

IBA INTERNATIONAL
BUSINESS ADVISORS

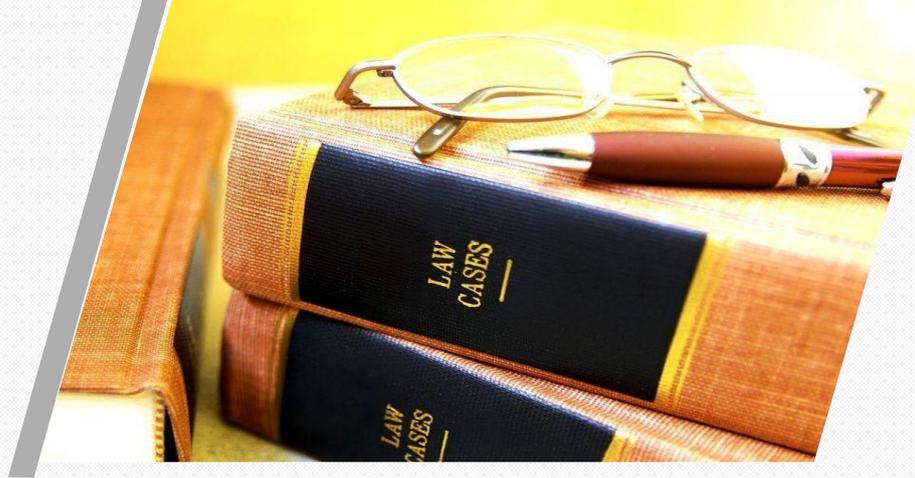
CONNEKT

January - 2019

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Direct Tax Case Laws



Case Law 1:

A Spain based company, engaged in real estate development activities in India, any capital gains arising from sale of shares of various companies was not taxable in India by virtue of article 14(6) of India-Spain DTAA

The assessee company, a tax resident of Spain, was licensed to purchase and sell securities in India as a Foreign Institutional Investor (FII) registered with the Securities and Exchange Board of India (SEBI). For the assessment year under consideration, the assessee filed its return declaring certain taxable income. During the assessment proceedings, the Assessing Officer found that the assessee had treated the income/loss arising out of foreign exchange transactions as capital gain and had claimed exemption under article 14(6) of India-Spain DTAA. The Assessing Officer held that the capital gain on sale of shares of companies engaged in real estate development activities was taxable in India under Article -14(4) of India-Spain tax treaty. At the same time, though, the Assessing Officer agreed that in the impugned assessment year the assessee suffered short term capital loss in respect of sale of shares, however, he refused to allow carry forward of loss since the assessee had not claimed it in the return of income.

The Commissioner (Appeals), however allowed assessee's claim of exemption under Article -14(6) of India-Spain DTAA.

The issue was covered by the decision of the Tribunal in assessee's own case for assessment years 2007-08 to 2009-10.

As could be seen, the issue in dispute between the parties is regarding the applicability of Article-14(4) of India-Spain tax treaty. The Commissioner (Appeals) while deciding the issue in preceding assessment years referring to Article-14(4) of India-Spain tax treaty qua Article-13(4) of U.N. Model Convention has held that capital gain arising out sale of shares is not taxable in India. The aforesaid decision of the Commissioner (Appeals) in assessment years 2007-08 to 2009-10 has been upheld by the Tribunal. No doubt, in the impugned assessment year, the Commissioner (Appeals) has followed his orders passed for the earlier assessment years. Moreover, as could be seen from the facts on record, the assessee had incurred huge loss in assessment year 2009-10 as well as in the impugned assessment year. Admittedly, if the capital gain is held to be taxable in India, then the loss suffered by the assessee and carry forward of such loss is allowable to the assessee. However, no such benefit has been given to the assessee by the Assessing Officer on the reasoning that assessee has not claimed it in the return of income. Thus, the assessee has been put to double jeopardy which is unjust and improper. In view of the aforesaid, there is no reason to interfere with the decision of the Commissioner (Appeals) on the issue. In the result, revenues appeal of _____ is dismissed and assessee was _____.

ITAT Mumbai: Merrill Lynch Capital Market Vs. Deputy Commissioner of Income Tax, Circle 3(2)(1), Mumbai

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Case Law 2:

Deemed dividend can be assessed only in hands of a person who is a shareholder of lender company and not in hands of a person other than a shareholder

The assessee-company was engaged in the business of manufacture of valves. The assessee-company borrowed a sum of Rs. 4 crores from company, MPPL. The Assessing Officer noticed that there were common directors in both the assessee company and MPPL and, therefore, the sum of Rs. 4 crores received as advance from MPPL was liable to be added as deemed dividend under section 2(22)(e) in the hands of the assessee. The assessee contended that it was not a shareholder in MPPL and, therefore, the provisions of section 2(22)(e) could not be invoked in the hands of assessee. Further, the funds were given for the business purpose, therefore, the provisions of section 2(22)(e) could not be applied. This explanation was rejected by the Assessing Officer for the reasons that MPPL was not in the business of lending of money within the meaning of the provisions of section 2(22)(e). Further, as per the statement of accounts, MPPL had sufficient reserves and surplus. The provisions of section 2(22)(e) were applicable also to the advance or loan made to a corporate entity. On appeal, the Commissioner (Appeals) confirmed the order of the Assessing Officer. Section 2(32) defines the expression 'person who has a substantial interest in the company', in relation to a company, means a person who is the beneficial owner of shares, not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits, carrying not less than twenty per cent of the voting power. An analysis of the above provisions shows that

there are three limbs to section 2(22)(e) which are that any payment by a private company, of any sum (whether as representing a part of the assets of the company or otherwise) made after the 31-5-1987, by way of advance or loan; first limb (a) to a shareholder, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power; second limb (b) or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest; third limb (c) or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits. In the present appeal one is concerned with the second limb of section 2(22)(e), viz., "to any concern in which such shareholder is a member or a partner and in which he has a substantial interest". The conditions required to be satisfied for application of the above category of payment to be regarded as dividend are that there must be a payment to a concern by a company. A person must be shareholder of the company being a registered holder and beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power. This is because of the expression 'Such Shareholder' found in the relevant provision. This expression only refers to the shareholder referred to in the earlier part of sec. 2(22)(e) viz., a registered and a beneficial holder of shares holding 10 per cent voting power. Further, the very same person referred to in above must also be a member or a partner in the concern

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holding substantial interest in the concern viz., when the concern is not a company, he must at any time during the previous year, be beneficially entitled to not less than twenty per cent of the income of such concern; and where the concern is a company he must be the owner of shares, not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits, carrying not less than twenty per cent of the voting power. Further, if the above conditions are satisfied then the payment by the company to the concern will be dividend. The Special Bench of ITAT, Mumbai, in the case of Asstt. CIT v. Bhaumik Colour Labs (P.) Ltd. 2009, considered the question whether deemed dividend under section 2(22)(e), can be assessed in the hands of a person other than a shareholder of the lender? The Special Bench held that deemed dividend can be assessed only in the hands of a person who is a shareholder of the lender company and not in the hands of a person other than a shareholder. Since the assessee in the present case is not a shareholder in the lender company, the above decision is squarely applicable to the facts of the assessee's case. In view of the aforesaid decision, the action of the revenue authorities in bring to tax a sum of Rs. 4 Crores as deemed dividend under section 2(22)(e) cannot be sustained and the said addition is directed to be deleted.

ITAT Bangalore: Microfinish Valves (P.) Ltd. Vs. Assistant Commissioner of Income Tax, Circle 2(1) Hubli

Case Law 3

Where company had received share premium and filed sufficient evidences such as share allotment details, annual return,

details including name, address and PAN of shareholder who had subscribed to its shares and same was not negated by Assessing Officer, merely because Assessing officer felt that share premium received by assessee was high, genuineness of transaction could not be doubted for purpose of section 68

The assessee-company was engaged in the business of real estate and real estate development and incidental services. During the course of assessment proceedings, the Assessing Officer noticed from the balance sheet of the assessee that during the year under consideration the assessee had issued 59,850 cumulative compulsory convertible preferential shares (CCPS) of Rs. 10 each to one PEPL for consideration of Rs. 5.98 lakhs and also charged share premium for the same at Rs. 99,990. The Assessing Officer noted that the assessee company was incorporated only on 14-12-2010 with a share capital of Rs. 1 lakhs and it had incurred loss of Rs. 7.59 lakhs during the assessment year 2011-12. He also noted that during the year under consideration, the assessee suffered a loss of Rs. 29.11 crores and as a result of the same earning per share was negative. Accordingly, the Assessing Officer held that such a huge premium of Rs. 99,990 was not justify. According he treated the share premium as unexplained under section 68 and added same to the income of the assessee. On appeal, the Commissioner (Appeals) deleted the addition. He observed that there was only one share-applicant viz. PEPL and that entity too was a group company and the assessee had filed complete details of the name and address of the assessee, its PAN. He had filed its return in form No. 2 with the RoC. The identity of the investor was proven

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beyond any doubt. Further, the return of income of PEPL of the assessment year under consideration too had been filed, along with its audited financial statements, before the Assessing Officer. The Assessing Officer was free to summon PEPL in case he had any doubts or queries in that regard. He had not done so. On this backdrop, the creditworthiness of PEPL was established beyond any doubt by the assessee. Coming to the genuineness of the transaction, the assessee had filed a copy of form No. 2 in which the return as required under the Companies Act, 1956 was filed by the assessee before the RoC. This return spelt out the details of the investments made by PEPL in the assessee-company. After taking into account this documentation. The genuineness of the transaction between the assessee and PEPL too was established more than adequately. Having established the identity and creditworthiness of the investor and also the genuineness of the transaction, there was no scope for invoking the provisions of section 68. The facts of the case are that the assessee-company issued 59,8501 per cent NCCPs having face value of 10 at a premium of Rs. 99,990 to PCPL. Now, in the present case of the assessee, the main crux of the facts that the assessee filed sufficient evidences viz., return of income, share allotment, annual return, details including name, address and PAN of the shareholder which are not negated by the Assessing Officer. The Assessing Officer has himself assessed the preference shareholder for the assessment year under consideration and after scrutiny has passed the order under section 143(3) around the same date and has neither made any addition nor made any adverse remarks. The Assessing Officer has not questioned the preference share capital to the extent of the face value but has only questioned the share premium.

By this action of the Assessing Officer himself, the 'nature' of transaction as that of 'preference share allotment' is proved beyond doubt and merely because he feels that the share premium was high the genuineness of the transaction cannot be doubted for the purpose of section 68 of the Act. Further, valuation is not relevant for determining genuineness of the transaction for the purpose of section 68. The Commissioner (Appeals) has rightly deleted the addition on account of the share premium. It is a settled position that what is apparent is considered as real unless proved otherwise. Further, the onus to prove that the apparent is not the real is on the party who claims it to be so. In the present case, the overwhelming evidence proves that the 'nature' of receipt is share premium. Only then can be provisions of section 68 be invoked. The revenue authorities cannot question the charging of such of huge premium without any bar from any legislated law of the land. In view of the above facts and circumstances, the assessee has discharged its onus by adequately disclosing the transaction in its books of account, filing statutory forms as regards allotment of shares, providing name, address and PAN of the shareholders, etc. the assessee has sufficiently discharged the onus cast upon it for the purpose of section 68 and no addition can be made on this account. Hence, ITAT confirmed that the Commissioner (Appeals) has rightly deleted the addition made by AO.

ITAT Mumbai: Piramal Realty (P.) Ltd. Vs. Deputy Commissioner of Income Tax, Circle 7(3)(2), Mumbai

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Case Law 4:

Where company engaged in business of software development paid annual maintenance charges to various Non-Resident companies which was regarded as fee for technical services taxable in India, in view of fact that revenue authorities did not go into question whether non-resident companies made available any technical knowledge to assessee through AMCs, impugned order was to be set aside and, matter was to be remanded back for disposal afresh

The assessee-company was primarily engaged in the business of software development. During relevant year, the assessee paid annual maintenance charges to various Non-Resident companies. In course of assessment, the Assessing Officer opined that said payments were in nature of fee for technical services taxable in India. The Commissioner (Appeals) confirmed the order of the Assessing Officer. The main contention of assessee was that AMC payments made to the non-resident companies, did not make available any technical knowledge to the assessee. The Commissioner (Appeals) did not go into the question whether the technical services were made available to the assessee companies through the AMCs. He held that the payments made, fell within the meaning of fees for technical services, applying certain tests like nature of services, requirement of professional expertise for running the services, element of human interface while providing services, whether the non-resident companies had provided standard facilities or something more including any use of special machinery, etc. The Commissioner (Appeals) however did

not test the transactions with the relevant articles in respective DTAA's, with regard to definition of royalty and fees for included services. The assessee can always opt for the provision in the DTAA, if it finds such provisions to be more beneficial than the Act. Even in the orders passed by the Assessing Officer under section 201(1) and 201(1A) of the Act, application of "making available" clause in the Article defining Royalty and fees for included services, in the respective DTAA's have not been considered. Considering the facts and circumstances of the case, it is opined that the question whether assessee was liable to deduct tax on AMC charges to Non-Residents requires a fresh look by the Assessing Officer. Thus, the orders of the lower authorities are set aside and issue is remitted back to the file of the Assessing Officer for consideration afresh in accordance with law. During relevant year, the assessee made payments to a Singapore based company for acquiring licence for software. The Assessing Officer opined that said payment was in nature of royalty under section 9(1)(vi) and under article 12(3) of India-Singapore DTAA. Thus, the Assessing Officer held that payment in question was taxable in India. The Commissioner (Appeals) confirmed the order passed by the Assessing Officer. A reading of the invoices clearly indicated that many of the supplied items were hardware with embedded software. Thus, there is much strength in the argument of the assessee that embedded software used in networking equipment without which the networking equipment could not be used, were not standalone software. The Commissioner (Appeals) had considered the payments made by the assessee to be Royalty for the licence granted by the payees to the assessee for using the software. No examination was done on the real nature of software,

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whether it was firmware or embedded software or standalone software. The question whether the payments were royalty or not hinged upon the nature of software supplied. Unless a close analysis is done on the purchases orders and invoices relating to the supplies made by non-resident company on the assessee, it is not logically possible to come to a conclusion on the nature of payments effected by the assessee. In the circumstances, the question whether the payments effected by the assessee would constitute royalty required a fresh look by the Assessing Officer. Therefore, the orders of the lower authorities are set aside and issue is remanded back to the file of the Assessing Officer for consideration afresh in accordance with law.

ITAT Chennai: Cognizant Technology Solutions India (P.) Ltd. Vs. Income Tax Officer, International Taxation

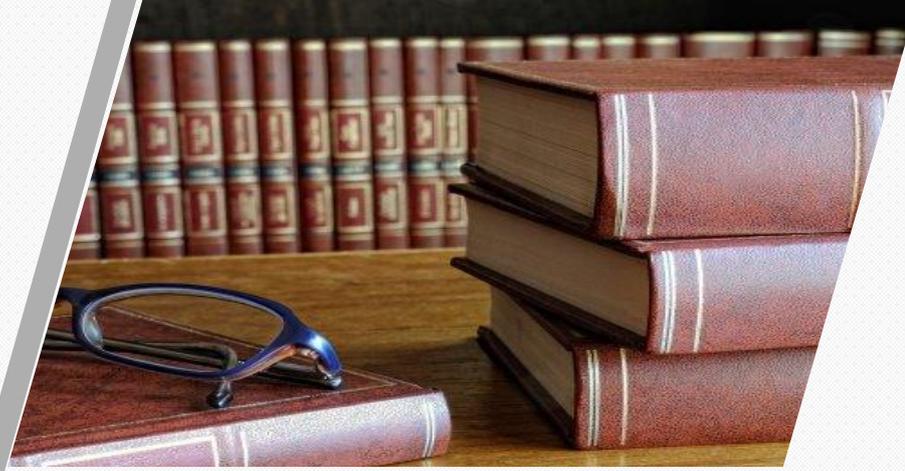
Notification:

The Central Board of Direct Taxes (CBDT) has notified all the provisions of the agreement entered into between India and Hong Kong for the avoidance of the double taxation and the prevention of fiscal evasion with respect to taxes on Income. The agreement was signed on 19-03-2018.

The official link of the same is below

<https://www.taxmann.com/fileopennew.aspx?id=222330000000017400&mode=home&page=ts>

Indirect Tax : Case Laws



Case Law 1:

Whether the activities performed by the employees at the Corporate office is a supply of service or not?

The Applicant M/s Columbia Asia Hospitals Pvt. Ltd. filed an advance ruling to confirm whether the activities performed by employees at the Corporate Office in the course of or in relation to employment, such as accounting, other administrative and IT System Maintenance for the units located in the other states is a supply as per Entry 2 of Schedule I of the CGST Act or not supply of Service as per Entry 1 of Schedule III of the CGST Act (employer-employee relationship). It was held that there is no dispute that each unit registered in different States is a distinct person as per Section 25(4) of CGST Act. When two units of the same business entity in different States take separate GST registration, then each registered unit will be considered as a distinct entity/person as per the GST law. Every distinct person will have to maintain separate records for their principal place of business. The laws relating to filing of returns and compliance procedure shall apply to both of them separately. Every distinct person is liable to pay GST on all supplies of goods and services or both made by it and every distinct person is treated as a separate taxable person. In the event of supplies between distinct persons, there will not be a consideration element as the transaction is within units of same business entity

AUTHORITY FOR ADVANCE RULING – KARNATAKA, IN RE: COLUMBIA ASIA HOSPITALS PVT. LTD. [GST-KAR/AAAR/05/2018-19 DATED 12th December 2018]

Case Law 2:

Whether or not the relationship between the parent company and their subsidiary company has influenced the price of import or not?

The appeal was filed by the revenue to determine whether the relationship between the parent company i.e. the supplier company from abroad and their subsidiary company i.e. the respondent herein, has influenced the import price or not and whether the department is justified in rejecting the transaction value? Although the respondent has produced the documents to show that the parent company had added 11% profit to the cost price and there are invoices to show that the purchase price of the goods supplied by the parent company is less than the price on which the same was sold by them to the respondent but still it is the case of the department that the relationship has influenced the price. It was found that there was no specific reason for the revenue for disregarding the transaction value, other than the suspicion that the profit margin is more than 11%. The Revenue failed to produce any evidence before any of the authorities below in support of its contention. Appeal filed by the revenue was dismissed.

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**COMMISSIONER OF CUSTOMS (IMPORT),
MUMBAI VERSUS M/S CHASYS
AUTOMOTIVE COMPONENTS PVT. LTD.
[2019 (1) TMI 192 - CESTAT MUMBAI]**

Case Law-3:

Eligibility to claim input tax credit on “Bill to Ship to” model

The applicant is engaged in manufacture of plastic pouches and is registered under GST in the state of Rajasthan. The applicant proposes to purchase goods from M/s Uma Polymers Ltd., Guwahati (supplier) and will further supply the said goods to M/s Pratap Snacks Ltd., Guwahati (customer). Also, it will direct M/s Uma Polymers Ltd. to deliver the goods directly to M/s Pratap Snacks Ltd. The advance ruling was sought on the admissibility of input tax credit of IGST charged by M/s Uma Polymers Ltd. to the applicant. The ruling authority found that the said transaction is a case of “bill to-ship to” and referring to section 10(1)(b) of the IGST Act 2017, it was observed that the applicant is acting as a third-party directing the supplier to dispatch the goods directly to the customer wherein the supplier would accordingly “bill to” the applicant and “ship to” the customer. Further, as per Section 16 & 17(1) of the CGST Act 2017, it was deemed that the applicant had received the goods from the supplier and thereafter the said goods were dispatched to the customer and hence the applicant was eligible to claim input tax credit. Thus, IGST was to be levied on both the transactions i.e. supply from supplier to the applicant and then from the applicant to the customer. Therefore, it was

ruled that the supplier would charge IGST from the applicant against which the applicant is eligible to claim full input tax credit of IGST paid on “bill to ship to” model as per the relevant provisions of Section 16 & 17 of the CGST Act, 2017.

**AUTHORITY FOR ADVANCE RULINGS –
RAJASTHAN IN M/s UMAX PACKAGING
[ADVANCE RULING NO. RAJ/AAR/2018-
19/23 dated 2nd November 2018]**

Case Law-4

Admissibility of Input Tax Credit (ITC) on purchase of Motor vehicles

The Applicant is a Private Limited Company engaged in the business of providing Mobile laboratory services to test the quality of Cotton. Advance Ruling has been sought on whether they can utilize or claim refund of the ITC amount for the vehicles purchased by them for their core business activity. The applicant submitted that they purchase five vehicles to use as mobile cotton labs, for the purpose of testing the quality of cotton. Applicant also argued that they are eligible for ITC as their business itself is of testing and the laboratory lab (launched on vehicles) were to be considered as prime business components, without which they cannot make any supply of services. The Ruling Authority were of the opinion that ITC on the vehicles purchased by the applicant for the purpose of their business fall under the ambit of Section 17(5) of the CGST Act 2017 (Blocked credit). Therefore, they ruled that applicant is not entitled for claim of ITC.

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**AUTHORITY FOR ADVANCE RULING –
ANDHRA PRADESH IN M/s INDIAN COTTON
SOLUTIONS.COM PRIVATE LIMITED
[ADVANCE RULING NO.
AAR/AP/6(GST)/2018 Dated 8th June 2018]**

Indirect Tax Notification



1. Seeks to change GST rate on goods

CBIC vide Notification No. 24/2018 – Central Tax (Rate) dated 31st December 2018 has amended Notification No. 1/2017 – Central Tax (Rate) dated 28th June 2017 to change GST rate on goods as per recommendations of the GST Council in its 31st Meeting.

Similar Notification has been issued in respect of inter-state supply of goods.

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-24-2018-cgst-rate-english1.pdf>

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-25-2018-igst-rate-english.pdf>

2. Seeks to exempt GST on goods

CBIC vide Notification No. 25/2018 – Central Tax (Rate) dated 31st December 2018 has amended Notification No. 2/2017 – Central Tax (Rate) dated 28th June 2017 to exempt GST on goods as per recommendations of the GST Council in its 31st Meeting.

Similar Notification has been issued in respect of inter-state supply of goods

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-25-2018-cgst-rate-english.pdf>

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-26-2018-igst-rate-english.pdf>

3. Seeks to exempt Central Tax on intra-state supply of gold by Nominated Agencies to registered persons

CBIC vide Notification No. 26/2018 – Central Tax (Rate) dated 31st December 2018 has exempted the intra-state supply of gold when supplied by Nominated Agencies under the scheme for “Export Against Supply by Nominated Agency” from the whole of the central tax leviable under the CGST Act, 2017.

Similar Notification has been issued in respect of inter-state supply of gold.

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-26-2018-cgst-rate-english.pdf>

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-27-2018-igst-rate-english.pdf>

Indirect Tax Notification

4. Seeks to notify GST rate on various services

CBIC vide Notification No. 27/2018 – Central Tax (Rate) dated 31st December 2018 has amended Notification No. 11/2017 – Central Tax (Rate) dated 28th June 2017 to notify CGST rate of various services as recommended by the GST Council in its 31st Meeting.

Similar Notification has been issued in respect of inter-state supply of services.

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-27-2018-cgst-rate-english.pdf>

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-28-2018-igst-rate-english.pdf>

5. Seeks to exempt GST on certain services

CBIC vide Notification No. 28/2018 – Central Tax (Rate) dated 31st December 2018 has amended Notification No. 12/2017 – Central Tax (Rate) dated 28th June 2017 to exempt GST on certain services as recommended by the GST Council in its 31st Meeting.

Similar Notification has been issued in respect of inter-state supply of services

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-28-2018-cgst-rate-english.pdf>

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-29-2018-igst-rate-english.pdf>

6. Seeks to specify services to be taxed under Reverse Charge Mechanism (RCM)

CBIC vide Notification No. 29/2018 – Central Tax (Rate) dated 31st December 2018 has amended Notification No. 13/2017 – Central Tax (Rate) dated 28th June 2017 to specify certain services to be taxed under Reverse Charge Mechanism (RCM) as per the recommendations of the GST Council in its 31st Meeting.

Similar Notification has been issued in respect of inter-state supply of services.

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-29-2018-cgst-rate-english.pdf>

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-30-2018-igst-rate-english.pdf>

7. Seeks to exempt supplies by Government Departments and PSUs to other Government Departments and PSUs or vice versa from the applicability of TDS provisions

CBIC vide Notification No. 73/2018 – Central Tax dated 31st December 2018 has amended Notification No. 50/2018 – Central Tax dated 13th September 2018 to notify that supplies made by one person to another person as specified under Section 51(1) of the CGST Act 2017, shall be exempted from the applicability of TDS provisions under the said Act.

Indirect Tax Notification

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-73-central-tax-english-2018.pdf>

8. Seeks to amend CGST Rules, 2017

CBIC vide Notification No. 74/2018 – Central Tax dated 31st December 2018 has made the Fourteenth amendment to the Central Goods and Services Tax Rule, 2017.

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-74-central-tax-english-2018.pdf>

9. Seeks to waive late fees payable on account of Delayed furnishing of FORM GSTR-1

CBIC vide Notification No. 75/2018 – Central Tax dated 31st December 2018 has waived off the late fees payable on account of delayed furnishing of FORM GSTR-1 for the months/quarters from July 2017 to September 2018 provided that the said return shall be filed before 31st March 2019.

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-75-central-tax-english-2018.pdf>

10. Seeks to specify and waive the late fees payable for delayed filing of FORM GSTR-3B

CBIC vide Notification No. 76/2018 - Central Tax dated 31st December 2018 has specified that late fees shall be payable for late filing of FORM GSTR-3B at the rate of INR 25 per day and in case of nil liability, late fees shall be payable at the rate of INR 10 per day for the period July 2017 onwards. Further, late fees shall be waived off for the period July 2017 to September 2018 provided that the return shall be filed before 31st March 2019.

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-76-central-tax-english-2018.pdf>

11. Seeks to waive late fees payable on account of Delayed furnishing of FORM GSTR-4

CBIC vide Notification No. 77/2018 – Central Tax dated 31st December 2018 has waived off the late fees payable on account of delayed furnishing of FORM GSTR-4 for the quarters from July 2017 to September 2018 provided that the said return shall be filed before 31st March 2019.

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-77-central-tax-english-2018.pdf>

Indirect Tax Notification

12. Seeks to extend due date for furnishing of FORM ITC-04

CBIC vide Notification No. 78/2018 – Central Tax dated 31st December 2018 has extended the due date for furnishing of FORM ITC-04 in respect of goods dispatched to or received from a job worker for the period July 2017 to September 2018 till 31st March 2019.

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-78-central-tax-english-2018.pdf>

13. Seeks to amend the IGST Rules 2017 for determination of place of supply

CBIC vide Notification No. 04/2018 – Integrated Tax dated 31st December 2018 has amended the IGST Rules 2017 to notify the rules for determination of place of supply in case of inter state supply under Sections 10(2), 12(3), 12(7), 12(11) and 13(7) of the IGST Act 2017.

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-4-2018-igst-english.pdf>

14. Clarification on certain issues related to GST

CBIC vide Circular No. 76/50/2018-GST dated 31st December 2018 has provided clarifications in respect of various issues related to GST viz., sale by government departments to unregistered persons, leviability of penalty under Section 73(11) of the CGST Act 2017, rate of tax in case of debit notes and credit notes issued under Section 142(2) of the CGST Act 2017, applicability of TDS provisions, valuation methodology in case of TCS income and definition of owner of goods under GST.

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular-No-76.pdf>

15. Clarification on export of services under GST

CBIC vide Circular No.78/52/2018-GST dated 31st December 2018 has issued clarification on export of services under GST in respect of outsourcing of a portion of services contract by an exporter of service to another person located outside India.

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular-No-78.pdf>

16. Clarification on refund related issues

CBIC vide Circular No.79/53/2018-GST dated 31st December 2018 has issued clarification on refund related issues under GST.

<http://www.cbic.gov.in/htdocs-cbec/gst/Circular-No-79.pdf>

Indirect Tax Notification

17. Clarification regarding GST rates & classification (goods)

CBIC vide Circular No. 80/54/2018-GST dated 31st December 2018 has issued clarification regarding GST rates & classifications on various goods including Sattu, Fish Meal, LPG for domestic use, wood logs for pulping, etc.

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular-No-80.pdf>

18. Clarification on GST rate on supply of food and beverages by educational institution

CBIC vide Circular No. 85/04/2019-GST dated 1st January 2019 has issued clarification on GST rate applicability on supply of food and beverage services by educational institutions.

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-85.pdf>

19. Seeks to extend the due date for availing ITC on the invoices or debit notes pertaining to FY 2017-18

CBIC vide Removal of Difficulty Order No. 02/2018 – Central Tax dated 31st December 2018 has extended the due date for availing ITC on the invoices or debit notes which were issued during FY 2017-18 till the date of filing the return in FORM GSTR-3B for the month of March 2019.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/ROD_2%20of%202018_CT_English.pdf

20. Seeks to extend the due date for furnishing of annual return in FORM GSTR-9, FORM GSTR-9A and reconciliation statement in FORM GSTR-9C for FY 2017-18

CBIC vide Removal of Difficulty Order No. 03/2018 – Central Tax dated 31st December 2018 has amended the Removal of Difficulty Order No. 01/2018 – Central Tax dated 11th December 2018 to extend the due date for furnishing of GST annual return in FORM GSTR-9, FORM GSTR-9A and reconciliation statement in FORM GSTR-9C for FY 2017-18 till 30th June 2019.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/ROD_3%20of%202018_CT_English.pdf

21. Seeks to extend the due date for furnishing the statement in FORM GSTR-8

CBIC vide Removal of Difficulty Order No. 04/2018 – Central Tax dated 31st December 2018 has extended the due date for furnishing the statement in FORM GSTR-8 by e-commerce companies for the months from October to December 2018 till 31st January 2019.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/ROD_4%20of%202018_CT_English.pdf

Corporate Legal & Regulatory Notifications



S.No	Notifications
1. EXTENSION OF LAST DATE OF FILING OF FORM NFRA-1	<p>(MCA circular dated December 13, 2018)</p> <p>The Ministry of Corporate Affairs (MCA) vide its circular dated December 13, 2018 has extended the time limit for filing the NFRA-1 form which would now be 30 days from the date of deployment of NFRA- 1 on the website of Ministry/ National Financial Reporting Authority (NFRA).</p> <p>The NFRA-1 form is required to filed for all bodies corporate governed by the National Financial Reporting Authority Rules, 2018 excluding companies as defined under section 2(20) of the Companies Act, 2013</p> <p>http://www.mca.gov.in/Ministry/pdf/NoticeAndCirculars_13122018.pdf</p>
2. DELEGATION OF POWERS TO REGIONAL DIRECTORS	<p>(MCA notification dated December 18, 2018)</p> <p>The Ministry of Corporate Affairs (MCA) vide its notification dated December 18, 2018, has delegated to the Regional Director (RD) at Mumbai, Kolkata, Chennai, New Delhi, Ahmedabad, Hyderabad and Shillong, the powers and function vested in Central Government under below mentioned provisions:</p> <ul style="list-style-type: none">• First proviso to clause 41 of section 2: Approval to follow a different financial year for consolidation of accounts• Second proviso to sub section (1) of section 14: Approval for conversion of public into private company <p>http://www.mca.gov.in/Ministry/pdf/NotificationDelegates1812_22122018.pdf</p>

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3. Companies (Registration of Charges) Second Amendment Rules, 2018

(MCA Notifications dated December 18, 2018)

The Ministry of Corporate Affairs (MCA) vide its notification dated December 18, 2018 has amended the Companies (Registration of Charges) Rules, 2014 through the Companies (Registration of Charges) Second Amendment Rules, 2018 which shall come into force with effect from the date of publication in the Official Gazette.

The Form No. CHG-4 (Satisfaction of Charges) has been revised through the said amendment to make it in consistent with the provisions of the Companies (Amendment) Ordinance, 2018.

http://www.mca.gov.in/Ministry/pdf/CompaniesRegistrationofCharges2AmendmentRules_19122018.pdf

4. Companies (Incorporation) Fourth Amendment Rules,2018

(MCA Notifications dated December 18, 2018)

The Ministry of Corporate Affairs (MCA) vide its notification dated December 18, 2018 has amended the Companies (Incorporation) Rules, 2014 through the Companies (Incorporation) Fourth Amendment Rules, 2018 which shall come into force with effect from the date of publication in the Official Gazette.

The key highlights of the said amendment are as follows:

1. Declaration at the time of commencement of business:

- The declaration under section 10A (as inserted by the Companies (Amendment) Ordinance, 2018 by a director shall be in Form INC 20A.
- In case of a company pursuing objects requiring registration or approval from any sectoral regulators such as RBI, SEBI etc., the registration or approval, as the case may be, from such regulator shall also be obtained and attached with the declaration.

2. Application under sub-section (41) of section 2 for change in financial year:

- The application for approval of concerned Regional Director (RD) under section 2(41), shall be filed in e-Form No. RD-1 along with the fee and documents prescribed in the rules.
- Where RD on examining the application, finds it necessary to call for further information or finds such application to be defective or incomplete in any respect, he shall give intimation of such information called for or defects or incompleteness

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On the last intimated e-mail address of the person or the company, which has filed such application, directing the person or the company to furnish such information, or to rectify defects or incompleteness and to re-submit such application within a period of 15 days, in Form RD GNL-5. Also, maximum of two re-submissions shall be allowed.

- In case the further information called for has not been provided or the defects or has not been rectified to the satisfaction of the RD within the period allowed, the RD shall reject the application with reasons within 30 days from the date of filing application or within 30 days from the date of last re-submission made as the case may be.
- In case where the application is found to be in order, RD shall allow and convey the order within 30 days from the date of application or within 30 days from the date of last resubmission, as the case may be.
- Where no order for approval or re-submission or rejection has been explicitly made by RD within the stipulated time of 30 days, it shall be deemed that the application stands approved and an approval order shall be automatically issued to the applicant.
- The order conveyed by RD shall be filed by the company with RoC in Form No. INC-28 within 30 days from the date of receipt of the order along with fee.

3. Application under section 14 for conversion of public company into private company:

- The application for approval of concerned Regional Director (RD) under section 14 for conversion of public company into private company, shall be filed within 60 days from the date of passing of special resolution in e-Form No. RD-1 along with the fee, documents and particulars prescribed in the rules.
- The Company shall, atleast 20 days before the date of filing of the applications:
 - (a) advertise in the Form No.INC.25A, in a vernacular newspaper in the principal vernacular language in the district and in English language in an English newspaper, widely circulated in the State in which the registered office of the company is situated;
 - (b) serve, by registered post with acknowledgement due, individual notice on each debenture holder and creditor of the company; and
 - (c) serve, by registered post with acknowledgement due, a notice to the Regional Director and Registrar and to the regulatory body, if the company is regulated under any law for the time being in force

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- Where no objection has been received from any person in response to the advertisement and the application is complete in all respects, the same may be put up for orders without hearing and the concerned RD shall pass an order approving the application within 30 days from the date of receipt of the application.
- Where no order for approval or re-submission or rejection has been explicitly made by RD within the stipulated period of 30 days, it shall be deemed that the application stands approved and an approval order shall be automatically issued to the applicant.
- The order conveyed by RD shall be filed by the company with RoC in Form No. INC-28 within 15 days from the date of receipt of approval along with fee.

http://www.mca.gov.in/Ministry/pdf/CompaniesFourthAmendmentRules_19122018.pdf



Time Management

By – Nisha Rawat – Financial Outsourcing

IBA

Time is one of life's most valuable possessions, as it is something you can never get back. Subsequently, one of the most essential life skills to master is time management. After all, time management is really life management. Learning how to make every day count for something is the objective. But it takes ridding your life of procrastination and a great deal of self-discipline. When time is managed wisely, it minimizes stress and improves the overall quality of your life.

“Time management” is the process of organizing and planning how to divide your time between specific activities. Good time management enables you to work smarter – not harder – so that you get more done in less time, even when time is tight and pressures are high. Failing to manage your time damages your effectiveness and causes stress.

The following strategies can help in getting right things done in less time.

- ❖ Start your day with a clear focus
- ❖ Have a dynamic task list
- ❖ Focus on high-value activities
- ❖ Minimize interruptions
- ❖ Stop procrastinating
- ❖ Limit multi-tasking
- ❖ Review your day

Benefits of time management in a workplace

There are many advantages that come along with proper management of time. In your professional life, time management can benefit you in the following ways:

- ❖ Deliver work on time
- ❖ Provide better quality of work
- ❖ Improved productivity and efficiency
- ❖ Less stress and anxiety
- ❖ Improved quality of life
- ❖ More opportunities and career growth

Your happiness and effectiveness at work will be significantly improved if you feel you're more in control. Both of what you do, and of how you do it. In addition, freeing up your time to focus on strength-based activities will also deliver results for your employer. Effective time management skills can have a positive impact on your work and life in general.

Upcoming Compliances

Date	Compliance
January 11, 2019	Due date for furnishing of Form GSTR-1 for the taxpayers having aggregate turnover of more than 1.5 crore for the month of December-2018
January 13, 2019	Due date for furnishing of Form GSTR-6 for Input Service Distributor for the month of December-2018
January 15, 2019	Due date for furnishing of Form 15G/15H declarations received during the quarter ending December 2018
January 20, 2019	Due date for filing consolidated return in the Form GSTR-3B for the month of December-2018
January 31, 2019	Due date for furnishing of Form GSTR-1 for the taxpayers having aggregate turnover of upto 1.5 crore for the quarter October to December-2018
	Quarterly statement of TDS deposited for the quarter ending December 31, 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 Bengaluru 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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