



# India tax konnnect

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## Direct Tax

### **CBDT notifies Faceless Appeals Scheme 2020**

On 13 August 2020, the Prime Minister (PM) launched the 'Transparent Taxation' platform inter alia encompassing faceless assessments, faceless appeals, taxpayer charter etc. The PM had stated that faceless assessments/appeals will have a technology driven interface and the facility of faceless appeal will be available for citizens across the country with effect from 25 September 2020.

On 25 September 2020, CBDT issued a Notification<sup>1</sup> and a press release to give effect to the Faceless Appeal Scheme, 2020 (the Scheme)<sup>2</sup>. The Scheme provides a mechanism for the purpose of disposal of

<sup>1</sup> CBDT Notification No. 76 of 2020 and Press Release, dated 25 September 2020

<sup>2</sup> Under Section 250(6B) of the Income-tax Act, 1961 (the Act)

appeals by the CIT(A) with effect from 25 September 2020.

Under the Scheme, all tax appeals will be decided in a faceless manner except appeals relating to serious frauds, major tax evasion, search matters, international tax and Black Money Act. Under the faceless appeals, all the processes like allocation of appeals, communication of notice/questionnaire, verification/enquiry to hearing and finally communication of the appellate order, will be online. There will be no physical interface between taxpayers or their representatives and the tax department.

## Decisions

### **Dividend Distribution Tax rate should not exceed the rate specified for dividends under the India-Germany tax treaty**

The ITAT (Delhi Bench) dealt with the issue of whether the Dividend Distribution Tax (DDT) rate should be restricted to the tax rate provided in the India-Germany tax treaty (tax treaty). The Tribunal held that tax rate specified in the tax treaty in respect of dividend will prevail over DDT rate. Consequently, the DDT rate should not exceed the rate specified in the Dividend Article under the tax treaty.

### **Depreciation is allowable on intangible assets received on succession of a firm by a company**

The Karnataka High Court<sup>3</sup> held that a taxpayer is entitled for depreciation on intangible assets received pursuant to succession of a firm by a company. The taxpayer and the erstwhile partnership firm are different entities and there was transfer of intangible assets by the partnership firm to the taxpayer for a valuable consideration

<sup>3</sup> Padmini Products (P.) Ltd. v. DCIT- [ITA No. 154/2014 AY 2005-06 to 2008-09] (Kar)

in the form of allotment of shares. ICAI Accounting Standard no 10 and 26 were followed and the intangibles had a real money value. Thus the taxpayer was eligible for depreciation on the actual cost of intangibles. The Court held that the provisions<sup>4</sup> dealing with proportionate allowance of depreciation in the cases of succession are applicable only in the cases where there is an aggregate deduction claimed by the predecessor and successor and that too only in the assessment year relevant to the year of succession. Further the specific provisions<sup>5</sup> dealing with the adjustments to the 'Actual Cost' by the AO warrant the jurisdictional fact of reduction of tax liability by enhancing the cost of asset and a prior approval from the Joint Commissioner.

### **Lower or nil tax withholding application cannot be rejected because of delay due to COVID-19 pandemic**

In view of the extra-ordinary situation faced by the country due to Covid-19 and the lockdown, the government issued an Ordinance to relax various timelines under various laws. This Ordinance has an overriding effect over the limitation provision contained in the Act for the AY 2020-21. Due to outbreak of pandemic there is severe disruption in the normal functioning of all sectors of the economy including functioning of the tax department. Thus, there was a delay by the taxpayer in filing a nil tax withholding application. Since the intention of the Ordinance was to provide benefit to the taxpayer who had made lower/nil withholding applications, the Bombay High Court<sup>6</sup> held that the same cannot be applied in a manner which acts to the disadvantage of the applicants. Accordingly, the Court held that the rejection of nil tax withholding application by the AO was not justified.

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<sup>4</sup> 6th Proviso (Erstwhile 5th proviso) to Section 32(1)

<sup>5</sup> Explanation 3 to Section 43(1)

<sup>6</sup> Vijaykumar Satramdas Lakhani v. CBDT and another [WP(ST.) No. 5837/2020, AY 2020-21] (Bom)

## CBDT Notification / Circular / Press Release

- CBDT issued a Notification<sup>7</sup> to amend the Tax Audit Report (Form 3CD), the Transfer Pricing Report (Form No 3CEB), ITR 6 and Rule 5 relating to depreciation in line with the new concessional tax regimes for domestic companies (under Sections 115BAA), for manufacturing companies (under Section 115BAB), for reduced slab rates for individuals (under Section 115BAC) and for co-operative societies (under Section 115BAD). The Notification comes into effect from 1 October 2020.
- CBDT issued guidelines<sup>8</sup> for AOs/Tax Recovery Officers (TROs) with respect to intrusive and coercive action for recovery of taxes. The guidelines provide that the recovery of tax demands should be taken only after exhausting alternative means of recovery. Further recovery surveys should be resorted to only in the cases where the taxpayer is not responding to the notices or notices are not getting served. For the attachment of movable or immovable property, CBDT will issue the relevant procedures.
- On 29 September 2020, CBDT issued guidelines<sup>9</sup> to clarify the applicability of TDS provisions on e-commerce operators under Section 194-O and TCS provisions on sale of goods under Section 206C(1H). CBDT clarified on various aspects like calculation of threshold, applicability of provisions to payment gateways, exchanges and insurance agent or insurance

<sup>7</sup> CBDT Notification No. 82/2020, 1 October 2020

<sup>8</sup> CBDT Order F. No. 275/29/2020-IT(B), 16 October 2020

<sup>9</sup> CBDT Circular No 17/2020, 29 September 2020

aggregator, no adjustment for sales return, discounts or indirect taxes, etc.

## BEPS/MLI

On 12 October 2020, the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS), released<sup>10</sup> Blueprints on Pillar One and Two to address the tax challenges of the digitalisation of the economy. The Pillar One Blueprint reflects the latest stage and is meant to provide a basis for political agreement across the Inclusive Framework. The three primary components of Pillar One are Amount A<sup>11</sup>, Amount B<sup>12</sup>, and the development of dispute prevention and resolution mechanisms that will promote tax certainty. The Pillar Two Blueprint proposes a set of rules that attempt to determine that large internationally operating businesses pay a minimum level of tax regardless of where they are headquartered or the jurisdictions in which they operate and proposes four new rules to accomplish this goal.

<sup>10</sup> Source: OECD Website

<sup>11</sup> Amount A would apply a formulary approach to allocate a portion of a multinational enterprise's deemed residual profits to market jurisdictions and provide those jurisdictions with nexus for taxing that allocation

## Indirect Tax

### Goods and Services Tax (GST)

### Advance Authority Rulings (AAR)

#### Activities undertaken by Liaison office in India are subject to levy of GST

The AAR observed<sup>13</sup> that the liaison office (LO) in India are permissible to carry out certain specified activities by Reserve Bank of India (RBI). These activities include representing the parent/group companies in India, promoting export/import from/to India, promoting technical/financial collaborations between parent/group companies and companies in India, and acting as a communication channel between the parent company and Indian Companies.

The said activities are in the nature of 'activity or transaction in connection with or incidental or ancillary' to the main business activity and thus would fall within the definition of the term 'business' under the CGST Act.

Under the valuation provisions, person who are associated in the business of another are deemed to be related party. In the instant case, the LO is involved in the promotion of the business of their head

<sup>12</sup> Amount B would provide a fixed return for certain baseline marketing and distribution activities that is intended to be consistent with the arm's length principle

<sup>13</sup> Fraunhofer-Gesellschaft Zur Forderung der angewandten Forschung [AAR order no. KAR ADRG 50/2020 dated 8 October 2020]

office ('HO') located outside India and they act on behalf of the HO for its customers in India. Thus, the LO and their HO are deemed to be related persons and also since the LO is engaged in facilitating supply on behalf of the HO, it is aptly covered within the definition of 'intermediary'.

Based on the above observations the AAR had held that the supply of services by the applicant amounts to inter-state supply and accordingly the LO will be required to obtain registration and be liable to pay GST on supplies made to HO.

## Entertainment tax

## High Court Order

### Entertainment tax not leviable on 'Online booking charges' recovered by Cinema Hall owners

The High Court observed<sup>14</sup> that payment for any purpose connected with entertainment is taxable under the Entertainment tax levy, if the person concerned is required to make such payment as a condition for entry. Online booking charges or the internet handling charges, is not a mandatory payment for gaining entry into the cinema hall. The same could be subject matter of levy under Service tax, but entertainment tax being a tax collected by State for the Local Administration or Municipal Administration, is leviable only on cost of ticket which entitles a person to gain entry into the cinema hall or theatre.

Booking of a cinema ticket on online basis is not a mandatory condition for all cinema goers, and this is not only optional but altogether a separate facility provided to all on the Web portal of the cinema hall owners.

Based on the above observation the Court held that unless a conditional payment for any purpose is integrally connected with the 'entertainment' is uniformly and mandatorily chargeable from all, who want to have entry in the place of cinema hall, entertainment tax cannot levied on 'online booking charges'.

## Notification update

### Number of digits of Harmonised System of Nomenclature code

Pursuant to the recommendation of the GST Council, the CBIC have issued a notification<sup>15</sup> thereby requiring taxpayers to mandatorily quote specified digit of HSN code. The Notification shall come into effect from 1 April 2021.

Sl. No.	For assessee (aggregate turnover in previous financial year)	Number of digits of HSN code with effect from 1 April 2021	Number of digits of HSN code up to 31 March 2020	Remark
1	Up to INR 5 crores	4	2	For supplies made to an unregistered person, option available to the taxpayer to not mention the HSN code
2	More than INR 5 crores	6	4	—

<sup>14</sup> PVR Limited [TS-875-HC-2020(MAD)-VAT]

<sup>15</sup> Notification 78/2020-Central Tax, dated 15 October 2020

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