





# Tax Bulletin

Update publication for our clients

## December, 2019

-  Income Tax
-  Goods & Services Tax ['GST']
-  Customs
-  Foreign Trade Policy ['FTP']



**Vijaywargi Khabiya & Saoji**  
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## FOREWORD

Maharashtra witnessed one of the most nail-biting election saga with no dearth of drama and theatrics. Now, that we finally have a Government in Maha Vikas Aghadi, here's hoping that State functions smoothly and democratically.

Amidst all the political show in Maharashtra, the Central Government extended further relief to businesses and has not only revised the due date for GST Annual Return for FY 2017-2018 to December 31, 2019 but has also simplified the form. The Government also issued certain clarifications pertaining to the job-work industry and has also implemented 100% e-filing of GST Refunds. The previous month also witnessed one of the highest GST collection since its inception in July 2017.

*Caution: E-way Bill generation will be blocked from December 1, 2019 for consecutive non-filers of GST Returns.*

With a snippet of the above the updates and more, we hope that this **19<sup>th</sup> Edition of the Tax bulletin** in relation to Direct Tax (i.e. Income Tax) and Indirect Tax (i.e. GST, Customs law and FTP) will be of value to all those interested in keeping abreast with tax developments.

Warm Regards,

**Team VK&S**

1

# Income Tax updates

- Recent Updates
- Legal Snippets

# Updates and Legal snippets

## Disallowance U/s 14A of Income Tax Act, 1961

- Section 14A (introduced by the Finance Act of 2001 w.e.f. 1-4-1962) disallows expenses incurred for earning exempt income (for example agricultural income).
- Section introduced after Supreme Court decision in **Rajasthan Warehousing Corporation [242 ITR 450 (2000)]**, where it was held that when an assessee had a composite and indivisible business which had elements of both taxable and non-taxable income, the entire expenditure in respect of the said business was deductible and, in such a case, the principle of apportionment of the expenditure relating to the non-taxable income did not apply.
- **Share in Profit from Firm** is an exempted item under Section 10(2A) - In **Sudhir Dattaram Patil Vs. DCIT, [2 SOT 678 (Mum.)]**, the court held that any expenditure towards the earning of such income shall be disallowed.
- Notification No. 45/2008, dated 24.03.2008, Rule 8D was introduced which gives the method for determining amount of expenditure in relation to income not includible in total income.

## Tips for planning

- To avoid unreasonable and *ad hoc* disallowance by the Assessing Officer, the assessee can disallow in its computation of income, a reasonable amount of expenditure considering the following factors:
  - Quantum of investments made from which exempted income has been earned
  - Quantum of dividend income received during the year
  - Percentage of time spent and salary of an Administrative officer and any other manager for making such investments and earning of such income
- Even where assessee claims that no expenditure has been incurred in relation to income, which does not form part of total income, AO is required to verify correctness of such claim before invoking rigours of Rule 8D

## Legal Snippets

Where receipt of cash from relatives & its repayment has been duly explained by presenting a reasonable cause, then penalties u/s 271D & 271E are not leviable

**[ Shri Jogendra Singh Vs ACIT  
2019-TIOL-2395-ITAT-JAIPUR ]**



Brokerage and commission expenditure can not be disallowed merely because letter sent to parties u/s 133(6) remained unanswered and bills issued by payees are not submitted if TDS is duly deducted and payment is proved from books of account of parties and from bank statement

**[Vatika Limited Vs DCIT Circle 20, New Delhi  
2019-TIOL-2388-ITAT-DEL ]**

2

## GST updates

- Notifications, FAQ and Press Release
- Legal Snippets
- GST Advance Rulings

# GST Notifications

## Due Dates - For J&K registered persons

All due dates  
aligned

Month	GSTR-1		GSTR-3B	GSTR-7
	Turnover < 1.5 Crore	Turnover > 1.5 Crore		
July 2019	Quarterly GSTR-1 to be filed by November 30, 2019	November 30, 2019	November 30, 2019	
August 2019		November 30, 2019	November 30, 2019	
September 2019		November 30, 2019	November 30, 2019	
October 2019		-	November 30, 2019	November 30, 2019

## J&K – Transition Plan

Notification issued to provide transition procedure for GSTIN holders in State of Jammu & Kashmir who are required to take obtain GSTIN for J&K Union Territory. Highlights are as under:

- Tax period specified
- Procedure to transfer ITC from GSTIN of J&K State to GSTIN of J&K Union Territory prescribed

## Simplification of Annual Return / Reconciliation Statement

### Due Dates:

FY 2017-2018 – 31.12.2019

FY 2018-2019 – 31.03.2020

- Various fields of the Forms GST-9 & 9C made optional
- Taxpayers not required to provide split of ITC availed on inputs, input services and capital goods
- HSN level information of outputs or inputs, etc. also not mandatory
- Option to fill net details of credit/debit notes and amendments
- Option to fill all( exempt, nil rated and non GST) in exempt category
- certification words “true and correct” replaced by “true and fair”



## Job work services in relation to Bus Body Building

Scope  
widened

Explanation inserted in Notification to state that

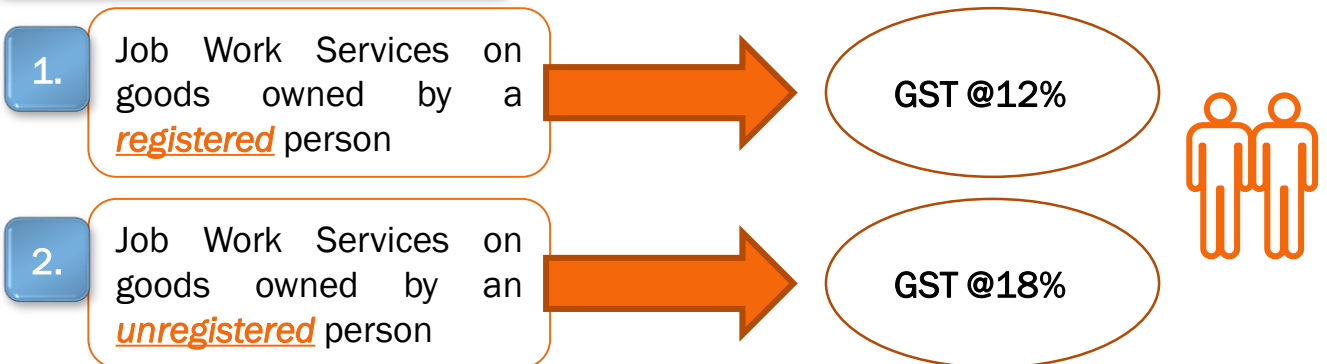
“**Bus Body Building** shall include – Building of body on chassis of any vehicle falling under chapter 87 in the First Schedule to the Customs Tariff Act, 1975”

# GST Circulars

## Restriction in availment of ITC as per Rule 36(4)

- **A taxpayer can avail ITC only for the amount reflecting in GSTR-2A plus 20% of the said amount**
- Restriction applicable only on which credit is availed after October 10, 2019
- Restricted ITC has to be availed on self-assessment basis and will not be auto-calculated on the portal;
- Since GSTR-2A keeps getting updated, restricted ITC needs to be calculated on the basis of GSTR-2A as available on the due date of GSTR-1 i.e. 11th of every month;
- Restriction does not apply to ITC in respect of imports, RCM , ISD Credit, etc.
- Balance ITC can be claimed in subsequent months as and when details are uploaded by suppliers.

## Job Work Services



## Blocking of E-way Bill generation facility

- **Blocking/un-blocking of E-Way Bill generation made effective from November 21, 2019 and is being implemented from December 1, 2019 on the portal**
- GSTIN will be blocked for generation of e-way bill either as consignor or consignee in case GSTR-3B for the last 2 successive months has not been filed;
- Upon filing the return, the GSTIN will get automatically updated as 'un-block' within a day in the e-Waybill system

# GST Circulars

## Document Identification Number

- ❖ Mandatory requirement of quoting DIN on all communication sent by officers of CBIC to taxpayers or other concerned persons. Communications include search authorization, summons, arrest memo, inspection notices and letters issued in the course of any enquiry.
- ❖ **Effective From:-** November 8, 2019
- ❖ **Exception:-** 1. Technical difficulties in generating DIN  
2. When communication required to issue is short notice or urgent situations **AND** authorized officer is outside the office  
*However, in such situations, reasons are to be recorded in writing and the communication must contain that it is issued without a DIN*
- ❖ **Effect of no mention of DIN :** Any communication without DIN is invalid

## Clarification on optional filing of Annual Return for small taxpayers

- ❖ A taxpayer/ composition taxpayer, may, at their own option file FORM GSTR-9/9A for 2017-2018 & 2018-2019 before the due date
- ❖ Common portal shall not permit furnishing of FORM GSTR-9/9A for the said period after the due date
- ❖ Irrespective of the time and quantum of tax which has not been paid or short paid, the taxpayer can self-ascertain such tax amount and pay it through FORM GST DRC-03

## GST Refunds to be fully electronic

w.e.f. 26-9-2019

Changes also made  
in Refund Form  
RFD -01

- ❖ Procedure laid down for electronic submission and processing of refund applications in supersession of earlier Circulars;
- ❖ Any refund claim for a tax period may be filed only after furnishing all the returns in FORM GSTR-1 and FORM GSTR-3B
- ❖ ITC claimed by applicant shall be accepted subject to the applicant giving an electronic undertaking to the effect that the amount of refund sanctioned would be paid back to the Government with interest in case it is found subsequently that the requirements of Section 16(2)(c) r/w Section 42(2) have not been complied with
- ❖ Applicant may file a refund claim for a tax period/quarter or by clubbing successive tax periods/quarters but cannot spread across different financial years
- ❖ Once an application has been submitted afresh, pursuant to a deficiency memo, the proper officer will not serve another deficiency memo unless the deficiencies pointed out in the original deficiency memo remain un-rectified;
- ❖ Circular lists down all statements/declarations/undertakings/certificates and other supporting documents to be provided along with the refund application



# GST – Advance Rulings



*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 recently.*

*M/s Maarq Spaces Pvt Ltd [ Karnataka AAR]*

Joint Development Agreement

**Issue:** In case of Joint Development Agreement, whether the activity of development and sale of land by Applicant would attract tax under GST

**Ruling –** As per the agreement, the Applicant is acting only as a developer of the land and does not hold any title to the land. The Applicant has no right over the land. The land developer is solely responsible for acquiring required sanctions from the concerned authorities. Applicants are only service providers in the whole process, be it development of the raw land into residential plots or their sale after the development, therefore, entire amount received by them is liable to be taxed under GST.

Amount received for bonus of persons

Bonus paid or payable to security personnel by State Government through third parties who deploys such security personnel will attract GST. This is because such an agreement does not create a master and servant relationship between the recipient of service (State Government) and the security personnel - *Ex Servicemen Resettlement Society*

Pure Agent

'Pass through expenses' for which Applicant receives amounts from foreign clients and passes it on to the local research institutions will not attract GST since Applicant acts as a pure agent  
*Parexel International Clinical Research Pvt Ltd*



Liquidated Damages

Liquidated damages and other penalties like milestone penalties are chargeable to GST @18%. Time of supply would be defined not when the delay is occurring but the liability of payment of these liquidated damages by the contractor  
*Rashtriya Ispat Nigam Ltd*

# Appellate Advance Rulings and Legal Snippet

## Lions Club of Poona Kothrud [Maharashtra AAAR]

Club Membership

**Issue:** Respondent is an association of person ('Club') who organizes Leadership program exclusively for it's members. **Whether Amount collected by Lions Club from its members and organizing Leadership Program constitutes as service?**

### Ruling –

- Membership fees used to the extent of administrative purposes to be **exempt**
- Amount collected by the Club as registration fees for conducting various programs/workshop **leviable to GST**

## M/s Penguin Trading and Agencies Ltd [Odisha AAAR]

Royalty Fees for Mining

**Issue:** Applicant engaged in the supply of mining and iron ore has been granted a lease from the Odisha State Government for extraction of iron ore. **Rate of GST to be paid by the Applicant under RCM on Royalty paid to the State Government during the period 01.07.2017 to 31.12.2018.**

- Services received by the Applicant not “leasing of goods” but “Licensing Services for the right to use minerals including its exploration and evaluation”
- Amendments in the Notification merely clarified the position and makes explicit what was implicit. Therefore, licensing services for the right to use minerals including its exploration and evaluation received by the Applicant is taxable @18% during 7/2017 to 12/2018

## Ashish Ghosh [Odisha AAR]

Filling foundation is works contract

- West Bengal AAAR holds that activity of filling in compound, tank, lowland, etc. with silver sand and earthwork in layers, including spreading and compacting is a 'works contract' service
- Rejects appellant's plea that the principal supply is supply of goods i.e. silver sand and the service portion involved therein like filling the designated areas, compacting and levelling the same are ancillary to principal supply; Dismisses appellant's contention that because 90% of the value of supply is that of supply of sand, it will be principal supply and tax rate ought to be at the rate of tax of sand;

## Statement of Family Members : Gujarat High Court

- Gujarat HC holds that Section 67(2) of the Act empowers the authorised officer to search and seize the goods, documents or books or things.
- However, s.67(2) does not empower the officer concerned to record statements of family members through force or coercion or to record their conversations in their mobile phones.
- It is not permissible for the authorised officer to use coercive measures against family members to find out the whereabouts of the taxable person.



3

# Customs updates

- Notifications
- Circulars

# Notifications & Circulars

## Non- Tariff Notifications

Amendment to All Industry Rates of duty drawback effective from 16.11.2019 for items of jewellery notified

## Anti-dumping Duty ('ADD') Notifications

43/2019	Rescinds Notification which had prescribed provisional assessment on export of jute products from Bangladesh by specified exporters
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## Circulars

### Mandatory DIN

w.e.f. 8-11-2019

Generation and quoting of Document Identification Number (DIN) on any communication issued by the officers of the Central Board of Indirect Taxes and Customs (CBIC) to tax payers and other concerned persons has been made mandatory

- Any communication without DIN is invalid
- DIN to be used for search authorization, summons, arrest memo, inspection notices and letters issued during enquiry
- Taxpayers will get digital facility to check genuineness
- In exceptional circumstance, requirement of DIN may be relaxed
- Detailed procedure prescribed.

### Auto Out of Charge under ECCS

- In principal approval given to implement 'Auto Out of Charge' under Express Cargo Clearance System (ECCS) to cargo which is cleared after X-ray.
- Currently such cleared cargo is sent to Shed Superintendent or Appraiser for Out Of Charge (OOC) order

### Mandatory uploading of documents

- On e-Sanchit, for every Bill of Entry, Invoice/ Invoice cum packing list and Transport Contract i.e. Bill of Lading/ Airway bill etc. is mandatorily required to be uploaded
- With effect from 02.12.2019, for every Invoice and Bill of Lading / Airway Bill declared in the Bill of Entry, the reference of IRN generated from eSANCHIT with the relevant document code as given above must be provided.



4

# FTP updates

- Notifications
- Public Notices

# Notifications and Public Notice

Subject	Implications
Amendment in Export Policy Condition of Rice	In addition to other existing policy conditions, export of Rice (Basmati and Non-Basmati) to European Union ('EU') Countries will require 'Certificate of Inspection' from Export Inspection Council ('EIC') / Export Inspection Agency ('EIA') with immediate effect.
Amendment in import policy of Iron & Steel	Import policy for the specific items in Chapter 72, 73 and 86 is amended from "Free" to "Free Subject to compulsory registration under Steel Import Monitoring System ('SIMS')" with effect from 21.11.2019 which was supposed to be mandatory from 01.11.2019. <i>One time relaxation till 21.11.2019 was notified.</i>
Amendment pertaining to Software Technology Parks	Software Technology Parks (STP) will have to submit Service Exports Reporting Form ('SERF') as in Annexure VI for capturing services export data for the specified services as in Annexure V.
Incorrect Data in certain IECs - corrective action required from exporters	Below two categories of data mismatch in Import Export Code ('IEC') have been identified by the DGFT: <ol style="list-style-type: none"> <li>1. Incorrect Permanent Account Number ('PAN') and</li> <li>2. More than one IEC against same PAN</li> </ol> IEC holders who have mismatch as above will be required to take immediate step to correct their IEC data before 15.12.2019 failing which these IECs will be suspended by the jurisdictional DGFT Regional Authority
Enlistment as designated port in Para 2.54 (d) (vi) Handbook of Procedure, (2015-20).	Import of scrap can take place only through designated ports. List of all designated port is as under: <ol style="list-style-type: none"> <li>1. Chennai;</li> <li>2. Cochin;</li> <li>3. Ennore;</li> <li>4. Jawaharlal Nehru Port Trust;</li> <li>5. Kandla;</li> <li>6. Mormugao;</li> <li>7. Mumbai;</li> <li>8. New Mangalore;</li> <li>9. Paradip;</li> <li>10. Tuticorin;</li> <li>11. Vishakapatnam;</li> <li>12. Pipava;</li> <li>13. Mumbai;</li> <li>14. Kolkata;</li> <li>15. Krishnapatnam and</li> <li>16. Kattupalli</li> </ol>

Customs circular also issued

Customs circular also issued

## About VK&S



**Vijaywargi Khabiya and Saoji**, Chartered Accountants, is a single window professional services firm focusing on high quality services one needs from a business advisory organization. The firm is managed by dynamic & pulsating partners with decade long professional experience. The firm provides services and consultancy related to accounting & implementation thereof, auditing including internal, statutory, tax, concurrent and management audit, matters related to direct & indirect tax including advisory, litigation, due diligence review, tax optimization and compliance services, outsourcing of accounts, payrolls, FEMA, Company Laws matters, Project Financing, Subsidies, and the like



### ANY QUESTIONS?

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