A K G V G &Associates

Chartered Accountants

Delivering Excellence

AKGVG Weekly Insight-Vol IV

15th February, 2018

Coverage:

- Income Tax Updates
- GST Updates
- Customs Updates
- MCA News
- RBI Update

Regulatory Updates

Assembled & Edited by:

Team - AKGVG

AKGVG & Associates
Chartered Accountants
(Delhi | Gurgaon | Mumbai | Ahmedabad | Bangalore | Chennai)

Head Office: E-1, Second Floor, Prashant Vihar, Rohini, Sector- 14, 110085

Visit us on www.akgvg.com
For more info:
E-mail us at info@akgvg.com
Ph: +91 9811118031, +91 9818330516, +91 9818314719, +919560001940

CBDT pre-empts tax world's queries, issues 24 FAQs on LTCG regime

CBDT via **Press release dated 04.02.2018**, has issued 24 FAQs on long-term capital gains ('LTCG') taxation proposed in Finance Bill, 2018. CBDT clarified that proposed regime applies where equity is held for a minimum 12 months and the STT is paid at the time of transfer (however, for shares acquired after 1.10.2004, STT is required to be paid even at the time of acquisition). CBDT further clarified that the modes of acquisition of equity shares that are exempted for the purposes of Sec. 10(38) vide its notification no. 43/2017, is proposed to be reiterated for the new regime. Likewise, CBDT clarifies on the point of chargeability, method for - calculating LTCG, determining cost of acquisition for assets acquired on or before 31st January, 2018, determining fair market value ('FMV'), states that FMV of bonus shares and rights shares as on 31st January, 2018 will be taken as cost of acquisition (except in some typical situations) for such shares acquired before 1st February 2018. CBDT further clarifies that "As the exemption from long-term capital gains under clause (38) of section 10 will be available for transfer made between 1st February, 2018 and 31st March, 2018, the long-term capital loss arising during this period will not be allowed to be set-off or carried forward." Lastly, CBDT clarifies that grandfathering of gains upto January 31st will apply to FIIs also. **Click here to read more**

Bombay HC upholds ITAT order that subsequent retro amendment can't result in Sec. 40(a)(i) disallowance

NGC Networks (India) Pvt. Ltd [TS-41-HC-2018(BOM)]

Conclusion: Bombay HC upholds ITAT order thereby deleteing Sec. 40(a)(ia) disallowance for channel placement fees paid to cable operations by NGC Networks (India) Pvt. Ltd. ('assessee') during AY 2009-10 on which tax was deducted @ 2% u/s. 194C. Revenue's contention was rejected that tax was to be deducted @ 10% u/s. 194J in view of the amended 'royalty' definition vide Finance Act, 2012 by virtue of retrospective insertion of Explanation 6 to Sec.9(1)(vi). Bombay HC upheld ITAT's reliance on its co-ordinate bench ruling in Channel Guide India Ltd., holds that a party cannot be called upon to comply with a provision not in force at the relevant time but introduced later by retrospective amendment and assessee could not have contemplated at the time of deduction, a future retrospective amendment. HC relied on co-ordinate bench ruling in Cello Plast for application of legal maxim - 'lex non cogit ad impossibilia'. Moreover, HC noted that meaning of royalty for the purposes of Sec. 40(a)(i) is as provided in Explanation 2 to Section 9(1)(vi) and not Explanation 6 to Section 9(1)(vi), since channel placement fee is not royalty in terms of Explanation 2 to Section 9(1)(vi), Bombay HC holds disallowance u/s. 40(a)(i) cannot be made.

Mumbai ITAT rules that Reliance Communication's software payments for wireless network operation, not royalty under DTAA

Reliance Communication Ltd [TS-44-ITAT-2018(Mum)]

Conclusion: Mumbai ITAT ruled that payment by Reliance Communication Ltd. ('assessee') to non-resident vendors (based in Australia, Israel, Sweden, Singapore and USA) for supplying software, not royalty under respective DTAA, held it as payment for 'copyrighted article' and not 'copyright' itself. Mumbai ITAT observed that all software license agreements stipulate that the assessee would be using the software for 'operation of its wireless network only' and it was prevented from utilizing the software for commercial uses. Mumbai ITAT further observed that copyrights in the software were not transferred to the customers and access to the 'source codes' in the software was not granted to assessee, also there was restriction on copying the software. Moreover, ITAT observed that in individual supplier's hands (i.e. Nortel Networks India International Inc. USA, Team Telecom International Ltd., Israel, Motorola Inc USA, Alcatel USA International Marketing Inc USA, ZTE Corporation China and Ericsson AB Sweden), the Courts/ Tribunals had held that sums received by them from assessee for supply of software for wireless network were not taxable and that the payments could not be termed as royalty. Mumbai ITAT cited plethora of rulings including Madras HC ruling in Neyveli Lignite Corporation Ltd., Delhi HC ruling in Asia Satellite Telecommunications Co. Ltd., thereby rejected Revenue's reliance on Karnataka HC ruling in Samsung. Mumbai ITAT relied on SC ruling in Pradip J. Mehta to hold that when two views were possible, then the interpretation in favour of the taxpayer should be adopted.

Delhi ITAT quashed revision u/s 263 thereby rejecting revenue's contention and genuineness of share application money from Swiss entity proved

Bycell Telecommunications India Pvt. Ltd [TS-43-ITAT-018(DEL)]

Conclusion: Delhi ITAT quashes revision u/s 263 for AYs 2006-07 to 2010-11 with respect to share application money received by assessee (an Indian telecom private limited company) from its Swiss holding company, thereby rejecting Revenue's stand that the revision was justified since AO had only verified identity of the Swiss entity, but failed to verify the creditworthiness of the investor and genuineness of transaction. ITAT noted that money was invested by Swiss entity with due approval by Govt. of India (FIPB), however, in wake of subsequent withdrawal of FIPB approval, assessee's case was reopened with sole purpose of verifying the entire source and genuineness of the share application money. ITAT noted that during re-assessment proceedings, AO had examined the details received from Swiss Authorities through FT & TR division which proved the legal existence and tax residency status of Swiss entity. ITAT held that even the source of the source was proved as Swiss authorities Report stated that Swiss entity had received money through its sole promoter company based in Cyprus by way of loan, remarks that "Whether the Tenoch Holding (Cyprus entity) had the creditworthiness to give such amount to M/s. Bycell Holdings AG ('Swiss entity') to prove the credit of share application money in the books of account of the Indian company, was not the requirement either under the facts of the case or under the law.". Delhi ITAT rejected Revenue's ground of non-availability of bank accounts of assessee's holding company observing that "When the money is flowing from the books of the investor as certified by Swiss Tax Authorities from their financial accounts including the source of their funds for investing in Indian Company and remittances are certified from FIRCs issued by respective banks of the investor and the investee duly approved by RBI, then how mere not filing of bank statement vitiates the onus of proving the source."

AAR held that no TDS is required to be deducted on Indian salary component of NR-employee deputed abroad

Texas Instruments [TS-38-AAR-2018]

Conclusion: AAR allowed application filed by Indian companies (Applicants). It held applicants not liable to deduct TDS on salaries paid in India to employees deputed to their overseas group companies for AY 2012-13 when such employees were non-resident in India. Referring to Sec. 5(2), Sec.15, AAR held that "chargeability to tax under the head "salaries" arises under section 5(2) read with section 15. Revenue's attempt to say that section 5(2) alone is the charging section and income should be taxed in India as it was received in India, cannot be accepted." AAR observed that since services were rendered in the USA, salary accrued to employee in the USA and fact whether the employer was Indian or foreign is immaterial. It relied upon Bombay HC ruling in Avtar Singh Wadhwan and commentary by Klaus Vogel on Dependent Personal Services. AAR observes that since Sec. 5(2) starts with the words "subject to the provisions of the Act", Sec. 90 read with provisions of Article 16 of India-USA DTAA also have to be considered as per which income of employee for services rendered in the USA was not taxable in India. Rely was placed upon AAR ruling in British Gas India and SC ruling in Eli Lily and Co. (India) Private Ltd. and AP HC ruling in Coromondal Fertilizers Ltd.

Pune ITAT: Capgemini's Hyderabad unit not 'new unit', but granted Sec. 10A benefit as expansion

Capgemini Technology Services India Limited [TS-37-ITAT-2018(PUN)]

Conclusion: Pune ITAT rejected Capgemini Technology's ('assessee') Sec. 10A claim in respect of undertaking established at Hyderabad during relevant AY 2010-11, however, accepted assessee's alternate claim that the undertaking at Hyderabad be treated as expansion of the existing unit at Pune, from where the employees were transferred, accordingly directed AO to allow deduction for the remaining period as eligible to the Pune unit. ITAT noted that the new undertaking was established because of the fall out of concern Satyam Computers, noted that assessee had transferred 66% of the technical personnel from its existing Pune unit, hence it failed to meet the 50% threshold as prescribed by CBDT circular14/2004. ITAT rejected assessee's stand that the circular was not mandatory, observed that in all the previous years, assessee itself claimed deduction on the basis that it had fulfilled the condition of transfer of employees as prescribed by CBDT. Pune ITAT also rejected assessee's stand that the condition prescribed u/s. 10A(2)(ii) [of the new undertaking not being formed by splitting up by earlier undertakings] was not applicable to assessee as its case was covered by Sec. 33B. ITAT observed that "The case of the assessee is that it had established the new undertaking in Hyderabad because of the fall out the concern Satyam Computers. It is not the case that the said concern Satyam Computers which had rehabilitated itself or revived itself. The assessee or its Director have no connection with Satyam Computers."

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

Govt issued advisory to exporters for filling IGST refund

Govt. issued advisory to exporters for filing refund of IGST paid on export of goods on GST Portal. As per the advisory, exporter is required to file FORM GSTR 1 for the corresponding tax period, fill complete and correct data of export in Table 6A of FORM GSTR 1 of relevant tax period, pay tax and file Form GSTR 3B, ensure that table 3.1 (b) of Form GSTR 3B is filed correctly and the amount shown is equal to or more than IGST in table 6A, and table 6B (Supply to SEZ), of GSTR1.

Also, due consideration is to be taken while filing GSTR 3B for said period. The exporters should make sure that correct IGST amount is filed else none of the export invoices filed in Table 6A of GSTR-1, of the corresponding return period shall get transmitted to ICEGATE which can impact the refund of IGST amount paid on exports. The relevant links:

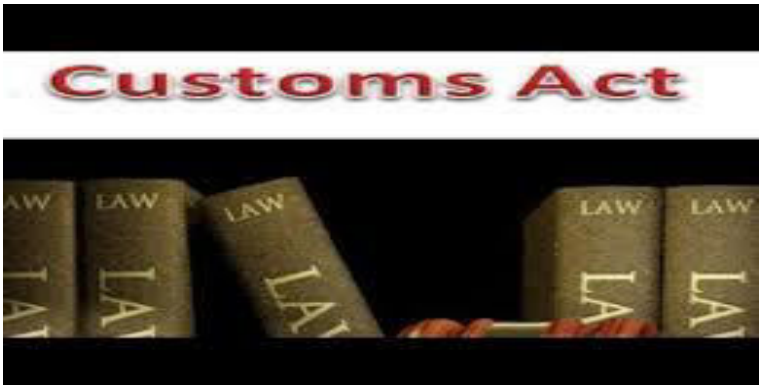
1. Advisory for filling of export refund
2. Advisory for filling Table 6A of GSTR-1

Superintendents of Central Tax shall also be empowered to issue show cause notices and orders

CBEC vide Circular no. 31/05/2018 dated 09.02.2018 has assigned proper officer up to the rank of AC/JC of Central tax for issuance of SCN under GST Act. Further, Government has also prescribed the monetary limit of tax for issuance of SCN and order u/s 73 and 74 of CGST Act.

Clarification issued for applicability of GST on certain services

CBEC via Circular no. 36/06/2018-GST dated 12.02.2018, has issued clarification with regard to the certain issues approved by the GST Council in its 25th meeting held on 18th January 2018.



BCD on motorcycles reduced

CBEC via Notification no. 26/2018- Customs dated 12.02.2018, has reduced the Basic Customs Duty on motorcycles falling under tariff heading 8711, thereby amending notification No. 50/2017- Customs, dated the 30th June 2017.

Definitive anti-dumping duty on imports of "Toluene Di-Isocyanate (TDI)" imposed

CBEC via Notification no.03/2018-Customs (ADD) dated 23.01.2018, has imposed definitive anti-dumping duty on imports of "Toluene Di-Isocyanate (TDI)" originating in or exported from China PR, Japan and Korea RP.

Additional Duty of Customs (CVD), in lieu of Additional Duty of Excise (Road and Infrastructure Cess) on imported petrol and HSD exempted

CBEC via Notification no. 21/2018- Customs dated 02.02.2018, exempts motor spirit commonly known as petrol and high speed diesel oil, falling under heading 2710 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India, from so much of the additional duty of customs leviable thereon under sub-section (1) of section 3 of the said Customs Tariff Act, as is equivalent to the additional duty of excise (Road and Infrastructure Cess) leviable on motor spirit commonly known as petrol and high speed diesel oil under the aforesaid clause 110 of the Finance Bill, 2018.

Know Your Customer (KYC) Norms relaxed

CBEC via Circular No. 02/2018 dated 12.01.2018 decided that 2 documents namely proof of identity and proof of address are required for KYC verification. Accordingly, **Aadhar Card had also been recognized as one of the document for individuals.**

MCA revised various e-forms

Form PAS-3 (Return of Allotment), **Form DPT-3** (Return of deposits), **Form MGT-6** (Persons not holding beneficial interest in shares), **Form MGT-15** (Form for filing Report on Annual General Meeting), **Form MGT-14** (Filing of Resolutions and agreements to the Registrar), **Form ADT-1** (Information to the Registrar by Company for appointment of Auditor), **Form ADT-2** (Application for removal of auditor(s) from his/their office before expiry of term), **Form SH-7** (Notice to Registrar of any alteration of share capital) and **Form URC-1**. The revised forms will be available on the portal on the portal of MCA shortly. **Click here to read more**

Several provisions of Companies (Amendment) Act, 2017 effective from 09.02.2018

MCA vide **Notification** has appointed 9th February, 2018 for operations of Section 2 [except clause (i) and clause (xiii)] and section 3, section 7, section 9, sections 11, 12, section 14, section 17, sections 27 to 29 (both inclusive), section 32, sections 34 and 35, section 38, sections 41 to 45 (both inclusive), sections 47 and 48, sections 50, section 51, section 53, section 59 section 60 ,sections 53 to 65 (both inclusive), sections 72to74 (both inclusive), sections 77 to79 (both inclusive), section 82, section 84, section 85, sections 90 to 93 (both inclusive). The Companies (Amendment) Act, 2017 which was passed by the Lok Sabha on July 27, 2017 and by the Rajya Sabha on December 19, 2017, has received the assent of the President of India on January 3, 2018 and subsequently published in the Gazette of India. The amendments under the Companies (Amendment) Act, 2017, are broadly aimed at addressing difficulties in implementation owing to stringent compliance requirements; facilitating ease of doing business in order to promote growth with employment; harmonisation with the Accounting Standards, the SEBI Act, 1992 and the regulations made thereunder, and the RBI Act, 1934 and the regulations made thereunder; rectifying omissions and inconsistencies in the Act.

RBI has announced Relief for MSME Borrowers registered under GST

Central Bank has decided that the exposure of banks and NBFCs to a borrower classified as micro, small and medium enterprise under the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, shall continue to be classified as a standard asset in the books of banks and NBFCs subject to the prescribed conditions including the borrower is registered under the GST regime as on January 31, 2018 and having an aggregate exposure, including non-fund based facilities, of banks and NBFCs, to the borrower does not exceed ₹ 250 million as on January 31, 2018. Further, the borrower's account was standard as on August 31, 2017 and the amount from the borrower overdue as on September 1, 2017 and payments from the borrower due between September 1, 2017 and January 31, 2018 are paid not later than 180 days from their respective original due dates. The additional time is being provided for the purpose of asset classification only and not for income recognition, i.e., if the interest from the borrower is overdue for more than 90/120 days, the same shall not be recognised on accrual basis. **Click here to read more**

RBI has issued instructions aimed at resolution of stressed assets in the economy

In view of the enactment of the Insolvency and Bankruptcy Code, 2016 (IBC), it has been decided to substitute the existing guidelines with a harmonised and simplified generic framework for resolution of stressed assets. In a major overhaul for resolution of NPAs (non-performing assets), the Reserve Bank of India has revised the new stressed assets framework asking banks to resolve defaults within 180 days. For accounts with an exposure of Rs 2,000 crore or more, banks will have to ensure that a resolution plan is in place within 180 days after a 'default'. If not implemented within the timeframe, the account must be referred to the insolvency courts within 15 days. RBI has withdrawn the existing resolution frameworks and the Joint Lenders' Forum (JLF) also stands discontinued with immediate effect.

Feedback/Queries can be sent to info@akgvg.com

"We transform by what we read"

Thank You for Reading!