

E-NEWSLETTER

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Website: Under Construction; offline version could be accessed at <http://101.53.155.66/fintax/>

"An investment in knowledge pays the best interest."

Benjamin Franklin

NEWSLETTER COVERAGE

1. Important Circulars/Orders & Notifications
2. Article
3. Notice Board for the FY 2019-2020
4. Legal Updates

From Editors Desk

Dear Readers,

It gives me immense pleasure to announce that with each volume we have something new for our readers. This time along with the latest updations in taxation regime we have also provided a link of, offline version of our website which soon shall be going live.

By this time, our readers could upgrade their knowledge and review our website side by side to know much more about FinTax Advisory Services @ <http://101.53.155.66/fintax/> .

This newsletter covers the latest Notifications, Circulars, and orders issued by CBIC and the gist of amendments in various laws that would be applicable w.e.f 1st April 2019. Hope you will find it valuable.

HAPPY READING ☺

CIRCULARS/NOTIFICATIONS

INDIRECT TAXATION

[Transfer of unutilized ITC to transferee in case of death of sole proprietor \[Circular No. 96/15/2019-GST dated 28th March, 2019\]](#)

The CBIC through its circular dated 28th March, 2019 has clarified that transfer or change in ownership of business **will include** transfer or change in the ownership of business due to death of the sole proprietor. In this case, if the business is continued by any person the ITC which remain un-utilized is allowed to be transferred to the transferee.

REMINDER

- Exporters need to file fresh application for Letter of Undertaking (LuT) in case of export of goods or services without payment of IGST.
- CBDT extends the due date from 31st March 2109 to 30th September 2019 for linking PAN with Aadhaar.
- The Central Board of Direct Taxes (CBDT) has notified the new Income-tax return (ITR) forms for Assessment Year 2019-20.

Verification of application for grant of a new registration under GST for the same PAN [Circular No. 95/14/2019-GST dated 28th March, 2019]

The CBIC through its circular dated 28th March 2019 has clarified that application for new registration under GST having the same PAN shall be rejected if the person whose GST registration was cancelled earlier due to default of not furnishing returns for a consecutive period of 3 or 6 tax periods (as the case may be) and revocation of cancellation of registration has not been filed.

Editorial Comment: *The department is under no impression to grant easy registration to defaulters in any case. There had been cases where the taxpayers had not filed returns for consecutive period of 6 months and the department not only rejected their application of amendments, rather the E Way bill portal blocked the person from generating further E Way bills.*

Refund related issues have been now clarified by CBIC [Circular No. 94/13/2019-GST dated 28th March, 2019]

The CBIC through its circular dated 28th March 2019 has clarified few issues related to the grant of refund which was not granted due to various reasons shall now be available by following the procedure as mentioned in this circular.

Determining ITC attributable to taxable & exempt supplies in respect of construction services is defined now [Order No. 04/2019-Central Tax dated 29th March, 2019]

The CBIC has specified vide this order, that builder or developer shall determine the amount of ITC attributable to taxable and exempt supplies on the basis of area of construction of complex, building, civil structure or part thereof, which is taxable and the area which is exempt. This order shall come into force with effect from April 1, 2019.

Editorial Comment: *Corresponding amendment has been made under Rule-42 of CGST Rules 2017 vide Notification No. 16/2019-CT dated 29th March 2019.*

Second Amendment in CGST Rules 2019 [Notification No. 16/2019 - Central Tax dated March 29, 2019].

Manner of determination of ITC to be reversed by the builders

If goods and services are used for both business and personal purposes, or for making taxable and exempt supplies, the credit of taxes paid in respect of common inputs and input services shall be allowed on proportionate basis. The common credit attributable to exempt supplies or for non-business use shall be reversed by the registered person.

Rule 42 of CGST Rules, 2017 provides the manner of determination of input tax credit to be reversed by the supplier. In the said Rule a new Explanation has been inserted for calculation of ITC to be reversed in case of builders.

Rule 42 prescribed a formula for calculation of common credit, a portion of which shall be reversed. As per this formula, the taxable person has to calculate the value of 'T4', i.e., the amount of tax attributable to inputs used exclusively for making taxable supplies including zero rated supplies.

In case of real-estate developers or builders, the calculation of variable 'T4' shall be deemed to be nil during the construction phase because inputs and input services shall be used commonly for construction of apartments, which are booked on or before the date of issuance of completion certificate or first occupation of the project (whichever is earlier) and for those which are not booked by the said date.

Further, the methodology for calculation of value of exempt supplies and total turnover has been defined specifically for builders or developers.

Order of Utilization of ITC

The CBIC has inserted a new Rule 88A in CGST Rules, 2017 to allow the taxpayer to pay the liability towards SGST or UTGST by utilizing the credit of IGST even if such credit is not used to set off the CGST liability first. After insertion of this Rule, the credit of IGST shall be utilized first towards the payment of IGST and any amount remaining may be utilized towards payment of CGST, SGST or UTGST, as the case may be, in any order at the option of a taxpayer. Also, ITC on account of CGST, SGST or UTGST shall be utilized towards the payment of IGST, CGST, SGST or UTGST, as the case may be, only when the credit of IGST has been utilized in full.

Editorial Comment: *This relaxation has been given to overcome the situation wherein the suppliers were required to pay the tax in cash even when they have the unutilized credit available in their electronic credit ledger.*

Transfer of credit in case of change in ownership

In case of change in the constitution of business of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of business, the registered person can transfer the unutilized ITC to the successor. As per Rule 41 of the CGST Rule, the input tax credit shall be apportioned in the ratio of the value of assets transferred. A new Explanation has been inserted in Rule 41 to clarify that the 'value of assets' shall mean the value of the entire assets of the business, notwithstanding the ITC has been availed thereon or not.

Certain definitions have been provided for the builders who intend to take the benefits of slashed rates.

The notification defines various terms which may be relevant for the developer or builder, to avail this scheme.

[The due date for filing ITC-04 in respect of goods sent to Job worker has been extended by CBIC\[Notification No. 15/2019 - Central Tax dated March 28, 2019\].](#)

CBIC on March 28, 2019, through notification, has extended the due date for filing form ITC-04, in respect of goods despatched to a job worker or received from a job worker, during the period from July 2017 to March 2019 till the 30th day of June 2019.

[ITC balance shall lapse for eligible persons who intend to pay GST @ 6% under new presumptive scheme\[Notification No. 09/2019 CT \(Rate\) and 09/2019 UT \(Rate\) dated March 29, 2019\]](#)

CBIC vide its notification no. 09/2019 CT (Rate) and 09/2019 UT (Rate) dated March 29, 2019, has notified that ITC lying in the electronic credit ledger of the eligible person shall lapse and the rules applicable to composition dealers shall apply to service providers opting to pay GST at 6% as per the new presumptive scheme as per notification no. 02/2019- CT (Rate). This notification shall come into force, w.e.f., April 1, 2019.

[18% GST shall be paid on inputs \(other than cement & capital goods\) supplied by an unregistered person to a promoter \[Notification No 08/2019 IT \(Rate\), 08/2019 CT \(Rate\) and 08/2019 UT \(Rate\) dated March 29, 2019\].](#)

CBIC vide its notification no 08/2019 IT (Rate), 08/2019 CT (Rate) and 08/2019 UT (Rate) dated March 29, 2019, has notified that 18 % GST shall be paid on any goods (other than cement & capital goods) supplied by an unregistered person to a promoter on RCM basis. This notification shall come into force, w.e.f., April 1, 2019.

[Certain Goods/Services, if supplied by an unregistered supplier, the promoter shall pay GST u/Sec 9\(4\) of CGST Act\[Notification No. 07/2019 IT \(Rate\), 07/2019 CT \(Rate\) and 07/2019 UT \(Rate\) dated March 29, 2019\].](#)

The real-estate developers or builders opting to pay tax at concessional rate, if they buy specified percentage of total inputs and input services from registered suppliers. The CBIC has notified that the promoter shall pay GST under reverse charge if there is any shortfall in such percentage. Also, the same shall apply to cement and capital goods as well. This notification shall come into force with effect from April 1, 2019.

[Classes notified for persons who shall pay GST on the date of issue of completion certificate\[Notification No. 06/2019 IT \(Rate\), 06/2019 CT \(Rate\) and 06/2019 UT \(Rate\) dated March 29, 2019\]](#)

The CBIC has notified that the promoters, receiving development rights, Floor Space Index (FSI) for construction of residential or commercial apartments in a project, long term lease of land for construction of residential apartments in a project as 'registered persons', shall pay GST on the date of issuance of completion certificate for the projects or on its first occupation, whichever is earlier. This notification shall come into force, with effect from April 1, 2019.

Services notified on which GST to be paid by the promoter under Sec 9(3) of CGST Act, 2017[Notification No. 05/2019 IT (Rate), 05/2019 CT (Rate), and 05/2019 UT (Rate) dated March 29, 2019]

The CBIC has specified that services rendered by way of transfer of development rights, floor space index (FSI) services, upfront amount (called as premium, development charges or any other name) for granting long term lease for 30 years or more, by any person to a promoter in relation to construction of his project, on which liability shall be discharged by the promoter on reverse charge basis in accordance with Section 9(3) of CGST Act. This notification shall come into force with effect from April 1, 2019.

Exemption list issued for services relating to real estate sector/developer/builders [Notification No. 04/2019 IT (Rate), 04/2019 CT (Rate), and 04/2019 UT (Rate) dated March 29, 2019]

The CBIC has given exemption to certain services rendered by way of transfer of development rights, floor space index (FSI) services, upfront amount (called as premium, development charges or any other name) for granting long term lease for 30 years or more, for construction of residential apartments on or after April 1, 2019. This notification shall come into force with effect from April 1, 2019.

Rates notified for Real Estate Sector/developers/builders [Notification No. 03/2019- Integrated Tax (Rate), 03/2019 - Central Tax (Rate), 03/2019- Union Territory Tax (Rate)]

The CBIC has notified special rates for real estate sector/builders/for their ongoing projects and for the new projects which commence on or after April 1, 2019. These rules shall be applicable for the projects which fulfill the criteria of affordable residential apartment, non-affordable residential apartment and commercial apartment. Also, for the ongoing projects a new GST Form has been prescribed in which promoters can file declaration by **May 10, 2019** to exercise one time option to pay tax either as per old rates 18% or 12% or as per new prescribed rates of 7.5% or 1.5%, as the case may be, before giving effect to the 1/3rd abatement on account of land portion.

FORTHCOMING CHANGES IN E-WAY BILL SYSTEM

With continuous upgradation of GSTN and E Way bill portal CBIC has now proposed the following changes on E Way bill portal. The said changes could be said as a welcome change since now the prolonged issue of computing the route distances could be rolled out. The calculation of Route distance between source and destination shall be computed from various electronic sources, keeping in view the various attributes, for example: road class, direction of travel, average speed, traffic data etc. These attributes will be picked up from traffic that is on National highways, state highways, expressways, district highways as well as main roads inside the cities. A proprietary logic will be the used for approximating the distance between two postal pin codes. The distance will be thus derived as the motorable distance at that point of time. Also, from now onwards the portal shall disallow composition dealers from generating E way bill for interstate transactions and generation of multiple E-way bills on one invoice/document keeping in view the hurdles faced by the officers.

Let's understand in brief the major forthcoming changes in e-way bill system:

Auto Calculation of Route distance based on PIN code for generation of E-way bill

1. User will be allowed to increase the distance, however it will be limited only upto 10% more than the displayed distance.
2. In case source and destination PINS are same, distance upto 100 KMS can be entered.
3. In case PIN is invalid, system shall display as INVALID PIN. Such instances shall be flagged by the system for review by department.

Blocking of Generation of multiple E-way bills on one invoice/document

1. Any party (Consignor, Consignee or Transporter) shall be able to generate only one E-way bill on the basis on an invoice.
2. One invoice, one E-way bill policy is followed.

Extension of E-way bill in case consignment is in transit

1. While going for extension, system shall prompt "consignment in transit or in movement.
2. On selection of "In transit", Address details of place need to be provided
3. On selection of "in movement", Place and vehicle details from where extension is required.

Blocking of Interstate Transaction for Composition Dealers.

1. Next version shall not allow Composition dealers to generate E-way bill for inter-state movement of goods.
2. They will not be allowed to enter details of CGST and SGST
3. Document type – Tax Invoice shall not be enabled.

Editorial comment: The idea behind Blocking of Interstate Transaction for Composition Dealers is, as per the GST Act, the composition tax payers are not supposed to do Interstate transactions.

NOTICE BOARD FOR LAWS EFFECTIVE FROM 1ST APRIL 2019

With the inception of financial year 2019-2020 it is important to know about the provisions of amended law, applicable from 1st April 2019. The Government had made various changes under Income Tax Law, GST, and Corporate Laws that shall be applicable from April 1 2019.

Income tax

1. Section 87A rebate

The amount of tax rebate under Section 87A has been increased from Rs. 2,500 to Rs. 12,500. Further, it shall be available to a resident individual whose total income does not exceed Rs. 5,00,000.

2. Standard deduction from salary

The limit of standard deduction for the salaried class taxpayers has been increased from Rs. 40,000 to Rs. 50,000.

3. No deemed rental income on having two residential house properties

If an individual owns more than one self-occupied house property then only one house property as per his choice is treated as self-occupied and its annual value is computed as nil. The other house property is deemed to be let-out as per section 23 and a notional rent is computed and charged to tax under the head 'Income from House Property'.

Section 23 has been amended with effect from 1/4/2019 to provide relief to the taxpayers by allowing them an option to claim nil annual value in respect of any two houses declared as self-occupied.

Though from F.Y. 2019-20, an assessee can claim annual value as nil in respect of two-self occupied house properties. However, there is no change in aggregate limit for deduction in respect of interest on housing loan. The aggregate deduction for interest on housing loan for both houses cannot exceed Rs. 30000 or Rs. 2, 00,000.

4. Section 54 relief extended to 2 residential houses

Any long-term capital gains, arising to an Individual or HUF, from the sale of residential house property is exempted to the extent such capital gains are invested in another residential house property. The taxpayer is allowed to invest only in one residential house in India to claim section 54 reliefs.

From financial Year 2019-20, an assessee shall be able to claim exemption under section 54 even if he invests in two residential houses in India. **However, this benefit shall be available where the amount of the capital gain does not exceed two crore rupees.** Further, if the assessee exercises this option, he shall not be subsequently entitled to exercise the option for the same or any other assessment year, i.e., the assessee can exercise this option **only once in a lifetime.**

5. TDS on interest income

Section 194A deals with deduction of TDS on interest income other than interest on securities like interest on Fixed Deposits.

Section 194A has been amended to ease the burden of compliance by way of increasing the threshold limit from Rs. 10,000 to Rs. 40,000 for deduction of tax at source on interest income, other than interest on securities, paid by a banking company, co-operative society or a post office.

6. TDS on rental income

The threshold limit for deduction of tax at source under section 194-I on rental income has been increased from Rs. 1,80,000 to Rs. 2,40,000.

7. Amendment to DTAA with Singapore and Mauritius

Protocols with Mauritius and Singapore were signed in year 2016 to tax capital gains. The protocol gave India the right to tax capital gains on transfer of shares of an Indian Company acquired on or after 1 April, 2017. Up to March 31, 2019 tax rates on capital gains is charged at 50% of the prevailing domestic rates. With effect from April 1, 2019 capital gains shall be charged at full domestic tax rates.

Goods & Services Tax

1. New Scheme is now available @ 6% to Intra-State Suppliers of Goods or Services.

A new scheme has recently been introduced wherein an Intra-State supplier can now pay GST at the rate of 6% (3% for Central and 3% for respective State) on first supplies of goods or services for Rs. 50 lakhs.

With effect from April 1, 2019 the benefit of this scheme can be availed. This scheme shall be available only if the aggregate turnover of supplier does not exceed Rs. 50 lakhs during the previous financial year. This has been made effective vide Notification No. 02/2019 – Central Tax (Rate) dated March 7, 2019.

The benefit of this scheme shall not be available to service providers who are rendering services in multiple States or through e-commerce websites. Thus, Chartered Accounts, Architects, etc. may not avail, this scheme if they have clients in different States.

2. Threshold Limit for composition scheme has been increased to Rs. 1.5 crores

The existing threshold limit on gross turnover in previous financial year to avail of the composition scheme has been increased from Rs. 1 crore to Rs. 1.5 crores. In respect of special category States (North-Eastern States), the threshold limit has been increased from Rs. 50 lakhs to Rs. 75 lakhs. Consequently, the taxable persons can substantially reduce their compliance burden as they would be required to file GST returns on quarterly basis instead of monthly basis. This benefit has been extended vide Notification No. 14/2019 – Central Tax dated March 7, 2019 and this notification shall come into force from April 1, 2019.

3. Threshold limit to take registration has been increased to Rs. 40 lakhs

As per Section 23 of the CGST Act, every person is required to obtain the GST registration if his turnover from supply of goods or services exceeds Rs. 20 lakhs. This threshold limit has been increased to Rs. 40 lakhs only if supplier is engaged in supply of goods. In other words, any person who is engaged in supply of goods and his total turnover in the current financial year does not exceed

Rs. 40 lakhs, he is not required to take registration under GST. This exemption from GST registration is subject to various conditions, inter alia, he is not making any Inter-State supply, he is not a non-resident taxable person, etc. This has been made applicable by Notification No. 10/2019 – Central Tax dated March 7, 2019 and this notification shall come into force from April 1, 2019.

4. Due dates for filing of GSTR-1 and GSTR-3B have been announced

The due dates for filing of GSTR-1 and GSTR-3B for the months of April, May and June of 2019 have been notified, which shall be as follows:

In case of GSTR-1

If the turnover of registered person is up-to Rs. 1.50 crores for the months of April to June, 2019, he shall file his GSTR-1 on a quarterly basis and the due date shall be 31st July, 2019.

If the turnover of registered person exceeds Rs. 1.50 crores for the months of April to June, 2019, he shall file his GSTR-1 on a monthly basis and the due date shall be 11th of succeeding month.

In case of GSTR-3B

Form GSTR-3B shall be filed on a monthly basis by every tax payer who is required to file GSTR-3B and due date shall be 20th of the succeeding month.

This has been made effective vide Notification No. 11/2019, Notification No. 12/2019, and Notification No. 13/2019- Central Tax dated March 7, 2019.

4. Option to opt for Composition Scheme

Any registered person who wants to pay tax under Composition Scheme for the F.Y. 2019-20 shall file intimation, duly signed and verified, on the GST common portal, latest March 31, 2019.

5. Last chance to avail Input Tax Credit relating to F.Y. 2017-18

The registered person can avail input tax credit of GST paid from July, 2017 to March, 2018, latest by the due date of furnishing the return for the month of March, 2019 i.e. by April 20, 2019. Legal wording can also be referred to removal of difficulty order no. 2/2018 dated 31.12.2018.

6. Availing benefit of reduced GST Rates by real estate developers or builders

The GST Council in its 33rd and 34th meeting had recommended the GST rate of 1% in case of affordable houses and 5% in other cases, without input tax credit. The promoters shall be given an one-time option to continue to pay tax at the old rates (i.e., at 8% or 12% with ITC) on ongoing projects (if construction and actual booking have started before 01-04-2019) which have not been completed by March 31, 2019. The option shall be exercised once within a prescribed time frame and where the option is not exercised within the prescribed time limit, new rates shall apply.

However, new tax rates in real estate sector are recommendations of the GST Council and date of applicability of new tax rates have not been notified yet.

9. Benefits related to Specific Industry

- Money Changer (Forex dealer) or
- Air Travel Agent
- Dealer of Second Hand Goods opting for "Margin Scheme" or
- Taxpayer engaged in Life Insurance Business

Are given the option to determine the value of such supply as per rule 32 of the CGST Rules, 2017. It is suggested that the above mentioned eligible registered persons intended to determine the value of their supplies as per the valuation rules can exercise the option at the beginning of the Financial Year that is on or before April 1, 2019.

10. Availing Input tax credit by Banks, Financial Institutions or NBFC.

Banks or financial institution or NBFC have been given an option to avail 50% of the eligible Input tax credit on inputs, capital goods and input services. It is suggested that this option to be exercised at the beginning of the F.Y. that is on or before April 1, 2019 as the option once exercised cannot be withdrawn during the remaining part of the financial year.

11. GST Amendment Acts made applicable from February 1, 2019

Some of the Major changes in the amendment act are as follows:

- Manner of utilization of ITC has been amended by inserting Section 49A in CGST Act. Now the credit of IGST needs to be utilized first fully for the payment of IGST, CGST, SGST and UTGST respectively.
- Section 9(4) relating to reverse charge applicability on purchases made by registered person from unregistered person is replaced and now it applies to specific class.
- Now only e-commerce operators who are required to collect tax at source under Section 52 of the CGST Act, 2017 are mandatorily required to obtain GST registration.
- Composition dealers as per section 10 of CGST Act, 2017 are allowed to supply services to the extent higher of 10% of the turnover in the preceding financial year or Rs. 5 lakhs.
- Multiple GST registrations within same state for each place of business has been allowed. The concept of business vertical is done away with.
- Issue of consolidated debit/credit note is allowed in respect of multiple invoices issued in a financial year rather than single debit/credit note in respect of each invoice.
- The receipt of payment in Indian rupees which is permitted by Reserve Bank of India for services exported out of India, will be covered in the definition of 'export of services' as per the IGST Act, 2017.

LEGAL UPDATES

DIRECT TAXES

Where Assessing Officer had issued notice under section 148 in name of deceased assessee to reopen his assessment, for acquiring jurisdiction to reopen an assessment, notice should be issued in name of living person, i.e., legal heir of deceased assessee and section 292B could not be invoked to correct a fundamental/substantial error.

Sumit Balkrishna Gupta VS Assistant Commissioner of Income-tax, Circle 16(2), Mumbai [2019] 103 taxmann.com 188 (Bombay)

FACTS OF THE CASE

- The Assessing Officer issued a notice dated 29-3-2018 under section 148 in the name of the dead person, i.e., the deceased assessee [B] to reopen his assessment for the assessment year 2011-12.
- The petitioner, who was the registered legal heir of 'B', challenged the impugned notice on the ground that it was without jurisdiction.
- The Assessing Officer by order dated 13-11-2018 rejected the petitioner's preliminary objection inter alia on the ground that the defect in the notice would stand rectified by virtue of section 292B.

HELD

The issue of a notice under Section 148 of the Act is a foundation for reopening of assessment. The sine qua non for acquiring jurisdiction to reopen an assessment is that such notice should be issued in the name of the correct person. This requirement of issuing notice to a correct person and not to a dead person is not a merely a procedural requirement but is a condition precedent to the impugned notice being valid in law. Thus, a notice which has been issued in the name of the dead person is also not protected either by provisions of Section 292B or 292BB of the Act. This is so as the requirement of issuing a notice in the name of correct person is the foundational requirement to acquire jurisdiction to reopen the assessment. This is evident from Section 148 of the Act, which requires that before a proceeding can be taken up for reassessment, a notice must be served upon the assessee. The assessee on whom the notice must be sent must be a living person i.e legal heir of the deceased assessee, for the same to be responded. This in fact is the intent and purpose of the Act. Therefore, Section 292B of the Act cannot be invoked to correct a foundational / substantial error as it is meant so as to meet the jurisdictional requirement. Therefore, both the impugned notice dated 29.3.2018 and the impugned order dated 13.11.2018 are quashed and set aside. It is made clear that this order will not prohibit the Revenue from issuing a fresh notice for reassessment, if requirement of Sections 147/ 148 of the Act are satisfied, including the limitation period therein.

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