

NewsBites

Eighth Edition

Greetings!

We are delighted to present our news bites for the month of November 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

GST Annual Return and GST Audit

Government has through Notification number 39/2018-CT dated 04.09.2018 and Notification number 49/2018-CT dated 13.09.2018 have notified GSTR 9 & 9A (Annual Return for Regular & Composite dealer) and GSTR 9C (GST Audit Form), respectively.

Who should file GSTR 9 annual return

All the registered taxable persons under GST must file GSTR 9 form. However, the following persons are not required to file GSTR 9

- Casual Taxable Person
- Input service distributors
- Non-resident taxable persons
- Persons paying TDS under section 51 of GST Act.

What is the due date of GSTR-9

GSTR-9 due date is on or before 31st December of the subsequent financial year.

For instance, for FY 2017-18, the due date for filing GSTR 9 is 31st December 2018.

What are different types of return under GSTR-9 form?

There are 4 types of return under GSTR 9:

1. **GSTR 9:** Every registered person shall be required to file GSTR-9. Hence, irrespective of the Turnover, every registered person under GST is required to file GSTR-9.
2. **GSTR 9A:** GSTR 9A should be filed by the persons registered under composition scheme under GST.
3. **GSTR 9B:** GSTR 9B should be filed by the e-commerce operators who have filed GSTR 8 during the financial year.

4. **GSTR 9C:** GSTR 9C should be filed by the taxpayers whose annual turnover exceeds Rs 2 crores during the financial year. All such taxpayers are also required to get their accounts audited and file a copy of audited annual accounts and reconciliation statement of tax already paid and tax payable as per audited accounts along with GSTR 9C.

What is the Penalty for the late filing of GSTR-9 form

Late fees for not filing the GSTR 9 within the due date is Rs. 100 per day per act up to a maximum of an amount calculated at a 0.25% (percent) of the taxpayer turnover in the state or union territory. Thus it is Rs 100 under CGST & 100 under SGST; the total penalty is Rs 200 per day of default subject to 0.50% of turnover in a state on late filing of GSTR-9. There is no late fee on IGST.

Whether GSTR-9 can be revised:

No such option has been provided in the law till now

Whether a Taxpayer shall be required to file GSTR-9 even though his registration has been cancelled before 31st March 2018

Every registered person shall be required to file GSTR-9. Hence, even if the status of taxpayer is not registered as on 31st March 2018 but he was registered between July-17 to March-18, he shall be required to file GSTR-9 providing details for the period during which he was registered.



GST Annual Return and GST (cont...)

Whether transactions for the period April-17 to June-17 are also to be included in GSTR-9 for FY 2017-18

No, instructions forming part of GSTR-9 which was notified by Notification No. 39/2018 dated 04th September 2018, clearly mentions that only details for the period July 2017 to March 2018 are to be provided in GSTR-9.

If a Taxpayer has obtained more than one GST Registration even though he has a single PAN, then whether GSTR-9 is to be filed at Entity level or GSTIN wise:

As per Legal provision of Section 44(1) of CGST Act, every registered person shall be required to file GSTR-9. Hence, if a Taxpayer has obtained multiple GST Registrations whether in one state or more than one state, it shall be treated as a distinct person in respect of each such registration as per section 25(4) of CGST Act. Hence, GSTR-9 is required to be filed separately for each such GSTIN.

If taxpayer has identified some information which are missed to be reported in GSTR-3B or GSTR-1, whether the same can be added while filing GSTR-9:

GSTR-9 is a merely compilation of data filed in GSTR-3B and GSTR-1 and no other information can be incorporated in GSTR-9. GSTR-9 requires details from monthly/quarterly returns on 'as is' basis. Even if a taxpayer has identified data fed in GSTR-1 / GSTR-3B as incorrect, still the same data is to be taken for reporting in annual return

If GSTR-9 is a compilation of the earlier returns (GSTR-1 / GSTR-3B) filed, then whether GSTR-9 will be auto-populated:

No clarification in this regards has been received from Government but it seems that system computed GSTR-9 in PDF format will be available auto populating figures to the extent possible which can be used to prepare GSTR-9 on portal.



Income Tax

Tax evasion: CBDT asks tax officials to widen certain 'limited scrutiny' cases (Excerpts from Mint. Dt. 29.11.2018)

The CBDT has issued a fresh directive on 'limited scrutiny' assessment cases allowing the tax officials to widen the scope of such probes if they receive "credible" information of tax evasion by assessees.

The policy-making body for the Income Tax Department, however, made it clear in its directive issued on Wednesday that such an enquiry will be specific to the allegation of tax theft that was flagged to the taxman by any other probe agency, in order to ensure that the assessing officer does not undertake a "fishing or roving" exercise resulting in harassment of the taxpayer.

The Central Board of Direct Taxes (CBDT), as per the directive, said it received "several" representations by field officials of the I-T Department in 'limited scrutiny' cases where they pointed out "specific" instances of tax evasion for the relevant year (2017-18) which was provided to them by other law enforcement, intelligence or regulatory agencies like the CBI, Enforcement Directorate (ED), DRI, Intelligence Bureau or markets regulator Sebi.

Income Tax

Govt. moves to redraft direct tax laws to modernize income tax (Excerpts from Mint. Dt. 27.11.2018)

The Narendra Modi government will take a fresh look at modernizing the Income Tax Act, 1961, after an earlier effort by a six-member task force got derailed. The union government on Monday appointed Akhilesh Ranjan, member (legislation), Central Board of Direct Taxes (CBDT), as the new convener to head the task force, which will advise the government on drafting a new direct tax law that suits India's economic requirements. The report has to be submitted by 28 February.

The report will be an important document for the Modi government to showcase before 2019 Lok Sabha elections, articulating the tax policy direction it would pursue if the National Democratic Alliance (NDA) returns to power.

Other members of the task force, which had earlier missed the 22 August deadline, will remain the same.



Finance ministry directive to I-T appellate officers triggers fears of 'tax terror' (Excerpts from ET. Dt. 24.11.2018)

Alarmed by the rising mountain of direct taxes stuck as arrears or in litigation, the Finance Ministry has come up with incentives/rewards for 'performance by appellate income tax officers in order to boost government coffers through recoveries. But finance and tax experts warn that this essentially signals a return of the "tax terror regime" with potentially grave consequences for the assesseees.

As per the Central Board of Direct Taxes (CBDT)'s figures, a provisional amount of Rs 11.23 lakh crore is stuck in arrears as on April 1, 2018. This is an increase from Rs 10.52 lakh crore on the same day the previous year. This latest figure is almost double the amount of arrears recoverable — Rs 5.75 lakh crore in April 2014, indicating financial and administrative mismanagement, according to the experts. However, last year, the I-T department managed to reduce the arrears by 31 per cent by collecting Rs 3.25 lakh crore, including a cash mop-up of Rs 44,633 crore by April 1, 2017. Cash mop-ups or collections are those which are seized during raids.

But this 'big achievement' in arrear reduction collapsed under an additional net current demand of Rs. 4.62 lakh crore made during 2017-2018, of which a mere Rs 76,641 crore (including a cash collection Rs 52,537 crore) could be recovered. This resulted in sending warning bells ringing in the I-T officialdom.

In order to reclaim the outstanding, the CBDT has now enhanced the targets for Reduction in Arrears Demand (RAD) to 40 percent of the total demand, according to a confidential Central Action Plan-2018-2019 circulated internally a few months ago.

For ensuring compliance by the I-T Department appellate officers, the CBDT has decided to reward them with two additional units for each quality appellate order passed vis-à-vis the assesseees. In any tax dispute with the government, the Commissioner of Income Tax (Appeal) — CIT (A) — is the first point of appeal for the assesseees, followed by the courts.

Corporate

CORPORATE

NEWS

The Healing Touch: Stressed Assets Worth Rs 3 Lakh Crore Cleared Through IBC, Says MCA Secretary Injeti Srinivas:

Secretary to the Union Corporate Affairs Ministry, Injeti Srinivas, has stated that the Insolvency and Bankruptcy Code of India, 2016 (IBC), has helped to, directly and indirectly, address over Rs 3 lakh crores of distressed assets, as reported by Press Trust of India (PTI).

This estimated amount includes both the recoveries made through the resolution plans and the successful conclusion of cases submitted to the NCLT (National Company Law Tribunal).

“Over 3,500 cases have been resolved at pre-admission stage and resulted in claims worth Rs 1.2 lakh crore getting settled,” Srinivas said.

Also, commenting on the case admitted by the NCLT to undergo resolution, he added, “About 1,300 cases have been admitted and out of that, in about 400 cases, corporate insolvency resolution process has been completed... in 60 cases resolution plans have been approved, in 240 cases liquidation orders have been given, 126 cases are in appeal. These cases which have been resolved have led to recovery of Rs 71,000 crore as of now.”

The IBC has led to several big-ticket insolvency resolutions in what is good news for the NPA-ridden banking sector. UltraTech Cement’s acquisition of Binani Cement earlier resulted in the first 100 per cent recovery under the IBC. Also, the Ruias, the promoting family of Essar Steel, which is undergoing resolution at NCLT, agreed to pay the full dues of the company. However, the Committee of Creditors (CoC), appointed by the court, termed Arcelor Mittal, as the highest bidder.

Taxmen begin scrutiny of Unilever-GSK deal

Taxmen have begun to scrutinise the \$3.8-billion (3.3-billion euro) Unilever-GSK transaction and could raise demand on the value of the sale of Horlicks brand to the Anglo-Dutch multinational by invoking provisions relating to indirect transfer of shares, tax experts and lawyers said on Tuesday.

Tax officials could also raise the issue that goods and services tax (GST) of 12% is applicable on the overseas transaction as its value is derived from the Indian market, but the two companies and their lawyers are expected to counter this.

The merger announced on Monday values GSK Consumer Healthcare at Rs 31,700 crore and its shareholders will get 4.39 shares of Hindustan Unilever for every share they own. After the merger, which is expected to be completed in a year, Unilever’s holding in HUL will fall from 67.2% to 61.9%. GSK Plc will become the second largest shareholder in the merged entity with 5.7% stake, though it has plans to sell the shares at an appropriate time later.

As per the deal, the Horlicks brand, which is currently owned by GSK Plc, will be acquired by parent Unilever and HUL will pay royalty for its use in India. The income-tax department may invoke provisions relating to indirect transfer of shares and demand tax on this leg of the transaction, said people in the know. Since most of the valuation for Horlicks — about 80% — is derived from India, this could even attract long-term capital gains tax, experts said.

Taxmen begin scrutiny of Unilever-GSK deal (cont...)

“As per news reports, GSK India is likely to merge with HUL. In that structure, while the merger may be ‘tax neutral’ subject to fulfilment of prescribed conditions under Income Tax Act, the shareholders of GSK India who will receive shares of HUL pursuant to the merger, may have 10% long term capital gains tax liability if they were to divest these shares,” said Sanjay Sanghvi, senior tax partner, in law firm, Khaitan & Co.

The tax treatment of transfer of a ‘brand’ between two foreign companies is contentious and would primarily depend on the ‘situs’ of the brand and related aspects.

HUL refused to comment on a detailed questionnaire sent by ET.

A GSK UK spokesperson said, “The subsequent sale of HUL shares will be subject to tax in accordance with Indian law. There will be no indirect transfer of shares in India and Indian GST does not apply on the transfer of shares of an Indian company.”

As per the regulations for indirect transfer of shares, if the stock of an Indian company held by a foreign firm constitutes more than 50% of its total assets, the transaction would be taxed in India. The deal between Unilever and GSK can attract up to 40% tax, experts said. “We had considered indirect transfer of shares when the transaction was being effected. But we hope that since the transaction is not happening in India and it’s a high-profile deal, those provisions would not be triggered,” said an expert advising HUL on the transaction. Companies approach tax experts.

Both GSK and HUL have approached tax experts to help structure a deal that would avoid paying GST as well, said people with direct knowledge of the matter. “The consumption and usage of the brand (Horlicks) does not have any relevance and it is merely licensed in India to ensure protection from other copycat products.

However, the GST law could be tested in this regard as the only precedent is present under the earlier tax regime,” said a tax lawyer advising one of the two companies.

“The indirect tax department can look to levy GST on the whole transaction since the brands primarily derive their value from India,” said Girish Vanvari, founder of tax advisory firm Transaction Square.

The deal, however, is not without some tax benefits for Hindustan Unilever. HUL would be able to take advantage of goodwill depreciation to reduce its tax liability, said a person working in the tax department of one of the companies. Goodwill is a concept that includes intangible assets, and could be subjected to depreciation in accounting .

“The merger will result in the creation of accounting goodwill and other intangibles in the books of HUL. Based on a Supreme Court decision, HUL would have the opportunity to claim tax depreciation (25% on written down value basis) on the goodwill so recorded. If such a claim is made and is successful, this could lower the effective tax rate of HUL and will be a big synergy arising out of the merger,” said Vanvari.



CORPORATE NEWS

The world is messed up
but I believe we are in a position now to help

Marketing strategy's goal is to increase sales and achieve advantage over other competitions. It includes short term and long term activities of marketing that has to do with the analysis of a company's situation and contribute to its objectives. The objectives will be based on how you gain sales by acquiring and keeping customers.

A marketing strategy helps on making good messages with the right twist of marketing approaches in order to have a good outcome of your sales and marketing activities. Lastly, improvement should be measured regularly and assessed in order for you to know what's beneficial and what is not. This will help you set new targets.

You won't be able to transfer physical shares from December 5



Created by Kaboompics - Freepik.com

NEW DELHI: Come Wednesday and you won't be able to transfer shares of listed companies if they are held in physical form. Markets regulator Sebi has set December 5 as the deadline from when shares of listed companies could be transferred only in demat form. Currently, along with demat shares, physical shares can also be transferred from the seller to the buyer. Here are some issues related to this rule:

Why has this rule come into effect?

In the last few years, there have been frauds involving physical shares, unclaimed dividend that accrued on such shares and also transfer of these shares. In case of demat shares, there's a bank account linked to the demat account and this aspect could substantially limit frauds related to physical shares.

Will all physical shares of all listed companies become worthless?

No. Every physical share will retain its value. The Sebi rule doesn't take away the value of any physical share. However, these shares will become illiquid, which means while these shares will have their intrinsic value linked to the company's stock price in the market, but to realise that value one will have to demat those physical shares and then sell in the market to get the money in their bank account. Investors who do not want to sell their shares, can continue to hold them in physical form.



You won't be able to transfer (cont...)

How to sell physical shares held by a deceased person?

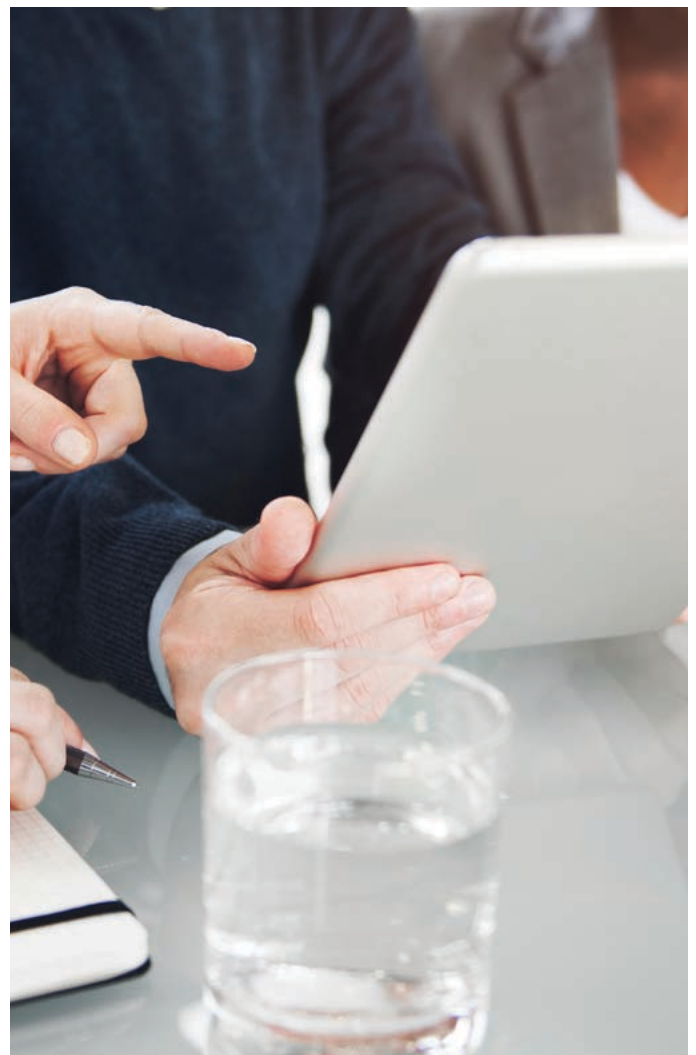
If the current value of the shares is up to Rs 2 lakh, the legal heir can approach the company whose shares he/she has, along with the death certificate of the deceased, to change the name of the owner. He/she can demat the shares and sell them in the market. In case the value of the shares is more than Rs 2 lakh, the legal heir needs to appoint a lawyer to get a probate from the court to establish legal ownership then change the name on the shares, demat those and sell in the market. Also, the current rules allow transfer of title of shares in case of inheritance and succession, and also for interchanging of the order of the name of shareholders.

What happens in case one of the joint owners is dead?

The existing joint owner can approach the company whose shares he/she has with the death certificate of the deceased and change the ownership status to single from joint. After that he/she can demat the shares and sell in the market.

What challenges are companies, and registers & transfer agents facing?

Investors holding physical shares are reluctant to follow the rules and formalities prescribed by the Companies Act and Sebi, to convert physical shares into demat form.



NewsBites

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Our services begin with company incorporation and statutory registrations of the entity in India throughout the business cycle until audits and compliances year on year. Our clients are businesses with foreign as well as Indian origins.

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