

November 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. **Sec. 14A disallowance to be restricted to amount of exempt income only:**

Held that amount of disallowance under section 14A could be restricted to amount of exempt income only and not a higher figure.

2. **SLP dismissed against deletion of sec. 69A addition made on basis of mere confession under MCOCA [CIT vs Jagdishprasad Mohanlal Joshi]:**

Section 69A of the Income-tax Act, 1961 - Unexplained money (Applicability of) - Assessment year 2000-01 - In course of assessee, Assessing Officer made addition to assessee's income on basis of confessional statement made by one 'R' under Maharashtra Central Organised Crime Act, 1999, to effect that he had made certain unaccounted payments to assessee - Tribunal noted that statement of 'R' had not been confronted to assessee to verify whether amount was actually paid - It was also found that no corroborative evidence had been produced or brought on record to substantiate fact of alleged payment - Accordingly, Tribunal deleted impugned addition.

3. **CBDT explains Scope of 'Limited Scrutiny Cases selected under CASS:**

The Central Board of Direct Taxes (CBDT) has explained the scope of limited scrutiny cases selected under CASS cycles 2017 and 2018 where the issues referred to by the law-enforcement/ intelligence/ regulatory authority or agency.

It was said that in such 'Limited Scrutiny' cases, Assessing Officer shall not expand the scope of enquiry/investigation beyond the issue(s) on which the case was flagged for 'Limited Scrutiny' & issue arising from nature of information.

The board further prescribed to adopt the following procedure while examining the additional issue if required:

- i. The Assessing Officer shall duly record the reasons for expanding the scope of 'Limited Scrutiny' to the extent mentioned in para 2 and 3, above;
- ii. the same shall be placed before the Pr. CIT/CIT concerned and upon his approval, further issue can be considered during the assessment proceeding;
- iii. The Assessing Officer shall issue an intimation to the assessee concerned that additional issue would also be considered during the course of pending assessment proceeding;
- iv. To ensure proper monitoring in these cases, provisions of Section 144A of the Income Tax Act, 1961 may be invoked in suitable cases. Further, to prevent fishing and roving enquiries in these cases, it is desirable that these cases are invariably picked up for Review/Inspection by the administrative authorities.

(CA Reshu Agrawal)

INTERNATIONAL TAX UPDATE

International Taxation – November 2018 Updates

Delhi High Court –MasterCard Challenges Adverse Ruling on Creation of Indian PE; High Court Orders Status Quo

MasterCard Asia Pacific Pte Ltd (MasterCard, the taxpayer) – a Singapore-based MasterCard group company – has filed a writ petition before the Indian High Court (Delhi Bench) to challenge the ruling delivered by Indian Authority for Advance Ruling (AAR) in July 2018, which held that it has a fixed-place Permanent Establishment (PE), service PE and dependent agent PE in India under article 5 of the India-Singapore DTAA in respect of the services with regard to the use of a global network and infrastructure to process card payment transactions for customers in India. The Delhi High Court has directed issue of notice to the Revenue and has listed the matter on 9 January 2019. The High Court has also directed that "till the next date of hearing, final assessment (audit) order shall not be made." *Source - Taxsutra*

(FCA Sulabh Lohia)

INDIRECT TAX UPDATES

GST UPDATES

1) Mandatory Radio Frequency Identification 'RFID' Tag for movement of goods in Uttar Pradesh from Nov 1, 2018

The Commissioner of State Tax of Commercial Tax Department, Uttar Pradesh has mandated the use of RFID tag for movement of goods within the state of Uttar Pradesh. It has been mandated for all such transporters, who transport such goods, for which generation of e-way bill electronically is mandatory.

2) Procedure prescribed for returning time-expired drugs or medicines under the GST regime

CBIC has laid down detailed procedure for returning time-expired drugs or medicines under the GST regime. The same procedure can be used for other sectors too, where goods are returned under similar situations.

3) Enhancements available on E-way bill portal

Following enhancements will be made available on e-way bill portal (<https://ewaybillgst.gov.in/>) from 16.11.2018:

- i) Checking of duplicate generation of e-way bills based on same invoice number:
If the transporter or consignee has generated one e-way bill on the consignor's invoice, then if any other party (consignor, transporter or consignee) tries to generate the e-way bill, the system will alert that there is already one e-way bill for that invoice, and further it allows him to continue, if he wants.
- ii) CKD/SKD/Lots for movement of Export/Import consignment:
CKD/SKD/Lots supply type can now be used for movement of the big consignment in batches, during Import & Export also. Delivery challan and tax invoice need to accompany goods as prescribed in Rule 55 (5) of CGST Rules, 2017.
- iii) Shipping address in case of export supply type:
For Export supply type, the 'Bill To' Party will be URP or GSTIN of SEZ Unit with state as 'Other Country' and shipping address and PIN code can be given as the location (airport/shipping yard/border check post/ address of SEZ), from where the consignment is moving out from the country.
- iv) Dispatching address in case of import supply type:
For Import supply, the 'Bill From' Party will be URP or GSTIN of SEZ Unit with state as 'Other Country' and dispatching address and PIN code can be given as the location (airport/shipping yard/border check post/ address of SEZ), from where the consignment is entering the country.

- v) Enhancement in 'Bill To - Ship To' transactions:
EWB generation is now categorized to four types - Regular and Bill to Ship to, Bill from, Dispatch from & Combination of both.
- vi) Changes in Bulk Generation Tool:
Facility of EWB generation through the Bulk Generation Tool has been enhanced.

4) Revenue department plans linking e-way bill with FASTag, logistics data bank to check GST evasion

The revenue department is planning to integrate e-way bill with NHAI's FASTag mechanism and DMICDC's Logistics Data Bank (LDB) services, to facilitate faster movement of goods and check GST evasion. The proposal, according to officials, will improve operational efficiencies across the country's logistic landscape. Currently, lack of harmonisation under the 'track and trace' mechanism in terms of sharing information among different agencies is affecting the ease of doing business in the country. Besides, it is also impacting the logistic costs of the companies.

The proposal, being worked out by the revenue department, will also help in preventing goods and services tax (GST) evasion by unscrupulous traders who take advantage of the loopholes in the supply chain, an official told PTI. Touted as an anti-evasion measure, e-way bill system was rolled out on April 1, 2018, for moving goods worth over Rs 50,000 from one state to another. The same for intra or within the state movement was rolled out in a phased manner from April 15. Transporters of goods worth over Rs 50,000 would be required to present e-way bill during transit to a GST inspector, if asked. "The integration of the e-way bill system with FASTag and LDB is expected to help boost tax collections by clamping down on trade that currently happens on cash basis," the official said.

5) Miscellaneous:

- i) CBIC exempt supply of Goods and Services from PSU to PSU from applicability of provisions relating to TDS vide Notification No. 61/2018 – Central Tax Dated 5th November, 2018.
- ii) GST is applicable of toll reimbursement charges collected in course of providing a service: AAR
- iii) Kerala High Court has ruled that any GST mistakenly paid under one head can be adjusted under the correct head. While noting that it sees no difficulty for the tax authorities to allow the petitioner's request and get the amount transferred from the head 'S-GST' to 'I-GST', the court said it is inequitable for the authorities to let the petitioner suffer.

(CA Puneet Goel)

FEMA UPDATES

Foreign Exchange Management Act 1999 'FEMA' –Nov 2018 Updates

November 26, 2018 –A.P. (DIR Series) Circular No 15 of Reserve Bank of India 'RBI' –External Commercial Borrowing (ECB) Policy – Review of Hedging Provision

On a review of the extant provisions, it has been decided, to reduce the mandatory hedge coverage from 100 per cent to 70 per cent for ECBs raised under Track I of the ECB framework by eligible borrowers given at paragraph 2.4.2 (vi) of the ECB Master Direction for a maturity period between 3 and 5 years. Further, it is also clarified that ECBs falling within the present scope but raised prior to the date of this circular will be required to mandatorily roll-over their existing hedge(s) only to the extent of 70 per cent of outstanding ECB exposure.

FEMA FAQ SERIES

Payment and Settlement Systems Act, 2007 (PSS Act, 2007)

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 extant regulations made or directions issued thereunder may be referred to.

Q 1. When did Payment and Settlement Systems Act, 2007 (PSS Act, 2007) came into effect?

Ans. The PSS Act, 2007 received the assent of the President on 20th December 2007 and it came into force with effect from 12th August 2008.

Q 2. What is the objective of the PSS Act, 2007?

Ans. The PSS Act, 2007 provides for the regulation and supervision of payment systems in India and designates the Reserve Bank of India (Reserve Bank) as the authority for that purpose and all related matters. The Reserve Bank is authorized under the Act to constitute a Committee of its Central Board known as the Board for Regulation and Supervision of Payment and Settlement Systems (BPSS), to exercise its powers and perform its functions and discharge its duties under this statute. The Act also provides the legal basis for “netting” and “settlement finality”. This is of great importance, as in India, other than the Real Time Gross Settlement (RTGS) system all other payment systems function on a net settlement basis.

Q 3. What are the Regulations made under the PSS Act, 2007 and when did they come into force?

Ans. Under the PSS Act, 2007, two Regulations have been made by the Reserve Bank of India, namely, the Board for Regulation and Supervision of Payment and Settlement Systems Regulations, 2008 and the Payment and Settlement Systems Regulations, 2008. Both these Regulations came into force along with the PSS Act, 2007 on 12th August 2008.

For more faqs kindly refer:

<https://www.rbi.org.in/Scripts/FAQView.aspx?Id=73>

(FCA Sulabh Lobia)

ARTICLE SECTION

TAXATION OF GIFTS IN INDIA

Earlier Law (Till October 1, 1998) – Gift Tax Act, 1958

- Till October 1998, there was a Gift Tax Act in India named as Gift Tax Act, 1958.
- As per this Act, Gifts (in the form of cash, draft, cheque etc.) exceeding Rs 50,000/- were taxable.
- As per this Gift Tax Act, the tax rate was @30% on the Gifts.
- Gifts between blood relatives were not taxable.

Present Law – Income Tax Act, 1961

- Now, wef April 1, 2005, Taxation on Gifts has been levied under the Income Tax Act.
- As per the provisions of section 56(2)(x) of the Income Tax Act, Gifts received are taxable in the hands of recipient under the head 'Income From Other Sources'.
- Gift means any Sum of Money; Moveable Property or Immovable Property, which received without consideration or inadequate consideration.
- Gifts received upto Rs 50,000/- are not taxable under these provisions. Hence, If Gift exceed Rs 50,000 then it is taxable.
- Property is defined to include Land and Building, Shares, Jewellery, Archaeological Collection, Drawings, Paintings, Sculpture, Any Work of Art, Bullion.
- In case of immovable property, Stamp Duty Value (adopted by Govt for stamp duty purposes) shall be considered as consideration and accordingly Gift amount shall be calculated. Eg if an immovable property, which has Stamp Duty Value of Rs 50 Lakh, is transferred for nil consideration then Rs 50 Lakh shall be considered as Gift amount. If any consideration is received then amount after reducing the consideration amount shall be the amount of Gift.
- For the purposes of Gift Taxation of Immovable Property, a difference of 5% between Stamp Duty Value and Actual Consideration shall be ignored (amendment wef AY 2019-20).

Exemption – Gifts Not Taxable

Following transactions are not taxable under the provision of section 56(2)(x) of the Income Tax Act. Hence, gifts received in following cases are exempt:

- i. From any relative
- ii. Gifts received on the occasion of marriage of an individual even from non-relatives are not an income
- iii. Under a Will or by way of inheritance;
- iv. In contemplation of death of payer;
- v. From local authority as defined in Explanation to section 10(20);
- vi. Educational or medical institution or fund etc. referred to u/s. 10(23C);
- vii. Trust or institution registered u/s. 12AA.
- viii. By any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10; or

- ix. By way of transaction not regarded as transfer under clause (i) or 11[clause (iv) or clause (v) or] clause (vi) or clause (via) or clause (viaa) or clause (vib) or clause (vic) or clause (vica) or clause (vicb) or clause (vid) or clause (vii) of section 47; or
- x. From an individual by a trust created or established solely for the benefit of relative of the individual.

The term “relatives” include the following:

- i. Spouse of the individual
- ii. Brother or sister of the individual
- iii. Brother or sister of the spouse of the individual
- iv. Brother or sister of either of the parents of the individual
- v. Any lineal ascendant or descendant of the individual
- vi. Any lineal ascendant or descendant of the spouse of the individual
- vii. Spouse of the person referred to in clauses (ii) to (vi).
- viii. In case of a Hindu undivided family, any member thereof;

(CA Shruti Gupta)