

# Goods & Services Tax

## **GST revenue collection for January 2020 - growth of 8% over revenue for January 2019**

Gross GST revenue collection in the month of January, 2020 is Rs. 110,828 crore (details given below), a growth by 8% over revenue collection for the same month last year (i.e., January 2019). Total number of GSTR 3B Returns filed for the month of December up to 31st January, 2020 is 83 lakh (approx).

IGST (Integrated Goods and Services Tax)	Rs. 53,013 crore
CGST (Central Goods and Services Tax)	Rs. 20,944 crore
SGST (State Goods and Services Tax)	Rs. 28,224 crore
Compensation cess	Rs. 8,637 crore
<b>Total</b>	<b>Rs. 110,818 crore</b>

Press release dated 1st February, 2020, including State-wise Gross Domestic GST Collection for the month of January, 2020.

## **New due dates prescribed for filing summary return in Form GSTR-3B based on turnover and geographical criteria**

To de-stress the GST system and address difficulties faced by taxpayers, 3 alternative due dates given below have been provided for different categories of taxpayers for filing Form GSTR-3B for the months of January - March, 2020. Earlier, the due date was 20th of following month for all taxpayers.

# Goods & Services Tax

Annual Turnover > Rs. 5 crore in the previous Financial Year (FY)	All States	January 2020 20th February 2020	February 2020 20th March 2020	March 2020 20th April 2020
Annual Turnover < Rs. 5 crore in the previous FY	15 States / Union Territories: Chhattisgarh, Madhya Pradesh, Gujarat, Daman and Diu, Dadra and Nagar Haveli, Maharashtra, Karnataka,	22nd	22nd March	22nd
	22 States / Union Territories: Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram	24th February 2020	24th March 2020	24th April 2020

Notification dated 3rd February, 2020.

# Goods & Services Tax

## **Due date for filing form Tran-1 for availing transitional credit extended to 31st March, 2020 in certain cases**

Central Government has extended the time limit for submitting declaration in Form Tran-1 for transitional credit to 31st March, 2020 for those taxpayers who could not submit the said declaration by the due date on account of technical glitches on the common portal.

Order dated 7th February, 2020.

## **Customs to roll out faceless assessment for imported goods across India**

Central Board of Indirect Taxes and Customs (CBIC) is planning to launch Faceless e-Assessment for imported goods to achieve following objectives:

- Bring anonymity in assessment and minimize manual interface between tax department and importer / broker to the extent technologically feasible
- Ensure uniformity in assessments across the country
- Promote sector specific approach and functional specialization
- To improve workload balance amongst various field formations for efficient utilization of resources

A detailed concept note has been released by the Government seeking inputs from public before finalizing the matter, covering the following topics:

- Background for the reform
- Journey towards faceless assessment
- Existing structure of commissionerates
- Future structure of commissionerates
- Functions of National Assessment Commissionerates (NACs) and Jurisdictional Port Commissionerates (JPCs)
- Proposed NACs
- Procedure for Assessment of Bill of Entry by Faceless Assessment Groups (FAGs)
- Speaking orders on re-assessment proceedings
- Appellate proceedings
- Review proceedings
- Communication exclusively by electronic mode and authentication of electronic record
- CBIC to specify format, mode, procedure and processes

Detailed concept paper released

# Goods & Services Tax

## Exemption of particular duty does not automatically exempt other duty or cess -Supreme Court

### *Issue Involved:*

Whether excise duty exempted vide notification dated 9 September, 2003 on industrial units set up in the state of Sikkim for 10 years would also extend to other excise duties such as the National Calamity Contingent Duty, education cess (EC) and secondary and higher education cess (SHEC), as introduced by the Finance Acts of 2001, 2004 and 2007 (respectively).

### *Brief facts:*

- There was scheme of re-credit/refund of excise duty applicable in the state of Sikkim which provided for exemption from excise duty. Relevant notification was issued on 9th September, 2003.
- Assessee submitted that if excise duty is exempted, all the other duties of excise (NCCD, EC and SHEC) stands to be exempted as these are also in the nature of duty of excise and levied in addition to basic excise duty
- Assessee had relied on the circular dated 10th August, 2004 issued under custom wherein it is stated that there is no collection of excise duty and hence no education cess would be leviable on such clearances and circular dated 8th April, 2011 issued by CBIC wherein it is stated that EC and SHEC shall not be levied where service tax stands exempted

### *Supreme Court's ruling:*

- Exemption shall be confined to basic custom duty or additional excise duty which are mentioned in the notification only by relying on decision of co-ordinate bench
- Circular of 2004 issued based on the interpretation of the provisions made by one of the Customs Officers, is of no avail as such Circular has no force of law and cannot be said to be binding on the Court. Similarly, the Circular issued by CBIC in 2011, is of no avail as it relates to service tax and has no force of law and cannot be said to be binding on courts
- Supreme court had held in case of Modi Rubber Limited exemption notification providing for "duty of excise" does not bear an extended meaning so as to include special excise duty and auxiliary excise duty. Court also laid down that the presumption is that when the Central Government issues a notification granting exemption from payment of excise duty the Central Government would have considered whether exemption should be granted only be with reference to the duty of excise which is leviable at the time of notification, not a duty to be imposed in future
- Accordingly, Supreme Court ruled that duties/ cess imposed by different legislations for a different purpose cannot be said to have been exempted in pursuance of exemption given to any particular kind of duty

Order dated 6th December, 2019.

# Goods & Services Tax

## Interest on delayed payment of GST to be calculated on net tax liability- Madras High Court

### *Issue Involved:*

Whether interest on delayed payment of tax is to be computed on total tax liability or on net tax liability i.e. liability discharged through electronic cash ledger.

### *Brief facts:*

The Petitioner had filed Returns of Income belatedly for the period 2017-2018. Demand notices were issued to the Banks of the Petitioners seeking to recover the arrears of interest from the balances in their accounts. The Petitioners objected stating that they had sufficient Input Tax Credit (ITC) available with the Department and thus interest could be demanded, if at all, only on the cash component of the tax remitted belatedly.

### *High Court's ruling:*

- Section 50 of CGST Act, 2017, is specifically intended to apply where the state has been deprived of funds and cannot apply in a situation where the State is possessed of sufficient funds to the ITC of the assessee. The proper application of section 50 is one where interest is levied on a belated cash payment but not on ITC available with the Department
- Further, the Court observed that proviso inserted in section 50(1) providing for payment of interest only on tax liability paid in cash i.e. by utilization of electronic cash ledger, was inserted with the intention to correct the anomaly in the provision as it existed prior to such insertion. Thus, the Court held that the provision is to be read as clarificatory and operating retrospectively

Order dated 6th January, 2020.

## Levy of IGST on Ocean Freight unconstitutional- Gujarat High Court

### *Issue Involved:*

Whether IGST on ocean freight is leviable under reverse charge or not.

### *Brief facts:*

- The applicant discharges the custom duty including IGST at the time of import on the value (including ocean freight) determined u/s 14 of Customs Act, 1962. In addition to the levy of such custom duty and IGST, the applicant as an importer is also required to pay IGST on ocean freight by virtue of notification no. 10/2017-Integrated Tax (Rate) read with notification no. 8/2017-integrated tax (Rate) as he is indirectly receiving such services
- Tax liability has been casted on the importer who is neither a supplier nor recipient
- Aggrieved by the fact that ocean freight is being taxed twice the applicant had filed a writ before the Gujarat High Court

### *High Court's ruling:*

- Levy of IGST on ocean freight under reverse charge leads to double taxation as the ocean freight has already been included in the assessable value under custom on which the applicant has paid applicable custom duty and IGST at the time of import
- High Court observed that importer has neither availed transportation service nor he is liable to pay consideration. Thus, it cannot be required to pay tax on some supposed theory stating that he is directly or indirectly recipient of service
- Basis above, High Court held that reverse charge under the rate notification and entry No. 10 of notification are ultra vires the IGST Act as they lack legislative competency
- The High Court concluded that no tax is leviable under the IGST Act, 2017, on the ocean freight for the services provided by a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India

# Goods & Services Tax

## ITC cannot be denied for default by selling dealer in depositing tax - Jharkhand High Court

### *Issue Involved:*

Whether Tax department can disallow the ITC claimed and impose interest on the assessee if the seller (from whom purchases were made) has defaulted in depositing tax with the Government treasury.

### *Brief facts:*

The Petitioner firm had made purchases in the FY 2015-16, on which petitioner firm discharged all the tax liabilities and claimed the ITC in their returns. However, during the scrutiny of the returns, it was found that the said amount did not reflect in the systemic reports, and it was discovered that the seller had not deposited the tax into the Government treasury.

Accordingly, notice u/s 33 of the Jharkhand VAT Act was issued to the petitioner firm. In reply to the notice, the petitioner produced all the necessary documents, including tax invoices supplied to it by the selling dealer, in order to satisfy the Tax department that while making the purchases, the petitioner had discharged all the tax liabilities, and it was the selling dealer, who had not deposited the tax in the Government Treasury, for which the petitioner firm was not at all at fault

### *High Court order:*

- The petitioner firm had duly discharged the VAT liability charged by the seller and had filed its return within time, claiming the applicable ITC
- The selling dealer had failed to file returns and to deposit tax amount. Further, the selling dealer was willing to pay the tax with interest, but was unable to do so, as the online VAT account was closed
- The petitioner firm had discharged its liability under the VAT Act, and there being no mechanism under the JVAT Act, by which, the petitioner could compel the seller to discharge their duty of payment of tax and to file the return within the stipulated time
- It's inappropriate that penal action was taken against the petitioner, only for the reason that the JVAT Act provided for such action against both the dealers, when the authorities were already satisfied from the documents produced by the petitioner, that it was the selling dealer who had defaulted in filing its return or depositing the tax collected
- The intent of the Legislature cannot be to punish the dealer acting in bona fide manner
- Accordingly, Jharkhand High Court quashed the order passed by the Assistant Commissioner for denying ITC to the petitioner and imposing the interest.

Taxpayers may try to rely on the above decision to support their claim of ITC under GST regime.

Court order.



# Direct Tax

## Central Board of Direct Taxes (CBDT) notifies rules, forms for exercising option to avail lower corporate tax rate by manufacturing companies

Deals with	Reduced corporate tax rate of 22% (plus surcharge and cess) on existing manufacturing companies	Reduced corporate tax rate of 15% (plus surcharge and cess) on new manufacturing companies which are registered after 1st October, 2019, and commence manufacturing before 31st March, 2023
Introduced by	Taxation Laws (Amendment) Ordinance 2019	
How to avail / exercise the option	By filing form on or before due date u/s 139(1) of the Income-tax Act for furnishing first of the tax returns for any assessment year (AY) beginning AY 2020-21 onwards. Such option once exercised shall apply to subsequent assessment years.	
Notification dated 12th February 2020	The relevant rules and forms were yet to be prescribed. Rule 21AE added to Income-tax Rules, 1962. Form 10IC prescribed, to be submitted by taxpayer electronically for availing above option	Rule 21AF added to Income-tax Rules, 1962. Form 10ID prescribed, to be submitted by taxpayer electronically for availing above option

Notification dated 12th February 2020 including the detailed forms.

## CBDT notifies Common Application Form (CAF) for allotment of PAN and registration of Foreign Portfolio Investors (FPIs) with Securities Exchange Board of India (SEBI)

### **Background:**

A Common Application Form (CAF) for the purposes of registration, opening of bank and demat accounts and application for Permanent Account No. (PAN) has been notified for the Foreign Portfolio Investors (FPIs) in India by the Ministry of Finance, Department of Economic Affairs (SEBI) vide notification F no.4/15/2016-ECB dated 27th January 2020.

### **Notification dated 7 February 2020:**

The Principal Director General of Income-tax (Systems) has notified the following classes of person who can apply for PAN through the CAF along with the format and procedure for filing the same.



# Direct Tax

Classes of person to which CAF will apply      New FPIs

Applicable form      CAF for FPIs of Ministry of Finance, Department of Economic Affairs (SEBI) notified vide notification F. No. 4115 /2016-ECB, dated 27/01 /2020

Procedure      Application for allotment of PAN will be uploaded in CAF. After due examination and generation of FPI registration certificate, SEBI will forward data in form 49AA to prescribed Income tax authority through the signature of authorized signatories of its Designated Depository Participants (DDPs)

Format in which the PAN application through CAF will be filed      Xml  
Notification dated 7th February 2020.

## **CBDT issues clarification on applicability of withholding tax (WHT/TDS) provisions on Mutual Fund dividend**

### **Background:**

- The Finance Bill, 2020 proposed to remove Dividend Distribution Tax (DDT) at the level of Company/ Mutual Fund and proposed to tax the same in the hands of share/unit holder.
- It was also proposed to levy TDS @ 10% on dividend/ income paid by the Company/Mutual Fund to its share/unit holder if the amount of such dividend/ income exceeds Rs.5,000 in a financial year.
- Queries have been received as to whether under the proposed section 194K, the Mutual Fund would be required to deduct TDS also on the capital gains arising on redemption of units.

### **Clarification issued by CBDT:**

Under the proposed section 194K, a Mutual Fund shall be required to deduct TDS @ 10% only on dividend payment. No tax shall be required to be deducted by the Mutual Fund on capital gains.

Press Release dated 4th February 2020.

## **Tax department provides e-calculator to compare tax for FY 2020-21 under old and new individual tax regime**

The Income-tax department has launched an e-calculator for individuals to estimate their tax liability for FY 2020-21 if they opt for the new tax slabs, without claiming deductions and exemptions, for Income-tax return filing as announced in the recent union budget. Taxpayers in 3 age categories, namely normal citizen (below 60 years), senior citizen (61-79 years) and super senior citizen (above 80 years) can punch their estimated annual income online from all sources, total eligible deductions and exemptions to see what will be their total taxable income if they continue in the old regime or opt for the new one.

CBDT calculator released

# Direct Tax

## **PAN to become inoperative after 31st March 2020 if Aadhaar number not intimated to tax department**

- As per section 139AA(2) of the Income-tax Act, every assessee who has been allotted PAN as on 1st July, 2017, and who is eligible to obtain Aadhaar number, shall intimate his Aadhaar number to the tax department on or before the 'prescribed' date.
- A new Rule 114AAA has been inserted in the Income-tax Rules prescribing 31st March 2020 as the due date for above intimation to the department. In case Aadhaar number is not intimated within the said date, the PAN shall become inoperative. Such person shall be liable for all the consequences under the Act relevant for not furnishing, intimating or quoting the PAN in the prescribed correspondence. However, the default can subsequently be reversed by intimating the Aadhaar number even after 31st March 2020.

Notification dated 13th February 2020.

## **Further relaxation in rules for condonation of delay in filing tax returns / Form 9A and 10 by charitable institutions**

### ***Background:***

- Reportedly, representations have been received by the Government seeking condonation of delay in filing tax return by charitable institutions for AY 2016-17 onwards on grounds of hardship. CBDT has issued circulars authorizing Commissioners to admit belated applications of Form 9A and Form 10 and to decide on merit the condonation of delay.
- However, in those cases where the tax returns have also been filed beyond the due date u/s 139(1), the condonation of delay in filing Form 9A & Form 10 by Commissioners is not of any help to the assessee, as section 13(9), inserted from 1st April 2016, stipulates twin conditions of filing of Form 9A/Form 10 and also of filing tax return before the due date

### ***Circular issued by CBDT:***

- In continuation of earlier circulars issued on the matter and to prevent hardship for assessee, CBDT has decided that where the application for condonation of delay in filing Form 9A and Form 10 has been filed, and the tax return has been filed on or before 31st March of the respective assessment years i.e. AYs 2016-17, 2017-18 and 2018-19, the Commissioners (Exemptions) are authorised to admit such belated applications for condonation of delay in filing tax return and decide on merit.
- For all other application for condonation of delay not mentioned above, the power of condonation of delay will continue with the respective authorities as per existing rules and practice.

Circular dated 19th February 2020.



# International Taxation

## **CBDT issues clarification on new provision relating to 'stateless citizens' residence in India**

### ***Background:***

- The Finance Bill, 2020 has proposed that an Indian citizen shall be deemed to be resident in India, if he is not liable to be taxed in any country or jurisdiction. This is an anti-abuse provision since it is noticed that some Indian citizens shift their stay in low or no tax jurisdiction to avoid payment of tax in India
- In some section of the media the new provision is being interpreted to create an impression that those Indians who are bona fide workers in other countries, including in Middle East, and who are not liable to tax in these countries will be taxed in India on the income that they have earned there. To negate this misunderstanding, CBDT has clarified as below.

### ***Clarification issued by CBDT:***

The new provision is not intended to include in tax net those Indian citizens who are bona fide workers in other countries. In case of an Indian citizen who becomes deemed resident of India under this proposed provision, income earned outside India by him shall not be taxed in India unless it is derived from an Indian business or profession.

Press Release dated 2nd February 2020.

## **Cabinet approves protocol amending India-Sri Lanka Double Taxation Avoidance Agreement (DTAA)**

### ***Background:***

- The existing DTAA between India and Sri Lanka was signed on 22nd January, 2013 and entered into force on 22nd October, 2013.
- India and Sri Lanka are members of the Inclusive Framework and as such are required to implement the minimum standards under G-20 OECD BEPS Action Reports in respect of their DTAA's with Inclusive Framework countries. Minimum standards under BEPS Action 6 can be met through the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) or through agreement bilaterally.
- India is a signatory to the MLI. However, Sri Lanka is not a signatory to the MLI as of now. Therefore, amendment of the India-Sri Lanka DTAA bilaterally was required to update the Preamble and also to insert Principal Purpose Test (PPT) provisions to meet the minimum standards on treaty abuse under Action 6 of G-20 OECD Base Erosion & Profit Shifting (BEPS) Project.

### ***Approval of the protocol amending DTAA:***

The Union Cabinet, chaired by Prime Minister Narendra Modi, has approved the signing and ratification of the Protocol amending India-Sri Lanka DTAA. Updation of preamble text and inclusion of Principal Purpose Test, a general anti abuse provision in the DTAA will result in curbing of tax planning strategies which exploit gaps and mismatches in tax rules.

Press Release dated 12th February 2020.



# Company Law

## **Revised Companies (Auditor's Report) Order (CARO), 2020 notified after consultation with National Financial Reporting Authority (NFRA)**

Ministry of Corporate Affairs (MCA) on 25th February 2020 after consultation with NFRA has notified CARO, 2020. It has replaced CARO 2016, increasing responsibilities of auditors. CARO 2020 is applicable for audit of financial statements of eligible companies for FY 2019-20 onwards. The criteria of eligibility of companies on which CARO, 2020 shall be applicable, has not been changed. Hence the new regulations shall be applicable to all companies on which CARO, 2016 was applicable.

Reportings required under CARO 2020 are indicative of Government's intention to bring greater transparency in financial state of affairs of such companies by increasing accountability of auditors to the society as a whole.

MCA's order dated 25th February 2020.

## **Extension of last date for filing Forms AOC-4 NBFC (IndAS) and AOC-4 CFS NBFC (IndAS) by Non-Banking Finance Companies (NBFC)**

Every NBFC that is required to comply with Indian Accounting Standards (IndAS) is required to file financial statements with Registrar of Companies (ROC) together with Form AOC-4 NBFC (IndAS) and the consolidated financial statement, if any, with Form AOC-4 CFS NBFC (IndAS).

MCA has issued a circular on 30th January, 2020 extending last date for filing above forms for FY 2018-19 to 31st March 2020, since the said forms were yet to be deployed on Government's website.

Circular dated 30th January 2020.

## **Amendment to company incorporation rules –Introduction of new forms Spice Plus and Agile Pro**

Towards enhancing ease of doing business in India by reducing time taken for company incorporation, MCA has introduced with effect from 23rd February 2020 a new web-based Spice Plus incorporation form replacing the existing Spice form. The existing service for name reservation (RUN –Reserve User Name) would be applicable only for change of name of an existing company. Spice Plus will offer 10 services by 3 Central Government Ministries / Departments and 1 State Government (Maharashtra). Spice Plus has 2 parts –Part A for name reservation for new companies, Part B offering bouquet of services.

The new Spice Plus form is accompanied by an updated form Agile Pro enabling functionality to obtain various mandatory registrations such as GST number, Provident Fund, Employee State Insurance Corporation, Professional Tax (Maharashtra) and also for opening of bank account in India.

MCA notification dated 18th February 2020.

## **Condonation of delay in filing applications / forms with Government / ROC by Limited Liability Partnerships**

As per section 460 of Companies Act, 2013, any delay in filing of application with Central Government or delay in filing form with ROC beyond the prescribed time limit under the Companies Act, may be condoned by the Government for reasons to be recorded in writing

MCA has extended the said benefit to LLPs as well.

Circular dated 30th January 2020

*The information is only for general guidance and is not meant to be a substitute for professional advice in any manner. In case the reader requires any specific inputs / suggestions / advice from our end, please contact us separately.*