



# CONNECT

**Wishing you a very Happy and Prosperous Diwali !!**

## **DIRECT TAX**

### **News**

#### **I-T dept launches major drive against Indians with illegal foreign assets; thousands under scanner**

The Income Tax Department has launched a major operation to investigate cases of illegal funds and properties stashed abroad by Indians looking to invoke the new anti-black money law for strict criminal action in many such cases. The department, in coordination with its foreign counterparts, is investigating offshore bank deposits and purchase of assets by “thousands of Indians”, as said by the officials.

#### **Income tax dept may seek first right on recovery of dues under IBC**

The income tax (I-T) department may soon request authorities in the finance ministry to intervene so that I-T dues get a higher priority over dues to unsecured creditors under the insolvency law. At present, the recovery of tax dues is possible only after payment to financial creditors under the Insolvency and Bankruptcy Code (IBC), which comes under the Ministry of Corporate Affairs.

### **Notifications**

**Notification No. 59/2018:** No public servant shall produce before any person or authority, any such document or record or any information or computerized data or part thereof as comes into his possession during the discharge of official duties regarding the PMGKY Scheme.



**Notification No. 61/2018:** CG constituted the National Committee for Promotion of Social and Economic Welfare and appointed 14 persons as the members of the committee.

**Notification No. 67/2018:** In consultation with the Chief Justices of the respective High Courts, the Central Government designated the court(s) of Session, as Special Court(s) for the area(s) specified against their respective courts, for the trial of offences punishable under the provisions of the Prohibition of Benami Property Transactions Act, 1988.

**Notification No. 72/2018:** CBDT provides new format of Form No. 36 (Form of Appeal to the

Appellate Tribunal) and Form 36A (Form of memorandum of cross objection to the Appellate Tribunal).

**Notification No. 74/2018:** CBDT substituted rules related to the Application by a person for a certificate under section 197 and/or sub-section (9) of section 206C of the Income-tax Act, 1961, for no deduction of tax or deduction or collection of tax at a lower rate.

[Source: [www.incometaxindia.gov.in](http://www.incometaxindia.gov.in)]

### **Orders**

Ministry of Finance vide S.O. 5602(E) stated that the Adjudicating Authority appointed and the Appellate Tribunal established under the Prevention of Money-laundering Act, 2002 may discharge the functions of the Adjudicating Authority and Appellate Tribunal, respectively, under the Prohibition of Benami Property Transactions Act, 1988, until the said Authority and Tribunal are appointed or established respectively, under the Prohibition of Benami Property Transactions Act, 1988.

[Source: [www.incometaxindia.gov.in](http://www.incometaxindia.gov.in)]

### **Case Laws**

#### **Should 20% of the demand during pendency of appeal before CIT(A) be paid by the assessee, as stated in CBDT's instruction dated 29.02.2016?**

Section 220(6)/ 246: The AO is not justified in insisting on payment of 20% of the demand based on CBDT's instruction dated 29.02.2016 during pendency of appeal before the CIT(A). This approach may defeat & frustrate the right of the assessee to seek protection against collection and recovery pending appeal. Such can never be the mandate of law.

#### **[DCIT v. Bhupendra Murji Shah – Bombay High Court]**

[Source: [itatonline.org](http://itatonline.org)]

#### **No order of reassessment can be passed if notice under section 143(2) of the Income Tax Act is not issued.**

A notice u/s 143(2) issued by the Assessing officer before the assessee files a return of income has no meaning. If no fresh notice is issued after the assessee files a return, the AO has no jurisdiction to pass the reassessment order and the same has to be quashed. **[Sudhir Menon vs. ACIT - ITAT Mumbai]**

[Source: [itatonline.org](http://itatonline.org)]

### Reopening of assessment will be void

The information given by Director General of Income Tax (Investigation) can only be a basis to trigger "reason to suspect". The AO has to carry out further examination to convert the "reason to suspect" into "reason to believe". If the AO acts on borrowed satisfaction and without application of mind, the reopening is void.

**[Devansh Exports vs. ACIT - ITAT Kolkata]**

[Source: itatonline.org]

### GOODS AND SERVICE TAX (GST)

#### News

#### Composition scheme business need not file purchase details while filing GST quarterly returns

Businesses opting for composition scheme under GST need not file details of purchases made from their vendors at the time of filing quarterly return GSTR-4, as confirmed by the Finance Ministry. In a clarification, the ministry said there have been doubts regarding the manner of filing the quarterly return by composition dealers in Form GSTR-4 in the absence of auto-population of the details of inward supplies received from registered suppliers.

[Source: ET]

#### Vehicle owners to pay 18% under GST on pollution check

Vehicle owners will have to pay a GST of 18 percent to get their vehicles checked for pollution, the Authority for Advance Ruling (AAR) has said. The Goa bench of the AAR passed the ruling on an application filed by Venkatesh Automobiles on whether the service provided for issuing 'Pollution Under Control' (PUC) certificate on behalf of the state government is exempted from the Goods and Services Tax (GST).

[Source: moneycontrol.com]

#### Form GSTR - 7 and GSTR - 7A

Form GSTR-7, Return for Tax Deducted at Source which is to be filed by Tax Deductors and Form GSTR - 7A



(Tax Deduction at Source Certificate) has been made available on GST portal to the taxpayers.

[Source: cbic.gov.in]

#### No GST on services of Religious & Charitable Trusts by way of residential programs or camps.

As per Circular No. 66/40/2018-GST, No GST on services of religious and charitable trusts by way of residential programs or camps meant for advancement of religion, spirituality or yoga. However, if charitable or religious trusts merely or primarily provide accommodation or serve food and drinks against consideration in any form including donation, such activities will be taxable.

#### Case Laws

#### GST (Compensation to States) Act, 2017 is constitutionally valid: Supreme Court

The Compensation to States Act, 2017 is not beyond the legislative competence of the Parliament.

- The Compensation to States Act, 2017 does not violate Constitution (One Hundred and First Amendment) Act, 2016 nor is against the objective of Constitution (One Hundred and First Amendment) Act, 2016.
- The Compensation to States Act is not a colorable legislation.
- Levy of Compensation to States Cess is an increment to goods and services tax which is permissible in law.

**[Union of India v. Mohit Mineral Private Ltd.]**

#### Rectification of GST- TRAN1 already filed, not allowed

Limited extension has been granted to cover cases where genuine hardships were felt in uploading the said declarations due to technical glitches. The time limit provisions contained in the transitional chapter cannot be lightly extended. Thus it was held that rectification of GST- TRAN1 already filed not allowed.

**[M/s Jay Chemicals Industries v. Union of India - Gujarat High Court]**

[Source: cbic.gov.in]

### REAL ESTATE REGULATION & DEVELOPMENT ACT

#### Rajasthan High Court stays execution of the orders passed by Rajasthan RERA

D.B Civil Writ No. 14186/2018, the Hon'ble HC held that, the real estate regulatory authority was to be constituted within a period of 1 year from the date of coming into force of the RERA Act, 2016. Such period of 1 year expired on 1<sup>st</sup> May, 2017 and the period of 1 year has also passed subsequent to it. Taking into consideration of these facts the Hon'ble HC has stayed the execution of the orders passed by the Rajasthan RERA with immediate effect.



Real Estate  
Regulatory Authority

#### UP RERA orders forensic audit of Ansal API projects

The Bench-2 of Uttar Pradesh Real Estate Regulatory Authority orders forensic audit of all the projects of Ansal Properties and Infrastructure Ltd. This decision came after hearing nearly around 256 complaints out of 403 complaints filed against the above mentioned promoter for delay in completion and handing over possession. The Authority directed the auditor to act as Financial Observer to oversee all financial transactions including inflows and outflows of funds in Ansal Properties and Infrastructure Ltd. The Authority

further directs that Lucknow development Authority and UP Housing Board will take steps to address the pending problems issues that are required for expeditious completion of various projects of the promoter.

**Fund amount was not maintainable, however interest @ 10.45% p.a. was allowed**

There was a delay on promoter’s part in handling over of possession of the flat to complainant. The complainant demanded refund of deposited amount with interest as prescribed in the act. The Hon’ble Authority held that amount cannot be refunded because the project was in the closure stage. However interest @ 10.45% p.a. was allowed that was to be paid within a period of 90 days from issue of the order.

**[Mohit Mittal v. M/s Hammid Real Estate Pvt. Ltd]**

[Source: haryanarera.gov.in]

**FINANCE AND MONEY MARKETS**

**FPIs pull out over \$4 billion from markets in 3 weeks**

Foreign investors have pulled out close to Rs 32,000 crore from the Indian capital markets in the first three weeks of this month due to the ongoing global trade tiff, rising crude prices and higher US treasury yields. This is much higher than the over Rs 21,000 crore net outflow seen in entire September. Prior to that, overseas investors had put in a net amount of Rs 7,400 crore in the capital markets (both equity and debt) in July-August. According to the latest depository data, foreign portfolio investors (FPIs) sold equities to the tune of Rs 19,810 crore during October 1-19 and bonds worth Rs 12,167 crore, taking the total to Rs 31,977 crore (USD 4.3 billion).

[Source: ET]

**Inflow of capital from China has reduced over past 4 years, shows report.**

Constantly billed as the biggest source of FDI by the government, inflow of capital from India’s neighbour, China has reduced over the past four years. According to the Department of Commerce, India received FDI equity inflows worth \$ 494 million from China in 2014-15. It was the same year Narendra Modi led government took charge. It reduced to \$ 461 million in the succeeding year. Since then, the figure has fallen to \$ 277 million in 2016-17 and a lowly \$ 141 million in the April-December period of 2017-18.

Financial Year- April to March, (\$ billions)		
	<b>FDI Equity inflows flow from China</b>	<b>Total FDI Equity inflow</b>
<b>FY 14</b>	<b>0.12</b>	<b>24.29</b>
<b>FY 15</b>	<b>0.49</b>	<b>30.93</b>
<b>FY 16</b>	<b>0.46</b>	<b>40.01</b>
<b>FY 17</b>	<b>0.28</b>	<b>43.47</b>
<b>FY 18*</b>	<b>0.14</b>	<b>44.85</b>

\* Till December 2017  
Source : Department of Industrial Policy and Promotion

**INTERNATIONAL**

**Tax treaties under scanner as Australia court says Tech Mahindra to be taxed**

The fundamental feature a bilateral pact between two countries to resolve issues of double taxation has come under question. According to a ruling by the Federal Court of Australia, the payments received by an Indian company from its clients in Australia will be taxed in Australia. The Australian superior court has treated such payments as ‘royalty’ — which can be taxed, even though such proceeds cannot be taxed under local Australian laws. The verdict relating to one of India’s leading companies Tech Mahindra goes against the underlying tenet of tax treaties which, as is widely accepted, should be used as shield for the taxpayer.

**STARTUP FUNDING**

**Clear Tax raises \$50 million in fresh funding led by Composite Capital**

Online tax filing and compliance startup Clear Tax has raised \$50 million (around Rs 3.67 billion) in



fresh funding led by Hong Kong-based Composite Capital as it looks to expand its product and services offerings to customers on its platform. The company which started off with helping individuals file their personal taxes today has expanded into offering solutions for GST and E-waybills and also services such as incorporating businesses and for compliance.

**Startups in India see 108% growth in funding in 2018: NASSCOM**

The startups in India saw a 108 per cent growth in total funding from USD two billion in 2017 to USD 4.2 billion this year, National Association of Software and Services Companies said. The worrying factor, however, was the decline in funding for companies at the seed stage. "India is becoming a startup hub. Opportunity for growth is enormous, which we had never seen in our lifetime. Challenge is how fast a company wants to transform," NASSCOM president Debjani Ghosh said.

[Source: ET]

**CORPORATE LAW**

**MCA notifies the commencement date of certain provisions of section 132**

In exercise of the powers conferred by sub-section (3) of section 1 of the Companies Act, 2013, the Central Government hereby appoints the 24th October, 2018 as the date on which the sub-sections (2), (4), (5), (10), (13), (14) and (15) of section 132 of the said Act shall come into force.

[Source: MCA]

## Ministry of Corporate Affairs has notified relevant sections to give effect to NFRA by way of notification on 24th of October, 2018.

- Till now ICAI used to make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards but, from now onwards ICAI will act as advisory to NFRA and NFRA will recommend to the Government.
- NFRA have the same powers as are vested in a civil court.
- Where professional or other misconduct is proved:
  - NFRA may impose minimum of one lakh rupees subject to maximum of five times of the fees received, in case of individuals.
  - And ten lakh rupees to ten times of the fees received, in case of firms.
  - Debarring the member or the firm from Practice for a period that may range from 6 months to 10 years.



सत्यमेव जयते

Ministry of Corporate Affairs  
Government Of India

## SEBI amends Regulatory Fee on Stock Exchanges w.e.f 1<sup>st</sup> April 2018

Notification No. SEBI/LAD-NRO/GN/2018/45  
SEBI made following regulations:-

- Regulations may be called the Securities and Exchange Board of India (Regulatory Fee on Stock Exchanges) (Amendment) Regulations, 2018.
- They shall come into force w.e.f April 1<sup>st</sup>, 2018: Provided that sub clause (c) of clause (1) of regulation 3 of these regulations shall come into force w.e.f October 1<sup>st</sup>, 2018.
- In the Securities and Exchange Board of India (Regulatory Fee on Stock Exchanges) (Amendment) Regulations, 2006, In regulation 4, sub regulation (1), Explanation-
  - After the word “transactions” and before the word “which”, the words “excluding turnover on agricultural commodity derivatives”, shall be inserted.
  - After the explanation and before the existing proviso to the explanation, a new proviso shall be inserted namely: “Provided that the recognized stock exchanges shall a flat regulatory fee of Rs. 100000 on aggregate value of the transactions on agricultural commodity derivatives.”

The existing proviso to the explanation shall be deleted.

## SME IPO fund raising nearly doubles to Rs 1,281 Crore in April-September

Small and medium enterprises (SMEs) raised Rs 1,281 crore through initial share-sales in April-September period of the current fiscal, registering a nearly two fold jump from the year-ago period.

A total of 74 companies got listed with initial public offers (IPOs) worth Rs 1,281 crore in the first six months of the ongoing fiscal, compared to 58 firms which tapped the IPO route to garner Rs. 656 Crore in the same period last financial year, as per the data provided by merchant bankers.

## NCLT Principal bench directs to move Videocon insolvency pleas to one court

The principal bench of the National Company Law Tribunal (NCLT) directed to transfer all insolvency petitions related to Videocon group being heard in Mumbai courts to a single court there. NCLT President Justice M M Kumar directed to transfer all insolvency petitions related to Videocon group to one court headed by M K Shrawat.

## BANKING

### Syndicate Bank gets Rs 728-cr capital infusion from government

Public sector Syndicate Bank NSE said it has received capital infusion of Rs 728 crore from the government in lieu of preferential allotment of shares. The bank said that the finance ministry had conveyed to the bank of getting government sanction for release of the amount towards contribution of the preferential allotment of equity shares during 2018-19 under plan as government's investment.

[Source: ET]

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