

September 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 Tax Audit Report for individual having tax audit, firms and companies extended till October 15, 2018. This extension is only for tax audit, therefore, the interest under section 234A shall be leviable on the tax amount payable by the assessee.
2. **No sec. 43B disallowance on unpaid service tax if amount on which service tax was payable not received [PCIT Mumbai Vs Tops Security Limited - Sep 10, 2018]:**  
Held that the Section 43B does not contemplate liability to pay service tax before actual receipt of the funds in the account of the assessee. Hence the liability to pay service tax into the Treasury will arise only upon the assessee receiving the funds and not otherwise.
3. **Share Capital cannot be regarded undisclosed income of the company u/s 68 of the Income Tax Act [V. R. Global Energy Pvt. Ltd. Vs ITO (Madras High Court)]:**  
When there was no cash involved in the transaction of allotment of shares, provisions of Section 68 of the said Act treating it as unexplained cash credit are not attracted.

*(CA Reshu Agrawal)*

## **INTERNATIONAL TAX UPDATE**

<b>International Taxation – September 2018 Updates</b>
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### **What is Form 67?**

Form 67 is an Income Tax Form that has to be submitted with the Income Tax Department to claim **Foreign Tax Credit (FTC)** by a taxpayer. Vide its notification number 9/2017, the CBDT has made it mandatory to furnish this form on or before the due date of filing return of income under section 139(1) i.e. the original return of income.

### **What is the process of filing the Form 67?**

Hereunder is the needful wrt filing of Form 67 with the Income Tax Department:

- Form 67 is to be prepared and submitted online (if ITR is to be submitted electronically);
- The form is available on the e-filing portal of the income tax department ([www.incometaxindiaefiling.gov.in](http://www.incometaxindiaefiling.gov.in)) in the taxpayer's account.
- Digital Signature Certificate (DSC) or Electronic Verification Code (EVC) is mandatory to submit Form 67.
- Submission of Form 67 shall precede the filing of return of income.

*(FCA Sulabh Lohia)*

# ***INDIRECT TAX UPDATES***

## **GST UPDATES**

1) **GST Annual Return Notified**

GST Annual Return GSTR-9 for Regular assesseees & GSTR-9A for Composition ones notified through Notification 39/2018 Central Tax of 4.9.18.

2) **Form GSTR – 9C notified for audited annual accounts and reconciliation**

The Central Government vide *Notification No. 49/2018 – Central Tax dated September 13, 2018* has amended the CGST Rules, 2017 to notify the Form GSTR-9C for furnishing certified copy of audited annual accounts and a reconciliation statement in terms of Section 35(5) of the CGST Act, 2017 read with Rule 80(3) of the CGST Rules, 2017.

It may be noted in terms of above mentioned provisions, every registered person whose aggregate turnover during a financial year exceeds INR 2 crore is required to get his accounts audited and furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C, electronically through the common portal

3) **TCS provisions in GST made applicable from October 1, 2018**

The Central Government vide *Notification No. 51/2018 – Central Tax dated September 13, 2018*, has appointed the 1st day of October, 2018, as the date on which the provisions of Section 52 of the CGST Act, 2017 (i.e. Collection of tax at source) shall come into force.

In terms of Section 52 of the CGST Act, 2017, every electronic commerce operator, not being an agent, shall collect an amount calculated at such rate not exceeding one per cent., as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

4) **TDS provisions in GST made applicable from October 1, 2018**

The Central Government vide *Notification No. 50/2018 – Central Tax dated September 13, 2018*, has appointed the 1st day of October, 2018, as the date on which the provisions of Section 51 of the CGST Act, 2017 (i.e. Tax deduction at source) shall come into force.

In terms of Section 51 of the CGST Act, 2017, the Government may mandate,—

- a. A department or establishment of the Central Government or State Government; or
  - b. Local authority; or
  - c. Governmental agencies; or
  - d. Such persons or category of persons as may be notified by the Government on the recommendations of the Council
- to deduct tax at the rate of one percent from the payment made or credited to the supplier of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees.

5) **Extension of Due Dates for filing of FORM GSTR-1**

GSTR-1 Time limit for furnishing the details of outward supplies has been extended for the months from July, 2017 to Sept, 2018, till the 31st October, 2018 and for the months from October, 2018 to March, 2019 till the eleventh day of the succeeding month.

6) **Imparting Yoga is not exempted under GST**

The Authority for Advance Ruling (AAR), Maharashtra has clarified that the activity of imparting yoga is not exempted under GST regime as the same constitute “business”. It also clarified that GST is payable on the supply of spiritual products by the Trust.

7) **Miscellaneous:**

i) September is crucial for taxpayers under the new GST regime, as it will be the final month for taxpayers to claim credit for invoices issued in 2017-18 as well as to rectify errors in their tax return forms for the year.

ii) Separate delivery challans to be issued for goods sent in batches or lots.

iii) ITC can be availed basis tax invoice and debit note, if it contains basic information of amount of tax, description of goods / services, GSTIN of supplier and recipient and place of supply.

iv) In case of imported goods, the person in charge of conveyance to carry a copy of bill of entry along with other requisite documents.

v) Late fee waived for registered persons who submitted but did not file GSTR-3B for the month of October 2017 after generation of ARN.

vi) Waiver of late fee paid for submitting GSTR-6 by ISD (for any tax period) between January 1, 2018 to January 23, 2018.

*(CA Puneet Goel)*

**Annual Return and Audit under GST**

<b>S No.</b>	<b>Particulars</b>	<b>Annual Return</b>	<b>Audit</b>
<b>1.</b>	<b>Applicability</b>	Every Registered person including those registered under composition levy scheme except: - Input service distributors - Persons paying Tax under Section 51 (Tax Deducted at Source) - Persons paying Tax under Section 52 (Collection of Tax at Source) - Casual Taxable Person - Non-resident taxable persons.	Every registered taxable person whose turnover during a financial year exceeds Rs 2 crore shall get his accounts audited.
<b>2.</b>	<b><u>Due Date</u></b>	On or before 31st December of the subsequent Financial Year	On or before 31st December of the subsequent Financial Year

3.	<b>Form Type</b>	<p><b>GSTR 9:-</b> To be filed by the <b>Regular Taxpayers</b> who are filing GSTR 1, GSTR 2 &amp; GSTR 3</p> <p><b>GSTR 9A:-</b>To be filed by the <b>persons registered under Composition Scheme</b> under GST.</p> <p><b>GSTR 9B:-</b>To be filed by the <b>e-commerce operators</b> who have filed GSTR 8 during the financial year.</p>	<p><b>GSTR 9C:-</b> Specific return for the taxpayers whose annual turnover is exceeds Rs. 2 crores during the financial year. All such taxpayers are also required to get their accounts audited and shall file a copy of audited annual accounts and reconciliation statement of tax already paid and tax payable as per audited accounts along with GSTR 9C.</p>
4.	<b>Penalty</b>	Rs.100 per day in each Act i.e. CGST & SGST. Maximum amount of the penalty will be 0.25% of the total turnover in the respective state.	Minimum Rs.10,000

#### Due Dates in October 2018

S. No.	Particulars	Due Date
1.	KYC of all directors for the year ending 31.03.2018 with Rs 500 penalty	October 05, 2018
2.	Due date for Payment of TDS/TCS in the month of Sep-2018	October 07, 2018
3.	Due Date for filing GSTR-6 by Input Service Distributors for the period Sep 2018	October 13, 2018
4.	Due date for payment of Provident fund and ESI contribution for the previous month	October 15, 2018
5.	Due Date for Income Tax Return for A.Y. 2018-19 for Corporate, Non corporate whose books of accounts are required to be audited.	October 15, 2018
6.	Due date for filling of ADT-1 Appointment of Auditor by Co.	October 15, 2018
7.	GSTR-4 for the quarter July - Sep, 2018 by Composition Dealer	October 18, 2018
8.	GSTR-3B for the month of Sep -2018	October 20, 2018
9.	GSTR-1 Filing of returns by registered person with aggregate turnover more than or upto 1.50 crores (July17- Sep18) Filling of Annual Accounts (AOC-4) Quarterly statement of TDS deposited for the quarter ending Sep 30, 2018	October 30, 2018

(CA Saurabh Jain)

# **FEMA UPDATES**

**Foreign Exchange Management Act 1999 'FEMA' –Sep 2018 Updates – FCA Sulabb Lobia**

## **September 19, 2018 – A.P. (DIR Series) Circular No 9 of Reserve Bank of India 'RBI' – Liberalization of External Commercial Borrowing (ECB)**

To liberalize some aspects of the ECB policy including policy, the RBI decided as under:

**ECBs by companies in manufacturing sector:** As per the extant norms, ECB up to USD 50 million or its equivalent can be raised by eligible borrowers with minimum average maturity period of 3 years. It has been decided to allow eligible ECB borrowers who are into manufacturing sector to raise ECB up to USD 50 million or its equivalent with minimum average maturity period of 1 year.

## **FEMA FAQ SERIES**

### **Money Changer Activities**

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.

#### **1. Who are Authorised Money Changers?**

Authorised Money Changers (AMCs) are entities, authorised by the Reserve Bank under Section 10 of the Foreign Exchange Management Act, 1999. An AMC is a Full Fledged Money Changer (FFMC) authorised by the Reserve Bank to deal in foreign exchange for specified purposes.

#### **2. The objective behind allowing Authorised Money Changers to do business?**

To widen the access of foreign exchange facilities to residents and tourists while ensuring efficient customer service through competition.

#### **3. What are the different types of AMCs?**

The different types of AMCs are Authorised Dealer Category -I Banks (AD Category–I Banks), Authorised Dealers Category - II (ADs Category–II) and Full Fledged Money Changers (FFMCs).

#### **4. Whether licence is mandatory for AMCs?**

Yes. No person shall carry on or advertise that he carries on money changing business unless he is in possession of a valid money changer's licence issued by the Reserve Bank. Any person found undertaking money changing business without a valid licence is liable to be penalised.

#### **5. Who can apply for FFMC licence?**

The applicant has to be a company registered under the Companies Act, 1956. The minimum Net Owned Funds (NOF) required for consideration as FFMC is Rs.25 lakh for Single branch FFMC and Rs.50 lakh for Multiple branch FFMC.

*For more faqs kindly refer:*

<https://www.rbi.org.in/Scripts/FAQView.aspx?Id=54>

*(FCA Sulabb Lobia)*

# ***OTHER UPDATES***

## **COMPANY LAW**

### **LLP (Second Amendment) Rules 2018 notified by MCA: Forms RUN-LLP/ FiLLiP introduced**

MCA has notified the Limited Liability Partnership (LLP) (Second Amendment) Rules 2018. LLP Form RUN-LLP/ FiLLiP have been introduced in place of LLP Form 1 and 2, for reserving name and incorporation application respectively. LLP Forms 5, 16, 17, 18, 19 have been amended/ substituted. Further Form RUN-LLP, Form 5, 17, 18 to be processed by CRC, as per amended LLP Rules. The amended LLP Rules shall come into force w.e.f. 2 Oct. 2018.

### **MCA issued Companies (PAS) Third Amendment Rules, 2018 which shall come into force w.e.f 2nd October 2018**

Key Points of "Rule 9A"

Issue of securities in demat form by unlisted public companies (UPC).-

- (a) Every UPC shall issue the securities only in demat form; and
- (b) Every UPC making any offer for issue of any securities or buyback or issue of bonus shares or rights offer shall ensure that before making such offer, entire holding of securities of its promoters, directors, KMP has been dematerialised.
- (c) Every UPC shall facilitate demat of all its existing securities by making necessary application to a depository and shall secure ISIN for each type of security and shall in-form all its existing security holders about such facility.
- (d) Every UPC shall comply with the regulations or directions or guidelines or circulars, if any, issued by the SEBI or Depository from time to time with respect to demat of shares of UPC and matters incidental or related thereto.
- (e) The audit report provided under Regulation 55A of the SEBI (DP) Regulations, 1996 shall be submitted by the UPC on a half-yearly basis to the RoC.

### **Duties of Shareholders**

- (a) Every holder of securities of an UPC, who intends to transfer such securities on or after 2nd October, 2018, shall get such securities in demat form before the transfer; or
- (b) who subscribes to any securities of an UPC (whether by way of private placement or bonus shares or rights offer) on or after 2nd October, 2018 shall ensure that all his existing securities are held in demat form before such subscription.



## **FAQ**

### **1. Can an existing partnership firm be converted to LLP?**

Yes, an existing partnership firm can be converted into LLP by complying with the Provisions of clause 58 and Schedule II of the LLP Act. Form 17 needs to be filed along with Form 2 for such conversion and incorporation of LLP.

### **2. Can an existing company be converted to LLP?**

Yes, any existing private company or existing unlisted public company can be converted into LLP by complying with the Provisions of clause 58 and Schedule III and IV of the LLP Act. Form 18 needs to be filed with the registrar along with Form 2 for such conversion. only private / unlisted public company can be converted into LLP.

*(Himani Saxena – MBA Finance)*

# ***ARTICLE SECTION***

## **GST PROVISIONS RELATED TO FOREIGN DIPLOMATIC MISSION OR UN ORGANISATIONS**

### **1. What is UIN(Unique identification number)**

The UIN is a 15-digit unique number and allotted to any specialised agency of the UN organisation or any multilateral financial institution and organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries.

### **2. Who can apply for UIN under GST?**

The following organizations can apply for a UIN:

- A specialized agency of the United Nations Organization
- A Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947,
- Consulate or Embassy of foreign countries
- Any other person or class of persons as notified by the Commissioner

### **3. How to register as a UIN?**

The organization must apply for UIN using **FORM GST REG- 13**.

If the proper officer is satisfied, he will assign a UIN and issue a certificate in FORM GST REG-06 within 3 working days from the date of the submission of the application.

### **4. What returns should be filed by a UIN holder?**

Every UIN holder must **file GSTR-11** by 28th of next month in order to claim refund of the taxes paid on his inward supplies. GSTR-11 will contain details of such supplies of taxable goods and/or services.

GSTR-11 will contain details of such supplies of taxable goods and/or services.

A UIN holder will not be allowed to add or modify any details in GSTR-11. The Information will be auto-populated information from seller's GSTR-1 (sales).

### **5. Requirement to record UIN on invoices by Seller.**

As per rule 46 of the CGST Rules, 2017 it is necessary to record UIN on the invoices.

All businesses and e-commerce companies supplying goods and services to foreign diplomatic missions or UN organisations are required to quote their respective unique identification number

(UIN) on tax invoices for GST benefits. A supplier should treat such sales as supplies to another registered person (B2B).

Recording of the 15-digit UIN while making such sales enables foreign diplomatic missions and UN organisations to claim refund of Goods and Services Tax (GST) paid by them in India.

**6. What is the last day for claiming a refund on purchases by a UIN holder?**

Refunds can be claimed only through GSTR-11. The return must be filed **within 6 months** from the last day of the quarter in which supply was received.

Beyond the 6 month deadline, the refund will lapse.

*(CA Shruti Gupta)*