

Tax Bulletin

Update publication for our clients

November, 2018



Vijaywargi Khabiya & Saoji

Chartered Accountants

FOREWORD

For us, October 2018 has been embedded as a milestone in our journey as we have moved to our new office in Civil Lines, Nagpur. We take this opportunity to thank you once again for being a part of our journey!

On the other hand, for the CA Community, October 2018 marks the virtual end of Financial Year 2017-2018 with finalization of GST returns for September 2018 as well as submission of Income Tax Returns. However, the completion of the first GST cycle still requires filing of GST Annual Return and GST Audit.

This herculean task requires trade, industry and GST practitioners to ensure that they are abreast of the latest developments and updates on the taxation front.

Accordingly, we have compiled the **6th Edition of the Tax bulletin** in relation to Direct Tax (i.e. Income Tax) and Indirect Tax (i.e. GST, Customs law and FTP).

Warm Regards,

Team VK&S

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- 2 Goods & Services Tax ['GST']
- 3 Customs
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Income Tax updates

- Dividend Distribution Tax on Deemed Dividend
- Long Term Capital Gain Bonds
- Legal Snippets

Dividend Distribution Tax on Deemed Dividend

Dividend is any advance or loan provided by a company to its shareholders. It is applicable to all corporate entities in which the public is not substantially interested. Section 2(22)(e) of the Income Tax Act deals with the concept of deemed dividend.

- ❖ Finance Act 2018 has amended the taxation of Deemed Dividend bringing special rate of Dividend Distribution Tax.
- ❖ Now, Dividend Distribution Tax @ 30% needs to be paid on deemed dividend in terms of Section 2(22)(e) of Income Tax Act, 1961. Earlier to this amendment, such amount was taxable in the hands of recipient.

Due precautions needs to be taken by closely held companies while advancing any loan to shareholders



Long Term Capital Gain Bonds



❖ Key amendments:

- Long Term Capital Gain (LTCG) arising out of transfer of **Land or Building or Both** are eligible for investment in Bond. Earlier, any LTCG was allowed to be invested.
- Holding Period of Bonds has increased to **five years** from three years .
- Currently such bonds are issued by National Highways Authority of India and Rural Electrification Corporation Limited
- Maximum amount of Rs 50 Lacs can be invested in such bonds which carry interest in the range of 5.50% to 5.75%. Such interest will be taxable.

Finance Act,
2018 has made
major
amendments in
Section 54EC

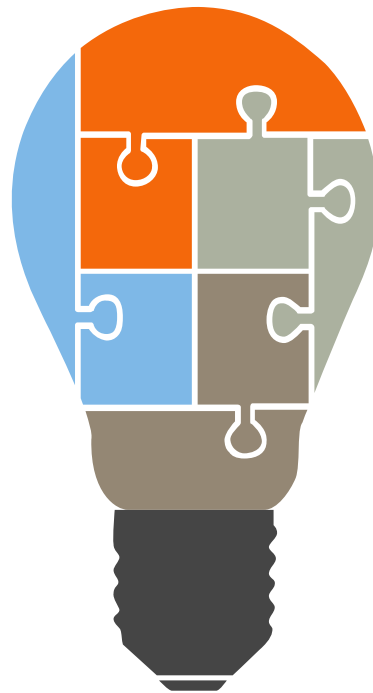


Tax Payers having
LTCG from Sale of
Shares/Securities
will no longer be
able to take
benefit of this
section

Legal Snippets

Investment of Long Term Capital Gain in triplex flats, where all three flats are situated at three different floors, is eligible for deduction u/s 54F

*[Amirali Akarbarali Engineer vs ACIT Ward 24(1), Mumbai 2018
TIOL – 2001-ITAIT-MUM]*



AO can not make disallowance u/s 14A read with Rule 8D with respect to exempt income earned without recording satisfaction in writing

[NINE DOT NINE MEDIAWORX PVT LTD vs ITO (2018) TIOL-1589-ITAT-DEL]



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GST updates

- Notifications and Circulars
- GST Advance Rulings
- Legal Snippets

Due dates for GST returns



GSTR- 3B

For filing GSTR-3B of September 2018, time limit extended up to **October 25, 2018**.

Last date for availing ITC of invoices pertaining to July 2017-March 2018 is last date for filing of GSTR-3B – *Press Release*



ITC - 04

- ITC - 04 is the declaration to be filed by manufacturers with details of inputs/capital goods sent and received from job workers
- For July 2017 to September 2018 time to file ITC -04 extended till **December 31, 2018**.



GSTR- 10

- This is the final Return prescribed for person whose registration is cancelled
- Ideally, this return is to be filed within 3 months from cancellation
- For registration cancelled on or before the 30th September 2018 return to be filed by **December 31, 2018**

Exports - Refund related amendment and clarification

Provision for Refund under GST

Under GST, exporters have below options:

(1) to charge IGST on exports and claim refund of tax

OR

(2) not charge GST on exports under LUT/ Bond and claim refund of Input Tax Credit

Restriction of Refund under GST

Rule 96 (10) of the CGST Rules, does not allow refund of IGST paid on exports where the exporters avail benefit of :

- Procurements under Advance Authorization / EOU / EPCG Scheme
- Procurements from Merchant exporter at reduced rates

Various amendments / clarifications pertaining to eligibility of exporter to claim refund of IGST paid on exports have been issued. Net effect is summarized below:

| Particulars | Up to October 9, 2018 | October 9, 2018 onwards |
|---|-----------------------|-------------------------|
| Domestic procurement as deemed export by AA/EOU | Not eligible | Not eligible |
| Imports by AA/ EOU | Eligible | Not eligible |
| Domestic procurement as deemed export by EPCG holder | Not eligible | Eligible |
| Imports by EPCG holder | Eligible | Eligible |
| Procurement of merchant exporter at reduced rate of GST | Not eligible | Not eligible |

Benefit to EPCG license holders

Clarifications – Casual taxable person, refund of Cess and cancellation of registration



Casual taxable person

- **Advance Tax** – Needs to be deposited while taking registration as a **casual taxable person**. Amount should be the estimated **net tax liability** (i.e. after considering effect of eligible ITC)
- For **long running exhibitions > 180 days** registration as casual taxable person cannot be taken. **Normal registration to be taken:**
 - Exhibition allotment letter/consent letter will be considered as proof for place of business.
 - Once exhibition is over, registration can be surrendered



Refund of Cess

Eligible UN and specified international organizations, foreign diplomatic missions or consular posts in India, or diplomatic agents filing for refund of GST **also eligible to get refund of Compensation Cess**

Cancellation of GST Registration



- Application for cancellation is to be made within **30 days** from event triggering cancellation. This 30-day deadline is to be liberally interpreted.
- Upon application, the proper officer must accept the application within 30 days, unless the application is incomplete or in case of cancellation due to merger/ transfer where the new entity has not registered.
- Requirement to reverse ITC of stock is not mandatory while filing of cancellation application - it will automatically settle after filing of FORM GSTR-10 (Final Return)
- Cancellation does not affect the liability of the taxpayer to pay any dues under the GST law
- Consequences of not filling FORM GSTR-10 within due date provided

Return of time expired drugs/medicines



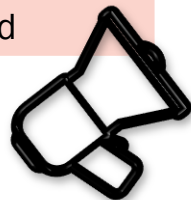
In pharmaceutical sector, the supply chain of return of time expired drugs or medicines is as under:
 Retailer → Wholesaler → Manufacturer
 For such returns, 2 options are available:

Option A - Return under invoice

Fresh invoice for return supply with value taken as price paid at the time of purchase may be issued

The recipient of such return supply shall be eligible to avail ITC

Where manufacturer destroys the expired goods, ITC availed on return supply needs to be reversed



Option B - Return under credit note

- Wholesaler / manufacturer to issue credit note.
- Retailer to return goods by issuing a delivery challan.

The time limit of issuing credit note is September of next financial year or filling date of annual return whichever is earlier.

- If goods are returned within time limit:
 - Credit Note can be issued
 - Tax liability can be adjusted by supplier
- If goods are not returned within time limit:
 - Credit Note can be issued but liability cannot be adjusted



From the manufacturer's perspective, it may be beneficial to follow option of treating return as fresh supply:

- Credit note option is time bound whereas return under fresh invoice may be done anytime.
- Reversal of ITC in case of goods destroyed by manufacturer is easier in case of a fresh invoice. In case of credit note, reversal of ITC will have to be done on ITC availed at the time of manufacture

Amendment to CGST Rules


Details of GST practitioner Exam notified

- Exam to be conducted by National Academy of Customs, Indirect Taxes and Narcotics
- Exam to be held twice a year
- Qualifying marks are 50%
- Other details such as registration, syllabus, declaration of result, etc. also notified.



Recovery of dues under pre-GST laws

- Summary of orders to be maintained on online portal
- Recovery to be made under GST Acts unless made as per pre-GST laws
- Confirmed demand to be posted in Electronic Liability Register



Joint Commissioner (Appeals) may be appointed to hear appeals against OIO passed by Assistant Commissioner

Minor changes made in registration form for GST Registration



Other changes / clarifications

Authority for Advance Ruling notified

The Appellate Authority and Authority for Advance Ruling notified for certain Union Territories



- Andaman and Nicobar Islands
- Chandigarh
- Daman and Diu
- Dadar and Nagar Haveli
- Lakshadweep

TDS not applicable

TDS provisions not applicable to **Ministry of Defence** other than certain specified offices (List of 30 offices notified)

Deficiency Memo – Refund Claim

Once deficiency memo is issued, re-credit in the electronic credit ledger is not required to be carried out and the rectified refund application would be accepted by the jurisdictional tax authorities with the earlier ARN itself



ISD excess credit

- Units who receive excess ITC from Input Service Distributor may deposit the excess amount voluntarily along with interest in FORM GST DRC-03.
- If recipient does not come forward voluntarily, proceedings may be initiated in FORM GST DRC-07.
- ISD would also be liable to the general penalty

GST Legal Snippets – From the Supreme Court and High Courts

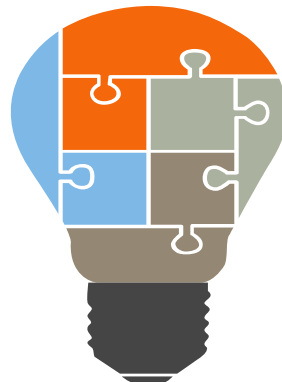
Union of India & Anr. V. Mohit Mineral Pvt. Ltd. – (Supreme Court)

Issue: Whether GST Compensation to States Act is a valid law? Whether set -off of Clean energy Cess is available?

Ruling:

- The **Compensation to States Act, 2017** is **not beyond the legislative competence** of the Parliament. It is not a colourable legislation
- Levy of Compensation to States Cess is an increment to goods and services tax which is permissible in law.
- The petitioner is not entitled for any set off of payments made towards Clean Energy Cess in payment of Compensation to States Cess.

Also followed in *FC Agarwal Coal Pvt. Ltd. v. Union of India* (Ahmedabad High Court)



O/E/N INDIA LTD AND ANOTHER v. UNION OF INDIA AND OTHERS

Issue: Petitioner seeks directions to allow them to resubmit/rectify its form **TRAN-1** and direction was sought as the petitioners had, by mistake, keyed in incorrect figures of CENVAT credit available as on 1 st July 2017 to be utilized under the new GST regime

Ruling: Petitioners would have to file representation to CBIC and the same would be considered for verification and bonafides of the claim made

CBIC to be approached for loss in credit due to erroneous filing of TRAN-1

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 Appellate Authority for Advance Ruling



M/s CALTECH
POLYMERS PVT
LTD
(Appellate Authority,
Kerala)

Upheld the decision of the AAR that **supply of food items to employees** for consideration in canteen run by company would come under the definition of "**supply**" and be taxable under GST



GKB Lens PVT
LTD
(Appellate Authority,
West Bengal)

Advance ruling modified to clarify that in case of supplies between distinct /related persons, valuation may be done as per second proviso to Rule 28 and **may be invoiced at zero value but ITC in such cases will not be available to the recipient**

GIRIRAJ
RENEWABLES PVT
LTD
(Appellate Authority,
Maharashtra)

Supply of turnkey EPC contract falls within the definition of 'composite supply' and since it is in relation to immovable property, it qualifies as works contract and will be taxed accordingly.

AAR – Payment of GST by Agent and supply of input through pipeline

NBCC India Limited (Delhi)

Issue: Whether the applicant is liable to pay GST for selling commercial super built up area on behalf of Ministry of Urban Affairs ('MoUA'), Govt. of India

Ruling – Applicant qualified as an agent of MoUA and was liable to pay GST. MoUA did not qualify as 'Governmental Authority' and therefore GST was payable. Activity does not relate to any function entrusted to the Municipality



Bharat Petroleum Corporation Ltd (Kerala)

Issue: whether gas and raw water etc. can be sent by applicant to M/s Prodair Air Products Pvt. Ltd. without payment of GST under job work provisions.

Ruling: Transport of Inputs from principal through pipe lines to the premises of the job worker for processing as well as return of processed goods after job work to the principal cannot be treated as 'taxable supply' - such manufacture of Industrial gases amounts to job work as defined u/s 2(68) r/w section 143 of the CGST/KSGST Act



Custom updates

- Notifications and Circulars

Customs – Non-tariff Notifications



Implementation of Sea Cargo Manifest and Transshipment Regulations, 2018 further deferred up to March 1, 2019



Earlier the date was 1 November 2018



Fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Sliver



Common Adjudicating Authority appointed by DGRI for specific SCN

Customs – Tariff Notifications

| Notification No. | Implications |
|------------------|--|
| 74/2018 | Basic Customs Duty on other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network and Base Stations increased to 20% with effect from October 12, 2018 |
| 75/2018 | Amends Notification No. 57/2017 dated 30th June, 2017 which provides for partial exemption of BCD to certain electronic goods. Optical transport equipment, combination of one or more of Packet Optical Transport Product or Switch (POTP or POTS), Optical Transport Network (OTN) products and IP radios will face customs duty of 20% instead of 10% now. |
| 76/2018 | Amends Notification No. 24/2005 dated 1st March, 2005 which provides for exemption from whole of BCD to certain goods. |

Customs duty on several telecom equipment increased and duties imposed on printed circuit boards used in such equipment with a view to curb non-essential imports to address current account deficit as also boost 'Make in India'.



Customs – Anti Dumping Notifications

| Notification No. | Implications |
|------------------|--|
| 50/2018 | Levies definitive anti dumping duty on nylon filament yarn imported from Vietnam and European Union. Applicable for 5 years starting October 6, 2018 |
| 51/2018 | Amends Notification No. 23/2103 dated the 10th October, 2013 to extend the levy of anti-dumping duty on the imports of "Ductile Iron Pipes" originating in or exported from China PR. To remain in force up to April 9, 2019 |
| 52/2018 | Seeks to rescind Notification No. 58/2012-Customs (ADD) dated 24th December, 2012. Accordingly, Anti-Dumping Duty on imports of the 'Phthalic Anhydride' originating in or exported from Korea RP, Taiwan and Israel stands withdrawn. |
| 53/2018 | Seeks to levy definitive anti dumping duty on Flax yarn below 70 lea count imported from China PR. Applicable for 5 years starting October 19 , 2018 |
| 54/2018 | Seeks to impose definitive anti-dumping duty on the imports of "Straight Length Bars and Rods of Alloy Steel" originating in or exported from China PR. Applicable for 5 years starting October 18, 2018 |



Customs – manufacturing or other operations undertaken in bonded warehouses



Procedure to be followed in cases of manufacturing or other operations undertaken in bonded warehouses

Format of application prescribed - The form of has been so designed that the process for seeking grant of license as a private bonded warehouse as well as permission to carry out manufacturing or other operations stands integrated into a single form.

Format for Records to be maintained - Records to be maintained in prescribed format, which combines data elements required under various regulations.

Format of triple duty bond prescribed – As per Section 59 of the Customs Act

Where resultant product is exported –

Shipping bill to be filed and GST invoice to be issued

Procedure prescribed under the Warehoused Goods (Removal) Regulations 2016 for transport of goods from the warehouse to the customs station of export to be followed

Where resultant product is cleared for domestic consumption

GST will be payable and invoice will have to be issued

Import duties will have to paid

Procedure also prescribed for waste and procurements.

Customs – Clarifications / Instructions

IGST Refund v. Duty Drawback

Cases where IGST refund have not been granted due to claiming higher rate of drawback or where higher rate and lower rate were identical cannot be reopened where exporters have availed the option voluntarily



Guidelines issued for better storage, management and handling of seized / confiscated goods

Cruise Tourism – Applicability of Customs



- Cruise vessel calling on an Indian Port will be liable to pay Customs Duty on liquor and other consumed goods during its transit/stay in India
- Mere passage of ship through Indian waters will not attract Customs Duty
- Domestic passenger sailing on domestic sector will be required to pay duty on disembarkation

Amendment in Reward Guidelines

- Guidelines for grant of **Reward to informers and Government Servants, 2015** made **applicable to GST enactments**
- Officers of other government agencies who play a role in detection of cases to be at par with CBIC officers
- Constitution of Apex Reward committee amended



Customs – Clarifications / Instructions

Export refund facilitation

- Board has extended the rectification facility to Shipping Bills filed up to 15.11.2018 where there is mismatch in invoice details appearing in GST Returns and shipping bill.
- Facility provided in ICES for the processing and sanctioning of the eligible differential IGST refund occurring due to specified errors.
- Facility available only for cases where Shipping Bills have been filed till 15.11.2018.
- Exporter is required to submit a duly filled and signed Revised Refund Request (RRR) to the designated AC/DC [Format of RRR attached with the Circular]
- Facility can be used only once for each eligible SB to sanction the revised IGST amount



Electronic Sealing

Implementation deferred till January 1, 2019 in order to enable establishment of infrastructure and procurement of seals

Circular 19/2018-Customs dated 18th June 2018 was issued to introduce electronic sealing for deposit in and removal of goods from Customs bonded Warehouses.

It is clarified that RFID seals are to be procured from the destination warehouse.



Instruction issued that e-seals are classifiable under HSN code 8309 9030

4 FTP updates

- Circulars & Trade Notices

FTP Trade Notices and Circulars

| Subject | Implications |
|---|--|
| <p>Eligibility of firms providing educational services to NRI students under SEIS</p> | <p>It is clarified that the educational services provided to NRI students will be eligible under the SEIS scheme.</p> <p>However, services given to Indian Students sponsored by NRI's will not be eligible for SEIS, since such category of students can't be considered as foreign consumers.</p> <p>Educational Services covered as under SEIS Scheme is as under:-</p> <ul style="list-style-type: none"> A. Primary education services; B. Secondary education services; C. Higher education services and D. Adult education. |
| <p>Amendment in SION A-1486-regarding</p> | <p>Description of import item 1 is SION A-1486 is amended from Lauryl Alcohol to Lauryl Alcohol / Lauryl Myristyl Alcohol.</p> |



About VK&S



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Contact us



ANY QUESTIONS?

VIJAYWARGI KHABIYA & SAOJI
CHARTERED ACCOUNTANTS

3rd Floor, MG House,
Rabindranath Tagore Road,
Nagpur-440001
Maharashtra India

Phone: 0712 2522020

info@cavks.in

www.cavks.com

