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Direct Tax

CBDT extends due-dates for furnishing of income-tax returns and various audit reports for financial year 2020-21

On consideration of difficulties reported by the taxpayers and other stakeholders in filing of tax returns and various audit reports for the Assessment Year 2021-22 under the Income-tax Act, 1961 (the Act), CBDT¹ further extended the due dates for filing of income tax returns and various reports of audit for the Assessment Year 2021-22. The extended dates are follows:

Sr No	Particulars	Original due date	Last extended due date	Revised due date as per CBDT Circular
In relation to tax returns:				
1	Taxpayers who are required to furnish transfer pricing report (including partners of a firm who is covered in this category)	30 November 2021	31 December 2021	28 February 2022
2	Taxpayers who are required to get their accounts audited (including partners of a firm who is covered)	31 October 2021	30 November 2021	15 February 2022

¹ CBDT Press Release, dated 9 September 2021

	in this category) and not covered in Sr. No. 1 above			
3	Other taxpayers not covered in Sr. No. 1 or 2 above (e.g., individuals, firms not liable to audit etc.)	31 July 2021	30 September 2021	31 December 2021
4	Belated/revised tax returns	31 December 2021	31 January 2022	31 March 2022
In relation to audit/transfer pricing reports:				
5	Tax audit report	30 September 2021	31 October 2021	15 January 2022
6	Transfer pricing report in respect of international/ specified domestic transactions	31 October 2021	30 November 2021	31 January 2022

Decisions - International Tax

FTC is available on lower of tax paid outside India or tax payable in India on such doubly taxable income under the India-Tanzania tax treaty: ITAT Bangalore²

The ITAT (Bangalore Bench) held that as per Article 23 of India-Tanzania tax treaty, foreign tax credit (FTC) is to be given on the amount of tax paid on income outside India or payable in India on such doubly taxable income, whichever is lower. The ITAT relied on the decision of Ittiam Systems Pvt. Ltd.³ where a similar conclusion was drawn by the ITAT under the India-Korea tax treaty. The ITAT observed that Article 23 of India-Tanzania tax treaty is pari materia with Article 23 of India-Korea tax treaty.

Delay in furnishing a Tax Residency Certificate cannot be a ground to reject a tax treaty benefit: ITAT Mumbai⁴

The ITAT dealt with the issue of eligibility of India-US tax treaty benefit on the interest income where there was a delay in furnishing a Tax Residency Certificate (TRC) and Form 10F. The ITAT allowed the benefit of the tax treaty since there were justifiable reasons with the taxpayer for delay in furnishing the TRC.

² Promac Engineering Industries Ltd. v. ACIT (ITA No. 501/Bang/2018)

³ Ittiam Systems Pvt. Ltd. v. ITO (ITA Nos.2464 & 2465/Bang/2017)

⁴ Haresh C. Sheth v. ITO (ITA Nos.1380/Mum/2020)

Software usage charges are not taxable as royalty. Management service fees are not taxable as FTS since no technical knowledge was made available: ITAT Pune⁵

The ITAT held that the software usage charges received from an Indian entity should not be considered as royalty under the India-France tax treaty as the taxpayer had merely transferred the right to use copyrighted software and it had not transferred the copyright itself to the Indian entity. With respect management service fee, the ITAT observed that no technical knowledge was made available for the management services provided by the taxpayer to the Indian entity and hence it was not taxable as FTS under the India-France tax treaty.

Decisions - Domestic Tax

No disallowance under Section 14A where investments are made out of common funds and interest-free funds are higher than the amount invested in tax-free securities: SC⁶

The Supreme Court dealt with the issue of disallowance of proportionate interest expenditure where tax-free investments are made out of mixed funds (partly of interest-free funds and partly of interest-bearing funds). The Supreme Court held that disallowance of expenditure incurred in relation to exempt income is not attracted where the tax-free investments are made from mixed funds and the interest-free funds of the taxpayer are higher than the amount of tax-free investment.

Gains arising on transfer of depreciable asset will be qualified as short-term capital gains: SC⁷

The Supreme Court dealt with the issue of whether on transfer of a capital asset on which depreciation was claimed and allowed to the taxpayer for a long period but not used in business subsequently, would qualify as long-term or short-term capital gains under the provisions of the Act. The Supreme Court upheld the decision of the Kerala High Court where it was held that the capital asset will retain its character as a depreciable asset even if it was not used for the business purpose subsequently and no depreciation was claimed thereon. Accordingly, the gains were held as 'short-term capital gains'.

Tax is not required to be deducted on ESOP discount in the year of vesting: ITAT Bangalore⁸

The ITAT dealt with the issue of allowability of Employees Stock Option Scheme (ESOP) related expenditure where tax has not been deducted on discount component of such ESOP. The ITAT observed that the taxpayer was liable to deduct tax at source when the discount amount becomes perquisite in the hands of the concerned employee. Discount will be considered as perquisite in the year in which the option is exercised by the concerned employee and tax would be deducted at that point of time. Hence, the assessing officer (AO) was not justified in holding that the taxpayer should have deducted tax at source from the discount amount by assessing the same as perquisite in the hands of the taxpayer in the year in which ESOP was vested. However, the AO is entitled to satisfy himself that the taxpayer has either deducted tax

⁵ Trigo SAS v. DCIT (ITA No. 768/PUN/2018)

⁶ South India Bank Ltd v. CIT [2021] 130 taxmann.com 178 (SC)

⁷ Sakthi Metal Depot v. CIT [2021] 130 taxmann.com 238 (SC)

⁸ Northern Operating Services Pvt. Ltd. v. JCIT (IT(TP)A No. 759/Bang/2017)

at source when the option is exercised by the employee or has reversed the expenditure when the concerned employee did not exercise the option.

Long Term Capital Loss on sale of shares is allowed to be set-off against long term capital gains earned by the taxpayer on sale of property: ITAT Mumbai⁹

The ITAT (Mumbai Bench) dealt with the issue of set-off of long-term capital loss on sale of certain shares against long-term capital gain on the sale of a property. The ITAT observed that the net worth of the company was fully eroded and wiped out by losses. The value of these shares was in negative with no future profit earning capacity or any future business prospects. Thus, there was clearly a loss to the taxpayer. Therefore, the taxpayer was eligible for set-off of long-term capital loss on sale of shares in company against long term capital gain on sale of property. The benefit of the long term capital loss could not be declined to the taxpayer, as long as transaction has been actually effected. The AO cannot disregard a transaction just because it results in a tax advantage to the taxpayer.

Notifications/Circulars/Press Releases

- CBDT vide letter dated 6 September 2021¹⁰ prescribed the procedure for handling of assessment by Jurisdictional Assessing Officer (JAO) in respect of assessment/penalty¹¹ cases transferred out of Faceless Assessment Scheme under Section 144B of the Act.
- CBDT vide Order dated 6 September 2021¹² directed that in addition to the cases in the Central Charges and International Taxation Charges, cases where pendency could not be created on ITBA because of technical reasons or cases not having a PAN shall also be excluded from the purview of Section 144B of the Act.
- CBDT has issued a Notification¹³ and a press release¹⁴ on 6 September 2021 introducing new Rule 14C which provides that the electronic records submitted through registered account of the taxpayers in the tax department's portal shall be deemed to have been authenticated by the taxpayer by Electronic Verification Code (EVC).

⁹ Michael E Desa v. ITO (ITA No. 4286/Mum/17)

¹⁰ CBDT Letter (F No. 225/97/2021/ITA-II, dated 6 September 2021)

¹¹ Assessments in terms of Section 144B(8) of the Act/penalty as per clause 5(2) of the Faceless Penalty Scheme 2021

¹² CBDT Order (F No. 187/3/2020-ITA-I), dated 6 September 2021

¹³ CBDT Press Release, dated 6 September 2021

¹⁴ CBDT Notification No. 101/2021, dated 6 September 2021

Notifications/Circulars

Goods and Services Tax

Clarification on scope of intermediary service¹⁵

As agreed in 45th GST council meeting, circular is issued on criteria to be fulfilled for services to be considered as intermediary services:

- i. Minimum of three parties
- ii. Two distinct supplies
- iii. Intermediary service provider to have the character of an agent, broker or any other similar person
- iv. Does not include a person who supplies such goods or services or both or securities on his own account
- v. Sub-contracting for a service is not an intermediary service

Clarification on mere establishment of a distinct person¹⁶

CBIC has analyzed whether export of service by a subsidiary/ sister concern/ group concern, etc. of a foreign company in India, which is incorporated under the laws in India, to the foreign company incorporated under laws of a country outside India, will be hit by condition under section 2(6)(v) of IGST Act, 2017 (i.e. mere establishment of distinct person). In this regard, CBIC has clarified the following:

- A company incorporated in India and a body corporate incorporated by or under the laws of a country outside India (i.e. foreign company) are separate persons under CGST Act, and thus are separate legal entities. Accordingly, supply of service by subsidiary/ sister concern/ group concern, etc. incorporated in India to establishments of its related foreign company would not be barred by condition under section 2(6)(v) of IGST Act, 2017 for being considered as export of services.
- Supply of service by company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India, would not be treated as supply to merely establishments of distinct person under Explanation 1 of section 8 of IGST Act 2017 and therefore would qualify as 'export of services'.

Amendment to CGST Rules¹⁷

CBIC, on the recommendation of the 45th GST council has issued notification amending certain rules. The changes effective from 24 September 2021 are as follows:

- Refund to be disbursed only in the bank account of registered person which is linked with same PAN on which registration has been obtained under GST.

¹⁵ Ministry of Finance, CBIC Circular No. 159/15/2021-GST dated 20 September 2021

¹⁶ Ministry of Finance, CBIC Circular No. 161/15/2021-GST dated 20 September 2021

¹⁷ Ministry of Finance, CBIC Notification No. 35/2021-Central Tax dated 24 September 2021

- Aadhaar authentication mandatory for application for revocation of cancellation of registration and refund application.
- Annual furnishing of Form GST ITC-04 (Details of goods/capital goods sent to job worker and received back) if aggregate turnover in preceding FY is upto INR 5 crores. In other cases, periodicity will be once in 6 months. Earlier periodicity was once in a quarter.
- Procedure and time limit for filing refund of tax wrongfully paid as specified in section 77(1) of the CGST/SGST Act and section 19(1) of the IGST Act prescribed¹⁸.

The changes effective from 01 January 2022 are as follows:

- Registered person will not be allowed to furnish Form GSTR-1 if Form GSTR-3B for the preceding month is not furnished.

CUSTOMS

Electronic Duty Credit Ledger Regulations, 2021 notified¹⁹

Electronic Duty Credit Ledger Regulations have been notified in exercise of powers conferred under section 51B of the Customs Act, 1962 titled 'Ledger for duty credit' which was inserted vide Finance Act, 2020. These regulations state that shipping bill or a bill of export, presented from 1 January 2021 and having a claim of duty credit under RoDTEP or RoSCTL scheme will be processed in the customs automated system. After filing of export manifest or export report, a scroll will be generated by customs officer in customs automated system. The regulations also provide for creation of e-scrip in ledger and registration of e-scrip. The e-scrip can be used for payment of customs duties and will be valid for a period of one year from date of its creation in the ledger and unutilised e-scrip will lapse. Entire amount in e-scrips can be transferred to ledger of another person having IEC number. E-scrip can be suspended or cancelled in case of contravention of any provisions.

Manner to issue duty credit under RoDTEP scheme notified²⁰

Duty credit in respect of goods exported under scheme of Remission of Duties and Taxes on Exported Products (RoDTEP) will be issued:

- a) in lieu of remission of any duty or tax or levy;
- b) against export of notified goods at respective rate (Value for duty credit is declared Export FoB or 1.5 times of market price, whichever is less);
- c) against a declaration at item level in shipping bill or bill of export;
- d) against order permitting clearance and loading of goods for exportation;
- e) necessary checks by customs and filing of export manifest or export report;
- f) in accordance with any rules or regulations in relation to duty credit.

¹⁸ Ibid vis-à-vis CBIC Circular No. 162/18/2021-GST dated 25 September 2021

¹⁹ Ministry of Finance, Department of Revenue, Notification No. 75/2021-Customs (N.T.) dated 23 September 2021

²⁰ Ministry of Finance, Department of Revenue, Notification No. 76/2021-Customs (N.T.) dated 23 September 2021 read with Circular No. 23/2021-Customs dated 30 September 2021

FOREIGN TRADE POLICY

Last date for submitting applications for scrip-based schemes extended²¹

Last date for submitting applications under MEIS, SEIS, RoSCTL, RoSL and 2% adhoc incentive for mobile phone for specified period has been extended till 31 December 2021. New late cut has been specified for applications submitted upto 31 December 2021 and it will not be available if applications are submitted after cut-off date. New validity of duty scrip issued on or after 16 September 2021 will be 12 months from date of issue.

Foreign Trade Policy 2015-2020 extended²²

Duration of Foreign Trade Policy (FTP) and Handbook of Procedures (HBP) 2015-2020 has been extended further till 31 March 2022. Extension of other durations is as follows:

- Imports against Advance Authorisations are exempted from integrated tax and compensation cess till 31 March 2022.
- Capital goods imported under EPCG Authorisation for physical exports are exempted from integrated tax and compensation cess till 31 March 2022.
- Imports / procurement by EOU / EHTP / STP / BTP unit from bonded warehouse in DTA or from international exhibition held in India are exempted from payment of customs duty, additional duty, integrated tax and compensation cess till 31 March 2022.

Services and rates notified for SEIS²³

Central Government has notified services and rates for Service Exports from India Scheme (SEIS) claims on services rendered in FY 2019-20. Other aspects are as follows:

- Rates notified is 3% and 5% respectively.
- Limit of INR 5 crores per IEC on total entitlement imposed.
- Facility to claim benefits under SEIS on payment in Indian Rupees will not be available for services rendered in FY 2019-20.
- Deadline for submission of SEIS application for FY 2019-20 is 31 December 2021. Late cut will not apply, which means that application will be time barred after 31 December 2021.

Extension of Export Obligation period and EPCG Authorisation²⁴

Period for fulfilment of export obligation (EO) under Advance Authorisation is 18 months from the date of issue of Authorisation. For Advance Authorisation and EPCG Authorisation, where original period or extended EO period is expiring during the period between 01 August 2020 to 31 July 2021, EO period is extended till 31 December 2021 without any composition fees subject to 5% additional EO on balance EO on the date of expiry of original/ extended EO period.

²¹ Ministry of Commerce and Industry, Department of Commerce, Notification No. 26/2015-2020 dated 16 September 2021

²² Ministry of Commerce and Industry, DGFT, Notification No. 33/2015-2020 dated 28 September 2021 read with Public Notice No. 25/2015-2020 dated 28 September 2021

²³ Ministry of Commerce and Industry, Department of Commerce, Notification No. 29/2015-2020 dated 23 September 2021

²⁴ Ministry of Commerce and Industry, DGFT, Notification No. 28/2015-2020 dated 23 September 2021

Decisions

ITC on CSR activities barred²⁵

'Applicant' is engaged in supplying insecticides, fungicides and herbicides. It spends the mandatory amount on Corporate Social Responsibility (CSR) activities in the form of donations, civil works or installation of plant and machinery items in schools or hospitals, distribution of food kits etc. 'Applicant' submits that an activity or a transaction which is done in connection with main business operation of the Company will be covered under the definition of business u/s 2(17) of the CGST Act, 2017 and thus ITC on CSR activities should be allowed. It further submits that the input items such as furniture, stationery, plant and machinery items, oxygen concentrators / oxygen plant which are being procured and donated as part of the CSR activity cannot be treated as gift.

Referring to rule 4(1) of Companies (CSR Policy) Rules, 2014, Gujarat Authority for Advance Ruling held that CSR activities are not activities undertaken in pursuance of Applicant's normal course of business and therefore not eligible for ITC.

ITC to be reversed on inputs used only for display purpose²⁶

'Applicant' is engaged in business of manufacturing and distribution of cakes and pastry items. These items are supplied to distributors for display on a tax invoice. Distributor returns these items when they expire. 'Applicant' issues a credit note for this transaction. There is no free/sample supply of goods by 'Applicant' as per section 17(5)(h) of the CGST Act, 2017. It sought an advance ruling on whether ITC on inputs consumed in expired items is to be reversed or not.

Gujarat Authority for Advance Ruling held that the transaction is covered under section 17(5)(h) of the CGST Act and thereby ITC on inputs used in manufacturing expired cakes and pastries is not admissible and hence reversal is required. While giving its decision, the Authority also relied on Circular No. 72/46/2018-GST dated 26 October 2018 which clarified that manufacturer is required to reverse ITC on destroying expired drugs or medicines returned by retailer / wholesaler.

²⁵ Adama India Pvt. Ltd [TS-505-AAR(GUJ)-2021-GST]

²⁶ Kanayalal Pahilajrai Balwani [TS-475-AAR(GUJ)-2021-GST]

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