

Wishing you a very Happy New Year!

DIRECT TAX

News

MNC units, Indian firms get tax notices for receiving FDI

After slapping 'angel tax' notices on startups, the taxman's attention seems to have turned to foreign direct investment (FDI) in multinationals and Indian companies where a 'premium' was paid over and above the 'fair market value' of shares. The income tax department has started issuing notices to several companies that have received FDI, claiming that the 'premiums' they received on such transactions are 'unexplained credits' that can be held as income. [Source: ET]



Relief for startup ecosystem: Angel tax recoveries put on hold

Amid widespread concerns over 'angel tax' notices being slapped on start-ups, the Central Board of Direct Taxes (CBDT) in the finance ministry has asked field officials to desist from taking any coercive action or recovery of demands of completed assessments from these firms till a policy decision is taken. The department of industrial policy and promotion (DIPP) would soon constitute a committee of experts drawn from reputed institutions like IITs and IIMs to consider grant of tax exemptions to start-ups, and the issue of premiums among other related matters.

[Source: Financial Express]

E-commerce firms not liable to collect TCS from suppliers with less than Rs.20 lakh turnover

The e-commerce companies are not liable to collect TCS on supplies made by entities with turnover not exceeding 20 lakh and are not registered under GST. As per Goods and Services Tax (GST) provisions, beginning October 1, 2018, e-commerce companies deduct 1% tax collected at source (TCS) before making payments to their suppliers.

Notifications

Notification No. 85 & 86 dated 06/12/2018

CBDT vide Finance Act, 2012 inserted Chapter XII-BB to incentivise foreign banks to set up subsidiary in India and provided benefits related to exemption in capital gain on the assets transferred consequent to conversion from foreign bank's branch to Indian subsidiary and also provided exceptions, modifications and adaptations in

treatment of unabsorbed depreciation, set-off or carry forward of losses, availability of minimum alternative tax (MAT) credit and the computation of income of the foreign bank and the Indian subsidiary company. Also CBDT has notified the conditions to be met for claiming the exemption of capital gain consequent to transfer of assets at the time of conversion from foreign bank's Indian branch to Indian subsidiary company. After meeting the specified conditions, capital gain will be exempt from tax and period of holding of previous owners will also be included while calculating total period of holding in the hands of Indian subsidiary and other benefits as per the scheme will also be provided. [Source: CBDT]

Notification no. 06/2018 - DGIT, dated 06/12/2018

Section 194A of the Income-tax Act, 1961 deals with TDS in respect of interest on other than 'interest on securities'. In this respect Pr. Directorate Income-tax (Systems) vide this notification clarifies that no deduction of tax at source u/s 194A shall be made in case of senior citizen where amount paid or credited during a financial year not exceeding fifty thousand rupees.

[Source: CBDT]

Notification No. 88 dated 18/12/2018 and Circular No. 9 dated 26/12/2018

CBDT notified the time period of twelve months from the end of the reporting accounting year in respect of report to be furnished by constituent entity related to international group as mandated by Section 286(4) of Income Tax Act, 1961. Further, in respect of assessee whose parent entity is resident of a country or territory where there has been systemic failure, period of submission of report shall be six months from the end of the month in which said systemic failure has been intimated. However, in respect of reporting accounting years ending up to February 28, 2018 CBDT has extended the period for furnishing of said report to March 31, 2019. [Source: CBDT]

Case Laws

Kerala State Co-operative Agricultural & Rural Development Bank Ltd vs. ITO - Kerala HC [2018 (12) TMI 1396]

Authorities may wait until the appellate authority decides on the stay petition.

If the assessee has exercised on time its statutory remedy of filing an appeal and also filed a stay petition, procedural fairness demands that the authorities may wait, before taking further steps, until the appellate authority decides on the stay petition.

ACIT vs. Karam Chand Rubber Industries - ITAT Delhi [2018 (12) TMI 1385]

The fact that the vendors are not available at the given address is not sufficient to treat the purchases as bogus if the assessee has discharged primary onus and substantiated the purchases through documentary evidence and payment is made through banking channels. None of these documents have been proved to be false or untrue and thus the initial burden cast on the assessee was duly discharged.

Vinod Soni vs. ITO (ITAT Delhi) [2018 (12) TMI 636]

The exemption of Rs. 50 lakh in s. 194-IA(2) is applicable w.r.t. the amount related to each transferee and not with reference to the amount as per sale deed. Each transferee is a separate income tax entity and the law has to be applied with reference to each transferee as an individual transferee / person.

DCIT vs. Rakesh Saraogi & Sons (HUF) (ITAT Raipur)

Penny Stock - Assuming brokers may have done manipulation, assessee cannot be held liable when the entire transaction is done through banking channels duly recorded in Demat accounts with Govt depository and traded on stock exchange. Nothing on record to suggest assessee gave cash and purchased cheque from broker.

FIS Global Business Solutions India Pvt. Ltd vs. PCIT (Delhi High Court)

Penny Stock - S. 147/ 148: A report of the Revenue audit party is merely information and opinion. It is not new or fresh or tangible material. If the reassessment notice is solely based on an audit opinion, it means it is issued on change of opinion which is not permissible.

Ramprasad Agarwal vs. ITO - ITAT Mumbai [2018 (12) TMI 561]

If the holding of shares is D-mat account cannot be disputed then the transaction cannot be held as bogus. The AO has also not disputed the sale of shares from the D-mat account of the assessee and the sale consideration was directly credited to the bank account of the assessee. Once the assessee produced all relevant evidence to substantiate the transaction of purchase, dematerialization and sale of shares then, in the absence of any contrary material brought on record the same cannot be held as bogus transaction merely on the basis of statement of one Anil Agrawal recorded by the Investigation Wing, Kolkata wherein there is a general statement of providing bogus long term capital gain transaction to the clients without stating anything about the transaction of allotment of shares by the company to the assessee.

ACIT vs. Celerity Power LLP (ITAT Mumbai) [2018 (12) TMI 190]

The conversion of a company into a LLP constitutes a "transfer". If the conditions of s. 47(xiiiib) are not satisfied, the transaction is

chargeable to 'capital gains' u/s 45 (Texspin Engg 263 ITR 345 (Bom) distinguished). If the assets and liabilities of the company are vested in the LLP at 'book values' (cost), there is in fact no capital gain. The argument that u/s 58(4) of the LLP Act, the LLP is entitled to carry forward the accumulated losses & unabsorbed depreciation of the company, notwithstanding non-compliance with s. 47(xiiiib) is not acceptable.

GOODS AND SERVICE TAX (GST)

News

Supply to duty-free shops liable to GST, rules high court

After the Authority for Advanced Ruling (AAR) under the GST, the Madhya Pradesh High Court has also held that a trader supplying goods to duty-free shops at the airport can't be exempted from paying the GST as the supply isn't a form of export. [Source: financial express]

Charges for cheque bounce to attract GST

Charges for cheque bounce collected by an entity from its customers are liable to be taxed with the applicable Goods and Services Tax (GST) rate, the Authority for Advanced Ruling (AAR) in Maharashtra ruled. The applicant, a non-banking financial company, argued that cheque-bounce charges were a form of penalty or liquidated damages and therefore not a consideration for supply. Hence, such charges collected weren't taxable under the GST. The AAR ruled that the recovery of charges in lieu of cases where a party fails to honour its commitment of timely payment is act of toleration of such an act. Charges ensure that the applicant continues its agreement with its customers despite default. This, therefore, is construed as supply under the GST Act and hence taxable.

[Source: financial express]

No penalty can be levied for minor errors in e-Way bill when taxes have been paid correctly, rules Kerala HC

In what could be seen as a big relief for businesses, a High Court ruling has made it clear that no penalty can be levied if wrong values of goods are entered in e-Way bills, provided the amount paid as tax is correct. Since the High Court order has precedent value, it



means such a ruling can be applied for any matter where goods are detained on account of small mistake in e-Way bill — like a zero missing from the value of goods even when tax has been paid correctly. [Source: businessline]

AAAR Okays GST on Inter-State Office Services

In a blow for companies with a presence in multiple states, the Karnataka Appellate Authority for Advance Rulings (AAAR) has upheld the levy of goods and services tax on services rendered by one office branch to other centres. In-house service

functions such as human resources and payrolls, if carried out from a centre in one state for offices in other states, will attract GST for which it will have to issue an invoice. [Source: tatkalnews]

23 goods and services to get cheaper from January 1 as reduced GST rates kick in

In a New Year gift to the common man, the government has notified reduction in GST rates on 23 goods and services, including movie tickets, TV and monitor screen. The consumers will pay less for these items of common consumption as the incidence of Goods and Services Tax (GST) on them will come down from 1st January. The GST Council on December 22 decided to cut tax rates on 23 goods and services, including movie tickets, TV and monitor screens and power banks and exempted frozen and preserved vegetables from the levy. [Source: ET]

Notifications

Various notifications issues amending Rules, Rates of GST and various other provisions, link for the same is

<http://www.cbic.gov.in/htdocs-cbec/gst/index>

Notification No.73/2018-Central Tax

Supplies made by Government Departments and PSUs to other Government Departments and vice-versa is exempt from TDS.

Notification No.75/2018-Central Tax

Amount of late fees leviable on account of delayed furnishing of FORM GSTR-1 for the period July, 2017 to September, 2018 fully waived off in specified cases.

Notification No.76/2018-Central Tax

Amount of late fees payable for delayed filing of FORM GSTR-3B for the period July, 2017 to September, 2018 fully waived off in specified cases.

Notification No. 77/2018-Central Tax

Amount of late fees leviable on account of delayed furnishing of FORM GSTR-4 for the period July, 2017 to September, 2018 fully waived off.

Notification No. 78 /2018 – Central Tax

Due date for furnishing FORM ITC-04 for the period from July, 2017 to December, 2018 extended till 31.03.2019.

REAL ESTATE REGULATION & DEVELOPMENT ACT

Karnataka Government yet to notify RERA agreement to sale

The Government is teetering on notification of agreement of sale, the most vital aspect of the Real Estate (Regulation and Development) Act, without which property buyers would lose their consumer rights. The Home Minister Shri UT Khader has signed the draft Agreement to sale on November 19, following which the RERA Karnataka promised to implement the clause immediately. However, the process has been delayed leaving both the consumer and the Real Estate Industry disappointed. [Source: TOI]

Allottee cannot be compelled to pay the balance amount in case of delay in possession

Neeraj Dhingra V/s M/s B.P.T.P. limited

The Haryana Rera has held that even if the complainant has paid only half of the amount and the Promoter fails to deliver the possession of the flat even after five years from the date of execution of Buyers' Agreement, then the allottee cannot be forced to pay the balance amount and in prima facie is entitled to refund of the paid amount along with interest as per rules.

[Source: Haryana Rera]

RERA specifies its jurisdiction over issues arising out of lease agreements

Jitendra Jagdish Tulsiani V/s Lavasa Corporation Ltd.

The MahaRERA tribunal in its recent judgment has stated that RERA also have jurisdiction over issues arising out of lease agreements. It was held that a lease where the property is transferred to the longer period like 99 years/999 years, then it is also for Transfer of Property. Hence, it will be treated as being included in section 18 of RERA ACT.

[Source: Maharashtra Rera]

UP RERA orders Six Builders to handover 4,220 pending flats by December 2019

The Greater Noida Bench of Uttar Pradesh Real Estate Regulatory Authority Presided by Shri Balwinder Kumar has directed Six Builders named Capital Infra Home Pvt. Ltd, Assotech Windsor Court, Devika Gold Homz Pvt. Ltd, Jatasya Promoter Pvt. Ltd, Nivas Promoters Pvt. Ltd and JM Housing to handover 4,299 flats to buyers by December 2019. The Bench has passed the order during a review of pending deliveries of six builders and held them accountable for the delay.

[Source:TOI]

FINANCE AND MONEY MARKETS

Fund raising via NCD surges 3-fold to Rs 29,300-cr in 2018

Indian companies raised over Rs 29,300 crore by issuing non-convertible debentures (NCDs) to retail investors in 2018 to meet their business requirements, representing a three-fold surge compare to the preceding year. NCDs are loan-linked bonds that cannot be converted into stocks and usually offer higher interest rates than convertible. According to latest data with the Securities and Exchange Board of India (Sebi), companies mobilised Rs 29,394 crore through NCD in 2018, much higher than Rs 9,779 crore raised from this route last year. [Source: ET]

Government plans to set up NBFC with Rs 2,000 crore to fund food processing firms

The government has planned to set up a non-banking financial company (NBFC) with an initial corpus of Rs 2,000 crore to fund food processing industries as part of its effort to boost this sector and double farmers income, Union Cabinet Minister for Food Processing Harsimrat Kaur Badal

said.

[Source: ET]

STARTUP FUNDING

Swiggy raises \$1 billion in funding, puts Zomato on notice

Online food delivery startup Swiggy, which entered India's "unicorn" club earlier this year, has raised \$1 billion in fresh capital, marking the biggest ever funding round in the country's booming food-tech sector. With the latest funding, which was led by existing investor Naspers Ltd and also saw participation from China's Tencent Holdings Ltd, Swiggy has become the fifth most valuable startup in the country, commanding a valuation of \$3.3 billion and underscoring the stunning rise of a venture that was launched four years ago.

[Source: livemint]

CarDekho raises \$100 million in latest investment round

Girnarsoft, which owns and runs online auto classifieds portal CarDekho, is raising \$100 million in its latest investment round. The investment will be led by Sequoia Capital's global growth fund, which is pegged at a massive corpus of \$8 billion.



Existing investor Hillhouse Capital is also participating in the round.

[Source: ET]

CORPORATE LAW

Over 1 lakh companies deregistered this fiscal

Names of more than 1 lakh companies have been struck off the official records in the current fiscal for not carrying business activities for a long time, the government said. As part of clamping down on illicit fund flows, the Corporate Affairs Ministry has been taking action against entities that are suspected to be shell companies. Under the Companies Act, 2013, a company can be deregistered if it has not been carrying out any business for two continuous years.

[Source: ET]

Significant beneficial owner: Sebi comes out with disclosure format

Listed companies will have to make disclosures about details pertaining to significant beneficial owners in a prescribed format. This will come into effect from the quarter ended March 31, 2019, the Securities and Exchange Board of India (Sebi) said in a circular. As per Sebi, listed entities need to disclose details such as name, PAN and nationality of the significant beneficial owner as well as registered owner. Among other disclosures are details of the shares in which significant beneficial interest is held by the beneficial owner and date of acquisition of significant beneficial interest.

[Source: SEBI]

Bankruptcy Code

NCLAT on NCLT's power to determine legality of a foreign decree

The NCLAT has once again held that the NCLT, for the purpose of initiating insolvency, has no jurisdiction to decide whether a foreign decree is legal or illegal. The judgment is in response to an appeal filed against the Principal Bench order which got into the merits of a foreign decree, in the case of Usha Holdings LLC vs. Francorp Advisors. The Principal Bench found that the foreign decree did not satisfy the requirements of Section 13 and 44A of the Civil Procedure Code, and hence the debt was not enforceable. The NCLAT, however, disagreed and held that NCLT has no authority to decide the legality of a foreign decree.

BANKING

SBI hikes MCLR by 5 bps, EMIs to go up

The country's largest lender State Bank of India (SBI) has hiked the marginal cost of lending rate (MCLR) by 5 basis points across all loan tenures. One basis point is equivalent to one-hundredth part of a percentage point. The hike has come in with effect from 10 December 2018. Post this hike, home, auto and other loans are most likely to become costlier.



[Source: ET]

Govt infuses Rs 10,882 crore capital in four PSU banks

The government infused Rs 10,882 crore in four public sector banks, including UCO Bank and Syndicate Bank, as part of Rs 28,615 crore capital infusion to be done in about half a dozen public sector lenders. The bank has received Rs 3,074 crore in the equity by way of preferential allotment.

[Source: ET]

RBI cancels registration of 1,490 NBFCs in 2 years; Kolkata tops the list

Stepping up oversight over credit companies, the Reserve Bank of India has cancelled the registration of 1,490 non-banking financial companies (NBFCs). These included NBFCs that failed to meet prudential norms and those that voluntarily surrendered registration. These cancellations happened owing to non-compliance with mandatory requirements like minimum net-owned funds (NoF) of Rs 20 million, not submitting statutory returns, and companies not being traced at the addresses they gave.

[Source: businesstandard]

FOR SUBSCRIPTION OF NEWSLETTER AND REGULAR UPDATES, CONTACT:

- ✉ : C-94, Lalkothi Scheme, Jaipur -15 (Raj.)
- ☎ : +91-9829555874
- ✉ : info@srngadvisors.com
- 🌐 : www.srngadvisors.com

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