

NewsBites

Eleventh Edition

Greetings!

We are delighted to present our news bites for the month of February 2019.

This News Bites intends to give an overview of what is happening in the sphere of direct and indirect taxation, audit and assurance and also 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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Goods & Service Tax

33rd GST Council Meeting – Highlights (Held on 24th February 2019)

The FM announced a rate cut for the under-construction properties covering the residential segment as follows:

- GST Rate for affordable housing slashed to 1% without the benefit of the Input tax credit (ITC) as against the earlier rate of 8%.

However, the earlier proposal had pointed out that the rate will be slashed down to 3% without the ITC benefit.

Affordable Housing has been redefined under the GST law with a twin definition to it as follows:

- **In case of Metro cities:** Flats with a value of up to Rs. 45 lakhs with the carpet area of up to 60 sq.m.

Metro cities currently cover Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (the whole of MMR)

- **In case of Non-metro cities:** Flats with a value up to Rs.45 lakhs with the carpet area of up to 90 sq.m.

GST rate for non-affordable housing reduced to 5% without ITC from the existing rate of 12%.

On or before 10th March 2019, all the changes will be drafted in a circular by the law and fitment committee and will be presented before the GST Council as recommendations. The Notifications will be out before the public soon after it is passed by the GST Council and will be made applicable from 1st April 2019. This call was taken to sensitively address the transitional issues likely to be faced by many builders who have ongoing projects before the date of implementation of the new rates.

- GST exemption proposed on Transfer Development Rights (TDR) / Joint Development Agreement (JDA), long term lease (premium), FSI- Press release states that an Intermediate tax on development rights such as the above mentioned will be exempt from GST for such residential properties on which GST is payable.

GST rate cuts on Cement out of the discussion:

- No rate cuts were discussed for Cement, which is currently being charged a GST at the rate of 28%.

No conclusion on Lottery Rate slashes:

No rate cuts were discussed for Cement, which is currently being charged a GST at the rate of 28%.

ITC Reversal Due To Non-Payment Within 180 Days

Second & third proviso to Sec. 16(2) of the Central Goods & Services Tax ("CGST") Act, 2017 provides for reversal and reavilment of ITC on account of non-payment within 180 days.

Rule 37 provides, Input Tax Credit Taken shall be reversed if:

A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof, the value of such supply along with the tax payable thereon, within 180 days from the date of issue of invoice .The input tax credit taken shall be added to the output tax liability of the registered person.

The registered person shall be liable to pay interest @18% for the period starting from the date of availed credit on such invoice till the date when the credit taken amount shall be added to output tax liability.

One can reavail the ITC on subsequently making the payment.

Following issues shall arise on closer reading of the above referred provisions:

1. **Whether reversal of ITC on account of non-payment shall apply to only services or it shall also apply to goods?**

Under earlier regime, CENVAT Credit reversal applied only to services. From the plain reading of the second proviso to Sec.16(2) of the CGST Act, 2017, it is clear that

ITC Reversal Due To Non-Payment (cont...)

reversal of ITC under GST is required to be done in case of non-payment against invoices for goods as well as services and not just goods.

2. Whether reversal of ITC shall apply if tax is fully paid but the value of supply remains unpaid after 180 days?

Second proviso to Sec. 16(2) clearly provides that the same shall apply when a recipient fails to pay the amount towards the value of supply along with the tax payable thereon. Hence mere payment of tax within the stipulated period of 180 days is not enough.

3. Whether reversal of ITC is required in cases of part payment of value of supply as well as tax thereon within 180 days?

It may so happen that registered recipient might have paid part amount towards the value of supply as well as tax amount within 180 days. In such scenario, whether ITC reversal shall apply to the entire tax amount charged in the invoice or only to the extent of proportionate tax amount not paid? In our opinion, ITC reversal shall apply only to the extent of proportionate amount. This is because second proviso to Sec. 16(2) nowhere states that full amount is required be paid within 180 days to avoid the reversal. Hence to the extent of amount (including tax) paid within 180 days, ITC reversal is not called for.

4. How to calculate the period of 180 days?

In case of nonpayment within the period of 180 days from the date of issue of invoice by the supplier. Hence the period of 180 days for determination of ITC reversal needs to be calculated from the date of issuance of invoice.

5. Can one reavail earlier reversed ITC?

One can reavail the ITC on subsequently making the payment. Even Rule 37(4) provides that the time limit prescribed u/s 16(4) for availing ITC (i.e. before the due date for furnishing return for the month of September of the succeeding year or annual return, whichever is earlier) shall not apply for reavailing the credit which

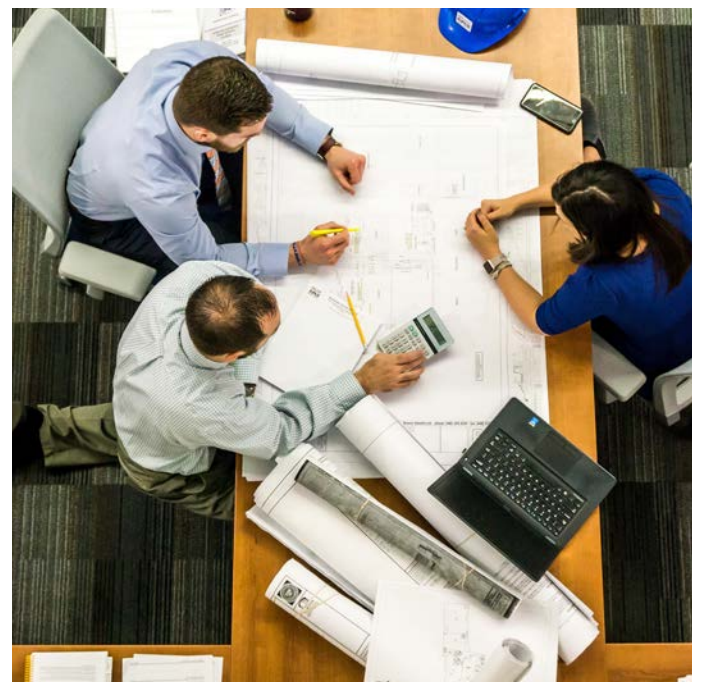
was reversed earlier. Hence reavilment can be claimed anytime in future when the payment is made.

6. Is interest payable even if ITC availed earlier is not utilized?

Even if the ITC availed earlier is not utilized, interest is required to be paid.

7. Will ITC reversal apply to ITC claimed under Reverse Charge Mechanism?

No. Second proviso to Sec. 16(2) clearly excludes supplies on which tax is payable on reverse charge basis from its applicability. Hence ITC is not required to be reversed even if payment is not made within 180 days against supplies covered under reverse charge mechanism.



Income Tax

Govt. simplifies, widens definition of Start up to provide relief from Angel Tax

The government announced a series of changes aimed at freeing investors and entrepreneurs from the so-called angel tax that's roiled India's startup ecosystem. It raised the exemption threshold and kept investments by listed companies of certain minimum size, venture capital funds and non-residents in startups outside the ambit of the tax. The move is expected to bring relief to 16,000 companies that are registered as startups with the Department of Investment and of Investment and Internal Trade (DPIIT).

"Startups' valuation was a contentious issue and we have clarified this," commerce and industry minister Suresh Prabhu told reporters. "Now DPIIT and the Central Board of Direct Taxes (CBDT) are on the same platform."

A notification issued by the government also widened the definition of startups to benefit a larger number of innovators and protect them from the tax. An entity that has been in operation for up to 10 years from its date of incorporation or registration will be considered a startup instead of the current seven years. A firm can be a startup if its turnover for any of the financial years since its incorporation hasn't exceeded Rs 100 crore against the existing cap of Rs. 25 crore.



Govt. simplifies, widens definition of Start up to provide (Cont...)

Excluded Investors

The investment limit was raised to Rs 25 crore from Rs 10 crore now for availing of tax exemption. "Considerations of shares received by eligible startups for shares issued or proposed to be issued by all investors shall be exempt up to an aggregate limit of Rs 25 crore," Prabhu said.

Under Section 56(2), when a closely held company issues shares at a price more than its fair market value, the difference is treated as income from other sources and taxed accordingly. This section, introduced as an anti-abuse measure by then finance minister Pranab Mukherjee in 2012, came to be dubbed the angel tax due to its impact on such investments in startups with a net worth of Rs 100 crore or turnover of at least Rs 250 crore.

The development comes in the wake of startups having been served demands for taxes on angel funds received by them. The commerce and industry ministry had told the finance ministry that the tax was a major impediment to the flow of investments into startups, which is a key element of the government's employment-generation strategy.

Tax Scrutiny

CBDT member Akhilesh Ranjan said that the new norms don't address cases in which tax demands have already been raised. "In cases where demand notices have been raised, we have directed the tax officers to not enforce recovery of demand. In such cases, they have to file an appeal," he said.

However, Ranjan said if the government later finds any case of money laundering, then the exemption would be revoked and tax would be imposed but scrutiny would not be related to Section 56.

Conditions Apply:

An entity will also be eligible for exemption if it's a private limited company recognized by DPIIT and is not investing in specified asset classes. However, for being eligible for exemption under Section 56(2)(vii)(b), a startup should

not be investing in immovable property, transport vehicles above Rs 10 lakh, loans and advances, capital contribution to other entities and some other assets except in the ordinary course of its business.

Startups only need to furnish a self-declaration that they are not involved in any of these activities beyond the ordinary course of business.

"Our intention was never to tax investments. Now that end use has been locked, we are not concerned about valuation," said DPIIT secretary Ramesh Abhishek.

To avail of these concessions, eligible startups will have to file a duly signed self declaration with the DPIIT. The department will then transmit these declarations to CBDT.

The valuation of shares is also no longer a criterion for exemption of investments in eligible startups under Section 56. There is no need to separately apply for exemption under the section and there will be no case-to-case examination of startups. The department will conduct a roundtable with stakeholders on March 1 on the next set of reforms, ways to augment investment in startups, incentivise angel investment and explore the concept of accredited investors.

Frequent large cash deposits, withdrawals can lead to tax scrutiny

Frequent deposits and withdrawals of large amounts can lead to an income-tax (I-T) notice during assessment of return. Recently, when a tax official scrutinised the details of a taxpayer, he found the taxpayer had frequent deposits of large amounts — ranging from Rs. 2.11 lakh to Rs. 98 lakh.

The total cash deposited in different banks totalled Rs 1.35 crore. Despite all the required documents to prove the genuineness of the transactions, the official was not satisfied. He treated the deposits as unaccounted sources of money, and added it to the income of the taxpayer.

Income Tax



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Link your PAN with bank for refunds: Income tax dept. to taxpayers

The Income Tax Department will “only” issue refunds via the e-mode into bank accounts of taxpayers beginning next month and they should link PAN with their accounts, the taxman said in its latest public communication.

The department said refunds will be sent to bank accounts as it will issue “only e-refunds from March 1, 2019.” Link your PAN (permanent account number) with your bank account to get your refund directly, swiftly and securely, the department said in a public advisory issued Wednesday. It added the bank account could be either savings, current, cash or overdraft.

CBDT sets up panel to help bring down tax litigation

The government is looking to address taxation-related pain points and cut down the number of tax litigations, while focusing on some of the major issues that may lead to revenue generation, people familiar with the development said.

The Central Board of Direct Taxes (CBDT) has formed a four-member committee, headed by income tax commissioner Sanjeev Sharma, to look into the matter and submit its final report and recommendations by mid-March.

The committee is looking to tackle the issue in a two-prong way – addressing some current pain points and recommending some steps borrowed from international best practices, people in the know said.

Its recommendations could include applying a filter for tax officer before a notice is issued and setting a time limit for concluding an investigation, they said. The panel has started inviting recommendations for best international practices on litigation management.

As per government figures, 465,349 cases related to taxation are pending at various forums. Of this, about 1% cases are high value cases and constitute about 90% of the total tax demand.



Companies Act, 2013

Companies Act, 2013

Form INC-22A – Companies required to file particulars of its registered office

As per the notification issued by the Ministry of Corporate Affairs dated 21st February 2019, companies are required to file particulars of the company and its registered office in form INC-22A. They shall come into force with effect from 25th February 2019.

A. Applicability of Rule 25A:

Active Company Tagging Identities and Verification (ACTIVE) – Form INC-22A is to be filed on or before 25th April 2019 by every company incorporated on or before the 31st December, 2017.

B. Non-applicability of this Rule:

The following class of companies is not required to file this form:

1. Companies struck off or under the process of striking off
2. Companies under liquidation
3. Companies amalgamated
4. Companies dissolved
5. Companies under management dispute and the Registrar have recorded the same on the register.

C. Conditions for Filing Form No. INC. 22A ACTIVE:

1. Every company should have filed its financial statements under section 137 in form (AOC- 4) and annual returns under Section 92 in form (MGT-7) with the Registrar.
2. The KYC of all directors has been completed in Form DIR-3KYC.
3. The Board of the Company does not have any directors whose DIN has been deactivated/ disqualified under section 167 of the Companies Act 2013.

D. Major contents of the form INC-22A:

1. Complete address of the registered office along with the photo as mentioned above.
2. Latitude and longitude of the registered office
3. Email ID of the company (on which the OTP shall be sent)
4. Detail of directors and status of their DIN.

5. Details of the statutory auditor of the Company
6. Details of cost auditor, if applicable
7. Details of KMP, if any
8. Details of Company secretary, if appointed
9. Details of annual filing for the year 2017-2018.

E. Requirements for filing the forms:

1. DSC of two directors
2. Photograph of the registered office showing external building and inside office also showing therein at least one director/ KMP who has affixed his/her Digital signature to this form.

F. Consequences:

1. If the Company fails to file the said return, the Company shall be marked as "ACTIVE-Noncompliant" on or after 26th April, 2019 and the Company's name may be removed from register of companies after verification by the Registrar of Companies.
2. Also, the company will not be able to file the following forms on the MCA portal:
 - A. SH-07 (Change in Authorized Capital)
 - B. PAS-03 (Change in Paid-up Capital)
 - C. DIR- 12 (Changes in Director except cessation)
 - D. INC-22 (Change in Registered Office)
 - E. INC-28 (Amalgamation, de-merger)
3. If the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may cause a physical verification of the registered office of the company and if any default is found to be made in complying with the requirements, he may without prejudice, initiate action for the removal of the name of the company from the register of companies.

G. Late Fee for Non-Filing of Form:

Where a Company files "e-form ACTIVE" on or after 26th April, 2019, the company shall pay penalty of Rs. 10,000 (Rupees Ten thousand only).

From the month of January 2019, we are delighted to introduce new section in our news bites i.e. Companies Act, 2013. This section intends to give an overview of recent amendments in Company Law so as to ensure better secretarial compliances.

NewsBites

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CHARTERED ACCOUNTANTS

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