

August 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 has exempted, a non-resident, not being a company or a foreign company, from the requirement of furnishing a return of income under Section 139(1) of the Income Tax Act from Assessment Year 2019-20 onwards.
- CBDT has clarified that small start-ups with turnover up to Rs. 25 crore will continue to get the promised tax holiday as specified in Section 80-IAC of the Income Tax Act, 1961, which provides deduction for 100 per cent of income of an eligible start-up for 3 years out of 7 years from the year of its incorporation.
- Task force on direct tax code has recommended abolishing the dividend distribution tax while retaining the longterm capital gains tax and securities transaction tax, a source in the know of the matter said.
- CBDT has withdrawn enhanced surcharge on tax payable on the transfer of certain assets. In order to encourage investment in the capital market, it has been decided to withdraw the enhanced surcharge levied by Finance Act, 2019.
- CBDT Clarification on applicability of Tax Deduction at Source on cash withdrawals. 2% TDS on cash withdrawals of more than 1 crore in aggregate from a bank account. Applicable from 1 September 2019. Cash withdrawals done from 1 April 2019 till 31 August 2019 shall be counted for TDS purposes.

Case Law Updates

LTTCG from penny stocks cannot be treated as bogus if documentation is in order and no fault found by Assessing Officer. [Chandra Prakash Jhunjhunwala Vs DCIT (ITAT Kolkata) – August 09, 2019]

Held that the assessee was a regular investor in shares and securities. The shares were purchased and sold through registered broker. The payments were received through proper banking channels. The purchase and sale transactions were subjected to Securities Transaction Tax, Service Tax, Brokerage Charge and stamp duty. Therefore, the LTTCG cannot be treated as bogus.

Gift received by assessee from 'HUF', being its member, was a capital receipt in his hands and was not exigible to income tax as in case of individual, the HUF has not been included in the definition of relative in explanation to section 56(2) (vii): [ITAT, Chandigarh; Pankil Garg Vs. PCIT, ITAT Chandigarh – August 03, 2019]

Held that in the case of an individual, a "HUF" is not a "relative" and that while a gift by the individual to the HUF is exempt, a gift from the HUF to its member is taxable u/s 56(2)(vii) is not correct. S. 56 (2) (vii) provides that the members of the 'HUF' are to be taken as "relatives". The converse is not provided because on first principles, amounts received by a member from the 'HUF' cannot be said to be income of the member eligible to taxation. Terming by the PCIT of decisions of the Tribunal as "incorrect" tantamounts to judicial indiscipline and will lead to chaos.

(CA Reshu Agrawal)

INTERNATIONAL TAX UPDATE

International Taxation – August 2019 Updates

Pune ITAT – DCIT Intl Tax Vs M/s Faurecia Automotive Holding and Faurecia Interior Industries Sections 9(1)(vi), 9(1)(vii) and India-France DTAA – Reimbursement of Expatriate Cost and Payment towards Certain Services does not qualify as FTS or royalty

M/s. Faurecia Automotive Holding (assessee) is a tax resident of France. Assessee has seconded an expatriate to Faurecia India. For the same, assessee received some payment from Faurecia India against reimbursement of salary cost. The payments also include an amount towards rendition of certain services. The AO considered the reimbursement amount as Fee for Technical Services (FTS). AO considered that assessee rendered technical services to Faurecia India through technical staff. Further, the AO considered the other part of payment ie rendition of certain services, as Royalty. Hence, the AO applied sections 9 9(1)(vi) and 9(1)(vii) of the Income Tax Act, 1961.

ITAT said that the payments are not taxable in India. ITAT applied 'Most Favored Nation' clause of Indo-France DTAA and held it not taxable in India.

Mumbai ITAT – DCIT Vs M/s Rackspace US Inc – Income From rendering Cloud Hosting services to Indian customers Not Taxable In India

ITAT held that income earned by Rackspace, US Inc does not qualify as Royalty or Fee for Technical Service. ITAT held that the income earned by assessee falls under Business Income category, and since there is no Permanent Establishment in India, hence, there is no taxability in India. ITAT is further held that provisions of DTAA between Indo-US DTAA will prevail and hence retrospective amendment provision in royalty section of Income Tax Act will not come into picture.

(FCA Sulabh Lohia)

International Taxation

- Government notifies Multilateral Convention to implement Measures to prevent BEPS (Base Erosion and Profit Sharing) (Notification No. 57/2019 dated 9th August 2019)
- CBDT notifies protocol amending India- Spain DTTA (Notification no 58/2009 dated 27th August 2019)

(CA Saurabh Jain)

INDIRECT TAX UPDATES

GST UPDATES

a) GSTR-9/ 9A (i.e. GST Annual Return) and GSTR-9C (Reconciliation Statement for GST Audit) due date extended till Nov 30, 2019

The CBIC vide Removal of Difficulty Order No. 7/2019 – Central Tax dated August 26, 2019 extended the last date for filing of Annual Return in Form GSTR-9 (normal taxpayers)/ GSTR-9A (composition suppliers) and Reconciliation Statement in Form GSTR-9C for the financial year 2017-18 from 31stAugust, 2019 to 30thNovember, 2019.

b) Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019 to be commenced from September 1, 2019

- In the Union Budget 2019-20, the Hon'ble Finance Minister announced the SabkaVishwas - Legacy Dispute Resolution Scheme, 2019.
- The Scheme has now been notified and will be operationalized from 1stSeptember 2019. The Scheme would continue till 31stDecember 2019.
- The government expects the Scheme to be availed by a large number of taxpayers for closing their pending disputes relating to legacy Service Tax and Central Excise cases that are now subsumed under GST so they can focus on GST.
- The two main components of the Scheme are dispute resolution and amnesty.
- The dispute resolution component is aimed at liquidating the legacy cases of Central Excise and Service Tax that are subsumed in GST and are pending in litigation at various forums.
- The amnesty component of the Scheme offers an opportunity to the taxpayers to pay the outstanding tax and be free of any other consequence under the law. The most attractive aspect of the Scheme is that it provides substantial relief in the tax dues for all categories of cases as well as full waiver of interest, fine, penalty, In all these cases, there would be no other liability of interest, fine or penalty. There is also a complete amnesty from prosecution.
- Government urges the taxpayers and all concerned to avail the Sabka Vishwas - Legacy Dispute Resolution Scheme, 2019 and make a new beginning.

c) Bring GSTR with invoice matching for all by January: Bengal FM

West Bengal finance minister Amit Mitra has sought a probe into rampant goods and services tax evasion. In a letter to finance minister Nirmala Sitharaman, dated August 27, Mitra also sought the introduction of the new return system with invoice matching by October, 2019 for large taxpayers and by January, 2020, for all taxpayers. Mitra further wrote that he had forewarned that giving up invoice matching would lead to widespread tax frauds and hawala transactions.

d) Miscellaneous:

- i) GST Council to meet in Goa on September 20, 2019; no proposal to lower GST rates.
- ii) CBIC waived the requirement to furnish declaration in FORM ITC-04 (a form which has to be furnished by registered manufacturers, showing the details of inputs or capital goods dispatched or received from a job worker in a particular quarter) for the period FY 2017-18 & FY 2018-19.
- iii) The AAR, Tamil Nadu in the case of M/s Chennai Port Trust has held that the amounts received on or after July 1, 2017 towards interest, late fees, penalty relating to services of lease/rent, due to delayed payment of consideration for those services rendered by Applicant before July 1, 2017, are liable to GST.
- iv) Punjab Finance Minister Manpreet Singh Badal said on August 29 there were flaws in the Goods and Services Tax and called for GST 2.0 by redesigning and revisiting it in its entirety.
- v) CBIC extends officer interface facility to resolve invoice mismatches for shipping bills filed upto July 31, 2019.
- vi) State bench of GST Appellate Tribunal to be set up in Hisar, Haryana Finance Minister.
- vii) Allahabad HC: Goods sold from duty free shops is to be treated as 'export of goods.
- viii) Authority of Advance Ruling of Kerala has held that Multiple companies functioning from the same address shall be allowed to take separate GST registration.

(CA Puneet Goel)

FEMA UPDATES

Foreign Exchange Management Act 1999 'FEMA' and Other RBI Regulations – August 2019 Updates

Aug16, 2019 – A.P. (DIR Series) Circular No 06 of Reserve Bank of India 'RBI' – Acceptance of Deposits Via Commercial Papers

Clause 6(3) of RBI Regulation, Foreign Exchange Management (Deposit) Regulations, 2016, provides about the terms where a Company may accept deposits via Commercial Paper. On review of this clause vis-à-vis other Statutes, RBI observed that other statutes exclude receipt via Commercial Paper from the definition of Deposits. RBI also considered that Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations 2017 already allow investments in Commercial Papers issued by the Indian Companies.

Therefore, with a view to bring in consistency in statutory provisions/regulations relating to Commercial Papers (CPs), RBI advise the deletion of clause 6(3) from the FEMA Deposit Regulation vide GOI Notification No. FEMA 5(R)(2)/2019-RB dated July 16, 2019.

FEMA FAQ SERIES

Govt Securities Market in India – Updated As On Aug 19, 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 there under may be referred to.

Government Securities Market in India – A Primer

1. What is a Bond?

A bond is a debt instrument in which an investor loans money to an entity (typically corporate or government) which borrows the funds for a defined period of time at a variable or fixed interest rate. Bonds are used by companies, municipalities, states and sovereign governments to raise money to finance a variety of projects and activities. Owners of bonds are debt holders, or creditors, of the issuer.

1.2. What is a Government Security (G-Sec)?

A Government Security (G-Sec) is a tradeable instrument issued by the Central Government or the State Governments. It acknowledges the Government's debt obligation. Such securities are short term (usually called treasury bills, with original maturities of less than one year) or long term (usually called Government bonds or dated securities with original maturity of one year or more). In India, the Central Government issues both, treasury bills and bonds or dated securities while the State Governments issue only bonds or dated securities, which are called the State Development Loans (SDLs). G-Secs carry practically no risk of default and, hence, are called risk-free gilt-edged instruments.

For more faqs kindly refer:

<https://www.rbi.org.in/Scripts/FAQView.aspx?Id=79>

(FCA Sulabh Lohia)

OTHER UPDATES

Due Dates

Statutory Compliance Due Dates - For the month ended on 31st August 2019

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

<u>S No.</u>	<u>Particulars</u>	<u>Date</u>
1.	TDS/TCS Liability Deposit For the month of August	Sept 07, 2019
2.	GSTR-1 for the month of June (Return of outward supply whose turnover exceeds 1.5cr)	Sept 11, 2019
3.	Advance Tax Second Installment	Sept 15, 2019
4.	PF/ESI Deposit for the month August	Sept 15, 2019
5.	GSTR-3B for the month of August (Summary Return)	Sept 20, 2019
6.	Income Tax Return {for companies (other than companies liable to file report u/s 92E) and tax audit assessee} and Tax Audit	Sept 30, 2019
7.	KYC of Director's DIN	Sept 30, 2019
8.	ROC Form BEN-2	Sept 30, 2019

(CA Saurabh Jain)