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Samācāra

SEPTEMBER 2017

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EDITORIAL

Dear All,

As stated by the great Leonardo da Vinci

“I have been impressed with the urgency of doing. Knowing is not enough; we must apply. Being willing is not enough; we must do.”

thus, action is most important than willingness to do.

Strength means power or caliber. Strength is needed to perform tasks efficiently with great energy. “Only one who devotes himself to a cause with his whole strength and soul can be a true master.” For this reason, mastery demands all of a person.

Since last two months GST has become a part of our life. The government had made its intent evident and clear that there was no option but to roll it out from 1-7-2017. Though the levy has been imposed upon the people of the country, the lack of preparedness on the part of the government is visible, leave aside the acceptance from the administrative or implementing agencies, tax professionals and the world of trade and commerce. The new taxation regime is going to be a game changer in the taxation system of the country but the transition does not seem to be free from challenges.

Various compliances that are to be made online are yet to be activated on the GST portal. The acceptance part is also missing from the clients as well. Trade and Industry is still assessing the impact of GST including provisions of place of supply, anti-profiteering clause and input tax credit after almost 60 days of the implementation. One can only guess the effect it would have had on the business and economy during this initial period.

The foundation of the GST is premised on the fact that it is completely system driven without much human intervention. When after 70 years of independence we still say that India lives in her villages, I wonder how many villages are equipped to comply with the GST provisions. Even in the big cities, leave aside corporates or larger enterprises, many small and medium enterprises are not adequately equipped. The transformation is to happen at the basic level of preparing invoices for a smooth adaptability. How will such a business entity be able to comply with the provisions GST?

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There is lot which can be said and debated upon but the bottom line is, due to increased cost of compliance, a professional is considered by the assesses as an unnecessary burden and the tax authorities consider them as hindrance. This is not an ideal situation.

In the last month, in spite of hectic schedule, we have launched our website and have started communicating with clients through the new avatar of E communication "Samacara". The credit of this goes to Knowledge and Newsletter Committee and all the contributors.

As we go to the press, the Supreme Court gave that momentous judgement upholding the Right to Privacy of the Citizen. This is one of the most significant judgements as it comes out of the full bench of the court and has long term implications.

I would like to conclude by wishing good luck to all for the forthcoming tax audit season and by sharing my favourite quotes on motivation and inspiration:-

“

“There are no secrets to success. It is the result of preparation, hard work, and learning from failure”
- Colin Powell

“The best preparation for tomorrow is doing your best today.” - H. Jackson Brown, Jr.

“Success is about creating benefit for all and enjoying the process. If you focus on this and adopt this definition, success is yours.” - Kelly Kim

”

with,
Best Regards



CA. Suhas P. Bora
Senior Partner

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DUE DATES

MONTHLY DUE DATES REGISTER FOR SEPTEMBER 2017

ACT	Particulars	Due Date
GST	Due date for GST payment for the month of Aug 2017	20 th Sept 2017
INCOME TAX	Due date for payment of last installment (i.e., 50% of tax, surcharge and penalty) under Income Disclosure Scheme, 2016.	30 th Sept 2017
INCOME TAX	TDS/TCS Payment for the month of Aug 2017	7 th Sept 2017
INCOME TAX	Second instalment of advance tax for the assessment year 2018-19	15 th Sept 2017
INCOME TAX	Due date for issue of TDS Certificate for tax deducted under Section 194-IA in the month of July, 2017	14 th Sept 2017
INCOME TAX	Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA in the month of August, 2017	30 th Sept 2017
PROFESSION TAX	E-Payment of Monthly Tax for Aug 2017	30 th Sept 2017

NOTE :-

- 1) If Due date is on Sunday or Public Holidays, the next working day is to be considered as due date.
- 2) For the month of July 2017 and August 2017 the earlier due date and Extended due date are as follows -

Month	JULY 2017		AUGUST 2017	
	Earlier	Extended	Earlier	Extended
GSTR - 1	10 th Aug 2017	5 th Sep 2017	10 th Sep 2017	20 th Sep 2017
GSTR - 2	15 th Aug 2017	10 th Sep 2017	15 th Sep 2017	25 th Sep 2017
GSTR - 3	20 th Aug 2017	15 th Sep 2017	20 th Sep 2017	30 th Sep 2017

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INCOME UPDATES AND CASE LAWS

A. Notification and Circulars

1. CBDT Extends the Due Date of Tax Audit and filing ITR to 31st October 2017 (F.No.225/270/2017/ITA.II dated 31st August 2017)

In view of GST and extension granted for filing various returns and forms under GST by the government, in respect of all assessee's covered under clause (a) of Explanation 2 to sub section (1) of section 139 of the Act, due date prescribed there in for filing the return of income as well as various reports of Audit prescribed under the Income Tax Act which are required to be filed by the said due date from 30th September 2017 to 31st October 2017.

2. CBDT Office Memorandum [F.NO.404/72/93-ITCC] dated 25-8-2017

The provisions for payment of 20% of the disputed demand, where the demand was contested before CIT(A) is applicable prospectively and assessee's stay petition filed before 31st July 2017 shall not be reviewed on the basis of revised Board Circular.

3. CBDT Notification No. 79/2017 dated 8-8-2017: Tax savings bonds issued by the Indian Railway Finance Corporation Limited.

The Central Government hereby notifies that any bond redeemable after three years and issued by the Indian Railway Finance Corporation Limited, a company formed and registered under the Companies Act, 1956 (1 of 1956), on or after the date of publication of this notification in the Official Gazette, as 'long-term specified asset' for the purposes of section 54 EC of the Act, in exercise of power conferred by clause (ba) of Explanation to section 54EC of the Income Tax Act, 1961.

B. Case Laws

1. H. T. Media Limited vs. Pr CIT (Delhi High Court)

a. S. 14A/ Rule 8D: Entire law explained on what constitutes proper recording of satisfaction by the AO, scope of disallowance of interest expenses under Rule 8D(2)(i), admin expenses under Rule 8D(2)(iii), need for nexus between borrowed funds and tax-free investments and power of the ITAT to remand to the AO

b. In order to disallow the expense, the AO had to first record, on examining the accounts, that he was not satisfied with the correctness of the assessee's claim of the expenses. This was mandatorily necessitated by Section 14 A (2) of the Act read with Rule 8D (1) (a) of the Rules. On the aspect of expenses being disallowed, since there was a failure by the AO to comply with the mandatory requirement of Section 14 A (2) of the Act read with Rule 8D (1) (a) of the Rules and record his satisfaction as required thereunder, the question of applying Rule 8D (2) (iii) of the Rules did not arise

2. Pr CIT vs. Emirates Technologies Pvt Ltd (Delhi High Court)

a. S. 271AAA: No penalty u/s 271AAA can be levied in respect of undisclosed income found during a search u/s 132 if the AO did not put a specific query to the assessee by drawing his attention to s. 271 AAA and asking him to specify the manner in which the undisclosed income, surrendered during the course of search, had been derived.

b. The CIT(A) during appellate proceedings noted that no specific query had been put to the assessee by drawing his attention to Section 271 AAA of the Act asking him to specify the manner in which the undisclosed income, surrendered during the course of search, had been derived. The CIT (A), therefore, relying on the decisions of this Court held that the jurisdictional requirement of Section 271AAA was not met. The above view has been concurred with by the ITAT. In the facts and circumstances of the case, the Court is of the view

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that the decision of the CIT(A) and the ITAT represent a reasonable view which cannot be said to be contrary or incorrect.

3. The Citizens Cooperative Society Ltd vs. ACIT (Supreme Court)

a. **S. 80P Test of Mutuality:** An assessee cannot be treated as a co-operative society meant only for its members and providing credit facilities to its members if it has carved out a category called 'nominal members'. These are those members who are making deposits with the assessee for the purpose of obtaining loans, etc. and, in fact, they are not members in the real sense. Most of the business of the assessee is with this category of persons who have been giving deposits which are kept in Fixed Deposits with a motive to earn maximum returns. A portion of these deposits is utilized to advance gold loans, etc. to the members of the first category.

b. It is found that the depositors and borrowers are quite distinct. In reality, such activity of the appellant is that of finance business and cannot be termed as co-operative society. It is also found that the appellant is engaged in the activity of granting loans to general public as well. All this is done without any approval from the Registrar of the Societies. With indulgence in such kind of activity by the appellant, it is remarked by the Assessing Officer that the activity of the appellant is in violation of the Co-operative Societies Act.

4. Anil Chhaganlal Jain vs. ACIT, ITA No. 369/M/2017 dated 13/4/2017 (ITAT Mumbai)

a. **S. 68: Cash credit - Loan received - Accommodation entry - Retraction of statement - Onus to prove**

b. The assessee received a loan from a Pvt. Ltd. during the year. The AO received information from the Investigation Wing that one of the director of the company, was engaged in providing accommodation entries and made addition in the hands of the Assessee.

c. The AO relied on the statement of the director wherein the said director could not answer basic questions about the company. The tribunal observed that the said statement was retracted by the director which was recorded under duress and under pressure, within a reasonable time and hence held that the authenticity of the statement relied on by the AO was under cloud and could not be considered as sole basis of addition.

d. The Tribunal further observed that the money from which the loan was advanced germinated from the hands of the shareholders, who contributed to the said company. Therefore, the assessee could not be expected to prove the source of source. A harmonious construction of section 106 of the Evidence Act and section 68 of the Income-tax Act will be that apart from establishing the identity of the

creditor, the assessee must establish the genuineness of the transaction as well as the creditworthiness of the creditors. The identity of the lender, capacity and genuineness of the loan was not in doubt. Therefore, the addition made by the AO in the hands of the assessee was not justified.

5. DCIT vs. Future Value Retail Ltd., ITA No. 3968/Mum/2015 dt. 31/5/2017 (ITAT Mumbai)

a. **S. 194H - Commission - Credit card service charges - Normal banking charges**

b. The AO disallowed credit card charges paid by the assessee to banks on account of service fee charged by banks for processing assessee's receipts payment in respect of which is made by assessee's customers by credit cards on the ground that TDS was deducted u/s. 194H.

c. Credit card charges paid to the collecting banks would not fall within the meaning of the expressions 'commission or brokerage' as understood for the purposes of section 194H, and therefore, no amount of tax was deductible at source on such payments under section 194H since the commission retained by the credit card company was in the nature of normal bank charges and not in the nature of commission/brokerage for acting on behalf of the merchant establishment.



- Deepali R. Shah



MVAT AND GST UPDATES

A. RECENT AMENDMENTS

1. Trade Circular No 34T of 2017 Dt. 03.08.2017

The Commissioner of Sales Tax, Maharashtra State, Mumbai has issued Trade Circular No 34T Dt. 03.08.2017 providing procedure for grant of refunds of the amount deposited by way of security deposit of Rs 25,000 at the time of Voluntary Registration under MVAT Act, 2002.

2. Trade Circular No 35T of 2017 Dt. 11.08.2017

The Commissioner of Sales Tax, Maharashtra State, Mumbai has issued Trade Circular No 35T Dt. 11.08.2017 for Distribution of GST Provisional Id and Access Token of Phase 9 dealers. Provisional Id and Access Token of Phase 9 dealers, are now made available by GSTN. The list of all such dealers is published under GST Tab on Mahavat Portal.

3. Trade Circular No 36T of 2017 Dt. 18.08.2017

The Commissioner of Sales Tax, Maharashtra State, Mumbai has issued Trade Circular No 36T Dt. 18.08.2017 for Distribution of GST Provisional Id and Access Token of Phase 10 dealers. Provisional Id and Access Token of Phase 10 dealers, are now made available by GSTN. The list of all such dealers is published under GST Tab on Mahavat Portal.

4. Trade Circular No 37T of 2017 Dt. 24.08.2017

The Commissioner of Sales Tax, Maharashtra State, Mumbai has issued Trade circular no 37T Dated 24.08.2017 for Identifying dealers who are effecting sale of non-GST goods after 01.07.2017 and for cancellation of all other dealers VAT and CST registration by the Maharashtra Sales Tax Department w.ef 01/07/2017. The dealers effecting sale of non-GST goods shall be liable to make payment of MVAT/CST and file returns under the MVAT and CST Act even after 01/07/2017.

5. Guideline 16A of 2017 regarding cross checking of Input Tax Credit (ITC) Dt. 07.08.2017

The Commissioner of Sales Tax, Maharashtra State, Mumbai has issued Guideline 16A regarding cross checking of Input Tax Credit (ITC). It was clarified that ledger confirmation shall not be asked if claim of ITC is Rs. 5000/- or below per supplier per year. As per above referred circulars, in the comprehensive assessment if top 10 supplies 50% ITC is matched then rest of the ITC is

allowed fully but the said criteria is not applicable to IBA cases. Considering the aforesaid hardship to the trade, it is now decided that the mis-matches of Rs. 1000/- or below per supplier may be allowed without ledger confirmation.

6. Guideline 17A of 2017 regarding passing of Assessment Orders Dt. 10.08.2017

The Commissioner of Sales Tax, Maharashtra State, Mumbai has issued Guideline 17A regarding passing of Assessment Orders and taking strict disciplinary action against the officers not observing the said guidelines. It is also mentioned that if proposed net tax liability deviates more than 50% points as compared to dealer's net tax liability then, the assessing authority shall submit the assessment file to the immediate supervisory authority for verifying procedural aspects. The supervisory authority shall dispose off such reference within a period 7 days and shall maintain proper record.

B. RECENT NOTIFICATIONS UNDER MVAT/MGST ACT

1. Notification No JC(HQ)-1/GST/2017/Noti/18/ADM-8 Dt. 11th August 2017

The Commissioner of State Tax, Maharashtra State, Mumbai has issued Notification No. JC (HQ)-1/GST/2017/Noti/18/ADM-8 Dt. 11.08.2017 for Extension of time limit for submission of GSTR3 for the month July and August 2017 as follows:

Month	Due Date
July 2017	11th to 15th September, 2017
August 2017	26th to 30th September, 2017.

2. Notification JC(HQ)-1/GST/2017/Noti/18/ADM-8 Dt. 11th August 2017

The Commissioner of State Tax, Maharashtra State, Mumbai has issued Notification No. JC (HQ)-1/GST/2017/Noti/18/ADM-8 Dt. 11.08.2017 for Extension of time limit for submission of GSTR3B for the month July and August 2017 as follows:

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Month	Due Date
July 2017	20th August, 2017
August 2017	20th September, 2017.

3. Notification JC(HQ)-1/GST/2017/Noti/18/ADM-8 Dt. 11th August 2017

The Commissioner of State Tax, Maharashtra State, Mumbai has issued Notification No. JC (HQ)-1/GST/2017/Noti/18/ADM-8 Dt. 11.08.2017 for Extension of time limit for submission of GSTR2 for the month July and August 2017 as follows:

Month	Due Date
July 2017	6th to 10th September, 2017
August 2017	21st to 25th September, 2017.

4. Notification JC(HQ)-1/GST/2017/Noti/18/ADM-8 Dt. 11th August 2017

The Commissioner of State Tax, Maharashtra State, Mumbai has issued Notification No. JC (HQ)-1/GST/2017/Noti/18/ADM-8 Dt. 11.08.2017 for Extension of time limit for submission of GSTR1 for the month July and August 2017 as follows:

Month	Due Date
July 2017	1st to 5th September, 2017
August 2017	16th to 20th September, 2017.

5. Notification No. JC(HQ)-1/GST/2017/Noti/18/ADM-8, dated 17th August, 2017

The Commissioner of State Tax, Maharashtra State, Mumbai has issued Notification No. JC(HQ)-1/GST/2017/Noti/18/ADM-8, dated 17th August, 2017 specifying conditions for submission of GSTR-3B along with the due date for submission of GSTR-3B for persons who desired/ did not desired to avail transitional credit. The due date for filing GSTR-3B was extended to 28th August 2017 for persons who wanted to avail transitional credit for the payment of tax for the month of July 2017.

6. Notification No. MGST. 1017/C.R. 138/Taxation-1 dated 18th August 2017

The Finance Department, Mumbai has issued Notification No MGST. 1017/C.R. 138/Taxation-1 dated 18th August 2017 for issuing GST-Maharashtra Goods and Services Tax (5th Amendment) Rules, 2017. Rule 3, Rule 17, Rule 40, Rule 44, Rule 61, Rule 87, and Rule 103 of Maharashtra Goods and Services Tax Rules, 2017 has been amended.

7. Notification No. MGST-1017/C.R.139/Taxation-1 dated the 18th August 2017

The Finance Department, Mumbai has issued Notification No MGST-1017/C.R.139/Taxation-1 dated 18th August 2017 for reduction in GST tax rates of Tractor Parts.

8. Notification No. JC(HQ)-1/GST/2017/Noti/18/ADM-8 dated the 21st August 2017

The Commissioner of State Tax, Maharashtra State, Mumbai has issued Notification JC(HQ)-1/GST/2017/Noti/18/ADM-8, dated 21.08.2017 for amendment of notification No 23/2017 State Tax relating to extension of the date for filing of return in FORM GSTR3 B for the month of July, 2017.

9. Notification No. MGST-1017/C.R.140 (A)/ Taxation-1, Dt. 22nd August 2017.

The Finance Department, Mumbai has issued Notification No MGST -1017/C.R.140 (B)/Taxation-1 dated the 22nd August 2017 for amending Notification No.11/2017 State Tax (Rate) and reduce SGST rates on specified supplies.

10. Notification No. MGST-1017/C.R. 140(B)/ Taxation-1, dated 22nd August, 2017

The Finance Department, Mumbai has issued Notification No MGST-1017/C.R.140(B)/Taxation-1 dated the 22nd August 2017 for Amendment to Notification No. 12/2017 State Tax (Rate) to Exempt Services provided by Federation International Football Association and its subsidiaries and services provided by Fair Price Shops to Government.

11. Notification No. MGST-1017/C.R.140(C)/ Taxation-1, dated 22nd August 2017

The Finance Department, Mumbai has issued Notification No MGST-1017/C.R.140(C)/Taxation-1, Dt.-22.08.2017 for Amendment to Notification No. 13-2017 State Tax (Rate) to amend RCM Provisions for GTA and to insert explanation for LLP.

12. Notification No. MGST-1017/C.R. 140(D)/ Taxation-1, dated 22nd August 2017

The Finance Department, Mumbai has issued Notification No MGST-1017/C.R.140(D)/Taxation-1, Dt.-22.08.2017 for Amendment to Notification No. 13-2017 State Tax (Rate) to make Electronic Commerce Operator responsible for payment of SGST.

13. Notification No. VAT-1517/ CR-136 (A)/Taxation-1 dated 24th August 2017

The Finance Department, Mumbai has issued Notification No VAT-1517/ CR-136(A)/Taxation-1 Dt. 24.08.2017 for MVAT-Reduction in Tax rate of Natural Gas from 13.5% to 3%



14. Notification No. VAT-1517/ CR-136 (B)/Taxation-1 dated 24th August 2017

The Finance Department, Mumbai has issued Notification No VAT-1517/ CR-136 (B)/ Taxation-1 dated 24th August 2017 for Taxation of Under natured neutral and Extra neutral alcohol for human consumption. The Government of Maharashtra hereby with effect from the 24th August, 2017 amends the SCHEDULE 'B'.



- CA. Gourav P. Oswal



- CA. Nikita A. Bajaj

CUSTOMS EXCISE AND SERVICE TAX CASE LAWS

A. Case Laws

1. Whether Refund of Service Tax paid on input services not admissible if remittances received in Indian Rupees and Foreign Remittance Certificate (FIRC) not produced?

- a. In the case of *Kobelco Machinery India Pvt. Ltd. v. Commissioner of S.T., Kolkata*, 2017 (3) G.S.T.L. 260 (Tri. - Kolkata)
- b. The appellant is engaged in providing support services like assistance in marketing of products in India, Customer Relationship Management, etc, to its parent company located outside India.
- c. The appellant filed application for refund of unutilized Service Tax and Cess from time to time but could not produce the FIRC so as to prove that the Foreign Inward Remittance was received in Foreign Currency so as to satisfy the condition of receipt of consideration in Foreign Exchange.
- d. The Hon'ble CESTAT, Eastern Bench, Kolkata **rejected the appeal filed by the appellant since the appellant was not earning any foreign exchange and was unable to produce the FIRC.**

2. Whether construction of buildings for use of educational institutions approved or affiliated to recognized universities amounts to construction of commercial or industrial construction service and liable to Service Tax?

- a. In the case of *Banna Ram Choudhary v. Commissioner of Central Excise, Jaipur*, 2017 (3) G.S.T.L. 338 (Tri. - Del.)
- b. The appellant has constructed the buildings for use of educational institutions who are approved and affiliated to recognized universities along with certain individual houses for occupation.
- c. The Hon'ble CESTAT, Principal Bench, New Delhi held that buildings used for educational purpose **cannot be categorized as "commercial buildings" and thus use of building will decide tax liability.**
- d. With respect to individual residences claimed to be used for occupation by the persons, since appellant has not provided proof of the same but submits that they can furnish the supporting, the Hon'ble CESTAT **remands back to the OA for giving sufficient opportunity.**

3. Whether subsequent show cause notice for demand can be issued based on same investigation when a show cause notice had been issued earlier?

- a. In the case of *Commissioner of Central Excise, Mumbai-II v. Cona Industries*, 2017 (352) E.L.T. 12 (bom.)
- b. The appellant relied upon the Landmark Judgement of the **Hon'ble Supreme Court in the case of Nizam Sugar Factory v. Collector of Central Excise, Andra Pradesh - 2006 (197) E.L.T. 465** where it was held that when the first show cause notice was issued, all relevant facts were in the knowledge of the authorities; later on, while issuing further show cause notice, the same/similar facts could not be taken as suppression on the part of the assessee as these facts were already in the knowledge of the authorities.
- c. Hence, the substantial question of law is answered against the Revenue and **in favour of the assessee.**

4. Whether auction of goods without giving notice to its alleged owner justified?

- a. In the case of *Union of India v. Mahabir Prasad Sarawgi*, 2017 (352) E.L.T. 146 (Pat.)
- b. On 7-10-1998, 13300/-kg of betel nuts of the respondent were seized by the Inspector of Customs, Gopalganj, on suspicion that it was of foreign origin and the authorities assessed the price of the goods at Rs. 13,30,000/-.
- c. The goods were ultimately confiscated by the authorities, while the respondent challenged the same preferring an appeal which was allowed.
- d. However, the confiscated goods were auction sold for Rs.477603/- and after the order of the Tribunal, the same was refunded to the respondent.
- e. A learned Single Judge of this Court had already passed an order, whereby the appellants were directed to pay the balance of the price of the goods assessed by the learned authorities under the Act at the time of the seizure of the goods, along with interest at the rate of 12%.
- f. Accordingly, the **Hon'ble High Court upheld the Single Judge Order.**

5. Whether department to pay interest on legitimate seized currency for the period during which it remained with its custody?

- a. In the case of R.H.L. Profiles Ltd. v. Commr. Of Cus., Ex. And Service Tax, Kanpur, 2017 (352) E.L.T. 349 (All.)
- b. Some Indian currency was seized from the appellant in the year 2004; later on, the said currency was confiscated.
- c. The order of confiscation was challenged by the appellant and the Tribunal held it was not liable to be confiscated and the appeal was allowed with all consequential relief. Accordingly, the seized currency was refunded to the appellant but without interest.
- d. The Revenue had deposited the aforesaid currency in a fixed deposit and had earned interest on the same.
- e. The appellant cited the Landmark Judgment of the **Hon'ble Supreme Court in the case of Union of India through Director of Income Tax v. TATA Chemicals Limited (2014) 6 Supreme Court Cases 335**, where it was held that when collection is illegal, there is corresponding obligation on the Revenue to refund such amount with interest inasmuch as they have retained and enjoyed the money deposited.
- f. Further, it was held that Government cannot deny payment of interest merely for the reason that there is no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue.

6. GST Applicability on Legal Services provided by individual advocated including senior advocates and firm of advocates.

- a. In the case of J.K. Mittal & Company v. Union of India, 2017 (352) E.L.T. 430 (Del.)
- b. The respondent has produced a Press Release issued by the Press Information Bureau, Ministry of Finance, Government of India on the 'position regarding applicability of GST on Legal Services provided by individual Advocates including Senior Advocates and a Firm of Advocate'
- c. During the course of hearing several questions arose as regards to the Press Release, in particular:

i. Whether there were any further recommendations of the GST council on 'legal services' after what had been recommended at the 14th Meeting of the GST Council held on 19th May, 2017.

ii. Under what authority of law, such a 'Press Release' could be issued and by whom and the legal sanctity thereof.

iii. Whether on a reading of Article 279A of the Constitution read with any of the provisions of the CGST, IGST and DGST Act, the recommendations of the GST council could be modified, clarified, amended etc. by a notification/notice/circular of 'press release' and, if so, by whom?

d. The responded has sought time to address the important legal and constitutional issues that arise in these petitions and it is asserted in the Court on behalf of the respondents that as to date, in fact, **no coercive action is taken against the lawyers, law firms or providers of legal services, LLPs, for non-compliance with any legal requirements of the CGST, IGST, DGST.**



- Adv. Sanket S. Bora



DATA INFORMATION FOR GSTR 1

The due date of filing GSTR 1 Return for the month of July 2017 is 1st to 5th September 2017 and for the month of August 2017 is 16th to 20th September 2017.

You have already filed summary return in form GSTR 3B for the month July 2017. The outward supplies (sales and services) data given in summary format in Form GSTR 3B now has to be uploaded invoice wise/detailed in form GSTR 1.

The offline utility templates in spread sheet for filing the details in Form GSTR 1 is available on GSTN portal. The spread sheet contains separate worksheets of data to be given in various tables for Outward supply details. For easy understanding of data to be filled in template of various worksheets of GSTR 1, the instructions sheet in simple language is prepared.

The summary of data to be provided in the respective worksheets of GSTR-1 Offline Template:

1. TURNOVER FOR PREVIOUS PERIODS:

a. Aggregate Turnover (Sales) During FY 2016-17 -
Give details of aggregate turnover (sales side) of goods and services for the FY 2016-17 in Rupees

b. Aggregate Turnover (Sales) During April To June 2017 -
Give details of aggregate turnover (sales side) of goods and services for the period April to June 2017 in Rupees

4. SHEET 3 - B2C - ALL OTHER SALE

Supplies made to unregistered persons of the following nature to be given

- a) Intra-State: Sum total of all invoices to unregistered person within the state is to provided is in consolidated form.
- b) Inter-State: Sum total of all inter-state transactions whose Invoice value Rs.2,50,000 or less
Is to be provided in consolidated form (Invoice wise details not required).

2. SHEET 1 - B2B - SALE TO REGISTERED PERSON

The Invoice wise details of sales/services made to registered person are to be provided in respective columns.

3. SHEET 2 - B2C - OMS SALE >2,50,000

The invoice wise details of inter-state sales made to unregistered persons have to be provided in respective columns only if value of single invoice is greater than Rs. 2,50,000. (For others, refer sheet 3)

5. SHEET 4 - CR AND DR NOTE - REGISTERED PERSON

The details of credit note, debit note and refund vouchers issued to registered persons during the month is to be provided. The details of original invoice of transactions against which the debit note/credit note is issued are also to be provided.

While filling the data in this worksheet, select the document type from the dropdown list. The dropdown list contains

- C - Credit Note
- D - Debit Note
- R - Refund Voucher

Also, it is necessary to select the reason for issuing debit note/credit note from the standard reasons provided in the dropdown list.

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6. SHEET 5 - CR AND DR NOTE - URD PERSON

The details of credit note and debit note issued to unregistered person against interstate invoice value more than Rs.2,50,000 lakhs per invoice.

While filling the data in this worksheet, select the appropriate category from the dropdown list against which debit note/credit note is issued in the UR type (Unregistered Taxpayers type) column. The dropdown list contains

- B2CL - OMS Sale exceeding Rs.2,50,000.
- EXPWP - Export of Goods with payment of taxes
- EXPWOP - Export of Goods without payment of taxes

7. SHEET 6 -EXPORT SALE

The details of Export sale including sale made to SEZ/ SEZ Developer or deemed exports is to be provided

While filling the sheet, you will have to select type of supply from the dropdown list. The dropdown list contains

- WPAY which means if export is made with payment of taxes.
- WOPAY means if export is made without payment of taxes.

8. SHEET 7 - ADVANCES RECEIVED - INVOICE NOT ISSUED

The details where advances have been received against which no invoice has been issued is to be provided.

9. SHEET 8 - ADVANCES RECEIVED - INVOICE ISSUED

The details where advances have been received and invoice has also been issued for the same is to be provided.

10. SHEET 9 - NIL, EXEMPT AND NON-GST SALE

The Nil rated, Exempted and Non-GST interstate and intrastate sales made to registered as well as unregistered person is to be provided in consolidated form for each respective category.

11. SHEET 10 - HSN/SAC WISE MONTHLY SUMMARY

The HSN/SAC wise details of goods/services supplied during the month is to be provided in consolidated form for each respective HSN/SAC separately.

For providing the quantitative data in this sheet it is mandatory to select the appropriate UQC i.e. Unit Quantity Code from the dropdown list.

12. SHEET 11 - DOCUMENTS ISSUED DETAILS

The inventory of the nature of documents issued for outward supply during the month is to be provided in respective column by selecting appropriate nature of documents from the dropdown list.

GENERAL INSTRUCTIONS:

1. In case of any doubts, you may refer the instructions given in Excel template in help instruction sheet.
2. It is mandatory to select the option from the dropdown list wherever mentioned.



- Adv. Abhay H. Bora

HIGHLIGHTS OF E-WAY BILL

The CBEC by way of Notification No. CGST 27/2017 dated, 30th August 2017, notified the E-way bill and the procedure related to its generation and verification.

GENERATION OF E-WAY BILL - RULE 138

- Every registered person supplying or receiving supply from unregistered dealer exceeding amount of Rs. 50000 to submit E-Way Bill electronically prior to movement of goods.
- Transporter to generate Consolidated E-Way Bill providing details of individual E-Way Bill number which is to be transporter in single consignment.
- No E-Way Bill for movement within 10 KMs within same state or UT.
- Upon generation of the e-way bill on the common portal, a unique e-way bill number (EBN) shall be made available to the supplier, the recipient and the transporter on the common portal.
- Supplier to furnish information of transporter in case of E-Way Bill is not generated and Transporter shall generate E-Way Bill.
- The information submitted in E-Way Bill shall be made available to supplier electronically which he may use to furnish GSTR-1.
- In case no movement post generation of E-Way Bill, it may be cancelled electronically.
- The information submitted in E-Way Bill shall be made available to recipient who shall communicate acceptance or rejection of consignment.
- Voluntary E-Way Bill can be generated in case of consignment value less than Rs. 50000
- E-Way Bill generated shall be valid for number of days depending upon the distance of transit.

Sr No.	Distance	Validity period
1	Upto 100 km	One day
2	For every 100 km or part thereof thereafter	One additional day

GENERATION OF E-WAY BILL - RULE 138A

- The person in charge of conveyance shall carry invoice or bill of supply or delivery challan and a copy of e-way bill either physically or mapped to a Radio Frequency Identification Device embedded on conveyance.
- Such invoice shall be auto-populated in E-Way Bill generation form GST E-Way Bill-01.
- A registered person may upload tax invoice in GST INV-1 and generate an Invoice Reference Number to be submitted for verification in lieu of tax Invoice.

VERIFICATION OF DOCUMENTS AND CONVEYANCE RULE 138B

- The Commissioner or an officer empowered by him in this behalf may authorise the proper officer to intercept any conveyance to verify the e-way bill or the e-way bill number in physical form for all inter-State and intra-State movement of goods.
- The Commissioner shall get Radio Frequency Identification Device readers installed at places where the verification of movement of goods is required to be carried out and verification of movement of vehicles shall be done through such device readers where the E way bill has been mapped with the said device.
- The physical verification of conveyances shall be carried out by the proper officer as authorised by the Commissioner or an officer empowered by him in this behalf.

INSPECTION AND VERIFICATION OF GOODS - RULE 138C

- A summary report of every inspection of goods in transit shall be recorded online by the proper officer in Part A of FORM GST EWB-03 within 24 hours of inspection and the final report in Part B of FORM GST EWB-03 shall be recorded within three days of such inspection.

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- Physical verification shall be only one time except cases of tax evasion subsequently.

**INSPECTION AND VERIFICATION OF GOODS -
RULE 138D**

- Information to be submitted for detention of vehicle for more than 30 minutes on common portal.



- CA. Abhay P. Katariya



ANALYSIS OF PROVISIONS OF EQUALIZATION LEVY IN INDIA

Chapter VIII titled 'Equalisation levy' is inserted in the Finance Bill which has taken effect from 1st of June 2016 to provide for an Equalisation Levy of 6 % of the amount of consideration for specified services received or receivable by a non-resident not having permanent establishment ('PE') in India, from a resident in India who carries out business or profession, or from a non-resident having permanent establishment in India.

With the introduction of the Equalisation Levy, the Govt. has been indirectly able to tax the global advertising companies and has set the more services may be added in the list of specified services in future.

CURRENTLY THIS EQUALISATION LEVY IS WITNESSED ONLY ON ADVERTISEMENT



THE SALIENT FEATURES OF THIS EQUALISATION LEVY ARE AS UNDER

- It is to tax the e-commerce transaction/digital business which is conducted without regard to national boundaries.
- The equalization levy would be 6% of the amount of consideration for specified services received or receivable by a non-resident not having permanent establishment ('PE') in India, from a resident in India who carries out business or profession, or from a non-resident having permanent establishment in India.
- Specified services mean online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement and includes any other service as may be notified by the Central Government.
- No levy if aggregate amount of consideration does not exceed Rs.1 lacs in any previous year.

EQUALISATION LEVY WILL NOT BE CHARGED

- If Service Provider being a non-resident having PE in India.
- Service Provider is a resident in India.
- Amount of consideration is less than Rs. 1 lakh

APPLICABILITY AND MANNER OF DEDUCTION OF EQUALISATION LEVY

- This levy of equalisation would be in same manner as TDS, like the person making the payment for advertisement will require to deduct Equalisation levy @ 6% on total amount of consideration and deposit the same to the account of Central Govt.
- In case of failure to do so, these expenditures will not be allowed to claim for Income Tax Purpose.

REASON FOR INTRODUCTION OF EQUALISATION LEVY

- Many Companies who are providing services in the cyberspace register themselves in a country wherein the Tax rates are low and pay very low taxes on their global income.
- Like, in India the revenue of Google in FY 2014-15 was 4,108 Crores, hence introduction of Equalisation levy would fetch the Govt a lot of money which till now was not Taxed that's why many people are calling Equalisation levy as Google Tax. Because a major share of online ads spent goes to google.

DUE DATE OF DEPOSITING EQUALISATION LEVY

Due Date of depositing Equalisation levy to the account of Central Govt by the 7th day of the Month immediately following the said calendar Month.

DUE DATE OF FURNISHING EQUALISATION LEVY STATEMENT (FORM-1)

Due Date of Furnishing Equalisation levy Statement is on or before 30th June of Financial Year ended. (after the end of Financial Year assessee has to submit Form-1 on or before 30th June or within prescribed time as the case may be.)

REVISION OR LATE SUBMISSION OF FORM-1

If assessee failed to furnish statement within time or had furnish wrong and now want to revise the same he can upload belated return or revise return at any time before the expiry of two years from the end of financial year in which specified services was provided.

INTEREST ON DEFAULT

If amount of levy is not deposited within specified time, then assessee shall have to pay 1% Interest on such levy for every month or part of month by which such credit of the Tax or any part of Tax delayed.

PENALTY FOR FAILURE TO DEDUCT OR PAY EQUALISATION LEVY

Failed to deduct levy-: penalty amount will be equal to amount of Equalisation levy that assessee failed to deduct. Levy has been deducted but not deposited: Penalty amount in this case will be 1,000 Rs. per Day till default continues but total of penalty shall not exceeds the amount of equalisation levy.

PENALTY FOR DEFAULT IN FURNISHING STATEMENT

If assessee failed to furnish the Equalisation levy statement within prescribed time, he has to pay penalty 100 Rs. Per day till the default continues.



- CA. Suhas P. Bora



KEY HIGHLIGHTS OF MAHARASHTRA RERA FOR ALLOTTEES

All provisions of RERA have been come in force in Maharashtra on **1st May 2017** and we are already seeing the change in Real Estate Sector; inducing transparency and fair practices by the developers.

The **Preamble** of The Real Estate (Regulation and Development) Act, 2016 [RERA] states that RERA is an Act to:

- Establish the Real Estate Regulatory Authority for **regulation and promotion** of the real estate sector;
- Ensure sale of plot, apartment or building, or sale of real estate project, in an **efficient and transparent manner**;
- Protect the interest of **consumers** in the real estate sector,
- Establish an adjudicating mechanism for **speedy dispute redressal**,
- **Establish the Appellate Tribunal** to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer.

Accordingly, following are some key highlights of Maharashtra RERA for allottees:

1. DOCUMENTATION

An allottee has the right to obtain the information relating to the **sanctioned plans, layout plans** along with the **specifications** approved by the competent authority, **land records, Search and Legal Title Report**, etc or the agreement of sale furnishing the required documents and specifications.

2. PROJECT COMPLETION

- a. An allottee is entitled to know **state-wise time schedule of completion of the project**, including provisions for water, sanitation, electricity and all other amenities and services as agreed between promoter and allottee.
- b. It is the promoter's duty to complete the project in time and state the project completion date on the **RERA Website** during his **RERA Registration**.
- c. Further, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, in accordance with the terms of agreement for sale or due

to discontinuance of his business as a developer on account of suspension or revocation of his RERA registration, the allottee has a right to claim refund of amount paid along with interest and compensation from the promoter.

3. PARKING

- a. The promoter **cannot sell** or even **allot** parking space to allottees from **common areas**.
- b. However, the promoter is entitled to **sell covered parking** and **garages** to allottees as per the provisions of Maha RERA

4. STRUCTURAL DEFECTS

It is the duty of a promoter to **rectify any structural defects** or any other defect in workmanship, quality or provision of services or any other of his obligations as per the agreement for sale relating to development of the real estate project, without further charge **within thirty days**.

Provided, that such defect is brought to notice of the promoter **within a period of five years** by the allottee from the date of handing over the possession.

5. AGREEMENT TO SALE

The MahaRERA has provided a **proforma Agreement to Sale** which has to be followed subject to amendment by the promoter keeping in the provisions of the Act, Rules, Regulations thereunder.

Further, Promoter **cannot accept a sum of more than 10 % of the cost of cost of the apartment**, plot, or building, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale.

The agreement shall **specify the particulars of development of the project** including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the

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date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default.

6. ADVERTISEMENT

a. If a person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, and sustains any loss or damage by reason of any incorrect, false statement included therein, **he shall be compensated** by the promoter and also have an **option to withdraw** from the proposed project with his **entire investment** along with **interest thereon**.

b. Further, every advertisement or prospectus issued or published by the promoter shall mention prominently the **website address of the Authority**, wherein all details of the registered project have been entered and include the **registration number** obtained from the Authority.

7. INSURANCE OF REAL ESTATE PROJECT

a. It is a duty of the promoter to obtain all such insurances as may be notified by the appropriate Government, not limited to:

i. Title of the Land and Building

ii. Construction of the Real Estate Project

Further, the **premium and charges** in respect of such insurance shall be paid by the promoter until transferring the insurance to the association of allottees.

8. FORMATION OF LEGAL ENTITY

a. Requirement of Apex Body:

Where a promoter is required to form an Apex Body either as a federation of separate and independent Co-Operative Housing Societies or Companies or any other Legal Entities, the promoter shall apply for the registration to the registrar of such Legal Entities **within a period of three months from the date of the receipt of the occupation certificate** of the last building which was to be constructed in the layout.

b. No Requirement of Apex Body:

Where the promoter is developing a single building project or more than one building/wing, not requiring formation of an Apex Body, the promoter shall apply for the registration to the registrar of such Legal Entities **within a period of three months from the date on which 51 % of the total number of allottees in such building or a wing have booked their apartments**.

9. CONVEYANCE OF TITLE

Plots:

In case of plots, the promoter shall carry out conveyance **within three months** from the date the allottees have **paid in full consideration** towards such plot.

Legal Entity of Allottees of a Single Building Project:

If no period for conveying the title to the Legal Entity of the allottees is agreed upon, the promoter shall execute the conveyance **within three months from the date of issue of occupancy certificate or 51 % of the total number of allottees in such a building** or a wing, have paid the full consideration to the promoter, **whichever is earlier**.

Legal Entity of Allottees of Multiple Building Project requiring Apex Body:

In case of a building/wing in Layout of Multiple Buildings/wings requiring an Apex body, the promoter shall execute the conveyance **within a period of three months** from the of issue of **occupancy certificate** of the last building/wing in the layout, whichever is earlier.

Legal Entity of Allottees of Multiple Building Project not requiring Apex Body:

In case of a building/wing in Layout of Multiple Buildings/wings not requiring an Apex body, if no period for conveying the title is agreed upon, the promoter shall execute the conveyance **within a period of one month from the date of incorporation of Legal Entity or within three months from the date of issue of occupancy certificate**, whichever is earlier.



- Adv. Sanket S. Bora

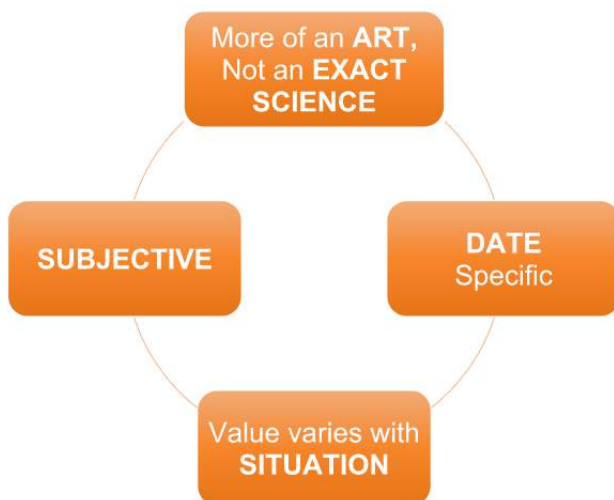


VALUATION – AN OVERVIEW VOL. 1

AN INSIGHT INTO VALUATION

Knowing what business is worth and what determines its value is prerequisite for intelligent decision making. It is the process of determining the "Economic Wealth" of company under certain assumptions and limiting condition and subject to data available on the valuation date. Therefore, it is pertinent to mention that the valuation of a business is not an exact science and hence, ultimately depends upon a number of factors like the purpose of valuation, stage of business, past financials, expected financial results, industry scenario, market recognition etc.

TO SUMMARIZE VALUATION IS



APPLICATION OF VALUATION TECHNIQUES

1. Based on Purpose:

- Mergers and Acquisition
- Fund Raising
- Sale of Businesses
- Voluntary Assessment

2. Based on Regulations

- Reserve Bank of India (RBI)
- Income Tax
- Securities and Exchange Board of India (SEBI)
- Companies Act
- IND AS & IFRS

3. Based on Accounting

- ESOP
- Purchase Price Allocation
- Impairment/Diminution

4. Dispute Resolution

- Company Law Board/Courts
- Family Settlement

5. Value Creation

- Equity Research
- Credit Rating
- Corporate Planning

SPCM's Samacara October 2017 would be covering various Methods and Techniques of valuation.



- CA. Prerna S. Bora

Corporate tax

TAXES

KEY MANAGERIAL POSITIONS UNDER THE COMPANIES ACT, 2013 VOL. 1

The Companies Act, 2013 governs the provisions apropos to Private Limited Company, Public Limited Company, Not for profit Company, etc. Even though such companies have a separate legal identity, they are managed by actual people holding various positions in the company depending upon their positions. The company has various Key Managerial Positions looking after various segments and aspects of management.

Directors are the life line of the company. There are various types of directors defined under companies Act, 2013 and previous companies Acts.

“KEY MANAGERIAL POSITIONS UNDER THE COMPANIES ACT, 2013 VOL. 1” covers the meaning, position, appointments and remuneration of whole time directors of the company.

Whole time director is defined as Key Managerial Person of the company which is very important aspect of the company.

MEANING OF THE TERM ‘WHOLE-TIME DIRECTOR’

- “Whole-time Director” has been defined to include a director in the whole-time employment of the company.
- The definition of ‘whole-time director’ is an inclusive definition. A whole-time director refers to a director who has been in employment of the company on a fulltime basis and is also entitled to receive remuneration.
- Section 269 of the Companies Act, 1956 contained the definition of the term “whole-time director” appended as an explanation to section 269 which corresponds to the definition under this Act. A whole-time director is a director rendering his services on whole time basis to the company.
- Further, a whole-time employee, when appointed as a director of the company, will be occupying the position as the whole-time director. This position is clarified by DCA vide letter no. 2/19/63- PR dated 29.06.1964 which provided that a whole-time employee of a company also appointed as a director of the company is in the position of whole-time director.

- The view is equally applicable in the case of alternate director. Accordingly, the appointment of an employee as an alternate director will be governed by the provisions of Section 314, 269, 309 and 198 of the Companies Act, 1956.

POSITION OF A WHOLE-TIME DIRECTOR

The position of a whole-time director is a position of significance under the Act. A whole-time director is considered and recognised as a ‘key managerial personnel’ in clause (51) of section 2 of the Act. Further, he is an officer in default (as defined in clause (60) of section 2) for any violation or noncompliance of the provisions of Act.

APPOINTMENT IN OTHER COMPANIES

- As the services are rendered whole time, logically, a director cannot be in whole-time employment in more than one company.
- However, the Act does not prohibit a person who is already a whole-time director of another company to be appointed as a director of another company.

- When the whole-time director is a key managerial person under the provisions of section 203, he may be appointed as a whole-time director in a subsidiary company as provided in sub-section (3) of section 203.

REMUNERATION OF WHOLE-TIME DIRECTOR

The remuneration of the whole-time director is required to be paid after complying with the provisions of section 197 and schedule V of the Companies Act, 2013 and rules made thereunder.



- CS. Aditi S. Deo

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Chartered Accountants

THANK YOU

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