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BUSINESS ADVISORS

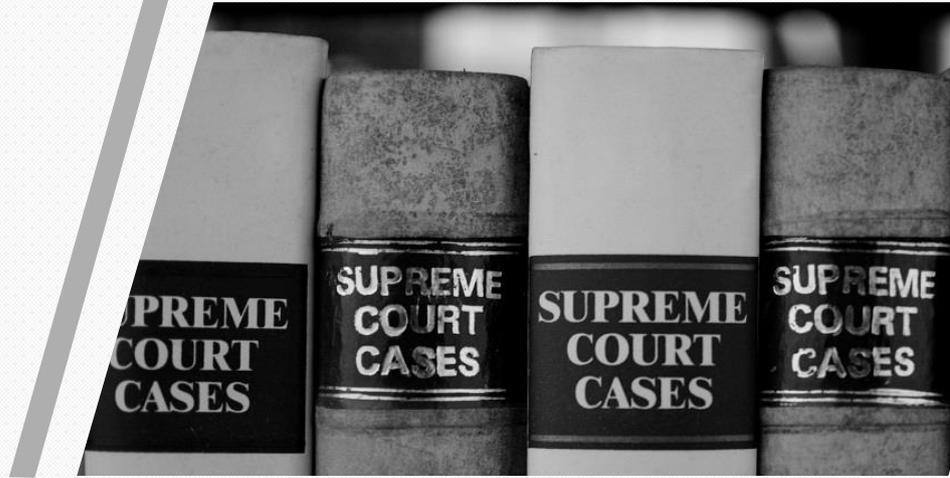
CONNEKT

April - 2018

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Direct Tax Case Laws



Case Law 1

Supreme Court of India: Sec. 153 proceedings couldn't be invoked against third party without recording satisfaction note; SLP dismissed

On search of a third party, certain documents were seized. The Assessing Officer of searched person prepared a satisfaction note that the seized documents belong to the assessee and therefore, notice under section 153C was issued to the assessee. The Assessing Officer of searched person handed over the seized documents to the Assessing Officer of the assessee. The Assessing Officer of assessee had not proved that seized documents belonged to assessee and not to searched person. Further, the satisfaction notes recorded by Assessing Officer of assessee and Assessing Officer of searched person were identically worded. No reason was recorded as to how satisfaction note of Assessing Officer of assessee was a carbon copy of satisfaction note of Assessing Officer of searched person. The assessee further contended that in view of section 153C(1) as it stood prior to the amendment with effect from 1-6-2015, it was incumbent on the department to show that the documents seized and referred to in the satisfaction notes of both the Assessing Officer of searched person and Assessing Officer of the assessee belonged to the assessee. The High Court by impugned order held that in above circumstances, proceeding initiated against assessee under

section 153C was unjustified. The Supreme dismissed Special Leave Petition filed against the impugned order.

(Income tax Officer v. Canyon Financial Services Ltd)

Case Law 2

High Court of Kerala: No immunity to payer for TDS default if recipient doesn't pay tax on income received by him from payer

The assessee credited lease rent to one Kerala State Co-operative Hospital Complex and Centre for Advanced Medical Services Ltd. and did not deduct tax at source thereon. The assessee contended that as per proviso to Section 40(a)(ia) and Section 201(1), where the resident receiver had paid tax on such receipts the assessee would not be deemed to be 'assessee in default' even when the payer has failed to deduct tax at source. The Revenue argued that the question of whether the provision is curative does not at all arise since the resident/receiver in the present case has not paid tax on the income and has filed a loss return, without any liability to pay tax, that too belatedly.

It was held that the cumulative effect of the second proviso to Section 40(a)(ia) and the first proviso to Section 201(1) would be that on **payment of tax** by the resident receiver, the assessee who failed to deduct tax any

Direct Tax : Case Laws

sum paid to the resident receiver, would not be considered as an assessee in default and the additions under Section 40(a)(ia) would also not have to be made in the case of that assessee. Furthermore, there should be:

- I. Return of Income u/s 139,
- II. Computation of income of such amounts received, and
- III. Payment of tax on such income.

The ruling was in favour of revenue and against the assessee.

(Academy of Medical Sciences v. Commissioner of Income Tax)

Case Law 3

High Court of Delhi: ITR filing after 5 months couldn't be granted for vague assertions without adequate proof

Where assessee had applied for extension of time for filing of return under section 119(2)(b), nearly four years after return was filed for sole reason of medical exigency and illness of auditor that had consequently resulted in delay of 5 months in filing of return, though auditor admitted his medical illness as cause of delay but did not give details of illness and nature of medical emergency and prescription in support, refusal of CBDT to grant extension was justified as delay of 5 months in filing return was substantial.

It was held that extension of time cannot be

claimed as a vested right on mere asking and on the basis of vague assertions without proof. Statutory audits is a common knowledge and not undertaken by one person but by a team consisting of auditor(s), article clerks and others. In the present case, the nature of illness or medical emergency suffered by the auditor and how long the auditor was incapacitated and could not work was not disclosed. The assertions made to justify extension of time have to be proved and established. Hence, ITR filing couldn't be granted.

(B.U Bhandari Nandgude Patil Associates v. CBDT)

Case Law 4

High Court of Uttarakhand: Indian Oil Corporation's carrier payment not "truck hiring"; Sec. 194C applicable, not Sec 194I

Uttarakhand HC upholds ITAT order, accepts Indian Oil Corporation's ('assessee') plea that payment made to the carrier under the contracts for transporting the petroleum products shall be subject to TDS u/s. 194C and not u/s. 194I ; Rejects Revenue's stand that the contract is not a mere Works Contract but of hiring and therefore the consideration constitutes 'rent' for the use of plant in view of Explanation to Sec. 194I; HC refers to the terms of contract, observes that the Carrier / truck operator is not being paid for full time including idle charges, but is being paid for the actual work of transporting the product from one place to another; HC also clarifies that provisions of agreement requiring "the painting of the

Direct Tax : Case Laws

Trucks as specified and various other logos, advertisements as provided therein would not detract from it being a contract of work...”, further the fact that the carrier exclusively uses vehicles for transporting the goods belonging to assessee doesn’t make it a case of ‘use of vehicles’; With respect to Revenue’s stand that the assessee has exclusive right to use trucks and has right to change the basis of loading of a tank truck, HC clarifies that “The petroleum products are subject to severe control under various laws... it is, therefore, that ..the respondent company has set various conditions on the transporters.”, cites SC ruling in Japan Airlines Company Limited.

(Income tax Officer v. Indian Oil Corporation)

Case Law 5

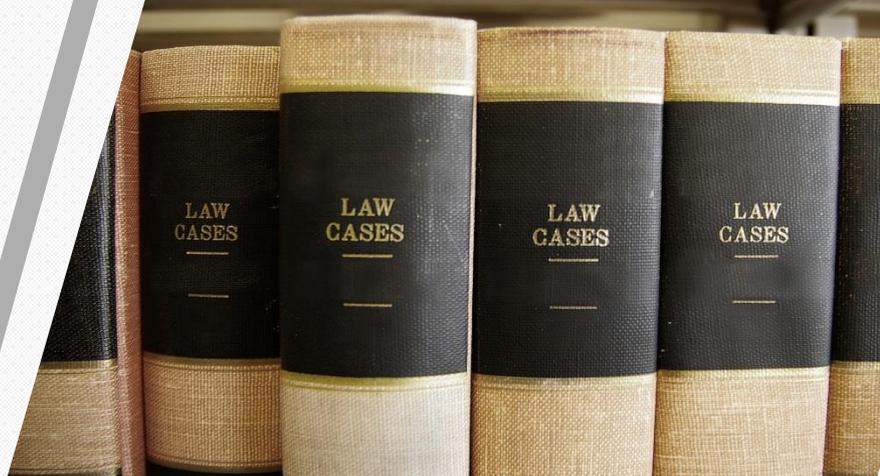
Chandigarh ITAT: Denies Sec. 10(23C) approval to I.K. Gujral University for parking surpluses in FDRs

Chandigarh ITAT upholds CIT(Exemption)’s order, rejects I. K. Gujral Punjab Technical University’s (‘assessee’) application for grant of approval for exemption u/s 10(23C)(vi) for AY 2016-17, observes that assessee is generating huge surplus running into hundreds of crores from year to year, which are parked in FDRs instead of being redeployed into education; It was further observed that parking funds in FDRs continuously for the last so many years shows that the assessee has neither any intention nor any vision or plan to spend the huge funds so generated and accumulated,

for achieving the stated objects of imparting education; Further, ITAT remarks that “We cannot close our eyes to the frequent news items in this respect including the registration of an FIR against the Ex. Vice Chancellor of the University on corruption charges.”; Concludes that the predominant object of assessee-university is to earn profit, accumulate it and invest the same for further earning of interest income and that assessee is not running solely for educational purposes but for making profits; Rejects assessee’s contention that the application of the income is to be seen at a later stage and not at the time of granting of approval, opines that this argument will have force in case of newly established institution, however, the assessee-University was established since 1997, “hence, the activities carried out by it since its incorporation can well be examined by CIT(E) to determine whether it is genuinely involved in carrying out its objects.”.

(I.K. Gujral University v. CBDT)

Indirect Tax : Case Laws



Case Law 1

Refund for CENVAT Credit cannot be rejected on the grounds that the payment was not received in the quarter to which the refund was applied.

The appellant is registered as a service provider under 'Banking and Financial Service' and is engaged in the business of investment advisory services and has entered into an Investment Advisory Service Agreement with Brookfield Asset Management INC at Toronto, Canada, had filed a refund claim for refund towards accumulated Cenvat credit in respect of various input services used for providing exported output services during the period April 2012 to June 2012. On scrutiny of the claim, the authorities rejected the entire refund claim on the grounds viz the appellant has received all the export proceeds in month of July, which is not during the claim period i.e. April-June 2012. Therefore, no export of service is involved in the present case considering the facts, and conditions under Rule 5 of CCR. Aggrieved by the said order, the appellant has filed appeal before the Commissioner(Appeals) who rejected the appeal. It was further submitted that during April to June 2012, the appellant had provided services to Brookfield Asset Management INC and raised an invoice on 30/06/2012. The recipient of services is located outside India and the benefit of the service accrues outside India. Therefore, the services rendered shall be qualified as

export of service in terms of Export of Service Rules, 2005 and provisions of Notification No.5/2006 CE(NT) dated 14/03/2006 as applicable during the relevant quarter. Rejection of refund not justified - appeal allowed - decided in favour of appellant.

(M/s. Brookfield Advisors India Pvt. Ltd. Versus Commissioner of Service Tax-I, Mumbai [2018 (4) TMI 26 - CESTAT MUMBAI - Service Tax)

Case Law 2

Penalty cannot not be imposed when the Cenvat Credit was reversed before the issuance of Show Cause Notice

The appellant is an Authorised dealer of Maruti vehicles. They are engaged in maintenance of such vehicles and sale of spare parts, etc They were availing Cenvat credit on various inputs, input services during the material time of October 2008 to September 2011. As they have not maintained separate accounts in respect of input services as required under Rule 6 of Cenvat Credit Rules, 2004 as they were having taxable services as well as trading activities, the Department proceeded to demand and recover Cenvat credit not available to the appellant due to non-maintenance of these separate accounts. The lower authorities confirmed reversal and imposed penalty of equivalent amount

Indirect Tax : Case Laws

under Rule 15 of CCR, 2004 read with Section 78 of the Finance Act, 1994. Ld. Counsel for the appellant submitted that trading as a deemed exempted service was introduced as a concept in the Service Tax Rules only w.e.f 1.4.2011. Prior to that date, there is no such statutory deeming provisions, nor the Department had any basis to hold such activity as service at all. When the matter was pointed out by the Revenue regarding non-maintenance of separate accounts the appellant immediately reversed the credits of all the common input services along with applicable interest. Accordingly, the penalty imposed on the appellant is set aside in terms of Section 80 of the Finance Act, 1994. The reversal of credit along with applicable interest is not contested. The appeal is allowed to this extent.

(M/s. Prem Motors (P) Ltd. Versus CCE, Jaipur [2018 (3) TMI 1432 - CESTAT NEW DELHI])

Case Law 3

Refund of GTA services utilized for exporting goods out of India

Assessee was engaged in the business of extracting iron ores. Post extraction, iron ores are transported through truck / lorry from mines to the port side for which GTA services are availed by assessee. Since the assessee was a regular exporter of iron ores, it was allotted a plot by the Kolkata Port Trust for storing the export cargo to maintain uninterrupted supplies to the foreign buyers. Assessee filed a refund of taxes paid on

inputs utilised for exporting goods and the same was partially accepted by Revenue rejecting the refund for service tax paid on GTA services availed. Revenue reasoned that the rejection was because of no one-to-one correlation between goods transported and the final export. Further, the conditions for refund of tax paid on GTA services as stipulated vide N/N 3/2008 – S.T. has not been complied with. Assessee contended that vide N/N 17 /2009- S.T., the exported can furnish a self-declaration or a C.A. certificate to prove co-relation between input services and exports. Further, assessee put forth that the basic purpose of allowing refund of input services was to avoid shifting of tax incidence on foreign buyers and to compete effectively in international markets. Hence, it requested to set aside the conditions stated in aforesaid notification. Held that the appeal filed by assessee is allowed, however the matter has been remanded back to Adjudicating Authority with respect to refund of GTA services.

Comm. of Central Excise, Customs & Service Tax, BBSR-II Versus M/s. East India Minerals Ltd. [2017 (9) TMI 1436 - CESTAT KOLKATA]

Case Law 4

Technical Testing and Analysis Services performed outside India and received by the recipient in India is to be covered under Reverse Charge Mechanism w.e.f 1.4.2011

The appellant has received Business Auxiliary Service (BAS) and Technical Testing and Analysis Service (TTA) from foreign based firms during the period from

Indirect Tax : Case Laws

25.5.2009 to 22.6.2011 and 20.5.2010 to 30.3.2012 respectively, for which the products were being sent to Canada and China where the calibration and testing services were being performed on the said goods and the goods along with test certificates were sent back, but did not pay service tax thereon under the RCM. Therefore, the DGCEI issued a show-cause notice to the appellant which was adjudicated, and the charges raised was confirmed. Being aggrieved by the order in original, the appellant contested the order and Ld. Counsel of the appellant submitted that the technical testing and analysis service is covered under sub-clause (zzh) of Clause 105 of Section 65 of the Finance Act, 1994 performed only in the foreign country and no part of the said service was performed in India. Therefore, in terms of Rule 3 (iii) of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, the said service is not taxable in the hands of the recipient in India. It was held that since technical testing and analysis was only performed in abroad, no part of it was performed in India. Therefore, the technical testing and analysis service under reverse charge basis is not taxable in terms of Rule 3(iii) of Rules 2006 up to 1.4.2011. After omission of clause (zzh) w.e.f. 1.4.2011, the service of technical testing and analysis is chargeable to service tax. As regard Business Auxiliary Service which was provided by foreign based company to the appellant and received by the appellant in India, the same is liable to service tax. Accordingly, the demand in respect of business auxiliary service is upheld. The penalties imposed under Section 77 & 78 are set aside by invoking Section 80 of the Act – the appeal is partly allowed.

(M/s EMI Transmission Ltd Vs Commissioner Of Central Excise, Nashik [2018-VIL-236-CESTAT-MUM-ST])

Indirect Tax: Notifications



S.no	Notifications												
1	<p>Notification No 16/2018-Central Tax Dated 23.03.2018</p> <p>Due dates for filing GSTR-3B for the months of April 2018 to June 2018 notified</p> <p>Central Government has notified the last date of filing of return in Form GSTR 3B for the following months: -</p> <table border="1"><thead><tr><th>S.No.</th><th>Month</th><th>Due date for filing GSTR 3B</th></tr></thead><tbody><tr><td>1</td><td>April 2018</td><td>20th May 2018</td></tr><tr><td>2</td><td>May 2018</td><td>20th June 2018</td></tr><tr><td>3</td><td>June 2018</td><td>20th July 2018</td></tr></tbody></table> <p>http://www.cbec.gov.in/resources//htdocs-cbec/gst/Notification-16-2018-central_tax-English.pdf</p>	S.No.	Month	Due date for filing GSTR 3B	1	April 2018	20 th May 2018	2	May 2018	20 th June 2018	3	June 2018	20 th July 2018
S.No.	Month	Due date for filing GSTR 3B											
1	April 2018	20 th May 2018											
2	May 2018	20 th June 2018											
3	June 2018	20 th July 2018											
2	<p>Notification No 17/2018-Central Tax Dated 23.03.2018</p> <p>Due Date for filing of GSTR-1 for the quarter April-June 2018 has been notified for the business having turnover up to INR 1.5 Crore</p> <p>Central Government has notified the due date for filing Form GSTR-1 for registered person having aggregate turnover of up to Rupees 1.5 crore in the preceding or current financial year who have opted to file GSTR-1 on quarterly basis. The due date for filing GSTR-1 for the period April 2018 to June 2018 is 31st July 2018.</p> <p>http://www.cbec.gov.in/resources//htdocs-cbec/gst/Notification-17-2018-central_tax-English.pdf</p>												

Indirect Tax: Notifications

3 Notification No 18/2018-Central Tax Dated 28.03.2018

Due Date for filing of GSTR-1 for the months of April-June 2018 notified for the business having turnover more than INR 1.5 Crore

Central Government has notified the due date for filing Form GSTR-1 for registered person having aggregate turnover of more than Rupees 1.5 crore in the preceding or current financial year who have opted to file GSTR-1 on monthly basis. The due date for filing GSTR-1 for the period April 2018 to June 2018 is as follows: -

S. No.	Month	Due Dates for filing GSTR -1
1	April 2018	31 st May 2018
2	May 2018	10 th June 2018
3	June 2018	10 th July 2018

http://www.cbec.gov.in/resources//htdocs-cbec/gst/Notification-18-2018-central_tax-English.pdf

4 Notification No 19/2018-Central Tax Dated 28.03.2018

Due date for filing GSTR-6 for July 2017 to April 2018 extended

Central Government extends the time limit for furnishing the return by an Input Service Provider (ISD) in FORM GSTR-6 for the months of July 2017 to April 2018 till 31st May 2018.

http://www.cbec.gov.in/resources//htdocs-cbec/gst/Notification-19-2018-central_tax-English.pdf

5 Order No.1/2018-Central Tax Dated 28.03.2018

Due Date for filing Form GST-Tran 02 extended

Central Government extended the due date for filing Form GST Tran-2 till 30th June 2018. GST Tran-2 is to be filed by the dealers who were unregistered in the old regime or who does not have documents of the duty paid but wish to avail the credit of the stock available with them on the appointment date.

<http://www.cbec.gov.in/resources//htdocs-cbec/gst/order1-2018-cgst.pdf>

Indirect Tax: Notifications

6	<p>Notification No. 10/2018-Central Tax (Rate) dated 23rd March 2018</p> <p>CG defers the applicability of section 9(4) of CGST Act and 5(4) of the IGST Act till 30th June 2018</p> <p>Central Government has deferred the applicability of Section 9(4) of CGST Act and Section 5(4) of IGST Act till 30th June 2018, hereby exempting the supplies of goods or services or both received by a registered person from any unregistered supplier, from the whole of GST leviable under the above-mentioned sections.</p> <p>http://www.cbec.gov.in/resources//htdocs-cbec/gst/notfctn-10-2018-cgst-rate-english.pdf</p>
7	<p>Notification No. 15/2018-Central Tax dated 23rd March 2018</p> <p>CG notifies the date from which the E-way bills shall be applicable for inter-state supplies</p> <p>Central Government appoints 1st April 2018 the date from which the E-way bill would be required for Inter-state supplies.</p> <p>http://www.cbec.gov.in/resources//htdocs-cbec/gst/Notification-15-2018-central_tax-English.pdf</p>

Indirect Tax: Notifications

8

Circular No.38/12/2018 – Central Tax dated 26th March, 2018

Clarification on Issues related to Job Works

S. No.	Particulars	Implication
1.	Goods supplied by principal directly from the job worker's place of business / premises will be regarded as <u>supply by the principal</u> and not by the job worker.	<ul style="list-style-type: none">• This facility is available to the principal only if he declares the <u>job worker's place of business as his additional place of business.</u>• Tax Invoice will be issued by the principal.• Such Invoice will be issued in the name of recipient of such goods and not job worker.
2.	Principal is required to generate delivery challan even if the goods are sent directly from supplier to the job worker	<ul style="list-style-type: none">• Irrespective of the fact, whether the goods are brought to the company's place of business or not, the principal would be required to generate delivery challan for any goods sent to job worker.• Supplier's invoice would be issued in the name of principal wherein job worker's name and address should be mentioned as the consignee.
3.	E-way bill shall be generated by principal where the goods are received back from unregistered job worker	The Company would be required to generate e-way bill for bringing back the goods from the <u>unregistered</u> job worker, wherever required.

Indirect Tax: Notifications

8	S. No.	Particulars	Implication
	4.	<p>Goods transferred by one job worker to another job worker shall be sent under the cover of:</p> <ul style="list-style-type: none"> Challan issued by Principal as endorsed by job worker sending the goods indicating the quantity and description of goods being sent, or Challan issued by Job worker 	<ul style="list-style-type: none"> This amendment has been inserted in Rule 45 of CGST Rules vide Notification no. 14/2018 – Central Tax dated 23 March 2018 It also provides for issuance of challan by job worker in case where goods are sent to another Job worker
	5.	<p>In case the goods after carrying out the job work, are sent in piecemeal quantities by a job worker to another job worker or to the principal, the challan issued originally by the principal cannot be endorsed and a fresh challan is required to be issued by the job worker.</p>	<p>This scenario has not been clarified by the said circular</p>
	6.	<p>FORM GST ITC-04 will serve as the intimation as envisaged under section 143 of the CGST Act, 2017</p>	<ul style="list-style-type: none"> Principal is required to file only FORM GST ITC-04 for goods sent to job worker, received from job worker, supplied from job worker's premise, etc. No separate intimation is required to be filed manually with the Tax Authorities

Indirect Tax: Notifications

8

S. No.	Particulars	Implication
7.	<p>Where inputs / capital goods are not received back from the job worker within the prescribed time limits;</p> <ul style="list-style-type: none">• Date of supply shall be the date on which inputs / capital goods were initially sent to the job worker• Return of goods by job worker would amount to supply	<ul style="list-style-type: none">• Principal would be required to pay GST along with applicable interest for such supplies• Goods returned by job worker would be treated as supply under GST i.e. job worker would be required to charge GST on supplies made after stipulated time (if he is liable for registration)

[http://www.cbec.gov.in/resources//htdocs-cbec/gst/Jobwork Circular 38 of 2018.pdf](http://www.cbec.gov.in/resources//htdocs-cbec/gst/Jobwork_Circular_38_of_2018.pdf)

Corporate Legal & Regulatory Notifications



S. no	Notifications
1	<p>MINISTRY OF CORPORATE AFFAIRS</p> <p>THE MINISTRY OF CORPORATE AFFAIRS (MCA) HAS NOTIFIED AMENDED RULES FOR FILING OF DOCUMENTS AND FORMS IN EXTENSIBLE BUSINESS REPORTING LANGUAGE</p> <p><i>(MCA Notification dated March 08, 2018)</i></p> <p>MCA has notified the amended Rules which will be called as the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Amendment Rules, 2018 which shall come into force on the date of their publication in the Official Gazette. The amendment is carried out to clarify that the XBRL filing will remain applicable on such Companies which have filed their financials in XBRL mode previously whether they were falling under the provisions for mandatory filings or not and shall continue to file in XBRL mode even if the Company has moved out of any of the mandatory condition for XBRL filings.</p> <p>http://www.mca.gov.in./Ministry/pdf/CompaniesXBRL0803rule_15032018.pdf</p>
2	<p>COMING INTO FORCE OF NATIONAL FINANCIAL REPORTING AUTHORITY</p> <p><i>(MCA Notification dated March 21, 2018)</i></p> <p>The Central Government has notified March 21, 2018 as the effective date for commencement of Section 132(11) (3) regarding the constitution of National Financial Reporting Authority.</p> <p>Further, the Government has notified the National Financial Reporting Authority (Manner of Appointment and other Terms and Conditions of service of Chairperson and Members) Rules, 2018 which shall come into force on the date of publication in the Official Gazette that is March 21, 2018. The key provisions of the rules are as below:</p> <ul style="list-style-type: none">• Composition of Authority – The Authority shall consist of a Chairperson, 3 full time members and 9 part-time member all of whom shall be person of eminence, ability, integrity and standing.

Legal & Regulatory

S.no	Notifications
	<ul style="list-style-type: none">• Manner of appointment - The Central Government shall appoint the Chairman and other full- time members based upon the recommendations of the search-cum-selection committee.• Procedure for inquiry of misbehavior of incapacity of the Chairperson or a Member – The Rules provide for inquiry against any misbehavior or incapacity upon written complaint. The inquiry shall be done by the Committee based on initial pre-scrutiny by the Ministry of Corporate Affairs.• Term of office - The Chairperson as well as full time members would have a three-year term each or till the person attains 65 years age, whichever is earlier. They would be eligible for re-appointment for one more term. In the case of a part-time member, the tenure would be not more than three years but eligible for re-appointment <p>http://www.mca.gov.in./Ministry/pdf/commencementNotification2103_21032018.pdf</p> <p>http://www.mca.gov.in./Ministry/pdf/ReportingAuthorityRule2103_21032018.pdf</p>
3	<p>THE MINISTRY OF CORPORATE AFFAIRS (MCA) PROVIDES RELAXATION IN EXISTING NAME AVAILABILITY PROCESS THROUGH “RESERVE UNIQUE NAME (RUN)” SERVICE</p> <p><i>(MCA Notification dated March 23, 2018)</i></p> <p>The MCA has notified the Companies (Incorporation) Second Amendment Rules, 2018 giving the much needed relief to the stakeholders by making changes to the existing provisions for availability of Name for the companies under the RUN web service. With an intent to match the commitment for continuous improvement of processes and providing greater ease to stakeholders, it has been decided to permit (w.e.f. 24th March 2018) two proposed names and one Resubmission (within 15 days) while Reserving Unique Names for companies through the RUN web service.</p> <p>http://www.mca.gov.in./Ministry/pdf/CompanyRule2303_23032018.pdf</p>

Legal & Regulatory

S.no	Notifications
4	<p data-bbox="229 460 1034 494">INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (IBBI)</p> <p data-bbox="229 542 1485 614">IBBI ENTERS INTO MEMORANDUM OF UNDERSTANDING WITH THE RBI FOR EFFECTIVE IMPLEMENTATION OF THE CODE</p> <p data-bbox="229 664 820 698"><i>(IBBI Press release dated March 12, 2018)</i></p> <p data-bbox="229 748 1485 864">Insolvency and Bankruptcy Board of India signs a Memorandum of Understanding with the Reserve Bank of India for effective implementation of the Code and its allied rules and regulations.</p> <p data-bbox="229 914 1485 1029">The MoU provides for a quick and efficient resolution process by RBI and IBBI and also assist and co-operate with each other for the effective implementation of the Code, subject to limitations imposed by the applicable laws. Further the MoU provides for</p> <ol data-bbox="229 1079 1485 1573" style="list-style-type: none"><li data-bbox="229 1079 1198 1113">I. Sharing of information and resources between the two parties<li data-bbox="229 1163 1098 1197">II. Periodic meetings to discuss matters of mutual interest<li data-bbox="229 1247 1485 1319">III. Cross-training of staff in order to enhance each party's understanding of the other's mission for effective utilisation of collective resources;<li data-bbox="229 1369 1275 1403">IV. capacity building of insolvency professionals and financial creditors;<li data-bbox="229 1453 1485 1573">V. joint efforts towards enhancing the level of awareness among financial creditors about the importance and necessity of swift insolvency resolution process of various types of borrowers in distress under the provisions of the Code, etc. <p data-bbox="229 1623 1145 1696">http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Mar/RBI-IBBI%20MoU%20Press%20Release_2018-03-12%2017:37:59.pdf</p>
5	<p data-bbox="229 1753 691 1787">MINISTRY OF LAW AND JUSTICE</p> <p data-bbox="229 1834 1018 1868">THE PAYMENT OF GRATUITY (AMENDMENT) ACT, 2018</p> <p data-bbox="229 1918 1410 1952"><i>(The Payment of Gratuity (Amendment) Act, 2018 with effect from March 29, 2018)</i></p> <p data-bbox="229 2002 1485 2118">The Parliament passed the Payment of Gratuity (Amendment) Bill which will increase the ceiling of tax-free gratuity amount to Rs 20 lakh from Rs 10 lakh. It provides greater defined benefit advantage for employees. The amendment also gives flexibility to the</p>

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S.no	Notification
	<p>Government to extend the ceiling in the future by mere notification as opposed to the requirement of an amendment.</p> <p>It also allows the government to fix the period of maternity leave for female employees as deemed to be in continuous service in place of the existing 12 weeks. The amendment to the payment of gratuity law comes in the backdrop of Maternity Benefit (Amendment) Act, 2017 enhancing the maximum maternity leave period to 26 weeks.</p> <p>http://www.egazette.nic.in/WriteReadData/2018/184298.pdf</p>



Deciphering the fixedness of a Fixed Place PE

By – Sheetal Bhatia, Deputy Manager – Direct Tax

IBA

While working in the consultancy field, one of the most sought-after questions that often get our foreign clients into dilemma is:

Does a non-resident enterprise having a PAN in India equivalent to it having a Permanent Establishment in India as well?

The concept of Permanent Establishment (PE) is one of the most important and litigative topics in the current era of cross border transactions. With this, it becomes important to discuss its concept at length. Since the concept of PE is vast, I am restricting my analysis to the most basic and important type of PE, i.e. the fixed Place PE.

Before deep diving, let's understand the significance of a PE

Significance of PE

Taxation of business income is governed by Article 7-Business Profits of a tax treaty. As per Article 7 of most tax treaties, business income of an enterprise, in general, is taxed in the STATE OF RESIDENCE. However, there may be cases wherein the business profits are taxable in the STATE OF SOURCE. This happens only in the case wherein the enterprise has a Permanent Establishment in the source state AND it carries on business in the source state through such PE.

The concept of PE is organized in seven to eight paragraphs, describing different kinds of PE. Amongst all the PE, Fixed Place PE seems to be the simplest as it is described as a one liner sentence. However, it is one of the most complex PE.

Read more at: <https://www.taxmann.com/topstories/10501000000015363/opinion-deciphering-the-fixedness-of-a-fixed-place-pe.aspx>

Upcoming Compliances

Date	Compliance
April 14, 2018	Due date for issue of TDS Certificate for tax deducted under Section 194-IA and Section 194-IB in the month of February, 2018
April 20, 2018	Filing of GSTR 3B(Consolidated Return) for the month of February 2018
April 30, 2018	Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA in the month of March, 2018 and Section 194-IB
	Due date for deposit of Tax deducted by an assessee other than an office of the Government for the month of March, 2018.
	Due date for deposit of TDS for the period January 2018 to March 2018 when Assessing Officer has permitted quarterly deposit of TDS under section 192, 194A, 194D or 194H
	Due dates for the furnishing of FORM GSTR-1(taxpayers with aggregate turnover of up to Rs.1.5 crore) for the period of January – March 2018
May 7, 2018	Due date for deposit of Tax deducted/collected for the month of April, 2018. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan.
May 10, 2018	Due dates for the furnishing of FORM GSTR-1 (taxpayers having aggregate turnover of more than Rs.1.5 crore) for the period of March 2018

Editorial Team



About us:

IBA is a leading Financial and legal advisory company with specialization in Assurance, Risk Consulting, Legal, Direct Tax, Indirect Tax(GST) and Corporate Advisory for midsize, SMEs and start-up firms. IBA constitute a young team of path breaking professionals, who believe in creating value through innovation and creativity to provide ultimate client satisfaction. Clients benefit from our fresh thinking, constructive challenge and practical understanding of the issues they face. We aim to alloy a perfect blend of professionalism with high standards of service, in our pursuit of excellence.

Founded in the Year 2003, the company witnessed immense growth from 2 members to currently a 100 members team, with its offices in Delhi, Mumbai and Bangalore and its clients from across states. IBA continues to offer wholesome service experience to boost highly valued client relationships by combining the technical and industry expertise at par with well-placed firms together with a personal commitment to optimize client service.

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