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Chartered Accountants

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Coverage:

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- GST Updates
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- MCA News
- RBI Updates

Regulatory Updates

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CBDT extends last date for linking of Aadhaar with PAN

As per the provisions of section 139AA of the Income-tax Act, 1961 (the Act), with effect from 01.07.2017, all taxpayers having Aadhaar Number or Enrolment Number are required to link the same with Permanent Account Number (PAN). In view of the difficulties faced by some of the taxpayers in the process, the date for linking of Aadhaar with PAN was initially extended till 31st August, 2017 which was further extended upto 31st December, 2017. Since some of the taxpayers have not yet completed the linking of PAN with Aadhaar, the date has been further extended to **31.03.2018**. [Click here to read more](#)

CBEC released income tax return statistics for 2015-16

CBDT has released data relating to distribution of income and tax payable in respect of returns filed for Assessment Year 2015-16. With this release, detailed income-tax data for four recent assessment years (apart from time-series data from FY 2000-01 to FY 2016- 17) have become available in public domain enabling researchers, scholars, policy makers, students and all other stakeholders to make a better analysis of the trends in incomes and tax payments. [Click here to read more](#)

Delhi ITAT allows benefit to assessee by not considering token billing during incubatory period as 'commencement year' for tax holiday u/s. 10A (i.e. 100% Export Oriented Unit)

North Shore Technologies Private Limited [TS-593-ITAT-2017(DEL)]

Conclusion: Delhi ITAT allows benefit u/s. 10A to assessee (a 100% EOU) for AY 2010-11, being the last year of the 10-year tax holiday period. ITAT notes that assessee (incorporated in AY 2000-01) had issued token invoice in the same year for trial verification, but claimed relief u/s. 10A from AY 2001-02 onwards (i.e. the year when production for global market was commenced). Revenue's stand was rejected that the year in which assessee first issued invoice should be considered as the year of commencement of manufacture or production and hence, assessee was eligible for exemption only upto AY 2009-10. ITAT remarks that "When the assessee company itself has not claimed exemption for AY 2000-01, incubatory period, cannot be

considered as production period merely on the basis of token invoice issued for trial verification of its cost." Delhi ITAT relies on Delhi HC ruling for Nestor Pharmaceuticals Ltd. wherein it was held that trial production is different from commercial production and the benefit of exemption provision is allowable from the date of commercial production, further relies on co-ordinate bench ruling in Sandvik Asia Pvt. Ltd. wherein it was held that the assessee is at liberty to claim deduction from end of the year of his choice.

Supreme Court applies 'purpose test' for non-taxability entertainment tax subsidy for new multiplexes as revenue receipt

Chaphalkar Brothers, Pune [TS-589-SC-2017]

Conclusion: SC dismisses Revenue's appeals, holds that entertainment-tax subsidy received by multiplexes ("assessee") under the respective subsidy schemes of the states of Maharashtra and West Bengal were capital in nature and not revenue receipt. SC refers to Maharashtra Govt. subsidy scheme which provides for exemption to Multiplexes from entertainment duty for a period of 3 years and partial remission for further period of 2 years and also notes that the subsidy scheme in the West Bengal is similar to the scheme in the Maharashtra. SC rejects Revenue's stand that the aforesaid subsidy schemes were to support the on-going activities of the multiplexes and not for their construction, further rejects Revenue's stand that since the scheme took the form of a charge on the gross value of the ticket and contributed towards the day to-day running expenses, it was in the nature of a revenue receipt. SC applies the 'purpose test' laid down by the co-ordinate benches in Sahney Steel and Ponni Sugars & Chemicals Limited and holds that the source of funds for the scheme and the form of the scheme are irrelevant. SC clarifies that the purpose of the scheme is crucial. SC referred to the statement of objects and reasons for introducing the aforesaid subsidy schemes. SC observed that considering that Multiplex Theatre Complexes are highly capital intensive and involve long gestation period, State Governments had decided to grant concession in entertainment duty to promote construction of new cinema houses in the State. With respect to Revenue's stand that the subsidy scheme kicks in only post construction, that is when cinema tickets are actually sold. SC clarifies that "the point of time at which the subsidy is paid is not relevant".

Kolkata ITAT deletes addition u/s Sec. 56(2)(viib) on preference shares by approving valuer's FMV calculation

Microfirm Capital Pvt. Ltd [TS-587-ITAT-2017(Kol)]

Conclusion: Kolkata ITAT deletes addition u/s. 56(2)(viib) in case of assessee-company (engaged in investment and financing) with respect to issuance of 0.1% redeemable non-cumulative preference shares ('RNCPS', of face value Rs.10 per share) at a premium of Rs.1,990 per share during AY 2013-14.

It uphold the fair market value ('FMV') determined by the valuer and rejected valuation arrived at by AO. ITAT notes that AO had determined the FMV of RNCPS at Rs.1285.41/- per share (adopting 15% discount factor) as against the FMV of Rs. 2,000/- determined by the valuer (adopting 10% discounting factor) and made addition u/s. 56 (2) (viib) of Rs.14. 64 cr. Firstly, ITAT rejects assessee's stand that AO cannot disregard valuation report from an independent accountant and arrive at a different valuation, further rejects assessee's stand that in case the AO is not satisfied with the value determined by the expert valuer, then the only option is to get it done by another expert valuer. ITAT rules that "the AO has not only a right but he is also duty bound to examine the valuation report, evaluate it and record his findings on the same.", cites SC ruling in Duncans Industries Ltd. It also rejects assessee's stand that only equity shares are covered and RNCPS should be excluded from the ambit of Sec. 56(2)(viib). However, ITAT acknowledges that assessee was entitled to issue RNCPS at a huge premium, opines that the valuer has followed accepted method of valuation by considering the rate of return on preference shares issued by other companies for relevant period, holds that 10% discount factor is appropriate as it is based on proper comparable for benchmarking.

Karnataka HC grants MFN (Most Favored Nation)-clause benefit: No notification enforcing beneficial provisions of subsequent treaty necessary

Apollo Tyres Ltd [TS-585-HC-2017(KAR)]

Conclusion: Karnataka HC sets-aside CIT's revisionary order u/s. 264 for AYs 2015-16 & 2016-17 thereby rejecting Revenue's stand that the beneficial FTS (Fee for technical services) clause under the India-Finland treaty (which was made effective from April 1, 2011) cannot be read into the former India-Netherlands DTAA by virtue of the Most Favoured Nation (MFN) clause. Karnataka HC holds that a separate notification by CBDT to enforce provision of the later treaty with Finland (i.e. another OECD country) into India-Netherlands treaty by virtue of MFN clause is not envisaged. Assessee-company had filed revision petition u/s. 264 seeking MFN clause benefit under the protocol to India-Netherlands DTAA with respect to the payment of Fees for technical services ('FTS') to a Dutch party, however, the same was rejected by the Commissioner holding that no notification was issued by CBDT making beneficial provisions under India Finland treaty applicable to India - Netherlands treaty. HC rules that the Protocol to the India- Netherlands DTAA itself provide for automatic application of subsequent Treaty, to the India-Netherlands Treaty in hand and "therefore, no such separate Notification was envisaged to be issued for enforcing such subsequent Treaty with another OECD country, viz., Finland, to

be made applicable to the facts of the present case." Delhi HC ruling was followed in Sterial India case reversing the AAR ruling which was relied by Revenue. AAR had held that protocol, though an integral part of DTAA, cannot be treated as same as the DTAA provisions. However, as no detailed discussion on the factual aspects of the matter about the payment of FTS was made by CIT, HC directs CIT to decide the revision petition filed by assessee u/s. 264 de novo (starting from the beginning)

Delhi High Court upholds reopening beyond 4 years on ground of wrong accounting for amalgamation

Johnson Products Pvt Ltd [TS-586-HC-2017(DEL)]

Conclusion: Delhi HC dismisses assessee's writ upholding reopening of assessment u/s 147 for AY 2007-08 and AY 2008-09 (beyond completion of 4 years of relevant AY) on ground that assessee had followed wrong method of accounting for amalgamation resulting in excessive depreciation claim on goodwill while computing profits u/s 115JB. Delhi HC notes Revenue's claim based on Company Court order that, since all assets and liabilities had been transferred to assessee company in totality, the 'pooling of interest' method was the appropriate method for accounting and not the 'purchase method' followed by assessee, noting that assessment was based on material produced during assessment proceedings for AY 2009-10. HC rules that fresh materials could also include subsequent years' assessments if AO could see the same pattern of claim being made in earlier years. HC remarks that, "if the AO comes across material subsequently, such as fresh facts, or materials which pertain to a previous assessment or assessment orders (as in the present case) where it is felt that returns were "dressed up" or improper claims were made, that escaped inquiry, reassessment is warranted". HC observes that regarding assessee's claim that the scheme of amalgamation was approved by Court, the Court had no occasion to conduct a detailed inquiry about the appropriateness of the method nor the Court was competent to return conclusive findings on this issue, thus, it cannot ipso facto (by that fact) bar any inquiry by the AO.

The case laws incorporated in this section has been annexed to this mail.



Due dates of several GST returns extended

CBEC has issued several notifications thereby extending the due dates of several returns. Extended dates along with the previous due dates have been summarized here under

S.no	Form/Return	Previous Date	Extended Date	Notification
1	FORM GST ITC-01	30 th November 2017	31 st January 2018	NN-67/2017 dated 21.12.2017
2	FORM GSTR-5	11 th December 2017	31 st January 2018	NN-68/2017 dated 21.12.2017
3	FORM GSTR-5A	15 th December 2017	31 st January 2018	NN-69/2017 dated 21.12.2017
4	FORM GST CMP-03	30 th November 2017	31 st January 2018	Orderno-11/2017 dated 21.12.2017

Total collection under GST for the month of December 2017 has been Rs. 80,808 crores till 25th December 2017

The total collection under GST for the month of December 2017 has been Rs. 80,808 crores till 25th December 2017. 99.01 lakh taxpayers have been registered under GST so far till 25th December, of which 16.60 lakh are composition dealers which are required to file returns every quarter. 53.06 lakh returns have been filed for the month of November till 25th December. [Click here to read more](#)

Due date for GSTR-1 extended

CBEC has recently extended due dates for filling of FORM GSTR-01 for the month of July to October as applicable.

Registered person having aggregate turnover upto 1.5cr: Notification no. 71/2017 dated 29.12.2107

Quarter	Due date
July to September	10 th January 2018
October to December	15 th February 2018
January to March	30 th April 2018

Registered person having aggregate turnover more than 1.5cr: Notification no. 72/2017 dated 29.12.2017

Months	Due date
July to November	10 th January 2018
December	10 th February 2018
January	10 th March 2018
February	10 th April 2018
March	10 th May 2018

E-way bill mandated from 01.02.2018

24th GST Council Meeting under Chairmanship of the Union Minister of Finance and Corporate Affairs, Shri Arun Jaitley, held on 16th December, 2017 decided that Inter-State e-way bill to be made compulsory from **1st February, 2018**. The nationwide e-way bill system will be ready to be rolled out on a trial basis latest by 16th January, 2018. Trade and transporters can start using this system on a voluntary basis from **16th January, 2018**. While the system for both inter-state and intra-state e-way Bill generation will be ready by 16th January, 2018, the states may choose on their own discretion, the timings for implementation of e-way Bill for intra-State movement of goods on any date before 1st June, 2018. But in any case, the Uniform System of e-way Bill for inter-State as well as intra-State movement will be implemented across the country by **1st June, 2018**.

Manual filing of applications for Advance Ruling and appeals before Appellate Authority for Advance Ruling allowed

CBEC vide [Circular no. 25/2017 dated 21.12.2107](#) clarified that due to non-availability of requisite forms for application to advance ruling and appeals before appellate tribunal on common portal same shall be filled and processed manually.

IGST is Leviable when Art Works sent to the gallery is purchased by buyer: CBEC

CBEC vide [Circular no. 22/2017 dated 21.12.2017](#) clarified that when art works are supplied by artists to art galleries for exhibition purpose then there is no flow of consideration between them, this transaction is not covered under supply hence no need to issue tax invoice. Supply made to art galleries should be accompanied with delivery challan and e-way bill wherever applicable. When art works are finally sold to buyer from art galleries that would be considered as time of supply hence tax will be applicable in such case. Supply of art work from one state to another state will be inter-state supplies hence IGST will be applicable.

Clarification regarding maintenance of books of accounts and additional place of business by a principal or an auctioneer for the purpose of auction of tea, coffee, rubber etc

CBEC via [Circular no.23/2017 dated 21.12.2017](#) clarified that principal and auctioneer of tea, coffee and rubber etc. are required to declare where such goods are stored as their additional place of business. Both the principal and auctioneer are required to maintain the books of accounts relating to each place of business in that place itself but in case any difficulty is faced than they may maintain books of accounts of additional place at their principal place of business.

Manual filing and processing of refund claims on account of inverted duty structure, deemed exports and excess balance in electronic cash ledger

CBEC vide [Circular no. 24/2017 dated 21.12.2017](#) clarified that due to non-availability of refund module on online portal for refund due to inverted tax structure, deemed export and excess balance in electronic cash ledger same shall be filed and processed manually. Refund can be claimed only after filling of GSTR-1 of such month and GSTR3B of last tax period. In case refund claimed is rejected then such amount is re credited in electronic credit ledger in FORM GST RFD-1B until the FORM GST PMT-03 is available on portal. Drawback of all taxes should not have been availed while claiming refund of accumulated ITC.

CGST Rules, 2017 amended

CBEC has via [Notification no. 70/2017 dtd 21.12.2017](#)

made following amendments in CGST Rules, 2017 Amendments in GSTR-1:

A. **Form GSTR-1 Amended:**

Table 6 of Form GSTR-1 has been amended to provide for columns of central tax (rate, taxable value, amount) and State/UT Tax (rate, taxable value, amount).

B. **Amendments made in Form RFD -01 and Form RFD-01A:**

1. In Table 7 "Recipient of deemed export supplies/ Supplier of deemed export supplies" is substituted in place of Recipient of deemed export.
2. Statement 01A is inserted after statement 01 to claim refund type ITC accumulated due to inverted tax structure.
3. Statement 5B is inserted after statement 5A to claim refund type: on account of deemed exports.
4. Declaration [rule 89(2)(g)] has also been amended.



CBEC notified Custom (Furnishing of information) Rules,2017

CBEC has notified Custom (Furnishing of Information) Rules, 2017 which shall be effective from **01.01.2018**. The information required to be furnished under sub section (1) of section 108A of custom Act,1962, shall be furnished electronically by a Banking company within the meaning of clause(a) of section 45A of Reserve Bank of India,1934 in respect of details of foreign exchange transactions made or received by any person specified.

[Click here to read more](#)

CBEC has clarified for refund/claim of countervailing duty as duty drawback

CBEC has clarified that drawback of countervailing duties can be claimed under an application for brand rate. Drawback shall be admissible only where the inputs that suffered countervailing duties were actually used in the goods exported as confirmed by the verification conducted for fixation of brand rate. [Click here to read more](#)



Condonation of delay scheme only for bona fide directors

The Condonation of Delay Scheme, which would be rolled out by the Ministry of Corporate Affairs, is expected to come as a relief for disqualified directors. It is to be operational from January 1 to March 31, 2018.

The scheme is not open for directors of struck-off companies. They can come only when they [those companies] are restored through the National Company Law Tribunal (NCLT).

As per a draft circular, the Director Identification Numbers of disqualified directors that have been deactivated would be 'temporarily activated' during the scheme period.

[Click here to read more](#)



RBI updated master circular relating to Compounding of Contraventions under FEMA, 1999

The provisions of section 15 FEMA, 1999, permit compounding of contraventions and, as such it empowers the Reserve Bank to compound any contravention as defined under section 13 of the FEMA, 1999, except the contraventions under section 3 (a) of FEMA, 1999, on an application made by the person committing such contravention. Foreign Exchange (Compounding Proceedings) Rules, 2000 (the Rules), as amended from time to time, lays down the basic framework for the compounding process.

Instructions issued on "Compounding of Contraventions under FEMA, 1999" have been compiled in this Master Direction. The list of underlying circulars/ notifications which form the basis of this Master Direction is furnished in the Appendix. All AD Category – I banks and Authorised banks may bring the instructions contained in this Master Direction to the notice of their constituents. The Master Direction will be updated from time to time as and when fresh instructions are issued. [Click here to read more](#)

RBI directs financial creditors for submission of financial information to information utilities

RBI via circular DBR.No.Leg.BC.98/09.08.019/2017-18 has advised all financial creditors regulated by RBI to adhere to the relevant provisions of IBC, 2016 and IBBI (IUs) Regulations, 2017 relating to submission of financial information and information relating to assets in relation to which any security interest has been created in the prescribed format. RBI has also advised all the financial creditors to immediately put in place appropriate systems and procedures to ensure compliance to the provisions of the Code and Regulations. [Click here to read more](#)

RBI has instructed all agency banks to prompt implementation of Governments' instructions

RBI noticed that some agency banks are not adhering to instructions/ notifications issued by Government (Central as well as States) promptly by stating that further communications have not been received by them from RBI. In this connection, all agency banks are advised by RBI to scrupulously follow all the guidelines /instructions contained in various notifications of Government (Central as well as States) and take necessary actions immediately without waiting for any further instructions from RBI. [Click here to read more](#)

Govt, RBI dismiss rumours about closing down of public sector banks

Dismissing rumours, both the government and RBI has said there was no question of closure of any public sector bank. The decision of the Reserve Bank to initiate a 'prompt corrective action' (PCA) against large state-owned lender Bank of India led to rumours that the government may close down some banks. The RBI in a statement said that it has come across some "misinformed communication" circulating in some section of media, including social media, about closure of some public sector banks in the wake of their being placed under the PCA. The government too dismissed such rumours saying that on the contrary it is planning to strengthen the state-owned banks. [Click here to read more](#)

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