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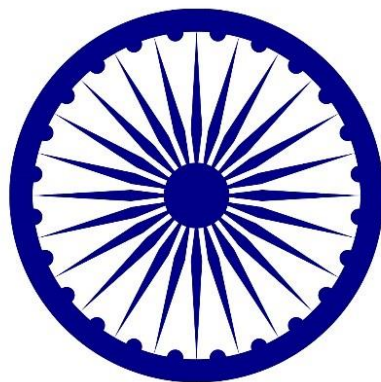
NEWSLETTER INDIA

ADDING VALUE

Issue:
April 2019

Latest news on compliance, tax and business
in India

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NEWSLETTER INDIAINDIA

ADDING VALUEVALUE

Issue:
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RECENT UPDATES UNDER COMPANIES ACT, 2013

- Newly incorporated companies are required to submit declaration in Form INC-20A: Every company with a share capital incorporated after 2 November 2018 is required to submit with the Registrar of Companies (ROC) a declaration within 180 days from the date of its incorporation. This requirement is introduced through Companies (Incorporation) Fourth Amendment Rules, 2018 as notified by Ministry of Corporate Affairs ("MCA").
 - Requirement of filing of initial return through Form MSME I: On 22 January 2019, Companies (Furnishing of Information about payment to micro and small enterprise suppliers) Order 2019 was notified by MCA. The said Order applies to every company who get supplies of goods or services from micro and small enterprises. Such companies whose payments to micro and small enterprises exceed 45 days from the date of acceptance or the date of deemed acceptance of the goods and services are required to file Form MSME I with the MCA. The Form MSME I needs to furnish details about the particulars of the name of suppliers, amount of payment due, reasons for delay. The last date of filing Form MSME I would be 30 days from the date of its deployment on the MCA portal. However, the said form is yet to be made available on the MCA portal. Thereafter subsequently the Form MSME I shall be regularly filed on a half yearly basis:
 - a. Period from April to September by 31 October and
 - b. For the period from October to March by 30 April
- Non-compliance shall be punishable with fine which may extend up to INR 10,000 along with a further fine which may extend up to INR 1000 for every day during which the contravention continues.
- Requirement to file Form DPT-3 (Return of Deposits): On 22 January 2019, MCA notified the Companies (Acceptance of Deposits) Amendment Rules, 2019, which requires every company other than the government company to file a return in Form DPT-3. The said form requires on a one-time basis to report all outstanding receipt of money or loan by a company for the period between 1 April 2014 to 31 March 2019 which Rule 2(1)(c) of Companies (Acceptance of Deposits) rules, 2014 are not considered as deposits in terms of. Earlier the last date for filing of the said form was 22 April 2019. But MCA through recent notification has extended a due date which is 30 days from the date of deployment of Form DPT-3 on the MCA portal. The said form is yet to be made available on the MCA portal. Non-contravention with filing is punishable with fine extending up to INR 5000 and where the contravention is a continuing one, additional fine of INR 500 per day during which the such contravention continues.
 - Due date for filing of form BEN-1 and Form BEN-2: On 8 February 2019, MCA notified the Companies (Significant Beneficial Owners) Amendment Rules, 2019. As per these amended rules, every individual who is a Significant Beneficial Owner (SBO) in an Indian Company (Reporting Company) is required to file a declaration in Form BEN-1 to the reporting company within 90 (Ninety) days of the commencement of these Rules. After receiving the declaration from the SBO, the company is required to file a return in Form BEN-2 with the Registrar of Companies in respect of declaration, within a period of 30 days from the date of receipt of declaration BEN-1. If the SBO fails to file BEN-1 within due date, it shall be punishable with imprisonment for a term which may extend to 1 year or with fine in range of INR 1 Lakh up to INR 10 Lakhs or with both. If the company fails to file returns vide BEN-2 with the Registrar or denies inspection of the register of SBO, the company is punishable with a fine in range of INR 10 Lakhs up to INR 50 Lakhs. If it is continuous a further fine of INR 1000 per day will be imposed. Form BEN-1 is a physical form and has already been notified and due date for filing of the same is approaching. However, Form BEN-2 is an e-form which has not been deployed on the MCA portal as yet and accordingly the time-limit for filing of BEN-2 is extended to be 30 days from the date of deployment of Form BEN-2 on the MCA portal.
 - Due date for filing of E-Form INC-22A(Active Company Tagging Identities & Verification: MCA vide notification dated 21 February 2019, introduced the compliance for those companies

which have been incorporated on or before 31 December 2017. It requires filing of INC-22A for the purpose of showing “Active Status” by requiring to provide for certain particulars of the company and its registered office. The due date of filing of form INC-22A was April 25 2019 and failure to file the said form on or before the due date would result in such companies getting a status of “Active-Non-Compliant”. As a consequence, such companies would be prevented from filing of certain statutory forms like Form SH-7, Form PAS-3, Form DIR-12, Form INC-22 and Form INC-28. Such companies will be able to regain their status of “Active Compliant” and shall be able to file the aforementioned statutory forms only after filing of Form INC-22A along with the penalty of INR 10,000.

Now registrations under one roof possible with the introduction of new Form AGILE: Recently the MCA has notified the Companies (Incorporation) Third Amendment Rules, 2019 dated 29th March 2019 which introduces a new E-Form called INC-35 (AGILE). The newly notified INC-35 (AGILE) forms a part of SPICe Incorporation E-form and the feature about this form is that it serves as one roof for application for registration under Goods and Service Tax (GST), Employees’ Provident Fund Organization (EPFO) and Employees’ State Insurance Corporation (ESIC). It is pertinent to note that for filing of INC-35 (AGILE) along with SPICe form is mandatory.

COMPANY SECRETARIAL (CS) COMPLIANCES FOR PRIVATE LIMITED COMPANY

Below is the summary of the compliances which needs to be adhered for the next quarter (April-June 2019)

Sr. No	Particulars	Due Date (2019)
1.	Holding at least one Board Meeting in quarter Apr-Jun 2019 (Gap between previous board meeting and this meeting should not exceed 120 days)	30 June
2.	Form INC-22A	25 April
3.	Form DIR-3 KYC	30 April
4.	Form BEN-1	8 May
5.	Form BEN-2	30 days from its deployment

6.	Form MSME-1	30 days from its deployment
7.	Form DPT-3	30 days from its deployment

LABOUR LAW UPDATES

The Hon’ble Supreme Court of India clarifies the inclusion of “Special Allowance” for contribution under the Employees’ Provident Fund (EPF): The Hon’ble Supreme Court of India on 28 February 2019 while hearing a matter between “The Regional Provident Fund Commissioner (II) West Bengal v. Vivekananda Vidyamandir and Others” has clarified its position on “special allowance” for contribution under the Employees’ Provident Fund and Miscellaneous Provisions Act, 1952 (EPF Act).

In a given judgement, the Supreme Court of India by applying the “universality test” has concluded that all such additional allowances whether in the form of “special allowance” or any other allowance which are universally and ordinarily payable to all the employees without any link to the quantum of efforts put in by employees or output produced, shall be taken into account as a part of “basic wages” for making contribution under Employees’ Provident Fund (EPF).

In view of recent Supreme Court’s decision, there is an increased risk of inspection by EPF authorities to track down non-compliances amongst employers and hence accordingly employers are required to review the salary structures of their employees and evaluate any increased liabilities towards making EPF contributions in order to avoid any penalties/damages in future.

SUPREME COURT CLARIFIES ON THE POINT OF SUSPENDED RIGHTS OF BOARD OF DIRECTORS DURING THE CORPORATE INSOLVENCY RESOLUTION PROCESS OF THE COMPANY

The Hon’ble Supreme Court of India on 31 January 2019 in the case of Vijay Kumar Jain v. Standard Chartered Bank and Others. Civil Appeal No. 8430 of 2018, by setting aside the order passed by National Company Appellate Tribunal (NCLAT) has clarified that directors have the right to participate in every meeting of Committee of Creditors (COC). In addition to this, although these directors do not have the right to vote in COC meetings, however, in order to ensure their effective participation, they cannot be denied access to all the documents and/or information including the resolutions plans being discussed in the meetings of the COC.

It is pertinent to note that under Insolvency and Bankruptcy Code, 2016 (IBC), once the corporate insolvency resolution process is commenced, the powers of board of directors of the debtor company stand suspended and the same become vested and exercised by the resolution professional. Under this arrangement, directors still are allowed to attend and participate in the meetings of committee of creditors (COC), however such directors are not entitled to vote.

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→ Tax News

Transfer Pricing

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THE ACCEPTANCE OF MAP AND BILATERAL APA IN CASES OF COUNTRIES WHERE ARTICLE 9(2) OF OECD MODEL TAX COMMENTARY IS ABSENT

Central Board of Direct taxes (CBDT) received number of references from time to time regarding the acceptance of applications pertaining to Transfer Pricing Mutual Agreement Procedures (MAP) cases and bilateral Advance Pricing Agreements (APAs) where the Associated Enterprise (AE) of the Indian entity is resident of a country with which India has entered into a Double Taxation Avoidance Agreement (DTAA) but the Agreement does not contain Paragraph 2 of Article 9 (or its relevant equivalent Article) relating to “Corresponding Adjustment”. Indian government has decided not to entertain such applications in the absence of Paragraph 2 of Article 9.

This leads to a slowdown of MAP process and an objective of creating effective alternative to long drawn litigation was not getting fulfilled.

The matter was escalated to CBDT and vide its Press Release dated 27 November 2017, CBDT has given in principle accord to accept Transfer Pricing MAP and bilateral APA applications regardless of the presence or otherwise of Paragraph 2 of Article 9 (or its relevant equivalent Article) in the DTAA.

This will speed up the finalization of pending applications of MAP and will be very useful in getting clarity by avoiding long drawn litigation.

SIGNING OF AGREEMENT FOR EXCHANGE OF CBC REPORTS BETWEEN INDIA AND USA

On 27 March 2019, India and USA signed Inter-Governmental agreement for exchange of Country-by-Country(CbC) Reports. This agreement will enable both the countries to automatically exchange CbC Reports filed by the ultimate parent entities of Multinational Enterprises (“MNEs”) in the respective jurisdictions, pertaining to the years commencing on or after 1 January 2016. It would also obviate the need for Indian subsidiary companies

of US MNEs to do local filing of the CbC Reports, thereby reducing the compliance burden.

A CbC Report has aggregated country-by-country information relating to the global allocation of income, the taxes paid, and certain other indicators of an MNE group. It also contains a list of all the constituent entities of an MNE group operating in a particular jurisdiction and the nature of the main business activity of each such constituent entity. MNE groups having global consolidated revenue of 750 million EUR or more (or a local currency equivalent) in a year are required to file CbC Reports in their parent entity’s jurisdiction. The INR equivalent of 750 million EUR has been prescribed as INR 5500 Crore in Indian rules.

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→ Tax News

Indirect Tax

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GOODS AND SERVICE TAX

- Pre-Import Condition withdrawn from Advance Authorization License – Central Government vide Notification No. 01/2019–Central Tax dated 15 January 2019 amended with a view to further expand the scope of export related benefits has withdrawn the “Pre-import condition”. The importer has to furnish a certificate from Chartered Accountant to evidence that imported goods have indeed been used in the manufacturing of export goods within six months of such supply.
- Section 43A of CGST Act, 2017 – Procedure for furnishing return and availing input tax credit has been introduced in order to enable the new return filing procedure as approved by GST Council. The new return filing system has been deferred for the time being and would be implemented once the online portal is ready with the new formats.
- Section 49A of CGST Act, 2017 – New system for utilisation of input tax credit subject has been introduced. As per the amendment, order of utilisation of input tax credit would start with Integrated tax over the Central tax or State tax. The order of cross-utilisation of input tax credit has been rationalised by introducing Rule 88A of CGST Rules, 2017 which states that Input tax credit on account of integrated tax shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the payment of central tax and State tax or Union territory tax in any order.

Prior 1 February 2019

Liability	First Set off from	Then Set off from
IGST	IGST	CGST & SGST
CGST	CGST	IGST
SGST	SGST	IGST

Post 1 February 2019

Liability	First Set off from	Then Set off from
IGST	IGST	CGST & SGST
CGST	IGST	CGST
SGST	IGST	SGST

- Central Government vide Notification No. 10/2019–Central Tax dated 7 March 2019 provided exemption from registration for any person engaged in exclusive supply of goods and whose aggregate turnover in the financial year does not exceed INR 40 lakhs. This notification came into force on 1 April 2019.
- Due dates for filing FORM GSTR-1 – Central Government vide Notification No. 11/2019–Central Tax dated 7 March 2019 prescribed the due date for furnishing of FORM GSTR-1 for those taxpayers with aggregate turnover up to INR 1.5 crores for the quarter April 2019 to June 2019 as 31 July 2019.
- Central Government vide Notification No. 12/2019–Central Tax dated 7 March 2019 extended the due date for furnishing of FORM GSTR-1 for those taxpayers with aggregate turnover more than INR 1.5 crores for the months of April, May and June, 2019 till eleventh day of the month succeeding such month.
- Due date for filing FORM GSTR-3B – Central Government vide Notification No. 13/2019–Central Tax dated 7 March 2019 prescribed due date for filing FORM GSTR-3B for months April 2019 to June 2019 on or before twentieth day of the month succeeding such month.
- Extended due date for filing FORM GST ITC-04 – Central Government vide Notification No. 15/2019–Central Tax dated 28 March 2019 extended due date for filing FORM GST ITC-04 (being form for declaration of goods sent to job worker for further processing) for the period July 2017 to March 2019 till 30 June 2019.
- Composition Scheme – Central Government vide Notification No. 14/2019–Central Tax dated 7 March 2019 extended the threshold of aggregate turnover for availing Composition Scheme under Section 10 of CGST Act, 2017 to 1.5 crores.

Further the said aggregate turnover in the preceding financial year shall be INR 75 lakhs in case of special category states.

- Central Government vide Notification No. 02/2019-Central Tax(Rate), gave composition scheme for service provider with tax rate of six per cent having annual turnover up to INR 50 lakhs in preceding year.
- These notifications came into force on 1 April 2019.
- New GST regime for real estate including RCM on certain transactions effective from 1 April 2019 – Central Government vide Notification No. 03/2019-Central Tax(Rate) dated 29 March 2019 has notified various GST rates for various services as recommended by GST Council for real estate sector. In case of affordable housing effective GST rate is eight per cent (with availing ITC) and one per cent (without availing ITC) subject to certain conditions and effective GST rates for other than affordable housing is twelve per cent (with availing ITC) and five per cent (without availing ITC) subject to certain conditions.
- Central Government vide Notification No. 04/2019-Central Tax(Rate) dated 29 March 2019 exempted supply of transfer of development rights (TDR), Floor Space Index (FSI), long term lease (premium) of land by a landowner to a promoter subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them.
- Central Government vide Notification No. 05/2019-Central Tax(Rate) dated 29 March 2019 specified that services supplied any person by way of TDR, FSI, long term lease (premium) for a construction of a project to a promoter would be taxable under the reverse charge mechanism. Thus, promoter would be liable to pay tax under reverse charge mechanism for the above mentioned services.
- Central Government vide Notification No. 07/2019-Central Tax(Rate) dated 29 March 2019 has notified promoters as category of persons liable to reverse charge u/s 9(4) of CGST Act, 2017 for the following supply:
 1. Supply of goods and services or both [other than services by way of grant of TDR, long term lease of land or FSI]. Value of such supply shall be the shortfall of minimum value of goods or services or both required

to be purchased by promoter for the construction of the Project till the issuance of completion certificate.

2. Supply of Cement. Value of the Cement shall be the shortfall required to be purchased by the promoter for the construction of the project till the issuance of the completion certificate.
3. Capital Goods falling under any Chapter to the Schedule to the Custom Tariff Act, 1975

Liability to pay tax under Reverse Charge shall be applicable only in case where developer selected the option to pay the tax without availing of Input Tax Credit.

- Central Government vide Notification No. 08/2019-Central Tax(Rate) dated 29 March 2019 notified that supply of any goods other than cement and capital by any unregistered person to promoter for construction of project would be taxable under reverse charge mechanism.
- Central Board of Indirect Taxes & Customs (CBIC) clarified vide Circular No. 88/07/2019-GST dated 1 February 2019 that the acceptance of LUT for supplies of goods or services to countries outside India or SEZ developer or SEZ unit will be permissible irrespective of whether the payments are made in Indian currency or convertible foreign exchange as long as they are in accordance with the applicable RBI guidelines. Thus, supply of services would qualify as exports, even if payment is received in Indian Rupees, where permitted by the RBI.
- CBIC clarified vide Circular No. 91/10/2019-GST dated 18 February 2019 regarding tax payment made for supply of warehoused goods while being deposited in a customs bonded warehouse for the period July 2017 to March 2018.
- CBIC clarified vide Circular No. 92/11/2019-GST dated 7 March 2019 various doubts related to treatment of sales promotion schemes under GST such as:

1. Free Samples and Gifts

- In case where customer is not related party: Supply of free goods is not covered under Schedule I of CGST Act, 2017. Therefore, such supplies will not be liable to GST. As per Section 17(5)(h) of the CGST Act, 2017, ITC in relation to such supplies

made to customers would not be allowed and need to be reversed by the supplier.

- In case where customer is related party: The said transaction will be covered under Schedule I of CGST Act, 2017 and thus liable to GST. However, supplier shall be entitled to avail ITC.

2. Buy one get one free offer

It can be treated as supplying two goods for the price of one. Taxability would be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of Section 8 of CGST Act, 2017. Further, supplier shall be entitled to avail ITC.

3. Discounts including "Buy more, save more" offers

Discounts offered by the suppliers to customers shall be excluded to determine the value of supply provided they satisfy the parameters laid down in Section 15(3) of CGST Act, 2017. Further, supplier shall be entitled to avail ITC.

4. Secondary Discounts

These are the discounts which are not known at the time of supply or are offered after the supply is already over. Such secondary discounts shall not be excluded while determining the value of supply as such discounts are not known at the time of supply and the conditions laid down in section 15(3) of CGST Act, 2017 are not satisfied. In other words value of supply shall not include any discount by way of issuance of credit note except in cases where Section 15(3) of CGST Act, 2017 has been satisfied. There is no impact on availability or otherwise of ITC in the hands of supplier in this case.

- CBIC clarified vide Circular No. 94/13/2019-GST dated 28 March 2019 about refund related issues to ensure uniformity in implementation of provisions.

CUSTOMS

- Pre-Import Condition withdrawn from Advance Authorization License - Central Government

vide Notification No. 1/2019-Customs dated 10 January 2019 has removed the pre-import condition for availing the benefit of exemption. Further, the benefit of exemption is extended even in respect of specified deemed export supplies.

- Extended the exemption from Integrated Tax and Compensation Cess - Central Government vide Notification 08/2019-Customs dated 25 March 2019 extended the exemption of Integrated Tax and Compensation Cess on goods imported against AA/EPCG authorizations up to 31 March 2020.
- Central Government vide Notification 09/2019-Customs dated 25 March 2019 extended the exemption of Integrated Tax and Compensation Cess to EOUs on import till 31 March 2020.

MAHARASHTRA VAT

- Amnesty scheme is a limited-time opportunity for a specified group of taxpayers to pay a defined amount, in exchange for forgiveness of a tax liability (including interest and penalty) relating to a previous tax period or periods. Recently the Government of Maharashtra introduced a scheme for settlement of arrears of tax, interest, penalty or late fee known as "Maharashtra Amnesty Scheme 2019".
- This Scheme is applicable for the period prior to 30 June 2017 and the application for the said can be made from 1 April 2019 to 31 July 2019. Further, benefit of this scheme is available for disputed as well as undisputed tax.

Quantum of benefit

Dispute period	Nature of Liability	Phase I 1 April 2019 to 30 June 2019		Phase II 1 to 31 July 2019	
		Pay-ment	Waiver	Pay-ment	Waiver
Period up to 31 March 2010	Tax	50 %	50 %	60 %	40 %
	Interest	10 %	90 %	20 %	80 %
	Penalty	5 %	95 %	10 %	90 %
Period from 1 April 2010 to 30 June 2017	Tax	70 %	30 %	80 %	20 %
	Interest	20 %	80 %	30 %	70 %
	Penalty	10 %	90 %	20 %	80 %

- The Amnesty Scheme 2019 provides good incentive in the form of partial waiver of tax, interest, penalty or the late fee and is one of the most lucrative Amnesty scheme.

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→ Tax News

Direct and International Tax

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GUIDELINES FOR EFFECTIVE REPRESENTATION OF CASES BEFORE COMMISSIONER OF INCOME TAX (APPEALS) [“CIT(A)”]

Central Board of Direct Taxes (“CBDT”) vide circular no. 3 of 2018 dated 11 July 2018 had raised the monetary limit of tax effect for filing of appeals by revenue authorities to INR 2 million. Due to this, the tax officer have no recourse to any appeal against the order of the CIT(A) where tax effect is lower than INR 2 million. In view of this, to ensure effective and proper representation of the cases by the tax officers before the CIT(A), CBDT vide guidelines dated 14 February 2019 (F. No. 279/Misc/M-124/2018-ITJ) has issued the following directions to the tax officers:

- Every tax officer shall mark 20 assessment order every year as “Quality orders” for proper representation before the CIT(A) which shall be the responsibility of the jurisdictional Principal Commissioner of Income-tax.
- Such flagged cases shall be represented before the CIT(A) either by the tax officer concerned or by any other tax officer within the jurisdiction of same Principal Commissioner of Income-tax (“Pr.CIT”), who has got special expertise or domain knowledge or by any tax officer duly authorized in this regard.
- The CIT(A)’s are also required to separately report on monthly basis, how many such “Quality Orders” have not been represented by the tax officers before them.

Further, the CBDT has directed that the Principal Chief Commissioner of Income-tax/Chief Commissioner of Income-tax/Legal & Research Directorate shall identify selected tax officers in their region having expertise/domain knowledge in specific trade/sector/section of the Income-tax Act and shall form a “Regional Talent Pool”/“National Talent Pool” for representation of high-stake cases at different levels of appeal.

The tax officers of the Talent pool shall also act as a “Think Tank”, to contribute articles on themes of their specialization for publication in National Judicial Reference System (“NJRS”) web portal as well as in national or international journals.

GRATUITY LIMIT FOR “OTHER” CATEGORY OF EMPLOYEES INCREASED TO INR 1 MILLION

Gratuity exemption limit for government employees as well as the employees covered under the Payment of Gratuity Act, 1972 (“Gratuity Act”) was increased from INR 1 million to INR 2 million last year. However, the limit for “other” category of employees not covered under Gratuity Act remained capped at INR 1 million.

Now, CBDT, vide its notification dated 8 March 2019 has extended the exemption INR 2 million to the “other” category of employees which includes employees not covered under Gratuity Act (for example private sector employees) who retire or become incapacitated prior to their retirement or are deceased on or after the 29 March 2018 or whose employment is terminated on or after the aforesaid date.

NEW INCOME TAX RETURN (“ITR”) FORMS APPLICABLE FOR ASSESSMENT YEAR (“AY”) 2019-2020 NOTIFIED BY CBDT

CBDT has notified the new ITR forms applicable for filing tax compliances for AY 2019-20 (relevant for reporting period 1 April 2018 to 31 March 2019). The new ITR forms provide for additional disclosures in respect of all those incomes which are often subject to tax disputes or which are prone to tax avoidance.

The purpose of making the changes in the ITR forms, is to ensure maximum disclosure of facts to uncover the under-reporting or wrong-reporting of income and other particulars.

A few important changes made in the new ITR forms are as under:

- The salaried tax payers are now required to provide details of their exempt allowances as well.
- A person who has been a director of a company at any time during the assessment period now needs to furnish the names and Permanent Account Number (“PAN”) of the company(s) in which he is director and also whether the shares of that company are listed or unlisted.
- An individual who held unlisted equity shares in any company during the assessment period has to now disclose it in their ITR form.
- Non-resident individuals’ inter-alia have to provide their stay period in India during the current year and for past years for calculation of their residential status.
- The companies now have to report date of incorporation and date of commencement of business activity which may impact the allowability of expenses incurred prior to commencement of business.

The java or excel utilities for preparing the ITR forms (for online submission) have not yet been notified, only pdf format forms have been notified. It is to be seen, how many of the newly notified additional disclosures in the ITR forms are made mandatory.

OECD INVITES PUBLIC INPUT ON POSSIBLE SOLUTIONS TO TAX CHALLENGES OF DIGITALISATION

As a part of the ongoing work of the Base Erosion Profit Shifting (BEPS) Project, the OECD released a Public Consultation Document on possible solutions to tax challenges arising from the digitalisation of economy on 13 February 2019. Comments were invited from interested parties by 6 March 2019. The Public Consultation Document contains proposals for revising profit allocation and nexus rules in response to the challenges posed by digitalisation. These proposals seek to expand taxing rights of the user or market jurisdiction, via the user participation and marketing intangible proposals. The Document also includes a detailed discussion of the concept of significant economic presence (“SEP”).

The user participation proposal focuses on the values created by highly digitalised businesses through developing an active and engaged user base, and soliciting data and content contributions from them, whereas the marketing intangible proposal addresses a situation where an MNE group can “reach into” a jurisdiction, either remotely or through a limited local presence to develop a user/customer base and other marketing intangibles. Under the proposal for SEP, a taxable presence in a jurisdiction would arise when a non-resident enterprise has a SEP on the basis of certain factors. Interestingly, India has already implemented the SEP vide its Finance Act 2018, however the criteria for determining SEP is yet to be finalised.

The tax challenges arising from digitalisation of the economy has been identified as one of the main focus areas of BEPS, leading to the 2015 BEPS – Action 1 “Report on Addressing the Tax Challenges of the Digital Economy (the Action 1 Report)”. Following a mandate by G20 Finance Ministers in March 2017, the Task Force on Digital Economy (TFDE), delivered an Interim Report in March 2018. A final report is committed in the year 2020 aimed at providing a consensus-based long-term solution to these challenges of digitalisation.

AMENDMENT TO DTAA WITH SINGAPORE AND MAURITIUS (CHANGE IN CURRENT CAPITAL GAINS TAX RATES EFFECTIVE FROM 1 APRIL)

In 2016, India and Mauritius signed a protocol for the amendment of the Double Taxation Avoidance Agreement (DTAA) to provide for source based taxation of capital gains arising from alienation of shares. Similarly, a third protocol amending India – Singapore DTAA was also signed to provide for source based taxation of capital gains in the same year.

The new protocols gave India the right of taxation of capital gains on transfer of shares of Indian company acquired on or after 1 April 2017 in a phased manner. Under both DTAA's, the capital gain tax rate was limited to 50 per cent of domestic tax rate in India up to 31 March 2019 on transfer of

such shares being transition period. From financial year 2019-20 i.e. from 1 April 2019 onwards, under these DTAA's, the capital gains arising from alienation of shares of an Indian company would be taxable in India at full Indian domestic tax rates.

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→ Accounting/Audit News

Business Process Outsourcing

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UNDERSTANDING TERMINOLOGIES

AUDITS & CONTROLS

Effective communication is highly dependent on correct usage of the right terminology. Since similar terms are used for different purposes, using right terminology is important to understand the subject matter correctly.

For example, "SOP" stands for "Standard Operating Procedure" in the banking industry as compared to "Start of Production" in manufacturing, automotive etc. Similarly the term "Audit" could mean internal audit or external audit where each of them assess different things, and have different frameworks and workflows.

Another common area where the terms are wrongly interchanged is the Internal Audit and Internal Control.

Internal Audit is a function, while Internal Control is a system. Internal Audit checks if the controls implemented are working according to the way they are intended to, and evaluates an organization's governance system and process whereas Internal Control is made up of procedures, policies and measures designed to make sure that an organization meets its objectives.

Internal audit is a systematic and independent examination of books, accounts, statutory records, documents and vouchers of an organization to ascertain how far the financial statements as well as non-financial disclosures present a true and fair view of the concern.

Internal control is the process designed, implemented and maintained by those charged with governance, management and other personnel to provide reasonable assurance about the achievement of an entity's objectives with regard to reliability of financial reporting, effectiveness and efficiency of operations, safeguarding of assets, and compliance with applicable laws and regulations. The term "controls" refers to any aspects of one or more of the components of internal control.

Internal Audits are only conducted at a specific time, but Internal Controls are a series of on-going checks being performed on a regular basis.

Internal Audit will test these internal controls based on their design, implementation & operating effectiveness.

On similar lines, in other industries the terms used are Project Audit & Project Control.

A Project manager is responsible for project controlling but project audits are done by another resource or an external source.

Internal Audits also play a very important role in Fraud Risk Management as there have

been several instances in the past few decades where organizations are subject to fraud risks. Fraud risk management has gained so much importance today that a designated independent role has also been identified now where the scope may also include investigation of possible frauds in addition to initial detection.

COMPLIANCE CALENDAR

I. No.	Particulars	Due Date
A DIRECT TAX		
1.	Monthly payment of TDS/TCS (other than for March month in case of TDS)	Within 7 days from the end of month in which the payment is made
2.	Monthly payment of TDS (for March month)	30 April
3.	Filing of Tax Collection at Source (TCS) Return for the quarter January 2019 to March 2019	15 May
4.	Filing of Tax Deducted Source (TDS) return for the quarter January 2019 to March 2019	31 May
5.	Statement of Financial Transactions in Form 61A	31 May
6.	Payment of 1st Instalment of Advance Tax for the FY 2019-2020	15 June
7.	Payment of Professional Tax Enrolment Certificate (PTEC) for FY 2019-2020	30 June
B INDIRECT TAX		
1.	Filing of GSTR 1 (monthly)	On or before 11 of subsequent month
2.	Filing of GSTR 1 for the quarter January 2019 to March 2019	30 April
3.	Filing of GSTR 3B (monthly)	On or before 20 of subsequent month
4.	Form ITC-04 for the period July 2017 to March 2019	30 June
5.	GST Annual Return & GST Audit	30 June
D OTHER STATUTORY COMPLIANCES		
1.	ESIC - Employees' State Insurance Corporation	15 of subsequent month
2.	Provident Fund (monthly)	15 of subsequent month
3.	Profession tax	30/31 of subsequent month (monthly)

FOR MORE INFORMATION PLEASE CONTACT



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