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Comparing Indian GST with European VAT

It has been more than 5 years since GST has been introduced in India and with the passage of time, the process of GST has stabilized in the country and the government feels proud of the success of GST implementation in the country. Being tax head of an MNC, I am being exposed to the GST or VAT process of other countries, especially European countries, and in this article tries to compare the indirect tax process of both countries from my own experience.

01. Rate of Tax

Most European countries follow a single rate of tax and for very few countries, the rate of tax may be 3-4 kinds. In the case of India, there are more than 10 kinds of rates of tax and applying the correct rate of the tax itself is a challenging task for the taxpayer.

02. Input credit.

In Europe, there is no conditions to claim Input credit whereas, in the case of India, the Input credit should appear in the GST portal coupled with several other conditions. Further, there is no concept of blocked credit in Europe and for India, input credit is blocked under the law for several items.

03. Number of returns

In Europe, there is only either a monthly or quarterly VAT return which captures both output and input. In India, there first come monthly output return, then after 10 days monthly input return, and at the year-end, two annual return makes the total number of returns per year for a single GST registration to 26.

04. Refund

There are no conditions when it comes to VAT refunds for European countries. The refund comes automatically to the taxpayer's bank account when the VAT return input exceeds the output. In the case of India, the GST refund is only possible when there is an export of goods or services, and the taxpayer received the foreign exchange within the stipulated timeline and is able to provide all documents related to the realization of foreign exchange of export of goods and service and require making a separate application for refund within the stipulated period. The documents are going to be verified by the tax office and he has all the right to ask any questions to the taxpayer and accept or reject his refund application.

The above-mentioned facts show that the GST of India still must go long to make the process simple for taxpayers and hopefully the government will work on this to bring ease of doing business in India.

Taxation of Online Gaming

Let us understand the online gaming ecosystem in India with reference to applicability of the Indirect tax and direct tax provisions in India.

- There are two types of gaming

(i) **Chance based gaming** which is a kind of gambling and same is not trade by Article 19(1)(g) of the Constitution of India.

(ii) On the other hand, competitions involving '**substantial skill'** form a distinct category and are business activities protected by Article19(1)(g).

- **Income Tax**
  - Income from online gaming is considered 'income from other sources' u/s 115B of the IT Act.
  - The entire amount received will be taxable at the maximum tax rate of 30%. (plus SC and Cess).
  - No deduction under section 80C, 80D, or any other deduction/allowance is allowed
  - The person responsible for paying to any person any income by way of winnings from any lotteryor crossword puzzle, card game and other game of any sort in an amount exceeding Rs. 10 K shall, deduct income-tax thereon at the rates in force.

- **GST**
  - Gambling or betting falls under heading 999692 and hence taxable @ 28% whereas online gaming platforms falls under heading 998439 and taxable @ 18%. (Bombay HC - Dream-11). This classification will start the controversy whether service provided is skill based or chance based.
  - Further, Tax would be charged on gross gaming value, or the total amount of bets placed is also not clear. For instance, if 10 people play a game of rummy on an online portal and contribute Rs 100 each, therecould be a 28% GST on the entire amount ('gross gaming value') of Rs 1,000 collected by the online gaming company. The gaming industry, on its part, wants the government to recognize only Rs 100 as taxable because the remaining Rs 900 is paid to the winner of the bet

- With the captioned confusion and lack of clarity, the GST department of Karnataka issued notice of Rs. 21,000 Crore on Gamekraft considering their service as betting and on gross earning whereas GameKkraft considered their service as skill based and also GST should applicable on bet value.

- Sports, recreation, entertainment, and gaming—which has blossomed into an ecosystem of mobile and online games owing to the utilization of the metaverse, web 3.0, and digital transformation—are essential aspects of life that cannot be disregarded. Raising notice with such a huge demand will cause only havoc amongits stakeholders and prevent them from doing business where India has become a hubinternationally for online gaming. Government should provide immediate clarification so that strategy be developed that would allow online gaming to develop inside a controlled environment.

History of Global Transfer Pricing

The First World War ended way back in 1918/19. It was the first time when the different nations in the world collaborated to form the "League of Nations" to maintain peace and security and take decisions in the matter of International Affairs.

First time in the 1920s, the League of Nations recognized that the interaction of domestic tax systems can lead to double taxation vis-à-vis double non-taxation of incomes which can affect global prosperity and trade. It was the first time when the UK had introduced the Arm's Length Principle not only in Europe but in India too by virtue of section 43 Income-tax Act, 1922.

Later on, OECD was formed after the end of World War II for the reconstruction of the European Economy in 1948 which has taken the concern of International Taxation as a priority and published guidelines on Transfer Pricing in 1979. This was the first time when the International Committee promised to amend their existing tax laws for the introduction of Transfer Pricing in their respective tax laws.

Consequent tax abuse by Multinational Enterprises (MNEs)

It was the 1990s when the dot-com boom was taking place in the United States and MNEs were spreading across the globe. India liberalized and globalized its economy in 1992 and opened doors for global MNEs. There were variances in the rate of charging taxes across the different tax jurisdictions and global MNEs were nonetheless shifting their profits to the lower tax jurisdiction not only making the consequent tax abuse but destroying the local enterprises paying higher tax on their income.

According to OECD, 60% of global trade takes place within the MNEs and as per IMF, tax avoidance through profit shifting is estimated to be around $400 Bn. for OECD countries and $200 billion for lower-income countries. A study by Tax Justice Network has estimated that India is losing around INR 70,000 crores on account of international tax abuse.

The rise in global trade within MNEs and consequent tax abuse by them has made the significance of Transfer Pricing in International Taxation.

History of Transfer Pricing in India

India instigated the Income-tax Act, of 1961 adopting the erstwhile Act of 1922 wherein the laws on taxation of MNEs became significantly important after the globalization of the Indian Economy. India has never become part of the OECD; however, UN Model has already adopted the OECD Model of Transfer Pricing back in the 1980s. Following the UN Model in line with the OECD Model, India has introduced Transfer Pricing in 2001 by virtue of a series of Section 92. Since then, it became the most important tax issue for MNEs operating in India. The Indian regulations have described pricing methodologies, maintenance of documentation, etc.

Is Form 10F mandatory?

While there has been a recent buzz in the industry over the government's move of mandating the furnishing of Form 10F electronically, many people are unaware of the basic fact that the aforesaid form [as per section 90(5)] is only required to be furnished if the Tax Residency Certificate (TRC) furnished by the Non-Resident payee in accordance with section 90(4), does not contain certain information as prescribed in Rule 21AB(1). This is also stated in rule 21AB(2).

The prescribed list of information has been delineated below:

(i) Status (individual, company, firm etc.) of the assessee;

(ii) Nationality (in case of an individual) or country or specified territory of incorporation or registration (in case of others);

(iii) Assessee's tax identification number in the country or specified territory of residence and in case there is no such number, then, a unique number based on which the person is identified by the Government of the country or the specified territory of which the asseessee claims to be a resident.

(iv) Period for which the residential status, as mentioned in the certificate referred to in sub-section (4) of section 90 or sub-section (4) of section 90A, is applicable; and

(v) Address of the assessee in the country or specified territory outside India, during the period for which the certificate, as mentioned in (iv) above, is applicable.

(vi) Thus, if your TRC contains the aforesaid information, you need not furnish Form 10F. The CBDT on 12th December 2022, provided relief to the NR taxpayers not having PAN in India to furnish Form 10F electronically, till 31st March 2023. The NR taxpayers now need to ensure that the aforesaid information is a part of the TRC, and they shall remain exempt from the need of getting a PAN in India for the purpose of availing tax benefits

There is relaxation to file E Form 10F till March 31, 2023. In my view, same will be further extended.

Know about "Form ITR-A & ITR-U

1. ITR-A is a form provided to furnish a modified return by a successor company to a business reorganization for an assessment year.

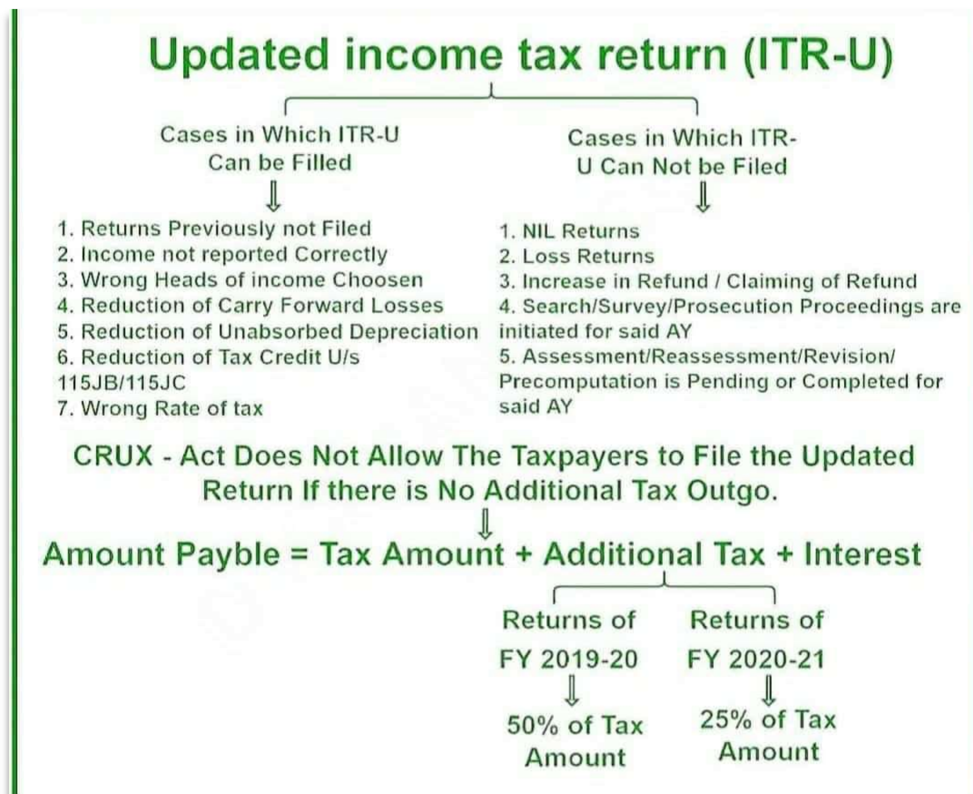
2. Where businesses go through a reorganization the successor entity, is required to file modified returns for the period between the date of effectivity of the order and the date of issuance of the final order of the competent authority. Form ITR-A is the prescribed form by the Income Tax Department for filing such a return.

3. When two or more businesses go under remodeling, reconstruction, amalgamation, or merger the resulting business or entity is known as the successor entity, and the businesses going under reorganization are known as the predecessor entity.

4. The prescribed form should be furnished within six months from the end of the month in which said order was issued.

5. The ITR-6 (applicable for companies) has been modified to include information contained in FORM ITR-A.

6. In Appendix II, in Form ITR-6- PART A-GEN, entries of the serial number (A19)(a)(i), have been substituted, for every assessment year commencing on April 01, 2022, or any, earlier assessment year. (Rule 12AD of the Income Tax Rules)



Can Tax audit report be revised?

Section 44AB read with rule 6G prescribes provisions relating to revision of the tax audit report
The Income Tax (Eighth Amendment) Rules, 2021 has inserted sub-rule (3) in rule 6G that provides for reasons to revise tax audit report.

FIRST LET US TAKE NOTE OF THE DUE DATES FOR COMPLIANCES-FY 21-22

FOR NON-TRANSFER PRICING CASES
Tax audit report filing due date for FY 2021-22 - 30th September 2022, tax returns filing due date in such cases is on 7th November 2022 [recently extended from 31st October 2022]

FOR TRANSFER PRICING CASES
Tax audit report filing due date for FY 2021-22 - 31st October 2022, tax returns filing due date in such cases is on 30th November 2022

POSSIBILITY OF DIFFERENCE IN NUMBERS BETWEEN TAX AUDIT REPORT AND TAX RETURNS

Tax audit report mandates reporting TDS defaults u/s 40 and also disallowances u/s 43B. Since, assessee gets a month more after tax audit due date to file tax returns, assessee may remit TDS or pay Statutory liabilities which gives eligibility to claim expenses and deductions U/s 40 and U/s 43B that are disallowed as per Original Tax audit report

This leads to difference of disallowances disclosed in Original Tax audit report and that reported in tax returns. In order to ensure this difference is addressed and reported in a reconciled manner, tax audit report has been allowed to be revised by the tax law itself now with amendment to Rule 6G

POSITION PRIOR TO FY 21-22
Guidance note on Tax audit issued by ICAI allowed Tax audit revision for the following reasons –
(i) revision of accounts of a company after its adoption in annual general meeting.
(ii) change of law e.g., retrospective amendment.
(iii) change in interpretation, e.g. CBDT's circular, judgments, etc.
(iv) Any other reason like system/software error requiring change in report already uploaded.

CONCLUSION
The number of tax audit revisions is not prescribed, hence multiple revision of tax audit report is possible – however from perspective of professionalism and resulting ambiguity in multiple revisions, such multiple revisions should be discouraged voluntarily by assessee and the tax auditor.

CBDT provides for uploading Revised Tax audit report in the online portal and hence IT WAS and IS ALLOWED.

What is Rule 132 of the Income Tax Rules?

1. Rule 132 is a beneficial clause allowing assessees to comply with the provision of Section 155 which allows Assessing Officers to re-compute the total income for such previous years in which the assessee would have claimed deduction of surcharge or cess subject to be disallowed u/s 40(a)(ii).

2. CBDT has introduced Rule 132, which came into effect on October 1, 2022. It deals with the re-computation of income U/S 155(18) of the Income Tax Act, 1961, in the Income Tax Rules, 1962.

3. As per Finance Act 2022, a deduction for such cess and surcharge on income tax is not an allowable deduction from the taxable profit. This amendment has been made with retrospective effect from 2005. AO is provided with the power to recompute Income on account of the retrospective amendment in Sec 155(18).

4. However by way of Rule 132, a one time window is provided to recompute Income by disallowing the cess and surcharge, which the assessee would have claimed as a deduction.

5. The information about the cess and surcharge claimed is to be submitted electronically on the income tax portal using Form 69. On receipt of Form 69, the tax officer will recompute the taxable income of the taxpayer and inform the additional tax to be payable by the taxpayer.

6. The taxpayer can then make the payment of tax and inform the tax officer of the payment of tax in Form 70. No penalty would be leviable on such payment.

7. The application in form 69 has to be filed on or before the 31st day of March 2023 with PDGIT (Systems) or other prescribed tax authorities.

Transfer Pricing Master File Form 3CEAA – Practical considerations

Master File (MF) in Form3CEAA to be e-filed by Indian entities of MNE Group by the due date of filing IT return i.e., 30 November. While Part A of Form has no threshold, Part B to be filed when a) consolidated group revenue >Rs 500 cr & b) aggregate value of international transactions >Rs 50 cr, or aggregate value of IP transactions >Rs 10 cr.

Most countries adopt format provided in OECD Guidelines consisting of MNE Group's Organizational structure, Description of businesses, Intangibles, Intercompany financing activities, & Financial & tax positions. In India there are certain additional requirements & hence for mncs in india , the Global MF needs to be customized with

1) Address of all constituent entities, entities involved in IP activity, central financing entity
2) FAR analysis of entities based on 10% of Group's revenue or assets or profits
3) Address of top 10 unrelated lenders
4) Major geographical markets

Few practical pointers to be kept in mind:

1) Consistency to be maintained between MF & local file

a) Classification of services – Services rendered by Indian entities are classified as software development services locally while the same are treated as R&D costs in the other jurisdiction & in MF. One should be aware as to how this needs to be presented in Global MF.

b) Cross charging of Intragroup service costs-Consistency in Group policy for services (management charges) to be evaluated. Whether these costs are cross charged to all countries? What is the position of Group in case of certain countries which don't permit management charges debits(e.g) China

c) Pricing policy for Financing, services arrangements, concluded APAs – Alignment of pricing policy for Indian entity transactions with other entities on financing, service arrangements as well as conclusions in APA.

2) Business Group wise disclosure: In case of big business Indian conglomerates, one needs to evaluate if a business unit wise presentation of MF can be captured considering OECD Guidance relevant for that entity

3) 10% FAR criteria – How to apply the criteria in case of loss making entities for 10% of group profits?

4) Indian HQ – MF to be prepared completely by India HQ & will initially call for perusing the financials of all group entities, collation & aggregation of details would be time consuming. Clauses specify furnishing of information for 'important' arrangements. As this is subjective, extent of details provided to be evaluated on materiality. In some cases, due date for MF for certain subsidiaries in other countries is before the Indian Due date & one needs to factor that

5) Online filing issues – Attention to be paid to Character restrictions. No separate offline utility for form, the same to be directly filled online.

Section 94B of the Income tax Act, 1961

Section 94B of the Act was introduced by the Finance Act, 2017 to give effect to 'OECD BEPS Action Plan 4 - Limiting Base Erosion Involving Interest Deductions and Other Financial Payments'.

The section is applicable if any previous year ('PY'), interest on any amount borrowed from non-resident Associated Enterprise ('AE') exceeds INR 1 crore and such expense is claimed as a business deduction.

Excess interest is disallowed under this section. Excess interest is lower of

(a) Total interest paid in excess of 30% EBITDA; or

(b) interest paid/payable to non-resident AE.

Disallowed interest can be carried forward for a period of 8 P.Y.s from the PY in which such interest is disallowed.

However, some questions which merit consideration/require further clarity are as follows:

1. Condition for applicability of this section is interest payable on the amount borrowed from non-resident AE whereas, for calculation of excess interest, total interest paid more than 30% of EBITDA is to be considered.

2. If any particular PY, amount of interest paid/payable to non-resident AE is less than INR 1 crore but there is a carry forward of disallowed interest, should the section be applicable in that case as well?

3. What will be the implications in cases where EBITDA is negative? What should be the amount of excess interest to be disallowed in such cases? Whether disallowing the entire amount of interest paid/payable to non-resident AE be justified in such a case?

4. What will be the implications if the assessee cannot claim the benefit of carrying forward the disallowed interest even after 8 years? Whether the same be considered a sunk tax cost?

- These are some of the questions which may be answered by way of suitable amendments to the Act.

GST input credit on Motor Vehicle.

ITC is blocked on motor vehicles having seating capacity ≤ 13 persons (including the driver) used for the transportation of persons. Further, ITC is also blocked on certain services relating to motor vehicles namely, insurance, servicing, and repair and maintenance.

Accordingly, expenditure on purchase of Motor Vehicles shall be covered under **Blocked credit**, and the GST paid on the purchase of a car will not be allowed to set off against output tax liability.

Motor Vehicle means the vehicles which require registration by RTO under motor vehicles act. Further, please note that construction and other earth moving machines are not used for transportation of passengers and hence GST for them is not blocked.

Exceptions to blocked credit on motor vehicles.

There are certain exceptions to 'Blocked credit' on cars as well which means GST credit will be available on ineligible cars when used for the specified eligible purposes.

ITC shall be available on cars when used for any of the following eligible purposes-

- making further taxable supply of motor vehicles
- making taxable supply of transportation of passengers
- making taxable supply of imparting training on driving such cars.

illustrations

Particulars	Input Tax Credit (ITC)
Car purchased by a Tech company for official use of its employee	Blocked
Car purchased by a car dealer for sale to customer	Allowed
Car purchased by a company engaged in renting out cars for transportation of passengers	Allowed
Car purchased by a car driving school	Allowed
General insurance taken on a car used by employees of a manufacturing company for official purposes	Blocked
General insurance services taken on cars manufactured by a car manufacturing company	Allowed

ITC on leased cars

In the matter of **Narsingh Transport, MP AAR** ruled that the applicant is entitled to avail ITC on cars (passenger vehicles) which are further supplied to customers on lease rent. Further, at the termination of the lease agreement/contract, if the vehicle is not further leased to the same or other customer, the applicant shall be liable to reverse the ITC so availed as per law.

ITC on demo car to car dealers

Car dealers usually purchase cars for resale. However, a few of those cars may also end up being used for demonstration purposes.

In the matter of **Chowgule Industries Pvt. Ltd., Maharashtra AAR** ruled that the car dealer shall be entitled to ITC charged on inward supply of motor vehicle which is used for demonstration purpose in the course of business of supply of motor vehicle as an ITC on capital goods and the same can be utilized for payment of output tax payable under this Act.

But, when such demo cars are sold, the car dealer shall pay an amount equal to the ITC taken on the said demo vehicles as reduced in the manner provided under Rule 44 of the **CGST Rules, 2017** (ITC involved in the remaining useful life in months shall be computed on pro-rate basis taking useful life as 5 years) or the tax on the transaction value of such demo vehicles, whichever is higher.

Conditions for claiming ITC on car purchase

- Buyer must be registered in the GST regime
- Possession of **GST invoice** or debit note issued by the registered supplier
- Relevant GST returns have been filed
- Tax paid on purchases has been deposited by the supplier to the government
- Purchase must not be covered under blocked credit.

Non-payment to supplier, a wrong availment of ITC?

It seems that there is a difference in opinion as to the levy of interest in cases when a recipient avails credit but does not make the payment to the supplier within the allowed time.

The majority view is tending towards an articulation that the requirement to repay the credit arises only if the payment is not made within the allowed time, hence, the non-payment should not be seen as a credit wrongly availed by the recipient which interalia would mean that even if the credit is utilized, rigors of section 50(3) should not apply.

It is pertinent to note that the above view is primarily based on the fact that the law entails repayment of ITC only if payment is not made within the allowed time. Hence, it needs to be examined if the law entails a mandatory condition for payment to the supplier for availing the credit at the first instance itself. If the answer is yes, would it not have a bearing on the aforesaid view?

Let's examine briefly.

There is no doubt or confusion that Section 16(2) lays out the various conditions that the recipient has to comply with in order to avail the credit. The expression 'unless' contained in the preamble of section 16(2) further amplifies the compliance to those conditions.

The 2nd 'proviso' which is relevant is reproduced.

"Provided further that where a recipient fails to pay to the supplier ….the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days ......an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon...."

The above 'proviso' if read in isolation may appear as if a condition post facto which means it's not being viewed as a mandatory condition to comply with for availing the credit. What if it is the other way??

The 'proviso' is currently seen as a consequential provision. However, an argument may arise that the 'proviso' entails payment to the supplier within the allowed time and should therefore be seen as a precondition for availing the credit even if the recipient is not required to wait till the time payment is actually made to the supplier so as to avail the credit.

If this argument is upheld, there would be a mandatory compliance on the part of the recipient to pay the supplier and if not paid, can it then not lead to a credit, wrongly availed? This is something which needs to be tested before the Courts unless clarified.

The counter to this could be that a 'proviso' is an exception to the main provision and since the main provision does not put any such condition where the payment to the supplier should be made within the allowed time, the 'proviso' cannot go beyond it. It is pertinent to note that a 'proviso' can at times act as an enacting provision and is not always an exception to the main provision.

Registration procedure for Casual Taxable persons under GST

According to Section 2(20) of the CGST Act, a Casual taxable person" means a person who occasionally undertakes transactions involving supply of goods or services or both in the course or furtherance of business, whether as principal, agent or in any other capacity, in a State or a Union territory where he has no fixed place of business; This can be easily explained through this following example:- A is participation in a fair/expo in another state. When a taxable person participates in a fair/expo outside the state where his usual place of registration is, then he should register as a casual taxable person to undertake the sale and purchase of goods in that other state.

Validity as Casual Taxable Persons:

A Casual registration shall be valid for the period specified in the application for Registration or ninety days from the effective date of registration, whichever is earlier.

It can be extended: if you apply for an extension of registration before the expiry of the initial period for which registration was granted by Applying in FORM GST REG-11 before the end of validity.

Procedure for applying for registration as Casual Taxable Persons:

The procedure for applying as a casual taxable person is the same as for a normal/regular taxpayer.

A casual taxable person shall electronically apply at least five days prior to the commencement of business.

When is tax due for Casual Taxable Persons:

In the case of Casual registration, the tax needs to be paid in advance. The applicant needs to estimate the value of supplies and his tax liability in advance and needs to pay the whole of the estimated tax before applying for casual registration. The estimated value of supplies and the estimated tax needs to be given in the application form at the time of applying for registration.

The excess tax paid in advance can be refunded at the time of filing for the surrender of registration after all the returns have been filed. Application for Refund of balance in excess of tax liability in the electronic cash ledger can be claimed in Form GST RFD-01 under the category "Refund of excess balance in the electronic cash ledger".

Returns filed by Casual Taxable person: -

A Casual taxable person has to furnish the same returns as a normal taxpayer. A Casual taxable person has to furnish the returns in form GSTR-1 and GSTR-3B for the time being.

However, a casual taxable person does not have to file an annual return.

GST CIRCULAR NO 18/2022

The Government *vide* Notification No. 18/2022-Central Tax dated 28 September 2022 hereby appoints 01st October 2022 as the date on which provisions of Section 100 to 114 of the Finance Act, 2022 except clause (c) of section 110 and section 111 comes into force. The summary of the provisions made effective are provided below for your ready reference:

Sr. No.	Section as per Finance Act, 2022	Section as per GST Act	Particulars	Amended Provision
1	Section 100	Section 16	Eligibility and conditions for taking input tax credit.	► New clause (ba) is inserted in section 16(2) of the CGST Act, 2017 which allows to claim ITC when the details of input tax credit in respect of the supplies communicated to such registered person under section 38 (furnishing details of inward supplies) has not been restricted. Further, other conditions as specified in Section 16(2) shall also be complied with. ► As per section 16(4) of the CGST Act, a registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after **thirtieth day of November** following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier. Hence, the time limit for claiming ITC for a financial year now stands to be 30th November of the subsequent year or furnishing of the relevant annual return, whichever is earlier. ► Basis reading of the notification, it appears that the same is applicable even for FY 21-22. However, further clarification are awaited on the same. We shall keep you posted on further updates.
2	Section 101	Section 29	Cancellation [or suspension] of registration	► The proper officer may cancel the registration of a person paying tax under Section 10 (i.e., Composition Dealer) where he has not furnished the return for a financial year **beyond three months from the due date of furnishing the said return**. ► The proper officer may cancel the registration of any registered person, other than a person specified in clause (b) i.e., Composition dealer, where he has not furnished returns for a **such continuous tax period as may be prescribed**
3	Section 102	Section 34	Credit notes and Debit Notes	► Any registered taxpayer who issues a credit note in relation to a supply of goods or services or both shall furnish the details of such credit note in the return for the month in which such credit note has been issued but not later than **thirtieth day of November** following the end of the financial year in which such supply was made, or the date of furnishing of annual return for the relevant period, whichever is earlier.

4	Section 103	Section 37	Furnishing details of outward supplies	► Every registered person, other than specified persons, shall furnish, electronically **subject to such conditions and restrictions** and in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the due date prescribed for the said tax period and such details **shall, subject to such conditions and restrictions**, **within such time and in such manner as may be prescribed, be communicated to the recipient of the said supplies.** ► Any registered person, who has furnished the details of outward supplies for any tax period shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission. ► The time limit for rectification of **such errors or omissions** in respect of details furnished shall be **thirtieth day of November following the end of the financial year to which such details pertain**, or furnishing of the relevant annual return, whichever is earlier. A registered person shall not be allowed to furnish the details of outward supplies for a tax period, if the details of outward supplies for any of the previous tax periods have not been furnished. Further, Government may allow registered person or a class of registered persons to furnish the details of outward supplies even if he has not furnished the details of outward supplies for one or more previous tax periods, subject to conditions and restrictions as may be prescribed.
5	Section 104	Section 38	Communication of details of inward supplies and input tax credit.	► Based on the details of outward supplies furnished by the registered persons, an auto-generated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies within such time, and subject to such conditions and restrictions as may be prescribed. ► The auto generated statement shall consist of following: ○ Details of ITC available to the recipient Details of supplies on which ITC cannot be availed for reasons as may be prescribed in auto generated statement.
6	Section 105	Section 39	Furnishing of returns	► Every NRTP shall furnish a return electronically within **13 days** after the end of a calendar month or within seven days after the last day of the period of registration specified, whichever is earlier. ► Every registered person furnishing return shall pay to the Government, in such form and manner, and within such time, as may be prescribed,— (a) an amount equal to the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month; or

				(b) in lieu of the amount referred to in clause (a), an amount determined in such manner and subject to such conditions and restrictions as may be prescribed ► The time limit for **rectification of any omission or incorrect particulars** in the returns shall **be thirtieth day of November** following the end of the financial year to which such details pertain, or the actual date of furnishing of relevant annual return, whichever is earlier. ► A registered person shall not be allowed to furnish the return for a tax period, if the return **for any of the previous tax periods or details of outward supplies for the said tax period** has not been furnished. Further, Government may allow registered person or a class of registered persons to furnish return even if the returns for one or more previous tax period or the details of outward supplies for the said tax period he has not been furnished, subject to conditions and restrictions as may be prescribed.
7	Section 106	Section 41	Availment of Input Tax Credit	► Every registered person shall be entitled to ITC in the return as self-assessed and such ITC shall be credited in its ECL. ► The ITC so claimed in respect of such supplies shall be reversed along with interest where the tax payable by the supplier has not been paid. However, where the supplier makes the payment of tax, the registered person may re-avail the amount of credit reversed.
8	Section 107	Section 42, 43 & 43A	Matching, reversal & reclaim & Procedure for furnishing return and availing input tax credit.	► The said sections are omitted.
9	Section 108	Section 47	Levy of late fee	► Any registered person who fails to furnish GSTR 1 or GSTR 3B or Final return or **TCS return** by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees.
10	Section 109	Section 48	Utilization of ITC subject to certain conditions	► A registered person may authorise an approved goods and services tax practitioner to furnish GSTR 1 and GSTR 3B or Annual return or Final return and to perform such other functions in such manner as may be prescribed.
12	Section 112	Section 52(6)	Collection of Tax at source.	► In case the operator after furnishing a statement discovers any omission or incorrect particulars, such rectification of any omission or incorrect particulars shall **not** be allowed after **thirtieth day of November** following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.
13	Section 113	Section 54	Refund of Tax	► A specialised agency of the United Nations Organisation or any Multilateral Financial Institution, Consulate or Embassy of foreign etc. shall apply for refund of tax paid by it on inward supplies before **2 years** from the last day of the quarter in which such supply was received.

				► Withholding payment of refund due or deduction of tax, interest, penalty, fee or any other amount from the refund due is now not restricted only for the refund of unutilized ITC. ► **Relevant date** in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies, or, the inputs or input services used in such supplies, shall be the due date for furnishing of return under section 39 in respect of such supplies.
4	Section 103	Section 37	Furnishing details of outward supplies	► Every registered person, other than specified persons, shall furnish, electronically **subject to such conditions and restrictions** and in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the due date prescribed for the said tax period and such details **shall, subject to such conditions and restrictions**, **within such time and in such manner as may be prescribed, be communicated to the recipient of the said supplies.** ► Any registered person, who has furnished the details of outward supplies for any tax period shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission. ► The time limit for rectification of **such errors or omissions** in respect of details furnished shall be **thirtieth day of November following the end of the financial year to which such details pertain**, or furnishing of the relevant annual return, whichever is earlier. A registered person shall not be allowed to furnish the details of outward supplies for a tax period, if the details of outward supplies for any of the previous tax periods have not been furnished. Further, Government may allow registered person or a class of registered persons to furnish the details of outward supplies even if he has not furnished the details of outward supplies for one or more previous tax periods, subject to conditions and restrictions as may be prescribed.

Key notes on Circular No. 183/15/2022-GST dated 27 December 2022 on GSTR-2A & GSTR-3B

The CBIC in the captioned circular issued a clarification with respectto the following scenarios to deal with differences in Input Tax Credit (ITC) availed in FORM GSTR-3B vis-à-vis as per FORM GSTR-2A for FY 2017-18 and FY 2018-19.

Sr.No	Scenarios
1	Where supplier has failed to file Form GSTR-1 but filed Form GSTR-3B
2	Where both Form GSTR-1 and Form GSTR-3B is filed but supplier failed to report the invoice in Form GSTR-1
3	Where invoices are reported wrongly by suppliers under B2C
4	Where both Form GSTR-1 and Form GSTR-3B is filed but supplier has declared wrong /incorrect GSTIN of the recipient

PARA 4 is the heart and soul of the aforesaid circular. Wherein, the following points are clarified:

1) The Proper Officer shall first seek the details on which ITC has been availedby the registered person in FORM GSTR-3B but which are not reflecting in his FORM GSTR-2A. Thereafter, the Proper Officer will ascertain the fulfillment of all conditions to Section 16, Section17 and Section 18 of the CGST Act, 2017.

2) In case, where the difference between the ITC available in Form GSTR-2A and in Form GSTR-3B in respect to a particular supplier is more than Rs. 5 lacs then the certificate from the CA/CMA (with validUDIN) of the said supplier is required to be produced. Wherein, the said certificate must cleary certifythat the *"supplies in respect of the said invoices of supplier have actually been made by the supplier tothe said registered person and the tax on such supplies has been paid by the said supplier in his returnin FORM GSTR-3B"*

3) In case, where the difference between the ITC available in Form GSTR-2A and in Form GSTR-3B in respect to a particular supplier is upto Rs. 5 lacs, then the recipient can produce the certificate from thesaid supplier certifying the same as above.

4) Further, for FY 2017-18, in terms of Section 16(4) of the CGST Act 2017, the aforesaid relaxations will not be applicable to the claim of ITC made in FORM GSTR-3B filed after the due date of furnishingreturn for the month of September, 2018 till the due date of furnishing return for March 2019, if supplierhad not furnished details of the said supply in his FORM GSTR-1 till the due date of furnishing FORMGSTR 1 for the month of March, 2019

Key takeaways from the Circular

1) The only condition that needs to be verified is that the supplier should have paid GST in its Form GSTR-3B whether or not such supply has been reported in Form GSTR-1 or wrongly reported in FormGSTR-1.

2) Invoice level reconciliation with respect to the invoices which are not available in Form GSTR-2A must be prepared by the recipient.

3) The circular will apply only to the ongoing proceedings in scrutiny/audit/ investigation, etc. for FY 2017-18 and 2018-19 and not to the completed proceedings. However, these instructions will apply inthose cases for FY 2017-18 and 2018-19 where any adjudication or appeal proceedings are still pending.

GST Council recommends decriminalization of offences and measures for trade facilitation

This Tax Alert summarizes a press release issued by the Ministry of Finance on various recommendations made by the Goods and Services Tax (GST) Council in its 48th meeting held on 17 December 2022.

The key recommendations are as follows:

- Decriminalization of certain offences, increasing the threshold of tax amount from INR 1 crore to INR 2 crores for launching prosecution, and reducing the compounding amount for offences.
- Paras 7, 8(a) and 8(b) earlier inserted in Schedule III to Central Goods and Services Tax Act, 2017 (CGST Act) w.e.f. 1 February 2019, to be made retrospectively effective from 1 July 2017.
- Amendment in GST law to prescribe a procedure for filing refund application by unregistered buyers on cancellation of supply agreements, where time limit to issue credit note by the supplier has expired.
- Restricting filing of returns/ statements to a maximum period of three years from the relevant due dates.
- Clarifying issues pertaining to the place of supply of services of transportation of goods outside India and availability of input tax credit (ITC) to the recipient of such supply.

Comments:

- Relaxation in the provisions relating to offences, prosecution and compounding is a welcome move and likely to aid the ease of doing business agenda of the Government.
- Although the threshold for launching prosecution will be increased to INR 2 crores, as per CBIC guidelines, prosecution would normally be initiated where amount of tax evasion is more than INR 5 crores except in case of habitual evaders and arrest cases.
- Allowing a refund to unregistered buyers in case of cancellation of supply agreements is a much-needed relief to the public. Earlier, in a few cases, recipients of supply had approached the High Courts to claim refund where the levy was struck down.
- Retrospective effect to the amendments under Schedule III to the CGST Act may benefit taxpayers in pending litigations. However, the Government should allow refunds in cases where a person has already paid tax on such transactions.
- While the recipient of supply can check GSTR-3B filing status of the supplier, he is unable to verify whether the supplier has paid tax to the Government. Thus, prescribing the mechanism under Rule 37A will be critical for complying with the provisions of section 16(2)(c).
- Courts in the past have held that the provisions of IBC have an overriding effect over the tax laws. Necessary changes were carried out under the Income tax law in the Budget for FY 2022-23. Amendment in Rule 161 and proposed issuance of Circular appears to be on a similar line.
- Proposed Rule 88C and amendment in Rule 59(6) may lead to additional compliance by taxpayers. There may be genuine reasons for the difference in tax reported in GSTR-3B and GSTR-1 (for e.g., adjustment of credit note pertaining to earlier period in GSTR-3B of the current period). The difference may now have to be substantiated monthly.

UAE Corporate Tax.

With effective from 01st June 2023, the new corporate tax will apply to businesses across all Emirates, with an exception for the extraction of natural resources, which will remain subject to Emirate level corporate taxation. Foreign entities and individuals will be subject to corporate tax only if they conduct a trade or business in the UAE in an ongoing or regular manner. It is important that businesses evaluate the impact of the introduction of UAE CT early on and proactively plan for a smooth implementation.

Examples:

- A business that has a financial year starting on 1 July 2023 and ending on 30 June 2024 will become subject to UAE CT from 1 July 2023 (which is the beginning of the first financial year that starts on or after 1 June 2023)
- A business that has a (calendar year) financial year starting on 1 January 2023 and ending on 31 December 2023 will become subject to UAE CT from 1 January 2024 (which is the beginning of the first financial year that starts on or after 1 June 2023)

UAE Corporate Tax will not be payable by natural persons, provided that they do not engage in business or commercial activity in the UAE. Taxable natural persons operating through sole establishments or proprietorships or as individual partners in an unincorporated partnership, conducting business in the UAE, will be subject to the CT regime.

Applicable Rates

CT will be charged on the annual taxable income of a business as follows:

- 0%, for taxable income not exceeding AED 375,000;
- 9%, for taxable income exceeding AED 375,000; and
- A different tax rate (not yet specified) for large multinationals that meet specific criteria set with reference to Pillar II of the OECD BEPS.

Calculation of Profit

The UAE CT regime proposes to use the accounting net profit (or loss) position in the financial statements of a business as the starting point for determining taxable income. IFRS standards are typically used by businesses in the UAE and will form the basis for such assessment, but the CT law will allow for alternative financial reporting standards.

Losses

The UAE CT regime will allow a business to use losses incurred (as from the UAE CT effective date) to offset taxable income in subsequent financial periods. A loss for CT purposes (tax loss) would arise when the total deductions the businesses can claim are greater than the total income for the relevant financial period.

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The relevant CIT legislation is still being finalised and has not been published yet. Although the regime that will come into force may ultimately diverge from MOF's announcement, businesses operating in the UAE (in particular businesses operating in both mainland UAE and in free zones under a dual licensing scheme) should consider the potential impact of the announced regime and prepare for the upcoming change in the law.

Transfer Pricing.

A corporate tax regime without transfer pricing provisions would be spineless. Transfer pricing is detailed mention in the Federal Decree released on 9 December 2022. While we are undertaking detailed research on transfer pricing law in the UAE, here is our first take on the transfer pricing law in the UAE.

- TP Regulation to apply to UAE Mainland as well as Free Zones.
- A Qualified Free Zone can continue to be qualified for 0% corporate taxes if it meets transfer pricing regulations and documentation. This means that without appropriate TP, a Free Zone can lose benefits.
- Arm's Length Principle (ALP) finds its place in the UAE Tax Decree.
- 5 methods to benchmark transactions with Related Parties prescribed that are in line with the global approach
- 6th method available, where none of the above methods could be used to derive arm's length results
- Choice of method depends on Contractual terms, Characterisation, Economic Circumstances, FAR analysis and Business Strategies
- The Most Appropriate Method (best suitable) concept used rather than Most Preferred Methods (hierarchy)
- The corresponding adjustment concept is brought in if a foreign tax administration makes adjustments to the ALP of the taxpayer.
- The concept of Associated Enterprises is subsumed by Related Parties with the threshold of 50% (In India - 26%)
- TP Documentation provisions are brought in, with 30 days provided for submission to tax authorities when called for
- Concept of Master File and Local file - thresholds to be declared
- The provision for the Transfer Pricing Disclosure form has been brought in (Similar to Form 3CEB - Transfer Pricing certificate)
- The ability to determine or exercise significant influence over the conduct of the Business and affairs is also covered in Related Parties

Direct Tax News

- Tax audit due date extended till October 7, 2022 from September 30, 2022.

- CBDT notifies rules providing manner for filing application for re-computation of income for disallowing claim for cess deduction

- CBDT extended the due date of filing Income tax return from Oct 31 to November 7, 22 for the Non TP cases with tax audit.

- CBDT also extended due date of ETDS Return Form 26Q from October 31, November 30, 2022 as they yet to update the section 194R in the utility.

  CBDT releases draft Common Income Tax Return Form for public consultation

- The CBDT has issued important Circular No. 24/2022 dated December 07, 2022 for the deduction of tax at source from salaries. The Circular explained obligation of employers with regard to the deduction of tax at source from salaries under section 192 of the Income-tax Act, 1961 ("the IT Act") for the Financial Year 2022-23 in a comprehensive manner.

- Non-residents claiming the benefits of the tax treaty as well as to the resident taxpayers while undertaking foreign remittances, require mandatory furnishing of Form 10F electronically. On consideration of the practical challenge being faced by non-resident (NI) taxpayers not having PAN in making compliance and with a view to mitigate genuine hardship to such taxpayers, it has been decided that such category of Non resident taxpayers who are not having PAN and not required to have PAN as per relevant provisions of the Income-tax Act, are exempted from mandatory electronic filing of Form 10F till 31 March 2023. Taxpayers may make statutory compliance of filing Form 10F till 31" March 2023 in manual form

- Clarification from ITBA team regarding mails of "Enablement of Communication Window" for CIT(A)

  Presently, after the Appellant has filed an Appeal through E-Filing portal, the E-Proceeding tab in E-Filing remains deactivated until respective CIT(A) issues a notice to the Appellant. It had noted by NFAC that since in many cases CsIT(A) have not issued the initial notice, the appellants were not able to submit any requests to CIT(A). NFAC has been receiving various communications from taxpayers requesting for opening of the communication window so that requests for Early Disposals and other requests can be made to CsIT (A).

  As per directions of NFAC, automatic communication is being triggered in all the pending Appeal cases to Enable the Communication Window for appellants. This would allow the taxpayers to submit requests to the CIT(A) without waiting for the issuance of the initial notice from CsIT(A).

Indirect Tax News

- Timelines for the following compliances linked to due date for filing September return shifted to 30 November:
  - Availment of ITC
  - Disclosure of credit note
  - Rectification of error or omission in GSTR-1, GSTR-3B and TCS return

- Outbound/export freight is liable to GST from 1st October

- CBIC issues Instruction relating to Pre-deposit for disputes under Central Excise and Service tax

- GST Council clarifies on issuance of recurring SCNs in enforcement cases

- *Notification No. 13/2020-Central Tax, dated March 21, 2020,* provides that a registered person having specified turnover shall prepare an e-invoice "*in respect of supply of goods or services or both to a registered person or for exports*".

- The CBIC vide N/No.23/2022–Central Tax, dated November 23,2022, empowers the Competition Commission of India to examine whether input tax credits availed by any registered person or reduction in tax rate have resulted in commensurate reduction in price of the goods or services or both supplied by him.

- The Tamil Nadu GST Department has issued detailed instructions on several procedures to be adopted by the GST authorities in Circular No. 14/2022-TNGST (PP2/GST-15003/23/2022) dated November 12, 2022 the instructions cover the assessment and cancellation of registration in the event of non-filing of returns under the Tamil Nadu Goods and Services Tax Act, 2017 ("the TNGST Act") for a continuous period of six months and also fixing up the responsibility on Territorial Deputy Commissioners and Territorial Joint Commissioners in the matter of supervising the return filings in assessment offices

- CBIC notifies effective date for amendments in CGST Act and modifies CGST Rules

- CBIC clarifies on extension of timelines for various compliances under GST

International Tax News

- Italy announced numbers of tax reforms in respect of appellate proceedings and given below the few important reforms.
  - (i) Remote hearing
  - (ii) Stay on tax demand

- The Saudi Arabian General Authority for Zakat and Tax (GAZT), in April 2021, published Circular No. 2104001, entitled Force of Attraction rule in the context of permanent establishment . The Circular confirms the GAZT's approach to applying the force of attraction principle under the Income Tax Law and several of Saudi Arabia's tax treaties. The GAZT has affirmed that when a treaty does not contain a force of attraction rule, only the profits that are directly attributable to a permanent establishment (PE) should be taxed in Saudi Arabia.

- New legislation for employee stock options was announced on 21 September 2021 and will go into effect on 1 January 2022. In the Netherlands, employee stock options are taxable as employment income as a benefit in kind (up to 49.5%). The taxable event of stock options is currently the moment of exercise (or alienation) of the stock option. Under the newly announced legislation, the taxable event for stock options will in principle be moved to the moment that the shares, received by exercising the stock options, become tradeable. However, it is possible to choose for taxation at the moment of exercise if an employee makes this choice via a written request to the employer. The plans are still subject to approval by the Dutch Parliament

- Transfer Pricing Law in France

  Article 57 of the French tax Code provides the legal basis for transfer pricing law in France. A fascinating aspect of this law relates to the application of transfer pricing provisions to transactions with non-associated entities (for whom the condition of dependence or control is not required) established in a foreign state or in a territory located outside France whose tax regime is privileged. The persons are considered to be subject to a privileged tax regime if they are either not taxable or subject to taxes on profits or income, which is less than half of French tax (reference articles 57, 209, and 238A of the General Tax Code).

- DTAA amendment by Australia with India may come into effect from 1st April 2023.

Trade News.

- Central Government allows International Trade settlements in INR for Export Promotion Schemes under FTP

- Indian Missions in Germany and Hong Kong have introduced an important change indicating that Indian employment visas will be granted to foreign nationals who are paid salary in India. There is no official communication from the Ministry of Home Affairs on the same. However, we have observed that Indian missions in a few jurisdictions seek confirmation on receipt of salary in India by the applicant. Upon providing appropriate documentation and justification for payroll running outside India, the visa application has been processed in favor of the applicant

- NFRA introduces audit quality inspections guidelines

- RBI has changed the rules of Fixed Deposit (FD), now if you do not claim the amount after completion of maturity, then you will get less interest in it.

- The Madras High Court has ruled that the Director General of Foreign Trade (DGFT), in exercise of its power to clarify the doubts regarding the interpretation of the Foreign Trade Policy (FTP), as formulated by the Central Government, cannot amend the very policy itself.

- 100% WFH granted to SEZ’s till 31st Dec 2023. Only intimation to be done before 31st Jan. No approval required for removal of laptops either.

- The government introduced the Jan Vishwas (Amendment of Provisions) Bill, 2022 in Lok Sabha to decriminalize minor offences by amending 183 provisions in 42 Acts with a view to promote ease of business.

- Integration of ICEGATE with AQCS-ICS (Animal Quarantine and Certification Services-Import Clearance System) effective 01.12.2022 – reg. For more details, refer to the circular no.24 dated 1st Dec'2022.

Direct Tax case laws

- The Supreme Court of India has ruled that section 43B(b) does not cover employees' contributions to PF, ESI, etc. deducted by the employer from the salaries of employees even for the Assessment Years Prior to 2021-22.

- Supreme Court rules shares under lock-in-period are not "quoted shares" and need to be valued as "unquoted shares" to determine gift tax liability

- SC, in a landmark ruling, in the context of "advancement of general public utility", holds that any body which involves in "trade or commerce" and charges over and above cost, would cease to be a Charitable Institution for the purpose of Income tax Act; When services are provided at cost or nominal basis, the same will not constitute "trade or commerce" but not when charges are markedly above cost; Three judges bench, while pronouncing the verdict, remarks that they have comprehensively dealt with each category of cases involving Development Authorities, Cricket Associations, Trusts and other similarly situated assessees; In a second batch of appeals, concerning educational institutions, Apex Court holds that the object of such institutions must be "wholly, solely and exclusively" for the purpose of education; SC rules that if educational institutions are making profits and gains and run for that purpose, then the benefit u/s Sec.10(23C) of Income Tax Act will not be extended to such institutions; SC disposes of the batch by dismissing several Revenue & Assessee appeals respectively.

- Supreme Court rules revaluation of capital assets of a firm by credit to partners' capital accounts post admission of partners taxable as capital gains

- Supreme Court brings clarity on a nascent tax issue for over 2 decades – Principal-Agent Relationship - Obligation to deduct TDS on 'Supplementary Commission'- When a person enters into a Principal-Agent relationship (Agency Contract), and pays commission income to the Agent, then it becomes important for the Principal to deduct TDS on Commission. Everyone knows that! But did you know that TDS is also required to be deducted on the 'indirect income' earned by the Agent from such Agency contract? Yes, where Principal has knowledge about such indirect income, he is required to deduct TDS on such additional indirect income, else the Principal should be ready to face consequences of being assessee-in-default. (Singapore Airlines)

- Supreme Court ruling in the case of S.M. Overseas (P) Ltd. (Taxpayer) where the issue before the SC was on validity of initiation of reassessment proceedings during the pendency of rectification proceedings, which were time-barred. The SC held that during the pendency of rectification proceedings even though they were initiated beyond the period of limitation, the reassessment proceedings cannot be initiated without first passing a specific order for withdrawal of time-barred rectification proceedings.

- Delhi HC settles a batch of petitions dealing with various issues around the date of issuance of reassessment notice

- The Delhi High Court upheld the order of ITAT and held that this Court is in agreement with the opinion of the ITAT that Section 195 of the Act has no application once the nature of payment is determined as salary and deduction has been made under Section 192 of the Act

- ITAT Is Last Fact-Finding Authority and Bound To Follow Directions Issued By High Court in Pith and Substance_ Rajasthan High Court

- The Jharkhand High Court has held that the registration once granted to trust under the Income Tax Act,1961 based on genuineness of activities and the same cannot be cancelled based on same provisions.

- The Calcutta High court in case of Southeastern Coalfields held that CSR expenses is allowed u/s 37(1).

- The High court of Madhya Pradesh accepting arguments of the assessee that this is a debatable issue and adjudicated it, therefore, it cannot be held that the assessee concealed the particular of the income. In all fairness, the assessee disclosed the income, as per the advice given by his Tax Consultant / Chartered Accountant, as a business receipt, hence, the appellant tribunal has rightly held that it is not a case of concealment of particulars of income or non-furnishing inaccurate particulars of such income.

- The Delhi Tax Tribunal holds that interest income earned by the German Company from Indian Rupee (INR) denominated Non-Convertible Debenture (NCD) is taxable at a beneficial tax rate of 5%.

- Mumbai ITAT has laid down principles for applicability of section 68 of Income Tax Act in cases like Share Premium received etc by the start-ups.

- No TDS required to be deducted on technical services to non residents in the absence of FTS clause in DTAA: ITAT Delhi.

- Chennai ITAT Allows 60% Depreciation On ATM machines As Applicable To Computer Software

- Jaipur ITAT rules on non-applicability of equalization levy on advertisement services where both advertisers and targeted audience are located outside India

- The Delhi ITAT dealt with the issues of classification of credits received by airlines for selection of engines as capital receipts and taxability of supplemental rent paid by airline operators.

- The Delhi ITAT, has, recently in an appeal filed before it, held that income tax penalty shall not be imposed for disallowance of bonafide claim. (Jain Peripherals).

- Pune Bench of ITAT granted deduction u/s 10B of The Income Tax Act, 1961 on registration with Software Technology Park of India (STPI) as 100% Export Orient Unit (EOU)

- Software expenses incurred for client is revenue expenditure. Mumbai- ITAT (Sikraft Infotech).

- Form No.67 is not mandatory but a directory requirement, the Bangalore ITAT has held that disallowance of FTC due to delay in filing the same is not valid. (Shashidhar Seetharam Sharma).

- ESOP Cross Charges Paid To Overseas Ultimate Holding Company Is Allowable Expenditure: ITAT Allows Deduction To HP - Bangalore ITAT.

- The ITAT Mumbai Bench, has recently in an appeal filed before it, held that no addition shall be made on the ground of typographical error in the Income Tax Return by the assessee.

- The Income Tax Appellate Tribunal (ITAT) has quashed a Rs 5,872 crore demand for dividend distribution tax (DDT) on Grasim Industries, a ruling that reinforced tax neutrality of NCLT-approved corporate restructuring. The Mumbai bench of the ITAT, in its order, held that the demerger of Aditya Birla group's financial services business from AB Nuvo in 2016 as part of major restructuring was a "qualifying demerger" under the provisions of the Income Tax Act, 1961 and hence the provisions of "deemed dividend" are not applicable.

- The Transfer Pricing issue of Intra Group Services is back to haunt MNC's operating in India. The latest HC ruling in the case of AKZO NOBEL India is a testimony to that. In the instant ruling the high court asked the taxpayer to demonstrate the receipt of services from AE through cogent evidence, including, any communication with the AE, the taxpayer expressed his inability to furnish any evidence and repeated his submission to restore the matter back to the Assessing Officer for enabling the assessee to furnish evidence. High Court in the instant ruling clearly relied on observations made by lower level of authorities and based thereon, clarified that Intra group services required to be backed by appropriate documents maintained by the taxpayer to substantiate that the services are duly received by the taxpayer and in absence of the same, HC upheld that the arm's length Price should be "NIL" in case taxpayer fails to maintain the documents to substantiate actual receipt of intra group services. Additionally, the HC also observes that merely because similar administrative services have been provided in the subsequent assessment years and have been accepted by the ITAT does not mean that the tax department is bound with respect to such findings, as each assessment year is different in matters of factual evidence.

- Delhi ITAT held that Revenue Earned By BBC For Distribution Of BBC News In India, Not Taxable As Royalty.

- The Chennai ITAT has held that the provision for Warranty Expenses is ascertained liability and is allow able as business expenditure. (M/s.Trivitron Healthcare Pvt. Ltd).

- Bangalore ITAT based on SC judgement of Checkmate held that Employees' Contribution To PF and ESI Should Be Remitted Before The Due Date To Allow Income Tax Deduction. (Technocorn).

- The Mumbai tribunal ruled that TDS under section 194C shall apply on payment made against AC maintenance, housekeeping, security & common area maintenance charges instead of TDS under section 194I.

- ITAT Special Bench in Vireet Investment (P.) Ltd in 2017 held that expenses disallowable u/s 14A cannot be reduced u/s 115JB. This view was challenged by department in Atria Power Corp, however Karnataka High Court dismissed it stating that no substantial question of law arises from it. Recently, Supreme Court also dismissed the SLP filed by tax department. IT APPEAL NO. 347 OF 2018. Now it seems settled that 14A formula shall not be applicable to 115JB.

- ITAT of Rajkot held that property transferred to mother through sale deed is transfer and not gift and hence taxable as capital gain.

Indirect Tax case laws.

- Kolkata CESTAT held that Cenvat Credit On Group Mediclaim Policy Cannot Be Disallowed (Diamond Beverages Private Limited Versus Commissioner of CGST & CX).

- Gujarat AAR held that GST Not Leviable on Employees' Portion Of Canteen Charges.

- Bombay HC holds ITC can be utilized for payment of pre-deposit under GST & directs CBIC to issue instructions on manner of pre-deposit for appeals under earlier regime

- Calcutta High Court Allows Pharma Company To Avail CENVAT Credit On Sales Promotion Services

- Bombay HC holds interest and penalty not leviable on delayed payment of customs surcharge CVD and SAD

- CESTAT Allows Cenvat credit To Satyam Computer For Service Tax Paid On Medical Insurance Premium Of Employees And Their Family – Hyderabad CESTAT.

- Jharkhand high court held that deposit in the electronic cash ledger, prior to the due date of filing GSTR 3B return, does not amount to discharge of tax liability.

- According to Section 135 of the Companies Act, if a company with a specified net worth failed to incur a minimum of 2% of its net profit towards CSR, the same will attract a penalty under Section 135(7) of the Companies Act, which may go up to Rs. 1 Crore. Thus, the running of the business of a company will be substantially impaired if they do not incur said expenditure. Therefore, the expenditure incurred for CSR is an expenditure made for the furtherance of the business. Hence, the taxes paid to meet the obligation under Section 135 of the Companies Act, shall be eligible for ITC under the Central Goods and Services Taxes ("CGST") and the State Goods and Services Taxes Acts ("SGST").

- Kerala High court allowed the writ petition filed by the assessee for refund of notice pay recovery, cites circular applicable retrospectively-(Manuppuram Finance Ltd.)