

NewsBites

Nineteenth Edition

Greetings!

We are delighted to present our news bites for the month of October, 2019. This News Bites intends to give an overview of what is happening in the sphere of direct and indirect taxation, audit and assurance, GST and Secretarial Compliances in the industry.

We hope you find this useful.

For any feedback you can reach to us at info@sanca.in

Best Regards,
S A N & CO.
Chartered Accountants

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Income Tax

Income tax dept says check your email or e-filing account as e-assessment

- The income tax department has started scrutiny under the new e-assessment scheme.
- E-notices have been sent by the income tax department to taxpayers whose cases have been selected for scrutiny.
- The income tax department has advised taxpayers to check their registered e-filing accounts and email ids as the first phase of the e-Assessment Scheme 2019 gets underway. In the first phase, the income tax department has selected 58,322 cases for scrutiny under the new e-assessment scheme and e-notices have been served before 30th of September 2019 for the cases of Assessment Year 2018-19. The income tax department has asked tax payers who have received notices to respond within 15 days.
- Under the new system, taxpayers will receive notices on their registered emails as well as on registered accounts e-filing portal www.incometaxindiaefiling.gov.in, if their cases are selected for scrutiny. They will also be alerted through SMS on their registered mobile number, specifying the issues for which their cases have been selected for scrutiny.

The taxpayers can submit their response, along with required attachments, by uploading the same on the e-filing portal.

In a major taxation reform, the income tax department earlier this month launched a faceless e-assessment scheme to eliminate interface between an assessing officer and a taxpayer. Anyone whose case is selected for scrutiny will be able to file all the documents online. Now, the

officer who is going to assess the case will also be selected randomly. E-assessment Scheme 2019 was notified on September 12.

How the proposed new Direct Tax Code could cut your income tax:

When the corporate tax rate was reduced to 25 per cent last month, it was termed as an early Diwali for the corporate sector. Now, taxpayers are hoping the government will gift them a similar tax relief. According to former Niti Aayog Chairman Arvind Panagariya, "there is a strong case for a similar reform of personal income tax".

The Akhilesh Ranjan taskforce, set up to suggest an overhaul of the Income Tax Act, has also recommended sweeping changes in the tax slabs. It submitted its report on the new Direct Taxes Code to the government in August. However, the report has not been made public.

The taskforce has retained the basic exemption level at Rs. 2.5 lakh for general income taxpayers. For senior citizens (above 60 years) the basic exemption stays at Rs. 3 lakh and for very senior citizens (above 80 years) it stays at Rs. 5 lakh.

The big change is the widening of the income tax slabs. The 10% tax slab extends right up to Rs. 10 lakh, which will bring a significant relief to a large chunk of taxpayers. According to the Central Board of Direct Taxes (CBDT), more than 27% of the 5.52 crore individual taxpayers who filed returns for 2017-18 had an income between Rs. 5 lakh and Rs. 10 lakh. If the recommendations of the task force are implemented, these 1.47 crore taxpayers would move from the 20% slab to the 10% slab.

Goods & Services Tax

GSTR-1 Returns and its effect on the availment of input tax credit (ITC) under the 20% Input Tax credit rule:

The present scheme of filing returns under the GST regime requires the tax payer to file GSTR3B return which is a summary of the total dispatches of goods or provision of services made during the month and the payment of tax calculated at the rates applicable to the goods or services supplied. There is a table under which the input tax credit amount can also be claimed based on the purchase invoices in the possession of the taxpayer provided the goods and or services have been received by him in that particular month.

The other return which the taxpayer files is the GSTR1 return which contains the detailed list of invoices issued by him during the month with full details as to the GSTN no of the purchaser, the taxable value, GST amount and total invoice value. The above information needs to be fed for B2B invoices and as the scope of our discussions covers availment of Input tax credit we are referring to B2B invoices only. The B2B invoices get recorded into the GSTN system and get reflected in the GSTR2A of the purchaser which contains the list of invoices which have been entered by various suppliers of the taxpayer in their respective GSTR1's. It is here that the Input tax credit which is available to the taxpayer as per the invoices entered by his sellers is reflected.

The present amendment made by **notification no 49/2019** dated 9th October 2019, by the insertion of sub rule (4) of Rule 36 of the **Central Goods and Service Tax Rules, 2017** has placed a cap of 20% (i.e. Credit reflected in GSTR2A plus 20%) on the input credit which can be availed by a taxpayer on the input tax paid on goods purchased by him. The new rule says that the taxpayer can avail only 20% extra amount than the amount of input credit reflected in his GSTR2A return.





Goods & Services Tax

If we analyse this further the following eventualities could happen:

1. A Bonafide taxpayer (Purchaser) correctly pays taxes on his purchases however the seller fails to upload the invoices in that particular month and probably uploads it in the next month.
2. A Bonafide taxpayer (Purchaser) correctly pays taxes on his purchases however the seller uploads the invoices mentioning incorrect GSTN no and the credit incorrectly gets reflected in the GSTR2A of another taxpayer.
3. A Bonafide taxpayer (Purchaser) correctly pays taxes on his purchases however the seller does not upload any of the invoices and just ignores to do so.
4. The Purchaser and the Seller collude with each other where the latter issues spurious invoices to the former on the basis of which he takes credit. None of these invoices are uploaded in the GSTR1 of the Seller and are not reflected in the GSTR2A of the Buyer as this is case of collusion and fraud.

Now when we look at the examples given above it is clear that in the first three cases the purchaser or the taxpayer is a bonafide person who has purchased goods from a Supplier and paid GST on the goods in good faith and subsequently availed input credit based on the Invoice issued by the Supplier. Majority of the purchases fall in this category as most of the taxpayers who have been operating their businesses over several years or maybe even generations and would belong to the law abiding category whereas the people who fall in the fourth category are seasoned fraudsters who want to make some quick money. The amendment made through Rule 36 (4) of the Central Goods and Service Tax Rules, 2017 is aimed at the fourth category only.

It is really unfortunate that **Notification 49/2019 dated 9th October 2019** has come out with a sub-rule (4) in Rule 36 which penalises the bonafide majority to curb the frauds committed by some fraudsters who want to derail the system of availing credit by a Bonafide taxpayer. Subsequent to this notification It has now become the responsibility of the taxpayer (Purchaser) to ensure that his purchases are entered by his supplier correctly in the GSTR1 filed by him so that the same gets reflected in his GSTR2A.

This will definitely open the floodgates of litigation wherein the Bonafide purchaser would be forced to seek redressal in a court of law as to why he should be precluded from availing Input Tax Credit of the tax which he has genuinely paid and due to no fault on his part. There are several cases decided in the VAT era which clearly indicate that legislation of this nature which precludes the availment of **Input Tax Credit** due to no fault of a Bonafide purchaser would not stand.

Moreover there are more and enough provisions in the present GST law which entitle the Department to take appropriate action against such fraudulent transactions and availment of input credit against spurious invoices where collusion has happened.

The following suggestions are also made which could ensure that a Bonafide purchaser of goods gets the input tax credit which he is entitled to:

1. Create a data input mechanism within the existing GST return wherein a bonafide purchaser could enter the details of the purchases which he has made from various sellers with the invoice details, GSTN no of the supplier, taxable value of purchases and the amount of input claimed so that the same can be matched at the back end by the GSTN system with the sales details entered by the Supplier. Presently only the input tax credit

figure which is being claimed by the taxpayer is required to be declared in the GSTR3B.

2. Wherever there is a mismatch between the purchases data entered by a bonafide purchaser on the basis of which he has claimed input credit and the sales data declared by the supplier the mismatched invoices should be brought to the notice of the seller with appropriate demand for tax and interest charges on the amounts unpaid and sales under declared.
3. If the seller disagrees with the demand for tax as calculated on the above basis then he could be allowed to file his objections which would ultimately prove whether the details declared by the bonafide purchaser is genuine and backed by relevant invoices issued by the seller.
4. The above system if followed strictly would throw up all the Suppliers who are either raising spurious invoices or under declaring their sales figures. There may be genuine cases of mismatch which the seller would be able to explain and justify
5. The payment of tax by any taxpayer should be possible only after the filing of his GSTR1 and not by GSTR3B only. This would also ensure that all suppliers upload their sales invoices by the 20th of the next month so that GSTR2A of the purchaser gets populated with the input tax credits at the earliest.

The above provisions relating to the cap of 20% on availment of input tax credit notified as per **Notification no 49/2019 dated 9th October 2019** only adds salt to the wound as businesses which are already reeling under the present adverse economic conditions would have to look for additional working capital which otherwise the input credit of taxes paid was providing them with.

GST: Recovery of interest by Initiation of coercive action & Stay thereof

2019 TaxPub(GST) 0939 (Tel-HC)

IN THE TELANGANA AND ANDHRA PRADESH HIGH COURT

SANJAY KUMAR & P. KESHAVA RAO, JJ.

Megha Engineering & Infrastructures Ltd. v. CCT

I.A. No. 2 of 2019 in WP No. 44517 of 2018

20 August, 2019

ORDER

Petition under section 151 of CPC praying that in the circumstances stated in the affidavit filed in support thereof, the High Court may be pleased to direct the Respondent No. 1 to 3 not to initiate any coercive action to recover the interest amount of Rs. 6,03,07,462 as per their Letter C. No. V/12/01/18-19(P&I), 28-11-2018 otherwise the petitioner would suffer irreparable loss and damage.

This petition coming on for hearing, upon perusing the petition and the affidavit filed in support thereof, and upon hearing the arguments of Sri Gandra Mohan Rao, Counsel for the Review Petitioner and of Sri B. Narasimha Sarma, Senior SC for Customs & Central Excise, the Court made the following :-

ORDER

“As this Court is already considering the issue of whether any notice would have to be given under section 73(1) of the Central Goods and Service Tax Act, 2017, in the event interest is not paid under section 50 thereof, there shall be a direction to respondent Nos. 1 to 3 not to initiate any coercive action against the petitioner until further orders.

Post on 15-10-2019.”

The Companies Act, 2013

Nidhi (Amendment) Rules, 2019:

- MCA vide its notification dated October 11, 2019 has notified Form NDH-4 (Form for filling application for declaration as Nidhi Company and for updation of status by Nidhis) vide the Nidhi (Amendment) Rules, 2019.
- Further Form NDH-3 (Half yearly Return) which was notified vide the Nidhi Rules, 2014 shall be available for filling as eForms w.e.f. November 01, 2019. Earlier these forms were filed as attachments to forms GNL-2 and RD-1

Companies (Creation and maintenance of Data Bank of Independent Directors) Rules, 2019:

- MCA vide its notification dated October 22, 2019 notified the Indian Institute of Corporate Affairs at Manesar (Haryana), as an institute to create and maintain a data bank containing names, address and qualifications of persons who are eligible and willing to act as independent directors that can be referred by companies appointing Independent Directors.
- An online application is required to be made to IICA for the inclusion of name in the data bank for a period of 1 year / 5 year or lifetime and renewal applications are also required to be made within the expiry of such period as the case may be.
- Every individual whose name is included in the databank is required to qualify a proficiency test within a period of one year.

- MCA has granted an exemption to the directors or KMP's of the listed company or unlisted company having paid up capital of Rs.10 crores or more and has already served for more than 10 years from Proficiency test.
- Every individual has to score a minimum of 60 marks in the proficiency test as may be conducted by the IICA to pass the test.

Date Extension for filing of CRA - 4 (Cost audit Report) for FY 2018-2019:

- Ministry of Corporate Affairs vide its notification dated October 24, 2019 extend the last date of filing of CRA-4 (Cost audit report) for all eligible companies for the FY 2019-20, without payment of additional fees till 31st December, 2019.

Date Extension for filing of form IEPFA- 1A and form IEPF -2:

- MCA vide its notification dated October 25, 2019 extend the last date of filing of Form IEPFA-1A upto 31st December, 2019 and Form IEPF-2 upto 31st November, 2019.

Date Extension for filing of form AOC-4 (Financial Statements) & MGT-7:

- MCA vide its notification dated October 29, 2019 extend the last date to file Form AOC-4 (Filing of Financial Statement), Form- AOC-4 (CFS) (Filing Consolidated Financial Statement) and Form AOC-4 XBRL (Filing Financial Statement in XBRL format) upto 30th November, 2019 and Form MGT-7 (Annual Return) upto 31st December, 2019.

Jurisdiction in Union Territory of JK and UT of Ladakh:

- MCA vide its notifications dated October 30, 2019 has notified the following:
 - The Registrar of Companies shall have jurisdiction in respect of Union Territory of J&K and Union Territory of Ladakh for the purpose of registration of companies and discharging the functions under the Companies Act, 2013.
 - Inclusion of registrar of companies cum official liquidator, Jammu and Ladakh in the Companies (Adjudication of Penalties) Rules, 2014

Process of Identification and flagging of directors disqualified under section 164 (2) (a)

- MCA has issued an important update on October 31, 2019 posted on its website stating that ROC's are in process of identification and flagging of directors disqualified under section 164 (2)(a) of companies Act, 2013 for their default of non-filing of financial or annual return for continuous period of three financial year i.e. 2015-2016, 2016-2017 and 2017-2018.
- All the defaulting directors are hereby cautioned to file the pending statutory returns and do necessary compliances as per the provisions of law, otherwise action will be initiated under section 164 of the Companies Act and Rule made thereunder the DIN of such directors will not be allowed to be used for filing any e-forms on MCA21 portal.

Statutory Compliance required to be adhered to:

SR. No	Form	Due Date	Description
1	E-Form INC-20A	Within 6 months of Incorporation	Declaration for commencement of business
2	E-Form BEN-2	December 31, 2019	Declaration regarding Beneficial Owners
3	E-Form AOC-4	November 30, 2019	Filing Financial Statement and other Documents with the Registrar
4	E-Form MGT-7	December 31, 2019	Annual Return

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