying on Bombay HC ruling of Indusind Bank, ITAT concluded that the subscription payments will not fall under FTS provisions and will not attract TDS.
- Accordingly, ITAT ruled in favour of the assessee.

FEMA

CA. Manoj Shah, CA. Sudha G. Bhushan, CA. Mitesh Majithia



Review of Foreign Direct Investment (FDI) Policy for curbing opportunistic takeovers/acquisitions of Indian Companies due to COVID 19 pandemic

Press Note No. 3 (2020 Series) dated April 17, 2020 issued by Department for Promotion of Industry and Internal Trade (DPIIT) and Notification No. 1278(E) dated April 22, 2020 issued by the Ministry of Finance, Government of India

In order to curb opportunistic takeovers and acquisitions of Indian companies due to COVID 19 pandemic, GOI has reviewed FDI Policy and amended para 3.1.1 of extant FDI Policy as contained in Consolidated FDI Policy, 2017.

It has now been decided that an entity of a country, which shares land border with India or where beneficial owner of an investment

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into India is situated in or is a citizen of any such country, can invest only under Government Approval Route. Further in the event of transfer of ownership of any existing or future FDI in an entity in India, directly or indirectly, resulting in the beneficial ownership falling within the restriction/purview of the para 3.1.1(a) such subsequent change in beneficial ownership will also require Government approval.

Consequently, GOI has, on April 22, 2020, issued Foreign Exchange Management (Non-debt Instruments) Amendment Rules, 2020 to amend Foreign Exchange Management (Non-debt Instruments) Rules, 2019 to give effect of the above change in FDI Policy.

Investment Limits for Investment by Foreign Portfolio Investors (FPI) and Fully Accessible Route (FAR) for investment by Non-residents in Government securities

A.P. (DIR Series) Circular No. 24 dated March 30, 2020; A.P. (DIR Series) Circular No. 25 dated March 30, 2020 and A.P. (DIR Series) Circular No. 30 dated April 15, 2020

- (i) The limit for FPI investment in corporate bonds is increased 15% of outstanding stock for F.Y. 2020-21. The revised limits for FPI investment in corporate bonds shall be as under:

Limits for FPI in Corporate Bonds for FY 2020-21	(Rs. in crore)
Current FPI Limit	3,17,000
Revised limit for HY Apr 2020 – Sep 2020	4,29,244
Revised limit for HY Oct 2020 – Mar 2021	5,41,488

- (ii) The limits for FPI investment in Government securities (G-secs) and State Development Loans (SDLs) shall remain unchanged at 6% and 2%, respectively, of outstanding stocks of securities for F.Y. 2020-21.

- (iii) As announced in the Union Budget 2020-21 that certain specified categories of Central Government securities would be opened fully for non-resident investors without any restriction apart from being available to domestic investors as well, it has been decided in consultation with the Government of India (GOI), to introduce a separate route viz. FAR for investment by non-residents in securities issued by GOI. These directions shall come into effect from April 1, 2020.

All investments by eligible investors in the specified securities will be under the Fully Accessible Route (FAR) from the date on which the FAR comes into effect. Also, all existing FPI investments in the specified securities shall be reckoned under the FAR. The calculation of outstanding stock of G-secs and utilization levels of limits under the Medium Term Framework (MTF) has accordingly been adjusted.

The detailed scheme can be referred in the aforesaid circular available at below link: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11849&Mode=0#AN1>

CORPORATE LAWS
CA. Premal Gandhi, CA. Rahul Joglekar



MCA notification No.GSR (E) dated 19th March 2020 – Companies (Meetings of Board and its Powers) Amendment Rules, 2020.

In wake of the Covid-19 outbreak in the country, MCA has amended the Companies (Meetings of Board and its Powers) Rules, 2020 to provide that the meetings of the Board of

companies which were hitherto not permitted to be held through video conferencing, may now be held through video conferencing. The said relaxation will be applicable till 30th June 2020. For a complete text of this notification, please refer the link: http://www.mca.gov.in/Ministry/pdf/Rules_19032020.pdf

MCA Circular no.17/2020 dated 13th April 2020 - Clarification on passing of ordinary and special resolutions by companies under the Companies Act, 2013 and rules made thereunder on account of the threat posed by Covid-19.

MCA has released the aforesaid circular to provide certain clarifications regarding conducting of Extraordinary General Meetings during the Covid-19 related social distancing norms and lockdown. For a complete text of this circular, please refer the link: http://www.mca.gov.in/Ministry/pdf/Circular17_13042020.pdf

MCA Circular no.15/2020 dated 13th April 2020 - COVID-19 related Frequently Asked Questions (FAQs) on Corporate Social Responsibility (CSR)

MCA had been receiving several references/representations from various stakeholders seeking clarifications on eligibility of CSR expenditure related to COVID-19 activities. In this regard, a set of FAQs along with clarifications have been released. For a complete text of this circular, please refer the link: http://www.mca.gov.in/Ministry/pdf/Notification_10042020.pdf

MCA Circular no.11/2020 dated 24th March 2020 - Special Measures under Companies Act, 2013 and Limited Liability Partnership Act, 2008 in view of COVID-19 outbreak

In order to ease the burden on and to support and enable Companies and LLPs in India focus on taking necessary measures to address the COVID-19 threat, the MCA has provided numerous relaxations. These include – waiver of late fee for filing of documents between 1st April 2020 and 30th September 2020, extension of mandatory intervals for holding Board meetings u/s 173, applicability of CARO, 2020 from F.Y. 2020-2021 instead F.Y. 2019-2020 and certain other relaxations. For a complete text of this circular, please refer the link: http://www.mca.gov.in/Ministry/pdf/Circular_25032020.pdf

SEBI (www.sebi.gov.in)

SEBI Circulars -

SEBI/HO/CFD/CMD1/CIR/P/2020/3 dated 19th March 2020

SEBI/HO/DDHS/ON/P/2020/41 dated 23rd March 2020

SEBI/HO/CFD/CMD1/CIR/P/2020/48 dated 26th March 2020

SEBI/HO/CFD/CMD1/CIR/P/2020/63 dated 17th April 2020

Relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, certain SEBI circulars and the SEBI circular dated January 22, 2020 relating to Standard Operating Procedure due to the Covid -19 virus pandemic.

In view of the Covid-19 outbreak, SEBI has relaxed certain provisions of the LODR regulations by allowing extension in respect of various filings to be made by listed companies. Certain important relaxations include extension of time for declaration

Obituary



CA. Ashwin S. Dedhia M. No. 103097 left for Heavenly Abode on 24/4/2020. May the departed Soul rest in peace.

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of quarterly and annual financial results, quarterly corporate governance report etc. For a complete text of this circular, please refer the link: https://www.sebi.gov.in/legal/circulars/mar-2020/relaxation-from-compliance-with-certain-provisions-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-due-to-the-covid-19-virus-pandemic_46360.html

https://www.sebi.gov.in/legal/circulars/mar-2020/relaxation-from-compliance-with-certain-provisions-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-and-certain-sebi-circulars-due-to-the-covid-19-virus-pandemic-cont_46395.html

https://www.sebi.gov.in/legal/circulars/mar-2020/further-relaxations-from-compliance-with-certain-provisions-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-lodr-and-the-sebi-circular-dated-january-22-2020-relating_46436.html

https://www.sebi.gov.in/legal/circulars/apr-2020/-additional-relaxations-clarifications-in-relation-to-compliance-with-certain-provisions-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-lodr-due-to-the-covid-1-_46525.html

CIRCULAR NO. 13/2020 [30-03-2020] issued by Ministry of Corporate Affairs to modify the LLP Settlement Scheme 2020.

CIRCULAR NO. 12/2020 [30-03-2020] issued by Ministry of Corporate Affairs to 'COMPANIES FRESH START' SCHEME, 2020.

GOODS AND SERVICES TAX CA. Rajiv Luthia



CBIC vide notification 30/2020-CT dated 3rd April, 2020 has amended following CGST rule w.e.f. 30th March, 2020 to provide that

- Any person who opts to pay Tax under composition scheme for F.Y 2020-21 can file intimation in Form GST CMP 02 on or before 30th June, 2020 & he shall furnish statement in form GST ITC 03 (Stock Statement) as required under section 44(4) upto 31st July, 2020.
- Rule 36(4) (Rule related to availment of ITC maximum up to 110% of ITC appearing in GSTR 2A) has been amended to provide that said condition of 110% of ITC appearing in GSTR 2A shall apply cumulatively for period Feb, March, April, May, June, July & August, 2020 & return in FORM GSTR 3B for month of September, 2020 shall be furnished with the cumulative adjustment of ITC of said month in accordance with the condition as stated in Rule 36(4).

CBIC vide Notification 31/2020-CT & 32/2020-CT both dated 3rd April, 2020 has extended the due-date for filing GSTR 3B as follows

Turnover	Tax Period	Date till which no interest & late fees payable	Remark
Turnover above Rs. 5 Crore in preceding Financial Year	Feb, 2020	4th April, 2020	Filing after the Due-date shall attract interest @ 9% till 24th June, 2020
	Mar, 2020	5th May, 2020	
	Apr, 2020	4th June, 2020	No Late fees will be charged till 24th June, 2020
			After 24th June, 2020, Interest @ 18% along with Late fees

Turnover more than Rs. 1.5 crore & upto 5 crore in preceding financial Year	Feb, 2020 & March, 2020	29th June, 2020	No Interest, Late Fees will be charged if return is filing till due-date as stated in here.
	April, 2020	30th June, 2020	If return filed after due-date as stated herein, Interest @ 18% along with Late fees will be applicable
Turnover of Rs. 1.5 crore & less in preceding Financial Year	Feb, 2020	30th June, 2020	No Interest, Late Fees will be charged if return is filing till due-date as stated in here.
	March, 2020	3rd July, 2020	
	April, 2020	6th July, 2020	If return filed after due-date as stated herein, Interest @ 18% along with Late fees will be applicable

TRANSFER PRICING CA. Bhavesh Dedhia, CA. Bhavya Goyal, CA. Shazia Khatri



Proceedings before the DRP are continuation of assessment proceedings, being a stage prior to the completion of assessment. Quashes TPO reference being contravention to Instruction 3/2016. - Sava Healthcare Limited vs. DCIT

Assessee's Return of Income was taken up for scrutiny through CASS on "non-TP" risk parameters. The AO made a reference to the TPO after according appropriate internal approval on the grounds that the transfer pricing addition made of more than INR 10 crore in earlier years was pending before DRP and accordingly, the case was covered under para 3.3(b) of the Instruction No.3/2016 dated 10-03-2016 issued by the CBDT. The TPO proposed an adjustment in line with earlier years. The DRP dismissed the objections and upheld the order of the TPO.

On appeal before the Hon'ble Tribunal, the Assessee contented that reference by the AO to the TPO should be declared invalid and consequential TP adjustment be deleted.

The Hon'ble Tribunal while adjudicating the said legal issue noted that the following:

- Para 3.3(b) of Instruction 3/2016 divulges that the reference can be made to the TPO when two conditions are cumulatively satisfied namely (a) there has been a transfer pricing adjustment of Rs.10 crores or more in an earlier assessment year; and (b) such adjustment has been upheld by the judicial authorities or is pending in appeal.
- The term "an earlier assessment year" does not refer to the immediately preceding assessment year. If, for any year prior to the immediately preceding assessment year also, a transfer pricing adjustment of INR 10 crores or more has been made, it will satisfy the first condition.
- In respect of second condition, whether the transfer pricing adjustment is upheld by the judicial authorities or is pending in appeal, it is a pre-requisite that the transfer pricing adjustment must have been made in the first instance by the AO in the final assessment order.
- Proceedings before the DRP are continuation of assessment and therefore the pendency of the matter before the DRP cannot be equalized with the pendency of an appeal so as to satisfy the second condition of para 3.3(b) of the 2016 Instruction. Hon'ble Tribunal referred to Hon'ble Bombay High Court decision in Vodafone India Services (P) Ltd. Vs.

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Union of India (2013) 39 taxmann.com 201 (Bom.) to draw a support in this regard.

In view of the factual matrix and above discussion, Hon'ble Tribunal held that the reference made by the AO to the TPO was in contravention with the Instruction No.3/2016. Since the Instruction was binding on the AO and such reference being declared as invalid, the consequential transfer pricing adjustment was directed to be deleted.

Under Transactional Net Margin Method- aggregation principle – reference to case of composite contract involving multiple international transactions. - M/s Lenovo India Private Limited vs. The Income Tax Officer [2020-TII-103-ITAT-BANG-TP]

The Assessee is engaged in the business of trading, manufacture and sale of desktops, laptops, servers and smartphones. The Assessee had inter-alia entered into transactions of (a) provision of sales facilitation services; and (b) administrative & business support services to its AEs. The Assessee had carried out separate analysis for both these transactions citing difference in Functions, Assets and Risks profile. The TPO however, aggregated both the segments / transactions and performed a common benchmarking analysis citing composite contract for services. The DRP in its direction did not deal with the objection on whether international transactions can be aggregated in the given facts and circumstances.

Remanding the issue to the file of the TPO, the Hon'ble Tribunal observed the following:

“As per the Indian Income-Tax Act, ideally, the transfer pricing is to be made on a transaction by transaction basis. However, Rule 10A(d) provides that the term ‘transaction’ includes a number of closely linked transactions. Thus, in cases where separate transactions are so closely linked or are closely inter-related or continuous and where application of the arm's length principle on a transaction by transaction basis becomes cumbersome for all involved and would not lead to an accurate result, recourse is often had to evaluate transactions following an ‘aggregation’ principle. Due to increasing presence of composite contracts and ‘package deals’ in an MNE group, the aggregation of transactions become necessary as a composite contract may contain a number of elements including royalties, leases, sale and licenses all packaged into one deal. One would usually want to consider the deal in its totality to understand how various elements relate to each other, but the components of the composite package deal may or may not, depending on the facts and circumstances of each case, need to be evaluated separately to arrive at the appropriate transfer price. Aggregation issue may also arise when looking at uncontrolled comparables. This is because third party information is not often available at the transaction level. In such circumstances, entity level information is the only recourse available. Therefore, whether ALP-principle is to be applied on a transaction by transaction basis or on an aggregation basis depends on the facts of each case and is not universally or generally applied in all composite contracts involving multiple transactions.”

Accordingly, Hon'ble Tribunal observed as under in relation to aggregation of transactions:

- In case of composite contract arrangements, the third party information is not often available at the transaction level, thus if there is an intrinsically linkage between transactions then aggregation of transaction could be adopted / considered for the purpose of benchmarking.

Hon'ble Tribunal has also made following other key observations:

- Method adopted for benchmarking in previous years cannot be ignored when there is no change in the facts and law.
- Incurring of Advertisement, Marketing and Promotion expenses cannot be treated as international transaction and consequently determination of arm's length price would not arise if the principles laid down by the Hon'ble Delhi High Court in Sony Ericsson Mobile Communications India P. Ltd.

[374 ITR 118 (Del)] are applied and the margins are accepted as at arm's length.

The fact that the TPO changes the method of computation of ALP does not mean it is a fit case for imposition of penalty if there is no dishonesty found in the conduct of the Assessee - Income Tax Officer vs. M/s Tianjin Tianshi India Private Limited

The Assessee, Indian Company, is engaged in trading/distribution of food supplements and health care equipment. The Assessee had entered into purchase transactions with an overseas Group Company's Branch Office ('PE') situated in India. The Assessee was of the view that the transaction between the Assessee and PE of the foreign AE situated in India would not attract the transfer pricing provisions. However, it had maintained TP documentation on conservative basis. The TPO during the TP Assessment proceedings proposed an upward adjustment to this transaction. In the merit appeal, CIT(A) deleted the said adjustment observing that there was no cross border transaction and accordingly, outside the purview of TP provisions. Hon'ble Tribunal reversed the said decision of CIT(A). Hon'ble Tribunal held that the said transaction between the Assessee and the PE of the foreign AE situated in India attracted the Transfer Pricing provisions. Pursuant to the said direction, Transfer Pricing adjustment was made.

Subsequently, the penalty under Section 271(1)(c) of the Act has been levied by the AO on the said adjustment. The Assessee filed an appeal before CIT(A) against the said penalty order. While deleting the penalty, CIT(A) held that provisions of Section 271(1)(c) of the Act would not get attracted as the Assessee was under belief that the purchase from the PE of the foreign AE situated in India would not attract the transfer pricing provisions. The Revenue Department filed an appeal before Hon'ble Tribunal.

Hon'ble Tribunal upholding CIT(A)'s order deleting the penalty under Section 271(1)(c) of the Act observed as under:

- In earlier years, it was not even clear whether the transactions are indeed international transactions or not.
- The adjustment primarily arose due to exclusion of some comparables, use of current year data by the TPO instead of multiple year data by the Assessee and also taking Net Profit Margin instead of Net Cost Plus margin as Profit Level Indicator. In view of the same, it cannot be said that the Assessee failed to exercise their transactions with all the due diligence or adopted any surreptitious mechanism.

Other Updates:

Recently, Hon'ble Gujarat High Court in case of FAG Bearings India Ltd. (R/TAX APPEAL NO. 862 of 2019 With R/TAX APPEAL NO. 864 of 2019) has admitted Revenue Department's substantial questions of law challenging Hon'ble Tribunal adoption of Transactional Net Margin Method as most appropriate method over Comparable Uncontrolled Price method for benchmarking the royalty transaction. Department has also challenged benchmarking of arm's length price at entity level instead if transaction level analysis as mandated by Section 92 of the Act.

GST-ADVANCE RULINGS

CA. C. B. Thakar, CA. Jinal Maru



Case: LATEST DEVELOPERS ADVISORY LTD [2020-TIOL-66] (RAJASTHAN AAR)

The applicant is in the business of providing maintenance i.e. Common Area Maintenance (CAM) services to housing societies and pay GST on the same. They also enter into separate agreement

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with individual members who wish to avail their services for supply of water to them. The applicant shall procure water from tanker water & supply and charge to the individual customers based on the sq. feet occupied by them as there are no sub-meters. They sought ruling for whether GST is payable on supply of water as they are mere traders and may qualify for exemption under Entry 99 of the Notification 2/2017-CTR.

The AAR held that though there is separate agreement for supply of water and they collect charges on per sq. feet basis from the residents of the society, it is not possible to supply of water to each apartment separately as the apartments do not have their own separate water storage tanks. Also, it is quite evident that supply of water in Contract-II & supply of maintenance services in Contract-I are to the same society and, there is no direct supply of water to the individual residents. GST is leviable on the supply of water as applicable on supply of maintenance services.

Case: OPTM HEALTH CARE PVT LTD [2020-TIOL-54-AAR-GST (KOLKATA)]

The Applicant is providing a form of treatment called "Phytotherapy" to cure osteoarthritis and disorders of similar nature. The medicines invented by them have been approved by the Drug Control Department under the category of Ayurvedic Medicine. They seek ruling to know whether they are eligible for exemption under entry 74 of notification 12/2017-CTR.

The AAR held that applicantsubmissions do not clarify that its plant-based preparations are manufactured exclusively in accordance with the formulae prescribed in any authoritative book of Ayurveda specified in the first Schedule of the Drugs and Cosmetics Act, 1940. It also does not claim that the persons administering the plant-based preparations are 'authorised medical practitioners' in Ayurveda within the meaning of para no. 2(k) of the exemption notification 12/2017-CTR. Hence, exemption not eligible.

Case: M/s WATER HEALTH INDIA PVT LTD [2020-TIOL-57] (KARNATAKA AAR)

Applicant enters into agreement with local Municipalities to purify the raw water through community water treatment and supply the purified water in unsealed containers of 20 litres. They claim to eligible for exemption from payment of GST under entry 99 of notification 2/2017-CTR.

AAR held that the word "and" used in entry 99 is disjunctive in nature & lays down that water sold in sealed container is the another type of water excluded from the said entry along with aerated water, mineral water, purified water etc.

Thus, supplying of purified drinking water to the general public in an unsealed container is not entitled for the exemption from GST

Case: LATEST DEVELOPERS ADVISORY LTD [2020-TIOL-66] (RAJASTHAN AAR)

Facts of the Case:

1. The applicant proposes to engage in the business of providing maintenance i.e. Common Area Maintenance (CAM) services to housing societies.
2. For providing above services, it will enter into an agreement (Contract -I) with the society/ individual customers.
3. With respect to one of the Projects lacking proper supply of water, applicant enters into an agreement (Contract-II) for water supply arrangement for personal use of individual members.

4. The applicant shall procure water from tanker water & charge to the individual customers based on the sq. feet occupied by them, as there are no sub-meters. Also Contract-II is optional with the individual members of the society.

Questions before AAR:

1. Whether the applicant is required to pay GST on water charges collected from customers for supply under Contract-II?

Arguments by Applicant :

1. Supply of water is exempt from levy of GST under Entry 99 of the Notification 2/2017-CT(Rate). That since the project is located in an area where there is no water supply, customers have entered into a contract with the applicant for water management. Water is purchased by the applicant & supplied "as such" to the customers, i.e. without carrying out any further process.
2. Water is movable in nature and therefore qualifies as "Goods" u/s 2(52) of CGST Act. The activity of applicant is merely trading of water supply.
3. Without prejudice, even if the transaction in Contract-II involves supply of services & supply of goods(water), it would be composite supply. Since principal supply is exempt under above notification the entry transaction would be out of levy of GST.

Decision of AAR

1. In the instant case, applicant is providing services to society in 2 parts i.e. all services of maintenance (other than supply of water) & supply of water. Further, as a general practice across trade the maintenance service is inclusive of supply of water & hence supply of water through a separate agreement raises suspicion in its activity. This is because the water received by the society is used for multiple purpose i.e. gardens, washing cleaning, swimming pool & is stored in common underground water tank which is maintained by society.
2. The applicant seems to have bifurcated the services provided to society in order to escape condition of Rs.7500/- per month per member under entry 77 of notification 12/2017-CTR or it might be crossing basic threshold limit.
3. Even though there is separate agreement for supply of water and collects charges on per sq. feet basis from the residents of the society, it is not possible to supply of water to each apartment separately as the apartments do not have their own separate water storage tanks.
4. Thus, it is quite evident that supply of water in Contract-II & supply of maintenance services in Contract-I are to the same society and relevant to each other, there is no direct supply of water to the individual residents.
5. Therefore GST is leviable on the supply of water as applicable on supply of maintenance services.

Case: M/s WATER HEALTH INDIA PVT LTD [2020-TIOL-57] (KARNATAKA AAR)

Facts of the Case:

1. he applicant is engaged in business of supplying purified water in following types :
 - a) In unsealed form by filling customers empty cans
 - b) In 20 litre unsealed cans
 - c) Through piped network to establishments
2. The applicant has entered into MOU with local panchayats / municipalities for the supply of purified water to the general public. The MOU provided that the applicant shall supply purified water by

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installing community water treatment plant at economical price.

- They charged this purified water at Rs. 8/- for 20 litres cans. Also, they could recover the capital & operational expenses in case the amount so collected falls short.

Questions before AAR:

- Whether supply of purified water to public in empty unsealed cans is exempt under GST law?

Arguments by the Applicant:

- They have entered into agreement with Municipalities to purify raw water pumped from well, ponds, bore well etc by removing all impurities making it fit enough to drink. Hence Applicant is selling purified water not in sealed containers.
- Entry 99 of notification 2/2017-CTR exempts all types of water except sold in sealed containers. This is evident from the term "and" in the said entry.

"Water [other than aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container] is exempt from GST."

- It was argued that, the exclusion will apply only when the purified water is sold in sealed container. The term 'sold in sealed container' runs along with the excluded category of water. The term 'and' prior to the term 'water' should be read in a manner that is conjunctive & in such a way that phrase in a sealed container is applicable for all types of water enumerated in the entry. They submitted that the word "water in sealed container" should be read in conjunction with word "purified, mineral, etc" and should not be read as separate sentence.
- Relying on the case of Sukhnandan V. Suraj Bali, it was held that "and" should be understood in its natural grammatical sense to indicate a conjunctive sense & not a disjunctive sense and cannot be read as "or".
- They also relied on CBIC circular 52/26/2018 dated 9th August, 2018 where it clarifies that supply of drinking water for public purposes, if not supplied in sealed containers, is exempt from GST.

Decision of AAR

- That the ordinary usage of "and" is conjunctive. However, there is no hard and fast rule as to the meaning of the word "and" and this word gets its proper meaning from the particular context from which it has been used. This has been observed by Hon'ble Allahabad HC in case of Sukhanandan V. Suraj Bali.
- Applying the above principle, the word "and" used in entry 99 is disjunctive in nature & lays down that water sold in sealed container is the another type of water excluded from the said entry along with aerated water, mineral water, purified water etc.
- Thus, supplying of purified drinking water to the general public in an unsealed container is not entitled for the exemption from GST.

CO-OPERATIVE HOUSING SOCIETIES
CA. Ramesh Prabhu, CA. Mukul Varma



GR dated 22-04-2020 by cooperative department has extended the validity of Cooperative Panel Auditors upto 30th Sept 2020 panel which was expired 31st March 2020.

MAHARERA
CA. Ashwin Shah



Section 6 of Real Estate (Regulation and Development) Act, 2016 - " Force Majeure."

The expression force majeure shall mean a case of war, flood, draught, fire, cyclone, earthquake, or any other calamity caused by nature affecting the regular development of the project.

Project extension shall be allowed for all such force majeure period which were prevailing during the project development phase.

However, it does not include the following :-

- Restrictive order of any Court or Authority
- Factors beyond the control of promoter
- Delay in approval by any competent authority

The current situation on account of CORONA outbreak is certainly natural calamity and is very much covered by force majeure condition.

Maharashtra Real Estate Regulatory Authority vide its order no. 13 dated 02-04-2020 in exercise of powers vested in Section 34 of the Act has decided that :-

- For all MahaRERA Registered projects where completion date, revised completion date or extended completion date expires on or after 15th March 2020, the period of validity for registration of such projects shall be extended by three months. MahaRERA shall accordingly issue project



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registration certificates, with revised timelines for such projects, at the earliest.

- Further, the time limits of all statutory compliances in accordance with the Real Estate (Regulation and Development) Act, 2016 and the rules and regulations made thereunder, which were due in March / April / May are extended to 30th June 2020.

Further, vide various clarification MahaRera Authority has extended the date of hearing to subsequent period and office of MahaRera and Maharashtra Appellate Tribunal shall remain closed till 3rd May 2020.

It, therefore, follows that extension or relaxation shall be available for various compliances including filing of Complaint /Appeal and submission of hard copies with Authority/Tribunal.

Promoter shall be entitled to claim force majeure period up to 30th June 2020 for delay in completion of projects and such other compliances that are required to be done by the Promoter.

However, Real Estate Industry is demanding through various representation that these force majeure period shall be extended to One Year at least and further shall be reviewed depending upon the conditions prevailing on account of CORONA outbreak

As per MahaRERA circular dated 2nd April 2020, the Maharera projects which expires on or after 15th March 2020 will be automatically extended by 3 months automatically and revised registration certificate will be issued. Similarly all statutory compliance due dates falling in March, April and may are extended upto 30th June 2020

INSOLVENCY AND BANKRUPTCY CODE

CA. Pravin Navandar, CA. Viral Doshi



Summary of Ultra Tech Nathdwara Cement Ltd., – Petitioner Vs. CGST Department –Respondent

A Writ Petition in the Rajasthan High Court against the demand by the CGST Department, for the period before it take over of Binani Cement which was admitted underinsolvency. UltraTech Nathdwara Cement Ltd. Resolution Applicant/ Petitioner, bid for the CD. COC approved the resolution plan. Plan dealt with the

dues of all the creditors equitably and was superior in terms of recovery to the banks and other creditors as compared to the losses which all the creditors would have suffered in case the company had gone into liquidation. The AA duly approved to be made by the Petitioner Company to all the creditors. The liquidation value available to the operational creditors including GST department would be zero. In this situation. The Resolution plan was affirmed/ approved also by the NCLAT and by the Hon'ble Supreme Court on being challenged before those authorities on one or more of the ground. The approved Resolution Plan proposes payment towards all the stakeholders including the statutory creditors. The RA contended that the amount as assessed by the Resolution Professional involving GST department is already deposited.

Resolution Plan attained finality after approval by the COC and AA. The same cannot be questioned in a court of law and that the amended Section 31 of the code says that the approved resolution plan will be binding on all the stakeholders including central/ state government or any local authority where any dues is owed against any application of law.

The Hon'ble High Court expresses serious reservation on the approach of the concerned Officers of the GST in persisting with the demands raised from the petitioner in gross ignorance of the amended Section 31 of the code.

The Court noted that the GST department had unsuccessfully challenged the resolution plan before the Supreme Court. Therefore, the court held that "We are of the firm view that the authorities should have adopted a pragmatic approach and immediately withdrawn the demands rather than indulging in totally frivolous litigation, thereby unnecessarily adding to the overflowing dockets of cases in the courts

The court emphasized that IBC was a special law and that the purpose is to revive dying industry by providing an opportunity for a resolution applicant to take over the same and begin the operation on a clean slate.

For more details on updates, visit www.wirc-icai.org

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