

Tax Bulletin

Update publication for our clients

March, 2019



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FOREWORD

February 2019 was a month which saw a dreadful act of terrorism reciprocated by an act of bravery by the Indian Armed Forces. While war is certainly not good for any nation, we salute our Jawans and extend our condolences to the families of all the Martyrs!

On the taxation front, with the President giving his assent to the Interim Finance Bill, 2019 on February 21, the tax proposals have now become law and the Finance Act, 2019 has come into force. Accordingly, it is important for tax payers to acquaint themselves with the new provisions.

Further, the 33rd GST Council Meeting held on February 24, 2019 has given recommendations for rate cuts in the real estate sector which will soon be notified.

Accordingly, we have compiled the **10th Edition of the Tax bulletin** in relation to Direct Tax (i.e. Income Tax) and Indirect Tax (i.e. GST, Customs law and FTP) with the relevant highlights of the Interim Union Budget 2019.

Warm Regards,

Team VK&S

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- 3 Customs
- 4 Foreign Trade Policy ['FTP']



Income Tax updates

- Year End Compliances
- Legal Snippets

Year End Compliances



- ❖ **Pay Last Installment Advance Tax by 15th March 2019:** Business needs to pay balance of advance income tax by 15th March 2019. Delay in payment of advance tax will attract interest as well as enquiry from the Department
- ❖ **Business under Presumptive Taxation-Last date to pay single installment of advance tax is 15th March 2019 :** Small business who has opted for presumptive taxation has given certain relation in payment in payment of advance tax. Such business needs to pay advance tax only in one installment by 15th March 2019.
- ❖ **Aadhar PAN Linking to be completed by 31st March 2019.**
- ❖ **File your Income Tax Return for FY 2017-2018 by 31st March 2019 :** Those tax payers who could not filed the tax return on due date, 31st March 2019 is last date to file the return with late fee.

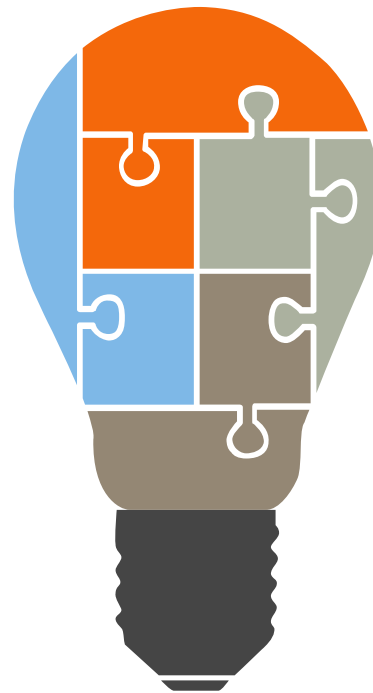


**Important
Compliances
for March
2019**

Legal Snippets

Entire undisclosed turnover cannot be income and undisclosed income should be computed after making reasonable deduction of expenses incurred for earning such income

[Smt Sipra Ghosh vs Income Tax Officer 2019-TIOL-390-ITAT-KOL]



When amount paid by an individual to a company represents refund/repayment of advances given by said individual to that company, then it cannot be taxed as deemed dividend u/s 2(22)(e).

[Pr.CIT Vs Atul Kumar Mittal(2019) TIOL 489 MUM HC]



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GST updates

- Notifications and Circulars
- Legal Snippets
- GST Advance Rulings

Notifications and Circulars



Extension of Due Dates

- FORM GSTR-3B of January 2019
 - In Jammu and Kashmir – extended to **February 28 2019**;
 - In other States – extended to **February 22 2019**.
- FORM GSTR-7 (TDS deductor) of January 2019, time limit extended up to **February 28 2019**.
- FORM GSTR- 8 (TCS) for the months of October 2018 to December 2018 was extended till **February 07 2019**.

Reporting inter-state B2C supplies in GSTR3B is mandatory and not optional !

- Non- reporting of details of inter-state supplies to URD in GSTR-3B results in :
- Non – apportionment of due amount of IGST to states where such supply takes place;
 - Mis – match in quantum of goods or services supplied in state and IGST apportioned between the Centre and States.



Penalty
up to
Rs.25,000

Place of supply must be mentioned on invoice in case of inter-state supplies

Since GST is a destination-based consumption tax it is essential that tax paid shall accrue to Consuming State. This is ensured by capturing the details of the place of supply along with the name of State in the tax invoice.

These clarifications indicate that anything that causes loss of revenue to States would be taken up seriously!

Other Changes/Clarification

Exemption discontinued

- Supply of services with place of supply in Nepal/Bhutan, against payment in INR is considered as 'export' of service.
- Earlier such supply was considered 'exempt supply' – said exemption discontinued

NEPAL
BHUTAN

Composition scheme for supplier of goods and service

- Composition Scheme has been extended to a supplier whose value of services does not exceed 10% of turnover of preceding FY in a State or Rs.5 lakhs (whichever is higher).
- Clarified that **exempt turnover of interest and discount** received as consideration for providing services by way of extending deposits, loans or advances **shall not be considered**



Supply of warehoused goods during the period from July 1st 2017 to March 31st 2018

- Supply of goods from custom bonded warehouses attracts IGST
- However, during the specific period, due to technical difficulty, such supplies were reported as intra-state supplies and Dual GST was discharged instead of IGST.
- Being a revenue neutral position, a **one time exception** is being given to suppliers who have paid CGST and SGST



Press Release on Real estate sector

GST Rate :

- GST @ 5% without ITC to be levied on residential properties outside affordable segment;
- GST @ 1% without ITC on affordable housing properties.

'Affordable housing' & Metropolitan cities defined

- Carpet area upto 90 sqm in non metropolitan cities/towns and 60 sqm in metropolitan cities having value upto Rs. 45 lacs.
- Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai

GST Exemption :

Exemption of Intermediate tax on development right, such as TDR, JDA, Lease, FSI shall be restricted to residential property on which GST is payable

Effective Date:

Applicable from April 1st,2019
Relevant Notifications/ scheme to be issued



GST Legal Snippets – From the High Courts

Squad Officer cannot detain goods beyond reasonable time in case of dispute as to classification of goods.

Jeyyam Global Foods Pvt. Ltd. Vs UOI
[Madras High Court]

Issue: Whether jurisdiction of Squad Officer to detain goods is on equal footing to an Assessing Officer, when there is a *bona fide* dispute as to the classification of goods.

Ruling – It is not open to the Squad officer to detain goods beyond a reasonable period (a few hours). Final call will be taken by the jurisdictional Assessing Officer. Commissioner of Commercial Taxes is directed to issue circular to Squad Officers giving effect to the same.

TRAN-2 may be revised provided it is justified to authorities.

Optival Health Solutions Pvt. Ltd. Vs UOI
[Kolkata High Court]

Issue: Whether an assessee should be allowed to revise or rectify TRAN-2 form

Ruling – The Act nor the Rules of 2017 forfeits the right of a person making an admission to substantiate that such admission was made by mistake or was untrue. Hence an opportunity must be afforded to assessee to correct the same. The authorities may retain the original GST TRAN-2 form for their assessment purpose and can confront the person seeking to revise the GST TRAN-2 with the form as originally filed and require explanation as to why such revision was required and whether such revisions are justified or not.

GST Legal Snippets – From the High Courts

ITC can be availed if TRAN-1 could not be uploaded within stipulated time due to system error.



*Kerala Agencies Vs State Tax Officer
[Kerala High Court]*

Issue: Whether ITC will be available in case TRAN-1 could not be uploaded in stipulated time due to system error.

Ruling – In view of CBIC Circular 39/13/2018-GST dated 03.04.2018, assessee were permitted to apply to the second respondent viz. Nodal Officer for resolution of the issue. The petitioner may, therefore, apply to the nodal officer within two weeks and who will (within a week thereafter) look into the issue and facilitate the petitioner's uploading FORM GST TRAN-1 without reference to the time-frame. If the uploading is not possible for reasons not attributable to the petitioner, the authority will also enable them to take credit of the input tax available at the time of migration.

Bank account of Directors of the company cannot be provisionally attached.

*H M Industrial Pvt. Ltd. Vs Commissioner,
CGST & CCE [Gujrat High Court]*

Issue: Whether bank account of directors of the company can be provisionally attached u/s 83 of the CGST Act, 2017.

Ruling – If liable amount cannot be recovered from the private company, the directors of the company do not ipso facto become liable to pay such amount and it is only if the director fails to prove that nonrecovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company, can the provisions u/s 89 of the CGST Act, 2017 be invoked. Respondents are directed to forthwith release the attachment of the following bank accounts.

GST – Advance Rulings



As per Section 97(1) of the Central Goods and Services Tax Act, 2017 ('CGST Act'), an applicant desirous of obtaining an advance ruling may make an application to the Authority for Advance Ruling ('AAR')

The broad objective for setting up a mechanism of Advance Ruling is to provide certainty in tax liability in advance, in relation to an activity proposed to be undertaken by the applicant and reduce litigation. Under GST, advance ruling can be obtained for a proposed transaction as well as a transaction already undertaken by the applicant

It may be clarified that an Advance ruling is binding only on the applicant who has sought the advance ruling and on the concerned officer or the jurisdictional officer in respect of the applicant

However, the Rulings help us to ascertain the mind-set and interpretation that may be adopted by the Department. Accordingly, we have discussed a few Advance rulings issued in the past months in the subsequent slides

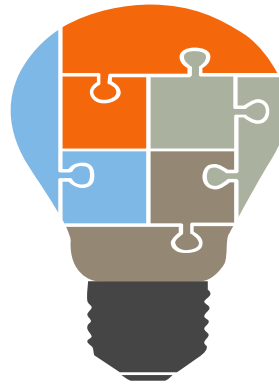
Ruling of Authority for Advance Ruling

Tewari Warehousing Company Pvt. Ltd. [Kolkata AAR]

Issue: Whether ITC is admissible on the inward supplies for the construction of a warehouse using pre-fabricated technology.

Ruling –

- The warehouse cannot be relocated by unfixing the pre-fabricated structures alone. The dismantling of the floor, which is the most important component of the warehouse, is not possible without substantial damage to the foundation.
- The warehouse being constructed is, therefore, an immovable property, and the input tax credit is not admissible under section 17(5) (d) of the GST Act.



Indian Institute of Science Education and Research [Odisha AAR]

Issue: Whether GST Rate under notification 45/2017-CTR and 47/2017-IGST(R) is applicable on imported goods.

Ruling – Concessional rate of GST @5% under notification 45/2017-CTR and 47/2017-IGST(R) is applicable to supply of all specified goods mentioned in the notification, whether imported or indigenous

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Custom updates

➤ Notifications and Circulars

Customs – Tariff Notifications

Notification No.	Implications
4/2019	Permits temporary importation of aircrafts, for the purposes of participation in Aero Show organised by the Central Government, without furnishing a bank guarantee or cash deposit.
5/2019	As a retaliatory step to the terror Act, this Notification imposes basic customs duty of 200% on all goods originating in or exported from Pakistan.
6/2019	Postpones the implementation of increased customs duty on specified imports originating in USA from 2nd March, 2019 to 1st April, 2019.



Customs – Non-tariff Notifications

Changes to the revised All Industry Rates of Duty Drawback

New rates were notified in December vide Notification No. 95/2018-Cus (NT) d.t 06.12.2018

The said Notification has been amended to change/specify Drawback rates for certain products



- Rate enhanced for certain items
- Rates rationalised for silver jewellery/articles covered under Chapter 71
- new tariff items have been created to allow better differentiation of export product

Customs Brokers Licensing Regulations, 2018

- Regulations were notified in May 2018
- Amendment made to specify that exam will be conducted by NACIN in August every year



New formats of Courier Shipping Bill and Courier Bill of Entry specified 2010



Date of coming into force of **Sea cargo and Manifest and Transhipment Regulations, 2018** postponed from 1st March 2019 to 1st August 2019.



Customs – Anti Dumping Notifications

Anti-dumping Notifications

7/2019	Imposes definitive anti-dumping duty on imports of "Non-Plasticized Industrial Grade Nitrocellulose Damped in Isopropyl Alcohol having Nitrogen content in the range of 10.7% to 12.2%" originating in or exported from Brazil, Indonesia and Thailand.
8/2019	Related to Anti-dumping duty imposed on Specific exporters
9/2019	<ul style="list-style-type: none"> • POSCO Daewoo Corporation • Hyosung Advance Materials Corporation (HAMC)
10/2019	<ul style="list-style-type: none"> • Zhejiang Guxiandao Polyester Dope Dyed Yarn Co., Ltd
11/2019	Rescinds Notification imposing Anti-dumping duty on Peroxosulphates (Persulphates), originating in, or exported from People's Republic of China and Japan
12/2019	Imposes definitive anti-dumping duty on "Textured Tempered Coated and Uncoated Glass" originating in or exported from Malaysia



Customs – Clarifications

Turant Customs – Ease of Doing Business

Next generation reform for Ease of Doing Business to be introduced

Self-registration

- Importers will be able to register the goods online (ICEGATE portal) after the goods have arrived (and not after payment of duty, as at present).
- reduce the time of clearance

Customs Compliance Verification (CCV) procedure prescribed

Rescinding old circular

Board Circular No. 195/95 which provided for warehousing grant of in-bond manufacture facility under Section 65 of Customs Act has been rescinded

Printing of **Advance Authorisations / Export Promotion Capital Goods (EPCG) Authorisations** on security paper by DGFT for authorisations issued with EDI ports to be discontinued



Clarification issues in relation to matters related to carriage of coastal cargo from one Indian port to another port in foreign going vessels/coastal vessels through foreign territory.

Carriage of coastal cargo

तुरंत !

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FTP updates

- Notifications, Public Notices,
- Circulars & Trade Notices.

FTP Public Notices and Circulars

Subject	Implications
Amendment in the ANF 3D for E commerce exports	The format of ANF3D for claiming MEIS benefits under Para 3.05 (i.e. Export of goods through courier or foreign post offices using e-Commerce) of the FTP 2015-20 has been changed for the exports made since 01.04.2015.
Activation of new ANF 3D	<p>E-com module for applying MEIS for E-Commerce has been made operational.</p> <p>There is no application fees for applying MEIS for E-Commerce.</p> <p>However, late cut provisions will be applicable.</p>
Amendments in the Appendix 3B, Table 2 of the Merchandise Exports from India Scheme (MEIS)	<ol style="list-style-type: none"> 1. The HS code 72251900 is amended to 72251910. <ul style="list-style-type: none"> • Description for HS Code 72251910 is Flat-rolled Products Of Silicon Electrical Steel Other Than Grain Oriented: Hot Rolled. • MEIS is applicable for the exports made on or after 22.09.2016. • MEIS rate is 2%. 2. The HS code 72251900 is amended to 72251920. <ul style="list-style-type: none"> • Description for HS Code 72251920 is Flat-rolled Products Of Silicon Electrical Steel Other Than Grain Oriented: Cold Rolled. • MEIS is applicable for the exports made on or after 22.09.2016. • MEIS rate is 3%.



FTP Circulars and Trade Notices

Subject	Implications
<p>Clarification on eligibility of Exports made from SEZ/EOU units on behalf of the DTA units</p>	<p>It is clarified that the MEIS benefits for the exports which are made directly from EOU / SEZ unit on behalf of the DTA unit, will be eligible to only one unit i.e. either to EOU/SEZ unit or to DTA unit.</p> <p>It is further clarified that the MEIS benefits may be availed by any unit on the basis of disclaimer certificate.</p>
<p>Discontinuation of physical copy of Advance /EPCG Authorizations issued from 01.03.2019 onwards, for EDI ports</p>	<p>To improve ease of doing business and online transactions, it has been decided to discontinue issue of physical copy of Advance / EPCG Authorizations issued on or after 01.03.2019 by Regional Authorities (RA) for EDI ports.</p> <p>Procedure for the application will be as it is, however RA will not issue any hard copy of the Authorization. RA will continue to examine the application as per current practice and approve the same. After the approval RA will intimate the applicant to take the print out of respective Authorization from DGFT website.</p>



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Contact us



ANY QUESTIONS?

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