

October 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. **No recovery of TDS can be initiated from the Deductee for the default in deposit of the same by the Deductor: [Devarsh Pravinbhai Patel Vs ACIT, Ahmedabad - Sep 24, 2018]:**

Held that deductee is entitled to the credit of tax deducted at source with respect to amount of TDS for which the certificate has been issued by the employer deductor.

2. **Sec. 54F deduction available to HUF even if new house was purchased in name of member [PCIT Vs Vaidya Panalalmanilal (HUF) (Gujarat High Court)]:**

Held that where consideration that arose in hands of HUF on sale of capital asset had been invested for purchase of new residential house in name of some of its members instead of Assessee (HUF), deduction u/s 54F in hands of HUF would be permissible.

*(CA Reshu Agrawal)*

## **INTERNATIONAL TAX UPDATE**

<b>International Taxation – October 2018 Updates</b>
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### **What is Form 15CA and 15CB?**

- As per Section 195 of Income tax Act, 1961, every person liable for making a payment to non-residents shall deduct TDS (at the rates in force) from the payments made to non-residents if such sum is chargeable to Income tax.
- A person making the remittance (a payment) to a Non Resident or a Foreign Company has to e-file the form 15CA. In many cases, a Certificate from Chartered Accountant in form 15CB is also required to e-file filing of the form 15CA online.
- The furnishing of information for payment to non- resident, not being a company, or to a foreign company in Form 15CA has been classified into 4 parts ie Part A, B, C, and D, which is according to different purposes/amount.

**PART A:** – Where the remittance or the aggregate of such remittance does not exceed 5 lakh rupees during the F.Y. (whether taxable or not).

**PART B:** – Where an order /certificate u/s 195(2)/ 195(3)/197 of Income Tax Act has been obtained from the A.O. (Whether Nil rate or Lower rate Certificate).

**PART C:** – Where the remittance or the aggregate of such remittance exceed 5 lakh rupees during the FY.

**PART D:** – Where the remittance is not chargeable to tax under Domestic law.

- 15CB is the Tax Determination Certificate where the CA examines the remittance with regard to chargeability provisions under Section 5 and 9 of the Income Tax Act along with the provisions of Double Tax Avoidance Agreements.
- In form 15CB, the CA certifies details of the payment, TDS rate and TDS deduction as per Section 195 of the Income Tax Act, if any DTAA is applicable, and other details of nature and purpose of the remittance.
- Upload of Form 15CB is mandatory prior to filling Part C of Form 15CA. To prefill the details in Part C of form 15CA, the Acknowledgement Number of e- verified form 15CB should be verified.

*(FCA Sulabh Lohia)*

# ***INDIRECT TAX UPDATES***

## **GST UPDATES**

### **1) No Centre-State Wall: Officials handling GST can assess all**

CBIC clarifies that both the State and Central Authorities handling the GST have Enforcement Powers over All Assessee in a State. Both the Central Tax and State Tax Authorities are allowed to Initiate Intelligence-Based Enforcement Action on the entire taxpayer base, irrespective of the administrative assignment of the taxpayers to any authority.

### **2) Form GSTR-9C for Annual GST Audit**

Government has notified the GSTR-9C form for annual GST audit under which every taxpayer above Rs 2 crore turnover in a financial year would need to fill up a reconciliation statement and also obtain a certification of audit.

### **3) Notified Exporters are not allowed to claim IGST refund, once benefit of drawback availed at higher rate**

The Government of India has issued a Circular No. 37/2018 – Customs dated October 09, 2018 which clarifies the cases where IGST refunds have not been granted because higher rate of drawback has been claimed or where higher rate and lower rate were identical. The exporters have availed the option to take drawback at higher rate in place of IGST Refund out of the own volition. However, It has been decided that exporter would not be allowed to avail IGST refund after initially claiming the benefit of higher drawback.

### **4) Supply of medicines & allied items to in-patients by hospital is composite supply are not separately taxable: AAR of Kerala**

- The supply of medicines and allied items provided by the hospital through the pharmacy to the in-patients is part of composite supply of health care treatment and hence not separately taxable.
- The supply of medicines and allied items provided by the hospital through the pharmacy to the out-patients is taxable.

### **5) Extension of time limit for declaration in Form GST ITC-04**

CBIC extended the time limit for furnishing the declaration in FORM GST ITC-04 in respect of goods dispatched to a job worker or received from a job worker or sent from one job worker to another, during the period from July, 2017 to September, 2018 till the 31.12.2018 vide Notification No. 59/2018 – Central Tax dated 26.10.2018.

### **6) Time limit for furnishing Final Return GSTR – 10 whose registration has been cancelled on or before Sept 30, 2018 till Dec 31, 2018**

The Central Board of Indirect Taxes & Customs vide its Notification No. 58/2018- Central Tax dated October 26, 2018 has notified a person whose registration has been cancelled by the proper officer on or before the September 30, 2018, as the class of persons who shall furnish the final return in FORM GSTR-10 till December 31, 2018.

7) **Miscellaneous:**

- i) Central Government notifies the Constitution of the Appellate Authority for Advance Ruling in the Union territories.
- ii) Reimbursement by Head Office to liaison office does not amount to 'supply', hence not liable to GST: AAR of Tamil Nadu.
- iii) Event management support service provided to registered recipient outside State, liable to 18% IGST: AAR of Goa.
- iv) Goods and services provided by charitable trusts for a consideration would classify as supply, making it liable for GST, the authority of advanced ruling (AAR) for GST in Maharashtra has ruled.
- v) Under GST In case of transport of goods in lots or batches, separate delivery challan & invoice copy for each despatch. Original invoice with last lot.
- vi) Government detects over Rs 21,000 Crores of Indirect Tax Evasion so far this year.

*(CA Puneet Goel)*

# ***FEMA UPDATES***

## **Foreign Exchange Management Act 1999 'FEMA' –Oct 2018 Updates**

### **October 3, 2018 – A.P. (DIR Series) Circular No 10 of Reserve Bank of India 'RBI' – Liberalization of External Commercial Borrowing (ECB)**

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

Under the extant policy, ECB can be raised under tracks I and III for working capital purposes if such ECB is raised from direct and indirect equity holders or from a group company, provided the loan is for a minimum average maturity of 5 years. It has been decided, in consultation with the Government of India, to liberalise the said provision and permit public sector Oil Marketing Companies (OMCs) to raise ECB for working capital purposes with minimum average maturity period of 3/5 years from all recognized lenders under the automatic route.

Further, the individual limit of USD 750 million or equivalent and mandatory hedging requirements as per the ECB framework have also been waived for borrowings under this dispensation. However, OMCs should have a Board approved forex mark to market procedure and prudent risk management policy, for such ECBs.

The overall ceiling for such ECBs shall be USD 10 billion equivalent and the said facility will come into effect from the date of this Circular.

### **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.

#### **Q1. What is meant by Remittance of Assets?**

Answer: 'Remittance of assets' means remittance outside India of funds representing a deposit with a bank or a firm or a company of:

1. provident fund balance
2. superannuation benefits
3. amount of claim or maturity proceeds of Insurance policy
4. sale proceeds of shares, securities, immovable property or any other asset held in India

**Q2. What are the assets out of/ from which funds may be remitted and by whom?**

Answer:

A foreign national of non-Indian origin (other than Nepal/ Bhutan/ PIO)	An NRI/ PIO	Indian entity	A branch or office established in India by a person resident outside India
<p>1. The person has retired from employment in India.</p> <p>2. Inherited assets from a person referred to in Sec 6(5)1 of FEMA</p> <p>3. The person is a non-resident widow/ widower and has inherited assets from her/ his deceased spouse who was an Indian national resident in India.</p> <p>May remit up to USD 1 Million in a financial year</p>	<p>1. From the balances of NRO account – subject to declaration*</p> <p>2. Sale proceeds of assets</p> <p>3. Assets acquired from legacy/ inheritance/ deed of settlement</p> <p>May remit up to USD 1 Million in a financial year</p> <p><i>*Where the remittance is to be made from the balances held in the NRO account, the Authorised Dealer should obtain an undertaking from the account holder stating that “the said remittance is sought to be made out of the remitter’s balances held in the account arising from his/ her legitimate receivables in India and not by borrowing from any other person or a transfer from any other NRO account and if such is found to be the case, the account holder will render himself/ herself liable for penal action under FEMA.”</i></p>	<p>Its contribution towards PF/ superannuation fund/ pension for expatriate employee who are resident but not permanently resident.</p>	<p>Remit its winding up proceeds after submission of requisite documents</p>

For more faqs kindly refer:

<https://www.rbi.org.in/Scripts/FAQView.aspx?Id=33>

(FCA Sulabh Lobia)



# ***OTHER UPDATES***

## **COMPANY LAW**

- 1. Relaxation of additional fees and extension of last date of in filing of forms MGT-7 (Annual Return) and AOC-4 (Financial Statement) under the Companies Act, 2013.**

Keeping in view the requests received from various stakeholders seeking extension of time for filing of financial statements for the financial year ended 31.03.2018 on account of various factors , it has been decided to relax the additional fees payable by companies on e-forms AOC-4, AOC (CFS) AOC-4 XBRL and e- Form MGT-7 upto 31.12.2018' wherever additional fee is applicable.

- 2. Brief explanation on Formation of company**

(1) A company may be formed for any lawful purpose by—

- (a) seven or more persons, where the company to be formed is to be a public company;
- (b) two or more persons, where the company to be formed is to be a private company; or
- (c) one person, where the company to be formed is to be One Person Company that is to say, a private company, by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration:

Provided that the memorandum of One Person Company shall indicate the name of the other person, with his prior written consent in the prescribed form, who shall, in the event of the subscriber's death or his incapacity to contract become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles:

- Provided further that such other person may withdraw his consent in such manner as may be prescribed:
- Provided also that the member of One Person Company may at any time change the name of such other person by giving notice in such manner as may be prescribed:
- Provided also that it shall be the duty of the member of One Person Company to intimate the company the change, if any, in the name of the other person nominated by him by indicating in the memorandum or otherwise within such time and in such manner as may be prescribed, and the company shall intimate the Registrar any such change within such time and in such manner as may be prescribed:
- Provided also that any such change in the name of the person shall not be deemed to be an alteration of the memorandum.

(2) A company formed under sub-section (1) may be either—

- (a) a company limited by shares; or
- (b) a company limited by guarantee; or
- (c) an unlimited company.

*(Himani Saxena – MBA Finance)*

# ***ARTICLE SECTION***

## **What is Ocean Freight transport?**

Ocean Freight transport is the physical process of transporting commodities and merchandise goods and cargo through shipping line.

## **Ocean freight under GST**

CIF(Cost, insurance, freight) basis:

- If goods imported by importer, without any separate charges of transportation (because supplier or exporter avail services of foreign shipping entity or Indian shipping entity for bringing goods into India) from other country to Indian port is called CIF value.
- As per section 5(3) inward supply received from specified services is liable under RCM under heading S.N-10.
- Services supplied by a person located in non-taxable territory by way of transportation of goods from outside India to India.
- In this situation if exporter(i.e. supplier) avail services of foreign shipping entity for bringing goods into India then RCM case will be apply, because supplier of Ocean freight transport is outside India and recipient is in India.

FOB Value:

- Importer avail services of foreign shipping entity or Indian shipping entity for bringing goods into India from foreign port, there is not any responsibility of exporter or supplier for transportation to goods to Indian port.
- As per section 5(3) inward supply received from specified services is liable under RCM under heading S.N-10.
- Services supplied by a person located in non-taxable territory by way of transportation of goods from outside India to India.
- In this situation if importer avail services of foreign shipping entity for bringing goods into India then RCM case will be apply, because supplier of Ocean freight transport is outside India and recipient is in India.

Tax on Import of goods:

- Tax on of goods imported:-As per section 5(1) of IGST Act, IGST shall be levied and collected in accordance with provisions of section 3 of Custom Tariff Act-1975 on the value determined under said Act.
- As per Custom tariff Act-1975, valuation for section 3, includes cost of goods imported and all cost incurred by importer in relation bringing goods from outside India to custom port in India.

## **Conclusion:**

IGST in case of import of goods shall be payable on the value of goods including freight.

*(CA Shruti Gupta)*