



The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)

Western India Chartered Accountants Newsletter

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Powered by Professionalism
Driven by Values



Dear Professional Colleagues,

The Indian economy is in the grip of an unusual depression due to structural and cyclical causes, leading to real GDP growth contracting to 5% in the quarter ending June 2019. Tapering GDP growth required expansionary impulses to revive the economy. To improve sentiment & revive the economy, Government of India has announced slew of measures like improving Ease of

Doing Business via facilitation of start-ups, capital infusion in Banks, etc.

Taking this further, the Finance Minister, in order to give impetus to the economy and to boost 'Make in India', announced an unprecedented reduction in corporate tax rates. This major policy change will make Indian corporate tax rates internationally competitive and will also incentivize Indian and foreign companies to set up in India in the times of global Trade Wars. India Inc. has applauded this positive tax measure. The new, reduced tax rate on the new manufacturing companies has been like a surgical strike to arrest economic slowdown. RBI has also continued to reduce the repo rate in turn passing the benefit to final consumer. These visionary measures will help to build a new India.

Today, Chartered Accountants play an important role in contributing to strategic decision-making. They are the ambassadors of the country's economic system and Partners in Nation Building - interfacing between government & tax-paying companies and individuals. CAs are committed to their work and the key to their success is that they possess an ethical mindset, creativity, analytical & presentation skills, professional equanimity and collaborativeness.

The recent announcements are opening up various opportunities for Chartered Accountants. We, Chartered Accountants, can be guides to the various stakeholders during turbulent times to evaluate various alternatives to reap the desired benefits of the announced measures. Thereby, we can truly play the role of the partner in nation-building. I am proud to say that Chartered Accountants inherently believe and follow the words of Swami Vivekananda, "When you are doing any work, do it as worship, as the highest worship, and devote your whole life to it for the time being."

Technology plays an important role in today's digital era in the CA Profession. The WIRC has organised a National Seminar on Digital Accounting Profession 2.0 - Taking Fresh Guard for building the digital competency of members. We thank Digital Accounting & Assurance Board (DAAB), ICAI, for extending their support. The lecture meeting on Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019, was very well accepted by members where Principal Chief Commissioner, CGST, and the speaker explained about

the scheme and addressed all the issues raised by members. WIRC Publication 'E-Guide on Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019' was published in the said program and is available to all members in electronic mode. The interactive meeting of members along with the officials of Registrar of Firms, Maharashtra State was very fruitful. It has supported the members to solve issues surrounding it. The speakers in the seminar on Valuation of Securities & Financial Assets have given insightful learning and added value to the knowledge of all participants. Seminars on various topics including GST, Standards on Auditing etc. were organised which upgraded the skills of members. The President felicitated the Indian physically challenged cricket team for winning the 6 Nation T-20 Physical Disability World Cricket Series 2019. The interaction with the newly qualified CA members of Kalyan-Dombivli, Vasai & Vapi Branches during the Branch visits was insightful.

The WIRC also received an opportunity to support the Campus Interviews, Orientation Program, Mock Interviews, Group discussions for newly qualified CA members organised by Committee for Members in Industry & Business at Mumbai. We have initiated the program of counselling the students by visiting colleges and Chairperson along with the members, Board of Studies, University of Mumbai have extended their support for the noble cause of guiding the students for joining CA course.

We have planned Indirect Tax Refresher Course - GST 2.0, Banking Summit, National Women Conference - Women 2.0 and seminars on various relevant topics including Transfer Pricing, Taxation, Ind-AS, forensic Audit, Internal Audit etc. The lecture meetings on analysis of The Taxation Laws (Amendment) Ordinance, 2019 - Impact of taxation measures & on Economy & Capital Market, E-Assessment are organised. ICAI International Conference 'Accountancy Profession: Catalysing Reforms, Creating Values' is also planned in Mumbai this year. The lecture meeting on our WIRC theme 'Powered by Professionalism, Driven by Values' shall be addressed by Shri Gnanvatsal Swamiji. All are invited to take benefit of these programs.

I look forward to meeting you in the forthcoming programs. I wish you a Happy Diwali & Saal Mubarak! May this Diwali enlighten you and your family. Let us celebrate this festival of light in the true sense by removing the darkness of ignorance through the light of knowledge. Once again, I wish a Happy Diwali and prosperous New Year to you.

With Best Wishes,

CA. Priti Paras Savla
Chairperson

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Miscellaneous
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Lecture Meeting on Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019



CA. Yashwant Kasar, Treasurer, WIRC, CA. Priti Savla, Chairperson, WIRC, Smt. Sungita Sharma, Pr. Chief Commissioner, CGST, CA. V. Sridharan, Faculty, CA. Arpit Kabra, RCM



Team - CGST Department at Lecture Meeting on Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 alongwith Team WIRC

Seminar on Valuation of Securities & Financial Assets



CA. Anisha Kazi, CA. Priti Savla, Chairperson, WIRC, CA. Sujal Shah, Faculty, CA. Mukund Mall



Team WIRC Visit to Branches



Kalyan Dombivli



Vapi

Discussion on Intricacies on GST Annual Return & Audit



CA. Praveen Jain, CA. Raj Khona, Faculty, CA. Priti Savla, Chairperson, WIRC, CA. Ashit Shah, Faculty

Seminar on New Audit format SA Application to Tax Audit & Small Private Companies



CA. Sikander Yadav, CA. Milan Mody, Faculty, CA. Priti Savla, Chairperson, WIRC, CA. Himanshu Kishnadwala, Faculty, CA. Vipul Shah, CA. Vijay Jeyam



Vasai



Date & Day	Time & Fees	Topics & Speakers	Regional Council Members (Chief Co-ordinators)	Co-ordinators
09, 11, 14, 16 & 17/10/2019 Wednesday, Friday, Monday & Thursday 15 CPE Hrs	4.00 p.m. to 8.00 p.m. ₹ 3,540/- (Incl. GST)	IDT Refresher Course – GST 2.0 Wednesday, 9th October, 2019 • Inauguration and Overview of GST, Act & policy : CA. Upender Gupta* <i>Commissioner GST, CBEC</i> • Issues in supply & valuation : CA. Udayan Choksi Friday, 11th October, 2019 • GST New returns : CA. Mandar Telang • Issues under Input Tax Credit under GST : CA. Sushil Solanki Monday, 14th October, 2019 • Issues in place of supply : CA. A. R. Krishnan • Import, exports & cross charge mechanism : CA. Rohit Jain Wednesday, 16th October, 2019 • Intricacies in GST audit : CA. Rajiv Luthia • Interest, Penalties & adjudication under GST : Adv. Shailesh Sheth Thursday, 17th October, 2019 • Recent Court Decisions and Advance Rulings : Adv. L. Badri Narayanan • Brain Trust : CA. S. S. Gupta, CA. Bhavna Doshi	CA. Umesh Sharma 9822079900 CA. Yashwant Kasar 9822488777 CA. Vikash Jain 9327715892	CA. Sanjay Gajra 9821441740 CA. Chintan Rambhia 9867383060 CA. Sachin Maher 9323982729 CA. Heenal Shah 9819758647
12/10/2019 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,416/- (Incl. GST)	Banking Summit Banking in current turbulent environment: Panel Discussion Mr. Arijit Basu , <i>Managing Director (CCG & IT), State Bank of India</i> Mr. Kannan , <i>Chief Executive Officer, Indian Banks Association</i> Mr. Khurshed Dordi* , <i>COO, Deutsche Bank Group</i> Mr. B. S. Shekhawat* <i>Executive Director, Central Bank of India</i> Bank Finance – various schemes & options: Panel Discussion Shri Prashant Kumar, <i>DMD & CFO, State Bank of India</i> Mr. Anubhav Srivastava, <i>ICICI Bank</i> Panel Moderator : Mr. Sandeep Sonpatki Digital Banking - Latest Technology & Practices Mr. Sameer RatoLikar, <i>HDFC Bank</i> Mr. Prasanna Lohar, <i>DCB Bank</i> Panel Moderator: Mr. Nanda Mohan Shenoy, <i>Bestfit Business Solution</i> Forex loans, hedging – Intricacies & benefits Mr. Akash Chopra, <i>ICICI Bank</i> Mr. Veda Narayanan Lakshmanan, <i>Indusind Bank Ltd.</i> Alternate funding options : Panel Discussion <i>Eminent Panelists</i> 	CA. Hitesh Pomal 9824049402 CA. Sushrut Chitale 9821112904 CA. Jayesh Kala 9820010113	CA. K V S Shyamsunder 9819660635 CA. Arvind Nagda 9322276820 CA. Chirag Vajani 9833160607
19/10/2019 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 472/- (Incl. GST)	Women 2.0 : National Women Conference Inauguration & Interaction with Dignitaries : CA. Prafulla Chhajed , <i>President ICAI</i> CA. Atul Kumar Gupta , <i>Vice President ICAI</i> CA. Kemisha Soni , <i>WMEG – ICAI Ms Alka Tyagi, CCIT, Mumbai*</i> • Reaching to Top: How to Overcome Challenges : Ms. R. M. Vishakha , <i>MD & CEO, India First Life Insurance</i> • Profession 2.0: Opportunities in different areas : Panel Discussion CA. Bahroze Kamdin , CA. Poornima Subramanian , <i>Reliance Nippon Life Insurance</i> CA. Arti Mahajan , <i>VP Risk Management, Nayara Energy</i> CA. Sheetal Shah , CA. Sujata Rangnekar • Taking care of Health in modern era : Dr Gayatri Deshpande , <i>MD, Consultant : Obstetrician & Gynaecologist</i> Dr Devyani Barve , <i>MS, Mch – Consultant Plastic Surgeon</i> Panel Moderator: Dr Ashwini Jogade , <i>Med. Supt Nanavati Hospital</i> • Building Digital Competency : CA. Payal Agarwal , CA. Maitri Chheda • Flexi working – Is it Possible? Comfort or necessity : CA. Suman Hegde , <i>Group Controller & Head investor Relations, Hindustan Unilever Ltd</i> Dr. Saundarya Rajesh , <i>Founder of Avtar Career</i> Smt. Rani Desai	CA. Rakesh Alshi 9819427242 CA. Drushti Desai 9820335923 CA. Shilpa Shinagare 9820053395	CA. Shweta Jain 9920737198 CA. Rupal Haria 9322219029 CA. Meenakshi Gupta 9820654322 CA. Vandana Dodhia 9820029281 CA. Pinki Kedia 9820113781



Lecture Meeting

3
CPE Hrs

Powered by professionalism; Driven by values
Puja Gnanvatsal Swamiji

Date: Friday, 18th October, 2019 • **Venue:** Yogi Sabhagruh, Dadar, Mumbai

Time: 5.00 pm to 08.30 pm | 5.00 p. to 5.30 p.m. Networking & Hightea

Regional Council Members (Chief Co-ordinators)

CA. Rakesh Alshi 9819427242
CA. Umesh Sharma 9822079900
CA. Yashwant Kasar 9822488777

Co-ordinators

CA. Hemant Joshi 9821127103
CA. Hinesh Doshi 9820232635
CA. Premal Gandhi 9324383636

Date & Day	Time & Fees	Topics & Speakers	Regional Council Members (Chief Co-ordinators)	Co-ordinators
09/11/2019 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,416/- (Incl. GST)	Seminar on Transfer Pricing Transfer Pricing Documentation (Section 92D r.w. rule 10D) and broad overview global documentation framework: CA. Mehul Shah Overview on BEPS documentation - requirements in respect of Country-by-Country report ("CbC"), Master file: CA. Ravi Gupta Accountants Report (Form 3CEB – section 92E) : CA. Nikhil Dhariwal FAR Analysis - (Delineation of transactions and value chain analysis) Panel Discussion : Eminent Panel Members	CA. Lalit Bajaj 9867692321 CA. Anand Jakhotiya 9325444644 CA. Murtuza Kachwala 9833015334	CA. Virag Shah 7043154500 CA. Himanshu Chheda 9820676826 CA. Virav Dedhia 9819296261
16/11/2019 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,416/- (Incl. GST)	Seminar on Corporate tax issues arising on account of IND AS Implementation of Ind-AS – Impact on Corporate Tax : CA Dinesh Patil Revenue recognition (Ind AS 115) : CA Hemant Wani* • Property, Plant, Equipments (IND AS 16) • Intangible Assets (IND AS 38) : CA Manmay Chandawalla • Borrowing Costs (IND AS 23) • Government Grants (IND AS 20) & MAT Impact : CA Hemantkumar Salian	CA. Vishal Doshi 9824059901 CA. Arpit Kabra 9819007027 CA. Chintan Patel 9099921163	CA. Gautam Mota 9594339945 CA. Harsh Dedhia 9892444121 CA. Rahul Soni 9773123976
18/10/2019 Friday 3 CPE Hrs.	5.00 pm to 08.30	Lecture Meeting Recent Amendments in GST CA. Sunil Gabhawalla Venue: Yogi Sabhagruh, Dadar, Mumbai		

Accounting & Auditing

GST & Other Indirect Tax

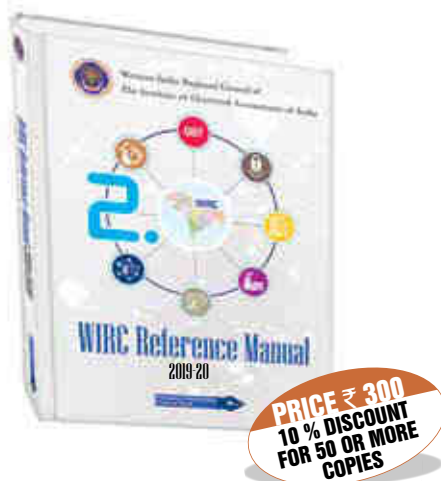
CA Act & Regulations

Company Law

Other Laws

Income Tax

Miscellanea



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2019-20

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DIRECT TAX – LAW UPDATE

CA. Haresh P. Kenia, CA. Deepak Lala



Return of Income – Section 139(1C) of the Income Tax Act – Exemption from furnishing of Return of Income u/s. 139(1) for Assessment Year. 2019 – 20. [265 Taxman (St.) 1]

The Central Government vide notification no. S.O.2672(E) (No.55/2019 [F.No.225/79/2019-ITA II] Dated 26-07-2019 hereby exempts the following class of persons, subject to the conditions specified, from the requirement of furnishing of return of Income u/s 139(1) of the Income Tax Act from assessment year 2019-20 onwards.

1. Class of Persons

- (i) a non-resident, not being a company; or
- (ii) a foreign company, who have any income chargeable under the said Act during a previous-year from any investment in an investment fund set up in an International Financial Services Centre (IFSC) located in India.

Explanation:- For the purpose of this paragraph.-

- (a) “investment fund” means any fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which has been granted a certificate of registration as a Category I or Category II Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (b) “International Financial Services Centre” shall have the same meaning as assigned to it in clause (q) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005).

2. Conditions

In case of class of persons referred to in para 1,-

- (i) any income-tax due on Income of the said class of persons has been deducted at source and remitted to the Central Government by the investment fund at the tax-rate in force as per provisions of section 194LBB of the said Act; and
 - (ii) there is no other income during the previous year for which the said class of persons, is otherwise liable to file the tax-return.
3. The exemption from the requirement of furnishing a return of income shall not be available to the said class of persons where a notice under sub-section (1) of section 142 or section 148 or section 153A or section 153C of the said Act has been issued for filing a return of Income for the assessment year specified therein.
 4. This notification came into force from the date of its publication in the Official Gazette.

Income from Other Sources – Section 56(2) (viib) - CBDT simplifies the process of Assessment in respect of Start-Ups [265 Taxman (st.) 3]

The CBDT vide press release dated 10-08-2019 simplified the process of Assessment in case of start-up entities. The CBDT has decide the following where scrutiny assessment of start-up entities are pending

1. In case of Start-up Companies recognized by DPIIT which have filed Form No.2 and whose cases are under “limited scrutiny” on the single issue of applicability of section 56(2)(viib), the contention of the assessee will be summarily accepted.

2. In case of Start-up Companies recognized by DPIIT which have filed Form No.2 and whose cases have been selected under scrutiny to examine multiple issues including the issue of section 56(2)(viib), this issue will not be pursued during the assessment proceeding and inquiry on other issues will be carried out by the Assessing Officer only after obtaining approval of the supervisory authority.
3. In case of Start-up Companies recognized by the DPIIT, which have not filed Form No.2, but have been selected for scrutiny, the inquiry in such cases also will be carried out by the Assessing Officer only after obtaining approval of the supervisory authorities. In addition to the above, the Central Government has further decided to relax Para-6 of the DPIIT notification No.127(E) dated 19-2-2019 and make it clear that this notification will also be applicable to Start-up Companies where addition under section 56(2) (viib) has been made and the assessee has been recognized by DPIIT and subsequently filed Form No.2. The Circular to this effect in F.No.173/149/2019-ITA-1 of CBDT dated 8th August, 2019 has been placed on www.incometaxindia.gov.in.

DIRECT TAX – RECENT JUDGMENT

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



TRIBUNAL DECISIONS

M/s Nortel Networks India Pvt. Ltd. Vs DCIT (ITAT Delhi)

Penalty U/s 271(1)(c) cannot be levied if more than one legal view is possible:

(Appeal No.: ITA No. 1510/Del/2016, Date of Order: 07/08/2019, Assessment Year: 2005-06)

Courts : All ITAT (6300) ITAT Delhi (1441)

The assessee has offered Explanation as why the transaction of loss of security was claimed as business loss. This Explanation has not found to be false by the Assessing Officer (AO). Further, the assessee substantiated the Explanation by way of filing relevant documents in relation to the transaction.

The Hon. Tribunal opined that the assessee has disclosed all the facts material to the computation of the income in the assessment proceedings. It is not the requirement of the law that all the facts material to the computation of income have to be disclosed in the Return of Income only as there are no relevant columns in the return of income form for disclosing all the facts of the case.

During the assessment proceedings, the Assessing Officer asked queries in respect of the claim of loss of security deposit claim and the assessee submitted all the detailed information in respect of the transaction and no facts have been found to be wrong by the AO. The issue involved is only of the interpretation of the transaction of loss of security. According to the assessee, it was in the nature of revenue expenditure whereas according to the AO, it is capital loss, not allowable against the business profit. The issue raised was where similar advances forfeited have been held to be revenue expenditure.

There is no doubt that there were two opinions, whether the advances written off could be considered as revenue expenditure or capital expenditure.

Hon'ble High Court of Punjab and Haryana in the case of Commissioner of Income Tax versus Amtek Auto Limited (supra) has held that “merely because assessee claimed expenditure as revenue, which was held as capital by the Assessing Officer, penalty for concealment could not be imposed where assessee discloses nature of transaction”.



In the case of CIT vs. Electrolux Kelvantro Ltd. (supra), Hon'ble Delhi High Court held that where the issue involved is debatable and not free from doubt, no penalty can be levied.

In view of the foregoing discussion and respectfully following the decisions of the Hon'ble High Court, The Hon. Tribunal took a view and accordingly held that Explanation 1 of 271(1) is not attracted in the case of the assessee for levy of penalty U/s 271(1)(c) of the Act.

INTERNATIONAL TAXATION

CA. Hinesh Doshi, CA. Ronak Soni



Knight Frank (India) (P.) Ltd vs. Assistant Commissioner of Income Tax, [2019] 107 taxmann.com 363 (Mumbai-Trib.) dated 12th June, 2019

Facts:

The assessee company, engaged in the business of rendering international real estate advisory and property management services. The assessee paid referral fees to US concern, Newmark for introducing clients to it without deduction of TDS at the time of making such payment.

AO was of the view that irrespective of the fact that the foreign concern had a residence or place of business or business connection in India and that whether or not foreign company had rendered services in India or not, the amount of referral fees would be taxable in the hands of said foreign concern in India. Thus, the Assessing Officer disallowed the referral fees under section 40(a)(i).

On appeal, the Commissioner (Appeals) upheld the said disallowance.

Aggrieved, the assessee filed appeal before the Tribunal.

Issue:

Whether there would be obligation upon the assessee to deduct TDS u/s. 195 on payment made to foreign company?

Whether the referral fees could only be brought to tax in USA in absence of PE?

Held:

ITAT held that the services rendered by the foreign concern for introducing a client did not "make available" any technical knowledge, experience, skill, know-how or processes to the assessee and did not fall under "Fees for included services" as per Article 12 of India-USA, DTAA.

ITAT held that the payment made to the foreign concern for the services which were rendered entirely in USA constituted business profits as per Article 7 of India-USA DTAA. The said foreign concern cannot be taxed in USA in the absence of PE in India.

ITAT held that no obligation for deduction of TDS was cast upon the assessee and thus ruled in favor of the assessee.

M/s. Braitrim UK Limited vs. DCIT (IT)-1(3)(2), Mumbai [TS-502-ITAT-2019(Mum) dated 21st August, 2019

Facts:

The assessee, a UK based foreign company, engaged in the business of supplying world class hangers. The assessee entered into agreements with various global retail chains and due to such arrangement gave rebate/discount to the retailers based on the volume/units of sales achieved by its group and subsequently, the proportionate share of rebate/discount is

recovered from the group companies based on the relative sales of those group companies.

During the impugned years, the assessee received such reimbursements from its Indian subsidiary as well which were treated as mere re-imbursement of administrative charges not taxable in India.

AO treated these receipts as royalty. Aggrieved, the assessee has filed appeal before Mumbai ITAT.

Issue:

Whether the remittances received by the assessee should be treated as reimbursement of expenses or as royalty?

Held:

Referring to the Cost Reimbursement Agreement laying down the nature, purpose and mode of computation of the payments (reimbursements), inferred that the payments would be in the nature of reimbursement of the rebate/discount passed on by the assessee to the retailers.

ITAT noted that there is no mark-up retained by the assessee while recovering the rebate/discount from the Indian subsidiary and no discount/rebate or administrative charges are payable to the assessee in case of sales made by Indian subsidiary to other independent parties.

ITAT noted that the reimbursements are in respect of specific and actual expenses incurred by the assessee and do not involve any mark-up and the assessee had furnished sufficient evidence to demonstrate the incurrence of expenses.

Relying on SC decision in AP Moller and HC decision in Siemens Aktiengesellschaft, ITAT concluded that the payments qualify as a pure reimbursement of expenses and accordingly, not taxable in India.

ITAT thus ruled in favor of the assessee.

FEMA

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



Review of Foreign Direct Investment (FDI) Policy on various sectors

Press Release dated August 28, 2019 issued by the Government of India; and Press Note No. 4 (2019 Series) vide DPIIT File No.: 5/3/2019-FDI Policy, dated September 18, 2019 issued by Department for Promotion of Industry and Internal Trade (DPIIT)

The Union Cabinet chaired by Prime Minister Shri Narendra Modi has on August 28, 2019 approved the proposal for review of FDI in Various Sectors. Consequently DPIIT has issued Press Note 4 (2019 Series) dated September 18, 2019 to give effect to the decision of Union Cabinet. Major changes in FDI Policy are as under:

Sector	Existing Policy	Revised Policy
Coal Mining	• 100% FDI under automatic route is allowed in coal & lignite mining for captive consumption by power projects, iron & steel and cement units and other eligible activities permitted under and subject to provisions of Coal Mines (nationalization) Act, 1973.	• In addition to existing policy, 100% FDI shall also be allowed under automatic route for sale of coal, coal mining activities including associated processing infrastructure subject to provisions of Coal Mines (Special Provisions)



Sector	Existing Policy	Revised Policy
	<ul style="list-style-type: none"> Further, 100% FDI under automatic route is permitted for setting up coal processing plants like washeries subject to the condition that the company shall not do coal mining and shall not sell washed coal or sized coal from its coal processing plants in the open market and shall supply the washed or sized coal to those parties who are supplying raw coal to coal processing plants for washing or sizing. 	<p>Act, 2015 and the Mines and Minerals (Development and Regulation) Act, 1957 as amended from time to time, and other relevant acts on the subject.</p> <ul style="list-style-type: none"> “Associated Processing Infrastructure” would include coal washery, crushing, coal handling, and separation (magnetic and non-magnetic)
Contract Manufacturing	<ul style="list-style-type: none"> The extant FDI policy provides for 100% FDI under automatic route in manufacturing sector. a manufacturer is permitted to sell its products manufactured in India through wholesale and/or retail, including through e-commerce, without Government approval. There is no specific provision for Contract Manufacturing in the Policy. 	<ul style="list-style-type: none"> In order to provide clarity on contract manufacturing, it has been decided to allow 100% FDI under automatic route in contract manufacturing in India as well. Manufacturing activities may be conducted either by the investee entity or through contract manufacturing in India under a legally tenable contract, whether on Principal to Principal or Principal to Agent basis
Single Brand Retail Trading (SBRT)	<ul style="list-style-type: none"> The extant FDI Policy provides that 30% of value of goods has to be procured from India if SBRT entity has FDI of more than 51%. Further, local sourcing requirement are required to be met as an average during the first 5 years, and thereafter annually towards its India operations. 	<ul style="list-style-type: none"> It has now been decided that - <ul style="list-style-type: none"> All procurements made from India by the SBRT entity for that single brand shall be counted towards local sourcing, irrespective of whether the goods procured are sold in India or exported. Sourcing of goods from India for global operations can now be done directly by the entity undertaking SBRT or its group companies (resident or non-resident) or indirectly by them through a third party under a legally tenable agreement. Entire sourcing from India (instead of incremental sourcing) for global operations shall be considered towards local sourcing requirement. Retail trading through e-commerce is now allowed to be undertaken prior to opening of brick and mortar stores, subject to the condition that the entity opens brick and mortar stores within 2 years from date of start of online retail.

Sector	Existing Policy	Revised Policy
Digital Media	<ul style="list-style-type: none"> The extant FDI policy provides for 49% FDI under approval route in Up-linking of 'News & Current Affairs' TV Channels 	<ul style="list-style-type: none"> In addition, 26% FDI under government route is allowed for uploading/ streaming of News & Current Affairs through Digital Media, on the lines of print media.

Please refer aforesaid Press Release at <https://pib.gov.in/indexd.aspx> and Press Note at <https://dipp.gov.in/policies-rules-and-acts/press-notes-fdi-circular>

TRANSFER PRICING

**CA. Bhavesh Dedhia, CA. Bhavya Goyal,
CA. Shazia Khatri**



Principal Commissioner of Income Tax vs. Tudor India Private Limited [2019-TII-92-HC-AMC-TP]

The Assessee is engaged in the business of manufacturing and marketing of storage batteries for different applications. As it has entered into various international transactions, its case was referred to the Transfer Pricing Officer (“TPO”). During the TP assessment proceedings, the TPO accepted all international transactions of the Assessee to be at arm’s length, except (a) payment of Management fees; and (b) payment of insurance expenses to its Associated Enterprises (“AEs”). The TPO in his order observed that (a) Management services provided by the AE were in the nature of supervisory activities undertaken on behalf of parent entity (i.e. shareholding activities) rather than the services for the benefit of the Assessee; and (b) there was duplication of insurance payment and the Assessee has not been able to substantiate the need for such payment. Accordingly, the TPO determined the arm’s length price for the above discussed transactions as “NIL”. The Dispute Resolution Panel (“DRP”) upheld the action of the TPO.

The ITAT after considering voluminous documentary evidences on record observed as under:

(a) Management Fees:

- A core management support services under cost contribution arrangement are outside the limited scope of shareholder services;
- Whether the Assessee “needs” the services or derives “benefits” from the services is not relevant for the Transfer Pricing analysis. The same should be best left to the commercial wisdom of the Assessee;
- What would be relevant is whether the Assessee has received the services and the cost allocation adopted is fair and reasonable;
- In the instant case, the e-mail correspondences and other details on record demonstrated rendition of services. Further, the allocation being on approximate time basis can be considered as reasonable for allocation of costs.
- In the view of the above, the ITAT deleted adjustment in relation to payment of management fees.

(b) Insurance expenses:

- The ITAT observed that the Assessee has submitted sample copies of insurance and also detailed allocation working which is on a reasonable allocation key (i.e. turnover basis).
- Further, there was no duplication of insurance payment as the types of insurance for which payment was made to the AE and third party were different.



- Accordingly, the ITAT deleted adjustment in relation to payment of insurance expenses.

Revenue department filed an appeal before the Hon'ble High Court. The Hon'ble High Court in its detailed order upholding the observations of the ITAT, pronounced the following principles:

- The commercial viability (i.e. the need and the benefits) of cost allocation is not the domain of Transfer Pricing Analysis, when receipt of services has been demonstrated with documentary evidences.
- No substantial question of law arises as the findings of fact recorded by the ITAT in its order cannot be termed as perverse or contrary to the evidence on record. The Hon'ble Court extensively relies on Hon'ble Karnataka High Court decision in case of Softbrands India P. Ltd., reported in (2018) 406 ITR 513 in this regard.

Principal Commissioner of Income Tax vs. M/s Visteon Engineering Center India Private Limited [2019-TII-94-HC-MUM-TP]

The Hon'ble High Court in the said ruling dismissing Revenue Department's appeal upheld the following principles:

- The Transfer Pricing adjustment has to be restricted to international transactions with AEs and cannot be made at entity level / on all transactions;
- The ITAT records the fact that certain companies are functionally not comparable to the Assessee. As the said finding of fact by ITAT is not shown to be perverse in any manner and therefore cannot give rise to any substantial question of law.

M/s Moog Controls India Private Limited vs. The Asst. Commissioner of Income Tax [2019-TII-399-ITAT-Bang-TP]

The Assessee is a company engaged in the business of design and manufacture of servo control and precision components for its AEs which are used in aviation industry, space industry and industrial controls divisions, etc. The Assessee had incurred losses in the manufacturing segment mainly due to under-utilization of capacity. Thus, post computing the capacity utilization adjustment, the Assessee concluded its margin in manufacturing segment were at arm's length.

During the TP assessment proceedings, the TPO rejected the Assessee's claim of capacity utilization and also rejected one of the comparable company selected in the TP study on the ground that it was a government company. The DRP upheld the action of the TPO. The Assessee filed an appeal before the ITAT.

The ITAT after considering the facts and arguments put forth observed as under:

- The adjustment for under-utilization of capacity can be granted provided the under-utilization of capacity vis-à-vis comparable companies is established with evidence. Further, with regard to computational aspects, the ITAT appreciated Assessee's argument that the capacity utilization of main product only should be considered or at best, the weighted mean of the products should be considered.
- With regard to rejection of government company as comparable, the ITAT relying on Hon'ble Madras High Court decision in case of "Same Deutz Fahr India (P) Ltd. [(2018) 405 ITR 345 (Mad)], held that a government company cannot be rejected as a comparable if it passes the all filters adopted (quantitative as well as qualitative).

CORPORATE LAWS
CA. Premal Gandhi, CA. Rahul Joglekar



MCA (www.mca.gov.in)

MCA notification No.GSR 636(E) Dated 5th September 2019 – National Financial Reporting Authority (Amendment) Rules, 2019

MCA has amended the NFRA Rules 2018 to provide that every auditor referred to in Rule 3 should file form NFRA-2 with the authority by 30th November every year. For a complete text of this notification, please refer the link:

http://www.mca.gov.in/Ministry/pdf/NFRA_05092019.pdf

GOODS AND SERVICES TAX
CA. Rajiv Luthia



CBIC vide Notification No. 38/2019 - CT dated 31st August, 2019 has waived the requirement of filing of Form ITC-04 (Return by registered manufacturer, showing details of input or capital goods dispatched or received from Job worker) for period July, 2017 to March, 2019.

The registered person shall furnish details of all challans in respect of goods dispatched to a job worker during the period July, 2017 to March, 2019 but not received back processed goods from said job worker or not supplied from the place of business of the job worker to ultimate customer till the 31st March, 2019, in serial number 4 of FORM ITC-04 for the quarter April-June, 2019.

CBIC vide Notification No. 39/2019 - CT dated 31st August, 2019 appoints 1st day of September, 2019 as date on which provision of section 103 (1A) (i.e. Advance ruling Pronounced by national Appellate Authority) shall come into force.

CBIC vide Notification No. 40/2019 - CT dated 31st August, 2019 extended due date till 20th September, 2019 for furnishing GSTR 7 (Return by registered person required to deduct TDS) for month of July, 2019 for registered person having principal place of business in following district

State	Name of District
Bihar	Araria, Kishanganj, Madhubani, East Champaran, Sitamarhi, Sheohar, Supaul, Darbhanga, Muzaffarpur, Saharsa, Katihar, Purnia, West Champaran.
Gujarat	Vadodara.
Karnataka	Bagalkot, Ballari, Belagavi, Chamarajanagar, Chikkamagalur, Dakshina Kannada, Davanagere, Dharwad, Gadag, Hassan, Haveri, Kalaburagi, Kodagu, Koppal, Mandya, Mysuru, Raichur, Shivamogga, Udupi, Uttara Kannada, Vijayapura, Yadgir
Kerala	Idukki, Malappuram, Wayanad, Kozhikode
Maharashtra	Kolhapur, Sangli, Satara, Ratnagiri, Sindhudurg, Palghar, Nashik, Ahmednagar
Odisha	Balangir, Sonapur, Kalahandi, Nuapada, Koraput, Malkangiri, Rayagada, Nawarangpur.
Uttarakhand	Uttarkashi and Chamoli:
Jammu and Kashmir	Entire State



GST-ADVANCE RULINGS CA. C. B. Thakar, CA. Jinal Maru



The Maharashtra Goods and Services Tax Act, 2017

Circulars

The Commissioner of Goods and Services Tax, Maharashtra State, has issued Circulars as below:-

- i) Circular 46T of 2019 dated 23.8.2019 by which guidelines for crosschecking of Input Tax credit are given.
- ii) Circular 47T of 2019 dated 26.8.2019 by which submission of correct return under GST is clarified.
- iii) Circular 48T of 2019 dated 18.9.2019 by which the clarifications about reimbursement of SGST applicable on tickets of Mission Mangal movie are given.

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



GRNo. Stamp-2017/2453/Pra.Kra.410/M-1 Dated: 20/09/2019:
The sub-Registrar of Assurances have been directed to register agreement for sale of Apartments having RERA registration or apartments which are exempted from RERA registration.

GR: Misc-2019/Case No10/Du Va Pu 1 Dated: 13/09/2019:
Government has passed a resolution to grant Concessions and incentive FSI, interest subsidy of 4% pa, one window clearance etc to cooperative housing societies to promote self redevelopment of CHS in Maharashtra.

Madras HC in WP 27100 of 2019 and WMP No. 26479 of 2019 has granted an interim stay for levy of GST on the amount upto Rs.7,500/- per member per month and to charge GST on the amount in excess of Rs.7500/- per month per member in the case of Residential welfare Association or the society.

GR: 07/09/2019 issued by Cooperative Department has postponed the election to all the Cooperative housing Societies upto 250 members till 31st December, 2019 as the Rules for conducting such elections are yet to be notified.

HC Mumbai: Second Appeal(ST) No. 27914 of 2018 with Civil Application 1313 of 2018 in the case of M/s. Samruddhi Developers Vs. Kiran Vasant Verekar, it has been held that the new developer shall be liable to discharge all the obligations and liabilities towards allottees created by the earlier developer irrespective of the fact whether, the new developer was a party to such transaction or not as per section 15 of RERA.

MAHARERA

CA. Ashwin Shah, CA. Vyomesh Pathak



LANDMARK JUDGEMENT - HON'BLE HIGH COURT, MUMBAI

In the matter of M/S. Samruddhi Developers V/s. Kiran Vasant Verekar and others.

Second Appeal No. 27914/2018 and Civil application No. 1313/2018 pronounced on 17th September, 2019.

Facts of the case :-

Various allottees have filed complaints before authority with claim of relief u/s 18 of the Act for interest on delayed possession.

Authority has dismissed the complaint of allottees without granting any relief u/s 18 of the Act.

Allottee then preferred Appeal before Maharashtra Real Estate Tribunal seeking interest u/s 18 of the Act, for delay in possession.

Tribunal allowed the Appeal of the allottees and directed Developer to pay interest from 1st January, 2018 till handing over possession.

Aggrieved by Tribunal order, Developer preferred Appeal before Hon'ble High Court, Mumbai.

Originally society granted Development Rights to M/s Rebuilt Developers on 13th December 12, 2007.

M/s Rebuilt Developers assigned Development Rights to new developers, M/s Samruddhi Developers with consent of society on 9th November, 2015

The various allottee who had executed Agreement for sale with M/s Rebuilt Developers then claimed interest for delayed possession from New developer, which is subject matter of current dispute.

Appellant i.e. New Developer M/s Samruddhi Developer raised the following arguments before Hon'ble High Court, Mumbai :-

- a) There is no privity of contract between allottee and Appellant.
- b) Appellant was appointed as new developer to complete remaining construction work which was left undone by the old developer.
- c) None of the allottees were parties to Deed of Assignment dated 9/11/15.
- d) It was clearly mentioned in the Deed of Assignment that appellant will not commence construction work for 8th Floor until commencement certificate is procured by Appellant.
- e) The consideration paid by various allottee was not received by Appellant but by the old developer.
- f) Society Terminated Development Agreement of Appellant on 1st February, 2019 which was after the order of RERA Tribunal.
- g) Appellant cannot now complete the construction as society has terminated Development Agreement on 1st February, 2019.
- h) Original Developer has not obtained consent from allottee while executing Deed of Assignment and hence the said Deed of Assignment is not enforceable by the allottees against Appellant.
- i) Appellant is not liable to pay any interest to any of the allottees.
- j) Since the Development Agreement is terminated on 1/2/19, Appellant cannot do any thing for construction work and therefore can not be made liable to pay any liability to any of the allottees.
- k) Appellant contended that Hon'ble Tribunal has failed to consider various arguments and explanations of appellant while disposing off the Appeal by the Tribunal.

Decision :-

It is the responsibility of new developer to take over all the rights and obligation of old developer as mentioned in the Deed of Assignment.



Even though appellant has not received consideration from allottees or had no privity of contract with allottee, still appellant is liable to all the allottees in terms of section 15 of the Act.

Appellant cannot be saddled with the obligation towards allottees merely for the reason that there is termination of Development Agreement by the society.

There is no substantial question of law arises in this appeal filed by appellant and thus no interference is warranted with the order passed by RERA Tribunal.

These Appeals are totally devoid of merit and hereby dismissed.

POINTS TO PONDER :-

Whether Society becomes Developer Promoter upon termination of Development Agreement?

Whether Society can terminate Development Agreement without taking consent of 2/3 rd of allottees and consent of RERA Authority as required and mandated by Section 15 of the Act ? Because it results in transfer of rights in the project and Society being land Owner is Promoter under the Act.

Once the Termination of Development Agreement is effective , how outgoing Developer be made liable for delay in possession from the date of Termination?

INSOLVENCY AND BANKRUPTCY CODE

CA. Pravin Navandar, CA. Viral Doshi



Hon'ble NCLAT opens a backdoor entry route for defaulting promoters:

Facts:

The National Company Law Tribunal, an adjudicating authority under the Insolvency and Bankruptcy Code (IBC), had earlier on May 8, 2019 ordered liquidation of the company after it raised concerns over the manner in which one of the financial creditors, Andhra Bank, had approached it for one-time settlement and withdrawal of the IBC proceedings against the company, whose promoters are absconding from the country.

The promoters of the group - Nitin Sandesara, Chairman and Managing Director and Chetan Sandesara, Joint Managing Director - are being investigated by various law enforcement agencies such as the Enforcement Directorate and CBI. The promoters of the group have been accused of money laundering and bank frauds involving Rs 8,100 crore approx.

The NCLAT had earlier stayed the NCLT order for liquidation of the company. Sterling Biotech owed over Rs 9,000 crore approx. to various creditors. Hon'ble NCLT in its liquidation order had raised concerns over how financial creditors agreed for a one-time settlement without verifying the source of fund from which the promoters promised to pay them. It had also said that if the one-time settlement proposal is accepted, the promoters would get the company back by paying Rs 3,110 out of around Rs 9,000 crore dues, a hair cut of 64 per cent

Existing provision under IBC:

The Insolvency and Bankruptcy Code (IBC), despite several pinches to the law over the last three years that it has been in operation, continues to generate undesirable surprises, thanks to new ways of interpreting legislative intent while interpreting the Code.

When the government found that defaulting promoters can enter the same company they ran into the ground by bidding

at the bankruptcy courts, it inserted clause 29A to prevent just this.

This clause disallows promoters from bidding for a company at the National Company Law Tribunal (NCLT) unless they have cleared their dues in full.

NCLAT conclusion:

Last month the National Company Law Appellate Tribunal (NCLAT) showed promoters a new way of getting back their companies by holding that the insolvency law only disallows them from bidding for their own company without clearing dues.

It does not stop them from offering one-time settlements to banks and taking the company out of the insolvency process altogether. This is how Sterling Biotech was ordered to be given back to its promoters, the Sandesaras, with the proviso that they should clear all their dues.

When the matter ended at the appellate tribunal (NCLAT), the order went in favour of the promoters, thus allowing them to neatly regain control of a company in which they were not allowed back under section 29A.

Key takeaway:

It is possible to argue that the NCLAT has not done anything more than ensuring that the creditors got what they were willing to settle for, but in the process, they have opened up one more boulevard for promoters to use backdoor methods to burrow their way back into the company they ran aground.

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