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CBDT Demands 100% disposal of Appeals by Appeal Commissioners of Income Tax

The CBDT has sent the clear signal in the Central Action Plan 2019-20 that it will no longer tolerate the lethargy of CsIT(A) in the matter of disposal of appeals. It has pointed out that huge tax demands are locked up in these appeals. It has stipulated that 100% of appeals involving demands of Rs. 50 crore should be disposed off by the CsIT(A) before the specified time limit

▲ **Rs. 5.71 lakh crore locked up in CsIT(A) appeals**

The anxiety of the CBDT regarding the slow pace of disposal of appeals is understandable because a colossal sum of Rs. 5.71 lakh crore is locked up in these appeals. Of this, demand of Rs. 1.15 lakh crore has been stayed by the Courts and the ITAT.

▲ **Huge pendency of appeals for more than 3 and 5 years**

A clear indication of the gross inefficiency of the CsIT(A) is the pendency of appeals for more than three and five years. As of 1st April 2019, there are 22,156 appeals pending for more than 5 years. There are more than 66,401 appeals pending for more than 3 years. There is obviously no justification for appeals to be pending for such long periods at the first stage itself.

▲ **Clear-cut targets for disposal of appeals stipulated**

In the wake of this difficult situation, the CBDT has stipulated stiff targets for disposal of the appeals. Each PCCIT has been directed to ensure the following disposals:

- (a) Disposal of 100% of appeals pending as on 01.04.2019 that involve demand of Rs.50 crores and above (category A1);
- (b) Disposal of at least 40% of appeals that involve demand of Rs.10 lakhs or more in categories A2, and A3;
- (c) Disposal of at least 90% of appeals that involve demand of Rs.2 lakhs to Rs. 10 lakhs (category B1 and B2)
- (d) Disposal of at least 90% of appeals that involve demand of less than Rs.2 lakhs (new category B3);
- (e) Disposal of 90% of all appeals pending beyond 5 years (excluding appeals stayed by judicial authorities).

In addition, it is stated that each individual CIT (A) is expected to dispose of a minimum of 550 appeals during the financial year

(Source: <http://itatonline.org>)

Higher I-T cess leaves India Inc a worried lot:

The increase in effective tax rate to 43% for those earning Rs 5 crore and more has spread disquiet in India Inc's C suite, raising the possibility of salary reviews, as the rise in tax will invariably push senior compensation levels higher with top talent demanding some offset, said HR heads.

As per the latest records available, 144 executives of BSE 500 companies on average earned Rs 11.4 crore annually. Employee stock option plans (Esops) represent a significant proportion of compensation for several executives, said tax experts.

The budget raised the tax surcharge on incomes between Rs 2 crore and up to Rs 5 crore to 25% from 15%, resulting in a maximum marginal tax rate of 39%, up from 35.88%. For those with incomes of Rs 5 crore and more, the surcharge was raised to 37% from 15% for a 42.74% highest applicable tax rate, the most since 1992, and also up from 35.88% before the change.

A senior India Inc CEO, who did not want to be identified, explained the math to ET: "Take the example of someone earning Rs 10 crore as salary with, say, 25% of it comprising Esops. Currently, about 35% will go towards tax, about 30% will be future cash flow, and what remains will be about 35%. Under the new scenario, what will remain is about 28%. This means the individual will lose 20% of take-home pay.

(Source: <http://economictimes.indiatimes.com>)

CBDT extended the due date for filing Income Tax Returns from 31st July 2019 to 31st August 2019

The 'due-date' for filing income-tax returns for Assessment-Year 2019-20 is 31.07.2019 for certain categories of taxpayers. It has been reported that some of the taxpayers are facing difficulties in filing their income- tax returns due to various reasons including extension of due date for issue of Form 16 for the Assessment-Year 2019-20.

In this regard, the Central Board of Direct Taxes, in exercise of its powers conferred under section 119 of the Income-tax Act, 1961 ('Act'), hereby extends the 'due-date', as prescribed under section 139(1) of the Act, for filing income-tax returns from 31st July, 2019 to 31st August, 2019 in cases of all taxpayers who are liable to file their income-tax returns by the said 'due-date'.

(Source : https://www.incometaxindiaefiling.gov.in/eFiling/Portal/StaticPDF_News/Order-for-extension-of-due-date-for_filing-of-ITRs-23-07-2019.pdf)

CBIC notifies reduction in GST rate for Electronic Vehicles and Chargers, hiring of Electric Buses

The Central Board of Indirect Taxes and Customs (CBIC) has notified the following changes effective from August 1, 2019

Sr No	Description of Goods	Existing GST rate	New GST rate
1.	Electrically operated vehicles, including two and three wheeled electric vehicles and E-bicycles	12%	5%
2.	Charger or charging station for Electrically operated vehicles	18%	5%
3.	Hiring, by a local authority, of an electrically operated vehicle meant to carry more than twelve passengers	18%	Nil%

Further, 'electrically operated vehicles' have been defined to mean vehicles which are run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicles.

[Notification No.12/2019 and 13/2019 - Central Tax (Rate) dated July 31, 2019]

Due date extended for filing Form GST CMP-08

A composition dealer is required to use the Form CMP-08, which is a special statement-cum-challan to declare the details or summary of his/her self-assessed tax payable for a given quarter. It also acts as a challan for making payment of tax. The due date for filing CMP-08 for the period April 2019- to June 2019 is further extended from 31st July 2019 to 31st August 2019.

[Notification No. 35/2019 - Central Tax dated July 29, 2019]

CBIC clarification on issues related to supply of IT enabled services to overseas entity

The government had received various representation from trade and industry seeking clarification under the GST laws on issues related to supply of IT-enabled services (ITeS) such as call centre, business process outsourcing services and intermediary services to overseas entities, and whether they qualify as 'export of service'. Pursuant to the same, the Central Board of Indirect Taxes and Customs (CBIC) has recently issued a circular clarifying important aspects with regards to the taxability/export eligibility, etc. related to the supply of such ITeS.

There may be various possible scenarios when a supplier of ITeS services located in India supplies services for and on behalf of a client located abroad. These scenarios have been examined and are being discussed in detail in the circular, the key clarifications are summarized below:

Scenarios	Clarifications
<p>Scenario I: Supplier of ITeS supplying backend services on his own account (services as defined under the sub-rule (e) of rule 10 TA of the Income-tax Rules, 1962)</p>	<ul style="list-style-type: none"> The supplier will not fall under the definition of intermediary as these services are provided on his own account. Even where a supplier supplies ITeS to his client's customers, but where the supplies of services are on his own account, the supplier will not be categorized as an intermediary.

Scenarios	Clarifications
<p>Scenario II: Supplier of backend services located in India arranges or facilitates the supply of goods or services or both on behalf of an overseas client to the customers of the client (Such services may include support services, during pre-delivery, delivery and post-delivery of supply such as order placement and delivery and logistical support, obtaining relevant Government clearances, transportation of goods, post-sales support and other services, etc.)</p>	<ul style="list-style-type: none"> • The supplier will fall under the definition of intermediary as these services are merely for arranging or facilitating the supply of goods or services or both between two or more persons.
<p>Scenario III: Supplier of ITeS services supplies backend services on his own account along with arranging or facilitating the supply of goods or services or both for and on behalf of the overseas client</p>	<ul style="list-style-type: none"> • The supplier is supplying two sets of services, namely ITeS and various support services, to his client or to the client's customers. • Whether the supplier falls under the ambit of an intermediary would be determined based on the facts and circumstances of each case and would be determined keeping in view which set of services is the principal/main supply.

The CBIC has further clarified that the supplier of ITeS who is not an intermediary can avail the benefit of export of services if he satisfies the prescribed conditions under the GST law.

[Circular No. 107/26/2019-GST dated July 18, 2019]

External Commercial Borrowings (ECB) Policy – Rationalization of End-use Provisions

As per the existing ECB regulations, ECB proceeds cannot be utilized for working capital purposes, general corporate purposes and repayment of Rupee loans except when the ECB is availed from foreign equity holder for a minimum average maturity period of 5 years. Further, on-lending for these activities out of ECB proceeds is also prohibited.

With a view to further liberalize the ECB framework, the RBI has decided, in consultation with the Government of India, to relax the end-use restrictions. Accordingly, eligible borrowers will now be permitted to raise ECBs for the following purposes from recognized lenders, except foreign branches/ overseas subsidiaries of Indian banks, subject to meeting other conditions as laid down in the said regulation:

- ▲ ECBs with a minimum average maturity period of 10 years for working capital purposes and general corporate purposes. Borrowing by NBFCs for the above maturity for on lending for the above purposes is also permitted.
- ▲ 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. For repayment of Rupee loans availed domestically for purposes other than capital expenditure and for on-lending by NBFCs for the same, the minimum average maturity period of the ECB is required to be 10 years.
- ▲ It has been decided to permit eligible corporate borrowers to avail ECB for repayment of Rupee loans availed domestically for capital expenditure in manufacturing and infrastructure sector if classified as SMA-2 or NPA, under any one time settlement with lenders. Lender banks are also permitted 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 framework.

The prescribed minimum average maturity provision, as above, for the aforesaid end-uses will have to be strictly complied with under all circumstances. All other provisions of the ECB policy remain unchanged. AD

(RBI/2019-20/20 A.P. (DIR Series) Circular No. 04 dated July 30, 2019)

Short Term Capital Gains arising to a Non Resident on sale of units of equity oriented mutual funds are not taxable under India-UAE treaty

Based on the facts and in the circumstances of the case, recently, the Cochin bench of the Income Tax Appellate Tribunal recently held that for a taxpayer who is a resident of UAE [for the purposes of the Double Taxation Avoidance Agreement between India and the UAE (the Treaty)], Short Term Capital Gain (STCG) arising from sale of units of equity oriented mutual funds are not liable to tax in India in accordance with the provisions of the treaty as such STCG would be taxable in the country of residence on the basis that shares and equity oriented mutual funds are two separate types of securities.

This decision provides clarity that share and mutual fund units are separate types of securities for the purpose of taxation considering application of tax treaty. The tribunal also upheld that treaty provisions, to the extent beneficial, shall apply as compared to the provisions as per the Income Tax Act.

(DCIT International Taxation (Kochi) v. Sri. K. E. Faizal (ITA No. 423/Cochin/2018))

Payments by Indian customers towards cloud computing fees not taxable as royalty under India-US DTAA

Based on the facts and in the circumstances of the case, recently, the Mumbai Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of, held that payment received by a US company from Indian customers in respect of cloud computing services will not constitute 'royalty' under the India-US tax treaty (tax treaty). The Tribunal also held that the retrospective amendment to the definition of royalty under the Income tax Act, 1961 (Act) would not override provisions contained in the tax treaty.

The matter pertaining to characterization of income in e-commerce transactions has become very significant in the Indian context with the tax authorities, in many cases, taking a view that the payments made to foreign service providers for various e-commerce dealings is in the nature of 'royalty' or 'Fees for Technical Services' (FTS) both under the Act as well as under the tax treaty. This ruling reiterates the position that such payment will not constitute royalty under the India-US tax treaty.

(Rackspace, US Inc. v. DCIT (ITA No 1634/Mum/2016))

Protocol amending the India-China tax treaty notified

India and China, signed a Protocol on 26 November 2018, amending the tax treaty. The said Protocol is notified on 17 July 2019. The key changes in the India-China tax treaty are as follows:

- ▲ The Preamble of the tax treaty has been replaced to, inter alia, state that its intention is to eliminate double taxation without creating opportunities for non/ reduced taxation (including through treaty shopping arrangements).
- ▲ In case of dual residency of person other than an individual, the competent authorities to determine the residential status mutually having regard to the relevant factors, such as place of effective management, place of incorporation, etc.
- ▲ Definition of "permanent establishment" (PE) amended to include, inter alia, certain changes required under the Base Erosion and Profit Shifting (BEPS) project.
- ▲ Introduction of limitation of benefits clause to deny the benefits of the tax treaty in specific circumstances.

The said Protocol shall be effective in India from 1 April 2020.

(Notification No. 54/2019 dated July 17, 2019)

**MCA amends Nidhi
Company Rules**

MCA vide Nidhi (Amendment) Rules, 2019 amends rules for Nidhi companies effective from 15th August 2019. In the amendment rule it provides definition of a Nidhi company, amends provisions related to incorporation and compliances of Nidhi Companies.

http://www.mca.gov.in/Ministry/pdf/NidhiRules_01072019.pdf

**MCA issued Companies
(Significant Beneficial
Owners) Second
Amendment Rules,
2019 thereby notifying
eForm BEN-2 required
to be submitted by
companies.**

The Ministry of Corporate Affairs (MCA) introduced E-Form BEN-2 w.e.f. 01 st July, 2019 to enable the Companies to find out the ultimate individual holder of beneficial shares in the Company. E-Form BEN-2 needs to be submitted within 30 days of its deployment i.e.- on or before 31st July, 2019 (date of filing of E-Form BEN-2 has now been extended till 30th September, 2019)

http://www.mca.gov.in/Ministry/pdf/CompaniesSignificantRules_01072019.pdf

**MCA introduces Web
service of E-Form DIR-
3 KYC**

The Ministry of Corporate Affairs (MCA) has introduced Web service of E-Form DIR-3 KYC under rule 12(A) of the Companies (Appointment and Qualification of Directors) Rules, 2014 w.e.f. 25 th July, 2019. There will be no Government Fees up to 30 th September, 2019 and afterwards, the Government Fees for filing E-Form DIR-3 KYC Web will be Rs. 5,000/- (Rupees Five Thousand Only)

http://www.mca.gov.in/Ministry/pdf/FourthAmedRules_25072019.pdf

http://www.mca.gov.in/Ministry/pdf/ThirdAmendRules_25072019.pdf

**Register of Charges to
be maintained by
Registrar**

The Registrar, shall maintain a register containing register of charges (**Particulars maintained on MCA Portal shall be deemed to be the register of Charges**) under Section 81 of the Companies Act, 2013. The register shall be open to inspection by any person on payment of a fee.

[http://www.mca.gov.in/Ministry/pdf/S.O.2296\(E\).pdf](http://www.mca.gov.in/Ministry/pdf/S.O.2296(E).pdf)

Key changes in the Companies (Amendment) Act, 2019 further brings various amendments to various Sections of the Companies Act, 2013

- ▲ As per Section 10A of the Companies (Amendment) Act, 2019, every company incorporated after the commencement of Companies (Amendment) Act, 2019 shall file Form INC-20A within 180 days from the date of incorporation in order to commence business or exercise borrowing powers.
- ▲ The MCA has introduced Form INC-22A to verify the Registered office of the Company. If the Registrar has reasonable cause to believe that, the company is not carrying on any business, he may cause a physical verification of the registered office in such manner as may be prescribed.
- ▲ After the commencement of the Companies (Amendment) Act, 2019, creation of charges needs to be registered within 30 days and after the period of 30 days, on payment of additional fees plus ad valorem fees as may be prescribed. Delay beyond 120 days for creation of charge will not be taken on record by MCA.
- ▲ As per Section 90 of the Companies (Amendment) Act, 2019, every company is required to identify an individual who is a significant beneficial owner and require him to comply with the provisions of this section. If the Company contravenes the provisions of section 135, in relation to unspent CSR amount, then the company shall be punishable with fine which shall not be less than Rs. 50,000/- subject to a maximum of Rs. 25,00,000/- and every director/officer of the Company who is in default shall be punishable with imprisonment for a term which may extend to three years or with a fine of Rs. 50,000/- subject to a maximum of Rs. 5,00,000/- or with both. The company is also required to transfer unspent CSR Amount during a financial year to a special account called the "Unspent CSR Account" within a period of 30 (thirty) days from the end of the financial year and the proceeds of the Unspent CSR Account will have to be spent by the Company towards CSR Projects within three Financial years from the date of transfer.

http://mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf

Due dates for the Month of Sept, 2019*

Regulation	Due Date	Compliance	Description
Employees' Provident Funds & Miscellaneous Provisions Act, 1952	15-Sept-19	PF Payment	PF Payment for the month of Sept, 2019.
Employees' State Insurance Act, 1948 - (ESIC)	15-Sept-19	ESIC Payment	ESIC Payment for the month of Sept, 2019.
Goods and Service Tax (GST)	10-Sep-19	GSTR 8	Summary of Tax Collected at Source (TCS) and deposited by E-Commerce Operator for the month of Aug, 2019
	11-Sep-19	GSTR 1	Return of outward supplies of taxable goods and/or services for the Month of August, 2019 (for Assesses having turnover exceeding 1.5 Cr.)
	13-Sep-19	GSTR 6	Return for Input Service Distributors for the month of Aug, 2019
	20-Sep-19	GSTR 3B	Summary Return for the month of Aug, 2019
	30-Sep-19	GSTR 7	Summary of Tax Deducted at Source (TDS) and deposited for the month of Aug 2019
Income Tax Act, 1961	7-Sep-19	TDS/TCS	Due date for deposit of Tax deducted/collected for the month of Aug, 2019.
	7-Sep-19	TDS/TCS	Due date for issue of TDS Certificate for tax deducted under section 194-IA / 194-IB in the month of Jul, 2019
	15-Sep-19	Advance Tax	Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending June 30, 2019
	30-Sep-19	Income Tax	Audit report under section 44AB for the assessment year 2019-20 in the case of a corporate-assessee or non-corporate assessee (who is required to submit his/its return of income on September 30, 2019).
	30-Sep-19	Income Tax	Annual return of income for the assessment year 2019-20 if the assessee (not having any international or specified domestic transaction) is (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) working partner of a firm whose accounts are required to be audited).

* The above due date calender contains compliances generally applicable to taxpayers and this calender has been compiled by HSCo on basis of data available on various portals and other sources. One should always check applicable compliances based on their business needs and should also check updated due dates, if any, on the government portal before making the compliance.

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