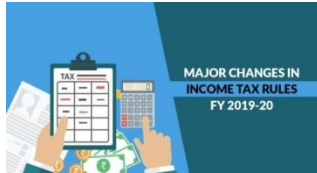


DIRECT TAX

News

New income tax rules: No escape just by paying penalty

Revised guidelines issued by the Income Tax (I-T) Department to tighten the screw on tax evaders who have made serious offences under black money and Benami laws which were "generally" non-compoundable. This means that a person or entity would not be able to settle a case of tax evasion by just paying the tax demand, penalty and interest. The new guideline applies to all cases for compounding received.



Notifications

Notification No 45/2019 dated 20 June, 2019:-

The Central Government notifies Grants/funds received from Central/State or any statutory body and compensation from sale disposal to Central Silk Board Bengaluru shall be exempt.

Notification No 46/2019 dated 20 June, 2019:-

The Central Government notifies International Sericultural Commission Bengaluru under a treaty entered into by the Central Government which shall be exempt.

Notification No 47/2019 dated 20 June, 2019:-

The Central Government has framed and notified a scheme for industrial park, by the notifications of the Government of India in the Ministry of Commerce and Industry dated the 1st day of April, 2002, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2006; - The minimum investment on infrastructure development in an Industrial Park shall not be less than 50% of the total project cost. In the case of an Industrial Park which provides built-up space for industrial use, the minimum expenditure on infrastructure development including cost of construction of industrial space, shall not be less than 60% of the total project cost.

Notification No 48/2019 dated 26 June, 2019 :-

It is hereby notified that M/s. Manipal Academy of Higher Education, has been approved by the Central Government for the purpose of clause (ii) of sub-section (1) of section 35 of the Income-tax Act, 1961 (said Act), read with Rules 5C and 5E of the Income-tax Rules, 1962 (said Rules), from Assessment year 2015-16 and onwards in the category of 'University, College or other Institution', subject to the following conditions, namely:-

- (i) The sums paid to the approved organization shall be used to undertake scientific research
- (ii) The approved organization shall carry out scientific research through its faculty members or enrolled students.

Notification No. 49/2019 dated 27 June, 2019

The Central Government notifies 'Karnataka Electricity Regulatory Commission', Bengaluru of which specified income arising to that Commission shall be exempt.

Notification No. 50/2019 dated 27 June, 2019:-

The Central Government specifies that any income arising to the foreign company by way of royalty or fees for technical services received in pursuance of the Mission Ready Management Solutions Agreement (MRMS) shall be exempt.

Case Law

Addition merely on the basis of Notices u/s 133(6) returned and unserved is not justifiable, Observation of the Assessing Officer in the assessment order that all the letters were returned back is incorrect.

Sunita Gupta Versus Income Tax Officer Ward - 34 (2) New Delhi 2019 (6) TMI 46 - ITAT Delhi

In the instant case the purchases are not doubted and the assessee has made payments to the creditors in the subsequent years through banking channels and the purchases made from some of the above parties in the subsequent years were not doubted and the notices u/s. 133 (6) issued to the 3 parties were never returned back meaning thereby these were served on the parties, therefore, addition in our opinion on account of difference in the opening and closing balance of sundry creditors in absence of non production of the creditors is not justified. Merely because the said creditors were not produced before the Assessing Officer for his examination, cannot be a ground for making the disallowance.

Omission on the part of the Assessing Authority to issue proper notice under Section 143(2) of the Act cannot be a procedural irregularity and the same is not curable, Non issuance of Notice u/s 143(2) within the time is not a curable defect u/s 292BB

Nittur Vasanth Kumar Mahesh Versus Assistant Commissioner Of Income Tax Circle 3 (2) (1) 2019 (5) TMI 1557 - Karnataka High Court

The flaw found in the notice issued u/s 143(2) goes to the root of the matter and the same cannot be cured or dispensed with, to consider the case on merits. The Assessment Order is passed based on the invalid Notice, which does not survive. Notice is the foundation. Assessment Order built

upon such defective notice would certainly fall to the ground.

Penalty proceedings initiated after a long gap of more than 4½ years from the date of original assessment in order passed in remanded matter by Tribunal is barred by limitation

Amit Sabharwal, C/o M/S Ashok Raj & Associates Versus ITO, Ward-1 (5) , Ghaziabad, 2019 (5) TMI 944 - ITAT Delhi

Penalty is not leviable where the penalty proceedings were not initiated long after the completion of the assessment and the assessment order was silent about the levy of penalty u/s 271B. There was no such mention of the initiation of penalty proceedings u/s 271B and the fact of higher gross receipt was very much available to the Assessing Officer which has been mentioned in the body of the original assessment order, therefore, the penalty proceeding initiated by the AO in our opinion is barred by limitation.

Exemption u/s 54F - The assessee did not deposit the sale consideration in the bank account before the due date of filing of return, But otherwise purchase of house is within two years stipulated in section 54F(1) of the Act, Exemption u/s 54F is allowed

Nandkishore Ramanlal Parikh-HUF Versus ITO, Ward-5 (2) (3) Ahmedabad, 2019 (5) TMI 106 - ITAT Ahmedabad

In this case assessee invested the capital gain in purchase of a flat and not deposited the sale consideration in a capital account before the due date of filing of return u/s 139 and stand of the assessee was that she has made investment in purchase of a new flat and utilised the total capital gain. It is not the case of the assessee that she has purchased beyond the period as contemplated in section 54F(1), The only failure is, she has not deposited the sale consideration in capital account. Thus allow the appeal of the assessee and direct the AO to grant exemption under section 54F to the assessee.

Assessment u/s 153A - Benefit of carry forward of losses against additional income offered in its return filed pursuant to search u/s 153A where loss also claimed in returns filed u/s 139(1)

M/s O.K. Silk Mills Ltd., M/S Okay Plus Builders Pvt. Ltd., M/S Shree Krishna VatikaBuildwellPvt. Ltd. Versus D.C.I.T., Circle-2, Jaipur 2019 (5) TMI 749 - ITAT Jaipur

It was observed that the claim of the assessee for earlier years loss, which is inclusive of the loss of the preceding AY has been duly allowed by the AO and the same has not been disputed by Ld. CIT(A). This further strengthens our conclusion that the current years losses were not shown in the acknowledgement generated for returns filed u/s 153A were due to some inadvertent technical error, and in no manner ought to have been

considered as additional income declared by the assessee pursuant to the search operations carried out in the group and the bench directed the A.O. to allow the benefit of carry forward of losses as claimed in all the assessment years involved.

Returned or Unserved Notice u/s 133(6) may not be the sole ground for making additions u/s 68 of the Act

Sunita Gupta Versus Income Tax Officer Ward - 34 (2) New Delhi 2019 (6) TMI 46 - ITAT DELHI

Observation of the Assessing Officer in the assessment order that all the letters were returned back is incorrect. Since in the instant case the purchases are not doubted and the assessee has made payments to the creditors in the subsequent years through banking channels, the notices u/s. 133 (6) issued to the 3 parties were never returned back meaning thereby these were served on the parties, therefore, addition on account of difference in the opening and closing balance of sundry creditors in absence of non production of the creditors is not justified. Hence this cannot be a ground for making the disallowance.

For Initiation of penalty u/s 271D reasons must be recorded in the assessment order

Shri t. ShijuVersus the Joint Commissioner of Income Tax, Non Corporate Range 7, Chennai 2019 (6) TMI 603 - ITAT Chennai

In this case, the assessment was completed u/s 143(3) by assessing total income after making various additions. Moreover, while framing the assessment order, AO has not given any findings/observations that the assessee has contravened the provisions of section 269SS. on perusal of the assessment order it is seen that the AO has not recorded any satisfaction recorded regarding penalty proceedings u/s 271D. The penalty levied u/s 271D stands deleted

Proof of Identity, Creditworthiness and Genuineness of the loan obtained has been proved by the assessee by all the evidences related to loan

Addl. Cit, Special Range-7, New Delhi VersusPrayagPolytechPvt. Ltd. 2019 (6) TMI 930 - ITAT Delhi

Creditors have sufficient funds and assessee has lead all the evidences to discharge its onus under section 68 in respect of identity, creditworthiness and genuineness of the loan obtained by it, lenders had sufficient income at their disposal to provide loans to the assessee which is substantiated by their return of income.

Evidences and the explanation has been rejected by the AO merely on the basis of doubt without bringing any material to discredit the document and information on record. CIT(A) has also arbitrarily rejected the explanation of the assessee company ignoring the above facts. The assessee

has lead all evidences in support of its contention and the identity, creditworthiness and genuineness of the transaction stand established and hence the addition made by the AO is directed to be deleted.

Allegation that the Co is a penny stock co whose share price has been artificially rigged by promoters/brokers/operators to create non-genuine LTCG is not sufficient.

Deepak Nagar vs. DCIT (ITAT Delhi)

The allegation that the Co is a penny stock co whose share price has been artificially rigged by promoters/brokers/operators to create non-genuine LTCG is not sufficient. The AO has failed to bring on record any evidence to prove that the transactions carried out by the assessee were not genuine or that the documents were not authentic. It is apparent from the assessment order that the Assessing Officer has not conducted any independent and separate enquiry in this case of the assessee. Even the statement recorded by the INV Wing has not been got confirmed or corroborated by the person during the assessment proceedings, hence the addition stand deleted.

These facts clearly demonstrate that the assessee is a habitual investor and being a qualified professional, is well aware of market trends of shares in the stock market. The entire assessment has been framed by the Assessing Officer without conducting any enquiry from the relevant parties or independent source or evidence but has merely relied upon the statements recorded by the INV Wing as well as information received from the INV Wing.

PREVENTION OF MONEY LAUNDERING ACT

News

IMA ponzi scam: ED attaches assets worth Rs 209 crore under PMLA

Bengaluru zonal office has issued a provisional order, for attachment of immovable assets worth Rs 209 crore in its money laundering probe into a ponzi scam involving Karnataka's IMA group, in which thousands of depositors have allegedly been duped. The agency recently filed a criminal case against the IMA group of companies of money laundering and its absconding main promoter and Managing Director Mohammed Mansoor Khan after reports emerged that he has gone underground fearing investments worth crores of about 40,000 investors have tanked.

Khan had promised returns ranging from 2.5 to 3 per cent month to the investors. The ED had summoned Khan multiple times but he did not depose before the agency and it is suspected that he has left the country. The Karnataka government has constituted a special investigation team (SIT) of the police to probe the case.

BENAMI LAW

Case Law

Payment of Part Sale Consideration Or Stamp Duty Cannot Be Sole Criteria To Hold Transaction As Benami

Mangathai Ammal (Died) Through Lrs & Oth. And Rajeswari & Oth.



While considering a particular transaction as Benami, the intention of the person who contributed the purchase money is determinative of the nature of transaction.

GST

News

35th GST Council Meeting Highlights-

- The council also extended the tenure of the anti-profiteering authority by two years till November 2021.
- The council extended the date for filing GST returns for year 2017-18 by two months till August 31st 2019.
- Aadhaar Card has now been approved as sufficient proof to obtain GST registration, thereby eliminating the need for multiple documentation.
- Electronic invoicing system for tickets of GST registered multiplexes and cinema halls to curb the menace of fake tickets.
- Imposing a penalty of up to 10 per cent of the profiteered amount on entities for not passing on benefits of GST rate cuts to consumers.
- To introduce a new one-form new GST return filing system, which will be applicable from January 1, 2020.
- To approve reduction in GST rate on electric vehicle chargers to 12% from existing 18%.

Dealers to get input tax credit on GST for the post-sale discounts

Dealers will have to pay 18 per cent goods and services tax (GST) on the post-sale discount that their company gives to them if it asks them to do promotional activities or pass on the concessions to the end consumer. The dealer would be eligible to get input tax credit on entire amount of GST paid if the discount is given after the sale of product.

Inter-state office services to come under GST

The government is set to make it clear that services provided by an office of an organization in one state to another office in another state will face goods and services tax, or GST. For Ex- In-house functions such as human resources and payrolls, if carried out from a centre in one state for offices in other states, will face GST, for which invoice will have to be issued.

Four held for issuing GST invoices worth Rs. 2,364 Crore without supplying goods.

The Directorate-General of GST Intelligence (DGGI) of Bengaluru Zone has arrested four persons, including a chartered accountant, for their alleged and admitted involvement in issuing GST invoices without actually supplying goods,

resulting in wrongful utilisation of input tax credit.

Gang involved in Rs 60 crore GST fraud busted, 4 held in Noida

The six companies were registered at Greater Noida addresses but did not exist in real. Using the fake companies, the accused had generated e-way bills (GST related challans for transporting consignments) of over Rs 615 crore and caused loss to the public exchequer.



Government identifies 5,106 'risky exporters' who have fraudulently claimed GST refunds.

The government on Thursday said it has identified 5,106 "risky exporters" so far who have claimed GST refunds based on bogus invoices, and would manually check their claims before issuing refunds. The Central Board of Indirect Taxes and Customs (CBIC), in a statement, also assured genuine exporters that their refund claims would be processed in an automated environment and issued in a timely manner.

Notifications

Notification No. 25/2019-Central Tax, Dt. 21-06-2019

Seeks to extend the date from which the facility of blocking and unblocking on e-way bill facility as per the provision of Rule 138E of CGST Rules, 2017 shall be brought into force to 21.08.2019.

Notification No. 26/2019-Central Tax, Dt. 28-06-2019

Seeks to extend the time limit for furnishing the return by a registered person required to deduct tax at source under the provisions of section 51 of the said Act in FORM GSTR-7 for the months of October, 2018 to July, 2019 till the 31st day of August, 2019.

Notification No. 27/2019-Central Tax, Dt. 28-06-2019

Due Date of Filing GSTR-1 (Aggregate turnover upto 1.5 crore) is 31st October, 2019

Notification No. 28/2019-Central Tax, Dt. 28-06-2019

Seeks to extend the due date for furnishing FORM GSTR-1 for registered persons having aggregate turnover of more than 1.5 crore rupees for the months of July, 2019 to September, 2019.

Notification No. 29/2019-Central Tax, Dt. 28-06-2019

Seeks to prescribe the due date for furnishing FORM GSTR-3B for the months of July, 2019 to September, 2019 is on or before the twentieth day of the month succeeding such month.

Notification No. 30/2019-Central Tax, Dt. 28-06-2019

Seeks to provide exemption from furnishing of Annual Return/Reconciliation Statement for suppliers of Online Information Database Access and Retrieval Services ("OIDAR services").

Notification No. 31/2019-Central Tax, Dt. 28-06-2019

Seeks to carry out changes in the CGST Rules, 2017 which includes:

- Refund of taxes to the retail outlets established in departure area of an international Airport beyond immigration counters making tax free supply to an outgoing international tourist.
- Furnishing of Bank Account Details.
- Value of supply in cases where Kerala Flood Cess is applicable.
- These rules may be called the Central Goods and Services Tax (Fourth Amendment) Rules, 2019.

Notification No. 32/2019-Central Tax - Dt. 28-06-2019

Seeks to extend the time limit for furnishing the declaration in FORM GST ITC-04 of the said rules, in respect of goods dispatched to a job worker or received from a job worker, during the period from July, 2017 to June, 2019 till the 31st day of August, 2019.

Notification No. 11/2019-Central Tax (Rate), Dt. 29-06-2019

Seeks to specify retail outlets established in the departure area of an international airport, beyond the immigration counters, making tax free supply of goods to an outgoing international tourist, as class of persons who shall be entitled to claim refund.

Circulars

Circular No. - 102/2019 dated 28-06-2019

Clarification regarding applicability of GST on additional / penal interest.

Doubts have been raised regarding the applicability of GST on additional / penal interest on the overdue loan i.e. whether it would be exempt from GST in terms of Sl. No. 27 of Notification No. 12/2017-Central Tax (Rate) dated 28th June 2017 or such penal interest would be treated as consideration for liquidated damages.

Circular No. - 103/2019 dated 28-06-2019

Clarifications issued in respect of Place of Supply. Various representations have been received from trade and industry seeking clarification in respect of determination of place of supply in case of Services provided by Ports and Services rendered on goods temporarily imported in India.

Circular No. - 104/2019 dated 28-06-2019

Refund Applications in Form GST RFD-01A Processing of refund applications in FORM GST RFD-01A submitted by taxpayers wrongly mapped on the common portal.

Circular No. - 105/2019 dated 28-06-2019

Treatment of secondary or post-sales discounts under GST

It is clarified that if the post-sale discount is given by the supplier of goods to the dealer without any further obligation or action required at the dealer's end, then the post sales discount given by

the said supplier will be related to the original supply of goods and it would not be included in the value of supply. The supplier of goods, being recipient of services, will be eligible to claim input tax credit (hereinafter referred to as the "ITC") of the GST so charged by the dealer.

Circular No. - 106/2019 dated 29-06-2019

Refund Provision for retail outlet make supply to outgoing international tourist

Refund of taxes paid on inward supply of indigenous goods by retail outlets established at departure area of the international airport beyond immigration counters when supplied to outgoing international tourist against foreign exchange.

Case law

Builder pulled up for not passing GST gain to buyers attracts penalty of 18% interest on profiteered Amount.

Peeyush Awasthi v/s. Sun Infra Services (P.) Ltd.

Where respondent builder had denied benefit of ITC to applicants as well as rest 36 purchasers of flats in contravention of provisions of section 171 of CGST Act, 2017 and thus realized more price from them than he was entitled to charge and had also compelled them to pay more GST than what they were required to pay by issuing incorrect invoices hence he has committed an offence under section 122(i) and therefore is liable to imposition of penalty under above section read with rule 133(3)(d) of the CGST Rules, 2017. [Source: CBIC]

Reduction in tax rate was not passed on to recipients attracts penalty of passing benefit of Rs 10,77,182.34 with 18% Interest.

C.P. Rao v/s. Unicharm India (P.) Ltd.

Where Central Government vide Notification No. 19/2018-Central Tax (Rate) dated 26-7-2018 had reduced rate of GST from 12 per cent to NIL without ITC in respect of product 'SofyBodyfit XL 6S' with effect from 27-7-2018 from invoices available but respondent increased its base price of said product from Rs. 33.08 to Rs. 37.05 and, thus, benefit of reduction in tax rate was not passed on to recipients and notwithstanding fact that there had been reduction in MRP, respondent had reduced his MRP, which did not commensurate with net reduction in rate of tax and that benefit of tax reduction had not reached all recipients; there was contravention of provisions of section 171(1) and, hence, penalty was to be imposed. [Source: CBIC]

RERA

News

UP RERA

UPRERA create Stress fund for completing stuck projects

Recently, FPCE (Forum for People's Collective Efforts) has demanded that the government should set up a stress fund for completing pending projects in next five years. It has also demanded that the government should notify home buyers as "Primary Secured Creditors"

instead of current status of "Unsecured Creditors".

UPRERA imposes fine on Ansal API.

The Uttar Pradesh Real Estate Regulatory Authority has imposed Rs1 Crore fine on Ansal API for not following its order dated 25.10.2018. UPRERA also defers its decision to de-register 6 projects of Ansal for 4 months and asked builder to publish project escrow account in newspaper and a CA from CAG panel has been appointed to carry out audit of company's projects.

UPRERA imposes fine on Rohtas group.

The Uttar Pradesh Real Estate Regulatory Authority has recently imposed a fine of Rs 39.3 crores on Rohtas group for not registering integrated township at Raibareilly road and the said fine is to be submitted within 30 days.

UPRERA recommends SIT inquiry over fund diversion

The Uttar Pradesh Regulatory Authority recommends a Special Investigation Team inquiry into the projects of Unnati Fortunes Holding. SIT inquiry has been recommended over company's failure to complete its five projects and also for the fund diversion of Rs 107 crore it took from the allottees.

Case law

Umesh Soni V/s Ridhi Sidhi Infra projects P. Ltd.

The Complainant has filed a complaint in which he sought a Relief as he has not yet received a possession of the flat which has been delayed by more than 3 years. As per the agreement on 01.12.2011, The Respondent has to develop the project & to give the possession within 36 months i.e 01.12.2014.

The Respondent has given justification that due to some unavoidable circumstances such as height of the building & certain Restrictions has been imposed by the state Govt. / Court on construction material the project got delay. Moreover he also says that the agreement was executed on 21.05.2012 & RERA provisions cannot be applicable with retrospectively effect.

The authority is opined that the argument of Respondent is not tenable as the project is an on-going & Registered in RERA. As per Section 18 the Delay in handling over possession in case of Ongoing Project has to be taken from the Date of Possession mentioned in the agreements & the Other contention of Respondent is not applicable as the Restriction from State Govt./ Courts is imposed after the date of completion mentioned in the agreements. [Rajasthan RERA]

Dashrath Singh Vs Ratan Housing Development Private Limited

The Hon'ble bench presided by Shri Bhanu Pratap Singh (Member IAS ret'd.) in the case of Dashrath Singh Vs Ratan Housing Development Private Limited has held that as there is no provision for non-payment of rent under the RERA act, the same does not fall under jurisdiction of RERA

authority and accordingly the authority does not possess any power to adjudicate the same.

[UP RERA]

Yudhistar Raj Soni Versus Ambition Builders Private Limited

The bench presided by Shri Nihal Chand Goel (Chairman) and Shri Rakesh Jain (Member) held that as the Promoter has executed the sale deed in respect of more than 60% of the units in the Project, and by virtue of clause (ii) of explanation to rule 4 of RERA Rules, the project is not an on-going project, and accordingly the project is not required to be registered under RERA Act. Further an observation was made by the authority that it has jurisdiction over only such new or on-going projects that are either registered or liable to be registered under RERA Act. [Rajasthan RERA]

Omnisight Services Versus Aqasia Homes Ltd.

The Rajasthan Real Estate Regulatory Authority bench presided by Shri Nihal Chand Goel Chairman and Shri Rakesh Jain Member in the case held that in this particular case the Complainant has sought relief under section 12, 13 and section 18 of the Act. But as no agreement for sale was executed between the parties, the provisions of section 18(1) of the Act are not attracted and accordingly the prayer of the Complainant to grant refund of the deposited amount along with compensation is not maintainable under section 18 of the Act.

[Rajasthan RERA]

CORPORATE LAWS & OTHER COMMERCIAL POLICIES

National Electronic Funds Transfer (NEFT) and Real Time Gross Settlement (RTGS) systems – Waiver of charge

In order to provide an impetus to digital funds movement, it has been decided that with effect from **July 1, 2019**, processing charges and time varying charges levied on banks by Reserve Bank of India (RBI) for outward transactions undertaken using the RTGS system, as also the processing charges levied by RBI for transactions processed in NEFT system will be **waived** by the Reserve Bank.

The banks are advised to pass on the benefits to their customers for undertaking transactions using the RTGS and NEFT systems with effect from July 1, 2019.

Govt. reduces rate of contribution towards ESI

The government of India has taken decision to reduce the rate of contribution under the ESI Act from 6.5% to 4% (employers' contribution being reduced from 4.75% to 3.25% and employees' contribution being reduced from 1.75% to 0.75%). This would benefit 3.6 crore employees and 12.85 lakh employers. The reduced rate of contribution will bring about a substantial relief to workers.

RBI notifies new online Portal for FLA returns

RBI wide notification dated 28th June, 2019 notifies that the present email-based reporting

system for submission of the FLA return will be placed by the web based system online reporting portal.

It would facilitate data submission by eligible entities including the alternate investment funds (AIF) registered with the SEBI as also the reporting of foreign investment in the form of capital/ profit share contribution received/ transferred in case of LLPs and investment by person resident outside India in an investment vehicle.

Indian entities not complying with above will be treated as non-compliant with FEMA Act, 1999 and regulations made thereunder.

These directions will come into force with immediate effect and would be applicable for reporting of information for the year 2018-19.

MCA issues circular regarding filing of e-form DIR-3 KYC

MCA vide General circular no. 07/2019 dated 27.06.2019 proposes to implement a web based verification service with pre-filled data based on the records in registry to enable ease of verification in filing KYC.

Incorporation of Section 8 Companies through SPICe - 10.06.2019

CA by Companies (Incorporation) 6th Amendment Rules, 2019 dated 7th June, 2019 has amended the incorporation rules for incorporation of Section 8 companies. The rules will be effective from 15th August, 2019.

As per the amended rules, application for incorporation of Section 8 Company along with application for license for such company will now be submitted in Form INC-32 (SPICe). However, application for Section 8 license for an existing Section 8 company will continue to be in Form INC-12.

Currently, the power to grant license to Section 8 Company is with ROC, post this amendment, this power will go into the hands of CRC (Central Registration Center).

SEBI

SEBI tightens rules for usage of client funds by brokerages

Capital market regulator the Securities and Exchange Board of India (Sebi) has tightened the rules for usage of client funds by brokerages. As per the new rules, brokers have been asked to transfer the securities to their client accounts within one day of receiving payment. In case if the client defaults on the payment, brokers have been asked to hold the securities up to five days post which they can liquidate the securities in the market and recover dues. "Under no circumstances, shall the securities of the clients received in pay-out be retained by the trading member (Brokers) beyond five trading days and be used for any other purpose," according to SEBI circular.



SEBI moves to curb sensitive information leak, seeks trading details

Individuals and entities circulating unpublished price sensitive information (UPSI) of listed firms over social media platforms have come under the regulator's glare. Sources said the Securities and Exchange Board of India (Sebi) had issued letters to over 50 individuals, including current and former employees of broking firms who had received and forwarded UPSI in the recent past

Can physical shares be accepted in buybacks, companies ask SEBI

Various listed companies have sought clarity from the Securities and Exchange Board of India (Sebi) on whether shares held in physical form could be accepted for buybacks, said two people privy to the development. The development comes after the National Stock Exchange (NSE) in a circular last month asked companies to accept only dematerialised shares for buybacks. This prompted companies such as Quick Heal Technologies, Aarti Drugs, Zenith Fibers to include similar clause in their buyback offer document.

MISCELLANEOUS

Transfer Pricing - India

The Government of India has issued a press release stating that the Union Cabinet, chaired by the Prime Minister, has approved the ratification of the MLI (Multilateral Convention) to implement tax treaty related measures to prevent BEPS (Base Erosion Profit Shifting). The Convention will modify India's treaties in order to curb revenue loss through treaty abuse and BEPS strategies by ensuring that profits are taxed where substantive economic activities generating the profits are carried out and where value is created.

While signing the MLI, India had chosen to apply the simplified limitation of benefits (LOB) along with the mandatory minimum standard of the Principal Purpose Test (PPT) to counter treaty abuse. India had also adopted the minimum standards prescribed under dispute resolution through Mutual Agreement Procedure (MAP). India had indicated that it will not apply Article dealing with fiscally transparent entities to any of its CTAs. Further India had not chosen for mandatory arbitration. It would be interesting to analyse the modifications (if any) are made by the Government while ratifying the MLI.

UNION BUDGET HIGHLIGHTS

2019-20

Budget Highlights: Direct Taxes

1. **Surcharge rates** have been increased.
(Rs. 2cr- 5cr: Surcharge of 25%; Above Rs.5cr- Surcharge of 37%)
2. **Corporate Tax Rate for Domestic Co.**- Gross turnover upto Rs. 400Cr in P.Y. Taxable @25%, otherwise taxable @30%.Further increased by Surcharge.(Rs. 1cr- 10cr: Surcharge of 7% ; Above Rs.10cr:Surcharge of 12%)

3. Sec 2(19AA) -Resulting company can now record the value of the **property and the liabilities at a value different** from that in the books of account of the demerged company, as per IND AS compliance.
4. Sec 9(1) -Any sum of money paid, or any property situated in India transferred by a person being resident in India to person resident outside India shall be **deemed to accrue or arise in India.**
5. Sec 12AA -the commissioner has to check the compliance & requirements any **other laws for time being** in force which are material.
6. Sec 40a -If a Non-resident makes a **default in deduction** or payment of TDS, then he shall be **deemed to be assessee not in default if he satisfy the conditions of section 201(1).**
7. **The word "bank account" the word "account or through such other electronic mode as may be prescribed" shall be substituted.**
8. Sec 43B -Interest payment on any loan or borrowing shall be allowable on actual payment basis even in case of **Deposit taking Non-Banking Financial Company or Systemically Important Non-Deposit taking NBFC.**
9. Sec 43D -Interest income of bad or doubtful debts shall chargeable to tax in the P.Y. in which it is credited even in case of **Deposit taking NBFC or a systemically important non-deposit taking non-banking company or public loan.**
10. Sec 47 -**Transfer** of certain securities by **Category III Alternative Investment Fund (AIF)** in IFSC, of which all the unit holders are non-resident, are **not** regarded as **transfer.**
11. Sec 54 - **Lock in period** of equity shares to be held by the assessee is reduced from **5 years to 3 years in respect of Capital Gains Exemption. Further, for eligible assessee and eligible company in sub clause (iii) of sub section (6) 50% has been substituted with 25%.**
12. Sec 56 -The aggregate consideration received for issue of share which exceeds FMV of shares in a company not being a company in which the public are substantially interested, **such excess consideration shall be chargeable under 'income from other sources head'.**
13. Sec 79 -Carry forward and set off of losses does not apply in case of **of startups.**
14. Sec 80C -**Central Government employees** to have more options of tax saving investments under **National Pension System.**
15. Sec 80CCD-Contribution made by the **CG to the account of its employees limit increased to 14%** under the given section for deduction of contribution to Pension Account.
16. Sec 80EEA- Insertion - **deduction in respect of interest up to Rs.1.5 Lacs taken for residential house property** for the assessee who are ineligible to claim Deduction under sec 80EE.
17. Sec 80EEB- Insertion - **deduction of interest on loan taken for purchase of an electric vehicle up to Rs. 1.5 Lacs.**

18. Sec 80IBA - Further **new conditions added** under the said sec for Deduction in respect of Profits and gains of housing Projects.
(Under subsection 2,
- Clause (d) has been amended to include new cities along with the existing provision to avail such deduction
 - Clause (f) for the carpet area of the plot has been amended with (i) sixty square mts. and (ii) ninety square mts.
 - Clause (g) has been inserted specifying the stamp duty value of a residential unit in the housing project does not exceed forty-five lakh rupees.)
19. Sec 80LA - Deductions in respect of certain incomes of Offshore Banking Units and International Financial Services Centre shall **be of 100% for any 10 consecutive years in case of IFSC.**
20. Sec 92CD- **Assessing Officers shall pass an order modifying** the total income of the relevant assessment year to give effect to Advance Pricing Agreements.
21. Sec 92CE- **Clarity in law** is provided regarding **Secondary Adjustments in Certain Cases**, such as threshold limit of Rs.1Cr is alternative in nature.
22. Sec 92D - **Information shall be furnished by the constituent entity of an international group to the prescribed authority.**
23. Sec 111A - It now **includes Central Public Sector Enterprises (CPSEs)** also to **extend the concessional rate of tax for short-term capital gains.**
24. Sec 115A - It **shall not apply to a unit of an IFSC in respect** Taxation on dividends, royalty and technical service fees in the case of foreign companies.
25. Sec 115JB -As per Special Provision for payment of tax by certain Companies, for calculating book profit, **the aggregate amount of unabsorbed depreciation and loss (excluding depreciation) brought forward allowed** in certain cases.
26. Sec 115O - **IFSC**, after 1st April 2017 shall **not be liable for tax** on distributed profits.
27. Sec 115QA- Buy Back of Shares of a **listed Co. shall also be covered.**
28. Sec 115R - **No additional income-tax shall be chargeable** in respect of any amount of income distributed to unit holders **by IFSC.**
29. **Interchangeability of PAN and Aadhar.**
30. Sec 194DA - **Rate of Deduction Changed to 5% for payment in respect of LIC.**
31. Sec 194M - inserted- **deduction of tax @5% in pursuance of a contract or by way of fees for professional services** (for assessee other than those covered under sec 194C/194J).
32. Sec 194N- inserted- **deduct an amount of 2% of sum exceeding Rs. 1Cr from an account maintained by the recipient.**



33. Sec 271FAA -In respect of **penalty for furnishing inaccurate statement of financial transaction or reportable account**, the scope of penalty to cover all reporting entities.

Budget Highlights: Indirect Taxes

• GST

1. Sec 10 - **Alternative composition scheme** introduced.
2. Sec 22 - The **Threshold Limit for GST Registration** in case of Goods increased to **Rs 40 Lakhs.**
3. Sec 25 - **AADHAR authentication** mandatory for specified class of new taxpayers.
4. Sec 31A- Certain Class of suppliers to **mandatorily provide facility for E-payment by recipient.**
5. Sec 39 - Composition taxpayers to furnish **Annual Return with quarterly payment of taxes.**
6. Sec 44- In respect Annual Returns, **now the commissioner has the power to extend the return filing due date.**
7. Sec 50 - New proviso is inserted to provide for **charging interest only on the net cash tax liability**
8. Section 53A - **Transfer of amount between Center and State**
9. Sec 101A, 101B & 101C- inserted -**National Appellate Authority of Advance Ruling to resolve conflicting rulings by Appellate Authority.**

• Customs Act

1. Sec 41(1) -Facilitate furnishing of departure manifest by any person **besides a person-in-charge of the Ship.**
2. Sec 99B- Inserted- **to prevent smuggling where AADHAR authentication is mandatory.**
3. Sec 110A- **Now Bank Account can also be provisionally attached in case of any pending adjudication.**

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