

April-June 2019

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

- CBDT extends PAN Aadhar number linking deadline to 30th September 2019. It is mandatory to quote Aadhaar in ITR u/s 139AA (1) (ii). CBDT Notification 31/2019.
- Income Tax department has notified I-T return forms for individuals and companies for the assessment year 2019-20. While there has been no change in ITR-1 or Sahaj, which is to be filled by the salaried class, some sections in ITR 2, 3, 5, 6 and 7 have been rationalised.
- Income Tax Department has barred directors as well as those who have invested in unlisted companies from filing income tax return forms Sahaj and Sugam. The directors in both listed and unlisted companies will be required to file their returns in ITR-2 to disclose details of DIN, PAN and equity holding with the names of the companies.
- CBDT has notified changes in Form 16, the certificate issued by employers for tax deducted at source (TDS) for salaried employees, seeking disclosure of more details, especially about exempt allowances.
- Form 16 is a certificate issued by an employer detailing the TDS deducted with respect to payment to its employees. According to current income tax rules, every employer is required to issue the Form 16 with details of the salary paid and tax deducted at source of each of its employee. The Form 16 is usually issued by mid-June.

Case Law Updates

Condonation of delay cannot be denied due to a mistake committed by an advocate in filing the appeal: [ITAT, Jodhpur, Mahnoo Khan Vs. ITO, Churu – May 03, 2019]

Held that the assessment order and other related paper were handed over to the advocate for filling of appeal but he could not file appeal with in due time and handed over all the papers to the assessee with written acceptance that he kept the papers in a drawer and over looked them and could not file the appeal in the given 30 days limitation period. Hence, the appeal cannot be submitted in due time due to the negligence of the advocate and not due to wilful default of applicant. Therefore, the rejection of request for condonation of delay is arbitrary and against the principle of natural justice.

Registration u/s 12AA of the Act cannot be denied to a trust formed for complying with the CSR obligation of the settler company: [ITAT, Delhi; Escorts Skill Development Vs. CIT (Exemptions), Chandigarh – April 26, 2019]

Undisputedly, the company has been formed to implement the CSR activities of financing/parental company; that the composition of applicant company is restricted and to that extent is not amenable to the public charity.

However, the main activity of the applicant company is providing vocational training in various fields under the "Skill Development Programme of Government of India"; that vocational training is part of CSR activities notified by the Government of India which can be carried out by the applicant company on its own or through a Trust/ Society/Company registered u/s 8 of the Companies Act, 2013. Merely because the applicant company has been established to comply with the CSR obligations, the registration u/s 12AA of the Act cannot be denied, particularly when CSR activities are also charitable activities.

Condonation of Delay granted where the CA was busy in ICAI Elections: [ITAT, Jaipur; Shri Manoj Deewan Vs. ACIT, Sikar – May 16, 2019]

Though sufficient opportunities were granted by the Id. CIT (A) to the assesseees for presenting their cases, however, when the assessee has explained a reasonable cause for not appearing on 20.11.2018 and also filed an application in advance wherein it was stated that the Id. A/R of the assesseees was contesting election of Central Council of ICAI scheduled for 8th & 9th December, 2018, then one more opportunity ought to have been granted by the Id. CIT subject to cost of Rs. 2500/-

An assessee cannot be penalized where some amendment has been brought with retrospective effect: [ITAT, Ahmedabad; DCIT(Exemptions), Ahmedabad Vs Baroda Cricket Association – May 21, 2019]

In the instant case, section 13(8) of the Act has been enacted by Finance Act, 2012 with retrospective effect from 01.04.2009 where benefit of section 11 & 12 will not be available to the assessee in case such assessee is in receipt of income which falls under proviso to clause (15) of section 2 of the Act. Held, the income arising on retrospective applicability of section 13(8) inserted at a time when the returns for all the assessment years in question were already filed by assessee cannot attract penalty by any stretch of imagination.

No disallowance of the amount paid as interest on borrowings, taken for giving advance to subsidiary company: [ITAT, Delhi; MDL Energy Pvt Ltd Vs, ACIT, New Delhi – June 14, 2019]

Held that the advance given to a subsidiary company on business expediency establishes the nexus between expenditure and the purpose of business. Moreover, there is no finding by the Assessing Officer that the subsidiary companies have not utilised the borrowed money for their respective businesses and, therefore, the interest paid on borrowed money cannot be disallowed.

(CA Reshu Agrawal)

INTERNATIONAL TAX UPDATE

International Taxation – April to June 2019 Updates

Mumbai ITAT - Sections 9(1)(vi), 9(1)(vii) and Article 12 of the India-Germany DTAA – subscription fees received for access to online database does not qualify as FTS or royalty

TS-215-ITAT-2019(Mum)

Elsevier Information Systems GmbH vs. DCIT

ITA No.1683/Mum/2015

A.Y.: 2011-12

Dated: 15th April, 2019

Vishakhapatnam ITAT –Appellant Assessee a Seafarer - Working in Marine Shipping Company – Was a Non-Resident in India in AY 2015-16 – Stay In India Less Than 182 Days – Rendered Services Outside India – Under The Head Salary Income – Salary Received In NRO Account in India – Have No Permanent Address or Bank Account Outside India – Considering the facts and circumstances of the case and also by considering the CBDT Circular No. 13/2017, dated 11/04/2017 and by following the various judicial pronouncements, ITAT found no infirmity in the order passed by the Id. CIT(A) – Thus, appeal filed by the Revenue is dismissed.

(FCA Sulabh Lohia)

International Taxation

CBDT said that India has ratified the Multilateral Convention to Implement Tax Treaty Related Measures (Mli) To prevent Base Erosion And Profit Shifting (BEPS), which will pave way for amendments to Double Taxation Avoidance Agreements (DTAA) with the countries signatories to the Convention To Plug Revenue Leakages. “On 25th June, 2019, India Has Deposited The Instrument Of Ratification To OECD, Paris Along With Its Final Position In Terms Of Covered Tax Agreements (CTAS), Reservations, Options And Notifications Under The Mli, As A Result Of Which Mli Will Enter Into Force For India On October 1, 2019 And Its Provisions Will Have Effect On India’s Dtaas From FY 20-21 Onwards.

(CA Saurabh Jain)

INDIRECT TAX UPDATES

GST UPDATES

a) **GSTN has enabled new functionality by linking GST Registration process with SPICe-AGILE Form of MCA**

GSTN has enabled a new functionality on June 21, 2019, that Normal and Composition taxpayer can now apply for GST registration while applying for incorporation of the company on MCA Portal. Thus, once a new company applies for its incorporation/registration with MCA, they can also apply for registration under GST, in SPICe-AGILE form, by furnishing additional information in an addendum.

b) **GST Annual Return & GST Audit date extended**

GST Council has extended GST Annual Return (i.e. GSTR-9 & GSTR-9A) date & GST Audit (GSTR-9C) date from 30th June, 2019 to 31st August, 2019.

c) **Efforts to further simplify GST to continue, says President Ram Nath Kovind**

President Ram Nath Kovind said on June 20, 2019 that:

- the Government will continue to take steps for further simplification of the Goods and Services Tax (GST).
- Addressing the joint sitting of both Houses of Parliament, the President said the indirect tax system is being made simple and effective. "With the implementation of GST, the concept of 'One country, One tax, One market' has become a reality. Efforts to further simplify the GST will continue," he said.
- He said that keeping in mind the interest of traders, accident insurance of up to Rs 10 lakh will also be provided to all traders registered under GST.
- Kovind also said for small traders that the Government will soon constitute the National Traders Welfare Board and formulate a National Retail Trade Policy to promote retail business.

d) **Restaurant & Sweetshop operated from same premises are not 'Composite Supplies' of restaurant services**

The Hon'ble AAAR, Uttarakhand upholds that when the goods such as sweets, namkeens, cold drinks, and other edible items are supplied to customers in the restaurant as takeaway from the restaurant counter and which are being billed under restaurant sales head should fall under 'composite supply' with restaurant service is the principal supply. Since the supply of food, in this case, is naturally bundled with the restaurant service. The taxability of all such goods supplied to or through the restaurant will be governed by the principal service i.e. restaurant service and GST rate with applicable conditions will also be applicable to all such goods also. Input credit will not be allowed in this case.

Further, all goods which are supplied to customers through sweetshop counter have no connection with restaurant service. Anyone can come and purchase any item of any quantity from the counter without visiting the restaurant. The billings of such sales are also done separately. These sales do not satisfy the basic requirement of 'composite supply' i.e. 'being naturally bundled and supplied in conjunction with each other'. These sales are completely independent of restaurant activity and will continue even when the restaurant is closed,

either temporarily or permanently. Hence such sales will be treated as a supply of goods with applicable GST rates on the items sold. The input tax credit will be allowed on such supply.

e) **Miscellaneous:**

- i) GST department has extended by three months till July 31, 2019 the deadline for service providers with turnover of up to Rs 50 lakh to opt for the composition scheme and pay 6% GST. The GST Council has permitted such service providers to opt for composition scheme and pay taxes at reduced rate of six per cent beginning April 1, 2019. This is against the higher rates of 12 and 18 per cent levied for most services under GST.
- ii) Around 3,500 exporters are under government's lens whose customs records are not matching with their income tax returns.
- iii) Hostel accommodation provided by Charitable Trust charging less than Rs.1,000 per day is exempt from GST.
- iv) CBIC released IGST refunds mechanism to verify the IGST payments for goods exported.
- v) Benefits from lower GST rate has to be passed on to home buyers: National Anti-Profitteering Agency (NAA).

(CA Puneet Goel)

FEMA UPDATES

Foreign Exchange Management Act 1999 'FEMA' and Other RBI Regulations – April – June 2019 Updates
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April 11, 2019 – A.P. (DIR Series) Circular No 29 of Reserve Bank of India 'RBI' – Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2015 - Opening of Foreign Currency Accounts by Re-insurance and Composite Insurance brokers

Reference to RBI circular, the extant regulations wrt foreign currency accounts in India by Person Resident in India (PRI) have been reviewed and it is decided that IRDA registered re- insurance and composite insurance brokers can open and maintain a non-interest bearing foreign currency account with AD bank in India. This account can be used only for those transactions, which are undertaken in their ordinary business course.

June 28, 2019 – A.P. (DIR Series) Circular No 37 of Reserve Bank of India 'RBI' – Annual Return on Foreign Liabilities and Assets Reporting by Indian Companies

Reference to RBI circular, to enhance the security-level in data submission and to improve the data quality, it is proposed to replace the present email-based reporting system for submission of the FLA return by the web-based system online reporting portal.

FEMA FAQ SERIES

Accounts in India by Non-residents – Updated As On April 25, 2019 by www.rbi.org.in

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.

Q1. Who is an NRI?

Answer: A 'Non-resident Indian' (NRI) is a person resident outside India who is a citizen of India.

Q2. Who is a PIO?

Answer: A 'Person of Indian Origin (PIO)' is a person resident outside India who is a citizen of any country other than Bangladesh or Pakistan or such other country as may be specified by the Central Government, satisfying the following conditions:

- a. Who was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or
- b. Who belonged to a territory that became part of India after the 15th day of August, 1947; or
- c. Who is a child or a grandchild or a great grandchild of a citizen of India or of a person referred to in clause (a) or (b); or
- d. Who is a spouse of foreign origin of a citizen of India or spouse of foreign origin of a person referred to in clause (a) or (b) or (c)

A PIO will include an 'Overseas Citizen of India' cardholder within the meaning of Section 7(A) of the Citizenship Act, 1955. Such an OCI Card holder should also be a person resident outside India.

Q3. Can persons resident in Nepal and Bhutan have accounts in India?

Answer: Persons resident in Nepal and Bhutan can open Indian rupee accounts with an authorised dealer in India.

For more faqs kindly refer:

<https://www.rbi.org.in/Scripts/FAQView.aspx?Id=52>

(FCA Sulabh Lohia)

OTHER UPDATES

COMPANY LAW UPDATES

DIR KYC date will be extended and method of doing KYC will be updated as under:-

- If all details of Director are same as on MCA portal, then web-based KYC verification.
- If email / mobile number is required to be updated_ then DIR-3 KYC based verification.
- If any other info to be updated, then first file DIR-6 and then DIR-3 KYC based verification.

DIR-3 KYC: Annual Affair:

MCA clarified that this form has to be filled annually. New form will be deployed & due date will be within 30 days from deployment date.

Shifting of Registered office from one place to another

The MCA has notified the Companies (Incorporation) Second Amendment Rules, 2019 which shall come into force from the date of notification i.e 06-03-2019. Through this amendment a much sought relief has been granted to the companies looking for the shifting of Registered Office from one State to another. Presently, for shifting of registered office from one state to another, a notice is required to be given in 2 newspapers i.e One in English daily having WIDEST circulation in district where registered office is situated and another in regional language. MCA has made amendment in Rule 30 of Company (Incorporation) Rules wherein the word 'Widest Circulation' is replaced with 'Wide Circulation'. Another amendment is to extent the benefit of zero registration fee for companies having capital upto of Rs. 15 lakh, instead of Rs. 10 Lakh for all SPICe form to be filed on or after 18th March, 2019 for incorporation of new companies.

Others

- MCA has notified the further amendments to Schedule VII of the Companies Act,2013, w.r.t inclusion of new areas within the CSR activities which shall come into force on the date of its publication in the Official Gazette i.e 30-05-2019.
- MCA notifies Form PAS-6 'Reconciliation of Share Capital Audit Report' vide Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2019 *(All information shall be furnished for the half year ended 30th September and 31st March in every financial year for each ISIN separately)*
- MCA fees for Form STK-2 is increased from Rs. 5,000 to Rs. 10,000 w.e.f. 10.05.2019
- Annual filing is made mandatory before filing STK-2
- Statement of Accounts is to be given in Form STK- 8.
- The llp restricted to use the proposed objects as manufacturing or allied activities are now free to use it as their objects with an immediate effect from now onwards...

Consequences on filing of E-form MGT-14 After due date

As per sec-117, a copy of resolution or any agreement, in respect of matters specified in shall be filled with the registrar within 30Days of passing or making thereof in a such manner and with such fees as may be prescribed

Penalty in case of non filing within due days as may be prescribed

Such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of rupees 500 for each day after the first during which such failure continues, subject to a maximum 25lakhs ruppees and

Every officer of the company who is in default including liquidator of the company, if any shall be liable to a penalty of fifty thousand rupees and in case of continuing failure with further penalty of 500ruppes each day after the first during which such failure continues, subject to a maximum of 5lakhs rupees.

(Himani Saxena – MBA Finance)

IND-AS

IFRS 16 (Globally), Ind AS 116 (India) & ASC 842 (USGAAP)

Ind AS 116 replaces the earlier standard on leases i.e Ind AS 17 and is effective from Accounting period beginning from 1st April 2019. Its counterpart IFRS 16 and ASC 842 is effective from Accounting period beginning from 1st January 2019.

The new standard will require lessees to recognize most leases on their balance sheets. A lessee is required to recognize a right-of-use asset representing its right to use the underlying leased asset and a lease liability representing its obligation to make lease payments. The earlier standard on leases i.e IAS 17/Ind AS 17 required classifying leases as finance lease and operating lease. Lessees will use a single accounting model for all leases, with limited exemptions.

Lease

Under the new standard, a lease is a contract, or part of a contract, that conveys the right to use an asset (the underlying asset) for a period of time in exchange for consideration.

To be a lease, a contract must satisfy below conditions/aspects of lease:

- a) The contract conveys the right to control the use of an Identified Asset - Implied /Explicit in the contract
- b) The lessor should not have substantive substitution right
- c) The lessee obtain substantially all of the economic benefits from the use of the asset
- d) Who has the right to direct the use of the asset i.e who takes the how and for what purposes decisions is an important factor to see whether it is a lease contract. If the Lessee has a right to direct the use of asset, then it is a lease contract. The lessor may have protective right with respect to the asset.

In all these three set of standards, one of the important aspect of application of lease standards is to identify that at which date the contract is evaluated/identified as a lease (Inception date). Once the contract is identified as a lease contract then the accounting will start from a particular date (Commencement date).

Ind AS 116 requires customers and suppliers to determine whether a contract is or contains a lease at the inception of the contract.

Inception Date/Commencement Date

Inception date is defined as the earlier of the (a) date of a lease agreement and (b) date of commitment by the parties to the principal terms and conditions of the lease.

Commencement date is defined as the date on which a lessor makes an underlying asset available for use by a lessee. Where, the 'underlying asset' is an asset that is the subject of a lease, for which the right to use that asset has been provided by a lessor to a lessee.

The timing of when lease payments begin under the contract does not affect the commencement date of the lease.

Hence inception date is the date when an entity shall assess if the contract is or contains lease. While the commencement date is relevant because on that date:

- (i) a lessee (except where the exemption of short-term lease or low-value asset is taken) initially recognises a lease liability and related Right Of Use Asset on the commencement date
- (ii) a lessor (for finance leases) initially recognises its net investment in the lease on the commencement date.

Right of Use Assets

For calculating Right of Use assets and corresponding leasehold obligation, one of the critical and one of the first step for calculation is determination of *lease period*.

In simple terms, *Lease term* is the aggregate of the following:

- a) Non-Cancellable Period
- b) Periods covered by an option to EXTEND the lease if the lessee is reasonably certain TO exercise that option
- c) Periods covered by an option to TERMINATE the lease if the lessee is reasonably certain NOT TO exercise that option.

The lease term begins at the lease commencement date. The lease term starts when the lessor makes the underlying asset available for use by the lessee and includes any rent free periods provided.

Accounting

1. Lessor Accounting: The Lessor accounting will be primarily remain unchanged.

(a) The earlier classification i.e Operating Lease and finance lease will continue. Lease is classified as finance lease if it transfers substantially all the risks and rewards incidental to ownership of an underlying asset. A lease other than finance lease is an operating lease. The lease classification test is same as of Ind AS 17.

(b) The straight lining of lease rentals will be required over the non cancellable lease term (In Ind AS 17, a carve out has taken that straight lining is not required if the escalation is in the nature of compensating inflation which is not there in Ind AS 116)

2. Lessee Accounting: a) No separate classification of operating lease and finance lease being a single lease model

(b) The Lessee is required to recognise Right of Use asset and Lease obligation for all leases except to the limited exemption.

(c) lessee needs to capitalised initial direct costs and estimated cost of dismantling as well.

Exemption

1. Short term leases: Under IFRS 16 / Ind AS 116 / ASC 842, Lessees can elect, by class of underlying asset to which the right of use relates, to apply a method similar to IAS 17/ Ind AS 17 operating lease accounting, to leases with a lease term of 12 months or less and without a purchase option.

2. Low value exemption: This option is not given in ASC 842 but is allowed in IFRS 16 and Ind AS 116. Lessees can elect, on a lease-by-lease basis, to apply a method similar to IAS 17/ Ind AS 17 operating lease accounting, to leases of low value assets (e.g., tablets and personal computers, small items of office furniture and telephones). Under IFRS, the basis of conclusion suggest an indicative value of USD 5000 for an underlying asset when new. Under Ind AS 116, no threshold has been given for low value items.

Due Dates

Statutory Compliance Due Dates - For the month/Quarter ended on 30th June 2019

Following are the statutory due dates during the month July 2019:-

S No.	Particulars	Date
1.	TDS/TCS Liability Deposit For the month of June	July 07, 2019
2.	GSTR-1 for the month of June (Return of outward supply whose turnover exceeds 1.5cr)	July 11, 2019
3.	FLA Report (Return on Foreign Assets & Liabilities)	July 15, 2019
4.	PF/ESI Deposit for the month June	July 15, 2019
5.	GSTR 4 Return filing due date (for previous quarter by composition dealer)	July 18, 2019
6.	GSTR-3B for the month of June (Summary Return)	July 20, 2019
7.	TDS Filling For 1 st Quarter (April-June)	July 31, 2019
8.	GSTR 1 for the 1 st Quarter (Return of outward supply whose turnover upto 1.5 Crore)	July 31, 2019
9.	Income tax return (Other than company and tax audit cases)	July 31, 2019
10.	Form 67 Claiming foreign tax credit offered for previous year 2018-19	July 31, 2019

(CA Saurabh Jain)