

August 2018

TAPF NEWSLETTER



Updates by Tax & Accounting Professional Forum (TAPF)

PREFACE

Tax and Accounting Professional Forum (TAPF) is a group of Chartered Accountants, Financial Consultants and Other Professionals.

Reference to various new Laws & Government Policies and also time to time regular amendments & updates in various Laws, TAPF has developed a monthly news update system. This monthly news update system aims to provide needful & relevant information to various segments including Business Entities, Individuals, Foreign Investors, NRIs.

Though the information provided in this letter are prepared by qualified and well experienced professionals, however, TAPF hereby advise all it's readers to seek separate professional advise (as per the facts of matter) before acting on it's information.

DIRECT TAX UPDATES

INCOME TAX

1. Due date for ITR for individual not having tax audit, AOP, BOI and others liable to file ITR by August 31, 2018 residing in the state of Kerala can now file ITR by September 15, 2018.
2. CBDT has mandated 'e-proceeding' for all income-tax scrutiny in 2018-19. It has also specified seven situations where e-proceeding will not be mandatory this year. These include search cases, cases where returns were filed in paper mode and the assessee doesn't have an e-filing account, and geographical areas with limited bandwidth.
3. CBDT has released parameters for manual selection of Income Tax Returns for Complete Income Tax Scrutiny during financial year 2018-19 vide Instruction No. 04/2018 Dated: 20th August 2018. The brief parameters are as under:
 - Cases involving addition in an earlier assessment year(s) on a recurring issue of law or fact.
 - Cases pertaining to Survey under section 133A of the Income-tax Act. 1961 ('Act').
 - Assessments in search and seizure cases to be made under section(s) 153A, 153C, 158B, 158BC & 158BD read with **section 143(3)** of the Act and also for return filed for assessment year relevant to previous year in which authorization for search and seizure was executed under section 132 or 132A of the Act.
 - Returns filed in response to notice under **section 148** of the Act.
 - Cases *where* registration/approval under various sections of the Act such as 12A, 35(1)(ii)/(iii), 10(23C) etc. have not *been* granted or have been cancelled/withdrawn by the Competent Authority, yet the assessee has been found to be claiming tax-exemption/deduction in the return.
 - Cases In respect of which information pointing out specific tax-evasion for the relevant year is given by any Government Department/Authority/Agency/Regulatory Body.

(CA Reshu Agrawal)

INTERNATIONAL TAX UPDATE

International Taxation – August 2018 Updates

(Mumbai ITAT – Grants India-Mauritius DTAA benefit on interest, accepts TRC for inferring beneficial ownership)

Mumbai ITAT rules that interest income earned by HSBC Bank (Mauritius) Ltd. ('assessee') from investments in debt securities made in accordance with the SEBI Regulations during AY 2011-12, not taxable in India, holds that assessee beneficially owns the interest income and therefore grants exemption under Article 11(3)(c) of the India-Mauritius DTAA; In the first round of litigation, Tribunal had examined the three conditions for exemption under Article 11(3)(c) and had held that the interest income was derived by assessee and that it was carrying on bona fide banking business, however, with regard to the third condition of 'beneficial ownership', the Tribunal had remanded the matter back; Accepts assessee's reliance on Tax Residency Certificate issued by the Mauritian Revenue authorities to accept the position that the interest income is beneficially owned by the assessee, relies on CBDT circular 789 of 2000; Acknowledges that the aforesaid CBDT Circular is specifically in the context of incomes by way of dividend and capital gain on sale of shares; However, opines that "it would equally apply even in the situation ... considering the taxability of interest income as per Article 11(3)(c) ..", cites Bombay HC ruling in Universal International Music B.V wherein the circular was held applicable in the context of royalty income. - *Source Taxsutra*

(Mumbai ITAT: Conducting 'training', providing CRS access to Marriott Hotels, not FTS for Dutch affiliate)

Mumbai ITAT rules that consideration received by assessee (a Dutch company, part of the Marriott group) for the services rendered to the Indian Hotels under the Training and Computer Systems Agreements ('TCSA') during AY 2009-10, not FTS under Article 12 of India-Netherlands DTAA; Assessee had entered into TCSA with 2 Indian hotels for conducting training programs of their employees and for providing access to Centralized Reservation System ('CRS'), Property Management Systems ('PMS') and Other Systems; ITAT accepts assessee's claim that as the training services were in the nature of general managerial /leadership training, which did not 'make available' or transfer any technology to the personnel, the same did not constitute FTS; Regarding Revenue's claim that TCSA was integral part of and was complementary to the licensing/royalty agreement, ITAT remarks that "the assessee was not the owner of any brand or trademark for which any royalty would have been received by it under Article 12(4) ..., hence the services provided ...could not be brought within the sweep of "ancillary and subsidiary" services as provided in Article 12(5)(a) .." Further, relying on SC ruling in Kotak Securities Ltd. and Delhi HC ruling in Sheraton International Inc, ITAT holds that providing access to CRS, PMS and other systems cannot be construed as 'technical services' as these were common facilities provided to other hotels of Marriott group across the world and were not tailor-made services. *Source Taxsutra*

(FCA Sulabh Lohia)

INDIRECT TAX UPDATES

GST UPDATES

1) Ambulance services provided by Private Service provider to the Government exempted from GST

The CBIC has clarified that the services provided by the Private Service Providers (PSPs) to the State Governments by way of transportation of patients in an ambulance on behalf of the State Governments against consideration, would be exempt from payment of GST.

2) Ambiguity on interpretation of the exemption notification must be in favour of revenue

The Supreme Court in case of *Commissioner of Customs (Import) Mumbai Vs. M/s Dilip Kumar and Company and Ors (2018-TIOL-302-SC-CUS-CB)*, held that in case of ambiguity in a charging provision, benefit must be necessarily go in favour of assessee but the same is not true for an exemption notification. When there is ambiguity in exemption notification which is subject to the strict interpretation, the benefit of such ambiguity cannot be claimed by the assessee and it must be interpreted in favour of the revenue. The view taken in this case, has overruled the judgment given in the case of *Sun Export Corporation, Bombay vs. Collector of Customs, Bombay (2002-TIOL-118-SC-CX-LB)*, where the benefit of the ambiguity on the interpretation of the exemption notification was conferred in favour of the assessee.

3) CBIC defers RCM on transaction with unregistered supplier till 30th September, 2019

Payment of GST under reverse charge vide section 9 (4) of the CGST Act has been suspended till September 30, 2019 vide Notification No.22 of 2018 (CGST-Rate) dated August 6, 2018.

4) Promoting courses of Foreign University in India, considered to be intermediary services

Recently, in the case of *Global Reach Education Services Pvt. Ltd, (2018) 96 taxmann.com 107 (AAAR-West Bengal)*, the Appellant Authority for Advance Rulings (AAAR), West Bengal has confirmed the decision of Authority for Advance Ruling (AAR), that the services of promoting the courses of the foreign university in India; finding suitable prospective students to undertake the course; recruiting and assisting in recruiting the suitable students shall be treated as intermediary services in terms of Section 2(13) of the IGST Act, 2017, and not 'Export of Services'.

5) Supply of external storage battery with UPS, constitutes as 'Mixed Supply'

In the case of *Switching Avo Electro Power Ltd. (2018) 96 taxmann.com 106 (AAAR-West Bengal)*, the Appellant Authority for Advance Ruling upheld the ruling of Authority for

Advance Ruling that when the storage battery or electric accumulator is supplied separately with the static converter (UPS), it would be considered as a mixed supply or not naturally bundled supply.

6) Due dates for filing returns in FORM GSTR-1 for period July, 18 to March, 19 notified

Taxpayers having annual aggregate turnover up to Rs. 1.5 Crores are required to file GSTR-1 on quarterly basis, the due dates has been notified vide Notification No. 33/2018-Central Tax dated 10.08.2018 as under:

Quarter for which details to be furnished	Due dates
July-September, 2018	31 st October, 2018
October-December, 2018	31 st January, 2019
January-March, 2019	30 th April, 2019

Taxpayers having annual aggregate turnover more than Rs. 1.5 Crores, are required to furnish the return in FORM GSTR-1 on monthly basis, the due dates for furnishing returns has been notified vide Notification No. 32/2018-Central Tax dated 10.08.2018, i.e. 11th day of the month succeeding the month for which the details are required to be furnished.

7) Ineligibility to take adjustment of any input tax credit in respect of any invoice pertaining to FY 2017-18 after the due date of filing GSTR3B for the month of Sept 2018 i.e. 20.10.2018

As per section 16(4) of the GST Act, a registered person shall not be eligible to take adjustment of any input tax credit in respect of any invoice pertaining to FY 2017-18 after the due date of filing GSTR3B for the month of Sept 2018 i.e. 20.10.2018.

8) Miscellaneous:

- The Authority for Advance Ruling (AAR), Karnataka has recently held that the salary for services like accounting, IT, human resource, provided by the head office of a company to its branch offices in other states will attract 18% GST.
- The GST portal has added a new facility for filing of refund application for multiple tax periods for the taxpayers filing refund application for ITC accumulated on account of export of goods or services without payment of tax and on account of supplies of goods and services made to SEZ units/SEZ developers without payment of tax.
- The Kerala High Court in Garuda Timber Traders has held that the omission to fill Part-B of the E-Way Bill due to technical glitches in the GST portal cannot be treated as a valid ground for avoiding penalty and detention under the Goods and Services Tax (GST) law.

(CA Puneet Goel)

FEMA UPDATES

FEMA FAQ SERIES

Exchange Earners' Foreign Currency Account (EEFC)

These FAQs attempt to put in place the common queries that users have on the subject in easy to understand language. However, for conducting a transaction, the Foreign Exchange Management Act, 1999 (FEMA) and the regulations made or directions issued thereunder may be referred to.

Q 1. What is an EEFC Account and what are its benefits?

Ans. Exchange Earners' Foreign Currency Account (EEFC) is an account maintained in foreign currency with an Authorised Dealer Category - I bank i.e. a bank authorized to deal in foreign exchange. It is a facility provided to the foreign exchange earners, including exporters, to credit 100 per cent of their foreign exchange earnings to the account, so that the account holders do not have to convert foreign exchange into Rupees and vice versa, thereby minimizing the transaction costs.

Q 2. Who can open an EEFC account?

Ans. All categories of foreign exchange earners, such as individuals, companies, etc., who are resident in India, may open EEFC accounts.

Q 3. What are the different types of EEFC accounts? Can interest be paid on these accounts?

Ans. An EEFC account can be held only in the form of a current account. No interest is payable on EEFC accounts.

Q 4. How much of one's foreign exchange earnings can be credited into an EEFC account?

Ans. 100% foreign exchange earnings can be credited to the EEFC account subject to the condition that the sum total of the accruals in the account during a calendar month should be converted into Rupees on or before the last day of the succeeding calendar month after adjusting for utilization of the balances for approved purposes or forward commitments.

Q 5. Can foreign exchange earnings received through an international credit card be credited to the EEFC account?

Ans. Yes, foreign exchange earnings received through an international credit card for which reimbursement has been made in foreign exchange may be regarded as remittance through normal banking channel and the same can be credited to the EEFC account.

Q 6. Is there any restriction on withdrawal in rupees of funds held in an EEFC account?

Ans. No, there is no restriction on withdrawal in Rupees of funds held in an EEFC account. However, the amount withdrawn in Rupees shall not be eligible for conversion into foreign currency and for re-credit to the account.

(FCA Sulabh Lohia)

OTHER UPDATES

COMPANY LAW

1) MCA extends due date of DIR 3 KYC to 15th September 2018

MCA wide notification dated 21st August 2018 has extended the last date of filing DIR -3KYC without any filing fees upto 15/09/2018. "in the proviso to rule 12A, for the words and numbers "DIR 3 KYC on or before 31st August, 2018, the words and numbers "DIR-3 KYC on or before 15th September,2018 " shall be substituted" The fees of Rs.5,000/- shall be applicable & payable on all filings w.e.f 16/09/2018.

2) Form DPT-3

Form DPT-3 is likely to be revised on MCA21 Company Forms Download page **w.e.f 19th AUG, 2018**. Stakeholders are advised to check the latest version before filing.

3) Invitation for public comments on the draft invitation for public comments on the draft national guidelines on social, environmental and economic responsibilities of business, 2018.

4) DIR-3 KYC

With reference to queries received by various stakeholders on essential documents especially AADHAR, required for DIR-3 KYC, the MCA has clarified as under:

- Name (As per PAN Database)
- Father's name (As per PAN Database)
- Date of Birth (As per PAN Database)
- PAN Number
- Personal Mobile Number
- Personal Email Address
- Permanent and Present Address
- Proof of Permanent address - Address proofs like passport, election (voter identity) card, and ration card, driving license, electricity bill, telephone bill or Aadhaar shall be attached and should be in the name of applicant only.

Accordingly, copy of any one of the above selected information is to be attached.

5) MCA replaced section 42 and rules for Private Placement

Major changes in provisions and rules are as follows:

Identified Persons: The persons to whom the private placement is to be made shall be first identified by Board.

Utilization of Money: As per new provision, money raised through Private placement can not be utilized unless allotment is made and return of allotment is filed with ROC.

Return of Allotment: Return of Allotment (Form PAS-3) shall be filed within 15 days from the date of allotment (earlier, it was 30 days).

Non-convertible debentures: Private placement for non-convertible debentures can be made by board resolution, if such offer amount is not exceeding the limit specified in Section 180(1)(c) of Companies Act, 2013.

Issue of Private placement offer letter: The Private Placement offer-cum-application letter shall be filed only after the relevant special resolution or board resolution shall be filed with ROC in Form MGT-14.

Replacement of document: Form PAS-4 is replaced in the new rules.

- 6) The Ministry of Corporate Affairs (MCA) has amended the Companies (Accounts) Rules, 2014 wherein the provision related to the matter disclosure in board report has been amended. Now, the companies are required to disclose in their report about the maintenance of cost records, internal complaints committee under sexual harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

(Himani Saxena – MBA Finance)

Due Dates in August 2018

S. No.	Particulars	Due Date
1.	TDS deposit for the month of August 2018	September 07, 2018
2.	GSTR-1 for the month August 2018*	September 11, 2018
3.	Second Installment of Advance Tax	September 15, 2018
4.	KYC of all directors for the year ending 31.03.2018	September 15, 2018
5.	PF/ESI Payment for the month of August, 2018	September 15, 2018
6.	GSTR-3B for the month August 2018	September 20, 2018
7.	Audit report under section 44AB for the assessment year 2018-19 in the case of a corporate/non-corporate assessee	September 30, 2018

*Return of outward supply whose turnover exceeds 1.5 crore.

(CA Saurabh Jain)

ARTICLE SECTION

Income Tax Audit under Section 44AB – Criteria, Audit Report, Penalty

Tax audit- Meaning

There are various kinds of audit being conducted under different laws such as company audit/statutory audit conducted under company law provisions, cost audit, stock audit etc. Similarly, Income tax law also mandates an audit called 'Tax Audit'. As the name itself suggests, Tax audit is an examination/review of accounts of the business /profession from income tax viewpoint such as income, deductions, compliance with income tax law etc. Tax audit makes the income computation for filing the return easy.

Mandatory criteria for tax audit

Following categories of taxpayers are required to get tax audit done:

Category of person	Threshold
Carrying on business (not opting for presumptive taxation scheme*)	Total sales, turnover or gross receipts exceeds Rs 1 crore.
Carrying on business (opting presumptive taxation scheme under section 44AD*)	Total sales, turnover or gross receipts exceeds Rs 2 crore
Carrying on profession	Gross receipts exceeds Rs 50 lakhs
Carrying on the business eligible for presumptive taxation under Section 44AE*, 44BB* and 44BBB*	Claims profits or gains lower than the prescribed limit under respective presumptive taxation scheme
Carrying on the profession eligible for presumptive taxation under Section 44ADA	Claims profits or gains lower than the prescribed limit under presumptive taxation scheme and income exceeds maximum amount not chargeable to tax
Carrying on the business and is not eligible to claim presumptive taxation under Section 44AD due to opting for presumptive taxation in one tax year and not opting for presumptive tax for any of the the subsequent 5 consecutive years	If income exceeds maximum amount not chargeable to tax in subsequent 5 consecutive tax years from the tax year where presumptive taxation is not opted for

How and when tax audit report shall be furnished?

Tax auditor shall furnish tax audit report online by using his login details in the capacity of 'chartered accountant'. Taxpayer shall also add CA details in their login portal. Once audit report is uploaded by tax

auditor, same should either be accepted/rejected by taxpayer in their login portal. If rejected for any reason, all the procedures need to be followed again till the audit report is accepted by the taxpayer.

Tax audit report shall be filed on or before the due date of filing the return of income i.e., 30 November of the subsequent year in case taxpayer has entered into an international transaction and 30 September of the subsequent year in case of other taxpayers.

Consequences of non-compliance

If any taxpayer who is required to get tax audit done but fails to do so, lower of 0.5% of total sales, turnover or gross receipts or Rs 150,000 may be levied as penalty. However, if reasonable cause is established for non-compliance, no penalty would be imposed.

(CA Shruti Gupta)