"Power is gained by sharing knowledge and not hoarding it"

EMERGING THOUGHTS

13 December 2018

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SURESH & CO.,

Chartered Accountants

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Foreword

We are happy to release the third publication series "EMERGING THOUGHTS". As the name suggests, these updates are the emerging and constructive thoughts of article students (Interns undergoing Chartered Accountancy course) . We, at SURESH & CO., have attempted to imbibe the habit of reading and updating one's knowledge library every single morning. The organisation has successfully implemented the concept of daily updates being shared by the articles . This has been a beautiful journey of knowledge without any breaks. Many a times we oursleves have been surprised by the new learning opprtunities that we got from these daily updates.

The main objective of this publication is to enable the articles of SURESH & CO., to think beyond their capabilities. It also helps the articles to improve their knowledge and climb the professional ladder and reach greater achievements.

Every day is a learning day at SURESH & CO., as an organisation we encourage all the budding professionals to share their views and opinions on various technical and non-technical aspects

The article assistants have various practical insights which help them understand the theoretical aspects in a more efficient way, and they are able to share the same with all of us, at the organisation, in these series of updates.

The intent behind these updates is imparting the skill of technical analysis and professional decision making of any case study.

We at Suresh & Co; wanted to share these gems of infant thoughts as conceived by these young minds . It is to be noted , that these updates may or may not have been reviewed by any senior or a technical expert and thus these should be used only to kindle thoughts in certain positive direction and readers to do further research and analysis on the topcs which they find interesting . Professional advice should be sought before acting on any of the information contained in it.

A candle loses nothing by lighting another candle.

Update 31 | June 20,2018

Introduction of new section 80 TTB of Income Tax Act,1961

Deduction Under section 80 TTB

- Section 80TTB has been introduced by Finance Act, 2018 which is effective from **F.Y 2018-19** in respect of interest on deposits in case of **senior citizen**.

- **The deduction is available for any interest income on deposits with the following:**

  - Savings accounts in bank or banking companies
  - Savings accounts in post offices
  - Savings accounts in co-operative societies involved in banking business.
  - Interest on fixed deposit
  - Interest on time deposit
  - Any other interest

- The deduction on interest income earned is allowed up to **Rs. 50,000 or amount of interest ,whichever is lower** (from assessment year 2019-20) and is deductible from the gross total income of the taxpayer.

- Interest earned on account of saving bank account, fixed deposit or any other interest is considered as income under head "Income from other sources" and taxable as such. However no deduction is allowable to partner of firm , member of AOI or BOI in respect of interest income earned from any account held by or on behalf of firm, an association of person or body of individual.

Also added Section 194A of the Income Tax law gives corresponding provisions that no tax shall be deducted at source from payment of interest to a senior citizen **up to Rs. 50,000.**

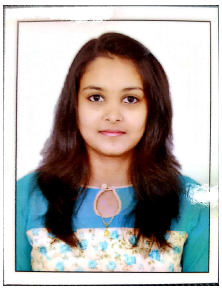
For the purposes of this section, "senior citizen" means an individual resident in India who is of the age of sixty years or more at any time during the relevant previous year.

- Krishna Chaitanya .

Update – 32 | June 21,2018
Minimum Public Shareholding

By way of a Circular dated October 10, 2017 [**No. CFD/CMD/CIR/P/2017/115**], the Securities and Exchange Board of India issued directions to stock exchanges to come down heavily on listed entities, their promoters and directors who are in breach of the **25%** minimum public shareholding norms mandated under regulation 38 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 . The Circular has been brought into force with immediate effect. In an effort to streamline the approach in the enforcement of MPS norms, SEBI laid down procedures for stock exchanges to impose fines on non-compliant companies, freeze promoter shares and even bar promoters from being promoters in other listed companies, all until such time that they fail to comply. This Circular is one of the steps SEBI has undertaken to maintain market integrity by acting as a check on defaulting companies.

The MPS requirements for listed companies have been stipulated in regulation 38 of the Listing Regulations, which mandates that a listed entity comply with the MPS requirements specified in rules 19(2) and 19A of the Securities Contracts (Regulation) Rules, 1957 read with section 21 of the Securities Contracts Regulations Act, 1956 and clause 40 of the Listing Agreement. Rule 19(2)(b) of the SCRR requires the maintenance of a minimum public shareholding of 25% at all times of each class or kind of equity shares or convertible debentures issued by a listed company.
Regulations 97(1) and 98(1)(2) of Listing Regulations mandate stock exchanges to monitor compliance of MPS standards, and in situations of breach, allow stock exchanges to impose penalties.



- Pragathi.R

Update 33 | June 22,2018
Sec 139(9) – Defective Return

As per Section 139(9), a tax return is defective if certain documents are not attached while filing the return. In case the return is considered defective by the tax officer, then tax payer will be informed by him and will be allowed to rectify the defect within 15 days starting from the day of intimation. Upon request from the tax payer through an application, the allowable period could be extended also. The assessing officer intimates the tax payer about the defect through a simple letter. If the Assessee fails to rectify the defect within the said period of 15 days or such further period, then the Assessing Officer will treat the return as invalid return. However, where the Assessee rectifies the defect after the expiry of the said period of 15 days or the further period allowed, but before the assessment is made, the Assessing Officer may condone the delay and treat the return as a valid return.

The following documents are necessary to avoid your filing to be deemed as defective:

- A duly filled tax return in the recommended form
- A statement displaying the computation of payable taxes
- Proof of all claims of paid taxes – like proof of tax deduction and collection that was done at source, payment of self-assessment tax and advance tax
- A report for the audit done u/s 44AB, where prior to filing the return, the report is furnished
- If tax payer maintains books of account then the mandatory copies are:

1. Profit and Loss A/C, Manufacturing A/C, Trading A/C, Balance Sheet, Income & Expense A/C
2. Personal A/Cs of partners in case of partnership firms
3. For AOP/BOI, personal accounts of the members
4. For proprietors, the personal account

- If the tax payer's account is audited, then the copies of audit report, balance sheet and audited profit and loss A/C
- In case of Cost Audit, the relevant report
- If Books of A/C for the tax payer is not maintained, then a statement indicating the gross receipts, turnover amount, expenses and net profit, bank balance, stocks, cash, debtors and creditors information and so on.

- Nagapooja.

Update 34 | June 23,2018
Amendment in Rule 10CB w.r.t Sec 92CE

Amendment in Rule 10CB of Income-tax Rules, 1962 in respect of computation of interest income pursuant to secondary adjustment made under section 92CE of Income-tax Act, 1961

In order to make the actual allocation of funds consistent with that of the primary adjustment, section 92CE was inserted in the Income-tax Act, 1961 ('the Act') vide Finance Act, 2017 with effect from 1st April, 2018 to provide for secondary adjustment by attributing income to the excess money lying in the hands of the associated enterprise (AE).

2. Sub-section (2) of section 92CE empowers the Central Board of Direct Taxes (CBDT) to prescribe the time within which the excess money, which is available with the associated enterprise of an assessee as a result of primary adjustment to the transfer price which leads to an increase in the total income or reduction in the loss of the assessee, shall be repatriated to India

2.1 Accordingly, rule 10CB of the Income-tax Rules, 1962 ('the Rules') was inserted vide Notification No. GSR 590(E) dated 15th June, 2017.

2.2 Under sub-rule (1) of the said rule 10CB, a uniform time limit of 90 days, starting from different dates, is prescribed for repatriation of excess money.

This is done in order to provide for uniform treatment in respect of the different types/situations of primary adjustments specified under sub-section (1) of section 92CE.

2.3 Certain difficulties have been noted in the implementing the provisions of sub-rule (1) of rule 10CB in respect of primary adjustment that arises on account of agreement for advance pricing (APA) entered into by the assessee, or on account of an agreement reached under the mutual agreement procedure (MAP).

In order to remove these difficulties, it is proposed to amend rule 10CB.

3. Accordingly, a draft notification has been prepared in this regard and is as under: "In exercise of powers conferred by sub-section (2) to section 92CE and section 295 of the Income Tax Act, 1961 (43 of 1961) (hereinafter referred to as „the Act"), the Central Board of Direct Taxes hereby makes the following rules further to amend the Incometax Rules, 1962 (hereinafter referred to as "the Principal Rules"), namely:-

1. (1) These rules may be called the Income-tax (… Amendment) Rules, 2018.

(2) They shall come into force on the date of their publication in the official Gazette.

2. In the Principal Rules, in rule 10CB, in sub-rule (1)

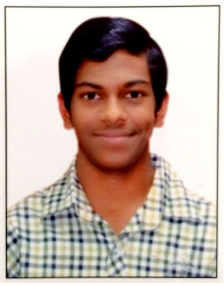
(A) for clause (iii), the following shall be substituted, namely:-

"(iii) from the date on which the advance pricing agreement has been entered into by the assessee under section 92CC, where the primary adjustment to transfer price is determined by such agreement;"

(B) for clause (v), the following shall be substituted, namely:-

"(v) from the date of giving effect by the Assessing Officer under Rule 44H to the resolution arrived at under mutual agreement procedure, where the primary adjustment to transfer price is determined by such

resolution, under a Double Taxation Avoidance Agreement entered into under section 90 or 90A."



- Sathvik V.

Update 35 | June 24,2018
Nodal Bank Accounts

What is a nodal bank account?

If any e-commerce website sells the products of merchant and get money on the behalf of actual merchant, he has to keep it in a separate account in Bank. This account will be called Nodal Account

Generally, in India, it is used to hold 3rd party amount for settlements and pertains to an account held usually by intermediaries.

As per RBI, notification "RBI/2009-10/231 DPSS.CO.PD.No.1102 /02.14.08/ 2009-10" **Intermediaries** would include all entities that collect monies received from customers for payment to merchants using any electronic/online payment mode, for goods and services availed by them and subsequently facilitate the transfer of these monies to the merchants in final settlement of the obligations of the paying customers.

Merchant: For the purpose of these directions, merchants shall include all Electronic commerce/Mobile commerce service providers and other persons (including but not limited to utility service providers) who accept payments for goods and service provided by them, through Electronic/Online Payment modes.

The permitted credits/debits in these accounts are set out below:

1. Credits

a. Payments from various persons towards purchase of goods/services.

b. Transfers from other banks as per pre-determined agreement into the account, if this account is the nodal bank account for the intermediary.

c. Transfers representing refunds for failed/disputed transactions.

2. Debits

a. Payments to various merchants/service providers.

b. Transfers to other banks as per pre-determined agreement into the account, if that account is the nodal bank account for the intermediary.

c. Transfers representing refunds for failed/disputed transactions.

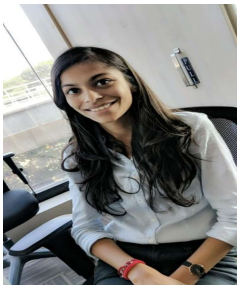
d. Commissions to the intermediaries. These amounts shall be at pre-determined rates/frequency.

Note: No payment other than the commissions at the pre-determined rates/frequency shall be payable to the intermediaries. Such transfers shall only be effected to a bank account intimated to the bank by the intermediary during the agreement.

Important points :

1. The money in such bank account shall not be utilized for any other payments other than those stated in the circular.

2. It is necessary that banks transfer funds to the ultimate beneficiaries with minimum time delay. Hence the circular requires that all payments to merchants involving nodal banks shall be effected within a maximum of T+3 settlement cycle.



- Sidhi Chopra.

Update 36 | June 25,2018
Highlights of the Karnataka State Budget

The maiden budget of the newly formed Congress - Janta dal (secular) government, has been a topic of debate among the coalition members with former Chief Minister Siddaramaiah asking for a supplementary budget instead of a new one. Siddaramaiah had presented the budget in February. Kumaraswamy was quoted by ANI as saying, "It is a new experience for me as a finance minister. I have taken up this as a challenge to give a surplus budget."

Nevertheless, the JD(S) and Congress, had later pacified their short lived feud with CM Kumaraswamy ensuring that the schemes initiated by the previous government will live on with proper funding.

Here are the 20 highlights of the budget presented today by our honorable Chief Minister H D Kumaraswamy :

1. Kumaraswamy announced a farm loan waiver at the cost of Rs 34,000 crore. The state decided against waiving off higher value crop loan. The limit for the same has been capped at Rs 2 lakh. In the first stage of the farm loan waiver, defaulted crop loans of farmers up to 31 Dec 2017 will be cleared by the government. Farmers who repaid the loan within time frame will be encouraged by the government by crediting them the repaid loan amount or Rs 25,000 whichever is less.

2. The budget also proposed to increase the rate of tax on petrol from the present 30% to 32% and diesel from 19% to 21%. Hence, Petrol price will be increased by Rs.1.14/ltr and diesel by Rs 1.12/ltr. Tax on liquor has also been increased by 4%.

3. 100% waiver of penalty and interest on payment of full tax on or before 30 October 2018 to reduce arrears under provisions of central sales tax act.

4.Additional excise duty increased on Indian Made Liquor for all 18 slabs by 4%

5. Motor vehicle taxes to be increased by 50% for private service vehicles based on sq meter of floor area.

6.Taxation on consumption of electricity will be increased to 9% from current 6%.

7.Consumption of captive energy rate of tax will be increased from 10 paise/unit to 20 paise/unit.

8. Rs.10 crore to be provided to construct a chemical waste treatment unit in Peenya in Bengaluru.

9. Rs.50 crore to provide additional 300 MLD water supply from Cauvery river to 92 parched districts in Mysuru district.

10.Six interconnected elevated corridors in 4 years at cost of Rs. 15,825 crore.

11. Rs. 1000 crore to be spent this year for the same project.

12. 65 kilometer long peripheral ring road to come up at the outskirts of Bengaluru at cost of Rs. 11,950 crore.

13. Rs. 50 crore for all round rejuvenation of Bellandur lake.

14. Ring road to come up around Hassan city at cost of Rs. 30 crore.

15. Rs.30 crore to open film university at Ramanagara under PPP model.

16. Rs. 40 crore capital to encourage industries providing support to film industry in Ramanagara film city.

17. Kalaburagi district to be developed as Bharat Solar district.

18. Rs. 2000 crore to be invested for production of sports and fitness goods in Tumakuru district to create 1 lakh jobs.

19. Rs. 2000 crore capital to companies willing to manufacture agricultural implements in Bidar district.

20. Kumaraswamy proposed to pay Rs. 10,000 per annum to skilled labourers working in the micro and small coconut fiber industry.

- Venkat Narayan Reddy.

Update 37 | June 26,2018
RBI tightens banks' statutory auditor rules

The Reserve Bank of India (RBI) has tightened rules on banks' statutory auditors saying it reserved the right to not approve appointments of such auditors for a **specified period if their audit quality was not found satisfactory.**

The Reserve Bank of India (RBI) said it will take action against statutory auditors of banks in case of any lapses in their auditing process including instances such as misstatement of a bank's financial statement or wrong information in audit report. The banking regulator came out with these guidelines after a recent $2 billion fraud at state-run Punjab National Bank revealed several lapses in the auditing process in banks.

"The framework would cover, inter alia, instances of divergence identified in asset classification and provisioning during the RBI inspection vis-à-vis the audited financial statements of banks," said RBI in a statement.

- Yavna Hariprasad.

Update 38 | June 27,2018
DIR – 3

DIR-3-KYC is a new E-form to be launched shortly by the Ministry of Corporate Affairs. This form will be used to update KYC of all directors. As per rule 12A of Companies (Appointment and Qualification of Directors) Rules, 2014 AS inserted by Companies (Appointment and Qualification of Directors) fourth Amendment Rules, 2018 applicable w.e.f. 10th July 2018 every individual who has been allotted a Director Identification Number (DIN) as on 31st March of a financial year as per these rules shall, submit e-form DIR-3-KYC to the Central Government on or before 30th April of immediate next financial year.
Therefore the form DIR-3 KYC is to be filed by every individual who has been allotted a Director Identification Number (DIN) as on 31st March of a financial year.

For example DIN was allotted to Mr. X 7th July 2018 he would need to file DIR-3 KYC before 30th April 2019.

1. What is the last day to file DIR-3 KYC for directors whose DIN has been allotted on or before 31st March 2018 ?

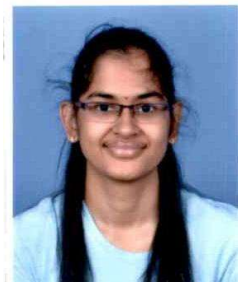
- 31st August 2018 is the last date to file DIR-3 KYC **by** every Director who has been allotted DIN on or before 31st March, 2018 and whose DIN is in 'Approved' status.

2. Is it compulsory to file DIR-3 KYC ?
Yes, its mandatory to be filed by all Director who has been allotted DIN on or before 31st March, 2018 and whose DIN is in 'Approved' status

EVEN DISQUALIFIED DIRECTORS NEED TO FILE FORM DIR-3 KYC

3. What if someone failed to file form DIR-3 KYC on due time?
After expiry of the due date by which the DIR-3 KYC form is to be filed, the MCA21 system will mark all approved DINs (allotted on or before 31st March 2018) against which DIR-3 KYC form has not been filed as **'Deactivated'** with reason as '*Non-filing of DIR-3 KYC.*

4. Can the DIR-3 KYC be filed after 31st August 2018?
Yes, After the due date filing of DIR-3 KYC in respect of such deactivated DINs shall be allowed upon payment of a specified fee only, without prejudice to any other action that may be taken by the MCA



- Neha Sanklecha.

Update 39 | June 28,2018
SOFTEX FORMS

SOFTEX forms:

SOFTEX forms are to be filed with Software Technology Park of India (STPI) to regulate inward outward remittance by Reserve Bank under export of goods in non-physical form, either domestic or offshore. The products includes computer software, export of Video and TV software and all other types of software products and packages which are falling under goods of non physical form.

SOFTEX form is issued by Reserve Bank foreign exchange department. All software forms under STP units are eligible to obtain SOFTEX forms from Foreign exchange department of Reserve bank once after submitting self-certified copy of overseas buyer's contract/purchase order or work order with STPI office as per 7(a) of SOFTEX form for declaration. SOFTEX forms are issued in triplicate.

These SOFTEX forms are to be submitted by STP units within 30 days of issue of export invoice or within 30 days of last invoiced released in a month. Once exports effected, after necessary certification by STPI director's office, the said SOFTEX forms are sent to Reserve bank. SOFTEX blank forms are obtained from foreign exchange department of Reserve bank by the STP units in triplicate. Once after effecting sales, the said SOFTEX forms in triplicate are submitted with STPI for necessary approval / endorsement by director of STPI under the jurisdiction of STP units. After certification of three copies of SOFTEX forms, original and duplicate are returned to STP units and triplicate copy is retained by STPI units. Once after exports effected, the duplicate copy of SOFTEX form is submitted with authorized dealer bank along with the necessary supporting documents. Original SOFTEX form is submitted with Reserve Bank's exchange control department within the jurisdiction of STP unit. Once after receipt of foreign exchange under the said SOFTEX form, authorized bank returns the said duplicate copy of SOFTEX form to Reserve Bank.

- Sumedha G N.

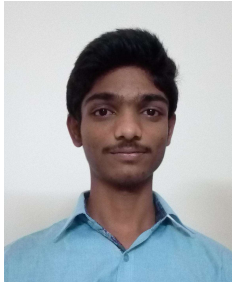
Update 40 | June 29,2018
SURESH & CO., 50 years June 29

Mr. D L Suresh Babu started Suresh & Co., in 1968 with the blessings of his parents. As a sole person with no employees he started his career with the first client Rajalaksmi Lorry Service, executed Power of Attorney for tax representation on the first day of office which was earlier located at Chowdeshwari Temple street. As the business grew and the reputation for the firm reached wide, the office was shifted to Avenue road, then to mission road sharing office with MSSV & Co., and then finally to Srinidhi in 1999 . The first article assistant to serve Suresh & Co., was Mr. P. Suryaprakash, now a Senior Partner at SSB Associates.

Suresh & Co. has always worked on creating an environment and providing a platform to thriving articles and employees to build their career to greater heights. Currently Suresh & Co., is providing training to 70 article assistants and providing expertise in the field of Auditing and Assurance, Taxation, Corporate Law, GST , Consultancy, Transfer Pricing and several other fields. Suresh & Co., is not only known for professional development of article assistants, but also on their personality development and to enter the world of professionalism. Till date, 85+ Chartered Accountants emerged out of Suresh & Co., successfully.
Suresh & Co today has been a platform for career growth for Chartered Accountants, Company Secretaries, graduates and others. It has recognized and helped people grow in proportion to their ability and contribution. It encourages all its employees to grow in their career. One of the measures of success of Suresh & Co has always been in the growth of their team members in all aspects of their life.

The firm always works on approach to areas such as recruitment and retention, flexible working, personal development, rewarding the talented, managing people, efficient leadership, environment friendly and serving the needy and more importantly creating a warm environment for women employees and article assistants.

Today we rejoice this great success and all the people who have put in their heart and soul for the firm to accomplish a standard in world of Chartered Accountants.
We wish to be part of Suresh & Co., in many more success stories. Kudos to Suresh & Co.!! Yippieee!!



- V Prem Sai Srinivas.

Update – 41 | June 30,2018
FLA

The Reserve Bank of India (RBI) vide Notification No. FEMA 20(R)/2017-RB dated November 07, 2017 by the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations 2017, inter-alia, provides that the Limited Liability Partnership (**LLP**) which has received investment by way of capital contribution from foreign investors in the previous financial year(s) including the current financial year, should submit Excel based **FLA return with the RBI** on or before the **15th day of July** of each year.

Although Regulations 2017 casts a mandatory obligation on the LLP(s) having foreign investment to file the Excel based FLA return with the RBI within the prescribed timeline, the format of the Excel based FLA return relates only to a company. No amendment has been carried out in the format of the Excel based FLA return to suit the LLP requirements, which creates the misperception that the same is not applicable to LLP(s) at all.

The first page of Excel based FLA return requires the corporate identification number (CIN) to be filled up, which contains 21 alphanumeric digits. Whereas limited liability partnership identification number (LLP-IN) contains only 7 alphanumeric digits. Therefore, to enable LLP(s) to file the Excel based FLA return they are required to obtain a dummy CIN by sending a request email to surveyfla@rbi.org.in. After the dummy CIN is allotted, the same will be used for future filings until the format of the Excel based FLA return is amended to meet the LLP requirements.

It is pertinent to note that non-submission or delay in submission of Excel based FLA return by LLP(s) is a compoundable offence in terms of the Master Direction on Compounding of Contraventions under the FEMA.

- Rishabh Jain

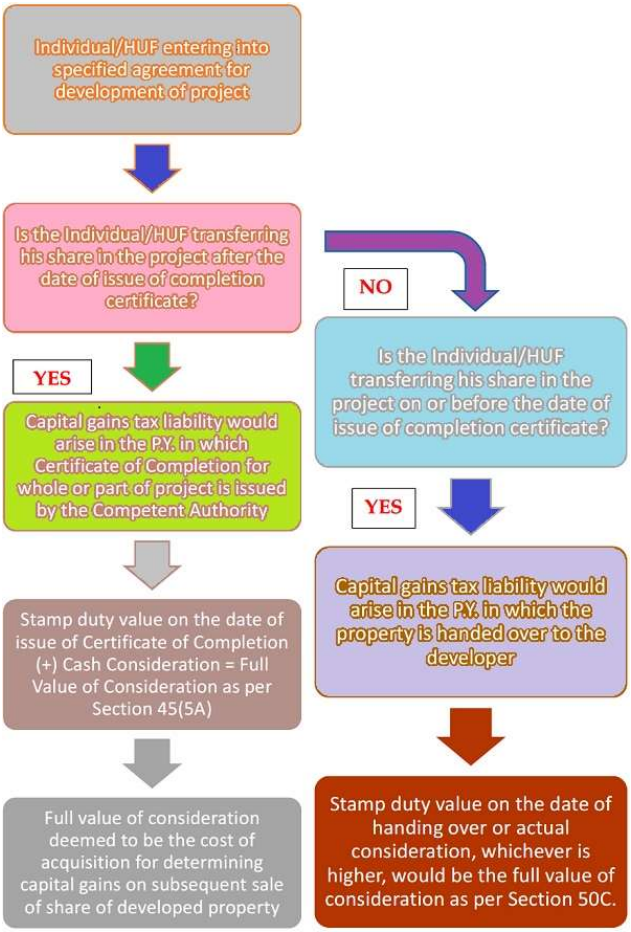
Update – 42 | July 1,2018
Tax consequences of entering into Joint development Agreement-

Meaning of Joint Development Agreement

In a Joint Development Agreement, land owner contributes his land and enters into an arrangement with the developer to develop and construct a real estate project at the developer's cost.The key feature of JDA is that the land owner contributes land and developer undertakes the responsibility of obtaining approvals, property development, launching and marketing the project with his financial resource.
The land owner may get consideration in the form of either

- lump sum consideration or
- percentage of sales revenue or
- certain percentage of constructed area in the project,

depending upon the terms and conditions agreed upon between them. In this manner, the resources and efforts of land owner and developer are pooled together.Taxability of Joint Development Agreement from the point of view of Land Owner



Taxability of Joint Development Agreement from the point of view of Developer

In case of developer, the nature of income would be business income. The property would constitute stock in trade for him. Overall, his income comprises of sale proceeds he gets from the buyers of the developed land and the cost would involve the expenditure incurred on development of the property.

Liability to deduct TDS

Consequently, a new section 194-IC was also inserted wide Finance Act,to 2017 to deduct TDS on monetary consideration. This section overrides the provisions contained in section 194-IAof the Act,which provides for deduction of TDS @ 1 % on transfer of immovable property where consideration exceeds Rs 50 Lakhs. According to section 194-IC, if under a joint development agreement, any developer pays any amount to the land owner in addition to the share in the project, then such builder shall deduct TDS @ 10 % on such payment.

- Isha R

Update – 43 | July 2,2018
An insight on UDIN

1.Meaning of UDIN

Unique Document Identification Number (UDIN) is a unique number,(15 digit) which will be generated by the system for every document certified/ attested by a Chartered Accountant and registered with the UDIN portal available at https://udin.icai.org/.

2.What is the Algorithm of UDIN?

The algorithm consists of the following

- The Membership Number of the Member attesting the document/ certificate.
- The Date (dd/mm/yy) when certificate is issued.
- The Document Serial Number allotted automatically by system.

3.Why UDIN?

It has been noticed that financial statements and documents were being certified/ attested by third persons, in lieu of Chartered Accountants. As these statements are being relied upon by the authorities as true statements and certificates, UDIN can be generated by a practicing CA by registering his/her documents/ certificates on UDIN Portal for verification.

4.Who can generate UDIN?

A practicing Chartered Accountant can generate a UDIN for certificate/ document attested by him either in individual capacity or as a partner.

5. Whether UDIN is mandatory for the CA members of ICAI for each certification done?

At present, this facility is recommended. But ICAI is mulling to make the same compulsory in near future, so as to curb the menace of fake or forged documents.

6. How many UDINs can be generated by a CA? Is there any limit?

There is no restriction on the number of UDINs to be generated by a CA.

- Deeksha Namburi

Update – 44 | July 3,2018
Applicability of GST on Out and Out Sale

After one year of GST implementation in India, one can observe that law of GST is based on law of central excise and service tax whereas GST compliance is based on law of sales tax. In spite of this, there are some transactions where related legal provisions are not clear and therefore, call for interpretations. **One of the transactions is out and out sale. i.e. purchase from X country and direct sale to Y country.**

It is observed that in many cases, the company located in India places an order on the supplier located in X country to directly deliver the goods to customer located in Y country without bringing such goods in India. Now, let's discuss applicability of GST on sale invoice raised by the Indian company on its customer located in Y country where the physical movement of goods is from X country to Y country.

As per Section 7(1) of the IGST Act, 2017, where the location of the supplier and the place of supply are in two different states or in two different union territories or in a state and a union territory, it shall be treated as supply in the course of interstate trade or commerce. Further, as per the provisions of Section 7(5)(a) of the IGST Act, 2017, where the supplier is located in India and the place of supply is outside India, such transaction shall be treated as interstate trade or commerce.

Considering the legal provision mentioned above, it is important to understand the term "supplier" which is defined under Section 2(105) of the CGST Act, 2017 - "supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied.

It can be seen from the above definition that there is no pre-condition of physical movement of goods. Further, Section 7 of the CGST Act, 2017 has defined the term "supply". Nowhere in this Section 7 provides any pre-condition of physical movement of goods. Therefore, a person can be treated as "supplier" even though such person is not causing the physical movements of goods. Thus, seller located in India is to be treated as "supplier" of the goods for the purpose of GST.

Now let's discuss whether the place of supply in the present case is within India or outside India.
As Section 10 (1) (a) and (c) of the IGST Act, 2017 - The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as follows

1. Where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient;

2. Where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient;

In the present case there is a movement of goods from the supplier located in X country to the customer located in Y country and therefore, as per the provisions of Section 10(1)(a), place of supply shall be Y country where movement of goods terminates.

Further we need to refer provisions of section 10(1)(c) assuming that the Indian company is not causing any movement of goods from India to Y country, the place of supply shall be the location of such goods at the time of the delivery, which is Y country. Thus, in terms of section 7(5)(a) of the IGST Act,2017 the present transaction between the Indian and its customer located in Y country is to be treated as supply of goods in the course of interstate trade or commerce.

Another question is can we treat sale to customer located in Y country as "export"?

As per Section 2(5) of the IGST Act, 2017 - "export of goods" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;

By going through the above legal definition, in case of export of goods, exporter is required to export the goods physically out of India / territory of India. In the present case, the Indian company will never physically export the goods to its customer located in Y country and therefore, the supply of goods from the Indian company to its customer located in Y country cannot be treated as "export" in terms of provisions of Section 2(5) of the IGST Act, 2017. Accordingly, IGST is applicable in terms of provisions of Section 7(5)(a) of the IGST Act, 2017.

However, we also need to refer provision of Section 1 (1) of the IGST Act, 2017 which provides its applicability - It shall extend to the whole of India except the State of Jammu and Kashmir. This basic provision clarifies that GST is not applicable to the transaction that completely takes place outside India. Text of Section 1(1) is reproduced below for your ready reference

Conclusion - Sale of goods directly from the supplier located in X country to the customer located in Y country without bringing the goods in India cannot be treated as "supply" and therefore, GST shall not be applicable.

- Sowmya Shree G

Update – 45 | July 4,2018
Section 269SS of the Income tax Act, 1961

Objective of this section:

Income Tax Authorities uncover hidden and unaccounted cash during raids. Previously, the culprit would escape by saying that he received the cash as loan or deposit from friends or relatives.

Also, the persons with an aim of tax evasion would do false transactions showing payment and repayment of loans and deposits in cash.

To curb the increasing cash transactions which are leading to accumulation of black money, 269SS and 269T were introduced which restricts these cash payments.

What is Sec 269SS?

A person cannot accept loan or deposit or any other specified sum from another person in cash, if –

i] Amount of loan **or** deposit **or** specified sum is Rs. 20,000 or more, or,

ii] Sum of total amount of loan, deposit and the specified sum is Rs. 20,000 or more,

For example – If Mr.A wants to take a loan of Rs. 5,000, a deposit of Rs. 12,000 and advance of Rs. 3,000 from Mr.B, he cannot accept it in cash because the total sum is 20,000.

iii] A Person had already received a loan, deposit or specified sum from the depositor (a person giving the loan, deposit or specified sum) but the loan or specified sum hasn't been paid back. In such case, if the unpaid loan or specified sum is Rs. 20,000 or more, or

iv]. Sum total amount of (1), (2) and (3) is Rs. 20,000 or more.

In short, a person cannot accept cash loan or deposit of Rs.20,000 or more from another person.

Exceptions to Sec 269SS:

1. Any loan or deposit or specified sum "taken or accepted from" or "taken or accepted by" the following entities –
a. The Government
b. Any banking company, post office savings bank or co-operative bank
c. Any corporation established by a Central, State or Provincial Act
d. Any Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013)
e. Any institution, association or body or class of institutions, associations or bodies notified in Official Gazette.
Thus, if any person accepts any loan or deposit or specified sum from the above mentioned entities, or the entities accept any loan or deposit or specified sum from any person, provisions of 269SS will not apply.

2. A person earning only agriculture income accepts loan or deposit from another person also earning only agriculture income.

3. Receiving cash from relative during emergencies. Here intention should not be to evade the taxes, rather helping in an emergency.

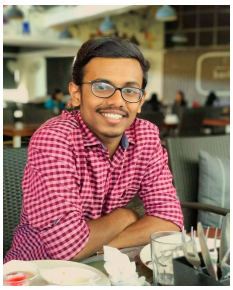
So can a partner contribute cash more than Rs.20,000 to partnership firm ?

Although the act doesn't give any reference to partner or partnership firm, according to the judgement passed by the high courts in several cases, the amount paid by partners to firm or vice versa is payment to self and doesn't act like loan or deposits in general law. And provisions of section 269SS aren't applicable in such cases. Such transactions are out of the scope of Sec 269SS of Income Tax Act, 1961.

Case law : i] CIT Vs M/s Muthoot Financiers (Delhi High Court).
ii] Commissioner Of Income-Tax Vs Lokhpat Film Exchange (Cinema) (Rajasthan High Court).

Penalty on contravention of Section 269SS:

100% of the loan or deposit amount.



- Anand M.B

Update – 46 | July 5,2018
Case law - East West Hotels Ltd. v. DCIT (2009) 309 ITR 149 (Kar.)

Whether the amount received by the assessee under a lease agreement is income from other sources or business income?

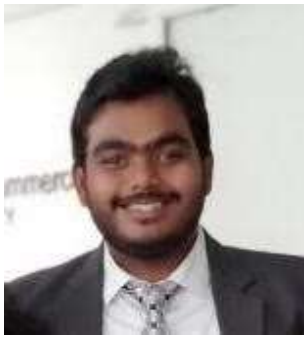
> The assessee was engaged in the hotel business activities. The assessee by an agreement with IHC gave one of its hotels on lease for an initial period of 33 years with an option to renew for a further period of 33 years.

> The assessee claimed that the amount received from IHC had to be treated as its business income. The claim was rejected by the Assessing Officer on the ground that the assessee was not getting any business income as the hotel had been leased out by the assessee to IHC and any amount received by the assessee from such company had to be treated as income from other sources and not business income.

> The Commissioner (Appeals) as well as the Tribunal held that the income received by the assessee from such hotel building was income from other sources.

> The High Court held that the clauses in the agreement were more in the nature of a lease deed and not a licence given for a particular period with no intention to resume its business of hotel in the premises.

It could not be said that the assessee had been managing the hotel through IHC. Therefore, the amount received from IHC had to be treated as **income from other sources and not as business income.**



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- Adithya CV

Update – 47 | July 6,2018
Certain Clarifications on MAT Provision

Section 115JB of Income tax act 1961 provides that in case of a company (including Foreign Company) if 18.5% of 'Book Profit' exceeds tax computed on total income under the normal provisions of Income Tax Act, the Book Profit shall be deemed to be the total income and the tax payable on such total income shall be 18.5% thereof. Such tax payable shall be further increased by surcharge (if income exceeds Rs. 1 crore) and cess as applicable. Companies in SEZ are also covered under MAT provisions.

MAT has been introduced to ensure that government collects certain minimum tax at the earliest possible time.

Basis of calculation :-

1. The basis of computation of Book Profit is the Statement of Profit and Loss prepared in accordance with schedule III.

2.All accounting standards , accounting policies, method and rate of depreciation shall be same as have been adopted for preparing annual accounts including Statement of Profit and Loss laid before the AGM.

There are a few adjustments to be added/reduced to/from the Profit as per financials to get the Book Profit for calculating MAT. But one of the major adjustment where most of us miss the clarity is reducing B/F depreciation loss or or B/F business loss whichever is less, as per books of Account.

How to go about this adjustment :-

1. Amount to be reduced shall always be restricted to lower of B/F depreciation loss or B/F business loss.
2.One should exhaust the B/F business loss first to have consistency in adjustment and we can adjust depreciation loss too.
3.We shall have consistency in whatever method we follow i.e; Accumulated basis or FIFO basis (year wise).
4.Losses at any point of time, considered for MAT would be the Reserves and Surplus balance as at the end of the preceding financial year.

Its preferable to follow yearly method since business person would want to have a track of income set off against losses year wise (business loss or depreciation loss)

- Kunal Kashyap

Update – 48 | July 7,2018
Interest payable u/s 234 A/B/C/D/E/F

Interest payble by assessee for Various reasons under Income Tax Act ,1961 :

234A

Where the return of income for any assessment year under Section 139(4), is furnished after the due date, or is not furnished,
the assessee shall be liable to pay simple interest at the rate of 1% for every month or part of a month comprised in the period commencing on the date immediately following the due date

234B

Where, in any financial year, an assessee who is liable to pay advance tax under section 208 has failed to pay such tax or, where the advance tax paid by such assessee
under the provisions of section 210 is less than 90% of the assessed tax, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month

234C

Where in any financial year
(i) the advance tax paid by such assessee on its current income on or before the 15th June is less than 15% of the tax due on the returned income or
advance tax paid on or before the 15th September is less than 45% of the tax due on the returned income or the amount of such advance tax paid on or before the 15th December is less than 75% of the tax due on the returned income, then,
the assessee shall be liable to pay simple interest at the rate of 1% per month for a period of three months on the amount of the shortfall from 15% or 45% or 75% or, as the case may be, of the tax due on the returned income;

(ii) the advance tax paid by the assessee on the current income on or before the 15th March is less than the tax due on the returned income, then, the assessee shall be liable to pay simple interest at the rate of 1% on the amount of the shortfall from the tax due on the returned income:
Provided that if the advance tax paid by the assessee on the current income, on or before the 15th day of June or the 15th day of September, is not less than twelve per cent or, as the case may be, thirty-six per cent of the tax due on the returned income,
then, the assessee shall not be liable to pay any interest on the amount of the shortfall on those dates

Ex:- 1) If an assessee has not paid advance tax of 15% on 15.06.2018 or as the case may be but paid 12% of the tax payable then interest u/s 234B is not levied
2) If an assessee has not paid advance tax of 15% on 15.06.2018 or as the case may be but paid less than 12% of the tax payable then interest u/s 234B is shall be levied

234D

Where any refund is granted to the assessee under Section 143(1), and
(a) no refund is due on regular assessment; or
(b) the amount refunded under Section 143(1) exceeds the amount refundable on regular assessment,
the assessee shall be liable to pay simple interest at the rate of 1% on the whole or the excess amount so refunded, for every month or part of a month comprised in the period from the date of grant of refund to the date of such regular assessment.

234E

Where a person fails to deliver or cause to be delivered a statement within the time prescribed in Section 200(3) or the proviso to section 206C(3) ,

he shall be liable to pay, by way of fee, a sum of ₹200 for every day during which the failure continues.

234F

Where a person required to furnish a return of income under section 139, fails to do so within the time prescribed in sub-section (1) , he shall pay, by way of fee, a sum of,—

(a) ₹5,000 , if the return is furnished on or before the 31st day of December of the assessment year;
(b) ₹10,000 in any other case:

Provided that if the total income of the person does not exceed ₹5,00,000, the fee payable under this section shall not exceed ₹1,000.

- Harsh Kumar G

Update – 49 | July 8,2018
Taxability of Income of Minor Child

Nowadays, it is observed that a lot of young talented kids are being hired in different fields like acting, singing, choreographing, etc., and they are paid handsome amount for their skill and talent. The question arises is whether the income earned by these children are taxable and if yes, in whose hands, will it be taxable.

The Indian tax law has special provisions related to clubbing of income earned by the minor child under Section 64(1A) of the Income Tax Act ('the Act'). A child also includes a step child and an adopted child who has not attained the age of majority. (I.e. 18 years of age).

Till the minor has not reached the age of 18 years, his income will be assessed/ clubbed with the income of the father or mother of such child, whoever has a higher income. The first point that should be remembered by a taxpayer is that the provision regarding clubbing would be operative only so long as the child is a minor. If the child attains majority at any time during the financial year, clubbing provisions would not be applicable and he would be assessed independently from that particular year.

Section 10(32) of the Act entitles the parent under which the minor's income is being clubbed to avail exemption of Rs.1,500 per child.

There are certain exceptions under which income of minor will not be clubbed with his/ her parent such as-

1. Income earned by the minor child suffering from a disability specified in Section 80 U of Income Tax Act, or

2. Income earned by minor from manual work or from any activity which includes his own skill, or specialized knowledge or experience.

However, if such income is invested or utilized otherwise, then any income earned from such investment/ utilisation will be clubbed with the income of parent of such minor.

Further, clubbing of income also depends upon whether marriage of their parent subsists or not i.e. If the marriage of the parents subsists means if the parents live together, normal provision of clubbing will prevail. However, if the marriage of their parent does not subsists that means they have agreed to live apart in such case, income will be clubbed in the hands of the parent who maintains the child. And where any such income is once included in the total income of either parent, any such income arising in any succeeding year shall not be included in the total income of the other parent, unless the Assessing Officer is satisfied, after giving that parent an opportunity of being heard, that it is necessary to do so.

Note: Where none of the parent is alive, no clubbing provisions shall apply and the minor shall file the return through his/her legal guardian.

-Nandan M N.

Update – 50 | July 9,2018
Applicability of Cost Records and Cost Audit

This update is regarding Applicability of Cost Records and Cost Audit

The Companies Act, 2013 empowers the Central Government to make the rules in the area of maintenance of cost records by the companies engaged in the specified industries, manufacturing / providing such goods/services; and for getting such cost records audited, vide Section 148.

Definition of Cost Records:

"Cost Records" means books of account relating to utilization of materials, labour and other items of cost as applicable to the production of goods or provision of services as provided in section 148 of the Act.

Rule 3: Application of Cost Records

For the purposes of sub-section (1) of Section 148 of the Act, the class of companies, including foreign companies defined in clause (42) of Section 2 of the Act, engaged in the production of the goods or providing services, specified in the **Table A (Regulated Sectors) and Table B (Non-Regulated Sectors)** provided in the Companies (Cost Records and Audit) Amendment Rules, 2016, having an **overall turnover from all its products and services of rupees thirty five crore or more** during the **immediately preceding financial year**, shall include cost records for such products or services in their books of account.

Provided further that this rule shall not apply to a company which is classified as a microenterprise or a small enterprise including as per the turnover criteria under sub-section (9) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006).

Rule 4: Application of Cost Audit

(1) Every company specified in Table (A) of rule 3 shall get its cost records audited in accordance with these rules if the **overall annual turnover** of the company from all its products and services during the immediately preceding financial year is **rupees fifty crores or more** and the **aggregate turnover of the individual**product or products or service or services for which cost records are required to be maintained under rule 3 is **rupees twenty-five crore or more.**

(2) Every company specified in Table (B) of rule 3 shall get its cost records audited in accordance with these rules if the **overall annual turnover** of the company from all its products and services during the immediately preceding financial year is **rupees one hundred crores or more** and the **aggregate turnover of the individual** product or products or service or services for which cost records are required to be maintained under rule 3 is **rupees thirty-five crores or more**.

(3) The requirement for cost audit under these rules **shall not apply** to a company which is covered in rule 3 :

(i) whose revenue from exports, in foreign exchange, exceeds seventy-five per cent of its total revenue; or

(ii) which is operating from a special economic zone;

So to summarise the above:

The Company qualifies for the criteria mentioned in Rule 3 for maintenance of Cost Records if:
1. Its business Activities includes in Table A (Regulated Sectors) and Table B (Non-Regulated Sectors)
2. The Turnover is more than Rupees Thirty-five crores or more in the immediately preceding year
3. The Company does not qualify as micro or small enterprise as per Micro, Small and Medium Enterprises Developme

The Company qualifies for the criteria mentioned in Rule 4 for Cost Audit if:
1. The overall turnover from all its products and services during the immediately preceding year is more than 50 crores
2. The aggregate turnover of the individual product or products or service or services is more than 25 crores for Table A
3. Revenue from exports in foreign exchange does not exceed 75% of its total revenue
4. The company is not operating from a Special Economic Zone (SEZ)

- Sarabjeet Singh

Update – 51 | July 10,2018
GAAR and its Applicability

A tax payer has to follow all the provisions of the act whether they are beneficial to them or not. Due to certain loopholes in framing the provision of act, many tax payers try to misuse or abuse the provision. To stop the tax payers from such misuse or abuse of provision of the income tax act, government usually amend the provisions of the Income tax act or make counter provisions which is called as **Specific Anti Avoidance rules (SAAR).** To avoid amending again and again, Chapter X-A has been introduced which is the **General Anti Avoidance Rules.**

Examples of SAAR are clubbing of income, transfer pricing, section 68 to 69D etc.,

History of GAAR:

a) In India, GAAR was originally proposed in the Direct taxes code 2009
b) During the 2015 Budget presentation Finance Minister announced that GAAR will be implemented w.e.f 1/4/2017
c) Many countries like Australia, Canada, New Zealand, South Africa, China, France etc have adopted GAAR before India.

Non-applicability of GAAR:

a) An arrangement where the tax benefit in the relevant A.Y arising, in aggregate, to all the parties to the arrangement **does not exceed Rs. 3Cr.**
b) A Foreign Institutional Investor (FII)
c) **Non-resident** for transfer of investment through FII.
d) Income from transfer of investment which was made before 1/04/2017, this is called grandfathering of investment made before 1/04/2017. It is to be noted that grandfathering is available only for investments and not arrangements.

Applicability of GAAR

a) As per **Section 95 :** Notwithstanding anything contained in the act, an **arrangement** entered into by an assessee may be **declared** to be **impermissible avoidance arrangement** and the consequences in relation to tax arising there from may be determined subject to the provisions of chapter X-A.
b) GAAR is applicable:
- From Assessment year 2018-19
- To all transactions whether domestic or international
- To both personal and corporate taxation

c) The provisions of GAAR override the provisions of Double Taxation Avoidance Agreement(DTAA)
d) Application can be made to Authority of advance ruling for obtaining ruling whether proposed transaction fall under GAAR or not. Ruling obtained will be binding on applicant, transaction in relation to which ruling is obtained, and IT authorities.

Impermissible Avoidance Arrangement (IAA)

IAA is defined under **section 96** as follow:

a) An IAA means an arrangement, the main purpose of which is to obtain a **tax benefit,** and it
- Created rights or obligations which are not ordinarily created between persons dealing at arm's length
- Results, directly or indirectly, in the misuse or abuse of the provisions of this act
- Lacks commercial substance or is **deemed to lack commercial substance** under section 97, in whole or in part: or

· Is entered into, or carried out, by means or in a manner, which are not ordinarily employed for bona fide purposes.

b) An arrangement shall be presumed, unless it is proved to the contrary by the assessee, to have been entered into, or carried out, for the main purpose of obtaining a tax benefit, if the main purpose of a step in ,or a part of, the arrangement is to obtain a tax benefit, notwithstanding the fact that the main purpose of the whole arrangement is not to obtain a tax benefit.

- Srinidhi P Kumar

Update – 52 | July 11,2018
Issuance of Shares at Discount

Can shares be issued at a discount?

As per Companies Act, 2013,
Sec 53- Prohibition on issue of shares at discount:
(*1*) Except as provided in section 54, a company shall not issue shares at a discount.
(*2*) Any share issued by a company at a discounted price shall be void.
(*3*) Where a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

Amendment to this section as per The Companies (Amendment) Act, 2017, the following sub-section has been inserted.

(2A) Notwithstanding anything contained in sub-sections (1) and (2), a company may issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme in accordance with any guidelines or directions or regulations specified by the Reserve Bank of India under the Reserve Bank of India Act, 1934 or the Banking (Regulation) Act, 1949.

- Simran S

Update – 53 | July 12,2018
International Financial Center | GIFT City

Motto of GIFT City-"To design a CBD(Central Business District) that will serve as a paradigm for Next Class city in terms of quality of life, infrastructure and ambiance aiming to be high-density and high-rise, treating land as a precious resource."

Gujarat International Finance Tec-City (**GIFT City**) is a business district promoted by the Government of Gujarat through a joint venture company. GIFT is conceptualized as a global financial and IT services hub, a **first of its kind in India**, designed to be at or above par with globally bench-marked financial centers such as Shinjuku, Tokyo, Lujiazui, Shanghai, La Defense, Paris, London Dockyards etc.GIFT provides suitable regulatory regimes and create a business environment to **promote talent and increase capital flow**.

Master Plan

GIFT City's Master Plan is for the **359 hectares** (886 acres) of land area to have approximately ~**110 buildings** with ~**5,800,000 square meters (62,000,000 sq ft) of built-up area**, of which around **67%** is **commercial**, **22%** is for **residential** and **11% is social facilities**. Currently ~190,000 square meters (2,000,000 sq ft) of **commercial space is operational**, and another 280,000 square meters (3,000,000 sq ft) is under devolpment

How to Unlock the Potential?

India is not able to fully realize it's vast potential in financial services because our cities do not have the required infrastructure. If India wants to compete with international financial hubs, our cities will have to provide global standards in infrastructure, office space, internet and telephone connectivity and lifestyle opportunities which would attract top talent.

GIFT aspires to cater to India's large financial services potential by offering global firms a world-class infrastructure and facilities. It aims to attract the top talent in the country by providing the finest quality of life.

It is estimated that GIFT would provide **500,000** direct and an equal number of indirect **jobs** which would require 5.76 million square meter of real estate office and residential space.

Target Business Segments

Business	Nature of Opportunity
Financial Services	Back-office of banking, Insurance and Asset Management
Financial Services	Corporate roles in financial services companies. E.g. Accounting, HR, Admin, IT.
Select Product Market	Private banking, Product development, Microfinance etc.
Capital Market and Trading	Includes DCM, ECM, M&A, Commodity trading, Private Equity, Hedge Funds, Institutional Brokegage

IT Services	Software Application development and maintenance for BFSI and other verticals
ITeS/ BPO Services	Captive BPOs of large global financial services companies, 3rd party BPO service providers KPOs etc.

Tax Regime for IFSC (International Financial Service Center) in India-
The Budget 2016-17 announced a competitive tax regime for IFSC with tax exemptions for a period of 10 years.
(i) A reduction in Minimum Alternate Tax (MAT) to 9% from 18.5%
(ii) Exemptions from Dividend Distribution Tax (DDT), Securities Transaction Tax (STT), Commodities Transaction Tax (CTT) and Long Terms Capital Gains Tax (LTCG)
(iii) Short Term Capital Gain Tax taxable at the rate of 15%

- Deeksha.A

Update – 54 | July 13,2018
Taxability of Deemed Dividend

Deemed dividend as specified in section 2(22)(e) were kept out of the ambit of Dividend Distribution Tax (DDT) under section 115-O. Therefore, the deemed dividend as arising from granting of loan to the shareholders having not less than ten percent of voting power in the entity in which public are not substantially interested, is taxable in the hands of the shareholders.

The taxability of deemed dividend in the hands of recipient has posed serious problem of collection of the tax liability and has also been the subject matter of extensive litigation.

Now, it is proposed to bring deemed dividends also under the scope of dividend distribution tax. Therefore, companies are now liable to pay DDT on the deemed dividend.

The tax at the rate of 30%(without grossing up) is proposed on such deemed dividend in order to prevent camouflaging of dividend in various ways such as loans or advances.

- Ganesh N R

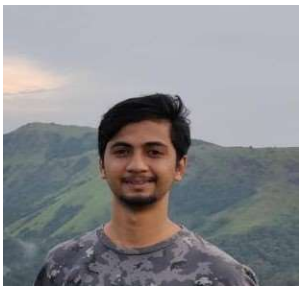
Update – 55 | July 14,2018
NBFC

A Non-Banking Financial Company (**NBFC**) is a company registered under the Companies Act, 2013 engaged in the business of loans and advances, acquisition of shares/stocks/bonds/debentures/securities issued by Government or local authority or other marketable securities of a like nature, leasing, hire-purchase, insurance business, chit business but does not include any institution whose principal business is that of agriculture activity, industrial activity, purchase or sale of any goods (other than securities) or providing any services and sale/purchase/construction of immovable property. A non-banking institution which is a company and has principal business of receiving deposits under any scheme or arrangement in one lump sum or in installments by way of contributions or in any other manner, is also a non-banking financial company.

Financial activity as principal business is when a company's financial assets constitute more than 50 per cent of the total assets and income from financial assets constitute more than 50 per cent of the gross income. A company which fulfills both these criteria will be registered as NBFC by RBI.

Financial assets are bank deposits, bonds, and stocks, whose values are derived from a contractual claim of what they represent.

Financial income is income derived from financial assets.



- Sumukha K A

Update – 56 | July 15,2018
Switch from Composition to Normal under GST

We know that composition scheme under GST has many benefits like lesser compliance(maintaining books of accounts,issuance of Invoices,returns etc..,)

There are certain draw backs also,which are as follows
1.Limited territory for business
2.No credit of Input tax
3.No collection of Tax from Buyers etc..,

So,in few cases its better to convert from Composition to normal provisions.

here is the procedure for converting from composition to normal.

1.File an intimation in Form GST CMP-04
If the move is because the person's turnover crosses the threshold limit, then Form GST CMP-04 should be furnished **within 7 days** after becoming liable to register as a regular dealer.

2.Furnish stock statement in Form GST ITC-01
The person moving to the regular scheme has to furnish a statement in Form GST ITC-01 containing details of the stock of inputs, inputs in semi-finished or finished goods held on the day before the date on which he becomes liable to be a regular dealer
Furnishing of Form GST ITC-01 enables the dealer to claim ITC on inputs, inputs in semi-finished or finished goods and capital goods in stock when he/she becomes a regular dealer and it has to be furnished **within 30 days** after filing Form GST CMP-04.

Conditions to Avail ITC In Closing Stock
Based on the following conditions, the input tax credit can be availed.

1. The closing stock must be intended for the taxable supplies and in the form of raw materials, finished goods or semi finished goods.
2. The invoice or any other supporting document of tax payment should be available with the dealer.
3. The tax paid on the closing stock should be permissible also under the old tax structure. This is applicable for claiming VAT credit only.
4. The date of invoice should be within 12 months from the date of transitioning to GST.

- Rakesh K

Update – 57 | July 16,2018
Insertion of new section 94-B of Income Tax Act

Section 94B - Limitation of interest deduction in certain cases.

It came into effect from 01-04-18.

Applicability : Indian Company or Permanent establishment of Foreign Company in India.

Pre-requisites :

1.The loan should be borrowed from a non-resident associate enterprise of an Indian Company or Permanent establishment of Foreign Company in India.

2. Interest payable or paid or any similar kind of expenditure incurred by the borrower, if exceeds Rs 1 crore, then excess interest is not allowable for deduction under the head "Profits and Gains of Business or Profession".

3. Even if the associate enterprise acts as an implicit or explicit guarantor to the lender, it shall be deemed that the fund has been lended by the associate enterprise

Limitation on allowability of Interest expense :

The interest on borrowings for the present year or 30% of Earning before interest and tax whichever is lower

Subject to a limit of 1 crore and the excess interest can be carried forwarded for not more than 8 Assessment years

Limitation for Subsequent years.

This is a temporary dis allowance and in subsequent years as well limit of Rs. 1 CR shall be applicable for the CY interest or 30 % of Earnings before Interest and Taxes plus the carried forwarded interest.

- KarthikKumar P

Update – 58 | July 17,2018
About Derivatives under Income-tax Act

WHAT IS DERIVATIVE: A derivative is a contract between two parties which derives its value/price from an underlying asset (*in simple words*, A derivative is a financial instrument that offers a return based on the return of some other underlying asset). The most common types of derivatives are futures and options (F&O).

Futures Contract: It is an agreement between two parties to buy or sell an underlying asset at a certain time in future at a certain price.

Options Contract: It gives the holder of the option the right, not an obligation to do something in future. The buyer of the option contract is required to pay an upfront fee called option premium. There are two types of options ***(a) Call option*** (Bullish) ***(b) Put option*** (Bearish).

TREATMENT OF INCOME:

Under section 43(5) of Income Tax Act, Income from F&O is treated as business income and this is a ***non-speculative business income*** (both intraday and carry forward). ***Note: Intraday equity trading*** *is considered as* ***speculative***.

MAINTENANCE OF BOOKS OF ACCOUNTS:

All the transaction carried out need to be recorded. This includes buy/sell transactions and all expenses relating to this. In case a trader is involved in multiple forms of trading in shares like intraday trading, F&O, making investments in MFs, holding shares for more than twelve months from the date of purchase, the business income from each of these must be declared separately since the tax treatment differs based on the type of dealing. The common expenses can be bifurcated depending on the proportion of time spent on the various types of trades.

CALCULATION OF TURNOVER OF DERIVATIVE: The total of ***favourable and unfavourable differences*** shall be taken as turnover. Below is the example:

1. Kiran bought one lot of INFY at 1 Lakhs and sold it for 1.80 Lakhs (***Profit*** Rs.80,000)

2. Kiran bought one lot of BHARTIARTL at 2 Lakhs and sold it for 1.60 Lakhs (***Loss*** Rs.40,000)

The turnover shall be calculated as Rs.80,000 + Rs.40,000 = Rs.1.20 lakhs. Also, any premium received when you're writing an option must be added to the turnover value.

TAX AUDIT: ***Situation 1:*** Tax audit will be applicable if the turnover from such trading exceeds Rs. 1 crore. ***Situation 2:*** As per 44AD, if the net profit from such transactions is less than 8% of the turnover from such transactions (includes loss).

TAX TREATMENT OF DERIVATIVE: Since it is a Business income the profits on F&O trading are taxed as per the tax slab you fall.

TREATMENT OF ADJUSTMENT FOR LOSS: Loss in respect of Non Speculative Business Income (NSBI) is as per the section 71 and/or 72 of the Income Tax Act (i.e. except against salaries and/or carry forward up to ***8 AY's,*** only against NSBI), whereas in respect of Speculative Business Income it is as per

section 71 and/or 73 of the Income Tax Act (i.e. only against Income from speculative business and/or carry forward up to ***4 AY's***).

Derivatives are financial weapons of mass destruction. -Warren Buffett

- Sunil Kumar V R

Update – 59 | July 18,2018
FDI in single-brand retail

What is a single-brand retail chain?
Single brand retail, as the name suggests is selling all products under a single brand name only.
For example: Nike, Sony, Maruti, Mother Diary, Wills lifestyle etc.

What's a multi-brand retail chain?
Multi-brand retail is a concept when a store or a portal or any other form of outlet sells more than one brand. For example: Planet fashion, Jumbo electronics, Shoppers stop etc.

As per FDI Policy, foreign players could own up to 49% in a local single-brand retail chain but had to approach the department of industrial policy and promotion (DIPP) for a go-ahead to acquire the remaining 51%.
However, post FDI Policy, 2017 they can fully own their Indian operations without applying for permission.
But the new concessions apply only to single-brand retail chains, subject to certain conditions.

Conditions to be satisfied are as under:

a) Products to be sold should be of a 'Single Brand' only.

b) Products should be sold under the same brand internationally i.e. products should be sold under the same brand in one or more countries other than India.

c) 'Single Brand' product-retail trading would cover only products which are branded during manufacturing.

d) A non-resident entity or entities, whether owner of the brand or otherwise, shall be permitted to undertake 'single brand' product retail trading in the country for the specific brand, directly or through a legally tenable agreement between the Indian entity undertaking single brand product retail trading and brand owner.

e) In respect of proposals involving FDI beyond 51%, sourcing of **30%** of the value of goods purchased, will be done from India.

The 30% sourcing requirement could be relaxed in case of companies with 'state-of-the-art' or 'cutting edge' products, for which local sourcing was not possible.

The quantum of domestic sourcing will be self-certified by the company, to be subsequently checked, by statutory auditors, from the duly certified accounts which the company will be required to maintain.

This procurement requirement would have to be met, in the first instance, as an average of five years' total value of the goods purchased, beginning 1st April of the year during which the first tranche of FDI is received. Thereafter, it would have to be met on an annual basis.

f) Retail trading, in any form, by means of e-commerce, would not be permissible, for companies with FDI, engaged in the activity of single-brand retail trading.

However, as per FDI Policy, 2017 a single brand retail trading entity operating through 'Brick and Mortar stores' is permitted.

g) Single brand retail trading entity would be permitted to set off its incremental sourcing of goods from India for global operations during initial 5 years, beginning 1st April of the year of the opening of first store, against the mandatory sourcing requirement of 30% of purchases from India.

- Sanchia Dias

Update – 60 | July 19,2018
About Equalisation levy

What is the need of introducing Equalisation levy ?

At present, in the digital domain, business may be conducted without regard to national boundaries and may dissolve the link between an income -producing activity and a specific location. Hence, business in digital domain doesn't actually occur in any physical location but instead takes place in "cyberspace."

These E - Commerce business models have created new tax challenges. The typical taxation issues relating to e-commerce are:

(1) the difficulty in characterizing the nature of payment and establishing a nexus or link between taxable transaction, activity and a taxing jurisdiction,

(2) the difficulty of locating the transaction, activity and identifying the taxpayer for income tax purposes.

The digital business, thus, challenges physical presence - based permanent establishment rules.

Introduction of Equalisation levy :

In order to address these challenges, Chapter VIII of the Finance Act, 2016, introduced "Equalisation Levy". It is similar to a consumption based tax levied on services rendered by a non resident (not having a Permanent Establishment in India) in a B2B transaction with resident.

It currently functions on a model wherein entire compliance obligation is on resident tax payer.

Person responsible for deduction of equalisation levy : (similar to the concept of TDS)

Every person, being a **i) a resident and carrying on business or profession** or **ii) a non-resident having a permanent establishment** in India shall deduct equalisation levy from the amount paid or payable to a non-resident in respect of the **Specified service.**

Accordingly, if the non-resident(not having a PE in India) does not agree to bear the levy, then the resident or the non - resident (having a PE in India) should bear this, however, grossing up provisions are not applicable and there is a flat amount to be calculated.

Example:

Case (i) : EL borne by non-resident(not having PE in India) - invoice amount is 100$, EL= 6$, the amount to be remitted is 94$.

Case (ii) : EL is to be borne by resident or non - resident (having PE in India) - Invoice amt = 100$, EL= 6$ and remittance is 100$.

So we see that there is no change in the EL liability and the expense to hit the books of accounts is 100$.

Meaning of "Specified Service":

(i)Online advertisement

(ii) Any provision for digital advertising space or any other facility or service for the purpose of online advertisement;
(iii) Any other service as may be notified by the Central Government.

Rate of equalisation levy :

6% of the amount of consideration for specified service.

Threshold limit :

Equalisation levy is deductible if the aggregate amount of consideration for specified service in a previous year exceeds ₹ 1,00,000.

Time period for remittance of equalisation levy :

The equalisation levy so deducted during any calendar month shall be paid by every assessee to the credit of the Central Government by the **7th of the month** immediately following the said calendar month.

Disallowance of expenditure U/s 40(a)(ib) :

Section 40(a)(ib) provides that if any consideration is paid or payable to a non- resident for a specified service on which equalisation levy is deductible, and such levy **has not been deducted** or **after deduction, has not been paid on or before the due date under section 139(1),** then, such expenses incurred by the assessee towards consideration for specified service shall not be allowed as deduction.

Exemption u/s 10(50) :

In order to avoid double taxation, section 10(50) provides to exempt any income arising from providing any specified service and chargeable to equalisation levy under that Chapter.

Non - Availability of tax credit :

The credit for Equalisation levy deducted in India cannot be taken by the non-resident. The reason being, this is not a part of Income tax but is a Separate Chapter of Finance Act, 2016.

- R Krishna Chaitanya.

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