TAX BY MANISH

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Direct Tax News

- Central Board of Direct Taxes restarts proceedings under faceless scheme

- CBDT further extends due date for filing of ITR for AY 2019-20 till 30-09-2020

- The CBDT has provided a one-time relaxation for verification of e-filed returns for AY 2015-16 to AY 2019-20 that are pending owing to non-filing of a valid ITR-V either by sending a physical copy of ITR-V to CPC, Bengaluru or through EVC/OTP modes by September 30, 2020

- CBDT exempts dividend payment to non-residents from higher withholding in the absence of PAN on furnishing alternative document

- The CBDT has issued an order, dated 13th August 2020 under section 119 of the Income-tax Act, 1961, stating that all assessment orders shall be passed by the National eAssessment Centre through the Faceless Assessment Scheme, 2019 subject to certain exceptions. It is also stated that any assessment order which is not in conformity with this shall be treated as non-est and shall be deemed to have never been passed.

- Lok Sabha passes Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Bill.

Direct Tax News

- CBDT notifies IL&FS and Yes Bank restructuring to be exempt from notional taxation in hands of recipients of shares.
- CBDT notifies permitted exempt allowances for salaried taxpayers opting for new optional concessional tax regime
- CBDT modifies challan ITNS 285 to enable payment of Equalisation Levy by non-resident e-commerce operators
- CBDT exempts transferor of shares in restructuring under section 242 of Companies Act 2013 from notional capital gains tax
- CBDT modifies challan ITNS 285 to enable payment of Equalisation Levy by non-resident e-commerce operators
- CBDT starts 11-day e-campaign on voluntary compliance of Income Tax for FY 2018-19 from 20 July 2020
- CBDT, vide a press release, reiterates that revised Form 26AS will include additional information
- CBDT and CBIC sign MoU for exchange of information on automatic and regular basis

Indirect Tax News

- CBIC extends time limit for issuing refund order and validity of e-way bill
- CBIC waives late fee in excess of specified amount for delayed filing of GSTR-3B
- CBIC extended the due date of filing GSTR-4 from July 31, 2020 to August 31, 2020.
- The threshold for e-invoicing has been increased to aggregate turnover exceeding 500 crores in FY, SEZ units will be exempted from e-invoicing - Notification No. 60/2020 and 61/2020 – Central Tax
- Facility to view, file and download returns of period July 2017 has been restored on portal. The functionality to enable taxpayers for filing revocation application again, in view of ROD order No.01/2020 has been implemented w.e.f. 6thAug, 2020
- Letter of Undertaking (LUT): Due date for filing of LUT for the financial year 2020-21 is extended to 31st August, 2020 as per Notification No. 55/2020 dated 27.06.2020.

Indirect Tax News

- CBIC notifies prospective amendment to interest provision under GST
- Government introduces Form GSTR-2B and amends GSTR-2A under GST.
- GSTN launches new functionality in Form GSTR-2A for disclosing imports and SEZ supplies
- Government notifies withdrawal of MEIS benefit with effect from 1 January 2021
- CBIC extends time limit for anti-profiteering related actions by the authority
- CBIC to roll out faceless assessment under Customs at an all India level by 31 October 2020
- HC allows refund of credit distributed by ISD to SEZ unit
- CBIC extends time limit of issuing invoices for goods out of India sent on approval basis

Indirect Tax News

- Following timelines were further extended.

  68/2020-Central Tax dated 21.09.2020 : Seeks to grant waiver / reduction in late fee for not furnishing FORM GSTR-10, subject to the condition that the returns are filled between 22.09.2020 to 31.12.2020.

  67/2020-Central Tax dated 21.09.2020: Seeks to grant waiver / reduction in late fee for not furnishing FORM GSTR-4 for 2017-18 and 2018-19, subject to the condition that the returns are filled between 22.09.2020 to 31.10.2020.

  66/2020-Central Tax dated 21.09.2020: Seeks to give one time extension for the time limit provided under Section 31(7) of the CGST Act 2017 till 31.10.2020 .

- New Comparison tool has been introduced in the GST Portal which provide comparison of output disclosed in GSTR-1 & 3B and also input claimed in GSTR-3B & appearing in 2A.

International Tax News

- The Australian Tax Office has released a guidance on the impact of jobkeeper payment on Transfer pricing arrangements. It states that Independent parties acting in a commercially rational manner would not be expected to share the benefit of the government assistance. The Australian entity should retain the benefit of the government assistance it receives. The guidance provides an example to demonstrate that the jobkeeper payment should not be reduced from the cost base for the purpose of charging a markup to the service recipient.

- Hong Kong SAR issues updated guidance on DIPN 42

- UK: Possible expansion of R&D tax credits to include data, cloud computing costs

- Singapore: significant GAAR changes have been proposed in the Income Tax (Amendment) Bill 2020. 50% surcharge on tax avoidance. More important is removal of Comptroller's discretion in relation to reconstruction for tax recovery once GAAR is applicable.

- UK government plan to end VAT free shopping for international visitors at the end of the year.

- USA - payroll tax holiday — a temporary suspension of the employee’s 6.2% share of the Social Security tax — takes effect on Sept. 1 and runs until the end of the year.

Judicial Pronouncement

- No Service tax on bank foreclosure charges.
- Auxiliary services conducted by employees did not constitute PE in India.
- Time limit prescribed for claiming transitional credits is mandatory and not directory
- Education cess is not disallowable under section 40(a)(ii) of the Income tax Act, 1961.
- SC rules that non-compete fee under a separate agreement is not a colorable device for avoiding taxes
- Profits derived from dependent agent in India is no taxable in India.
- AO has no power to switch from DCF to NAV method.
- TP adjustment is applicable in case of interest free loan advanced to AE.
- Marketing services to overseas client held as ‘intermediary services’ liable to IGST.
- Taxpayer have option to choose the method under rule 11UA.
- Mastercard would not need to pay Equalisation levy unless the dispute on existence of its Indian PE is settled
- Madras HC held refund of unutilized ITC on input services not available in case of inverted tax structure

Judicial Pronouncement

- TDS amount did not represent tax of assessee but it was tax of party, on whose behalf it was deducted and paid to the Government Exchequer. Thus, any delay in payment of TDS by assessee could not be linked to income tax of assessee and consequently, interest expenses claimed by assessee on account of delayed deposit of TDS liability was allowable under section 37(1)
- Karnataka HC rules deduction of indexed cost of acquisition while computing book profits under MAT.
- Mumbai Tribunal rules that expenditure incurred in foreign currency in excess of INR20,000 is not allowable as deduction
- Supply of common administrative services by HO to other units leviable to GST: Haryana AAR

An Evaluation of the New Tax Rate under Section 115BAC

In February 2020, the Finance Minister of India announced the reduction in Income tax rates of Individuals & HUF by introducing section 115BAC. Individual taxpayers may have assumed that this new section would help reduce their tax burden from the financial year 2020-21. However, when the fine print of the law was published, I personally did not see any opportunity for reduction in tax costs with the new lower tax rate.

The benefits of this reduced tax rate are available only after a taxpayer forgoes their exemptions & deductions. These exemptions & deductions are the most commonly available deductions. Taxpayers don't have to go the extra mile to be eligible for these exemptions & deductions. For example, the standard deductions of Rs.50,000/- and of Rs. 150,000/- under section 80C which primarily includes mandatory payments towards provident funds, school fees, Life Insurance, Home loan repayment, deductions for health insurance, house rent allowance, Interest on loan for self-occupied residence, etc. Therefore it seems unlikely that taxpayers availing all these exemptions and deductions will receive any benefits from the new tax rate.

Furthermore, individual taxpayers now have the choice to select between the old and new tax rates. Therefore to pick the optimal choice, the taxpayer will have to accurately compute the correct tax liability under both tax rates and then decide which is beneficial to him. Thus, the process of computing income tax liability for individual taxpayers may become more stressful & cumbersome.

With regards to salaried individual taxpayers subject to TDS, they are required to inform their employer at the beginning of the year about their preference of tax rates and with no option to change their preference during the financial year. Thus, these salaried taxpayers may have an additional burden of being extra cautious while intimating the employer regarding their choice of tax rates. The new tax rates may only be beneficial to taxpayers who don't claim any deductions or exemptions.

The potential complexities in evaluating the two rates may make the experience onerous for a taxpayer. Also, the scope of availing exemptions and deductions are vast, so it's unlikely that taxpayers will opt for the new tax rate. If that holds true, then the new tax rate may just serve as eyewash.

Understanding Re-domiciliation

Introduction :

Much in the way that a company can change its registered office/registered agent within the same jurisdiction, it can also "move" to a new jurisdiction. Corporate re-domiciliation is the process by which a company moves its 'domicile' (or place of incorporation) from one jurisdiction to another by changing the country under whose laws it is registered or incorporated, whilst maintaining the same legal identity. The ease with which re-domiciliation may take place has increased in recent years.

Further, not all countries allow re-domiciliation. Those that do, tend to be Commonwealth "common Law" (as opposed to Civil law jurisdictions). Notable exceptions are Cyprus, Austria, Hungary, Latvia, Luxembourg, Liechtenstein, Mauritius, BVI, Delaware & Ireland which are civil law but do permit re-domiciliation and conversely UK, Singapore, Hong Kong which are common law but do not generally allow re-domiciliation in or out. Notably, the Indian corporate laws currently do not permit either inbound or outbound re-domiciliation.

Advantages of re-domiciliation

Once a company is re-domiciled, it will be subject to all laws and regulations of the new jurisdiction and also avail benefits and advantages offered by such jurisdiction. In short the company would be regarded as a company registered/ incorporated in that jurisdictions, without going through the tedious process of liquidation and incorporation. Also, company is being allowed to retain their legal identity, registered name, employees, contract, bank accounts etc.
The advantages are subjective and often involve the balancing of the additional costs of re-domiciling against the inconvenience (and costs) of not doing so.

As an example Mr. X formed a Gibraltar company in 2004. He has established bank accounts for this company and the company has a number of commercial contracts. For various reasons Mr. X wishes to re-domicile the company to the Seychelles. If he re-domiciles, he will pay certain costs, but:

The company continues its legal existence with effect from the original incorporation date – 2004 in this example. … It can quite properly continue to state "in business/incorporated for over 10 years" for example.

Websites can remain "as is" with only minor changes to privacy policies and T&C.

All of the company's legal contracts remain valid; although notification of the change of jurisdiction may be required to counter-parties.

Bank accounts may remain in place, as it is still the same company. However, please note that banks will almost certainly require a full set of documents pertaining to the incoming jurisdiction. Some banks are easier to deal with than others – it is therefore wise to ask the bank informally before proceeding with re-domiciliation.

By contrast, Mr. Y also has a company registered in Gibraltar and wishes to transfer/continue his business in Belize. He has no contracts and his bank accounts are (relatively) easily replaced. In such a case he might be better advised to register a company (perhaps with the same name) in Belize, establish new banking relationships, and simply arrange for the Gibraltar Company to be struck off.

Further, re-domiciliation may not qualify as transfer in most of the countries who allowed re-domiciliation. Also few countries like Singapore give incentive for inbound re-domiciliation.

How to Claim Medical Treatment Deductions u/s. 80DDB?

Most Taxpayee did not aware about claiming of Medical Treatment Deductions u/s. 80DDB, What are the conditions to claim deductions u/s. 80DDB and how much maximum amount to claim as well as diseases disability.

To claim deduction u/s 80DDB following condition should be satisfied.

1. Taxpayer should be resident in India in the previous year.
2. Deduction is available to Individual or HUF only.
3. Deduction is available on actual expenditure on medical treatment of specified Disease or ailment as prescribed.
4. Expenditure should be incurred for medical treatment of
   - assessee himself
   - wholly/mainly dependent Husband/wife(spouse)
   - wholly /mainly dependent children
   - wholly/mainly dependent parents
   - wholly/mainly dependent Brother
   - wholly/mainly dependent Sisters
   - in case of Huf ,wholly/mainly dependent member of the HUF
5. The assesee should submit a certificate under rule 11DD of Income tax rules.

- The certificate can be taken from a Specialist as per the table below provided in SN 6.
- Patients getting treated in a private hospital are not required to take the certificate from a government hospital.
- Patients receiving treatment in a government hospital have to take the certificate from any specialist working full-time in that hospital. Such specialist must have a postgraduate degree in General Medicine or an equivalent degree, which is recognized by the Medical Council of India (MCI).
- Certificate in Form 10I is no longer required.
- The certificate must have

i. name and age of the patient
ii. name of the disease or ailment
iii. name, address, registration number and the qualification of the specialist issuing the prescription
iv. If the patient is receiving the treatment in a Government hospital, it should also have name and address of the Government hospital.

6. Here are the specialists who can give certificate under section 80DDB –

Serial No	Disease	Certificate to be taken from
(i)	Neurological Diseases where the disability level has been certified to	Neurologist having a Doctorate of Medicine (D.M.) degree in Neurology or any equivalent degree, which is recognised by the Medical Council of India

	be of 40% and above — (a) Dementia (b) Dystonia Musculorum Deformans (c) Motor Neuron Disease (d) Ataxia (e) Chorea (f) Hemiballismus (g) Aphasia (h)Parkinsons Disease	
(ii)	Malignant Cancers	Oncologist having a Doctorate of Medicine (D.M.) degree in Oncology or any equivalent degree which is recognised by the Medical Council of India
(iii)	Full Blown Acquired Immuno-Deficiency Syndrome (AIDS)	any specialist having a post-graduate degree in General or Internal Medicine, or any equivalent degree which is recognised by the Medical Council of India
(iv)	Chronic Renal failure	a Nephrologist having a Doctorate of Medicine(D.M.) degree in Nephrology or a Urologist having a Master of Chirurgiae(M.Ch.) degree in Urology or any equivalent degree, which is recognised by the Medical Council of India
(v)	Hematological disorders (i) Hemophilia (i) Hemophilia (ii) Thalassaemia	a specialist having a Doctorate of Medicine (D.M.) degree in Hematology or any equivalent degree, which is recognised by the Medical Council of India

7. Quantum of Deduction.
    - 40,000/- or the amount actually paid, whichever is less.
    - In the case of a senior citizen and super-senior citizen, Rs.1,00,000 or amount actually paid, whichever is less.

8. Documents required to claim the deductions.
    - Certificate from the medical specialist.
    - Invoices of medical expenses incurred. (Hospital, Doctor, Medicine, Testing etc)

TCS ON SALE OF GOODS.

Applicability:

All Seller of goods (Seller of Services not covered) whose turnover (Sales) during the preceding previous year i.e. FY 2019 – 2020 is more than INR 10 Crores, they have to collect the tax (TCS) at the time of raising of invoices to the buyer and pay such tax (TCS) on receipt of payment from the buyer to the government exchequer w.e.f. 1st October 2020. This provision would be applicable only after threshold exemption limit of INR 50 Lakhs sale to each buyer of the goods.

<u>This provisions would not be applicable if seller sells the goods to –</u>

(i) the Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; or

(ii) local authority as defined in the Explanation to clause (20) of section 10; or

(iii) a person importing goods into India or any other person as notified by Central Government.; or

(iv) <u>buyer is liable to deduct tax at source (TDS)</u>

Rate of Tax

TCS have to be collected @ 0.1% of the value of goods (excluding taxes i.e. GST) if the buyer is having PAN / Aadhar Card. If buyer do not have PAN / Aadhar Card, rate of TCS would be 1% of the value of goods (excluding taxes i.e. GST).

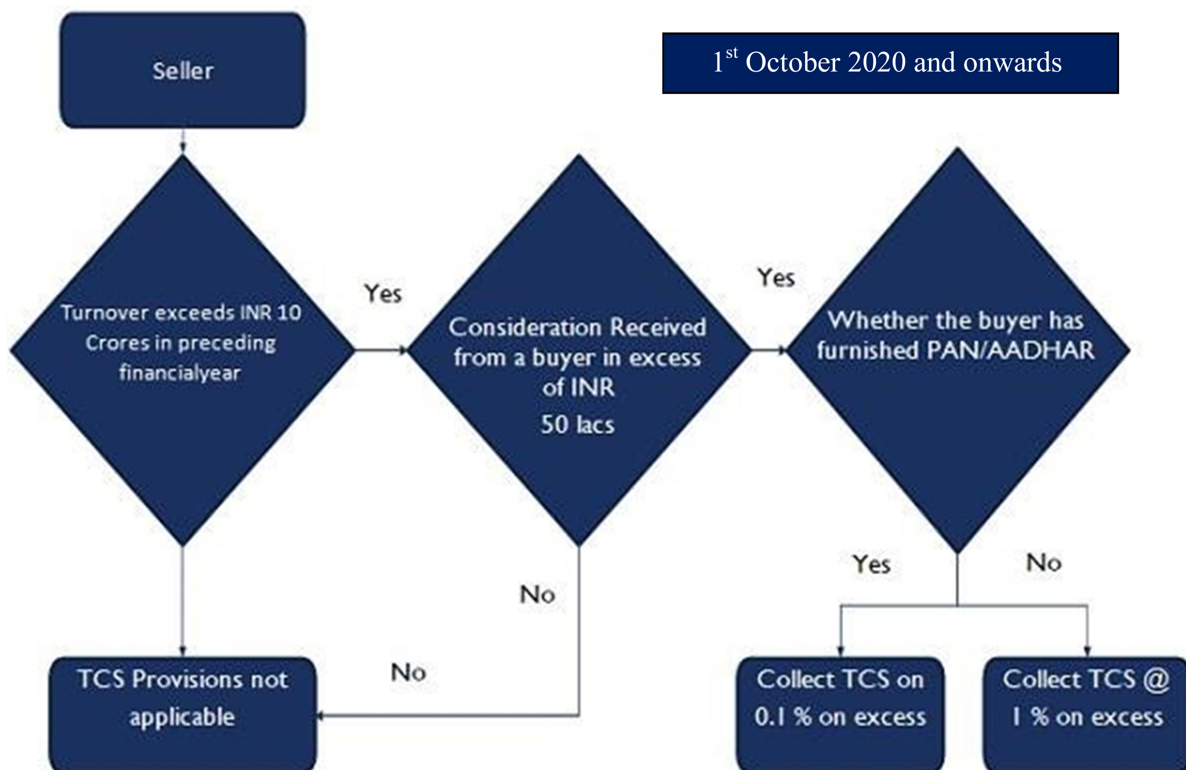
	PAN or Aadhar is available	PAN or Aadhar is not available
Total Sales / Turnover / Gross Receipts in PFY	25 Crores	25 Crores
Sale of Goods including other Expenses during year to a single party	1,00,00,000	1,00,00,000
GST	18,00,000	18,00,000
Amount realized	75,00,000	75,00,000
Exemption from TCS provisions	50,00,000	50,00,000
Amount eligible for TCS	25,00,000	25,00,000
Tax to be collected from the buyer	2,500	25,000

Note: TCS rate for the period 01-10-2020 to 31-03-2021 would be 0.075% of the value of goods (excluding taxes i.e. GST) if the buyer is having PAN / Aadhar Card. If buyer do not have PAN / Aadhar Card, rate of TCS would be 0.75% of the value of goods (excluding taxes i.e. GST).

Payment of Tax (TCS) and Return

Seller of goods has to make the payment of tax (TCS) in to Government Exchequers within 7 days of the next month i.e. payment realized in the month of August 2020 from their buyers, tax will have to be deposited in to Government Exchequers by 7th of September 2020.

Moreover, Seller of the goods have to also furnish quarterly return in Form 27EQ in respect of tax collected (TCS) by them during the quarter by 15th of the next quarter.



Analysis of Section 80M of the Income tax act, 1961.

Section 80M has been re-introduced from the financial year 2020-21. The text of the law is given below.

80M. *(1) Where the gross total income of a domestic company in any previous year includes any income by way of dividends from any other domestic company or a foreign company or a business trust, there shall, in accordance with and subject to the provisions of this section, be allowed in computing the total income of such domestic company, a deduction of an amount equal to so much of the amount of income by way of dividends received from such other domestic company or foreign company or business trust as does not exceed the amount of dividend distributed by it on or before the due date.*

(2) Where any deduction, in respect of the amount of dividend distributed by the domestic company, has been allowed under sub-section (1) in any previous year, no deduction shall be allowed in respect of such amount in any other previous year.

Explanation.*—For the purposes of this section, the expression "due date" means the date one month prior to the date for furnishing the return of income under sub-section (1) of section 139.*

From the above following is being concluded.

1. Domestic company is in receipt of dividend from
   - (i) Domestic company
   - (ii) Foreign company
   - (iii) Business trust

2. Thus following dividend income is not included
   - (i) Dividend from mutual fund or units.
   - (ii) Share of profit from LLP

3. The quantum of the deduction under section 80M is the least of the following
   - (i) Divided income received as mention in SN 1 during the FY.
   - (ii) Dividend payout by the company before filing return of Income u/s 139(1) for the FY.

4. Once deduction for a particular dividend has been claimed for one FY same cannot be claimed as deduction for next FY.

5. In the act, there is no mention that dividend should receive first and then dividend payout should happen.

Challenges for TDS on Dividend

From Financial year 2020-21, companies required to deduct TDS under section 194 & 195 while making dividend payout to their shareholders. In this article we had highlighted few challenges in respect of TDS deduction on dividend.

01. A shareholder can have multiple demat account. Hence it is necessary to check if single PAN is having multiple demat account where he holding shares of your company on the record date.

02. Shareholders have the option to opt for lower TDS rate by submitting Form 15G/15H or tax residency certificate. Company should provide this facility to the shareholders and also remember to file online quarterly return for Form 15G/15H.

03. The company may be paying dividend more than one time in a financial year. While making first payment there was no TDS for a shareholder as the payment was less than Rs. 5000/-. However while making another dividend payment, the aggregate dividend exceeds Rs. 5000/- and become subject to TDS.

04. There are number of shareholders who kept their shares in physical form and not in demat form. Thus, mandatory data like PAN, residency status may not be available with the registrar. Company should provide facility to this shareholder to provide necessary information.

05. The dividend amount should be transferred to separate escrow bank account within 5 days from the date of announcement of dividend. If possible check with bank, whether they allow TDS payment from the escrow account and if not then transfer only the net dividend amount to escrow bank account. Thus, companies require to compute correct for all shareholders in a very short span of time.

06. The biggest challenge is in respect of dividend payment to non resident. If the shareholder suo-moto not updates his residential status before his demat company, then there is no way company can know the correct residential status of his shareholders.

07. Further, based on Tax residency certificate, PAN availability , country of payment, etc, the TDS rate under section 195 going to determine and same may be vary for number of shareholders.

08. For all the foreign payment companies has to arrange for separate form 15CA/15CB for each dividend payment.

09. At last, the details of TDS deduction require to be consolidated in the quarterly Form 26Q and Form 27Q of the company.

An Analysis of India GST Law After Three Years.

Background.

The significant Goods and Services Tax law (GST) was brought into place and effectuated on 1st July 2017 after adoption on 8th August 2016 of the 101st Constitutional Amendment Act, 2016. Last month marked the 3rd anniversary of the law, introduced in a midnight session addressed by Hon'ble President Pranab Mukherjee, Prime Minister Narendra Modi and Finance Minister Arun Jaitley in the Central Hall of Parliament on 30th June 2017 where the game-changing economic reform was formally announced.

Hon'ble President Sri Pranab Mukherjee stated, *'GST is the result of a broad consensus arrived at between the Centre and the States and is a tribute to the maturity and wisdom of India's democracy"*

The Hon'ble Prime Minister in his own flair nicknamed GST as "Good and **Simple** Tax". The following are some noteworthy assertions made by him in his midnight address:

- The new law shall ensure 'one nation, one tax' which shall be executed in a standard manner in all the states. The same was expected to put an end to much of the earlier compliance headache for businesses from the erstwhile multiple Indirect Taxation collection system
- It shall be a revolutionary taxation system for the digital India. It would not merely ease doing business, but also demonstrate the best way of managing business
- It shall be an example of co-operative federalism which shall facilitate inclusive growth of the nation. States shall now get equal opportunities of development where both Centre and State play equal role in its operations
- It would lead to immense savings in time and cost. Specifically, that the new law would eliminate delays at state border crossings caused by existence of different state taxation policies
- The law would cater to the cascading erstwhile indirect tax regime by introduction of a simpler, more transparent modern tax administration which would help curb corruption (including the low-level corruption of pre-GST era) and reward honesty

In addition to the above points, the primary objectives of this new consumption based indirect tax system instead of erstwhile multiple taxes on manufacturing by Centre and Sale by States known as GST has sought to achieve uniform GST procedures and seamless Input Tax Credit (ITC). It would also increase tax to GDP ratio and revenue surplus, reduce economic distortions, provide transparency in the taxation system, boost employment opportunities and help in a developing a unified national market to boost Foreign Investment and 'Make in India. Finally it would increase the product competitiveness in the international market; improve the overall investment climate in the country in a uniform basis for developing all states.

01. Achievements.

The new law has its own share of achievements. It has considerably stopped the cascade of tax upon tax, reduced compliances in contrast to the erstwhile indirect tax regime, and has an effectively functioning GST Council which meets regularly to discuss important challenges faced by the law. Further, the new law brought up the Central uniform E-Way Bill across the country, the rainmaker policy of availability of seamless credit has been beneficial for a number of industries while leading to the emergence of another set of concerns stated hereinafter. The new law has further led to a substantial decline in the number of cases of tax evasion.

While appreciating the milestones which have been achieved by the GST law, a look back at the eventful years of the introduction of the reform, demonstrate a swelling number of confusions and litigations in the recent past. A surge in the legal, technical and procedural faults has been observed. These need to be reviewed for their immediate solutions.

02. **Challenges**.

The implementation of the new law as per its design has been made substantially reliant on the efficient digital platform-GSTN which is regrettably susceptible to technical glitches. It is the single largest problem which needs to be strengthened and streamlined. Too much concentration & centralization of power in the hands of few bureaucrats has kept the extensive reform away from the people of the country. GST hasn't completely included areas which may require transformation and corrections in Indian economy. GST also faced some technical hiccups, faulty implementation and initial un-preparedness, along with repeated experiments in the framing of GST Law; lack of consistency and sustainability which could have adversely affected the business and industry. India lost a big opportunity to happily feel GST as a beneficial reform. The challenges faced by the law today can further be discussed as follows:

a. GST Law is not well drafted, it is cut and paste of erstwhile three main Indirect Tax Laws which make it a combination without clarity, simplicity, transparency and intelligence of its own. During this three year's period, GST has seen in the year 2017, 256 Notifications, 29 Circulars, 12 Orders and 1 Removal of Difficulty Order (ROD) while in the year 2018, 192 Notifications, 56 Circulars, 4 Orders and 4 ROD as well as in the year 2019, 174 Notifications, 50 Circulars, 2 Orders, 13 ROD and 11 Corrigendum were issued. In the current year of 2020, we have already seen 73 Notifications, 11 Circulars, 1 order and 1 ROD. In total 695 Notifications, 146 Circulars, 19 Orders, 19 ROD and 11 Corrigendum were issued in addition to numerous Notifications and Amendments in the GST Law which comprised of three Acts & their corresponding Rules i.e. CGST, SGST and IGST. Further, the taxpayer needs to understand and implement the law after considering the interpretation and observations made in more than 1,000 Judgments rendered by various High Courts creating more chaos than bringing clarity

b. Whether the businessman can keep track of such large number of Notifications, Circulars, Clarifications, ROD, etc. while performing his other business duties. Can it still be called a 'Simple' Law? Even a tax professional having requisite educational qualification, knowledge, and experience is worried every moment that whether what he is advising the client or implementing the Law while filing of returns or performing any usual compliance is correct in-accordance to the law. The genuine and vigilant businessman including their tax advisors are just spending un-productive time in keeping track of extended dates, waving of late fees or fines and interest rather than focusing on real issues facing GST and its long-term success

c. The difficulty increases when the Law is driven absolutely through the complex notifications issued everyday by the Government and complicated circulars by Central Board of Indirect Taxes and Customs

d. Rule of Law in GST is absolutely missing in the country, which is a serious question in a seasoned democracy like India. The Government has been regularly collecting around ` 1 Lakh crore every month as GST revenue, but no judicial forum has yet been put in place for the genuine taxpayer for resolving their grievances. Every time they have to knock the doors of the High Court or Supreme Court which is practically not possible for small or medium dealers. Lack of judicial forum like Tribunal and Appellate Authorities as prescribed and provided by the Parliament in the GST Law has placed the taxpayers in the precarious situation since he cannot take any legal action to safe guard his interest

e. Probably, GST Council which itself is one of the finest examples of Cooperative Federalism, has not realized the essential requirement of proper judicial forum. Probably, bureaucracy responsible for implementing GST Law wants no or minimum interference so that their arbitrary actions and pro-revenue approach could continue even at the detriment of the country wide business. Imagine the plight of the repressed taxpayers in a democracy for last three years, the Government could not establish and start the 'GST Tribunal' neither the 'Central Advance Ruling Authority' while the local AARs manned with junior officers deficient in legal acumen are creating havoc with their revenue biased interpretations of law in most cases

f. Even as the time-gap arrangement of filing the 1st Appeal, the procedure is too much complicated, tedious and time consuming. As per the present instructions in the various States after uploading/filling of appeal online, hard copies must be submitted before the 1st Appellate Authority. What is the benefit of filling appeals online? Certified Copy of the questioned Order is separately needed to be filed manually

g. GST was expected to integrate the entire value chain starting from raw materials to finished products, this one advantage itself should have been a huge economic benefit for India, but GST grossly failed due to numerous arbitrary riders placed in the law. Thus the aim of removal of cascading effect in the economy could not be achieved to the desired level, nor the business could become globally competitive, neither the prices of the finished products consumed by the citizens could come down due to the restrictions on Input Tax Credit adjustment seamlessly through-out the supply chain.

h. A new problem has unfortunately erupted and faced by taxpayer. Suppose during the movement of goods from Gujarat to Punjab if goods are verified & seized by Mobile Squad Authority in Rajasthan, all legally required solutions like filing of clarifications, written reply etc. Even the filling of Appeal against the Tax & Penalty Order have to be completed before the proper Authority in Rajasthan i.e. at the remote place of seizure itself which is entirely new State or a unknown place for a normal consignor of Gujarat or consignee of Punjab. Such tedious procedure forces the harassed consignor or consignee to succumb before the arbitrary, illegal, and un-justified huge demand of security deposit in Rajasthan. This is leading to corruption rather than removing the corruption, as envisaged earlier by the Government before implementation of GST. The present bureaucracy is absolutely sitting upon this very sensitive issue and no solution is being found out by GST Council in spite of repeated representation by Trade, Industry and Professional Bodies

i. Classification of Goods for applying the tax rate has many complications. In respect to same commodities Custom officer depends on their own Custom Classifications based on old thinking resulting in different views than GST Officer as per HSN Code. The custom duty calculated and paid at ICEGATE i.e. web portal of customs and GSTN i.e. web portal of GST both managed by Central Government have different interpretations and applications creating huge uncertainty for the import business. To develop and maintain transparent price structure by a business which is importing the goods as well as manufacturing the goods of similar brand in the country is a big issue due to this variance in thinking of the two Central Departments. Even after three years of implementation, the Government has utterly failed to integrate the windows of two Central Departments under Central Board of Indirect Taxes &Customs

j. Blocking of fund due to lack of integration as well as riders placed in process of refund/adjustment has further aggravated the financial problems of the export or import business

k. The rationalization of GST rates has also been taken by the Government in a big way, the number of entries in 28% GST Tax slab has been reduced from the earlier 228 items to only 37

items as well as some 500 items have seen rate tweaks over a period of 3 years which is certainly a good start, but still, we have at least seven GST slabs. This defeats the principle of simplicity and also introduces inverted tax structure. The classifications tend to be arbitrary, which means that slab allotment is susceptible to political patronage and undesirable lobbying

l. In the recent time of COVID-19, the businesses have come across an intricate controversy about the applicable HSN code and accordingly the GST Tax rate on face mask, sanitizer, medical consumables & tools and other such items of essential requirements for fighting the pandemic. Similar such issues are erupting time and again to complicate the business in various fields

m. The problem of fake registration under GST could not be tackled by the Government in spite of the availability of large number of State as well as Central Officers. Rather this laxity is increasing both the evasion and corruption to the great disadvantage of genuine business inducing tax distortions

n. Due to in-efficient digital infra-structure the pre-requisite of matching of GSTR- 1 (Outward Supply) and GSTR-2 (Automatic updating of Inward Supply) could not be put in place which is detrimental to the very ethos of GST; defeating the advantage of 'Self-Policing' feature. Now, with an aim to cover-up the failure, the Government is giving some limited benefits to the registered dealers knowingly that such leniency is certainly susceptible to misuse by unscrupulous registered dealers as well as independently detrimental to genuine business which is conducting all its transactions after recording in the books of accounts and payment of due taxes.

o. The Goods and Services Tax has many anomalies in its present form, inputs are taxed at higher rates than final products, this phenomenon known as 'Inverted Duty Structure' resulting in blockage of fund which has become a very common and general problem of several Industries & Trade. It is tough to get even the top-most bureaucracy understand the real issue for its solution, further every time the industrial or trade body cannot approach High Court for obvious reason as their action of adopting judicial route being characterized as against the Government

p. One of the important aims of GST was to allow seamless credit of tax paid at the earlier stage from the Outward Liability to remove cascading effect, but large number of direct and indirect restrictions has been imposed on allowing ITC. This is creating interruption which is against the spirit of homogeneous integration of value chain. Government with all its might, unreasonably blocked the transitional Input Tax Credit available as on 1st July 2017 for the erstwhile taxes (VAT, Central Excise or Service Tax etc) paid in repealed laws merged with GST; why so?

q. The GST was expected to raise efficiency in business with the aim to lower the final prices of supply of goods and services, a goal it has largely failed to achieve. This could be a popular advantage to the citizens after implementation of GST. Anti- profiteering provisions of GST Law have not been rationally used to ensure passing on differential benefit by the business to the ultimate consumer in the larger interest of economy of the country

r. GSTN Official Web Portal of the Government has failed in data management and analysis for accurate policy planning of targeted growth; sectoral data is not available for the economic activity so the business as well as Trade & Industry bodies are unable to get the precise data to make a long term planning in their business area.

s. Even after 3 years of implementation of GST Law the Central & State Departmental Officers are still untrained to analyse the transaction data and immediately detect loss of revenue by un-

scrupulous registered dealers. The training provided by the Government has not yet equipped/skilled the Officers and staff to the desired level as is needed for correct implementation of GST, expecting guidance to the small taxpayers is a farfetched dream

t. Most important of all, range of technical glitches need to be fixed. The software systems in use are too complex for individuals and modest businesses, and input credits are hard to get. Moreover, the GST Authority's at the District or Zone level or even at the State level has no power at all to resolve any of the grievances which are increasing troubles of the taxpayers. The resolution of the dispute even with the satisfaction and consent of the Jurisdictional Authority at the local level is not permitted at all, the tax-payer cannot rectify any genuine mistake happened during filing of any of the complicated forms regularly required to be submitted online.

4. **Conclusion.**

Recently, the Government on 24th June, 2020, by Notification extended the operation of power to issue 'Removal of Difficulties Orders' by a further period of two years, beyond 1st July 2020 which proves beyond doubt that the GST Council itself admits that GST has not yet been stabilized even-after passing of three years, as this time period was envisaged when GST was adopted by Indian Parliament.

The extensive impediments which have been faced by the law have not gone unnoticed by the eyes of various Courts of India. The bench of Madras High Court constituting Dr. J. Anita Sumanth in the case of M/s. Samrajyaa and Co. v. Deputy Commr of GST & CE in paragraph 5 mentions that "the era of GST is in a nascent stage and both the Department as well as assesses are still learning the ropes … it is common knowledge that assesses pan India are facing difficulties in accessing the system and uploading Forms to seek transition of credit…"

Further, the Delhi HC in the case of Sales Tax Bar Association (Regd.) v. Union of India recognized the technical issues faced by the portal and provided further instructions on improving the efficacy and reach of the portal. Also, in the recent Delhi High Court decision of the Brand Equity Treaties, it was observed in paragraph 15 that "realizing that Respondent's network and system, and the change, had posed multifarious problems that require a reasonable approach. …This is palpably evident from the sheer number of cases being presented before us, in relation to such technical difficulties and inadequacies. The benchmark, in our view, is that the online system brought into force by the GSTN Ltd. should be able to perform all functions and should have all flexibilities/ options, which were available in the pre-GST regime. The problems on the GSTN cannot be wished away and have to be resolved in the right earnest. This requires sensitivity on the part of the Government which has, unfortunately, not been exhibited in adequate measure."

Hence, keeping the above extensive list of issues in mind as have been experienced by the businesses & industries in the implementation phases, it would not be wrong to admit that 3 years is a sufficient time for new GST regime to stabilize, but unfortunately India is still struggling with this new law and now onwards will be losing the precious time to firmly stand as a global economic power. A legislative reform coupled with a robust technical reorganization with minimal glitches, which shapes the basic machinery for immaculate implementation of the GST law is required on the present date.

Transaction in Securities - Tax Audit threshold limit

THIS article deals with the requirement of Tax Audit u/s 44AB of the Income-tax Act, 1961 ('the Act') in respect of the transactions in securities which inter alia includes transaction in derivatives of shares, stocks etc. It defines what should be included for the purpose of determination of the turnover for the applicability of the Tax Audit and how it should be valued. It also interprets the nature of income from transactions in securities and whether it should be construed as business income or income from capital gain and further speculative or non- speculative income from business in the light of judicial rulings and provisions of the Income-tax Act. It describes with examples how the guidelines issued by ICAI should be read in the light of Income-tax provisions where ICAI has missed referring to the definition of speculative and non-speculative transactions under the Act and have not differentiated between them.

INTRODUCTION

Section 44AB of the Act stipulates the requirement of Tax Audit on a person carrying on business, if his total sales, turnover or gross receipts (as the case may be) in business for the year exceed or exceeds Rs. 1 crore. This provision is? not applicable to the person who opts for presumptive taxation scheme under section 44AD? and his total sales or turnover doesn't exceed Rs. 2 crores.

W.e.f. FY 2019-20, the threshold limit, for a person carrying on business, is increased from Rs. 1 Crore to Rs. 5 crores in case when cash receipt and payment made during the year does not exceed 5% of total receipt or payment, as the case may be. In other words, more than 95% of the business transactions should be done through banking channels.

The Act does not define how the value of the turnover should be calculated and what should be included or excluded while computing the same. For this purpose, we need to refer to the Guidance Note on Tax Audit u/s 44AB issued by the ICAI which specifically describes the guidelines which determine the value of turnover or gross receipts in shares, securities and derivatives. This study interprets whether a transaction in securities should be a part of turnover or not and if yes, what value should be considered.

TRANSACTION IN SECURITIES, WHETHER BUSINESS OR INVESTMENT

Whether or not a transaction in securities should be considered for calculating the turnover depends upon its nature of business or investment. In case such transactions are for the purposes of investment and profit/(loss) arising therefrom, it is to be computed under the head 'Capital Gains', then the value of such transactions are not to be included in sales or turnover. However, in case such transactions are in the course of business, then those should be included in the sale, turnover or gross receipts as the case may be.

Central Board of Direct Taxes ('CBIC') has issued Instruction No. 1827 dated August 31, 1989 which has been further supplemented by the Circular No. 4/2007, dated June 15, 2007, where CBDT has described the principles to determine the nature of transactions based on the different Apex Court rulings, High Court rulings and AAR rulings. After going through all these rulings, we can summarize the following factors to determine the nature of the transactions i.e.

1. Intention behind investment: The purchase and sale of shares with the motive of earning profits would result in the transaction being in the nature of trade but where the object of the investment in shares is to derive income by way of dividend etc. then the profits accruing by change in such investment will yield capital gain and not revenue receipt.

2. Accounting treatment in the Financials: Where a taxpayer purchases and sells shares in the course of his business, it must be shown that they were held as stock-in-trade and in case of Investment it should be shown as part of Investment Heading. Only the existence of the power to purchase and sell shares in the objectives of the business through memorandum of association or otherwise, is not decisive factor to determine the nature of transaction.

3. Frequency and volume of transactions: High frequency and volume of transaction indicate the business intent of the taxpayer rather than investment strategy.

The following case laws can be referred to understand the nature of the transactions where the issues have been discussed under different circumstances:

- CIT vs. Ahmedbhai Umarbhai & Co. - 2002-TIOL-579-SC-IT-CB
- Sarder Indra Singh & sons Ltd. Vs. CIT (1953) 24 ITR 415 (SC)
- CIT Vs. Associated Industrial Development Co. (P) Limited - 2002-TIOL-558-SC-IT
- CIT, Bombay Vs H. Holck Larsen - 2002-TIOL-531-SC-IT
- SBH. Vs.CIT (1988) 151 ITR 703 (AP)
- Fidelity North star Fund, In re - 2007-TIOL-03-ARA-IT, Authority for Advance Rulings (AAR)
- Sanjeev Mittal Vs. CIT, ITA No. 520 of 2014 (2015), (Delhi HC) - 2015-TIOL-2543-HC-DEL-IT
- Pr. CIT-1 (S), Vs. Shah Investor's Home Limited, Tax Appeal No. 418 of 2016 - 2016-TIOL-1151-HC-AHM-IT (Gujarat)

It can be opined that it is the total effect of all relevant factors and circumstances that determines the character of the transaction. CBDT has further emphasized that it is possible for a taxpayer to have two portfolios, i.e., an investment portfolio and trading portfolio.

CALCULATION OF VALUE OF TRANSACTION TO BE CONSIDERED AS TURNOVER

The ICAI has issued the Guidance Note on Tax Audit u/s 44AB and clause 5.14 on page no. 25 of it provides guidelines to determine the value of turnover or gross receipts in shares, securities and derivatives. The Income-tax Act, 1961 also stipulates the definition of Speculative and non-speculative transactions u/s 43(5). After a cumulative reading of provisions and guidelines, the transaction can be of two types for the purpose of calculation of turnover i.e.

(1) Delivery based transaction

In respect of the delivery based transaction, total sales value of the shares, stocks or commodities should be considered as turnover. However, it should be applicable only in the case of transactions considered as business income and not as investment income.

(2) Non-delivery based transaction

All the derivatives transactions are generally non-delivery based transactions e.g. future contracts, forward contracts, options (call/put), margin contracts, swaps etc., hence, any value derived from such transactions should be considered for the purpose of calculation of Turnover/Receipts for applicability of Tax Audit.

(a) Speculative Transaction: Section 43(5) of the Act defines "speculative transaction" means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrip. It further provides that an eligible transaction in respect of trading in security derivatives or commodity derivatives from a recognized stock exchanges should not be considered as speculative transaction.

ICAI guidelines suggests that each transaction resulting into whether a positive or negative difference is an independent transaction and the aggregate of all speculative transactions shall be taken to calculate the turnover. Hence, it can be opined that the absolute value of the Profit/(loss) of each transaction should be considered for turnover computation, e.g. the taxpayer has incurred profit of Rs. 45 lakhs in one transaction and loss of Rs. 65 lakhs in another transaction, then the value of turnover should be considered as Rs. 1.10 Crs.

(b) Non-speculative Transactions: The transactions other than speculative transactions should be considered as non-speculative transaction as the Act does not define any separate definition for it. The turnover in such type of transactions is to be determined as follows:

(i) The total of favorable and unfavorable differences shall be taken as turnover.

The ICAI guidelines does not define that whether it should be absolute value of the transactions or net of profit/(loss) account which should be considered to determine the value of turnover. Analysts have different view on it, however, as per my opinion it should be considered as absolute value rather than total value.

While calculating the value of turnover or gross receipts of any business the net profit/(loss) element of all the transactions should not be considered as it does not impact the turnover of the business. A business which is in loss is also eligible for Tax Audit similar to a business in profit so netting off the same is not advisable.

(ii) Premium received on sale of options is also to be included in turnover. E.g., in options, if you buy 2 lots (50 quantity) of Nifty 8,200 calls at Rs.20 and sell at Rs.30. Firstly, the profit of Rs 500 (10 x 50) is the turnover. But premium received on sale also has to be considered for turnover, which is Rs 30 x 50 = Rs 1,500. So total turnover on this option trade will be of Rs. 2,000.

(iii) In respect of any reverse trades entered, the difference thereon should also form part of the turnover.

The ICAI guidelines do not differentiate between speculative and non-speculative transaction and also does not refer to the definition of the same as per the Act. The exclusion of derivatives transaction through stock exchanges was introduced in Section 43(5) by Finance Act, 2005 w.e.f. April 1, 2006, however, after that Guidelines for Tax Audit u/s 44AB has been revised many times but this aspect was missed. Hence, it is suggested that the the definition of speculative and non-speculative transactions as per the Act should be referred to in the Guidance Note along with examples elaborating the different scenarios to remove any ambiguity.

CONCLUSION:

In my opinion, it can be concluded that while calculating the value of turnover, sales or gross receipt u/s 44AB of the Income-tax Act, 1961, the following principles should be followed -

(1) Only the business transactions should be considered and not the investment transactions.

(2) In respect of delivery based business transactions, the total sales value of the transactions should be included.

(3) In respect of non-delivery based transactions, the absolute value of Profit/(loss) from each transaction should be taken rather then the net value of profit/(loss) through all the transactions of the business during the year.

(4) For options and reverse trades, in addition the point no. (3), the premium received on sale of options and difference value in reverse trade should be included respectively.

Know the changes introduced in new TDS Returns

The Finance Act, 2020 has made several changes to the Chapter-XVII (Collection and Recovery of Tax). Twenty-Five Sections of the Income-tax Act, 1961 have been impacted due to the Finance Act, 2020 either by way of amendment to the existing provision or by insertion of new provisions for deduction or collection of tax. E- Commerce operators, tour operators, Mutual Funds, domestic companies and authorized dealers have been entrusted with obligations of deduction or collection of tax at source from certain transactions. To incorporate the impact of recent changes, the CBDT has notified the amendment to Rule 31A and Annexure to Form 26Q and Form 27Q vide Income-tax (16th Amendment Rule), 20201.

A summary of the changes introduced in the form for filing of TDS Statement and Rule 31A are explained in the below paragraphs.

1. Reporting of nil or lower deduction of tax in cases notified under Section 194A(5) or Section 197A(1F)

As per section 194A of the Income-tax Act, every person (other than an individual or HUF, whose turnover or gross receipt during the preceding year does not exceed Rs. 1 crore in the case of business and Rs. 50 lakhs in case of the profession) is required to deduct tax at the rate of 10% from interest, other than on securities, paid or payable to a resident person.

Section 194A(3) contains clauses (i) to (xi) to provide an exemption from deduction of tax in certain cases. As per clause (iii), no tax is required to be deducted by a person from the interest paid or payable to a Bank, Financial Corporation, Insurance Company or such other institutions or bodies as may be notified by the Central Government. Various persons had been notified for this purpose by the Government through various notifications.

The Finance Act, 2020 amended the said clause (iii) of Section 194A(3) to provide that no notification shall be issued by the Central Government in respect of the said clause on or after 01-04-2020. Alternatively, a new sub-section (5) has been inserted to empower the Central Government to notify the cases where no tax shall be deducted or the tax shall be deducted at the lower rate. In other words, this amendment empowers the Central Government to provide an exemption from deduction of tax or

deduction at the lower rate for entire section 194A instead of issuing notifications clause-wise or sub-section wise.

A similar amendment has also been made to Section 197A. As per current provisions of Section 197A(1F), no deduction of tax shall be made from the specified payment to such institution, as may be notified by the Central Government in this behalf. To empower the Central Govt. to notify the specified payments for both nil deduction of tax and lower deduction of tax, the sub-section (1F) of Section 197A has been substituted. The new sub-section provides that no deduction of tax shall be made or deduction of tax shall be made at a lower rate by the deductor in cases notified by the Central Government.

Accordingly, the CBDT has made the consequential changes to Rule 31A and Form 26Q requiring deductor to furnish the particulars of the amount paid or credited on which tax was not deducted or deducted at a lower rate in view of the notification issued under sub-section (5) of section 194A or sub-section (1F) of Section 197A. Further, the deductor shall be required to provide the following remarks in respect of such payments:

Remark	Reason for no deduction or lower deduction of tax
D	If no deduction or lower deduction is on account of payment made to a person or class of person on account of notification issued under sub- section (5) of section 194A

Z	if no deduction or lower deduction is on account of payment being notified under section 197A(1F)

2. Reporting of interest paid by Offshore banking unit without deduction of tax

As per sub-section (1D) of section 197A, an Offshore Banking Unit is not required to deduct tax from 'interest' paid in respect of deposit made by or borrowing from a 'non-resident' or 'not ordinarily resident in India'.

New Form 27Q now requires Offshore banking unit to furnish particulars of the amount paid or credited on which tax was not deducted under sub-section (1D) of section 197A and write remark "G" under reasons for not deducting tax.

3. Reporting of tax deducted under Section 194J at concessional rate of 2%.

Section 194J of the Income-tax Act requires every person (other than an individual or HUF whose turnover or gross receipts does not exceed Rs. 1 crore in case of business and Rs. 50 lakhs in case of the profession) to deduct tax at the rate of 10% from the payment made to a resident if such payment is in the nature of fees for professional services, fees for technical services, director's fee, non-compete fees or royalty.

The Finance Act, 2020, has amended Section 194J with effect from 01-04-2020, to provide for a concessional rate of TDS at the rate of 2%. This concessional rate shall be applied to the fees for technical services (not being professional services) and royalty paid or payable for the sale, distribution or exhibition of cinematographic films.

The annexure to Form 26Q has been amended to incorporate the effect of this amendment. New annexure has revised the list of section codes to bifurcate section 194J in two parts as follows:

Section	Nature of payment	Section Code
194J(a)	Fees for technical services (not being professional services), royalty for sale, distribution or exhibition of cinematography films and call centre (at the rate of 2%)	94J-A
194J(b)	Fee for professional services or royalty etc. (at the rate of 10%)	94J-B

4. Reporting of tax deducted by an e-Commerce operator under Section 194-O

The Finance Act, 2020 has inserted a new Section 194-O in the Income-tax Act with effect from 01-10-2020, to provide that every e-commerce operator facilitating the sale of goods or provision of services of an e-commerce participant through its digital or electronic facility or platform, shall be required to deduct tax at source at the rate of 1% of the gross amount of sale or service or both facilitated by the e-commerce operator.

The annexure to Form 26Q has been amended to incorporate the effect of this amendment. New annexure has revised the list of section codes to incorporate reference of section 194-O, namely:

Section	Nature of payment	Section Code
194-O	Payment of certain sums by the e-commerce operator to e- commerce participant	94O

Reporting of payment made to the entities whose income is exempt from tax

The CBDT has clarified2 that no tax is required to be deducted from the following income of Ramakrishna Math and Ramakrishna Mission as they are exempt under section 10(23C)(iv):

(a) Interest on securities (Section 193);
(b) Interest other than 'interest on securities' (Section 194A); and
(c) Income in respect of units of Mutual fund specified under section 10(23D) or of Unit trust of India (Section 194K)

The CBDT has further clarified3 that no tax is required to be deducted from the income of specified entities which are unconditionally exempted under section 10 and which are also statutorily not required to file the return of income under section 139.

The amended Rule 31A(4) requires deductor to furnish particulars of the amount paid or credited on which tax was not deducted due to the aforesaid circulars.

Consequently, new annexure to Form 26Q has incorporated a new code "E" under "Reason for non-deduction/lower deduction/ Higher Deduction/ Threshold/ Transporter etc." requiring the deductor to furnish the information in respect of payment made to these entities without deduction of tax.

5. Reporting of tax deducted from income in respect of units of mutual fund

The Finance Act, 2020, has abolished dividend distribution tax with effect from Assessment Year 2021-22. Consequently, a new Section 194K has been inserted to provide for deduction of tax at source at the rate of 10% from income paid or payable in respect of units of a Mutual Funds.

Consequently, the annexure to Form 26Q has been amended to incorporate the effect of this amendment. New annexure has revised the list of section codes to incorporate reference of section 194K, namely:

Section	Nature of payment	Section Code
194K	Income in respect of units	94K

6. Reporting of tax deducted on cash withdrawal

The Finance Act, 2020 has expanded the scope of provisions related to deduction of tax at source (TDS) on cash withdrawal by substituting the existing section 194N with a new Section 194N. The new section 194N provides different tax rates for two different class of persons. Further, it also prescribes two threshold limits.

As per the new section 194N, a banking company or a co-op. bank or a post office which is responsible for paying any sum, being the amount or the aggregate of amounts, in cash exceeding Rs. 1 crore during the previous year, to any person from one or more account, shall at time of payment of such sum, deduct 2% of such sum as income-tax.

A proviso has been inserted to Section 194N to reduce the threshold limit for deduction of tax from Rs. 1 crore to Rs. 20 lakh if the person has not filed return of income for all of the three assessment years relevant to three previous years, immediately preceding the previous year in which cash is withdrawn, and the due date for filing ITR under section 139(1) has expired. The deduction of tax under this situation shall be at the rate mentioned in sub-clause (a) and (b):

(a) 2% from the amount withdrawn in cash if the aggregate of the amount of cash withdrawal exceeds Rs. 20 lakhs during the previous year but does not exceed one crore rupees; or

(b) 5% from the amount withdrawn in cash if the aggregate of the amount of cash withdrawal exceeds Rs. 1 crore during the previous year.

The tax is deductible under the sub-clause (a) if the aggregate of the amount withdrawn during the previous year exceeds Rs. 20 lakhs but does not exceed Rs. 1 crore. The tax under the sub-clause (b) shall be deducted if the aggregate of the amount withdrawn during the year exceeds Rs. 1 crore. Where the payee is covered in sub-clause (b), that is, the amount or aggregate of the amount withdrawn exceeds Rs. 1 crore, the tax shall be deducted at the rate of 2% from the sum in excess of 20 lakhs but up to Rs. 1 crore and at the rate of 5% from the sum in excess of Rs. 1 crore.

The necessary changes have been made to the annexures to Form 26Q and Form 27Q to enable the deductor to furnish the information of tax deducted under Section 194N or First Proviso to Section 194N. The details are required to furnished deductee/payee wise.

The new Forms 26Q and 27Q have following three columns to report the details of tax deducted under Section 194N:

(a) Amount of cash withdrawal in excess of Rs. 1 crore (in cases not covered by the first proviso to Section 194N);

(b) Amount of cash withdrawal in excess of Rs. 20 lakhs but does not exceed Rs. 1 crore (for cases covered by sub-clause (a) of clause (ii) of first proviso to section 194N);

(c) Amount of cash withdrawal in excess of Rs. 1 crore (for cases covered by sub- clause (b) of clause (ii) of first proviso to section 194N).

Example, Mr. X withdraws the following sum in cash during the financial year 2020- 2021 as follows:

Date	Amount withdrawn
01-08-2020	10,00,000
15-09-2020	35,00,000
17-11-2020	25,00,000
28-01-2021	45,00,000
16-03-2021	30,00,000

He has not furnished his return of income for the previous year 2016-17, 2017-18 and 2018-19 and the due date for filing of return has already expired.

Since Mr. X has not filed return of income for three assessments years immediately preceding the previous year in which cash is withdrawn, and the due date for filing the return under section 139(1) has expired, the tax shall be deducted as follows:

Date	Amount withdrawn	Aggregate of amount withdrawn	Tax Deducted at Source			Reporting of cash withdrawal in Column of Form 26Q	Reporting of cash withdrawal in Column of Form 27Q
			Rate	Computation	Tax to be deducted		
01-08-2020	10 lakhs	10 lakhs	-	-	-	419B	720B
15-09-2020	35 lakhs	45 lakhs	2%	[45 lakhs (-) 20 lakhs] * 2%	50,000	419B	720B
17-11-2020	25 lakhs	70 lakhs	2%	25 lakhs * 2%	50,000	419B	720B
28-01-2020	30 lakhs	100 lakhs	2%	30 lakh * 2%	60,000	419B	720B
28-01-2021	15 lakhs	115 lakhs	5%	15 lakh * 5%	75,000	419C	720C
16-03-2021	30 lakhs	145 lakhs	5%	30 lakh * 5%	1,50,000	419C	720C

Second, Third and Fourth proviso to section 194N empower Central Government to notify the class of recipients where the provisions of this Section shall not apply or would apply a reduced rate of tax. In case, deductor has not deducted tax or has deducted tax at a rate lower than the prescribed rate, the reasons for same are required to be mentioned in Annexure to Form 26Q and Form 27Q.

Annexure prescribes a list of notes which is to be mentioned in column 'Reason for such non-deduction/lower deduction/higher deduction'.

New Annexure to Form 26Q and 27Q have inserted following two new notes for non- deduction or lower deduction of TDS under section 194N:

(a) 'M' shall be used if no deduction or lower deduction of tax is on account of notification issued under the second proviso to section 194N;

(b) 'N' shall be used if no deduction or lower deduction of tax is on account of payment made to a person referred to in the third proviso/fourth proviso to section 194N.

7. Reporting of tax deducted from the income distributed by a Business Trust

Business Trust (REIT/InVIT) has been provided with the status of a hybrid pass- through entity under the Income-tax Act whereby it can pass certain income to its unit-holders without paying the income-tax at its end. Thus, ultimately unit holders are liable to pay tax on such distributed income.

The incomes which a business trust can pass to its unit-holders are as follows:

(a) Rental income from real estate property directly owned by the REIT;
(b) Interest received from SPV.

With effect from Assessment Year 2021-22, the Finance Act, 2020 has abolished the Dividend Distribution Tax and move to the traditional system of taxation wherein units-holders are liable to pay tax on dividend income. Thus, if a business trust distributes any dividend received from SPV to its unit-holders then such dividend income shall be taxable in the hands of unit-holders. However, if the dividend is received from SPV who has not opted for concessional tax regime of section 115BAA then such dividend shall be exempt in the hands of the unit-holders under section 10(23FD).

A business trust is liable to deduct tax while distributing the income to its unit-holders as per section 194LBA. Thus, the consequential amendment has also been made to section 194LBA and a new sub-section (2A) is inserted to provide that no tax shall be deducted by a business trust from dividend distributed to the unit-holders if such dividend is distributed out of sum received as dividend from an SPV and the SPV has not exercised the option under section 115BAA.

Accordingly, the Rule 31A and Annexure to Form 26Q and Form 27Q have been amended to incorporate the effect of this amendment.

Form 26Q has been amended to bifurcate the section codes relating to section 194LBA in following parts:

Section	Nature of payment	Section Code
194LBA(a)	Certain income in the form of interest from units of a business trust to a residential unit-holder	4BA1
194LBA(b)	Certain income in the form of a dividend from units of a business trust to a resident unit-holder	4BA2

Form 27Q has been amended to bifurcate the section codes relating to section 194LBA in following parts:

Section	Nature of payment	Section Code
194LBA(a)	Income referred to in section 10(23FC)(a) from units of a business trust	LBA1
194LBA(b)	Income referred to in section 10(23FC)(b) from units of a business trust	LBA2
194LBA(c)	Income referred to in section 10(23FCA) from units of a business trust	LBA3

Further, the business trust shall be required to write remark “O” under reason for not deducting tax if tax is not deductible in view of sub-section (2A) of Section 194LBA.

Tax Withholding by Non-residents on Payments to Residents

Background

Whether a non-resident is also required to comply with the tax withholding obligations enshrined under Indian tax law has been a long-standing controversy. The issue arose because withholding tax provisions, such as Section 194J of the Income-tax Act, 1961 ('the Act') casts as obligation to withhold taxes on "any person responsible" for making the prescribed payments to a resident. Further, with no express or implied exemption or exclusion being provided for non-resident payers, the provisions appear to include them within the ambit and fasten withholding tax obligations upon non-residents responsible for making prescribed payments to residents in India.

However, it has been a widely adopted position that non-residents, not having any place of business or any other presence in India, are not required to undertake such compliance. This position was largely based on principles emanating from certain pronouncements of the Hon'ble Supreme Court. In the case of GVK Industries Ltd. (332 ITR 130), the Hon'ble Supreme Court opined that the Parliament is empowered to make laws with respect to aspects or causes that occur, arise or exist, or may be expected to do so, within the territory of India, and also with respect to extra-territorial aspects or causes that have an impact on or nexus with India. However, any laws enacted by Parliament with respect to extra-territorial aspects or causes that have no impact on or nexus with India would be ultra vires.

Similarly, while determining the liability of a non-resident to withhold taxes under Section 195 of the Act in the case of Vodafone International Holdings B.V. (341 ITR 1), the Hon'ble Supreme Court mentioned that laws made by a country are intended to be applicable to its own territory, but that presumption is not universal unless it is shown that the intention was to make the law applicable extra territorially. The Supreme Court went on to analyze the withholding tax provisions enshrined under the Act and held that the intention of the Parliament was to make these provisions applicable only to residents having a tax presence in India. This landmark judgment triggered a lot of amendments, including a specific amendment under Section 195 of the Act to fasten withholding tax compliance obligation on non-residents in respect of taxable payments made to other non-residents.

Reliance was also placed on CBDT Circular Number 726 of 18 October 1995 wherein it was clarified that non- residents who do not have any agent or business connection or permanent establishment in India may not be subject to provisions of Section 194J of the Act in respect of fees paid through regular banking channels to any chartered accountant, lawyer, advocate or solicitor who is resident in India.

Based on the above, it was generally opined that a non-resident, not having any place of business or any other taxable presence in India, would not be required to comply with the withholding tax provisions of the Act, while making payments to Indian residents.

Recent amendments made by Finance Act 2020

With the aim of widening and deepening the tax net, Section 194-O was inserted under the Act to provide for tax withholding @ 1% by e-commerce operator on payment made to e-commerce participant. Consequential amendment has been made under Section 204 of the Act according to which "person responsible for paying" now includes a non-resident as well, with effect from 1 April 2020.

While the amendment under Section 204 appears to be consequential to the introduction of Section 194-O, nothing in the Memorandum suggests the limited applicability of this change. As mentioned above, other withholding tax provisions, such as Section 194J of the Act, also casts the obligation to withhold taxes on the "person responsible for paying". Now with the amendment in Section 204 of the Act to include non-residents within the ambit of "person responsible for paying", technically, non-residents may be required to comply with the tax withholding obligations under the provisions of the Act.

Potential impact

While it may be argued that being a consequential amendment it should be read in a restricted manner and confined to Section 194-O of the Act, but the literal language does not seem to provide any such restriction on its applicability. Further, as a cardinal rule of interpretation, in the absence of any ambiguity in the language, reference to the Explanatory Memorandum to the Finance Bill 2020 is not warranted. Accordingly, since various other withholding tax provisions such as Section 192 (salary payments), 193 (interest on securities), 194A (other interest), 194J (fee for professional or technical services), 194C (contractual payments), 194I (rent), 194H (commission or brokerage) of the Act etc. also refer to the phrase "person responsible for paying", non-resident making such payments to a resident in India may now be liable to withhold taxes as per these provisions, with effect from 1 April 2020. Needless to add, compliance obligations in the form of obtaining tax registrations, deposition of taxes, filing of withholding tax returns and issuance of withholding tax certificates shall also be applicable on such non-resident.

Apart from the compliance obligations, a bigger impact may be on account of the cash flow ramifications that may arise on account of withholding taxes being applicable. IT/ ITES service providers, back office service providers and shared services centers of multinational groups in India may face significant cash flow challenges on account of such tax withholding, where the withholding tax rate may go up to about 10% (being the applicable withholding tax rate for fees for professional services).

Possible consequences of non-compliance

The amendment to Section 204 of the Act has been made applicable with effect from 1 April 2020 and thus, the compliance obligation is already in place. Non-compliance could potentially attract recovery of the taxes required to be withheld by the non-resident along with interest and penalties. While the recovery of withholding taxes may be challenged where the Indian resident payee/ recipient has already deposited the requisite taxes on its income and filed a tax return [refer decision of Hon'ble Supreme Court in the case of Hindustan Coca Cola Beverages (P.) Ltd. vs. CIT (293 ITR 226)], the exposure of levy of interest and penalty may continue to remain. Furthermore, such recovery could also be made from any agent or person treated as an agent of the non-resident in India as per Section 163 of the Act, which could potentially be the Indian resident receiving the payments from the non-resident.

Way forward

It may be advisable for non-residents making payments to Indian residents to review the requirement of tax withholding in light of the above amendment, evaluate alternative stands and firm up the position to be adopted going forward.

One may also argue that fastening of this additional compliance obligation on non-residents is directly at odds with the Government's intention of promoting ease of doing business. Accordingly, industry groups/ organizations/ relevant stakeholders may also consider approaching the relevant authorities to seek their intervention and request for suitable clarification/ relaxation.

However, any quick resolution/ clarity on this aspect may not be expected. Hence, there may not be any time left to wait and watch. It is time to take some action and firm up positions!

GST on Factoring Arrangements

Receivables constitute a significant portion of current assets of a firm. But, for investment in receivables, a firm has to incur certain costs such as costs of financing receivables and costs of collection from receivables. Further, there is a risk of bad debts also. It is, therefore, very essential to have a proper control and management of receivables. In India, transfer of receivables arising out of sale or loan transactions takes place quite frequently. In such a case, a firm may avail the services of specialized institutions engaged in receivables management, called factoring firms.

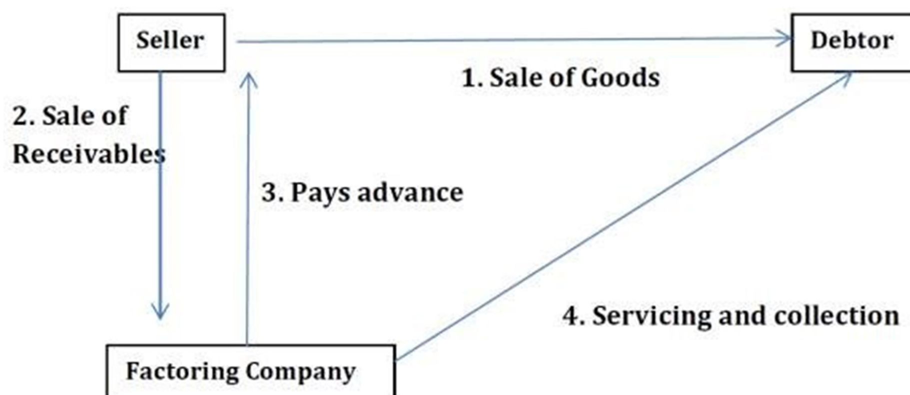
Factoring

Basically factoring is a kind of Financial Service in which a business organization sells its Account Receivables to another person, called a Factor, at a discount in order to raise money. However factoring is completely different from concept of bill discounting. Factoring is a wider concept of financing as compared to bill discounting. In bill discounting, invoices are discounted at certain rate to get the instant funds whereas in factoring services, trade receivables are sold to an outside factoring agency or company. The term" factoring" has been defined in various countries in different ways due to non-availability of any uniform codified law. The study group appointed by International Institute for the Unification of Private Law (UNIDROIT), Rome during 1988 recommended, in simple words, the definition of factoring as under:

"Factoring means an arrangement between a factor and his client which includes at least two of the following services to be provided by the factor:

- Finance
- Maintenance of accounts
- Collection of debts
- Protection against credit risks

Factoring can broadly be defined as an arrangement in which receivables arising out of sale of goods/services are sold to the "factor". The same can be depicted in chart as follows:



Implications of GST

GST is levied on supply under the law. It can be supply of goods or services or both. While discussing applicability of GST on factoring transaction, it is important to conclude first, whether parts/components of factoring arrangement qualify to be supply or not under the provisions of the Act. A factoring arrangement or contract may include the following steps or transactions which need to checked individually from lenses of GST implication:

1. Sale of Receivables: Seller of goods or services sells its receivables arising out of sale of goods or services to the Factor.
2. Processing Fee or Service Fee: Sale of receivables is followed by servicing and collection for a management or factoring charges. These charges are charged towards various services to seller namely- sales ledger administration, MIS reporting, collection etc. These charges are also called administrative charges or factoring charges. In general, the factor receives payments from the buyer on due dates and pays the balance money to the seller after deducting the service charges.
3. Finance/Discount Charges: These charges are normally computed on periodic basis towards providing advance finance to the seller. These charges are similar in nature of interest levied by bank on cash credit facilities.

Let us now analysis the impact of GST on above transactions one by one:

1. **Sale of Receivables:** Since GST is levied on supply of goods or services, thereby it is important first to determine character/form of transaction under discussion. In general, receivables are actionable claims i.e. it is a right to claim of money. The term "Goods" is defined u/s 2(52) - "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crop..." Thus, under GST laws, actionable claims would be goods. But Schedule III to Section 7 of CGST Act provides list activities or transactions which shall be treated neither as a supply of goods nor a supply of services. The list includes "Actionable claims, other than lottery, betting and gambling."

Thus, plain reading of schedule III would mean that actionable claims, being goods in nature by virtue of definition of goods, are neither a supply of goods nor a supply of services. But three categories of claims- Lottery, Betting and gambling are still to be considered as goods due to non-exclusion in schedule III. Accordingly sale of receivables shall be treated neither a supply of goods nor a supply of services and will not be chargeable to GST since a right to claim money is itself in nature of money and therefore excluded from GST. Further definition of actionable claims shall be taken from section 3 of the Transfer of Property Act for the purpose of GST Law.

Section 3 of Transfer of Property Act - "actionable claim" means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent."

On reading the definition of actionable claims, it is noted that those claims which are backed by mortgage or hypothecation or pledge of movable or immovable property are excluded from definition of actionable claims.

However, proper view in this regard would be to consider nature of activity i.e. If an actionable claim is nothing but a right to receive money, then it is money itself, and therefore, excluded from the GST law. Definition of goods exclude money and a claim of debt secured by tangible or intangible property is nothing more than money to money transactions. The position would not change if the receivable was backed by any tangible or intangible property, because the property is just a collateral to back up a monetary claim in case of any default. FAQs on Financial services as released by CBIC also says that sale, transfer or assignment of debts falls within the purview of actionable claims, the same would not be subject to GST in answer to the question as to whether assignment or sale of secured or unsecured debts is liable to GST.

Therefore, we can draw a conclusion that sale of receivable shall not be taxable under GST.

2. **Processing fee or Service Fee**: The CGST Act defines the term "services" in the following manner: Section 2(102) "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

GST Act excludes money from definition of goods as well as services. But transaction in money w.r.t. to use of money or activities in relation to conversion of money are included in definition of services. In the factoring arrangements, processing of receivables and collection from the debtors is an activity in relation to use of money and it falls under the definition of 'Services" Therefore processing fees charged by factoring companies for processing the transaction and others becomes taxable under GST in absence of any specific exemption.

FAQs on Financial services as released by CBIC also says that, any charges collected in the course of transfer or assignment of a debt would be chargeable to GST, being in the nature of consideration for supply of services.

3. **Finance/Discount Charges**: As stated earlier, these charges are similar in nature of interest levied by bank on cash credit facilities. The factoring company remits advance against receivables to the extent of 75% to 80% to seller and rest of payment is made after realization from customer. This act of factoring company will be treated as supplies of services because of activities in relation to use of money are treated as supply of services. However we find an exemption for such supply of services and excluded from taxability under GST.

S.No-27 of Notification No.12/2017-CGST (Rate) dated 28.06.2017 provides exemption to services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services). Therefore, it can be concluded that discount or interest charges recovered by factoring company will not be taxable under GST.

Sometimes factoring arrangement may not contain separate charges for collection and servicing of receivables but adjusted with the discounting rate. In this situation, the discounting rate has two components attached to it, first, compensation towards the credit facility in form of advance payment and another one in form of charges for facility of collection and servicing. As discussed earlier in this document above, the former one is exempted from GST and the latter one is taxable. Therefore it will become a mixed supply and taxability of the same need to be determined from that point of view also.

Section 8 of CGST Act provides for taxability manner of mixed supply. According to said section mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax. This would mean that in such factoring arrangement, discount charges and service charges, both will be chargeable to GST at the rate which is applicable to the supply of collection and servicing services.

Conclusion

India went under a paradigm shift in its Indirect Tax regime with introduction of GST in July 2017. GST rate, which was earlier the 15 per cent service tax on financial services, has now been increased to 18 per cent in GST, and is financial charges and other charges, such as late payment, annual and renewal fees, as was the practice in the pre-GST era. Other charges that have gone up include service charges, service fees, documentation fees and brokering charges etc. We need to relook into arrangements considering implications of GST on different components of arrangement.

Aspects to be considered before filing GST Returns for September 2020

In view of the specific provisions of the GST law, following aspects need to be finalized before furnishing the returns for the month of September 2020:

Sr No	Section/ Rule Reference	Particulars	Action Required
1	Section 16(4) of CGST Act, 2017	ITC in respect of any invoice and debit note raised during FY 2019-20 shall not be available after the due date for filing the return for September 2020 or after furnishing the annual return for FY 2019-20, whichever is earlier	➤ ITC on invoices and debit notes dated upto 31 March 2020 should be availed by 30 September 2020. ➤ In this regard, invoices received and unaccounted till date should be posted in books on or before 30 September 2020. Reference in this regard can be made to the PR-2A reconciliation summary in respect of invoices appearing as addition in Form GSTR-2A.
2	Section 34(2) of CGST Act, 2017	Credit notes pertaining to FY 2019-20 against invoices raised during FY 2019-20 should be reported in Form GSTR-1 before filing the return for September 2020 or the annual return for FY 2019-20, whichever is earlier	➤ Credit notes pertaining to invoices of FY 2019-20 should be issued on or before 30 September 2020 and reported in the GST returns to be filed for September 2020. ➤ Any credit note issued after 30 September 2020 will not be available as adjustment against GST liability and may be a cost to the Company.
3	1. Proviso to Section 37(3) of CGST Act, 2017 2. Proviso to Section 38(5) of CGST Act, 2017 3. Proviso to Section 39(1) of CGST Act, 2017	Rectification of error/ omission in respect of details already furnished in GST return	➤ Undertake reconciliation activity between Form GSTR 1 and Form GSTR 3B and report any errors/ omission in the details furnished in GST returns for FY 2019-20, by rectification in returns to be filed for September 2020. ➤ Accordingly, any rectification on account of errors/ omissions in GST returns filed for the period between April 2019 to March 2020 would not be permissible after the above prescribed timelines.

4	Rule 42(2) of CGST Rules, 2017	Reversal of ITC in respect of inputs/ input services availed partly used for business purpose and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies	▶ The amount of ITC reversed on monthly basis during FY 2019-20 is required to be recalculated for the entire year before the due date for filing the return for September 2020. Further, for any additional reversal there shall be interest liability.
5	Rule 36(4) of the CGST Rules	Rule 36(4) inserted vide Notification No. 49/2019 dated 9 October 2019, had restricted ITC availment to 110% (effective 1 January 2020) of the matched credit available in Form GSTR 2A. Such reversal has been kept in abeyance for tax periods February 2020 to August 2020 in view of COVID-19 with an option to reverse the cumulative amount for these periods in the return to be filed for the month of September 2020.	▶ Reversal of ITC under Rule 36(4) of the CGST Rules, if not reversed in the individual months of February 2020 to August 2020 should be done cumulatively and reported in the return to be filed for the month of September 2020.

Additionally, it should be noted that new return system along-with e-invoices is also expected to go live from 1 October 2020. Further information in this regard is awaited from the Government and we will keep you posted on all relevant update in this connection.

Are you puzzled with due date of Q1 TDS statement of Financial Year 2020-21.

The Govt. vide the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 read with Notification No. 35 /2020, dated 24-06-2020 has extended various due dates of Income-tax compliances. It includes the extension of due dates for filing of Income-tax Returns for the Assessment Year 2019-20 and 2020-21, TDS/TCS statement of the 4th quarter of Financial Year 2019-20, etc.

The Notification has specifically provided that the due dates for completing any compliance shall be 31-03-2021 if it falls during the period from 20-03-2020 to 31-12-2020 except those specified in the Proviso to Notification No. 35/2020. Clause (iii) to the said Proviso creates an exception that the TDS/TCS statement for the month of February or March, 2020, or for the quarter ending on the 31st day of March, 2020, as the case may be, the due date shall be extended to the 31st day of July, 2020. The Notification did not mention anything about the due date for filing of TDS/TCS Statement for Q1 and Q2 of the financial year 2020-21. As the prescribed due date for furnishing of TDS statement for the Quarter 1 of the Financial Year 2020-21 is around the corner, that is, July 31, 2020, there is a chaos to know about the applicable due date. Whether it will be the original due date of 31-07-2020 as per Rule 31A or 31-03-2021, the due date extended for all compliances (falling between 20-03-2020 to 31-12-2020) by the Notification No. 35/2020, dated 24-06-2020.

Bases literal interpretation of the Notification, it is reasonable to conclude that the due dates of all compliances falling between 20-03-2020 to 31-12-2020 have been extended to 31-03-2021. This extension is not available for all those compliances which are mentioned in the Proviso to the said notification. In the absence of reference of the due date for filing of TDS statement for Q1 of FY 2020-21, it could be concluded that the due date should be 31-03-2021. However, the purposive interpretation suggests otherwise. The due date for filing of TDS Statement for Q1 and Q2 falls beyond the due date for filing of TDS Statement of Q3. If the literal interpretation of the Notification is applied the deductor gets time till 31-03-2021 to furnish TDS statements for Q1 and Q2 but for Q3 he is required to furnish the statement by 31-01-2021 as this due date is not falling between the stated duration of 20-03-2020 to 31-12-2020. This will create an unyielding situation for the tax deductors as they have to prepare and submit TDS statement of Q3 much before the due date of furnishing TDS statements of Q1 and Q2 of Financial Year 2020-21.

Further, in the absence of any announcement of a change in the TDS utility, the CPC may automatically charge the late filing fees of Rs. 200 per day if TDS statement is not filed on or before 31-07-2020.

Thus, it is advisable that the deductors should follow the original prescribed limitation period as far as the due dates for filing of TDS/TCS Statement for Q1 and Q2 of FY 2020-21 are concerned.

It should be noted that the Notification no. 35 did not provide any relaxation with respect to the payment of tax. In absence of any relaxation of payment of tax, no concessional interest rate shall be available to a taxpayer for making delayed payment of TDS, TCS or Advance-tax. The taxpayer is required to deposit tax with the Central Government on respective due dates to avoid any interest charges. This also supports the conclusion that there is no extension in the due date.

The last reasoning to support this conclusion is the due date for issuing the TDS/TCS Certificate. Rule 31 provides that the TDS Certificate is required to be issued by the deductor on a quarterly basis within 15 days from the due date of furnishing the statement of TDS. If literal interpretation is believed, the deductor will be required to issue the certificate by 15-04-2021 for Q1 and Q2 and by 15-02-2021 for Q3. This will create a situation of havoc for the deductees as they will not get any confirmation about the deposit of tax deducted by the deductor.

One of the well-recognised canons of construction is that a law has to be read as it is written in the document. Thus, a literal interpretation of Notification No. 35 read with the Ordinance suggest that the due date for furnishing of TDS statement for Q1 and Q2 of Financial Year 2020-21 stands extended to 31-03-2021. It is recommended that the CBDT should issue a clarification to rest the controversy.

Transparent Taxation - Honoring The Honest'

TAX REFORMS ANNOUNCED BY HON'BLE PM ON 13.08.2020

The 'Transparent Taxation - Honoring The Honest' platform will initiate major tax reforms aimed at bringing transparency in income tax systems and empowering taxpayers. It has also been focussing on simplification of direct tax laws and increasing transparency in communication. A major step in this regard was the introduction of Document Identification Number (DIN) wherein every communication of the department would carry a computer generated unique document identification number.

Key Announcements in the PM Speech

- Taxpayers' Charter
- Faceless Assessments to be made effective from 13.08.2020
- Faceless Appeals to be made effective from 25.09.2020
- Extending Scope of SFT (notification to be issued)

Statutory Orders to give effect of PM announcements

- Order u/s 119 dt 13.08.2020 Power of survey u/s 133 A
- Order u/s 119 dt 13.08.2020 Faceless Assessment
- Transfer order dt 13.08.2020 wherein number of field officers transferred under NeAC

Key highlights of Faceless assessments / faceless appeals

- Faceless assessment will be effective from 13 August 2020.
- Faceless income tax appeal will be effective from 25 September 2020.
- Scrutiny assessment will be allocated randomly to any officer in any state. The review of the order is to be undertaken by another unit located in a different State.
- Faceless team selection to be done by computer on random basis.
- No interaction between the taxpayer and the tax officer.
- Relief from transfer/posting of tax officers.

Understanding CBDT MAP Guidance.

Introduction

The Organisation for Economic Co-operation and Development (OECD) in its Base Erosion and Profit Shifting (BEPS) project, had, under the Action Plan 14 (Making Dispute Resolution More Effective) had recommended that all countries that implement BEPS package of recommendations, must publish comprehensive guidance on Mutual Agreement Procedure (MAP).

In the later part of 2019, the OECD had also released a peer review report on India's journey on MAP, wherein it had provided its comprehensive recommendations on the India MAP programme. These recommendations inter alia covered many aspects which Indian Revenue Authorities (IRA) were expected to act upon, covering changes in treaties and bringing out detailed guidance in relation to the MAP process which were essential for making taxpayers and other stakeholders aware of how India's MAP regime functions.

Considering the above and in continuation of various initiatives taken by the Central Board of Direct Taxes (CBDT) for bolstering the Alternate Dispute Resolution (ADR) mechanisms comprising of Advance Pricing Agreements (APAs), Safe Harbour etc., as well as recently announced "Vivad Se Vishwas" Scheme, the CBDT has released first of its kind MAP guidance on 7th August 2020. While the Indian Income-tax Rules, 1962 (the Rules) covered the process and administrative aspects vide Rules 44G and 44H, a detailed information and guidance on MAP was missing in a comprehensive and consolidated manner.

In this article, we endeavour to discuss the guidance in a threadbare manner and also put up certain interesting assertions and take a stock of the hits and misses by the CBDT on this important ADR called MAP.

What is MAP?

MAP is an ADR mechanism, laid out in the Double Taxation Avoidance Agreements (DTAA) entered into between countries. MAP cases involve cross-border double taxation that could either be:

- juridical double taxation (same income taxed twice in the hands of the same entity in two different countries) or

- economic double taxation (same income taxed in the hands of two separate entities, who are Associated Enterprises, in two different countries).

MAP process enables the Competent Authorities (CAs) of India and the overseas treaty partner country to engage and facilitate discussion and negotiations to endeavour to resolve the tax disputes which are not in accordance with the DTAA and aim to provide a relief from double taxation, either fully or partially.

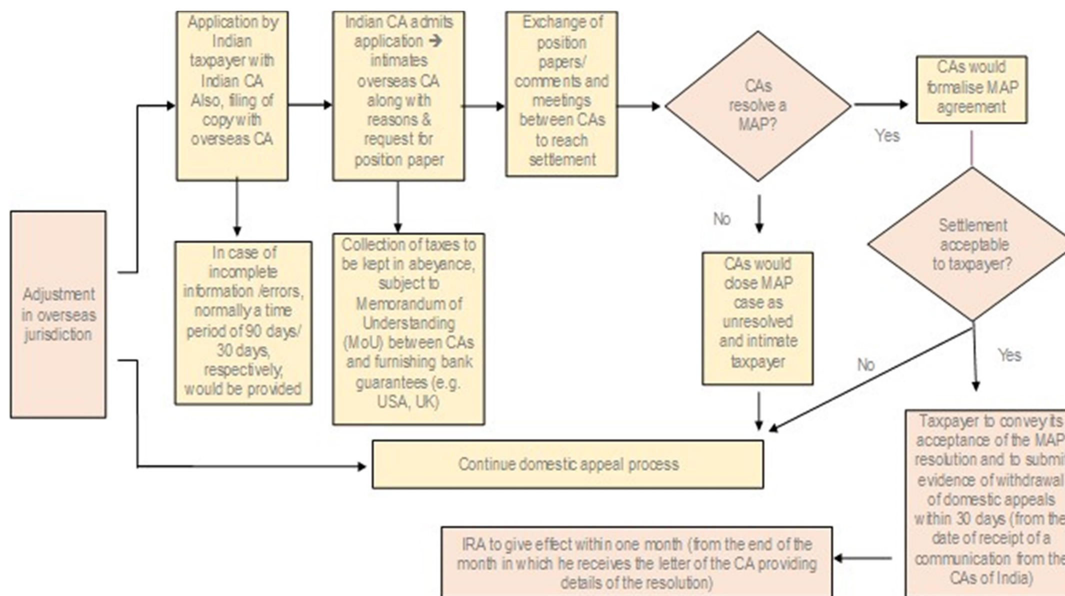
India with its extensive network of treaties with over 90 countries which contain an article in relation to allowing of MAP, has a well-established MAP programme and does have a significant experience with resolving MAP cases. As many as 600 tax disputes have been resolved under MAP between 1 April 2014 to 31 December 2018.

Brief about the guidance

This recently released MAP guidance is aimed for the benefit of taxpayers, tax practitioners, tax authorities and Competent Authorities (CAs) of India and treaty partners.

MAP process

The pictorial / flow-chart presentation of the MAP process, as per the CBDT's guidance is as follows:



* Some of the processes described above would flow similar to the above, where the MAP application has been accepted by the overseas CAs due to adjustment by IRA.

The guidance also specifies that the CAs may either meet in person or negotiate remotely through teleconference, video conference or email, which is a welcome move and speaks volumes about the digital agenda and flexibility of the CBDT / IRA. For multilateral MAPs, the guidance provides detailed conditions for its acceptance and specifies that the case shall be executed in the form of series of parallel bilateral MAP cases.

Summary of CBDT's MAP guidance has been tabulated in Annexure

A. **Interesting inferences and unfinished agenda**

While CBDT has come up with a detailed guidance and addressed most of the issues raised in the peer review report of OECD, there are still some unanswered questions wherein there is indeed a need for more clarifications. Some of these are as follows:

Instances that "will" result into double taxation – The typical MAP clause from DTAA specifies the circumstances under which MAP application can be filed, which is action by one tax authority which (a) results or (b) will result in taxation not in accordance with the DTAA.

India's existing position for acceptance of cases in MAP generally necessitates the existence of final assessment order, may be with an objective to avoid devotion of time and resources on cases for which the underlying tax has not been finalised, though, the OECD guidance and global interpretation does not mandate existence of a final order.

However, the current guidance seems to have acknowledged the fact that the MAP application could be accepted even in following circumstances:

- For an order to enforce tax withholding under Section 201 of the Act and the same is disputed by the non-resident entity - though the guidance specifies that the MAP discussion will be taken up only after the assessment order is passed in the case of the non-resident taxpayer,

- Foreign CAs of the treaty partners may accept MAP applications from their taxpayers in respect of signed / under discussion Unilateral Advance Pricing Agreements (UAPAs) if any decision of the tax authorities of such other countries disturbs the income declared in the returns filed in pursuance of the UAPAs. Again, the

guidance specifies that for the UAPA under discussion, the MAP will be taken up only after the UAPA is entered into.

While this is a welcome step by the CBDT, a facilitation of application owing to an interpretation of possible double taxation instance may still help India to align itself with the OECD guidance. Following are some of the instances wherein taxpayer should, ideally, be allowed to apply for MAP for cases which may result in double taxation and are subject to treaty interpretations leading to multiple/ contrasting views:

- Existence or non-existence of Place of Effective Management (PoEM),
- Confirmation in relation to the residency status,
- Taxation of dividends etc.

In addition to the above, it would be worthwhile to evaluate granting MAP access at draft assessment order/ Transfer Pricing (TP) order stage itself, because at that moment also the proposed taxation that is not in accordance with the treaty is more probable and no longer merely possible. Same logic may also be extended to a show cause notice from which the proposition may lead to double taxation.

Thus, the facilitation of early acceptance of MAP could in turn provide the taxpayers an opportunity to achieve certainty and avoid double taxation at an early stage.

UAPA along with MAP – option for Bilateral APAs :

As per guidance in case of UAPAs, AE/ related party of the Indian taxpayer can apply for MAP with the CA with the treaty partner and corresponding relief can be available to the AE/ related party of the Indian taxpayer.

Accordingly, it would be worth to explore whether to opt for Bilateral APAs or whether to go for Indian UAPA and then opt for a MAP with the overseas CA. Decision in this regard would depend on various factors such as follows:

- Comfort of taxpayer with higher margins/ mark up (as generally Bilateral APAs have better scope for negotiation);
- Additional time taken by Bilateral APAs vis-à-vis MAP resolution;
- Higher cost in case of Bilateral APAs vis-à-vis MAP resolution.

It would be important to gauge the willingness of treaty partner to accede to request of Indian CA and provide such relief (especially without any negotiation in terms). It would be interesting to see whether the similar relief would be provided by India CAs in case of reverse scenario, i.e. UAPA entered into by the overseas AE / related party and MAP sought with the Indian CA, as ideally it should be a two-way exchange, though, the current guidance doesn't provide any views for such a scenario.

Limited scope of MAP for cases where the Income Tax Appellate Tribunal (ITAT) has pronounced the order:

While it is understandable to deny the access to MAP for settlement by Income-tax Settlement Commission (ITSC), or an order from Authority for Advance Rulings (AAR) being voluntary and separate /independent processes under the domestic law and also to grant an access to purely facilitate a correlative adjustment for cases of ADR mechanisms such as UAPA / Safe Harbour (SH), the position of the Indian CA not being allowed to negotiate / deviate from the ITAT orders may somehow appear to be against the spirit of MAP, which aims at avoiding double taxation through the mutual consultation and negotiation process through an ADR. The current guidance somehow appears to put the ITAT proceedings at the same pedestal of APA / SH / settlement commission / AAR, though, these are voluntary procedures initiated by the Indian taxpayer, whereas, the ITAT is an appellate authority under the domestic litigation process, to which, typically, an ADR like MAP should be available to achieve double taxation relief. The current guidance seems to facilitate access to MAP for overseas CA for ITAT pronounced cases only to facilitate a correlative adjustment, which

may not be acceptable to the overseas CA in all cases.

Moreover, while there have been practical instances, where the Indian taxpayers approach the ITAT and request for keeping the case in abeyance, wherever its AE has initiated a MAP and in many such cases the ITAT has also honoured such a request, however, the guidance doesn't mandate the abeyance to the ITAT proceedings nor does it suggest to initiate any such outcome through some other mechanism either through Ministry of finance or Ministry of Law and Justice, which could keep up the spirit and objective of ADR like MAP intact.

This is also in line with the MOUs signed by India with certain Treaty partners like USA and UK wherein collection of taxes could be kept in abeyance and accordingly, it is somewhere acknowledged that payment of taxes is not required due to ongoing MAP resolution process. However, if ITAT proceeds to decide such cases based on merits, the option for negotiating the case in MAP would therefore get lapsed for the taxpayer.

Thus, to strengthen the MAP mechanism, it is imperative that the Government of India comes up with necessary circulars/ internal guidance to keep the ITAT proceedings in abeyance in case the taxpayer has an ongoing negotiation in relation to MAP, which could save the efforts of Indian judiciary and also the taxpayers till the MAP process either concludes or fails.

Timelines for MAP application in case of orders set aside by the ITAT for fresh adjudication

The guidance in relation to orders set aside by the ITAT for fresh adjudication by IRA provides that access to MAP would be provided again after the fresh adjudication by the IRA. It is important to note that with such an instruction, the ITAT sets aside the original order and requisitions the IRA to conduct a fresh adjudication, meaning thereby, that the order by IRA pursuant the fresh adjudication may replace the original order and may, practically, be considered to be "the first instance of action not in accordance with the DTAA", if such order results in double taxation.

The guidance in this regard may be further elaborated specifically in relation to following:

- Whether the time limit of three years (or otherwise as per the DTAA) would counted from the new order pursuant to fresh adjudication by the IRA, as mandated by the ITAT?

- If the AE of the taxpayer had not applied for MAP within the timelines prescribed under the DTAA against the original order, but intends to now proceed with the MAP route post the passing of the new order by the IRA pursuant to the fresh adjudication mandated by the ITAT, whether such application would be acceptable to Indian CA for negotiation under the MAP process?

While the logical answers to the above questions could be affirmative, it would be important to get a specific guidance from the CBDT on such issues.

Safe Harbour Rules (SHR) vis-à-vis MAP guidance:

Rule 10TG of the Rules specifies that the assessee shall not be entitled to invoke MAP under DTAA if the transfer price is accepted by the IRA under the SHR, whereas, the MAP guidance mentions that overseas CAs may accept a MAP application if its tax authorities disturb the income reported pursuant to the SHR application in India and that the Indian CA will allow access to MAP, though won't change the arm's length price determined under the SHR.

While the MAP guidance may appear to be contradictory to the Rule 10TG of the Rules, a harmonious interpretation may lead to a conclusion that Indian CA will only allow access to the MAP, so that the overseas CA can facilitate a correlative adjustment to the AE of the Indian taxpayer, which, otherwise may not be available to the overseas CA/ tax authorities in the absence of access to MAP. Nonetheless, it would be advisable to incorporate an appropriate amendment to Rule 10TG to facilitate the above interpretation/ inference.

It would be interesting to track whether the overseas CAs accept the India SHR norms and provide a full correlative relief to the AEs of the Indian taxpayers and if no, whether such access to MAP remains theoretical and inoperative, unless, the domestic rules of such an overseas CA allow a partial and unilateral

correlative relief.

Corresponding relief in case of Vivad Se Vishwas Scheme (VSVS)

The guidance has broadly covered all the ADR / domestic dispute settlement mechanisms pursuant to which there could be an instance of double taxation. However, the recent amnesty scheme brought by the income-tax department this year, i.e. VSVS has been left untouched. It is important to watch whether the adjustments accepted by the taxpayers under VSVS would indeed be eligible for MAP at least from a correlative relief perspective if not a detailed negotiation. If yes, the combination of VSVS with MAP could provide taxpayers a significant cover from instances of double taxation.

Penal implication on the MAP outcomes:

While the Indian taxpayers have taken arguments for waiver of penalties pursuant to a tax payment arising out of a MAP negotiation, especially since the outcome is a negotiation between the CAs to provide relief from double taxation and not necessarily an understatement / misreporting of income by the Indian taxpayer, the current guidance seems to prescribes that the CAs of India do not have the mandate to consider consequential issues such as interest and penalties and they cannot negotiate disputes that arise from such issues.

However, considering the spirit of the MAP process, i.e. to facilitate a negotiation between CAs wherein detailed deliberation is undertaken to arrive a common agreeable taxability position, penal exposure on such negotiations could certainly be a deterrent against the success of a MAP process. Similar to the other ADR mechanisms like APAs, wherein penal exposure is mitigated, similar position could be adopted for MAP outcomes in case adequate documentation is maintained by the taxpayer.

Multilateral MAPs – inferred guidance for Multilateral APAs as well?

The guidance prescribes that the CAs of India can participate in multilateral MAP discussions with more than one treaty partner. Multilateral MAP cases shall involve all the prescribed processes (like exchange of position papers, negotiations, finalization of mutual agreements, etc.) on a multilateral basis amongst the CAs concerned. However, the guidance suggests that a multilateral MAP case shall be executed in the form of a series of parallel bilateral MAP cases. The CAs of India can agree to accept a multilateral MAP request if certain conditions are fulfilled. This could be considered as an inferred guidance for multilateral APAs as well (being ultimately the CA proceedings) and thus it could be inferred that even for the multilateral APAs, the discussions may happen jointly – but agreements will happen bilaterally.

Concluding thoughts

Despite the above-mentioned issues which need to be appropriately addressed, the guidance released by the CBDT is a welcome move and it does strengthen the intent of the Indian Government to reduce the tax controversy and thereby providing more cohesive tax regime aligned with the global tax framework. It further .

Following are certain concluding thoughts:

- To make regimes like MAP more attractive, the government should provide more emphasis on the ADR mechanisms as against domestic remedies. This would inter alia include strengthening the tax infrastructure and allocation of more resources to handle cases involving MAP/ APA negotiations.
- Since MAP is required to be opted for each assessment year separately, a block processing/ bullet application for MAPs could be introduced for taxpayers having similar issues on a year on year basis. While this would expedite the overall process, it would definitely help in reducing the administrative hassles for the taxpayers as well as the tax authorities, especially since the guidance refers to resolution of recurring tax disputes on the basis of prior MAP negotiations.

This guidance will certainly give a much-needed push to resurrect the less explored MAP mechanism and also assist in improving the ‘ease of doing business’ index for India.

Annexure A: Summary of CBDT's MAP guidance

Sr	Particulars	Comments
1	Cases/ situations for MAP access	a) Transfer Pricing (TP) adjustments; b) Determination of existence of a Permanent Establishment (PE); c) Attribution of profits to PE (whether admitted or not); d) Characterisation or re-characterisation of expense/ income; e) Even in a situation where the IRA apply domestic anti-abuse provision; f) Where obligation to withhold taxes from non-resident is enforced under Section 201 of the Income-tax Act, 1961 (the Act), though, the discussions will be only taken up after an order on non-resident by the IRA.
2	Timeframe for conclusion	India has given its commitment to endeavour to resolve cases within 24 months (domestic appeal process which might take upto 5 to 10 years).
3	Time limit for filing	Within three years from the first notification of the order/action of tax authorities that results or will result in taxation not in accordance with the relevant DTAAs (DTAAs specifying lesser period to be modified through bilateral negotiations or Multilateral Instrument ('MLI').
4	Circumstances where Indian CA would provide access to MAP but would not negotiate any other outcome than what has already been achieved and will request the overseas CA to provide a correlative relief	a) Unilateral APA (UAPA) • In case of already signed Indian UAPAs, Foreign CA may accept MAP from their taxpayers if their tax authorities disturb the income declared in the return filed in pursuance of UAPA, or • In case of ongoing UAPA, if action of IRA / overseas tax authorities during such pendency of UAPA gives rise to double taxation, though Indian CA would not process such MAP cases till UAPA is entered into. b) Safe Harbour (SH) For a SH application by the Indian taxpayer, Foreign CA may accept MAP from their taxpayers if their tax authorities disturb the income declared in the return filed in pursuance of such safe harbour. c) Income Tax Appellate Tribunal (ITAT) order In case order from ITAT is received before resolution of the MAP, then the Indian CA shall not deviate from order of tribunal (being independent statutory appellate body, outside the administrative jurisdiction of IRA and highest fact finding body on tax matters): will apply even wherein order of ITAT came to knowledge of Indian CA even after MAP has been resolved but not yet implemented.

Sr	Particulars	Comments
5	Denial of MAP application in certain cases	Indian CAs can deny access to MAP in some situations such as • Delayed MAP applications • Taxpayer objection not justified (but still mandated to undergo notification and bilateral consultation process between the CAs, though, such consultation shouldn't be interpreted as consultation to resolve the case) • Incomplete MAP applications/ documents/information and errors are not remedied within prescribed time limits (may include extensions) • Settlement order from Income-tax Settlement Commission (ITSC), being an independent statutory dispute resolution body (access possible if ITSC refuses to issue a settlement order or issues order without settlement or where the proceedings before ITSC abate and IRA take action resulting in double taxation) • An order from Authority for Advance Rulings (AAR), which is an independent statutory dispute prevention body. • MAP access shall also not be provided in respect of issues that are purely governed by India's domestic law/ legal provisions.
6	Technical issues	• Downward adjustment: not possible under MAP below the returned income, owing to the specific provision of Section 92(3) of the Act. However, for MAP cases involving adjustment by overseas tax authorities, Indian CA may go below the returned income to implement the MAP in full measure in accordance with treaty obligations. • Resolution of recurring issues: can be on the same basis as prior MAP resolution, however, cannot accept application in advance, i.e. before any order by the IRA. • Interest and penalties: since not connected with the quantum of income and being consequential in nature, cannot be negotiated, being out of mandate of Indian CAs. • Secondary adjustments: Indian CAs obliged to make secondary adjustment under a MAP resolution in respect of cases pertaining to Financial Year 2016-17 or thereafter. • Bilateral / Multilateral APAs: MAP application for same issue and same year cannot be accepted if covered under bilateral / multilateral APA, unless the APA fails to result into an agreement. • Suspension of collection of taxes during pendency of MAP: subject to compliance with MoU with specific treaty partners. But where no MoU exists, domestic law shall prevail. • Adjustment of taxes paid in pursuance of order under Section 201 of the Act: allowable for the non-resident in the event of resolution of MAP for relevant issue for relevant year.

Tax analysis of Transfer of Capital Asset from Partnership Firm to Partners

1. Background

- Section 45(4) of the Income Tax Act, 1961 (hereinafter referred to as the Act) deals with computation of income from capital gains arising by way of distribution of capital assets ***on dissolution or otherwise*** of firm/AOP/BOI (other than company and co-operative society).Prior to the introduction of this Section, it was a settled legal position that, assets of the firm belonged to the partners. And therefore no gain shall arise on account of transfer of such assets to the partners upon dissolution or reconstitution. With a view to curb such tax avoidance through routing of assets from firm to partners, the Finance Act, 1987 inserted a new sub-section 4 of Section 45 of the Act.

- ***As per Section 45 (4)*** *- The profits or gains arising from the transfer of a capital asset by way of distribution of capital assets on the dissolution of a firm or other association of persons or body of individuals (not being a company or a co- operative society) or otherwise, shall be chargeable to tax as the income of the firm, association or body, of the previous year in which the said transfer takes place and, for the purposes of section 48, the fair market value of the asset on the date of such transfer shall be deemed to be the full value of the consideration received or accruing as a result of the transfer.*

2. Application of Section 45(4)

- there shall be a **transfer** by way of distribution.
- transfer should be by way of distribution upon "**dissolution or otherwise**"
- the transferor shall be the firm/AOP/BOI(not being a company or co-operative society
- the transferee shall be the partner/member
- the underlying transferred asset should be a **capital asset** (defined u/s 2(14))
- FMV of the asset as on the date of such transfer shall be deemed to be the full value of consideration
- Profit or gains arising from such transfer shall be chargeable to tax as income of the Firm/AOP/BOI (Transferor)
- Profits/Gains arising out of the transfer shall be charged as **STCG/LTCG**

3. Analysis

A further analysis to the section can be drawn in light of the clarifications issued by various courts/legislative authorities:

a. Significance of the term "*otherwise*"

There were controversies whether this section covers only a transfer on dissolution or also a transfer during the subsistence of a firm. However it was settled by various courts that, even when a firm is in existence and there is a transfer of capital asset to retiring partner, it comes within the expression "**Otherwise**". Hence, Section 45(4) will be applicable even in case of reconstitution of firm.

It was clarified in CIT vs A.N.Naik Associates (2004) 265 ITR 346 (Bombay) by the Honorable High Court of Bombay that the expression "otherwise" has to be read with the words "transfer of capital assets by way of distribution of capital assets.

This was further upheld by the Honorable High Court of Madras in the case of National Company vs The Assistant Commissioner of Income Tax (2019).

b. Distribution in specie
The distribution shall be "Distribution in specie" and "not distribution of sale proceeds". Distribution of capital assets should be the actual transfer of such asset. Distribution connotes actual distribution and not something which is Notional.

Following transactions ***shall not be*** regarded as transfer by way of distribution:

i. Receipt of amount in excess of the capital balances in the partners' capital account
Partnership Firm ABC sold capital asset for Rs.50 crore. The sale proceeds were equally distributed to the partners at the time of dissolution. Consequently each partner received Rs.10 crore over and above their respective capital balances.

This is a case of distribution of sale proceeds to partner and not a case of "Distribution in specie". Hence, the transaction cannot be regarded as transfer for the purpose of Section 45(4).

In Prashant S. Joshi Vs. The Income Tax Office and Ors., reported in 2010 324 ITR 154 (Bom), it was held that excess amount paid to partners over and above their capital balances shall not be regarded as transfer within the meaning of Section 45(4)

ii. Revaluation of capital assets in the books of accounts and crediting the capital accounts of the partners on such revaluation cannot be regarded as transfer as this is not a case of "Distribution in specie".

Partnership Firm ABC at the time of retirement of partner A, revalued all the capital assets of the firm. Profit arising on account of such revaluation was credited to the capital accounts of all the partners in equal ratio.

Mere revaluation of capital assets by crediting the capital balances of partners cannot be regarded as transfer as this is not a case of Distribution in specie. This is a case of Notional sale. Hence, the transaction cannot be regarded as transfer for the purpose of Section 45(4).

In CIT vs Kunnamkulam Mill Board [2002] 257 ITR 544, Honorable High Court of Kerala held that on retirement of the partner of the firm, crediting of revaluation profits to the retiring partners' account cannot be regarded as transfer within the meaning of Section 45(4).

Media

Centre looking to merge CBDT, CBIC in austerity drive

Freezing hiring, curtailing allowances, and merging of job categories also on the cards

IFIN case: Audit regulator now faults BSR's appointment, work

What taxpayers can expect from faceless assessment scheme

House panel for 2-yr LTCG tax removal

Pranab as FM: How he managed controversies, and created some

BRIEFLY

₹71,229 crore of I-T refunds

New Delhi: The Income Tax Department has issued refunds worth Rs 71,229 crore to over 21 lakh taxpayers during April 8 to July 11.

Yes Bank FPO subscribed 93%

I-T Dept Framing Rules for Physical Hearing

NEW DELHI The Income Tax department is framing rules to enable physical hearing in case there is addition, either in tax or income, for taxpayers under the faceless assessment scheme, a senior official said. "Wherever there is addition proposed - either to income or tax - a show cause notice will be issued and final opportunity will be given to taxpayers and reply will be taken into consideration," SK Gupta, member of the Central Board of Direct Taxes (CBDT), said Wednesday. "If physical hearing through video conferencing is required, we can allow that; the rules are being made," he said, referring to the government's recent reforms related to faceless tax assessment. –Our Bureau

Today's GST Council meet likely to be fractious

There is a lack of consensus among members on ways to mobilise funds to protect states' revenue

CBIC clarifies interest to apply prospectively on delayed GST payment

GST taxpayers to get more help in filing returns

Govt to tighten

Know how tax-saver fixed deposits work

THERE ARE VARIOUS types of tax-saving investment options available, but if you are looking for something that comes with minimal investment risk and is extremely easy to understand and operate, you cannot ignore tax-saver fixed deposits (FD). And unlike normal FDs, these qualify for tax-deduction benefits up to ₹1.5 lakh in a financial year under Section 80C of the Income Tax Act which can, hence, bring down your taxable income to the extent of your investment. So, before you start investing in a tax-saver FD, it would be better to know its features and key benefits.

Key benefits of tax-saver FDs

All resident individuals and Hindu Undivided Families (HUFs) are allowed to invest in the tax-saver FDs. These FDs are a little different from regular FDs. They come with a lock-in period of five years, investment amount can be from ₹100 to ₹1.5 lakh in a financial year and the interest earned is subject to tax at the applicable slab rate. For non-senior citizen investors, if the interest from a tax-saver FD during the financial year exceeds ₹40,000, the bank will deduct TDS from such interest income.

Widening the scope of SFT can affect taxpayers in many ways

Nissan, Tamil Nadu settle $660-m tax dispute

SAJAN C KUMAR
Chennai, August 26

AFTER AGREEING TO settle the $660-million (about ₹5,000 crore) long-pending tax dispute with the Tamil Nadu government, Japanese auto major Nissan Motor on Wednesday withdrew its petition relating to the dispute from the Madras High Court. The Tamil Nadu government also withdrew its petition seeking order for refraining Nissan from pursuing international arbitration proceedings that was initiated in 2016.

Chief Justice AP Sahi and justice Senthilkumar Ramamoorthy allowed the parties to withdraw the petitions after all the parties filed a joint compromise memo for withdrawal of the cases. Sources said Nissan is likely to receive around ₹1,400-1,800 crore as per the agreement. While the state government is to continue to offer the incentives as promised, Nissan will give up its claims on the in-

under a 2008 agreement to set up a car manufacturing plant at Oragadam near Chennai. Nissan and its French partner Renault had invested ₹6,100 crore in the facility that has the capacity to produce 4 lakh cars per annum.

Consequently, Nissan initiated an international arbitration against India in 2016, claiming ₹2,100 crore in unpaid dues and ₹2,900 crore in damages and other costs. Following that, TN had been trying to reach a settlement with Nissan for several years. Nissan had gone for arbitration by invoking the provisions of Comprehensive Economic Partnership Agreement between Japan and India.

While the case was pending before the high court, the state

Over 35k direct tax disputes resolved

Covid-19: Cities running out of hospital space

Centre used states' ₹47,272cr GST funds to close fiscal gap

CAG says Centre violated GST Act through unauthorised use

BREACH OF TRUST

- CAG said the Centre used this money for "other purposes" which "led to an overstatement of revenue receipts and understatement of fiscal deficit for the year"
- According to CAG, the Finance Ministry accepted the audit observation and stated in February 2020 that the proceeds of cess collected and not transferred to Public Account would be transferred in the subsequent year.