

July 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 UPDATES

Due Date for filing of Income Tax Return for Individual/HUF extended from July 31, 2019 to August 31, 2019.

Budget 2019 - Highlights

Hereunder are highlights of India Budget 2019 presented by Smt Nirmala Sitharaman:

- Increase in surcharge from 15% to 25% on person having income between Rs 2 crore to Rs 5 crore and 37% on income above Rs 5 crore.

- New Section 80EEA inserted to provide deduction in respect of interest up to 1,50,000 on loan taken on residential property from any financial institution provided that the stamp duty of value shall not exceed 45 lakhs, loan should have been sanctioned in FY 2019-20 and person should not possess any other residential house on the date of sanction of loan.

- Deduction under section 80CCD extended from 10% to 14% of total contribution made by the Central Government or any other employer.

- New Section 194M inserted for TDS deduction on contractor and professional services received by any individual/HUF for more than rupees 50 lakh in a year. TDS shall be deducted at the rate of 5%. TDS compliance can be done by the PAN itself .i.e. TAN not required.

- New Section 194N is inserted to provide TDS deduction at the rate of 2% by bank wherein the cash withdrawal in any account exceeds 1 crore in a year.

- NRIs have been given relaxation to apply Adhaar Number on the basis of their arrival in India. Hence, condition of stay in India for 180 days will no more be required for NRIs to apply for Adhaar Card.

- Budget has proposed to make Income Tax Return (ITR) filing compulsory for persons who deposit over Rs 1 crore in a current account in a year, spend over Rs 2 lakh on foreign travel or have an annual electricity bill of more than Rs 1 lakh.

(CA Reshu Agrawal)

INTERNATIONAL TAX UPDATES

International Taxation – July 2019 Updates

Delhi ITAT – Adidas India Marketing Pvt Ltd Vs ITO – July 29, 2019

The ITAT quashed the addition made by the Assessing Officer of Rs 90 Crores in the hands of Adidas India, on account of insurance compensation pertaining to loss due to fire, paid to associate enterprises 'Adidas AG, Germany'. ITAT held that the insurance receipt by the German Parent towards erosion of financial interest in Indian subsidiary company is not taxable. Hence, appeal is allowed to the assessee Adidas India Marketing Pvt Ltd.

Mumbai ITAT – Cloud Computing Services Is Not Royalty Under DTAA – July 2019

In a recent judgement, Mumbai ITAT held that charges received by the US Company from Indian customers in relation to cloud computing services are not in the nature of Royalty as per the Indo US DTAA. ITAT held that the amendment in the Income Tax Law will not have any impact on the Double Tax Avoidance Agreement between the two countries. Hence, DTAA will prevail, where this payment cannot be categorized as Royalty.

(FCA Sulabh Lobia & CA Saurabh Jain)

INDIRECT TAX UPDATES

GOODS AND SERVICE TAX (GST) UPDATES

a) Key highlights of 36th GST Council Meeting

The 36th GST Council Meeting was held via Video Conference under the chairmanship of Union Finance & Corporate Affairs Minister Smt. Nirmala Sitharaman. The Council has recommended the following:

i) GST rate related changes on supply of goods and services:

- The GST rate on all electric vehicles be reduced from 12% to 5%.
- The GST rate on charger or charging stations for Electric vehicles be reduced from 18% to 5%.
- Hiring of electric buses (of carrying capacity of more than 12 passengers) by local authorities be exempted from GST.
- These changes shall become effective from 1st August, 2019.

ii) The last date for furnishing statement containing the details of the self-assessed tax in Form GST CMP-08 for the quarter April, 2019 to June, 2019 (by taxpayers under composition scheme), to be extended from July 31, 2019 to August 31, 2019.

b) Naturopathy, Yoga, Ayurveda qualify as health care, exempt from GST

Reiterating that services like Naturopathy, Yoga, Ayurveda fall under health care, a recent Authority of Advance Ruling ('AAR') verdict has provided parity among India's traditional system of medicines and allopathy-based system. It also states that such 'health care services' rendered at clinical establishments by authorized medical professionals would be exempt from GST.

c) New functionality for utilization of IGST Credit, implemented in Form GSTR 3B only

GSTN has enabled new functionality in which taxpayers filing Form GSTR 3B will have to utilize IGST credit towards payment of Integrated tax, and the amount remaining, if any, may be utilised towards the payment of Central tax and State tax or Union territory tax, in any order.

This can be done provided that the input tax credit on account of Central tax, State tax or Union territory tax shall be utilised towards payment of Integrated tax, Central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of Integrated tax has first been utilised fully.

d) Miscellaneous:

- i) Flat owners will have to pay GST at 18% if their monthly contribution to RWA exceeds Rs 7,500. RWAs are required to collect GST on monthly basis by way of supply of services and goods exceeds Rs 20 lakhs.
- ii) Kerala Flood Cess introduced by state Government of Kerala for accumulating funds for re-developing Kerala on account of devastating floods in the state in August 2018, applicable from 1st July 2019.
- iii) Gujrat HC held MoF Circular untenable and allowed IGST refund despite of higher 'drawback' claim
- iv) State Finance and Industries Minister Amit Mitra has urged Union Finance Minister Nirmala Sitharaman to correct the anomalies in the GST structure for the wagon business.
- v) BJYM, the youth wing of the BJP urged Finance Minister Nirmala Sitharaman to review the issue of 18% GST on competitive exam coaching centers, private tuition centers, and other self-styled educational institutions.
- vi) The Gems and Jewellery industry has heaved a sigh of relief, as the finance ministry has announced no IGST will be levied on Gems and Jewellery carried outside of the country for exhibition purpose.

(CA Puneet Goel)

FEMA UPDATES

Foreign Exchange Management Act 1999 'FEMA' and Other RBI Regulations – July 2019 Updates – FCA Sulabh Lohia

July 30, 2019 – A.P. (DIR Series) Circular No 04 of Reserve Bank of India 'RBI' – External Commercial Borrowing (ECB) – Rationalisation of End Use Provisions

Reference to present RBI Regulations, use of ECB is restricted. ECB cannot be utilized for the purposes of working capital requirement, general corporate purposes and repayment of Rupee loans etc. Reference to various feedback received from various stakeholders and also to further liberalise the ECB framework, RBI has decided, to relax the end-use restrictions in relation to ECB.

Hence, now onwards the eligible borrowers will be allowed to raise ECBs for the following purposes (ECB raised from recognised lenders, except foreign branches/ overseas subsidiaries of Indian banks):

- **Working Capital and General Corporate Purposes** - ECBs with a minimum average maturity period of 10 years can be used for working capital and general corporate purposes. NBFCs are also permitted.
- **Repayment of Rupee Loan** - ECBs with a minimum average maturity period of 7 years can be availed by eligible borrowers for repayment of Rupee loans availed domestically for capital expenditure as also by NBFCs for on-lending for the same purpose.
- **Repayment of Rupee Loans** - It is permitted that eligible corporate borrowers can avail ECB for repayment of Rupee loans, which is availed domestically for capital expenditure in infrastructure and manufacturing sector if classified as NPA or SMA-2, under any one time settlement with lenders. Lender banks are also allowed to sell, through assignment, such loans to eligible ECB lenders, except foreign branches/ overseas subsidiaries of Indian banks, provided, the resultant external commercial borrowing complies with all-in-cost, minimum average maturity period and other relevant norms of the ECB.

For the purposes of above end-users, the prescribed minimum average maturity provision will have to be strictly complied with under all circumstances.

FEMA FAQ SERIES

External Commercial Borrowings (ECB) and Trade Credits – Updated As On May 29, 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. Where can one get the details of extant External Commercial Borrowings (ECB) and Trade Credits (TC) framework?

Answer: [Master Direction No. 5 on 'External Commercial Borrowings, Trade Credits and Structured Obligations dated March 26, 2019](#) may be referred to for guidance on the extant

framework on ECB and TC. ECBs and TCs raised under the prior frameworks should continue to be in compliance with the corresponding guidelines applicable at the time of availing the ECBs and TCs.

Q2. Do FCNR (B) loans given by AD Category I banks come under the ECB framework?

Answer: No, foreign currency loans given domestically by AD Category I banks out of the proceeds of FCNR (B) deposits do not come under the ECB framework.

Q3. What precautions have to be taken before raising loan from non-residents?

Answer: Borrowings from overseas have to be in compliance with the applicable ECB guidelines / provisions contained in the Foreign Exchange Management (Borrowing and Lending in Foreign Exchange) Regulations, 2018 issued vide [Notification No. FEMA 3 \(R\)/2018-RB dated December 17, 2018](#), as amended from time to time.

Q4. Whose responsibility is it to ensure compliance with ECB guidelines?

Answer: The primary responsibility for ensuring that the borrowing is in compliance with the applicable ECB guidelines is that of the borrower concerned. Structures which bypass/ circumvent ECB guidelines in any manner and / or raising borrowings in any other manner which is not permitted / disguising borrowing under the wrap of other kind of transactions and / or contravening provisions of Foreign Exchange Management (Borrowing and Lending in Foreign Exchange) Regulations, 2018 would also invite penal action under FEMA.

For more faqs kindly refer:

<https://www.rbi.org.in/Scripts/FAQView.aspx?Id=120>

(FCA Sulabh Lohia)

COMPANY LAW UPDATES

1) In exercise of the powers conferred under Section 419 of the Companies Act, 2013, the President, National Company Law Tribunal has constituted Benches for the purpose of exercising and discharging the Tribunal's powers and functions across the country.

As per the Order dated July 25, all members shall join their respective place of posting on or before July 29, 2019.

Recently, the Ministry of Corporate Affairs had notified the place of posting for 12 Judicial Members and 18 Technical Members to various Benches of the National Company Law Tribunal.

While New Delhi shall have six Division Benches including the Principal Bench comprising Chief Justice (Retd.) M M, Kumar, President and SK Mohapatra, Member (Technical). Mumbai shall have five Division Benches.

Ahmedabad, Chennai, and Kolkata shall have two Division Benches each.

Jaipur, Cuttack, Kochi, Guwahati, Bengaluru, Allahabad shall have one Division Bench each.

There shall be two Division Benches at Hyderabad and one Single Bench at Amravati.

2) Companies their Registered office is in the State of Haryana, now will be managed by Registrar of Companies, Chandigarh.

3) Director KYC -

Director (appointment & qualification) 3rd Amendment Rules, 2019

DIR KYC due date will be 30th September

Late Fee - INR 5,000/-

1. If all details of Director are same as on MCA portals per last DIR-3KYC, then web-based KYC verification.
2. In other cases e-form DIR-3 KYC based verification.
3. As per the format of web based KYC format, OTP requirements are not there.

4) The Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2019

1. With effect from 10th May 2019, MCA fees for filing Form STK-2 (form for strike off a company) shall be Rs. 10,000/- instead of Rs. 5,000/-
2. No application in Form No. STK-2 shall be filed by a company unless it has filed overdue returns in Form No. AOC-4 (Financial statement) or AOC-4 XBRL, as the case may be, and Form No. MGT-7 (Annual Return), up to the end of the financial year in which the company ceased to carry its business operations.
3. In case a company intends to file Form No. STK-2 after the action under sub-section (1) of section 248 has been initiated by the Registrar, it shall file all pending overdue returns in Form No. AOC-4 (Financial statement) or AOC4 XBRL, as the case may be, and Form No. MGT-7 (Annual Return) before filing Form No. STK-2.
4. Form No. STK-8 format for statement of account is prescribed for filing with Form STK-2.
5. Once notice in Form No STK-7 has been issued by the Registrar Pursuant to the action initiated under sub-section (1) of section 248, a company shall not be allowed to file an application in Form No. STK-2.

(Himani Saxena – MBA Finance)

OTHER UPDATES

UPCOMING DUE DATES - AUG 2019

S No	Particulars	Due Date
1.	TDS/TCS Liability Deposit for the month of July	07-Aug-2019
2.	GSTR – 1 (GST filing of returns by registered person with aggregate turnover more than 1.50 crores.)	11-Aug-2019
3.	PF/ESI for the month of July	15-Aug-2019
4.	GSTR-3B Return for the month of July (Summary Return.)	20-Aug-2019
5.	Income Tax Return (for individual and non-corporate (who are not subject to tax audit)	31-Aug-2019
6.	GST Annual Return for FY 2017-2018	31-Aug-2019
7.	CMP-08 Return filing extended due date (GST return filing for composition dealer of 1 st Quarter.)	31-Aug-2019

(CA Saurabh Jain)