



India tax konnnect

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Direct Tax

CBDT issues notifications extending certain timelines due to COVID-19 pandemic

The Central Board of Direct Taxes (CBDT) has issued Notifications¹, Circular² and a press release³ to further extend the following time limits in view of COVID-19 pandemic from 30 June to 30 September 2021:

- Time limit for passing an assessment order.
- Time limit for passing a penalty order.
- Time limit for processing Equalisation Levy returns.

¹ Notification 74 and 75 of 2021

² Circular No. 12/2021, dated 25 June 2021

³ CBDT Press Release, dated 25 June 2021

⁴ Link of detailed flash news - <http://www.in.kpmg.com/TaxFlashNews-INT/KPMG->

- Last date for linkage of Aadhar with PAN

The time limit for payment of amount under the Direct Tax Vivad se Vishwas Act, 2020, without an additional amount has been further extended to 30 August 2021. Further the last date of payment of amount under such scheme has also been extended to 31 October 2021.

CBDT has also extended⁴ various other time limits like furnishing of TDS returns, compliances to be made by taxpayers such as investment, deposit, payment, acquisition, etc. for claiming any exemption under Section 54 to 54GB, annual statement by eligible investment fund, etc.

Decisions

The ITAT (Mumbai Bench) refers an issue of applicability of lower tax treaty rate on dividend over DDT rate to the President of the ITAT for considering the setting up of a Special Bench

The ITAT (Mumbai Bench)⁵ dealt with the issue of eligibility of lower tax treaty rate on dividend for Dividend Distribution Tax (DDT) under Section 115-O. The ITAT did not agree with the earlier decisions of the other benches of the ITAT where the benefit of lower tax rate on dividend has been granted as against the DDT rate. The ITAT, based on various observations, referred the matter to the President of the ITAT to consider the setting up of a Special Bench to deal with this issue.

[Flash-News-CBDT-Press-Release-further-extension-of-time-limits-1.pdf](#)

⁵ DCIT v. Total Oil India Pvt Ltd (ITA No. 6997/Mum/2019)

Tax is to be deducted at a concessional rate of 5 per cent on dividends in view of the MFN clause under the India-Switzerland tax treaty

The Delhi High Court⁶ dealt with the issue of eligibility of lower rate of tax on payment of dividend (available in subsequent Indian tax treaties with OECD country) in view of the Most Favoured Nation (MFN) clause under the India-Switzerland tax treaty (the tax treaty). The High Court held that the lower tax rate at 5 per cent on dividend would apply to the taxpayer in view of the MFN clause under the tax treaty. The High Court relied on its earlier decision in the case of Concentrix Services Netherlands BV⁷ and held that the lower deduction certificate under Section 197 is to be issued in favour of the taxpayer.

Foreign employees deputed to the Indian associate enterprise do not constitute agency PE in India

The ITAT (Ahmedabad Bench)⁸ dealt with the issue of constitution of an Agency Permanent Establishment (PE) and attribution of salary of the employees working under the supervision of an Associated Enterprise (AE) to a supervisory PE under the India-U.S. tax treaty. The ITAT held that the foreign employees working with the Indian subsidiary do not constitute an agency PE in India since there was no connection between such employees and the taxpayer. Further, the deputed personnel were employees of the AE and worked under the supervision and guidance of AE in India. Merely displaying information on the website does not lead to the conclusion that these are employees of the foreign taxpayer. Therefore, salary of the employees of the AE cannot be attributed to the supervisory PE in India.

⁶ Nestle SA v. Assessing Officer Circle [W.P.(C) 3243/2021]

⁷ Concentrix Services Netherlands BV v. ITO and Optum Global Solutions International BV v. DCIT [2021] 127 taxmann.com 439 (Del)

National Faceless Appeal Centre (Delhi) is bound by the decision of the High Court having jurisdiction over taxpayer's assessing officer

The ITAT (Agra Bench)⁹ held that the National Faceless Appeal Centre (NFAC) is bound by the decision of the High Court having jurisdiction over taxpayer's assessing officer. The ITAT observed that an appeal against an order passed by NFAC shall lie before the ITAT having jurisdiction over the jurisdictional Assessing Officer (AO). Thus, the appeal against the Agra Bench of the ITAT shall lie before the Allahabad High Court. Accordingly, the decision rendered by the Allahabad High court is not only binding on the ITAT but also on NFAC, (though sitting in Delhi) which is deciding the cases pertaining to assessee under the Allahabad High Court's jurisdiction.

Payment made to a non-resident for sales promotion is not FTS and therefore not chargeable to tax in India

The ITAT (Jaipur Bench)¹⁰ dealt with the taxability of payment of sales promotion expenditure to a non-resident agent located in UAE. The ITAT held that FTS provisions under Section 9(1)(vii)(b) were not attracted as the taxpayer had utilised the services of the non-resident service provider outside India for the purpose of earning commission from its customer/shipping companies outside India.

The sum paid to such agent did not fall under the scope of total income. Further since there was no PE in India, no business income can be charged to tax in India. Accordingly, there was no requirement to deduct any tax at source under Section 195.

⁸ Lubrizol Advanced Materials Inc. v. DCIT [ITA No. 2455 /Ahd/2018]

⁹ Mahadev Cold Storage v. JAO (ITA No. 41 & 42/Agr/2021, AY 2018-20)

¹⁰ Prime Oceanic Pvt. Ltd. v. ITO [ITA No. 652/Jpr/2019]

Notifications /Circulars/Press

Release

- CBDT issued a Notification¹¹ to amend rules and forms in respect of submission of TDS and TCS quarterly statements. The amendments expand the scope of reporting to cover payments exempt from TDS/TCS and also carry out changes consequential to amendments made to statutory provisions of the Act. The amended rule and forms now require the reporting of payment of exempt income like income from Zero Coupon bond, payment of dividend income to business trusts, being Real Estate Investment Trusts (ReIT) and Infrastructure Investment Trusts (InvIT), etc. Further reporting is also required where taxes have been collected at higher rates on account of non-filing of return of income by payer.
- CBDT notified¹² the cost inflation index as '317' for the Financial Year (FY) 2021-22 .
- The Employees Provident Fund Organisation (EPFO) extended¹³ the timeline for mandatory Aadhaar seeding required to file ECR from 1 June 2021 to 1 September 2021.

MLI/BEPS

- The BEPS Inclusive Framework of the OECD/G20 issued a statement on a Two-Pillar solution to address the tax challenges arising from the digitalisation of the economy on 1 July 2021. The statement sets forth the key terms for an agreement of a two-pillar approach to reforms and calls for a comprehensive agreement by October

2021. Pillar 1 envisages a new taxing right to market jurisdictions, allocating a portion of residual profit based on a formulary approach. Pillar Two reflects an agreement on a global minimum level of taxation which has the effect of stipulating a floor for tax competition amongst jurisdictions.

Following the third meeting of G20 Finance Ministers and Central Bank Governors on 9 and 10 July, the group issued a statement endorsing the key components of the two-pillar solution as set out in the statement of 1 July 2021. It is calling on the OECD Inclusive Framework to swiftly address the remaining issues and finalize the design elements within the agreed framework together with a detailed plan for the implementation of the two pillars by the next meeting at the end of October 2021.

- OECD published¹⁴ the Model reporting rules for digital platforms: international exchange framework and optional module for sale of goods. The Model reporting rules for digital platforms were developed in response to call for a global reporting framework in respect of activities being facilitated by such platforms, in particular in the sharing and gig economy.

An optional module has been developed to allow jurisdictions to implement the model rules with an extended scope to cover sale of goods and the rental of means of transportation. Exchanges of information under the model rules are to be implemented by an international legal framework in the form of the Multilateral Competent Authority Agreement.

¹¹ CBDT Notification No 71/2021, dated 8 June 2021

¹² CBDT Notification No 73 of 2021, dated 15 June 2021

¹³ EPFO Circular No: WSU/15(1)2019/ATR/529 – dated 15 June 2021

¹⁴ Source: OECD Website

Decisions

Electronic Credit Ledger cannot be blocked beyond period of one year¹⁵

Electronic Credit Ledger of the petitioner was blocked on 21 January 2020 and it has been continued to be blocked for a continuous period of over one year. The petitioner filed a writ petition before the High Court of Karnataka challenging the blocking of electronic credit ledger beyond the period of one year from the date of imposing the restriction.

Petitioner submitted that in view of Rule 86A(3) of the CGST Rules, 2017, which states that *“Such restriction shall cease to have effect after the expiry of a period of one year”*, blocking of credit beyond the prescribed period is prejudicial.

The Hon’ble High Court set aside the action of the Department in continuing to block the electronic credit ledger and declared that consequential orders and restoring credit to electronic credit ledger be made. It also clarified that the Department is at liberty to take such action as is permissible in law in connection with the assessment proceedings.

Normal loss of inputs inherent to manufacturing process not required for reversal of credit¹⁶

The Petitioners are engaged in manufacture of MS Billets and Ingots wherein MS scrap is an input in the manufacture of MS Billets and the latter, in turn, constitutes an input

for manufacture of TMT/CTD Bars. During the process, there is loss of small portions of inputs which is inherent to the manufacturing process. The Adjudicating Authority passed assessment orders seeking to reverse a portion of the ITC claimed by the Petitioners, proportionate to the loss of the input, referring to the provisions of section 17(5) of the CGST Act, 2017.

The Hon’ble High Court of Judicature At Madras held that the loss that is occasioned by the process of manufacture cannot be equated to any of the instances set out in section 17(5)(h). The loss is occasioned by consumption in the process of manufacture, which is inherent to the process of manufacture itself, hence no reversal is required.

Bombay High Court Judges differ on Constitutional validity of place of supply of intermediary services¹⁷

Petitioner is engaged in providing marketing and promotion services to customers located outside India. The overseas customers may or may not have establishments in India. It receives consideration in convertible foreign currency from the overseas customers. The services provided by the Petitioner are in the nature of intermediary in terms of section 13(8)(b) of the IGST Act, 2017. It has paid CGST and SGST under protest without collecting it from its overseas customer. It has filed the writ petition since the tax burden has increased post implementation of GST.

Petitioner prayed that section 13(8)(b) and section 8(2) of the IGST Act, 2017 are ultra-virus of the Constitution of India and also ultra-virus the provisions under CGST / SGST Act and IGST Act. It further asserted

¹⁵ M/s Aryan Tradelink Vs The Union Of India and Others [2021-VIL-447-KAR]

¹⁶ M/s ARS Steels & Alloy International Pvt Ltd Vs The State Tax Officer, Group - I, Inspection, Intelligence - I, Chennai [2021-VIL-484-MAD]

¹⁷ Dharmendra M. Jani vs Union Of India and Others [2021-VIL-458-BOM] and [2021-VIL-472-BOM]

that Constitution of India has empowered Parliament to frame law for levy and collection of GST in the course of inter-state trade or commerce, besides laying down principles for determining place of supply and when such supply of goods or services or both takes place in the course of inter-state trade or commerce and thus the Parliament is not empowered to impose tax on export of services out of the territory of India by treating the same as a local supply. In its support, it has also referred to the 139th Parliamentary Committee Report and submits that levy of GST on intermediary services is contrary to the fundamental concept of GST as a destination-based consumption tax.

The Judges of the High Court Of Judicature At Bombay gave a split verdict wherein one Judge held that section 13(8)(b) of the IGST Act, 2017 is ultra-vires the said Act besides being unconstitutional while the other Judge held that section 13(8)(b) as well as section 8(2) of the IGST Act are constitutionally valid and operative for all purposes.

Notifications

Waiver of late fees and amnesty for non-filers of Form GSTR-3B¹⁸

Central Government has amended notification no. 76/2018 – CT dated 31 December 2018 to waive late fees for specified taxpayers and for specified tax period. It has also allowed amnesty from late fees in excess of INR 500 for Form GSTR-3B non-filers for the period July 2017 to April 2021 if the same is furnished between 01 June 2021 to 31 August 2021. Late fees for the tax period June 2021

¹⁸ Ministry of Finance (Department of Revenue) Notification No. 19/2021 - Central Tax dated 01 June 2021

¹⁹ Ministry of Finance (Department of Revenue) Notification No. 20/2021 - Central Tax read with Notification No. 21/2021 – Central Tax and Notification No. 22/2021 all dated 01 June 2021

onwards or quarter ending June 2021 onwards has been rationalized based on turnover of the registered persons.

Late fees capped¹⁹

Late fees for delayed filing of Form GSTR-1, GSTR-4 and GSTR-7 has been capped for specified class of registered persons and for specified period.

Government Department and Local Authority excluded from provisions of e-invoicing²⁰

Central Government has amended notification no. 13/2020 – CT dated 21 March 2020 to exclude government department and local authority, among others, from the provisions of e-invoicing.

Penalty waived for non-compliance of Dynamic QR Code upto 30 September 2021²¹

Central Government had issued notification no. 14/2020 – Central Tax dated 21 March 2021 mandating issue of invoices with Dynamic QR Code for B2C supplies by registered persons having turnover above INR 500 crores with effect from 1 December 2020. Subsequent notifications were issued to waive penalty for non-compliance of provisions of Dynamic QR Code upto 31 March 2021 which was subsequently extended to 30 June 2021. This present notification further extends the date to 30 September 2021.

²⁰ Ministry of Finance (Department of Revenue) Notification No. 23/2021 - Central Tax dated 01 June 2021

²¹ Ministry of Finance (Department of Revenue) Notification No. 28/2021 - Central Tax dated 30 June 2021

KPMG in India contacts:

Rajeev Dimri

Partner and Head

Tax

T: +91 124 307 4077

E: rajeevdimri@kpmg.com

home.kpmg/in



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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.

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