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BUSINESS ADVISORS

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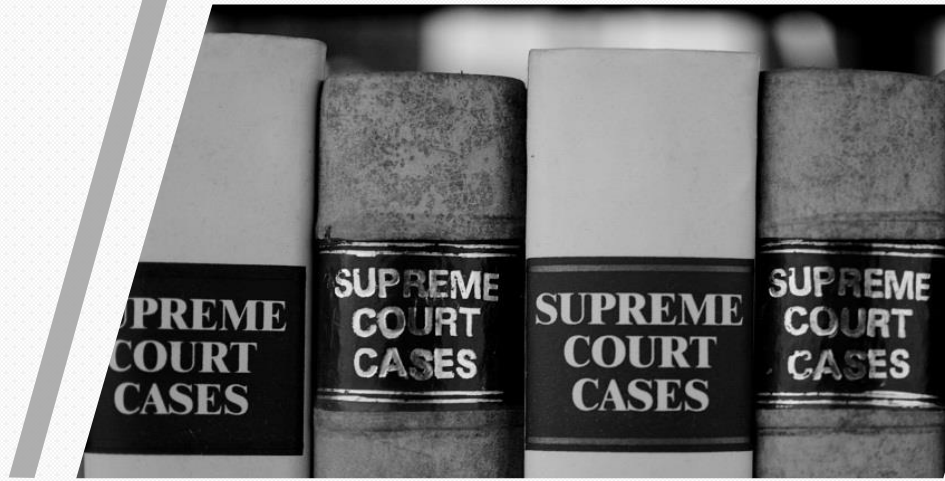
May - 2018

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Direct Tax

Case Laws



Case Law 1

HC: Sum paid to employees deputed abroad for meeting personal expenses taxable as perquisite

The taxpayer deputed employees from India to work in its London branch office. The employees continued to be on the payroll of the taxpayer and received salary in India. Boarding & lodging allowances were paid as a lump sum in UK. The taxpayer continued to withhold taxes on the salary paid in India. However, taxes were not withheld on allowances paid in UK to employees. The Assessing Officer (AO) charged taxes under section 192 on the allowances paid in UK besides levying interest thereon for assessment years under consideration. Under appeal, the CIT(Appeals) and ITAT dismissed the appeal.

It was finally held by the Honourable Andhra Pradesh High Court held that any allowances paid to the assessee to meet his personal expenses at the place where the duties of his office are ordinarily performed is not exempt under tax. The lump sum payments conferred additional advantages to meet the high cost towards accommodation & personal expenditure. Such expenditure cannot be treated as having been incurred in connection with discharge of duties. The taxpayer did not obtain any details of the expenditure incurred by employees in London against the lump sum payment. In absence of any records, there is no reimbursement but lump-sum payments.

Hence the taxpayer is legally bound to deduct taxes, any exemption, if valid can be claimed by the employee before the tax office post submission of necessary documents.

Sun Outsourcing Solutions (P.) Ltd. v. Commissioner of Income-tax: [2018] 92 taxmann.com 339 (Hyderabad)

Case Law 2

SC: Expenses proportionate to earning exempt income to be disallowed under section 14A

The taxpayer was engaged in the business of finance, investment and dealing in shares and securities. It held shares/securities in two portfolios, namely, as investment on "capital account" and as "trading assets". In the Income tax return filed for the year under consideration, while it claimed exemption in respect of dividend income, it did not disallow apportioned interest expenses, relatable to such dividend incomes. The AO made disallowance under section 14A but restricted the disallowance to the amount of exempt income. The taxpayer contended that the dominant purpose for purchasing the share was not to earn dividend income, but to gain control over the investee group company or for the purpose of trading in the shares and earning business income and the receipt of dividend was merely incidental.

Direct Tax : Case Laws

On appeal to the High Court, it was held that provisions of section 14A shall apply where an income is claimed as exempt, regardless of the intention/ motive behind making the investment. The Hon'ble Court also relied on the decision passed by the Supreme Court in the case of CIT v. Walfort Share and Stock Brokers P Ltd, wherein it was held that the basic principle of taxation was to tax the net income and hence disallowance of expenses apportioned to exempt income may be disallowed. When appealed further, the Supreme Court confirmed the intention of section 14A by holding that while determining the disallowance, the dominant purpose or the intention while making the purchase of such investment is not relevant.

Maxopp Investment Ltd. v. Commissioner of Income Tax: [2018] 91 taxmann.com 154 (SC) [New Delhi]

Case Law 3

SC: Applicability of Section 194H on payments made to advertising Agencies

The taxpayer is engaged in telecast of news, various sports, entertainments, cinemas and other programmes. It entered into various agreements with advertising agencies, wherein it would pay 15% commission for telecasting the ads given by the agencies. During the years under consideration, the taxpayer paid commission without deducting tax at source considering the agencies to be independent principals.

However, the Assessing Officer (AO) was of the view that section 194H would be applicable on the payments made as the same were in the nature of "commission". Accordingly, the taxpayer was held liable to be "Assessee in default" under section 201(1). CIT(Appeals) and Kerala High Court also upheld the assessment order on similar premise.

It was held by the Supreme Court that the taxpayer was to be liable on the grounds that the agreement itself had used the expression "commission" in all relevant clauses. Also, the transaction nowhere showed that the relationship was principal-to-principal, rather it was principal and agent only

Prasar Bharati v. Commissioner of Income Tax, [2018] 92 taxmann.com 11 (SC) [Thiruvananthapuram]

Case Law 4

ITAT: Where there was neither any business conducted by assessee through expatriated employees seconded in India on behalf of assessee nor any income was derived through activities of these employees, there could have been no fixed place PE of assessee constituted through these expatriated employees

Samsung India Electronics Ltd. ('SEIL') is engaged in the business of manufacturing as well as trading of consumer electronics and is a subsidiary of Samsung Electronics Co Ltd ('SEC')

Direct Tax : Case Laws

SEC deputed its employees to SIEL wherein the secondees work under the direction and supervision of the Indian entity. Expatriates receive a portion of their salary in Korea directly from SEC for administrative convenience, which is subsequently reimbursed by SIEL. A survey was conducted on the premises of SIEL, pursuant to which the AO issued a notice under section 148 to SEC for initiating reassessment proceedings for six years. In response to the notice, the Company filed its India tax returns for all such years declaring amongst other income, income from royalty / fee for technical services (FTS) which were not declared in the original return, on which taxes had already been withheld. The AO passed the draft assessment order holding that the seconded employees create a Permanent Establishment (PE) in India of SEC as per Article 5 of the India-Korea Double Taxation Avoidance Agreement (DTAA).

SEC filed its objection before the Dispute Resolution Panel ('DRP') against such order. The DRP concluded that the Indian entity should be treated as a deemed fixed place PE of SEC on account of regular communication between expatriates and SEC. DRP took a view that the services rendered by expatriates were essentially for the benefit of SEC which were being performed in addition to the services for Indian entity.

When appealed further, the Tribunal ruled that the communication between expatriates and SEC helped SEC to make a decision on designing products based on market preference etc., which would benefit the Indian entity.

The expatriates, through communication with SEC, are only discharging their function as employees of SIEL and are not conducting any business of SEC in India. Hence, there is no PE of SEC in India. Even if it is considered that SEC is rendering services to the Indian entity through seconded employees, it will not result in existence of service PE in the absence of Service PE clause in the DTAA.

Samsung Electronics Co. Ltd .v. Deputy Commissioner of Income Tax (Int. Taxation), [2018] 92 taxmann.com 171 (Delhi - Trib.) New Delhi

Press Release

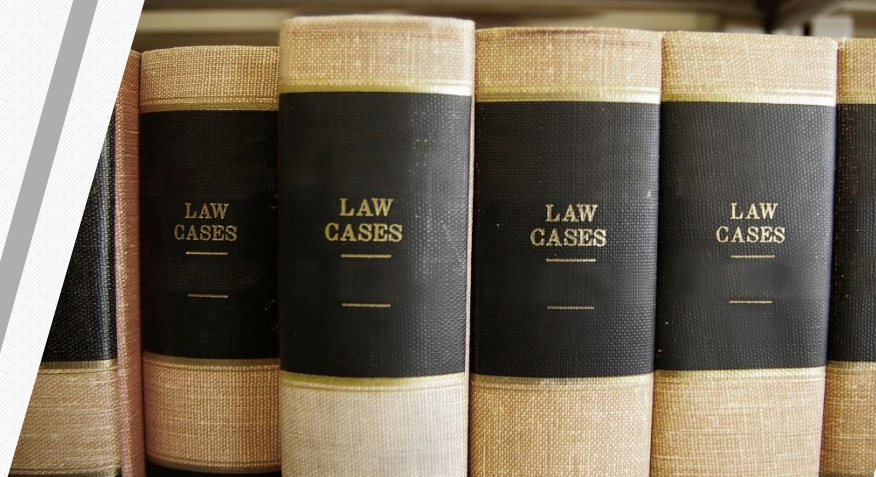
CBDT notifies Income Tax Return Forms for Assessment Year 2018-19

The Central Board of Direct Taxes (CBDT) has notified new Income Tax Return Forms (ITR Forms) for the Assessment Year 2018-19. There is no change in the manner of filing of ITR Forms as compared to last year. The notified ITR Forms are available on the official website of the Department www.incometaxindia.gov.in.

Requirement for obtaining PAN card u/s 139A of IT Act, 1961 eased for corporate assesseees

In case of a company, an application for incorporation, allotment of Permanent Account Number (PAN) and allotment of Tax Deduction and Collection Account Number (TAN) may be made through a Common Application Form submitted to the Ministry of Corporate Affairs (MCA). It is further clarified that PAN and TAN mentioned in the Certificate of Incorporation shall also be treated as sufficient proof of PAN and TAN for the said company assesseees.

Indirect Tax : Case Laws



Case Law 1

Whether scrap will be covered under the definition of Supply and admissibility of ITC thereon

The application was filed under section 97 of the Central Goods and Services Tax, 2017 and the Maharashtra Goods and Service Tax Act, 2017 by M/s CMS Info Systems Limited ('applicant'). The applicant is engaged in providing cash management services which is done through security vans popularly known as cash carry vans. The applicant is seeking an advance ruling in respect of the applicability of GST on whether supply of such motor vehicles as scrap after its usage can be treated as 'supply' in the course or furtherance of business and whether input tax credit (ITC) is available to the applicant on purchase of motor vehicles i.e. cash carry vans which are purchased and used for cash management business and supplied post usage as scrap. The applicant stated that permanent transfer or disposal of business asset is also treated as 'supply' but such transfer or disposal will be deemed to be supply only where ITC has been availed on such assets. On this, the department contested that it is the activity of supply of scrap which shall be covered under the scope of supply and tax shall be charged as per the schedules and ITC would not be allowed on the same as it does not fall within the exceptional cases as mentioned under Section 17(5) of the CGST Act, 2017. The Members of the Advance Ruling passed the order in favour of the Department.

CMS Info Systems Limited dated 19th March 2018 before Advance Ruling Authority Maharashtra State, Mumbai.

Case Law 2

Whether supply to international passengers on Airport would be considered as Export

The applicant is engaged in the business of retail sale of sunglasses. The applicant has several retail outlets in Delhi and one such outlet is at Terminal 3 (International Departure), Indira Gandhi International Airport, New Delhi. Presently, the applicant is charging SGST/CGST on the supply invoice issued to the International passengers. However, the applicant is of the view that, its supply of goods to international passengers is a 'zero-rated' transaction, being 'export sale' within the meaning of the same under Section 2(5) of the IGST Act. The issue is whether the location of the retail outlet of the applicant in the Security Hold Area of the International departure is outside India though geographically it is within the territory of India. The goods can be said to be exported only when they cross the territorial waters and the goods cannot be called to be exported merely on crossing the Customs Frontiers of India. However, the said outlet is not outside India, as claimed by the applicant but the same is within the territory of India and hence the applicant is not taking goods out of India.

Indirect Tax : Case Laws

Therefore, supply cannot be called as “export” under Section 2(5) of the IGST Act, 2017. Accordingly, the applicant is required to pay GST at the applicable rates

ROD Retail Private Limited dated 27th March 2018 before Advance Ruling Authority, Delhi

Case Law 3

Filing of GST Tran-1/Tran-2 forms- IT Grievance Redressal Mechanism to address the problems faced by taxpayers due to IT glitches on the GST Portal

It has been stated that assesses who could not file GST TRAN-1 / TRAN-2 forms for carry forward of credit in time due to technical errors would be duly accommodated. A procedure is being devised to put in place an IT Grievance Redressal Mechanism to address the problems faced by taxpayers due to IT glitches on common portal (GSTN). The GST Implementation Committee (GIC) shall act as the IT-Grievance Redressal Committee. As per the proposed redressal mechanism, nodal officers shall be appointed in requisite numbers to address concerns of tax payers in a time-bound manner. The relief provided to such taxpayers could be in nature of allowing filing of any form or return prescribed in law or amending any form or return already filed. It is stated that one-time facility of filing will be available only to those individuals or concerns which had approached the GST Council or the concerned Commissionerate/portal/officials etc.

through e-mail or other means of communication before the stipulated time

Tara Chand Saluja And Sons, Vee Gee auto components pvt. Ltd, Ankur Oil & Refrigeration, M/s Alliance Graphic Equipment Private Limited, Sare Realty Projects Private Limited And Dotcom Home Fashions Pvt Ltd. Versus Union of India And ORS

Case Law 4

Seizure of Goods in case on of Incomplete E-Way Bill

The petitioner has come up in this writ petition against the seizure of goods under Section 129(1) of Uttar Pradesh Goods and Service Tax Act, 2017. The goods of the petitioner under transit have been seized because it was not accompanied by proper E-Way Bill. The submission of learned counsel for the petitioner is that the E-Way Bill duly filled up was accompanying the goods. The non-filling of the vehicle number, address and name of the driver is optional and therefore, the seizure is illegal. It contains a specific column requiring the vehicle number, name and address of the driver and its license to be filled up. In the present case admittedly, all the above details were not filled up or disclosed in the E-Way Bill. In view of this, the E-Way Bill was incomplete and improper. Any E-Way Bill which is not duly filled up cannot be construed to be a valid document and it would be treated as if the goods are not accompanied by appropriate / valid E-Way bill.

Indirect Tax : Case Laws

Thus, apparently there is a convention of the provision of the Act which mandates that the E-Way bill should be accompany the goods in transit

In view of the above, there is no illegality in seizing goods for violation of provision of the Act. However, in the interest of justice, we permit the release of the goods, of the petitioner and the vehicle on furnishing security other than cash and bank guarantee of the amount specified in clause (a) or (b) of sub Section (1) to Section 129 of the Act to the satisfaction of the authority concerned. The writ petition is dismissed with the above observation

Time To Time Logistics Versus Union Of India And 3 Others

Indirect Tax Notification



Clarification on issues related to taxability of 'Tenancy Rights'

The Central Government vide Circular No.44/12/2018 – Central Tax dated 2nd May, 2018 has clarified various issues related to taxability of Tenancy Rights which are as follows:

The transfer of tenancy rights against tenancy premium which is also known as “pagadi system” is prevalent in some states. In this system the tenant acquires, tenancy rights in the property against payment of tenancy premium (pagadi). The landlord may be owner of the property but the possession of the same lies with the tenant. The tenant pays periodic rent to the landlord as long as he occupies the property. The tenant has the option to sell the tenancy right of the said property and share a percentage of the proceed with the owner of land, as laid down in their tenancy agreement. Alternatively, the landlord pays to tenant the prevailing tenancy premium to get the property vacated

- The activity of transfer of tenancy right against consideration in the form of tenancy premium is a supply of service liable to GST. It is a form of lease or renting of property and such activity is specifically declared to be a service in para 2 of Schedule II i.e. any lease, tenancy, easement, license to occupy land is a supply of services.
- Stamp duty and registration charges levied on transfer of tenancy rights cannot be precluded from the scope of supply of goods or services and from payment of GST. The transfer of tenancy rights cannot be treated as sale of land or building declared as neither a supply of goods nor of services in para 5 of Schedule III to CGST Act, 2017. Thus, a consideration for the said activity shall attract levy of GST.
- Transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable.
- Renting of residential dwelling for use as a residence is exempt [Sl. No. 12 of notification No. 12/2017-Central Tax (Rate)]. Therefore, grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt.
- Services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST.

http://www.cbec.gov.in/resources//htdocs-cbec/gst/Circular_No.44.pdf

Corporate Legal & Regulatory Notifications



S. No	Notifications
1	<p>MINISTRY OF CORPORATE AFFAIRS</p> <p>AMENDMENT TO THE SCHEDULE I OF COMPANIES ACT, 201</p> <p><i>(MCA Notification dated April 10, 2018)</i></p> <p>The Amendments provide that every share certificate as may be issued by the Company, shall specify the shares to which it relates and the amount paid-up thereon and shall be signed by two directors or by a director and the company secretary, wherever appointed. It is also clarified that in case of an One-Person Company, it shall be sufficient if the certificate is signed by a director and the company secretary, wherever the company has appointed a company secretary, or any other person authorized by the Board for the purpose.</p> <p>Further with effect from the 29th May, 2015, Companies are not be required to affix the common seal on share certificates if by virtue of registration under the Act the company does not have the common seal.</p> <p>These amendments have been done to bring more clarity to the provisions relating to share certificates.</p> <p>http://www.mca.gov.in/Ministry/pdf/NotificationSchedule2018_11042018.pdf</p>
2	<p>THE COMPANIES (SHARE CAPITAL AND DEBENTURES) AMENDMENT RULES, 2018</p> <p><i>(MCA Notification dated April 10, 2018)</i></p> <p>It is clarified that a director shall be deemed to have signed the share certificate if the director signs through digital, electronic or mechanical means using a machine or equipment, but it shall not include signing by way of rubber stamp.</p> <p>Also, the director signing using such means shall be personally responsible for permitting the affixation of his signature by any other person and for the safe custody of any machine or equipment used for the purpose of signing.</p> <p>http://www.mca.gov.in/Ministry/pdf/SharecapitalRule2018_11042018.pdf</p> <p>INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (IBBI)</p>

Legal & Regulatory

S.no	Notifications
3	<p>ANNUAL COMPLIANCE CERTIFICATE FOR INSOLVENCY PROFESSIONAL AGENCIES</p> <p><i>(IBBI Circular No. IPA/009/2018 dated April 19, 2018)</i></p> <p>The Insolvency and Bankruptcy Board of India (“IBBI”) in consultation with Insolvency Professional Agencies, vide circular dated April 19, 2018, has devised the format of Annual Compliance Certificate to be submitted by the IPAs to the IBBI which is to be displayed on IBBI website within 45 days of the closure of financial year. The purpose behind the same is to facilitate monitoring of both performance and compliance of statutory requirements and in the interest of transparency and accountability. The format has been made available on IIBI website under the said circular</p> <p>http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Apr/19th%20April%202018%20Annual%20Compliance%20Certificate%20for%20Insolvency%20Professional%20Agencies_2018-04-20%2011:56:27.pdf</p>
4	<p>COMMENCEMENT OF DISCIPLINARY PROCEEDING</p> <p><i>(IBBI Circular No. LA/010/2018 dated April 19, 2018)</i></p> <p>The Insolvency and Bankruptcy Board of India (“IBBI”) vide circular dated April 23, 2018, has clarified that an insolvency professional may be appointed as interim resolution professional, resolution professional, liquidator, or a bankruptcy trustee if no disciplinary proceeding is pending against him. The Insolvency and Bankruptcy Code, 2016 is silent on the definition of “Disciplinary Proceedings”. It has been clarified by IBBI that:</p> <p>A disciplinary proceeding is considered as pending against an insolvency professional from the time he has been issued a show cause notice by the IBBI till its disposal by the disciplinary committee; and</p> <p>(i) An insolvency professional who has been issued a show cause notice shall not accept any fresh assignment as interim resolution professional, resolution professional, liquidator, or a bankruptcy trustee under the Code.</p> <p>http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Apr/Disciplinary%20Proceeding_2018-04-24%2010:45:52.pdf</p> <p>RESERVE BANK OF INDIA</p>

Legal & Regulatory

S.no	Notifications
5	<p>PROHIBITION ON DEALING IN VIRTUAL CURRENCIES (VCS)</p> <p><i>(RBI Notification dated April 06, 2018)</i></p> <p>The Reserve Bank of India (RBI) via notification dated April 06, 2018 has instructed entities regulated by Reserve Bank, to not to deal or provide services regarding Virtual Currencies (VCs) with immediate effect.</p> <p>The services as provided in the notification include maintaining accounts, registering, trading, settling, clearing, giving loans against virtual tokens, accepting them as collateral, opening accounts of exchanges dealing with them and transfer / receipt of money in accounts relating to purchase/ sale of VCs.</p> <p>Also, regulated entities are provided three month's time to exit the relationship with these services.</p> <p>https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11243&Mode=0</p> <p>CENTRAL GOVERNMENT ORDINANCE</p>
6	<p>THE FUGITIVE ECONOMIC OFFENDERS ORDINANCE, 2018</p> <p>In the wake of many economic and financial fraud offenders fleeing the country in order to avoid arrest and penalties, the Central Government has passed the much awaited Fugitive Economic Offenders Ordinance, 2018 ('ordinance') with the aim of laying down measures to deter economic offenders from evading the process of Indian law by remaining outside the jurisdiction of Indian courts.</p> <p>The ordinance provides for such means and measures that would force the fugitive economic offenders to return to India to face trail for scheduled offences. The salient features of the ordinance includes:</p> <ol style="list-style-type: none">1) It provides for application to a Special Court for declaration of an individual as a Fugitive Economic offender;2) Attachment of property of the offender;3) Confiscation of the property of an individual declared as a fugitive economic offender resulting from the proceeds of crime;4) Confiscation of other property belonging to such offender in India and abroad, including benami property;5) Disentitlement of the fugitive economic offender from defending any civil claim; and6) Appointment of administrator for managing and disposing off the confiscated property <p>http://www.pib.nic.in/PressReleseDetail.aspx?PRID=1529875</p>



External Commercial Borrowings Policy- Rationalisation & Liberalisation

By – Garima Sardana Asst. Manager – Regulatory

IBA

One of the most efficient and cheaper way to raise funds by corporates globally is by way of an External Commercial Borrowing (ECB). Not only does it help corporates to lower its borrowing costs but also opens an array of avenues to borrow from. Shortage of capital and higher interest rate has compelled corporates to look for foreign capital. It is an approved method promoted by the Reserve Bank of India (RBI) to enable inflow of foreign exchange in India. Hence, ECB has been emerging as one of the valuable sources of investable resource of funds for domestic companies.

ECB can be raised in the form of bank loans, buyers credit, suppliers credit, securitized instruments availed from non resident entities by eligible resident entities. RBI regulates the ECB and on a regular basis issues notification making changes in the regulations as required. In order to promote the inflow of these regulated funds into India, RBI has liberalized and rationalized the current ECB Policy via Notification dated April 27, 2018, which has been discussed henceforth.

EXISTING STRUCTURE

To begin with it is required to understand the current structure governing ECBs. The framework for raising loans through ECB comprises the three tracks as enumerated below.

Track -I: Medium term foreign currency dominated ECB with minimum average maturity of 3/5 years.

Track-II: Long term foreign currency dominated ECB with minimum average maturity of 10 years.

Track -III: Indian Rupee (INR) dominated ECB with minimum average maturity of 3/5 years.

RECENT AMENDMENTS

The recent amendments in the ECB regulations [click here](#)

Upcoming Compliances

Date	Compliance
May 15, 2018	Due date for issue of TDS Certificate for tax deducted under Section 194-IA in the month of March, 2018
	Due date for issue of TDS Certificate for tax deducted under Section 194-IB in the month of March, 2018
	Quarterly statement of TCS deposited for the quarter ending March 31, 2018
May 20, 2018	Due date for filing GSTR-3B for the month of April, 2018.
May 31, 2018	Quarterly statement of TDS deposited for the quarter ending March 31, 2018
	Due date for furnishing of statement of financial transaction (in Form No. 61A) as required to be furnished under sub-section (1) of section 285BA of the Act respect of a financial year 2017-18.
	Due date for filing GSTR-1 of the taxpayers having aggregate turnover of more than 1.5 crore for the month of April, 2018.
	Due date for furnishing GSTR-6(to be filed by Input Service Distributor) for the period of July,2017 to April,2018.
June 07, 2018	Due date for deposit of Tax deducted/collected for the month of May, 2018.
June 10, 2018	Due date for filing GSTR-1 of the taxpayers having aggregate turnover of more than 1.5 crore for the month of May, 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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