September 2018

NewsBites

Sixth Edition

Greetings!

We are delighted to present our news bites for the month of September 2018 . 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

TDS under GST will be applicable from 1st October 2018:

Deduction, registration, compliance, challenges:

- The GST law requires TDS to be deducted by certain specified Government bodies/ PSUs, where the total value of supply, under a contract, exceeds Rs. 2,50,000.
- After the GST regime gained momentum, the government decided to introduce TDS and TCS provisions. The GST law requires TDS to be deducted by certain specified government bodies/ PSUs, where the total value of supply, under a contract, exceeds Rs 2,50,000.
- The recipient of supply i.e. the TDS Deductor is obligated to deduct 2% (1% CGST + 1% SGST) from the payment made or credited for taxable goods or services or both. The aim to bring this provision is to keep a watch on tax evasion and leakages to the extent possible.
- The sudden but delayed implementation of TDS provisions from 1st October 2018 has presented certain challenges amongst the industry. The challenges would range from initial hiccups to long-lasting impact on the business of companies. Some noticeable challenges with this implementation are outlined below.

Transitioning to TDS:

- The priority for the deductor at this stage is smooth transition considering the additional compliance and legal requirements to deduct tax. This has resulted in businesses analyzing the trigger point for deduction of tax. One key issue is whether TDS provisions apply to supplies made prior to 1 st October but where payments are received after this date. In order to answer this question, the interpretation of legal provisions becomes critical.

TDS on inter-State supplies:

- The GST Law excludes TDS where the supplier registration and the place of supply registration of the TDS deductor are in different states. The provisions do not say that TDS is not applicable to inter-State supplies. However, the FAQ released by Karnataka Government seems to indicate TDS is not to be deducted on inter-State supplies (irrespective of the location of supplier/ place of supply/ location of recipient).
- Although the understanding in the FAQ seems to be incorrect, the Department is yet to clarify this position or make the relevant changes to the law. Till then, it remains unclear whether TDS is to be deducted on inter-State supplies.

TDS on inter-unit transactions:

- The transactions between two registrations of a same company (even without any consideration) are taxable under GST. As per the provision under TDS, deduction is to be made on payment made or credited to the supplier.
- Different companies follow different practices with respect to the compensation mechanisms between its units. In such cases, TDS provisions may pose significant accounting and legal challenges.

Contract value or supply value?

- The TDS provision specifies that the tax is to be deducted where the total value of such supply, under a contract, exceeds 2.5 lakh. The question that arises is whether the tax is to be deducted for all supplies under one contract, where the contract value exceeds 2.5 lakh, or the value qua each supply is to be considered irrespective of the contract value. In absence of clarification, the provision could have serious ramifications.

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Deduction of exempt supplies?

- As per the legal provisions, TDS is to be deducted from payments made or credited for taxable goods or services or both. Taxable supplies have been defined as "supply of goods or services or both leviable to tax under the Act". Therefore, the supplies which have been made exempt by virtue of exemption notifications would also be considered as taxable supplies.
- This brings us to the question, whether TDS is to be deducted on payments pertaining to supplies which have been made exempt? Under the Income Tax Law, various Circulars have clarified the non-requirement of deduction in situations where the income is unconditionally exempt. Under GST laws, similar clarifications have not been issued and have been a concern for companies.

Compulsory registration for deductors:

- Persons who are required to deduct tax are required to obtain registration (whether or not registered separately). The provision does not address the situation where a person is operating through multiple places of business in one State. It remains unanswered whether such a person would require separate registration for each place of business to comply with the compulsory registration provision or a single registration for the entire State would be enough.

Additional compliance burden:

- In addition to legal issues, the business would be required to prepare themselves for certain compliance requirements. Over and above the existing returns, the person deducting the tax would also be required to file GSTR-7 for furnishing the details of tax deducted.
- The Deductor would also be required to furnish to the Deductee (supplier of goods or services) a TDS certificate mentioning the contract value, rate of deduction, amount deducted, and amount paid to the government within 5 days from the date the TDS is deposited.
- With fresh challenges under the GST, all the stakeholders must be ready for implementation of the TDS provisions before 1st October 2018.

Other Updates

1. Form GSTR-9C (GST Audit Form) released. Due date of filing GSTR -9C yet to be notified
2. Extension of Due date for GSTR-3B only for newly migrated taxpayers for months July 2017 to Nov 2018 till 31st December 2018. The due dates remain unchanged for rest of the taxpayers.
3. Due date of TRAN-1 and TRAN-2 is extended for certain taxpayers who could not complete filing due to tech glitch.
4. Extension of Due date for GSTR-1 in case of taxpayers with turnover above/below Rs 1.5 crores in previous FY or Current FY
   a. Regular taxpayers: from July 2017 to September 2018 extended till the 31st October 2018.
   b. Newly migrated taxpayers: from July 2017 to November 2018 extended till the 31st December 2018.

Income Tax

Earned foreign income this year? Here's how you can avoid Double Taxation (Excerpts from Financial Express Dt. 26.09.2018)

In the era of technological globalization, it is commonplace for an individual or business to earn income in a country other than the country of residence. Such an instance, where you are resident in one country but have source of income in another, may give rise to possible double taxation.

In light of such cross-border transactions, the effect of taxation is an important consideration to avoid being subjected to tax twice. Here are a few facts about Double Taxation that you (probably) did not know.

Double Taxation Avoidance Agreement (DTAA)

Double taxation means taxation of the same income of a person in more than one country. This results due to countries following different rules for taxation, namely,

Source rule: Source rule holds that income is to be taxed in the country in which it originates irrespective of whether you are a resident or non-resident.

Residence rule: Residence rule stipulates that the power to tax should rest on the country in which you reside.

The governments of two countries enter into a DTAA which lays down the rules for taxation by the source country and residence country. Each category of income such as dividend, interest, capital gains, fees for technical services, royalty etc. is defined by a rule for granting relief to the taxpayer.

DTAA in India

India follows the residence rule of taxation, which means that you will be taxed on the basis of your residential status. The Income Tax Act provides for double taxation relief by way of Bilateral and Unilateral Relief.

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When stamp duty value is to be treated as Sale Price? (Excerpts from Mint Dt. 27.09.2018)

Under income tax laws, if land or building is sold at a price of less than the stamp duty valuation of such land or building, the seller is taxed on a notional basis on the capital gain by taking the stamp duty valuation as the sale price, instead of the actual agreement value. Not only that, the purchaser is also taxed on the same difference between stamp duty valuation and agreement value as his income from other sources.

Very often, when a person has booked a flat in a building under construction, he may wish to dispose of the flat before the construction is complete, either because the construction has been delayed, or because he may have identified a better flat somewhere else, or because he may even otherwise need the funds. Given the difficulty in finding ready buyers for real estate, particularly for property under construction, often, he is keen to sell the flat, maybe even at cost or below cost, and very often below the stamp duty valuation, as he needs the liquidity immediately. In such cases, are the purchaser and the seller liable to pay tax on the difference between the actual price and stamp duty valuation?

If one looks at the provisions of the law, it refers to immovable property, being land and building or both. Tribunals have held in various decisions that this term “land and building or both” is a more restrictive term than “immovable property”. It, therefore, does not cover rights in immovable property, which right is not ownership of land or building. In the case of a property under construction, the purchaser does not own the flat which is under construction—neither the land nor the construction. He merely has a right to get ownership of the flat at a future date, when construction is complete.

Income Tax

Income tax clearance certificate: an insight (Excerpts from Mint Dt. 20.09.2018)

In an era of rapid globalization, India has witnessed significant increase in the number of deputations or secondments to fulfil the organizational demands of having the right employees with appropriate skill-sets at the right location. More and more Indians are going overseas for employment and, similarly, an increasing number of expatriates or foreign citizens are coming to India for work-related matters. As organizations grow and become more global in nature, employment issues become more complex. One of the challenges that businesses face today is compliance with multifaceted tax laws and labour regulations.

At the time of leaving India, there is an important obligation for individuals to obtain an income tax clearance certificate (ITCC).

What is an ITCC?

In common parlance, an ITCC is an income-tax clearance certificate/no-objection certificate (NOC) issued by the tax authorities certifying that a person who is leaving India has no tax dues in India or has made satisfactory arrangements in order to discharge any tax liability that may arise in the future.

According to the relevant provisions under the Indian tax law, a person who is not domiciled in India and has come to India in connection with any business, profession or employment, and has any income derived from India, is required to obtain an ITCC before repatriating to his/her home country. This can be done by filing a declaration through the employer or through whom such person is in receipt of the income in India.

On the contrary, people who are domiciled in India are only required to furnish permanent account number (PAN), the purpose of visit outside India and estimated period of stay outside India in case of travel abroad for the purpose of deputation or secondment.

How government is dealing with tax evasion, corporate fraud? (Excerpts from Mint Dt. 11.09.2018)

Tax officials have an embarrassing admission to make—94% of the ₹9.3 trillion outstanding direct tax demand as of December 2017 is difficult to recover because assessees are not traceable. These untraceable entities have played a big role in generation and laundering of unaccounted wealth by entering into bogus transactions on paper and cash deals. Prime Minister Narendra Modi, who is committed to a minimum government machinery, is pursuing a simple but effective strategy to deal with corporate fraud and tax evasion—higher transparency in the affairs of companies. Some of the recent measures taken by the government throw more light on the conduct of companies, especially on corporate ownership and the way funds are routed. Experts said that in the process, genuine businesses are also denied some operational flexibility. Mint takes a look at some of these measures and their significance.

Revealing beneficial interest

The ministry of corporate affairs in June widened the scope of disclosure requirement of persons who have a beneficial interest in a company. The rules notified in June say that any person who owns 10% beneficial interest in the shares of a company or exerts significant influence over it has to disclose this to the company. The company in turn, has to keep a record of such persons and report it to the Registrar of Companies.

"Over a period of time, the practice of setting up several layers of subsidiaries have made it difficult to know who is the ultimate owner of some companies. Disclosure of beneficial ownership will bring transparency and fairness in the affairs of companies," said Ved Jain, former president of accounting rule maker Institute of Chartered Accountants of India (ICAI). Jain, however, said that anonymity of ownership does not per se imply intent to do wrong. Globally, many businesses do strategic operations like land acquisition through step-down subsidiaries so that the cost does not go up rendering the venture unviable.

How government is dealing with tax evasion, corporate fraud? (Excerpts from Mint Dt. 11.09.2018)

The Companies Act mandated disclosure of beneficial ownership of 25% or what is to be specified in rules later. The ministry exercised this flexibility to narrow the threshold to 10% in the rules. The 10 September deadline for persons to file this declaration to the companies concerned has now been extended. Bringing anonymously held corporate ownership to light is important as other stakeholders will be able to detect instances of related-party transactions by companies and other implications of such ownership. Shareholders with a 10% stake in a company can approach tribunals claiming mismanagement and oppression. Shareholding information is vital for tax authorities who look for mismatches between assets and income in their efforts to combat tax evasion.

Disclosure, limits of step-down subsidiaries

After the ₹7,000 crore Satyam Computer Services Ltd. scam that surfaced in January 2009, there was a demand from policy advocates to limit the number of subsidiaries a company can set up. The government eventually limited it to two layers in the case of investment companies in the Companies Act 2013. But industry observers said some entities have abused the law by routing investments through several layers of subsidiaries meant for conducting manufacturing activity.

The government last September capped the level of step-down subsidiaries prospectively at two and mandated that all businesses have to disclose details of all step-down subsidiaries. This disclosure will help in creating a massive data bank of how capital is routed and assets are held by businesses and could help regulators crack down on shell companies. Banks and insurance firms are excluded from this norm. “Limiting the layer of step-down subsidiaries will make the corporate structure clear and clean,” said Pavan Kumar Vijay, founder of advisory firm Corporate Professionals.

Holding unlisted company shares in dematerialized form

The corporate affairs ministry on Monday notified new rules mandating that all unlisted public limited company shares can only be held in electronic (dematerialized) form. Existing physical shares in such companies have to be dematerialized and new shares can be allotted only in electronic form. This will make it easier for regulators to track transactions in unlisted public limited companies. The amendment to Companies (Prospectus and Allotment of Securities) Rules, 2014, in this regard will be effective from 2 October 2018.

The thrust on transparency

Experts said that across the globe, governments are making sure businesses are more open about their affairs.

“The priority of tax authorities have expanded from revenue collection alone to combating tax avoidance and taxpayer services. Tax authorities now use technology and information gathered from taxpayers as well as other sources to reduce the risk of tax evasion. The increased disclosure requirement is part of this,” said S.P. Singh, senior director at Deloitte India. Instances of fraud, need for protecting the interests of minority shareholders and public financial institutions and tax non-compliance in the economy are driving the changes in law.

Tax evasion

Finance and corporate affairs minister Arun Jaitley said in his budget speech for 2017-18 that India has largely been a tax-non-compliant society.

The minister said that only 172,000 people show income of over ₹50 lakh although 12.5 million cars were sold in the previous five years and 20 million people travelled abroad in 2015. Raising the share of direct taxes in the government’s overall tax receipts also serves a social objective as income tax rates are fixed based on a person’s ability to pay while indirect taxes affect the rich and the poor alike to an extent.

INDUSTRY NEWS

Maharashtra Coir Policy 2018

The state has huge quantity of raw material available required for coir industries however, there is negligible consumption of husk for coir & coir based industries. The government has come up with a dedicated policy for this sector for the overall economic development of rural areas and to bring the entrepreneurs of these sectors in the main stream of industrialization of the state. Under the policy the state targets increase in husk utilization to 22% and thereby generate employment for persons.

Salient features of the policy:

1. Additional benefits under package scheme of incentives (PSI)
   A. The coir industries in the state will be provided incentives one stage above.
   (For Ex: A & B zone will be eligible for benefits available for the industries in C Zone)

2. Special Capital Incentive
   A. Special capital subsidy for new and expansion MSME units as detailed below.

Sr. No.	Classification of Taluka's as er PSI-2013	Capital Subsidy (% fixed capital investment)	Maximum ceiling for special subsidy (In Rs. Lacs)
1.	A&B	30	20
2.	C	35	30
3.	D	35	40
4.	D+	35	50
5.	Non-Industry and naxal affected	35	50

3. Cluster Development
   A. Under Maharashtra State Industrial Cluster Development Program (MSI-CDP), Five Common facility Centers will be established for coir based MSMEs and will be provided assistance in the form of subsidy up to 90% of the project cost.

4. Coir Industries Incubation, Research and Development
   A. The Coir Industries, Incubation, Research and Development centre will be set up by MSSIDC at Kudal, Dist. Sindhudurg.

5. Skill & Entrepreneurship Development
   A. Technical Skill and entrepreneurship development will be undertaken with the help of Central coir research institute, Cochin.
   B. Residential training program and non residential training program financial assistance of Rs. 18000 and Rs. 10000 respectively for per trainee will be provided.

6. Participation in Exhibitions
   A. Coir entrepreneur will be given incentives for participation in the domestic and international exhibitions and fairs.
   B. Grant-in aid up to 75% of space rent maximum up to Rs. 0.50 Lacs will be given for participation in domestic and Rs. 3.00 Lacs for International exhibitions.

7. Setting up Exhibition-cum sales center
   A. Permanent Exhibition-cum sales centers will be established by the state government at least at 5 tourist location through MSSIDC.
   B. A fund of Rs. 5 Crores will be made available for Creating these Centers.

Maharashtra Telecom Infrastructure Policy 2018 (Maha TiP)

1. Department of Information Technology designated as state's single nodal agency for right of way approvals and mobile tower infrastructure permissions.
2. Online platform will serve as single window through which applications for permissions should be submitted.
3. Single fee in the form of administrative charges (as per central government rules) to be recovered. All other charges and fees to be subsumed under "administrative charges".
4. Restoration charges will separately apply.
5. Maximum time limit of 30 days for grant of permission if application not decided within 30 days, permission to be considered as deemed.
6. Principal Secretary IT to be designated as dispute resolution officer.
7. Government Department to declare list of building on which installation of mobile tower will be permitted.

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