



# India tax konnnect

April 2020



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## Direct Tax

# Extension of time limits for compliance with various provisions of the

<sup>1</sup> The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020

<sup>2</sup> (i) Passing of any order or issuance of any notice, intimation, notification, sanction or approval. (ii) Filing of any appeal, reply or application or furnishing of any report, document, return, statement, or such other record. (iii) Making of investment, deposit, payment, acquisition, purchase, construction, etc., to claim any deduction, exemption or allowance under the specified provisions. (iv) Beginning of manufacture or production of articles or things or providing any services referred to in Section 10AA subject to specified conditions

# Income-tax Act due to Covid 19

In view of the spread of pandemic COVID-19, the President promulgated an Ordinance<sup>1</sup> on 31 March 2020, to provide relief in respect of certain tax related provisions. These include:

- The time limit to avail the 'Vivad Se Vishwas Scheme' without making payment of any additional amount is extended from 31 March to 30 June 2020.
- The time limit for compliance or completion of various actions<sup>2</sup> under the Income-tax Act is extended to 30 June 2020.
- The rate of interest for delayed<sup>3</sup> payment of any tax or levy is reduced to 0.75 per cent for every month or part thereof. Further no penalty or prosecution will be initiated for such delay.
- 100 per cent deduction to donations made to PM CARES fund will be available under Section 80G.

## Decisions

### Supreme Court's decision on reassessment proceedings

The Supreme Court<sup>4</sup> 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

<sup>3</sup> The term 'Period of delay' - The period between the due date (due date specified under the Act which falls during the period from 20 March to 29 June 2020, or such other date after 29 June 2020) for payment of any amount towards tax or levy, by whatever name called and the date on which the amount has been paid (on or before 30 June 2020 or such other date after 30 June 2020 as the government may notify).

<sup>4</sup> New Delhi Television Ltd v. DCIT [WP(C) 11638/2015 (AY 2008-09)]

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.

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

The Bombay High Court<sup>5</sup> 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.

### **Payment of toll-free telephone charges are royalty in nature**

The Bangalore Tribunal<sup>6</sup> held that the payment of toll-free telephone charges are taxable as royalty because such services are covered under the definition of 'process'.

### **Payment to a foreign company for placement services does not amount to FTS**

The Indore Tribunal<sup>7</sup> held that the payment for placement services to a Korean company does not amount to FTS because

such services do not require any technical expertise.

### **Disallowance of expenditure related to exempt income does not apply to an insurance company**

The Delhi High Court<sup>8</sup> observed that the special provisions dealing with computation of income of an insurance company<sup>9</sup> override all other provisions of the Act including the provisions for disallowance of expenditure related to exempt income<sup>10</sup>. Thus, provisions of disallowance of expenditure in relation to exempt income are not applicable to such a company.

## Notification/Circular/ Press Release

- In Budget 2019, capital gains tax related exemption provisions<sup>11</sup> were amended to provide that the transfer of certain specified securities will not be regarded as transfer of a capital asset. Recently, CBDT notified<sup>12</sup> the following securities were notified for this purpose:
  - Foreign currency denominated bond
  - Unit of a mutual fund
  - Unit of a business trust
  - Foreign currency denominated equity share of a company
  - Unit of Alternative Investment Fund

These securities should be listed on a recognised stock exchange located in any International Financial Services Centre in accordance with the SEBI or IFSC regulations.

- CBDT in a press release stated that TDS surveys were conducted by the tax department where the TDS default worth of 3500 Crore were found in the cases of major telecom and oil companies. The TDS defaults were on

<sup>5</sup> CIT v. Taj TV limited (ITA No. 1984/Bom/2017)

<sup>6</sup> Vidal Health Insurance TPA Pvt Ltd. v. JCIT (ITA No. 1213 to 1215/Bang/2018 and 736/Bang/2018, AY- 2011-12 to 2014-15)

<sup>7</sup> D&H Secheron Electrodes Pvt. Ltd v. ITO (ITA No. 104/Ind/2018, AY- 2016-17)

<sup>8</sup> PCIT v. Oriental Insurance Co Ltd- [TS-148-HC-2020 (Del)] – Taxsutra.com

<sup>9</sup> Section 44 of the Act

<sup>10</sup> Section 14A of the Act

<sup>11</sup> Under Section 47(viia) of the Act

<sup>12</sup> Notification No. 16/2020, 5 March 2020

account of short deduction of tax and non-deduction of tax. The tax department has stepped up enforcement action against such TDS defaulters because it contributes more than 45 per cent of the total direct tax collection<sup>13</sup>.

- CBDT has clarified<sup>14</sup> that submission of valid Form 15G and 15H to the banks or other institutions for FY 2019-20, will be valid upto 30 June 2020 for FY 2020-21 also.
- Validity period of the lower or nil TDS / TCS tax certificates for FY 2019-20 is extended to the period of 1 April to 30 June 2020 for FY 2020-21. Where the taxpayer has not made any application for FY 2020-21 nor he has obtained any certificate for FY 2019-20, tax on payments made to non-residents (including foreign companies) having a permanent establishment in India is to be deducted at the rate of 10 per cent (including surcharge and cess), till 30 June 2020, or till disposal of their applications, whichever is earlier.

## BEPS/MLI

- OECD has issued a second peer review report<sup>15</sup> to implement the Action Plan 6 as agreed under the OECD/G20 BEPS Project. This report reveals that a large majority of members of the OECD/G20 Inclusive Framework on BEPS are translating their commitment on treaty shopping into actions and are modifying their treaty network. The report recognises the substantial progress that jurisdictions have made towards the implementation of the minimum standard. The results of the peer review show that the MLI has been used by the vast majority of jurisdictions that have begun to implement the minimum standard.

- Recently, OECD has released the stage 2 peer review monitoring reports with respect to Action Plan 14 (Resolution of tax-related disputes between jurisdictions) of the seven jurisdictions i.e. Austria, France, Germany, Italy, Liechtenstein, Luxembourg and Sweden. These reports evaluate the progress made by these seven jurisdictions in implementing recommendations suggested in stage 1 peer review reports.

## Indirect Tax

## COVID-19 – Relief measure announced and notified

- CBIC<sup>16</sup> has provided relief in the form of no late fee and no interest/ reduced rate of interest for filing of returns and payment of taxes for the tax period February 2020 to April 2020. The notification provides an option to the taxpayer to defer payment of GST liability till 24 June 2020, without any late fee, penalty or interest. However, a taxpayer having an aggregate turnover in excess of INR 5 Crore will be required to pay interest at 9 per cent per annum in case payments are made after 15 days from the original due dates.
- CBIC has notified deferment of the provision restricting the claim of ITC<sup>17</sup> relating to unmatched invoices or debit notes, for the tax period February 2020 to August 2020. The taxpayer will be required to match and make a cumulative adjustment for these periods at the time of filing GSTR-3B

<sup>13</sup> CBDT press release, dated 4 March 2020

<sup>14</sup> CBDT Order No. [F. No. 275/25/2020-IT(B)], dated 3 April 2020

<sup>15</sup> Prevention of Treaty Abuse – Second Peer Review Report on Treaty Shopping

<sup>16</sup> CBIC – Central Board of Indirect Taxes and Customs

<sup>17</sup> ITC – Input Tax Credit

return for the month of September 2020.

- Extension of due date for filing returns by specific classes of taxpayers, such as person required to deduct tax at source, input service distributor, etc. for the tax period March 2020 to May 2020 till 30 June 2020
- Extension of exemption from levy of IGST and compensation cess till 31 March 2021, on import of goods by an EOU<sup>18</sup> or imports under EPCG<sup>19</sup> or Advance Authorisation licences.
- The existing Foreign Trade Policy 2015-20 which was valid up to 31 March 2020 is extended up to 31 March 2021. The validity of the MEIS<sup>20</sup> scheme has also been extended till 31 December 2020 until the exported goods are covered under the new scheme of RoDTEP<sup>21</sup>. The decision to continue SIES<sup>22</sup> scheme after 1 April 2020 shall be notified separately.
- Exemption provided from levy of Basic Customs Duty and Health cess on import of ventilators, face masks, surgical masks, personal protection equipment's and COVID-19 testing kits including inputs used in their manufacture. The exemption shall be valid on imports made up to 30 September 2020.
- Ministry of Commerce and Industry has relaxed the compliance requirement of units/developers/co-developers of SEZs till 30 June 2020. These requirements include filing of QPR<sup>23</sup> by developers, SOFTEX by IT/ITeS units and APR<sup>24</sup> by SEZ units.
- CBIC has announced measures to enhance the automation of Customs clearance process. Effective 15 April 2020, authorities have enabled electronic communication of PDF version of the final Electronic Out of Charge copy of Bill of Entry generated

and e-gate pass to the importers/customs brokers.

## Supreme Court Decisions

### Notifications issued to explain the original notification cannot be subject to Doctrine of Promissory Estoppel

The Supreme Court held<sup>25</sup> that where the subsequent notification is issued 'to explain' the earlier notification/industrial policy in order to safeguard the interest of the revenue, the same cannot be subject to the doctrine of promissory estoppel. The subsequent notification issued, seeks to clarify only the original objective of the policy and to clarify on the purpose of giving incentives/exemption i.e. inviting persons to make an investment in establishing the new undertakings and they do not take away any vested rights conferred under the original industrial policy. Thus, a subsequent notification cannot be said to be irrational or arbitrary.

The Court further held that, the said order shall not have any effect on the amount of excise duty already refunded under the incentive scheme prior to issuance of subsequent notification and all pending refunds shall be decided as per the clarification announced in subsequent notifications.

## Advance Authority Rulings (AAR)

### No requirement to obtain registration in the State where the

<sup>18</sup> EOU - Export Oriented Units

<sup>19</sup> EPCG – Export Promotion Capital Goods

<sup>20</sup> MEIS – Merchandise Export from India scheme

<sup>21</sup> RoDTEP – Remission of Duties and Taxes on Export Products

<sup>22</sup> SEIS – Services Exports from India scheme

<sup>23</sup> QPR – Quarterly Progress Report

<sup>24</sup> APR – Annual Performance Report

<sup>25</sup> UOI and Another Etc. Etc. v. V.V.F. Limited & Another Etc. Etc. [TS-232-SC-2020-EXC]

## port of clearance is located, if supply is not made from such port

The AAR held<sup>26</sup> that tax invoice can be issued for inter-state supplies with IGST<sup>27</sup>, even when the goods are directly dispatched from the port of import with invoicing done from the registered place of business. Also, there is no requirement under the GST laws to obtain registration in the state where the port of clearance is located, if taxpayer is not making any supply from the state in which the port is located.

## Consideration paid to the employee director is subject to levy of GST under reverse charge

The AAR held<sup>28</sup> that the consideration paid to directors is taxable under the reverse charge mechanism (RCM). The RCM notification<sup>29</sup> has given the distinct identity to the services provided by the director and specifically included the same in the category of services on which GST will be payable under reverse charge.

## Transfer of title in goods without actual import liable to GST

The AAR held<sup>30</sup> that 'transfer of title in goods' for a consideration and provided in course of business is liable to GST. Accordingly, goods manufactured and retained abroad (Thailand) and not physically imported into India but the ownership is transferred from foreign manufacturer to the applicant and from applicant to Indian buyer by raising a separate invoice infers 'transfers of the title in goods'.

## Separate registration not mandated for executing works contract in another state

The AAR held<sup>31</sup> that there is no requirement under the GST law to obtain separate registration to execute a works contract project in another state. Taxpayer have a liberty to obtain registration in the state where the project is undertaken, if they intend to have a fixed establishment at the project site.

## Instruction under the Customs Act

CBIC has issued an instruction<sup>32</sup> providing guidelines to be followed for conducting personal hearings by virtual mode under the Customs Act. The instruction broadly includes the following:

- Taxpayer to give consent for a virtual hearing in writing.
- Tax authority to intimate by email, date and time along with the web link.
- Online filing of vakalatnaama or authorisation letter by the lawyer /consultant along with Photo ID.
- Communication of record of personal hearing by the adjudicating authority by email and acceptance/ 'amended acceptance' within three days by the taxpayer.
- Submission of additional documents by taxpayer within three days of the hearing, if any.

<sup>26</sup> Kardex India Storage Solution Pvt. Ltd. [KAR ADRG 13/2020, dated 18 March 2020]

<sup>27</sup> IGST - Integrated Goods and Services Tax

<sup>28</sup> Clay Craft India Pvt. Ltd. [RAJ/AAR/2019-20/33 dated 20 February 2020]

<sup>29</sup> Notification No. 13/2017-Central Tax (Rate) dated 28 June 2017

<sup>30</sup> Automotive Components Technology India Pvt. Ltd. [05/ARA/2020 dated 31 January 2020]

<sup>31</sup> T. D Electricals [KAR ADRG 18/2020 dated 31 March 2020]

<sup>32</sup> F. No. 390/Misc/3/2019-JC, dated 27 April 2020

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