Tax Highlights 2020

Table of contents

KPMG Assurance and Consulting Services LLP, Lodha Excelus, Apollo Mills Compound, NM Joshi Marg, Mahalaxmi, Mumbai - 400 011
Phone: +91 22 3989 6000, Fax: +91 22 3983 6000

Permanent Establishment

Based on the Protocol to the India-Switzerland tax treaty, FTS can be taxed on gross basis even though the Swiss company had a Service PE in India

The ITAT (Mumbai Bench) held that Fees for Technical Services (FTS) can be taxed on gross basis even though the taxpayer company had a Service Permanent Establishment (PE) in India. The Tribunal relied on the Protocol to the India-Switzerland tax treaty which specifically provides an option for taxation of FTS on gross basis where taxpayer has a service PE in the source country.

AGT International GmbH v. DCIT [2020] 114 taxmann.com 51 (Mum)

For further details, please refer to our Flash News dated 11 February 2020 available at this link

A Mauritian company does not constitute an Agency PE in India on account of distribution of a sports channel by its subsidiary in India

The Bombay High Court held that the Indian subsidiary was not acting as an agent of a Mauritian company, as it had obtained the right of distribution of a sports channel on a principal to principal basis. Thus, Mauritian company does not constitute an Agency PE in India.

CIT v. Taj TV Limited [2020] 425 ITR 141 (Bom)

For further details, please refer to our Flash News dated 12 March 2020 available at this link

Liaison office of UAE based company does not constitute a Permanent Establishment in India – Supreme Court

The Supreme Court dealt with an issue whether activities of Liaison Offices (LOs) of a UAE based company constitute a PE in India. The Supreme Court observed that activities carried on by LOs in India were in the nature of 'preparatory or auxiliary character'. Since such activities are specifically exempt under Article 5(3)(e) of the India-UAE tax treaty, LO of the taxpayer does not constitute a PE in India.

Union of India v. U.A.E. Exchange Centre [2020] 116 taxmann.com 379 (SC)

For further details, please refer to our Flash News dated 26 April 2020 available at this link

Foreign celebrity appearing in a product launch event organised abroad for promoting business in India, constitutes business connection in India

The ITAT (Mumbai Bench) dealt with the issue of taxability of payment made to a foreign celebrity for an appearance made in a product launch event held at Dubai for promoting business in India. The Tribunal held that while the event, in which appearance was made by the celebrity, was held outside India, all the benefits accrued to the taxpayer in India. On account of these benefits to the taxpayer in India, the foreign celebrity was paid for his participation in the Dubai car launch event. Thus, income accrued and arised in India due to business connection in India. Accordingly, income embedded in the payment to the foreign celebrity, for participation in Dubai launch event, was taxable in India. The taxpayer was liable to withhold taxes from the payment made to the foreign celebrity for appearance at the Dubai launch event.

Volkswagen Finance Pvt Ltd. v. ITO [2020] 115 taxmann.com 386 (Mum)

For further details, please refer to our Flash News dated 12 May 2020 available at this link

The seconded employee does not constitute a service PE in India under the India-Singapore tax treaty

The ITAT (Delhi Bench) held that the taxpayer, a Singapore company, does not constitute a Service PE in India under the India-Singapore tax treaty on deputation of its employee to an Indian company (YRIPL). The Tribunal referred to the deputation agreement and CIT(A) order and observed that all the facts and circumstance of the case and clauses of the agreement indicate that deputed person was an employee of an Indian company and the taxpayer had simply acted as a conduit to pay salary to him in Singapore as his family was there in Singapore.

The Tribunal also held that the taxpayer does not constitute an agency PE on account of marketing activities carried out in India by YRIPL. Further the payment made to the deputed employee was not taxable as FTS.

DDIT v. Yum Restaurants (Asia) Pte. Ltd. [2020] 117 taxmann.com 759 (Del)

For further details, please refer to our Flash News dated 20 July 2020 available at this link

Since activities of foreign company's project office were preparatory or auxiliary in nature, such project office does not constitute a fixed place PE in India

The Supreme Court in the case of the taxpayer held that the Project Office (PO) set-up by a Korean Company in India for executing a contract of ONGC does not constitute a Permanent Establishment (PE) in India under the India-Korea tax treaty. The PO was not involved in the core activities of the taxpayer. The PO was solely an auxiliary office, meant to act as a LO between the taxpayer and ONGC. The activities carried on by the PO were in the nature of preparatory or auxiliary character and therefore PO does not constitute a PE in India.

DIT v. Samsung Heavy Industries Co Ltd. [2020] 272 Taxman 377 (SC)

For further details, please refer to our Flash News dated 24 July 2020 available at this link

A Mauritian company does not constitute a fixed or an agency PE in India

The ITAT (Mumbai Bench) dealt with the issue of determination of a PE in India under the India-Mauritius tax treaty. The Tribunal held that the taxpayer did not constitute a fixed place PE in India under Article 5(1) of the tax treaty since there is no permanent infrastructure, office, supervisory staff, tangible and intangible assets in India. The directors of the taxpayer are staying in UAE and are exercising their control over the affairs of the taxpayer from UAE. This cannot be a ground for creation of fixed place PE in India as none of the conditions of Article 5(1) of the tax treaty are satisfied. The Tribunal also held that the taxpayer did not constitute an agency PE in India since the Indian agents are not exclusively working for the taxpayer. Further, the services provided to the taxpayer by these agents are in the ordinary course of their business.

Overseas Transport Co. Ltd. v. DIT [ITA No.3129/Mum/2002 and ITA No.7128/ Mum/2004)

For further details, please refer to our Flash News dated 26 September 2020 available at this link

Royalty and fees for technical services

Payment for database access and market research report is not taxable as 'royalty' under the India-Switzerland tax treaty

The ITAT (Mumbai Bench) held that consideration received for non-exclusive and non-transferable access to the database and market research report is not taxable as 'royalty' under the India-Switzerland tax treaty.

IMS AG v. DCIT (ITA No.6445/Mum/ 2016)

For further details, please refer to our Flash News dated 22 July 2020 available at this link

Payment for web hosting and promotion services is not taxable as fees for included services under the India-US tax treaty

The ITAT (Ahmedabad Bench) held that web hosting and promotion services do not 'made available' any technical knowledge and know-how and therefore the payment made to the non-resident company is not taxable as 'Fees for Included Services' (FIS) under the India-US tax treaty.

Esm Sys Pvt Ltd. v. ITO (ITA No. 350/Ahm/2018)

For further details, please refer to our Flash News dated 27 July 2020 available at this link

Payment for infrastructure and data centre services is not taxable as royalty under the India-Singapore tax treaty. Further management service fees and referral fees are not taxable as FTS

The ITAT (Mumbai Bench) dealt with the taxability of Infrastructure Data Centre (IDC) charges, management consultancy services and referral services. The Tribunal held that receipts on account of IDC services are not taxable as royalty either under the Income-tax Act, 1961 (the Act) or under the India-Singapore tax treaty. Further, the Tribunal held that the management consultancy services and the referral fees are not taxable as FTS since 'make available' conditions under the tax treaty were not fulfilled.

Edenred Pte Ltd. v. DCIT [2020] 118 taxmann.com 2 (Mum)

For further details, please refer to our Flash News dated July 2020 available at this link

BEPS and MLI

KPMG report: Summary and initial analysis of Pillar One and Two Blueprint

On 12 October 2020, the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS), released 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[1], Amount B[2], 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

[1] 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

[2] 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

headquartered or the jurisdictions in which they operate and proposes four new rules to accomplish this goal.

Source: OECD Website

For further details on Pillar One Blueprint, please refer to our Flash News dated 12 October 2020 available at this link

For further details on Pillar Two Blueprint, please refer to our Flash News dated 12 October 2020 available at this link

Foreign Tax Credit

Since the tax credit is not available, taxes paid in a foreign country are allowed as business expenditure

The ITAT (Ahmedabad Bench) held that Foreign Tax Credit (FTC) is to be computed on the basis of 'net income' and not on the basis of 'gross receipts'. Further, since FTC is not available under Section 91 of the Act, the taxpayer is eligible for a deduction of such taxes paid in a foreign country as business expenditure under Section 37(1) of the Act.

Virmati Software & Telecommunication Ltd v. DCIT [ITA No. 1135/AHD/2017]

For further details, please refer to our Flash News dated 23 March 2020 available at this link

Equalisation levy

CBDT amends Equalisation Levy Rules

The Finance Act, 2020 broadened the scope of the equalisation levy and introduced a 2 per cent levy on the consideration received or receivable by an e-commerce operator from an e-commerce supply or services. In October 2020, CBDT has amended the Rules to extend their application to the new equalisation levy at the rate of 2 per cent.

Notification No. 87/2020, dated 29 October 2020

For further details please refer to our Flash News dated 31 October 2020 available at this link

DDT

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 levied under Section 115-O of the Act should be restricted to the tax rate provided in the India-Germany 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 levied by the taxpayer should not exceed the rate specified in the Dividend Article under the tax treaty.

Giesecke & Devrient [India] Pvt Ltd v. ACIT [ITA No. 7075/Del/2017]

For further details please refer to our Flash News dated 14 October 2020 available at this link

Vivad-se-Vishwas Scheme

The Direct Tax Vivad se Vishwas Bill, 2020 introduced in the Lok Sabha

In February 2020, the government introduced the 'Direct Tax Vivad se Vishwas Scheme. Under the scheme, in case of pending appeals, the taxpayer is given the option of resolving the dispute by only paying the amount of the disputed tax (if payment is made before 31 March 2020). The taxpayer will be entitled to a full waiver of interest and penalty in such cases and will also get immunity from prosecution under the Act. If payments are made after 31 March 2020 the taxpayer will have to pay 110 per cent of the disputed tax.

In October 2020, the Ministry of Finance has issued a Notification (No. 85/2020) relating to Direct Tax Vivad se Vishwas Act, 2020 (the Act / the Scheme) to provide that:

- The declaration under the scheme shall be filed to the designated authority on or before 31 December 2020 in respect of tax arrears.
- 31 March 2021 shall be the date on or before which the amount payable under the Act shall be without any additional amount.
- 1 April 2021 shall be the date on or after which the amount payable under the Act shall be with certain additional amount.

CBDT issued various FAQs related to the Scheme to provide clarity on various aspects.

Source – Income Tax India website

For further details, please refer to our Flash News dated 5 February 2020 available at this link, Flash News dated 5 March 2020 available at this link, Flash News dated 8 March 2020 available at this link, Flash News dated 20 March 2020 available at this link, Flash News dated 23 April 2020 available at this link, Flash News dated 7 December 2020 available at this link

Depreciation on goodwill

Depreciation on goodwill is available on acquisition of business operations of a company

The ITAT (Delhi Bench) allowed depreciation on goodwill on acquisition of business operations of a company. The AO had alleged that the year-wise revenue from logistic services to I Co. India was showing a declining trend. However, this observation was incorrect because there was an increase in revenue from I Co. The Tribunal relied on the decision of the Delhi High Court in the case of Areva T&D India Ltd.2 and on the Special bench of Delhi Tribunal in the case of CLC & Sons Private Ltd3 to allow depreciation on goodwill on acquisition of business operations.

Geodis Overseas Private Limited v. DCIT (ITA No. 2305/Del/2015)

For further details please refer to our Flash News dated 28 August 2020 available at this link

Restructuring related specific provisions under the Income-tax Act do not apply while allowing depreciation on goodwill in the scheme of amalgamation

The ITAT (Ahmadabad Bench) dealt with the claim of depreciation on goodwill arising in the scheme of amalgamation. The Tribunal held that the goodwill arising in the scheme of amalgamation is a part and parcel of intangible assets. Hence, the taxpayer is eligible for depreciation on the goodwill. The taxpayer had not acquired any goodwill from the amalgamating/transferor company and hence 6th proviso to Section 32, Explanation 7 to Section 43(1) and Explanation 2 to Section 43(6)(c) of the Act

do not apply in the present case. Further the transaction cannot be regarded as a colorable device merely because the taxpayer had claimed depreciation on goodwill in the scheme of amalgamation.

Urmin Marketing P. Ltd. v. DCIT (ITA.No.1806/Ahd/2019)

For further details please refer to our Flash News dated 28 October 2020 available at this link

Capital gains

Gift of shares without consideration by a company is exempt from capital gains tax liability

The High Court in the case of the taxpayer while quashing reassessment proceedings held that the transfer of shares without consideration was a gift transaction which was valid, permissible and genuine. The High Court held that such transfer of shares by a company by way of gift are exempt from the provisions of capital gains.

Asian Satellite Broadcast Pvt. Ltd. v. ITO (Writ Petition No.2749 of 2019)

For further details, please refer to our Flash News dated 6 October 2020 available at this link

Gifting of shares to a group company pursuant to restructuring is not valid due to absence of voluntariness and thus it is taxable as capital gains

The Madras High Court dealt with the issue of taxability of gift of shares by a company to its step-down subsidiary. The High Court held that the transaction was not covered within the capital gains tax exemption provisions as it was a transfer of a capital asset. The share transfer was not voluntary and would not qualify as a valid gift. Further it was executed for a consideration and therefore, it fails to satisfy the test laid down under the provisions3 of the Transfer of Property Act, 1882 (TOPA) to qualify as a valid gift. The High Court has not proceeded solely on the basis of the title of the document but it was guided by the form, the substance and the intention behind the transaction. Accordingly, it was held that the manner in which the transfer was effected and ultimately the investment landing in a tax haven clearly show that it was a sham transaction devised to avoid tax in India.

PCIT v. Redington (India) Limited [T.C.A.Nos.590 & 591/2019 AY 2009-10]

For further details, please refer to our Flash News dated 13 December 2020 available at this link

Disallowance under Section 14A

No disallowance under Section 14A when no expenditure has been incurred in relation to exempt income or in the absence of exempt income

The Madras High Court dealt with the issue of disallowance under Section 14A of the Act. The High Court held that only expenditure, which is incurred in relation to earning of tax exempt income is disallowed under Section 14A. Provisions of Section 14A cannot be extended to disallow the expenditure, which is assumed to have been incurred for earning tax free income. Provisions of Section 14A read with Rule 8D of the Rules cannot be made applicable in the absence of exempt income.

CIT v. Celebrity Fashion Ltd [2020] 428 ITR 470 (Mad)

For further details please refer to our Flash News dated 14 October 2020 link

MAT

Non-taxable income under a tax treaty cannot be reduced from book profits for the computation of MAT

The ITAT (Delhi Bench) held that a taxpayer is liable to deduct tax at source on the year-end provisions which are for ascertained liabilities and where the payees are identifiable. This decision reiterates the principle that this issue is fact-specific and would depend on whether these specific requirements are met.

IRCON International Ltd v. DCIT [ITA No. 977/Del/2010 (AY 2004-05)]

For further details, please refer to our Flash News dated 10 February 2020 available at this link

The benefit of 'indexed' cost of acquisition is available on the sale of long-term capital asset while computing Minimum Alternate Tax

The Karnataka High Court held that the taxpayer is entitled to the benefit of indexed cost of acquisition on the sale of long-term capital asset while computing the MAT liability under Section 115JB. The Court noted that there is no provision in the Act to prevent the taxpayer from claiming indexed cost of acquisition on the sale of asset, where the taxpayer is subjected to MAT provisions. Denial of the benefit of indexed cost of acquisition will result in taxing the income other than actual/real income.

Best Trading and Agencies Ltd. v. DCIT [2020] 428 ITR 52 (Kar)

For further details please refer to our Flash News dated 13 September 2020 available at this link

Non-compete fee

Payment of non-compete fee is capital expenditure. However, depreciation is not allowed on such expenditure

The ITAT (Delhi Bench) held that non-compete fees paid for not disclosing the confidential information relating to the business and for not competing in a similar line of business in their respective territories for a period of five years are capital expenditure. Further the taxpayer is not entitled to claim depreciation on such capital expenditure.

Hindustan Coca Cola Beverages v. DCIT (ITA No. 2699/Del/2015, AY 2001-02)

For further details, please refer to our Flash News dated 1 May 2020 available at this link

Faceless Assessment

CBDT amends the E-assessment Scheme, 2019 to implement the Faceless Assessment Scheme

On 13 August 2020, the PM launched 'Transparent Taxation' platform encompassing faceless assessments, faceless appeals, etc. On the same day, CBDT issued a Notification to amend the E-Assessment Scheme and to implement the Faceless Assessment Scheme under Section 143(3A). Further in exercise of the powers conferred by Section 143(3B) to give effect to the Scheme, CBDT also amended the relevant directions.

The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 incorporated Faceless Assessment Scheme under the Act with effect from 1 April 2021 i.e. assessment

orders passed on or after 1 April 2021. However, assessment orders which are passed on or before 31 March 2021 will be governed by the Faceless Assessment Scheme provided under the existing Notifications.

The Taxation Act made applicable faceless assessment scheme to various proceedings under the Act, including for collection and recovery of tax and gathering of information, transfer pricing proceedings, DRP proceedings, appeal to the Tribunal, etc.

Source: Income Tax India website

For further details please refer to our Flash News dated 21 September 2020 available at this link

For further details please refer to our Flash News dated 15 August 2020 available at this link

Faceless Appeal

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 and a press release to give effect to the Faceless Appeal Scheme, 2020. The Scheme provides a mechanism for the purpose of disposal of 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.

CBDT Notification No. 76 and Press release & Notification No. 77 of 2020 dated 25 September 2020

For further details please refer to our Flash News dated 28 September 2020 available at this link

Covid-19 related amendments

Government further extends the due date of furnishing of Income Tax Returns and Audit Reports

In view of the spread of COVID-19 pandemic, the government had provided various reliefs during the year. In October 2020, the Ministry of Finance issued a press release and a notification to extend various due dates (i.e. Income-Tax Returns, Tax Audit report, Transfer Pricing report, Payment of self-assessment liability in the case of small and middle-class taxpayers, etc.) which are specified as follows:

- The due date for furnishing of Income Tax Returns for the following persons has been extended to 31 January 2021:

- Person other than a company or a partner of a firm who are required to get their accounts audited
- A company
- Taxpayers who are required to furnish report in respect of international/specified domestic transactions.

- The due date for furnishing of Income Tax Returns for the other taxpayers [for e.g. Individuals/non-audit cases for whom the due date was 31 July 2020] has been extended to 31 December 2020.
- The date for furnishing of various audit reports under the Act including tax audit report and report in respect of international/specified domestic transaction has been extended to 31 December 2020.
- The due date for payment of self-assessment tax for taxpayers whose accounts are required to be audited or where a report is required to be submitted in respect of international/specified domestic transactions and whose self-assessment tax liability is up to INR 1 lakh has been extended to 31 January 2021. For the other taxpayers whose due date for furnishing of Income Tax Returns was 31 July 2020 has been extended to 31 December 2020.

PIB release dated 24 October 2020

For further details please refer to our Flash News dated 24 October 2020 available at this link

Carry forward and set-off

In a court approved scheme, the resulting company is eligible to set-off brought forward losses transferred from the demerged company and claimed through a revised return

The ITAT (Kolkata Bench) dealt with the set-off of brought forward losses transferred from the demerged company to the resulting company. The Tribunal held that the resulting company is eligible for set-off of brought forward losses claimed through a revised return. Specific provisions dealing with the filing of loss return are not applicable to the instant case. Further the right to file a revised return of income does not lapse with the issuance of intimation. Such intimation cannot be said to be a 'completion of assessment'.

ACIT v. Padma Logistics & Khanji Pvt Ltd [2020] 117 taxmann.com 210 (Kol)

For further details please refer to our Flash News dated 3 June 2020 available at this link

TDS on year-end provision

Tax needs to be deducted at source on year-end provisions since payees are identifiable and the provisions are for ascertained liabilities

The ITAT (Delhi Bench) held that the taxpayer is liable to deduct tax at source on year-end provisions since the payees are identifiable and the provisions are for ascertained liabilities.

Inter Globe Aviation Ltd. V. ACIT [2020] 181 ITD 225 (Del)

For further details, please refer to our Flash News dated 15 January 2020 available at this link

Year-end provisions for expenditure are disallowed since tax is not deducted on the same.

The ITAT (Mumbai Bench) held that year-end provisions for expenditure are disallowed under Section 40(a)(ia) of the Act since tax was not deducted on the same.

Tata Sky Limited v. ACIT [2020] 119 taxmann.com 424 (Mum)

For further details, please refer to our Flash News dated 22 September 2020 available at this link

MAP

Benefit of Section 10A is allowed on the enhanced income pursuant to the MAP resolution

The ITAT (Bangalore Bench) held that the transfer pricing provisions which deny the allowability of Section 10A benefit on the enhanced income will apply only to adjustment made by the AO and not to any other modes of determination of ALP for e.g. MAP in the present case. Accordingly, the Tribunal held that the taxpayer was eligible for the benefit of Section 10A with respect to enhanced income under the MAP resolution.

Dell International Services India Pvt Ltd. v. DCIT (IT(TP)A No. 879/Bang/2018, AY 2007-08)

For further details please refer to our Flash News dated 29 June 2020 available at this link

India amends Mutual Agreement Procedure Rules

Rule 44G of the Rules provides that where a resident taxpayer is aggrieved by any action of the tax authorities of any country outside India for the reason that, according to him, such action is not in accordance with the terms of agreement with such other country outside India, he may make an application to the Competent Authority in India seeking to invoke the MAP, in terms of Form No. 34F. CBDT issued a Notification amending Rule 44G with respect to the application and the procedure for MAP. It also amended Form 34F for application to the Competent Authority for invoking MAP.

CBDT Notification No. 23/2020, dated 6 May 2020

For further details please refer to our Flash News dated 9 May 2020 available at this link

CBDT issues detailed guidance on Mutual Agreement Procedure

In May 2020, CBDT notified a new Rule to provide the processes to be followed by the competent authorities (CA) of India when the resolution of the issue of taxation is not in accordance with the treaty and the processes to be followed by the tax authorities to implement the outcome of MAP. The new rule provides that disputes under MAP should be resolved within an average time period of 24 months. In August, CBDT issued the MAP guidance which deals in detail with introduction and basic information, access and denial of access to MAP, technical issues and implementation of MAP outcomes, etc.

CBDT Notification No. F. No. 500/09/2016-APA-I, dated 7 August 2020

For further details please refer to our Flash News dated 21 August 2020 available at this link

Other direct tax developments

Section 10AA benefit on export by SEZ units is available on commercial profits before claim of tax depreciation and investment allowance

The ITAT (Mumbai Bench) dealt with the issue of grant of deduction under Section 10AA of the Act on 'profits and gains' earned by units located in a Special Economic Zone (SEZ) without deducting tax depreciation and investment allowance under the Act (i.e. commercial profits). The Tribunal held that the taxpayer is eligible to claim deduction under Section 10AA with reference to commercial profits (i.e. without deducting tax depreciation and investment allowance under the Act).

Reliance Industries Ltd. v. ACIT (ITA No. 7299/Mum/2017)

For further details please refer to our Flash News dated 24 November 2020 available at this link

Prosecution proceedings can be initiated on a company for failure to deposit tax deducted at source

The High Court dealt with the issue of initiation of prosecution proceedings under Section 276B of the Act for failure to deposit tax deducted at source with the Government. The High Court dismissed the writ petition filed by the taxpayers against the prosecution proceedings initiated by the tax department on company for failure to deposit tax deducted at source.

Dr. Viloo Patell and Avesthagen Limited (Writ Petition No. 47512 of 2017, 6 September 2019)

For further details please refer to our Flash News dated 7 January 2020 available at this link

Tax is not required to be deducted on reimbursement of expenditure incurred in foreign countries as well as on participation fees for a conference held outside India

The ITAT (Mumbai Bench) held that remittance to foreign companies towards participation of its employees in a conference cannot be treated as FTS under Section 9(1)(vii) of the Act since no services in the nature of consultancy, technical or managerial have been provided to the taxpayer. Further, such remittance is not taxable in India under the relevant tax treaties. The Tribunal also held that the tax is not required to be deducted on reimbursement of various expenditure in foreign countries.

Roche Diagnostics India Pvt Ltd. v. ACIT (ITA No. 1537/Mum/2016)

For further details please refer to our Flash News dated 29 January 2020 available at this link

Supreme Court's decision on the re-assessment proceedings

The Supreme Court held that for determining whether there were reasons to believe that income had escaped assessment, facts which came to the knowledge of the AO after the completion of assessment proceedings could be taken into consideration. The Supreme Court rejected the invocation of extended period of limitation of 6 years in this case as the taxpayer had disclosed all primary facts before the AO. It was held that it was not necessary to give any further assistance to the AO by disclosure of other facts.

With respect to invocation of the 16 years period for re-assessment, the Supreme Court held that neither the reassessment notice nor the reasons provided for re-opening had made a reference to the 16 year period and hence it was not open to the tax authorities to invoke this at a later stage.

New Delhi Television Ltd. v. DCIT [2020] 116 taxmann.com 151 (SC)

For further details please refer to our Flash News dated 14 April 2020 available at this link

CBDT defers reporting of GAAR and GST under the Tax Audit Report till 31 March 2021

In August 2018, CBDT issued a Circular (CBDT Circular No. 6/2018, dated 17 August 2018) where the reporting with respect to GAAR and GST compliance under Form No. 3CD was kept in abeyance till 31 March 2019. Subsequently, it was extended to 31 March 2020 (CBDT Circular No. 9/2019, dated 14 May 2019). Various representations were made with regard to difficulty in implementation of such reporting in view of the global pandemic due to COVID-19 virus. Request was to defer the reporting under the above clauses. Recently, CBDT has clarified that in view of the prevailing situation due to

COVID-19 pandemic across the country, the above reporting shall be kept in abeyance till 31 March 2021.

CBDT Circular No.10 of 2020, dated 24 April 2020

For further details, please refer to our Flash News dated 28 April 2020 available at this link

CBDT issues guidelines on applicability of certain TDS provisions on e-commerce operators and on TCS provisions on certain payments

On 29 September 2020, CBDT issued guidelines 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 aggregator, no adjustment for sales return, discounts or indirect taxes, etc.

CBDT Circular No. 17 of 2020, dated 29 September 2020

For further details please refer to our Flash News dated 30 September 2020 link

CBDT issues press release relating to reduction in TDS/TCS rates

On 13 May 2020, the Prime Minister announced INR 20 lakh crore stimulus package, to make the country self-reliant and to revive the stalled economy due to Covid-19. To give effect to the five pillars of 'Aatmanirbhar Bharat' announced by the Prime minister, the Finance Minister announced the first set of package containing several measures. The Finance Minister, *inter alia*, announced that in order to provide more funds at the disposal of the taxpayers for dealing with the economic situation arising out of COVID-19 pandemic, the rates of TDS for the non-salaried specified payments made to residents and rates for TCS for the specified receipts has been reduced by 25 per cent for the period from 14 May 2020 to 31 March 2021.

CBDT has issued a press release providing a table of reduced rates under various TDS/TCS provisions. Therefore, TDS on the amount paid or credited during the period from 14 May to 31 March 2021 shall be deducted at the reduced rates specified. Similarly, tax on the amount received or debited during the period from 14 May to 31 March 2021 shall be collected at the reduced rates specified

CBDT Press Release dated 13 May 2020

For further details please refer to our Flash News dated 14 May 2020 available at this link

Provisions dealing with the acceptance of payment through the prescribed electronic modes are not applicable to B2B transactions

CBDT clarified that the provisions dealing with the acceptance of payment through the prescribed electronic modes shall not apply to the specified person (person having a business turnover of more than INR 50 crore) having only B2B transactions if at least 95 per cent of aggregate of all amounts received during the previous year, including amount received for sales, turnover or gross receipts, are by any mode other than cash.

CBDT Circular No. 12/2020, 20 May 2020

For further details please refer to our Flash News dated 21 May 2020 available at this link

CBDT amends rules to exempt dividend payment to non-residents from higher deduction of tax in the absence of PAN

The CBDT has issued a Notification amending Rule 37BC to include dividend payment within its ambit. This is pursuant to the amendment made by the Finance Act, 2020 in the dividend taxation in the hands of shareholder with effect from 1 April 2020. The Notification comes into force from 24 July 2020, being the date of publication in the Official Gazette.

CBDT Notification No. 54/2020, dated 24 July 2020

For further details please refer to our Flash News dated 14 August 2020 available at this link

The AAR has correctly accepted the application since no question was pending upon issuance of a mere pre-printed scrutiny notice by the tax department under Section 143(2) of the Income-tax Act

The High Court dismissed the writ petition filed by the tax department against the AAR's acceptance of application where scrutiny notice under Section 143(2) of the Act was issued to the taxpayer. The High Court has relied on various decisions and observed that a question cannot be said to be pending before the AAR upon issuance of a mere scrutiny notice under Section 143(2), especially when it was issued in a standard pre-printed format and the questions raised before the AAR do not appear to be forming the subject matter of the said notice.

CIT v. Authority for Advance Rulings [2020] 119 taxmann.com 80 (Delhi)

For further details please refer to our Flash News dated 3 September 2020 available at this link

Taxpayer is eligible for refund of TDS even when corresponding income from offshore supply is not taxable in India

The ITAT (Bangalore Bench) dealt with the issue of eligibility of TDS credit when the corresponding income is not taxable in India. The Tribunal observed that the amount received from offshore supply of equipment was not taxable in India; however, tax was deducted on such amount in India. Therefore, the taxpayer was eligible for refund of such TDS credit. The issue was restored back to the AO for limited purpose to examine and verify the correctness of taxpayer's claim and to consider the ratio of judicial decisions referred by the taxpayer.

ABB AB v. DCIT [IT(I.T.)A Nos. 464/Bang/2018 & 2878/Bang/2019]

For further details please refer to our Flash News dated 5 September 2020 available at this link

Payment for hiring vehicles to a truck operator is liable for TDS since it was a payment made to a sub-contractor

The Supreme Court in the case of Shree Choudhary Transport Company held that the taxpayer is under an obligation to deduct tax at source in relation to the payments for hiring vehicles for the purpose of its business of transportation of goods under Section 194C of the Act. The contract of the company, for transportation of its goods, was awarded to the taxpayer and it was the taxpayer who further hired the services of the trucks. The payment made by the taxpayer to the truck operator/owner was clearly a payment made to a subcontractor and therefore covered within the scope of Section 194C.

Further the disallowance under Section 40(a)(ia) covers not only those cases where the amount is 'payable' but also when it is 'paid' and tax has not been deducted on the same. The Supreme Court

also held that the disallowance under Section 40(a)(ia) as introduced by the Finance (No.2) Act, 2004 is applicable from AY 2005-2006 and thus applicable to the present case. Further the benefit of restricted disallowance of 30 per cent as provided by the Finance (No.2) Act, 2014 is prospectively applicable from AY 2015-16 and thus not available to the taxpayer in the instant case.

Shree Choudhary Transport Company V. ITO [2020] 426 ITR 289 (SC)

For further details please refer to our Flash News dated 4 August 2020 available at this link

The Supreme Court suggests the government to consider the efficacy of the AAR system and make it more comprehensive

The Supreme Court has suggested the government to consider the efficacy of the AAR system and make it more comprehensive as a tool for settlement of disputes rather than battling it through different tiers. The Supreme Court referred to the international scenario where there has been an incremental shift towards mature tax regimes adopting advance ruling mechanisms. The Supreme Court also suggested that a council for Advance Tax Ruling based on the Swedish model and the New Zealand system may be a possible way forward.

National Co-Operative Development Corporation v. CIT [2020] 119 taxmann.com 137 (SC)

For further details please refer to our Flash News dated 18 September 2020 available at this link

Indirect tax

Supreme Court cases

Installation of CCTV and recording devices in the offices of the agencies having power to interrogate/ arrest and directs for a time bound implementation

In a recent judgement, the Supreme Court while referring to earlier directions issued by them has passed an order directing the Ministry of Home Affairs and other State and Union Territories to compulsorily install CCTV cameras and recording equipment in the offices of those agencies who have the power to carry out interrogations and the power to arrest.

Paramvir Singh Saini vs. Baljit Singh and others [SLP (Criminal) 3543 of 2020]

For further details, please refer to our Flash News dated 4 December 2020 link

Levy of GST on Lottery upheld by the Supreme Court

In the instant case, the petitioner had filed petition seeking to quash levy of GST on lottery primarily on following grounds i.e.

i. The definition of 'goods' as provided in article 366(12) of the Constitution refers only to materials, commodities and articles, and thus it excludes actionable claim. Further, the Constitutional Bench in case of Sunrise Associates [(2006) 5 SCC 603] had categorially held that lottery is not goods.

   However, the definition of 'goods' given in section 2 (52) of the CGST Act includes actionable claim and thus definition is unconstitutional.

ii. GST is levied on the face value of the lottery tickets which is impermissible since the face value of the tickets also includes prize money to be reimbursed to the winners of the lottery tickets.

On perusal of the definition of 'goods' and 'actionable claim under the various statutes viz. Sale of Goods Act, 1930, Transfer of Property Act, 1882, etc. and in case of Ganon Dunkerley case, the Court observed that the Constitution framers never intended to give any restrictive meaning to the term 'goods' in article 366(12). The power conferred upon the parliament to make law with respect to goods and services is plenary. The court after critically analysing the various case laws, held that the definition of goods under the GST Act does not violate the constitutional provisions nor does it conflict the definition laid down in article 366(12).

Further, on the question whether prize money should be excluded from the value of lottery ticket for the purpose of levy of GST, the Court observed and held that Section 15 of the CGST Act provide for what shall be included and what shall not be included in the value of supply. When there are specific statutory provisions enumerating what should be and what should not be included, we cannot accept the submission that the prize money is to be abated for determining the vale of taxable supply. What is the value of taxable supply is subject to the statutory provision which clearly regulates, which provision has to be given its full effect and something which is not required to be excluded in the value cannot be added by judicial interpretation.

Skill Lotto Solutions Pvt. Ltd. vs. UOI [W.P.(CIVIL) No. 961 of 2018]

High Court Orders

Social Welfare Surcharge ('SWS') liability to be paid in cash and not by debiting the MEIS/SEIS scrips

The Madras High Court had in the instant case observed the scheme of MEIS and SEIS is such that these scrips are loaded with money value and the same can be used for payment of Customs duty and Excise Duty. Therefore, it cannot be contended that duty paid is NIL. Neutralisation of duty does not mean that there was no duty levied and collected at all.

Further, the Court also stated that when a particular duty is exempted, other types of duty or cess imposed by legislation of different purpose cannot be said to have been exempted. Thus, the exemption granted from levy of Customs duties and additional duty vide notification no. 24/2015-Customs and 25/2015-Customs dated 8 April 2015 for imports made against MEIS and SEIS, does not mean that exemption has been granted for payment of SWS.

The SWS is a levy imposed under the Finance Act, 2018 and accordingly, an independent levy and the petitioner is bound to pay the same. If the liability to pay the customs duty is discharged by effecting adjustment from the value of the scrips, the liability to pay SWS is also to be discharged either by way of cash or by other mode, since the scrips cannot be used for discharging such liability.

Gemini Edibles and Fats India Pvt. Ltd. vs. UOI [WP no. 24490 and 27452 of 2019]

For further details, please refer to our Flash News dated 7 January 2020 available at this link

Levy of IGST on Ocean Freight unconstitutional – Gujarat High Court

In a landmark judgement, the Hon'ble Gujarat High Court held that no tax can be levied on ocean freight for services provided by a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the Customs Station of clearance in India.

The High Court had passed the order in response to the petition seeking quashing of the notifications[3] issued under the IGST Act, which required importers to pay GST on ocean freight under RCM. It was contended by the petitioner that at the time of import the importer discharges customs duty on the value of import which includes ocean freight, leading to double taxation.

Mohit Minerals Pvt. Ltd. vs. UOI & Others [TS-29-HC-2020(GUJ)-NT]

For further details, please refer to our Flash News dated 27 January 2020 available at this link

Delhi High Court directs revenue to allow filing of TRAN-1 till 30 June 2020

The Delhi High Court had held that the time limit prescribed in the CGST Rules for transitioning of credit into the GST regime are directory in nature and therefore, the same would not result in any forfeiture of the rights, in case the credit is not availed within the time limit prescribed under the Rules.

Further, the court has held that by virtue of the Limitation Act, the benefit of transitioning of accumulated credit into the GST regime, shall be available for a period of 3 years from the date of enactment of GST law.

Brand Equities Treaties Ltd. [TS-256-HC-2020(DEL)-NT]

For further details, please refer to our Flash News dated 7 May 2020 available at this link and 18 June 2020 at this link

Implanting of prosthetics into physiology or the body of the patient construed as 'works contract'

The Madras High Court has held that fitting out or implanting of prosthetics into physiology or the body of the patient for alleviation of pain or for improvement of the life of the patient in the course of medical surgical procedure can be construed as works contract.

MIOT Hospitals [2020-VIL-238-MAD]

For further details, please refer to our Flash News dated 9 June 2020 available at this link

Cesses being a 'dead claim' cannot be transitioned into GST – Madras High Court (Division Bench)

Setting aside the order passed by the learned single Judge, the division bench of the Madras High Court has recently held that transition of unutilised input tax credit could be allowed only in respect of taxes and duties which were subsumed in the new GST law. The three types of cesses i.e. Education cess, Secondary and Higher Education cess and Krishi Kalyan Cess were not subsumed in the new GST laws, either by the Parliament or by the States. Therefore, the question of transitioning them into the GST regime and giving credit against the output GST liability cannot arise.

Sutherland Global Services Pvt. Ltd. [W.A. no. 53 of 2020 dated 16 October 2020]

For further details, please refer to our Flash News dated 20 October 2020 available at this link

[3] Notification no. 10/2017-IGST (Rate) read with notification no. 8/2017-IGST (Rate)

Power to arrest provision under GST can be invoked if the Commissioner has 'reasons to believe' that specified offences have been committed – Gujarat High Court

The Gujarat High Court has recently held that the arrest provision under the GST i.e. Section 69 and punishment for offences as provided in section 132 operate in totally different fields. The attempt to canvass that unless and until adjudication proceedings determining the tax and liability is completed, the Commissioner cannot form any opinion to 'reason to believe' that the assessee has committed any offence, is contrary to the entire scheme of the GST Act.

The phrase 'reasons to believe' in the arrest provision under GST contemplate an objective determination based on intelligence, care and deliberation, involving judicial review as distinguished from a purely subjective consideration. Hence, he is not required to conclude that person sought to be arrested is guilty of any offence.

Vimal Yashwant Giri Goswami and Others [TS-924-HC-2020(GUJ)-NT]

For further details, please refer to our Flash News dated 2 November 2020 available at this link

GST Notification and Circular updates

Amendment to Central Goods and Services Tax Act, 2017 ('CGST Act')

Central Board of Indirect Taxes and Customs ('CBIC') had issued notification to make effective certain provisions which were amended vide the Finance (no. 2) Act, 2019. The gist of amendments is as under –

i. Section 10 – Alternative composition scheme introduced for certain suppliers having annual turnover up to INR 50 lakhs. The rate of GST in such cases shall not exceed 6 per cent.

ii. Section 22 – For supplier's exclusively engaged in supply of goods, new proviso has been inserted to allow higher threshold exemption of INR 40 lakhs on specific request of the state and recommendation of the GST Council.

iii. Section 44, 52 and 168 – New provisos inserted to empower the Commissioner to extend the due date of furnishing annual return and reconciliation statement, and the due date for furnishing monthly and annual statement by the person collecting tax at source.

iv. Section 49 – New sub-section inserted to provide a facility to the registered person to transfer tax, interest, penalty, fee or any other amount available in the electronic cash ledger, to the electronic cash ledger for integrated tax, central tax, state tax, union territory tax or cess, in such form and manner as may be prescribed.

v. Section 171 – Amended to empower the National Anti-profiteering authority to impose penalty equivalent to 10 per cent of the profiteered amount.

CBIC Notification No. 1/2020-Central Ta dated 1 January 2020, Notification No. 29/2019-Central Tax (Rate) dated 31 December 2019 and Circular No. 354/189/2019-TRU]

For further details, please refer to our Flash News dated 3 January 2020 available at this link

Notification issued pursuant to announcement made by the GST Council in its 39th Meeting

Following amendments to the CGST Rules has been notified

- New sub-rule inserted to mandate authentication of the Aadhar number of the applicant before grant of registration. In case of failure, the registration shall be granted only on physical verification of the principle place of business.

- New sub-rule inserted to prescribe procedure for reversal of input tax credit in respect of capital goods partly used for affecting taxable supplies and partly for exempt supplies.

- Rules for determining the value of zero-rated supply of goods for purpose of claiming refund has been amended. As per the amended rule, the value of zero-rated supply is restricted to 1.5 times of the domestically supplied goods either by the exporter themselves or by similarly placed supplier.

Notification no. 16/2020-Central Tax dated 23 March 2020

For further details, please refer to our Flash News dated 27 March 2020 available at this link

Notifications pursuant to relief announced amid the pandemic COVID-19 outbreak

Gist of the notifications is as under –

- The provision restricting the claim of ITC of the unmatched credits were relaxed for the tax period February 2020 to August 2020. However, while filing the return for the month of September 2020, a cumulative adjustment for the said months were mandated to be carried out.

- Relaxations in the form of waiver of penalty and late fee were announced allowing deferment in filing of the GST return in form GSTR-3B for the tax period February 2020 to April 2020. The relaxation was announced subject to filing of GSTR-3B on or before the notified dates.

- Validity period of e-way bill expiring during the period from 20 March 2020 to 15 April 2020, shall be deemed to have been extended till 30 April 2020. However, where the e-way bill has been generated on or before 24 March 2020 and expiring on or after 20 March 2020 the validity period shall be deemed to have been extended till 30 June 2020.

- Due dates for compliance falling between 20 March 2020 to 30 August 2020 by specific class of taxpayers viz. person who are required to deduct tax at source, input service distributors and non-resident taxable person was extended up to 31 August 2020

- Due date for completion or compliance of any action, such as completion of any proceeding, passing of an order, issuance of notice/intimation/notification, etc. by an authority, or filing of any appeal, reply or application or furnishing of any report, document, return, statement, etc. by any person falling between 20 March 2020 to 30 August 2020 were extended up to 31 August 2020.

Notification nos. 30/2020-Central Tax, 31/2020-Central Tax, 32/2020-Central Tax, 33/2020-Central Tax, 35/2020-Central Tax, dated 3 April 2020, Notification no. 47/2020-Central Tax dated 9 June 2020, Notification no. 40/2020-Central Tax dated 5 May 2020, Notification no. 47/2020-Central Tax dated 9 June 2020, Notification no. 55/2020-Central Tax dated 27 June 2020, Notification no. 65/2020-Central Tax dated 1 September 2020, Notification no. 66/2020-Central Tax dated 21 September 2020, Notification no. 91/2020-Central Tax dated 15 December 2020.

For further details, please refer to our Flash News dated 5 April 2020 available at this link and 15 June 2020 available at this link

CBIC circular | No GST leviable on remuneration paid to an employee director

CBIC issued a circular to clarify therein that GST will not be leviable on the portion of director's remuneration which is declared as 'salaries' in the books of accounts of a company.

Earlier, the Rajasthan Authority of Advance Ruling had held that remuneration to an employee director is subject to levy of GST under RCM. Pursuant to the said ruling, the revenue authorities had started issuing notices to companies seeking information about the remuneration to the directors.

Circular no. 140/10/2020-GST dated 10 June 2020

For further details, please refer to our Flash News dated 11 June 2020 available at this link

Reverse Charge Mechanism ('RCM')

GST | Supply of services by way of renting of motor vehicle

CBIC had issued notification to incorporate within the scope of RCM, supply of services by way of renting of motor vehicle designed to carry passengers, where the cost of fuel is included in the consideration charged.

For further details, please refer to our Flash News dated 3 January 2020 available at this link

Service Tax | Banks not liable to pay service tax under RCM on correspondent bank charges

In the instant case, the Customs, Excise and Service Tax Appellate Tribunal ('CESTAT') observed that as a facilitator to an Indian exporter, Indian bank acts as a mediator between the exporter and the foreign banker representing the foreign importer. In such scenario the Indian banks are not the recipient of the services provided by the foreign bank. Thus, on the charges that are recovered/collected by the foreign bank, Indian bank is not liable to pay service tax under reverse charge.

Further, the CESTAT also held that for the purpose of levy of service tax under the category of 'Banking and Financial services', banking services are required to be provided in India. In the instant case, the foreign bank does not transact banking business in India, accordingly, they would not fall within the definition of a 'banking company' which is the pre-requisite for the levy of service tax under the service category 'Banking and Financial services'.

State Bank of Bikaner and Jaipur vs. Commissioner of Central Excise and Service Tax [TS-643-CESTAT-2020(DEL)-ST]

For further details, please refer to our Flash News dated 24 August 2020 available at this link

Advance Authority Rulings ('AAR') and Appellate Authority for Advance Rulings ('AAAR')

Kerala High Court quashes the order passed by the AAR and AAAR which held that free supply of instrument and reagents are composite supplies

In the instant case, the petitioner had entered into contract for supply of reagent and instrument with various hospitals. By virtue of the contract, the petitioner was required to place diagnostic medical instruments at the premises of hospitals without any consideration. The Hospitals had an obligation to

purchase specified quantities of reagent, calibrators, disposables, etc. at the price specified in the agreement. These reagents, calibrators, disposables, etc. were supplied by the distributors of the petitioners.

Based on the above facts, the petitioner had approached the AAR, to seek ruling on whether the free placement of medical instrument to hospital would constitute as 'supply'.

The AAR in its ruling observed that since the instrument has no utility unless the reagent, calibrators, disposable, etc. are bought along with it, the two supplies are to be treated as naturally bundled to form composite supplies, with supply of medical instrument as the principal supply. The said ruling was subsequently confirmed by the AAAR.

The above ruling was challenged before the High Court by the petitioner. The High Court in its order had made the following observations –

- The concept of enhancement of utility of the instrument through supply of reagent, calibrators, disposables, etc. are relevant for the purpose of valuation of supply of medical instruments, the same cannot be applied to determine whether the supply is a composite supply.

- In the instant case, two different taxable persons are making supplies i.e. the petitioner who supplies the instrument and the distributor who are supplying the reagents, calibrators, disposables, etc.

Based on the above observation, the Court held that since these two supplies are supplied by two different taxable persons and are not bundled and supplies in conjunction with each other in the 'ordinary course of business', the order of the AAR/AAAR needs to be remitted back to the AAR for fresh consideration.

Abbott Healthcare Pvt. Ltd. [WP(C). No. 17012 of 2019(B)]

For further details, please refer to our Flash News dated 10 January 2020 available at this link

Pursuant to transfer of business unit, unutilised ITC can be transferred to other states by filing ITC-02

In the instant case, the question before the authority was whether the transaction of sale of business unit located in the state of Andhra Pradesh to another unit located in the state of Karnataka would amount of supply of goods or supply of services and whether the unutilised ITC can be transferred to the transferee unit.

The AAR held that the transfer of business unit as a going concern is exempt from levy of GST. Further, on the question of transfer of the unutilised ITC under different heads i.e. CGST, SGST and IGST, the AAR referring the provisions contained under rule 41 of the CGST Rules read with section 18(3) held that the transferor can transfer unutilised ITC to the transferee which is lying in its electronic credit ledger by filing form GST ITC-02.

Shilpa Medicare Limited [2020-VIL-199-AAR]

For further details, please refer to our Flash News dated 20 July 2020 available at this link

Delayed payment of GST liability

Interest on delayed payment of GST is to be calculated on net tax liability – Madras High Court

The Madras High Court had held that the levy of interest on delayed payment of GST liability is purely compensatory in nature and accordingly, liable to be charged only on the net cash payment and not on the gross liability.

Refex Industries Limited [TS-89-HC-2020(MAD)-NT]

For further details, please refer to our Flash News dated 17 February 2020 available at this link

Incentive schemes to promote domestic manufacturing

With the aim to promote domestic manufacturing, the Government of India ('GOI') has announced various incentive scheme spread across various sectors.

a) The gist of the various schemes notified during the year is as under –

Sl. No.	Scheme	Incentive	Capital Outlay	Incentive applicable from	Tenure	Application filing date
1	Scheme for Promotion of Manufacturing of Electronic Components and Semiconductors ('SPECS')	SPECS offered financial incentive of 25 per cent of the capital expenditure incurred for the manufacturing of specified components and semi-conductors.	INR 3,252 crore	1 April 2020	3 years	Application can be received up to 31 March 2023
2	Production linked incentive scheme ('PLIS') for electronic manufacturing	Incentive of 4 per cent to 6 per cent on incremental sales of goods manufactured in India.	INR 40,951 crore	1 August 2020	5 years	Application period 4 months initially
3	PLIS – Medical devices	Incentive of 5 per cent of incremental sales	INR 3,420 crore	1 April 2020	5 years	120 days
4	PLIS – Key bulk drugs	- For fermentation based	INR 6940 crore	27 July 2020	FY 2020-21 to FY	120 days

		products, incentive for FY 2023-24 to FY 2026-27 would be 20%, incentive for 2027-28 would be 15% and incentive for 2028-29 would be 5%. 4.2. - For chemical synthesis based products, incentive for FY 2022-23 to FY 2027-28 would be 10%.			2029-30.	

b) Gist of the incentive schemes announced but not yet notified are as under –

Sl. No.	Scheme	Capital Outlay	Target segment
1	PLIS - Advance Chemistry Cell (ACC) Battery	INR 18100 crore	ACC Batteries
2	PLIS - Electronic/Technology Products	INR 5000 crore	a) Semiconductor Fab b) Display Fab c) Laptop/ Notebooks d) Servers e) IoT Devices f) Specified Computer Hardware
3	PLIS - Automobiles & Auto Components	INR 57042 crore	Automobile and Auto Components
4	PLIS - Pharmaceuticals drugs	INR 45000 crore	**Category 1** a) Biopharmaceuticals b) Complex generic drugs c) Patented drugs or drugs nearing patent expiry

			d) Cell based or gene therapy products e) Orphan drugs f) Special empty capsules g) Complex excipients **Category 2** a) Active Pharma Ingredients (APIs) /Key Starting Materials (KSMs) and /Drug Intermediaries (DIs) **Category 3** a) Repurposed Drugs b) Auto-immune drugs, Anti-cancer drugs, Anti diabetic drugs, Anti Infective drugs, Cardiovascular drugs, Psychotropic drugs and Anti-Retroviral drugs c) In-vitro Diagnostic Devices (IVDs) d) Phytopharmaceuticals e) Other drugs not manufactured in India f) Other drugs as approved
5	PLIS - Telecom & Networking Products	INR 12195 crore	a) Core Transmission Equipment b) 4G/5G, Next Generation Radio Access Network and Wireless Equipment c) Access & Customer Premises Equipment (CPE), Internet of Things (IoT) Access Devices and Other Wireless Equipment d) Enterprise equipment: Switches, Router
6	PLIS - Textile Products: MMF segment and technical textiles	INR 10683 crore	a) Man-Made Fiber Segment b) Technical Textiles
7	PLIS - Food Products	INR 10900 crore	a) Ready to Eat / Ready to Cook (RTE/ RTC) b) Marine Products

			c) Fruits & Vegetables d) Honey e) Desi Ghee f) Mozzarella Cheese g) Organic eggs and poultry meat
8	PLIS - High Efficiency Solar PV Modules	INR 4500 crore	Solar PVs
9	PLIS - White Goods (ACs & LED)	INR 6238 crore	a) Air conditioners b) LED
10	PLIS - Speciality Steel	INR 6322 crore	a) Coated Steel b) High Strength Steel c) Steel Rails d) Ally Steel Bars & Rods

For further details, please refer to our Flash News dated 6 April 2020 link, 3 June 2020 link, 23 July 2020 link, 27 October 2020 (no link), 17 November 2020 link and 18 November 2020 link, link

Committee constituted by the Government for export incentives under RoDTEP scheme

The Government of India has constituted a Committee for determination of the ceiling of export incentives under the Remission of Duties and Taxes on Exported Products (RoDTEP) Scheme. The Committee will recommend the ceiling rate for export incentives under the RoDTEP scheme based on the data/ information received from the trade/industry.

In order to recommend the same, the Committee will interact with various administrative Ministries, Export Promotion Councils, Commodity Boards, Trade Bodies and other identified stakeholders to solicit their views on the ceiling rates of incentives under RoDTEP scheme.

The Export Promotion Councils/ Commodity Boards/ Trade and Industry Associations/Chambers of Commerce are requested to compile the corresponding data from members and submit the same in the specified templates, i.e. Proforma - RI, R2, and R3. Exporters are requested to submit this information along with the supporting documents to ensure that all taxes/duties/ levies forming part of the exported products are appropriately captured in the above working.

For further details, please refer to our Flash News dated 14 August 2020 available at this link

home.kpmg/in

Ahmedabad
Commerce House V, 9th Floor,
902, Near Vodafone House,
Corporate Road,
Prahlad Nagar,
Ahmedabad – 380 051.
Tel: +91 79 4040 2200

Bengaluru
Embassy Golf Links Business Park,
Pebble Beach, 'B' Block,
1st & 2nd Floor,
Off Intermediate Ring Road,
Bengaluru – 560071
Tel: +91 80 6833 5000

Chandigarh
SCO 22-23 (1st Floor),
Sector 8C, Madhya Marg,
Chandigarh – 160 009.
Tel: +91 172 664 4000

Chennai
KRM Towers, Ground Floor,
1, 2 & 3 Floor, Harrington Road,
Chetpet, Chennai – 600 031.
Tel: +91 44 3914 5000

Gurugram
Building No.10, 8th Floor,
DLF Cyber City, Phase II,
Gurugram, Haryana – 122 002.
Tel: +91 124 307 4000

Hyderabad
Salarpuria Knowledge City,
6th Floor, Unit 3, Phase III,
Sy No. 83/1, Plot No 2,
Serilingampally Mandal,
Ranga Reddy District,
Hyderabad – 500 081.
Tel: +91 40 6111 6000

Jaipur
Regus Radiant Centre Pvt Ltd.,
Level 6, Jaipur Centre Mall,
B2 By pass Tonk Road,
Jaipur – 302 018.
Tel: +91 141 - 7103224

Kochi
Syama Business Centre,
3rd Floor, NH By Pass Road,
Vytilla, Kochi – 682 019.
Tel: +91 484 302 5600

Kolkata
Unit No. 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata – 700 091.
Tel: +91 33 4403 4000

Mumbai
1st Floor, Lodha Excelus,
Apollo Mills,
N. M. Joshi Marg,
Mahalaxmi,
Mumbai – 400 011.
Tel: +91 22 3989 6000

Noida
Unit No. 501, 5th Floor,
Advant Navis Business Park,
Tower-A, Plot# 7, Sector 142,
Expressway Noida,
Gautam Budh Nagar,
Noida – 201 305.
Tel: +91 0120 386 8000

Pune
9th floor, Business Plaza,
Westin Hotel Campus, 36/3-B,
Koregaon Park Annex,
Mundhwa Road, Ghorpadi,
Pune – 411 001.
Tel: +91 20 6747 7000

Vadodara
Ocean Building, 303, 3rd Floor,
Beside Center Square Mall,
Opp. Vadodara Central Mall,
Dr. Vikram Sarabhai Marg,
Vadodara – 390 023.
Tel: +91 265 619 4200

Vijayawada
Door No. 54-15-18E,
Sai Odyssey,
Gurunanak Nagar Road, NH 5,
Opp. Executive Club, Vijayawada,
Krishna District,
Andhra Pradesh – 520 008.
Tel: +91 0866 669 1000

KPMG Assurance and Consulting Services LLP, Lodha Excelus, Apollo Mills Compound, NM Joshi Marg, Mahalaxmi, Mumbai - 400 011
Phone: +91 22 3989 6000, Fax: +91 22 3983 6000