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Issue: November 2019

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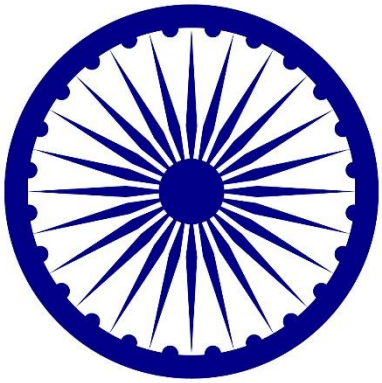

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Santhosh Tantzscher
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COMPANY LAW UPDATES

– Key changes brought about the Companies Amendment Act, 2019

On 31 July 2019, the Companies Amendment Act, 2019 ("The Amendment Act") was introduced which basically augmented all the relevant amendments brought into effect by the Companies (Amendment) Ordinance, 2018 and the Companies (Amendment) Second Ordinance, 2019, with an effective force from 2 November 2018. It is pertinent to note that the Amendment Act, 2019 also introduced certain new amendments for the first time most of which were subsequently notified on 15 August 15 2019. A few of the key highlights of the changes introduced for the first time

through the Amendment Act, 2019 are as follows:

1. A duty is casted on the companies to take necessary steps to identify individuals who are significant beneficial owners in relation to the companies in order to require them to declare their significant beneficial ownership interest in compliance with the provisions of section 90 of the Companies Act, 2013.

2. The companies having a net worth of INR 5,000 million or more, or having a turnover of INR 10,000 million , or having a net profit of INR 50 million or more during the immediately preceding financial year are required to set up a Corporate Social Responsibility (CSR) Committee. The CSR Committee has to ensure that the company spends in every financial year at least two per cent of the average net profits of the company made during the three immediately preceding financial years. In case where a company has not completed three financial years from the date of their incorporation, the Amendment Act requires such company to spend two per cent of their average net profits earned during such immediately preceding financial years. The Amendment Act introduces an additional requirement of transfer of unspent amount (in respect of any ongoing CSR project) by the company into a special account opened with the scheduled bank i.e. Unspent Corporate Social Responsibility Account. Such transferred proceeds will have to be spent by the company towards CSR projects within three financial years. However, if the company fails to spend such transferred sum within the prescribed period of three financial years, such unspent amount should be transferred to a fund specified under Schedule VII of the Companies Act (Schedule VII Fund) within 6 (months from the end of the relevant financial year).

3. The Amendment 2019 has made certain additions to permit the Central Government to take a course of action against any person including director or managerial personnel on the grounds of fraud misfeasance, default in carrying out their obligations and functions or of breach of trust in carrying out the functions related to the company. Such action is taken by filing an application with National Company Law Tribunal (NCLT) to initiate an inquiry by NCLT to decide if such a person is not fit and not proper person to hold the office of director or any other office connected with the conduct and management of any company. Where in case NCLT decides that such a person is not a fit or proper person to hold the office of a director or any other office connected with the conduct and management of the affairs of any company, he/she shall not hold such a position for a period of five years from the date of NCLT's decision. Non-compliance with the abovementioned restriction of five years, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to INR 500,000 or with both.

– The MCA has notified the Companies (Share Capital and Debentures) Amendment Rule, 2019 ("Amendment Rules") with effect from 16 August, 2019. The major change which is affected through the said Amendment Rules is that before the Amendment Rules, that now there is a maximum cap of issuing equity shares within differential rights to a cap of seventy four per cent of the total voting power. The Amendment Rules have

now also removed the condition pertaining to issuer company having a consistent track record of distributable profits for the last three years.

– Ministry of Corporate Affairs(MCA) vide circular dated 24 September 2019, has extended the due date for filing of BEN-2 up to 31 December 2019 without payment of additional fees.

COMPANY SECRETARIAL (CS) COMPLIANCES FOR PRIVATE LIMITED COMPANY

Below is the summary of the compliances which needs to be adhered to in the next quarter (Oct-Dec 2019)

Sr. No	Particulars	Due Date (2019)
1.	Hold at least one Board Meeting in quarter Oct – Dec 2019 (Gap between previous board meeting and this meeting should not be more than 120 days)	31 December
2.	Filing of AOC-4 (Annual Accounts)	30 October (If AGM was held on 30 September)
3.	Half yearly return MSME from April-19 to Sep-19	October 31, 2019
4.	Filing of MGT -7	29 November (If AGM was held on 30 September)
5.	Filing of Form BEN- 2	31 December

EMPLOYMENT LAW UPDATES

– **Code of Wages, 2019 receives Presidential assent**

On 8 August 2019, the Code of Wages was introduced and has been published in the official gazette. However, the date on which the provisions of the Code of Wages, 2019 shall come into force is not yet notified. The Code of Wages, 2019 amalgamates the four labour laws the Payment of Wages Act 1936, the Minimum Wages Act 1948, the Payment of Bonus Act 1965 and the Equal Remuneration Act 1976 into a single piece legislation. One of the main features of the Code of Wages, 2019 is that it universalizes right to minimum wages and timely payment of wages to all the employees regardless of wage ceiling, employment sector.

Further, the concept of "floor wage" is introduced wherein, the Central Government shall fix the floor wage after taking into account minimum living standards of a worker for different geographical areas for the purpose of ascertaining the minimum wages.

– Maternity Benefit Act, 1961, applies to contractual employees as well, held by Hon'ble Bombay High Court

In the case of Archana vs State of Maharashtra (W.P. No. 3491/2018, Dt/–19-10-2018), the Bombay High Court (Bom HC) has clarified that maternity benefits as under the Maternity Benefit Act, 1961, have to be given to even those employees of private sector establishments engaged on contractual basis or through contractors. The facts of the case in a nutshell are: The petitioner was working as a project officer on a contractual basis and had requested for her salary during her maternity leave period. However, her request was denied, hence resulted in filing of the present petition. The Bom HC held that a contractual employee is also entitled to maternity benefit as per the provisions of the Maternity Benefit Act, 1961. The Bom HC while rendering its decision also relied on a circular dated 12 April 2017 issued by the Ministry of Labour & Employment, Government of India, which said the Maternity Benefit Act, 1961 is applicable to all women who are employed in any capacity directly or through any agency i.e., either on contractual or as consultant.

THE ARBITRATION AND CONCILIATION (AMENDMENT) ACT, 2019

– On 9 August, 2019, the Arbitration and Conciliation (Amendment) Act, 2019 was introduced which brought noteworthy

changes to the existing provisions of Arbitration and Conciliation Act, 1996 (The Act). Most of the changes introduced under the said Amendment Act have been notified as on 30 August 2019. Some of the important amendments brought about are as per given below:

1. The Amendment Act has introduced 'arbitral institution' for the purpose of appointment of arbitrators. Arbitration institution is relevant from the point of view of appointment of arbitrator. Given a case where the parties to arbitration agreement have failed to appoint an arbitrator, they can approach the arbitral institution for the appointment of arbitrator. Also in a case where the arbitration agreement is silent on the procedure for appointment of arbitrator, then such appointment will be made by the arbitral institution. The Amendment Act provides, for the above mentioned purpose, in case of international commercial arbitration, the Supreme Court of India has the authority to designate the arbitral institution and High Courts (in cases other than international commercial arbitration) to designate arbitral institution.

2. The application for appointment of an arbitrator will be disposed of by the arbitral institution within a period of thirty days from the date of service of notice on the opposite party. The arbitral institution will determine the fees of the arbitral tribunal and the manner of its payment to the arbitral tribunal subject to the rates specified in the Fourth Schedule to the Act.

3. The Amendment Act provides for establishment of an independent body called the Arbitration Council of India (for the promotion of arbitration, mediation, conciliation and other alternative dispute redressal mechanisms.

4. Now all details of arbitration proceedings will be kept confidential except for the details of the arbitral award in certain circumstances where it is necessary for implementing or enforcing the award.

5. The parties to an arbitration agreement can choose their own arbitrator possessing any of nine broad qualifications as provided under the Amendment Act. These qualifications include advocates, chartered accountant, cost accountant, company secretary, person with technical knowledge and experience etc.

INSOLVENCY BANKRUPTCY CODE (AMENDMENT) ACT, 2019

– On 16 August 2019, the Insolvency and Bankruptcy Code Amendment Act, 2019 (Amendment Act) is notified, to bring out certain changes to Insolvency and Bankruptcy Code, 2016 (The Code);:

1. Section 5 of the Code is modified to clarify a resolution plan which is submitted in respect of a company undergoing corporate insolvency resolution process (CIRP) as a part of corporate restructuring may also include through merger, amalgamation and demerger. Further once a resolution plan is approved it will be binding on all and also binding on the Central Government, State Governments or any local authority to whom a debt in respect of payment of dues is owed.

2. The Code allows financial creditors to cast their vote through their authorized representatives. In case where a large number of financial creditors are being represented by an authorized representative. Such authorized representative shall cast his vote on behalf of the financial creditor he represents in accordance with decisions taken by more than 50 per cent of voting share of financial creditors he represents for the purpose of casting their vote. However this will not be applicable in cases of voting on the taking of a decision to withdraw the resolution application, in such cases each individual financial creditor will vote individually.

3. The Amendment Act now has increased the time line and requires CIRP to be mandatorily completed within the period of three hundred and thirty days days from the insolvency commencement date.

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→ Tax News

Transfer Pricing

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CENTRAL BOARD OF DIRECT TAXES ('CBDT') RETAINED TOLERANCE RANGE OF ONE PER CENT AND THREE PER CENT FOR WHOLESALE TRADING AND ALL OTHER CASES RESPECTIVELY

The CBDT vide Notification No. 64/2019[1] dated 13 September 2019, has continued application of tolerance band of 1 per cent for wholesale traders and three per cent in all other cases for the financial year 2018-19.

Accordingly, the variation between the arm's length price determined under section 92C of the Income Tax Act, 1961, and actual price at which international and/or specified domestic transaction ("transaction price") has taken place does not exceed 1per cent of the transaction price in case of wholesale trading and 3 per cent in all other cases, then transaction price is considered to be at arm's length price for financial year 2018-19.

The notification has also given clarification for the word "wholesale trading" which means an international transaction or specified domestic transaction of trading in goods which satisfies below two conditions:

1. purchase cost of finished goods is eighty per cent or more of the total cost pertaining to such trading activities and
2. average monthly closing inventory of such goods is ten per cent or less of sales pertaining to such trading activities.

CBDT AMENDS RULE WITH RESPECT TO COMPUTATION OF INTEREST INCOME PURSUANT TO SECONDARY ADJUSTMENT

The CBDT vide Notification No. 52 dated 15 June 2017 introduced Rule 10CB to provide mechanism for computation of interest income pursuant to secondary adjustments. This has been further amended vide Notification No. 76/2019[2] dated 30 September 2019 whereby CBDT has streamlined interest computation mechanism by inserting new clauses for determining starting date of interest computation and has further attempted to provide certain clarifications in respect of existing provisions of said Rule.

The secondary adjustment is a result of primary adjustment to the transfer price which increases the total income or reduces losses of the asseesse as the case may be. Pursuant to such primary adjustment, the excess money which is available with the associated enterprise has to be repatriated to the assessee on or before ninety days.

The notification has substituted the 'excess money' to 'excess money or part thereof'.

Accordingly, now in case of partial repatriation of money, interest will be chargeable only to the extent of outstanding money which is not repatriated on or before ninety days.

[1] Notification no 64/2019/F. No. 500/1/2014-APA-II

[2] Notification no 76/2019/F. No.370142/12/2017-TPL

Clause 3. of sub-rule (1) of rule 10CB which prescribes computation of interest income in case of primary adjustment is determined by an advance pricing agreement ('APA'). CBDT has amended this clause by insertion of two sub-clauses. Accordingly, time limit for repatriation shall be within ninety days (a) from the date of filing of return under section 139(1) of the Income Tax Act, 1961, where APA has been entered on or before the due date of filing of return; (b) from the end of the month in which APA has been entered where APA has been entered after the due date of filing of return.

Further, clause 5. of the rule prescribes computation of interest income in case where primary adjustment arising as a result of resolution under mutual agreement procedure ('MAP').

Accordingly notification prescribes time limit from the date of giving effect by the assessing officer under Rule 44H to the resolution arrived under MAP. Earlier time limit was from the due date of filing of return under section 139(1).

Newly inserted sub-rule (3) provides for the period from which interest shall be chargeable in case where the excess money or part thereof is not repatriated on or before ninety days.

Further, for determining the value of international transaction in Indian rupees, foreign exchange rate shall be the telegraphic transfer buying rate of foreign currency on the last day of the previous year in which such international transaction was undertaken.

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→ Tax News

Indirect Tax

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GST DEVELOPMENTS AND ASSOCIATED PROCEDURES

1. New GST Compliance System - deferred

- With the intent to simplify and even out filing of GST returns, the Government had initially proposed the roll out a new system for filing of GST returns with effect from October, 2019. However, in order to give an opportunity to the tax payers for better understanding and to the system to be ready, the proposed date of implementation has been extended to April 2020.

- The pilot systems for the new return forms are available on the GST portal for trail purposes.

2. Appointment of judges to GST Appellate Tribunal – struck down

- The Hon'ble High Court of Madras in a matter has struck down the provisions dealing with the appointment of judges to the GST Appellate Tribunal which is the highest fact finding quasi-judicial body in the GST appellate hierarchy. The reason was the observation of the Court that appointment of two technical members and only one judicial member violates the principle of separation of power and is contrary to rulings of the Supreme Court of India. [V. Vasanthakumar v. UOI]

- A similar stay was also granted by the Hon'ble High Court of Delhi on a prior occasion and the matter is pending disposal. [Bhartiya Vitta Samiti & Anr. V. UOI]

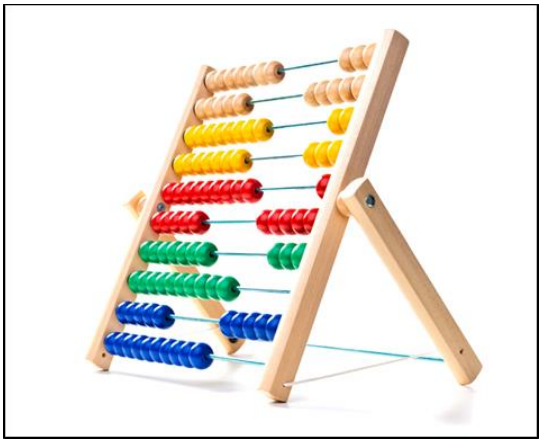
3. IGST on duty free shops – exempted

- With conflicting Advance Rulings and judicial decisions already in place around supplies from duty free shops, the Government proceeded to issue notification exempting goods that are sold from duty free shops. This exemption is however, restricted in the following manner:

  - Goods should be sold from departure area

  - Goods should be sold to outgoing international tourists which means a person not normally a resident in India who enters India for a stay not more than six months for legitimate non-immigrant purposes.

  - Refund can be claimed for the input GST paid on procurements made and supplied to outgoing international tourists from the departure area. [Notification 10/2019 and 11/2019 – Integrated Tax (Rate) dated 29 June 2019 read with Circular No. 106/25/219 – GST dated 29 June 2019]



IMPORTANT NOTIFICATIONS ISSUED DURING THE QUARTER

- Vide Notification No. 38/2019 – Central Tax dated 11 August 2019, the Government has waived the requirement for filing of Form GST ITC – 04 (required in case of supply to/ from Job Worker). The waiver is for the period July 2017 to March 2019 with the condition that the details of such period should be furnished in Serial No. 4 of Form ITC-04 that will be furnished for the quarter April 2019 to June 2019.

- Vide Notification 22/2019 – Central tax (Rate) dated 30 September 2019, the Government has provided for certain services where the GST liability will be paid under Reverse Charge Mechanism (RCM). The following services are, inter alia, covered:

Service	Supplier of Service	Recipient of Service
Renting of motor vehicle to a body corporate	Any person other than a body corporate paying GST @ 5 per cent on renting of motor vehicles with ITC only of input services in the same line of business	Anybody corporate located in the taxable territory

- Vide Notification 47/2019 – Central tax dated 9 October 2019, the Government has made filing of GSTR 9 optional for F.Y 2017-2018 and F.Y 2018-2019 for registered suppliers having a turnover up to INR 2 crores.

- Vide Notification 49/2019 – Central tax dated 9 October 2019, the Government has amended Rule 36 which deals with restrictions on credits on account if invoices not uploaded by the supplier. Credit of only 20 per cent of the GST amount on invoices uploaded by the supplier shall be available in respect of invoices, the details of which have not been uploaded by the supplier.

Timelines to furnish Form GSTR 1 and GSTR-3B

- Vide Notification 44,45,46/2019 – Central Tax dated 9 October 2019 and on account of deferment of the new system of filing GST returns, the Government has proposed the following dates for filing returns during October 2019 to March 2019

  - GSTR 3B – by the 20th day of the following month

  - GSTR 1 – as tabulated below:

Period	Aggregate turnover < INR 1.50 Crores	Aggregate turnover > INR 1.50 Crores
October 2019	Return for the quarter by 31 January 2020	11 November 2019
November 2019		11 December2019
December 2019		11 January 2020
January 2020	Return for the quarter by 30 April 2020	11 February 2020
February 2020		11 March 2020
March 2020		11 April 2020

IMPORTANT CIRCULARS ISSUED DURING THE QUARTER

- CBIC had initially issued Circular No. 105/24/2019 – GST providing for clarification on taxability of after sales discounts and the GST effect, thereon. The said Circular has been withdrawn *ab initio* vide Circular 112/31/2019 - GST.

- CBIC has issued a Circular No. 102/21/2019 – GST dated June 28, 2019 providing for taxability of interest, additional interest and/or penal interest.

In case where the additional interest/penal interest forms part of the main agreement for supply of goods and/or services, the interest component, where applicable, will form part of the value of supply of goods and/or services and attract relevant GST.

Where interest represents consideration for supply by way of extending loans, etc., the same is exempt under GST [Serial No. 27 of Notification 12/2017 – Central tax (Rate)].

Additional or penal interest on account of the same will also be exempt and not fall under Schedule II – agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act.

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→ Tax News

Direct and International Taxation

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INDIAN TAX TREATIES AMENDED

The Indian government has been proactive in proposing and implementing changes to the Indian tax treaty regime. This is achieved either by ratification of the Multilateral Instrument ('MLI') or by amending existing bilateral treaties (Double Taxation Avoidance Agreements or DTAAs). Recently, the Indian government amended 2 treaties and incorporated MLI proposals into the amended treaties.

- **India China DTAA** – The original India China DTAA which was entered into force on 21 November 1994 was amended by the two governments recently by entering into a protocol. Vide Notification No. 54/2019 dt. 17 July 2019, such protocol has been notified and consequentially the tax treaty stands amended in India with effect from 1 April 2020. The amended DTAA incorporates most clauses of the MLI such as the Principal Purpose Test ('PPT') for preventing treaty abuse, resolution of dual residence status, artificial avoidance of Permanent Establishment ('PE') status through activity exemptions, and splitting up of installation contracts and exchange of information. Interestingly, it is to be noted that neither India nor China included each other in the list of the Covered Tax Agreements ('CTA') for the purpose of application of MLI. With the amendment of the India China DTAA to include clauses similar to MLI, listing each other as CTA for application of MLI is now not needed anyway.

- **India Spain DTAA** – The original India-Spain DTAA which was entered into force on 12 January 1995, was amended by the two governments in 2012 by entering into a Protocol. The Protocol has now been notified on 27 August 2019 to have entered into force on 29 December 2014, i.e. with a retrospective application. The amended DTAA now provides for corresponding adjustments in the other country in case of Transfer pricing adjustments in the first country, thereby enabling bilateral Advance Pricing Agreements ('APA'). Interestingly, the amended treaty vide Article 28B – Limitation of Benefits, provides for General Anti-avoidance Rule ('GAAR') override and provides that domestic rules and procedures as applicable to abuse of tax treaties may be applied. Other changes proposed are w.r.t exchange of information and assistance in collection of taxes. The biggest challenge in application of this Protocol is its retrospective applicability (i.e. 29 December 2014). This could lead to interpretation issues on the application of the Protocol clauses to transactions undertaken between December 2014 and August 2019.

CLARIFICATION ON BROUGHT FORWARD MAT CREDIT AND LOSS ON ACCOUNT OF ADDITIONAL DEPRECIATION

The Indian government recently slashed corporate tax rates to twenty two per cent/fifteen per cent for domestic companies and newly incorporated domestic companies exclusively engaged in manufacture or production of articles or things. The benefit of reduced corporate tax rates is available under provisions of Sect. 115BAA of the Income-tax Act, 1961 ('ITA'), subject to fulfillment of certain conditions. Two such important conditions to be fulfilled are:

- Provisions of Minimum Alternate tax ('MAT') shall not apply to companies availing such lower corporate tax rates.

- Total taxable income of the company, for the year of exercising the option and all subsequent years, shall be computed without claiming any deduction for additional depreciation or set-off of any loss brought forward from previous years on account of additional depreciation.

In view of the above amendments, Central Board of Direct Taxes ('CBDT') has issued Circular No. 29/2019 [F. No. 142/20/2019-TPL] dt. 2 October 2019, to further clarify that a domestic company which would exercise option for availing benefit of lower tax rate under Sect. 115BAA ITA, shall neither be allowed to claim set-off of any brought forward loss on account of additional depreciation, nor be eligible to claim set off of brought forward MAT credit.

The circular has further clarified that since there is no time limit provided by CBDT

within which the option under Sect. 115BAA ITA needs to be exercised, a domestic company may choose to opt for beneficial corporate tax rate regime, once it has exhausted its claim of set-off of brought forward losses on account of additional depreciation or brought forward MAT credit, as the case may be.

In addition to above, the you can read our detailed coverage on slashing of corporate tax rates in our newsflash report.

CBDT NOTIFIES WITHHOLDING CREDIT RULES CASH WITHDRAWALS

Finance (No. 2) Act, 2019 introduced Sect 194N ITA with the objective to discourage cash transactions and move towards cash less economy. Sect. 194N ITA inter alia provides for withholding of taxes of two per cent by Banking company on cash withdrawals in excess of INR 10 million in aggregate made during the year by the tax payer from their bank account.

CBDT vide notification no. 74/2019 dt. 27 September 2019 amended Rule 37BA of the Income-tax Rules, 1962 to allow credit of such withholding taxes to the tax payer from whose account such withholding taxes have been deducted and paid to the Central Government. The above amendment is effective from1 September , 2019.

NATIONAL E-ASSESSMENT CENTRE ('NEAC') LAUNCHED

Earlier this year, the Indian government had introduced scheme for electronic proceeding for Income-tax cases to move to the era of faceless income-tax assessment ('Scheme').

The Scheme came into effect from 12 September 2019, and thus, any scrutiny assessment carried out on or after 12 September 2019, shall be governed by this Scheme. The CBDT has now set-up NEAC which will be an independent office that will look after the work of e-Assessment scheme.

There would be a NEAC in Delhi to be headed by Principal Chief Commissioner of Income Tax (Pr. CCIT). There will be 8 Regional e-Assessment Centres (REAC) set up at Delhi, Mumbai, Chennai, Kolkata Ahmedabad, Pune, Bengaluru and Hyderabad which would comprise Assessment unit, Review unit, Technical unit and Verification units.

This new initiative of faceless income-tax assessment is expected to increase ease of compliance, transparency and efficiency.
In addition to above, the detailed e-assessment scheme is documented in our newsflash report.

MODIFICATION OF APPROVAL CRITERIA IN RESPECT OF LOWER OR NIL WITHHOLDING TAX APPLICATIONS

CBDT vide instruction no. 7 of 2009, had mandated prior approval of Commissioner of Income-tax ('CIT') for issue of lower or nil withholding tax certificates, where the tax forgone exceeded specified thresholds. Various administrative and systematic difficulties were faced in case of non-resident tax payers in the newly introduced system of online application for lower or nil withholding tax certificates.

To address such issues, CBDT vide office memorandum [F.No. 275/16/2019-IT(B)] dt. 2 September 2019 has raised the threshold of revenue effect for issue of lower or nil withholding tax certificates needing approval of CIT (Intl. Tax) to INR 100 million. This threshold limit is applicable in respect of all applications of non-resident taxpayers either pending as on 2 September 2019 or filed hereafter.

MONETARY LIMITS FOR FILING OF APPEALS BY INCOME TAX DEPARTMENT ENHANCED

As a step towards further management of litigation in India, the CBDT has made an upward revision in the monetary threshold limits for filing of appeals by the Income tax department. Vide Circular No. 17/2019 [F. No. 279/MISC.142/2007-ITJ(Pt.)] dt. 8 August 2019, the earlier CBDT guidelines in this regard have been reviewed. It is now specified that no appeal should be filed by the Income tax department before the Appellate/Judiciary authorities, unless the monetary tax effect concerning the dispute exceeds the following threshold limits:

- Before Appellate Tribunal – INR 5 million
- Before High Court – INR 10 million
- Before Supreme Court – INR 20 million

In a situation where same disputed issue having a tax effect arises in different years, the Income tax department can only prefer an appeal in respect of such year or years in which the tax effect exceeds the specified monetary limit as stated above. This will apply even in a case of a composite order of any High Court or Appellate authority. Further, in case of a composite order involving more than one tax payer, each such tax payer shall be dealt with separately.

An exception has been carved out by CBDT for cases involving organized tax evasion through bogus Long Term/Short Term Capital Gains on penny stocks in which case such enhanced monetary limits shall not be applicable for filing appeals by Income-tax department.

The modified monetary threshold limits for tax effect shall come into force from 8 August 2019 and will further aim to reduce litigation matters in India.

STREAMLINING OF PROCEDURE FOR INITIATING PROSECUTION

CBDT has, yet again, issued the guidelines vide circular no. 24/2019 dt. 9 September 2019 for streamlining the procedure of identifying and examining the cases for initiating prosecution for offences under Direct Tax Laws. CBDT lays down criteria for launching prosecution in respect of the following categories of offences:

- **Offences in respect of failure to pay tax deducted or collected at source to the credit of Central Government** – prosecution not to be initiated in cases wherein tax amount involved in such failure is INR 2.5 million or less and delay in deposit of such amount is less than sixty days from the due date. However, exceptional cases like, habitual defaulters, based on particular facts and circumstances of each case, prosecution may be initiated with the previous administrative approvals from prescribed officers.
- **Offences in respect of willful attempt to evade tax, etc.** – in cases where the amount sought to be evaded or tax on under-reported income is INR 2.5 million or below, prosecution to be initiated only with the previous administrative approvals from prescribed officers and such prosecution to be launched only after the confirmation of the order imposing penalty by the Income Tax Appellate Tribunal.
- **Offences in respect of failure to furnish returns of income** – cases where the amount of tax, which would have been evaded if the failure had not been discovered, is INR 2.5 million
- or below, shall not be processed for prosecution except with the previous administrative approval from prescribed officers.

Further, to mitigate unintended hardship to taxpayers in deserving cases, and to reduce the pendency of existing prosecution cases before the courts, the CBDT vide circular no. 25/2019 dt. 9 September 2019, as a one-time measure, has relaxed the condition that compounding application shall be filed within twelve months. Such application shall be filed before the Competent Authority on or before **31 December 2019** and such application shall be deemed to have been filed in the prescribed time of 12 months. Such compounding application can be filed in all such cases where –

- prosecution proceedings are pending before any court of law for more than twelve months, or
- any compounding application for an offence filed previously was withdrawn by the applicant solely for the reason that such application was filed beyond twelve months, or
- any compounding application for an offence had been rejected previously solely for technical reasons.

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Business Process Outsourcing

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INVENTORY ACCOUNTING: PRACTICAL CHALLENGES

Inventory Accounting includes the valuing & accounting for the changes in the inventory items.

An important challenge typically faced in inventory accounting is the determination of the value at which inventories are carried in the financial statements. The Accounting Standard 2-Valuation of Inventories thus specifies the ascertainment of cost of inventories and any write-down to the net realisable value. As per the accounting standard inventory is to be valued at lower of Cost or Net Realisable Value (NRV). But most of the time the valuation of inventory is not so simple and the entity faces many practically issues while doing the valuation of inventory & accounting for the same. This article discusses the practical problems faced by a business entity and the solutions thereof.

For the small and medium business entities the challenge faced is the frequency of the physical count of inventory. Most such business undertake the stock count only at the time of audit. It is advisable to have a more frequent stock take instead of having it just once a year. A quarterly stock take, if not, monthly, will be very helpful for inventory accounting. This helps in understanding the discrepancies in the inventory count and accounting for such differences in a timely manner.

Another problem that is usually faced is the allocation of the expenses to the costs of purchase of inventory. The costs of purchase consists of the purchase price including duties and taxes (other than those subsequently recoverable by the enterprise from the taxing authorities), freight inwards and other expenditure directly attributable to the acquisition. Most of the times when the client has a ERP system of accounting it has been noticed that the basic purchase costs are allocated item-wise to the inventory but not the ancillary/overhead costs. In case of month-end imports especially the clearing and shipping costs are not available and hence allocation of the same is not undertaken. This is important to note that these month-end costs should at least be loaded based on the provisions of such costs in order to reflect the correct costs and the profit margins of the inventory. A proper cost sheet should be maintained as per the work order in order to reflect the correct inventory in hand, cost of goods sold and the gross margins.

Most of the standard accounting packages have features of inventory accounting, valuation and reporting. The companies should ensure that these features are suitably used for their inventory accounting purpose. Manual maintenance of inventory records is cumbersome and prone to errors. Hence a computerised system is always suggested to be followed by the various companies. An electronic inward and outward register for the movement of inventory will help in zero differences at the time of the physical stock take. Be it any other ERP system, implementing a robust inventory management system comes with a number of challenges. The process can be overwhelming and lengthy. But with proper internal controls and timely execution these challenges can be overcome.

An important aspect for inventory accounting is the internal controls with respect to inventory system. Practically there are many other business scenarios for changes in inventory apart. Many times goods are removed as 'samples for free' and then there is also rejection of the final goods. Scrap sales are also a common scenario. It is pertinent to note that the inventory ERP system should be updated for such changes in physical movement of goods. There must be enough internal controls to document the same.

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