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Tax
Consultants**

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"Never Stop Learning, Never Stop Growing"

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President's Communique

Dear Members,

Sarve Bhavanti Sukhine, Sarve Santu Niramaya.

Sarve Bhadrani Paschuyantu, Ma Kaschit Dukhbihag Bhavetu.



"Let everybody be happy, let everybody be free of disease. Let everybody be witness to Good Fortune and nobody have to face or be part of misfortune."

With these words welcoming and wishing everybody a great flourishing new year.

As we are entering into the last quarter of the financial year, everybody will be making plans for their professional engagements for this financial year. However due to extension of the due date of the filing of GST Annual Returns, GST Audit and MVAT Audit for the financial year ending 31-3-2018, all the professionals will be stretched not only to complete these work but also the work pertaining to the concluding new financial year ending 31-3-2019. All members engaged in the above and related activities are advised to handle their assignments with diligence and care which may appear difficult to complete. We professionals may face many such near impossible tasks. But it is our experience and knowledge that converts these difficult tasks into more golden opportunities and execute these tasks with perfection.

The Chamber is participating in a Joint Workshop on GST Laws in association with GSTPAM, CTC, AIFTP (WZ), BCAS and WIRC which will be held at GSTPAM Library, Mazgaon from 17-1-2019 to 14-3-2019. In our further efforts to spread and gain knowledge, we have started sending out Bulletins to these Tax Practitioners' Associations and also to colleges and Institutions of our area.

We will also be undertaking Rajubhai Chokshi Oration Fund lecture and RRC in the month of February 2019. Details of the programme will be sent on mail and by messages. All the members of the Chamber are requested to participate in these programmes in large numbers to make it successful.

With Warm Regards,

CA Vaibhav D. Seth
President

For Queries & Submission of Forms for Membership/Seminar please contact any of the following Office Bearers:

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DIRECT TAXES – LAW UPDATE

Compiled by CA Haresh P. Kenia

□ **INCOME-TAX (TWELFTH AMENDMENT) RULES, 2018 - AMENDMENT IN RULE 114, FORMS 49A & 49AA NOTIFICATION NO. GSR 1128(E) [NO. 82/2018 (F. NO. 370142/40/2016-TPL (PART-I)], DT 19-11-2018**

Budget 2018 amended Section 139A of the I-T Act making it mandatory for non-individuals who did not have PAN but conducted transactions of ₹ 2.5 lakh or more in a single FY to apply for PAN. Non-individual entities who do not have PAN but conduct a transaction of ₹ 2.5 lakh or more in a single financial year will now mandatorily have to get a PAN before May 31 of the following financial year. This is as per the above notification. An amendment has been made in Rule 114 of the Income-tax rules. The amendment will come into effect from December 5, 2018.

□ **SECTION 90 OF THE INCOME-TAX ACT, 1961 - DOUBLE TAXATION AGREEMENT - AMENDMENT IN DOUBLE TAXATION AVOIDANCE AGREEMENT BETWEEN INDIA & CHINA
PIB PRESS RELEASE, DATED 26-11-2018**

The Government of the Republic of India and the Government of the People's Republic of China have amended the Double Taxation Avoidance Agreement (DTAA) for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income, by signing a protocol on 26-11-2018.

Besides other changes, the Protocol updates the existing provisions for exchange of information to the latest international standards. Further, the protocol incorporates changes required to implement treaty related minimum standards under the action reports of Base Erosion & Profit Shifting (BEPS) Project, in which India had participated on an equal footing. Besides minimum standards, the Protocol brings in changes as per BEPS Action reports as agreed upon by the two sides.

□ **SECTION 194A OF THE INCOME-TAX ACT, 1961, READ WITH RULE 31A OF THE INCOME-TAX RULES, 1962 - DEDUCTION OF TAX AT SOURCE - INTEREST OTHER THAN INTEREST ON SECURITIES - TDS IN CASE OF SENIOR CITIZENS**

NOTIFICATION NO. 06/2018 [F. NO. PR. DGIT(S)/CPC(TDS)/NOTIFICATION/2018-19], DT. 6-12-2018

It has been brought to the notice of CBDT that in case of Senior Citizens, some TDS deductors/Banks are making TDS deductions even when the amount of income does not exceed fifty thousand rupees. The same is not in accordance with the law as the Income-tax Act provides that no tax deduction at source under section 194A shall be made in the case of Senior Citizens where the amount of such income or, the aggregate of the amounts of such income credited or paid during the financial year does not exceed fifty thousand rupees. (Please refer to the third proviso to sub-section 3 of section 194A). Under sub-rule (5) of Rule 31A of the Income-tax Rules, 1962, the Director General of Income-tax (Systems) is authorised to specify the procedures, formats and standards for the purposes of furnishing and verification of the statements or claim for refund in Form 26B and shall be responsible for the day-to-day administration in relation to furnishing and verification of the statements or claim for refund in Form 26B in the manner so specified. In exercise of the powers delegated by the Central Board of Direct Taxes (Board) under sub-rule (5) of Rule 31A of the Income-tax Rules, 1962, the Principal Director General of Income-tax (Systems) hereby clarifies that no tax deduction at source under section 194A shall be made in the case of Senior Citizens where the amount of such income or, the aggregate of the amounts of such income credited or paid during the financial year does not exceed fifty thousand rupees.



TAXABILITY OF DEVELOPMENT RIGHTS FOR CONSTRUCTION OF BUILDING UNDER GST FOR LANDOWNER AND DEVELOPER

Compiled by CA Bhavin Mehta

Different views and opinions are prevalent in the Industry in respect of taxability of development rights in relation to construction of building under GST. In this article I have tried to analyse taxability of development rights in hands of landowner and in the hands of developer.

Case Study: Land owner enters into development agreement with developer for development of land admeasuring 50,000 sq.ft., wherein landowner will retain 40% of the developed area and balance 60% will be retained by the developer.

Issue 1: Whether development rights would be taxable in the hands of landowner?

Comments: An agreement between landowner and developer for construction of building on the land belonging to landowner is commonly known as development rights agreement, which is not transferable. In other words so called development right is not marketable. Therefore, the question of taxability of development rights in the hands of landowner does not arise. Further, at no point of time, the ownership in land gets transferred to developer or the ownership in built-up area gets transferred. The agreement is for transfer of rights, title and interest in the undivided share in land directly to the end-customer.

In case where agreement is to transfer the right, title and interest in the undivided share in land to developer then it can be argued that landowner is transferring his ownership right in the land for getting construction of the building of his share in development agreement. In that case interest in land rights of landowner gets curtailed. In other words there is sale of land. Sale of land is excluded from levy of GST under Schedule III of the Act. Section 3(26) of the General Clauses Act, 1897 defines 'immovable property' as:

"26 'Immovable property' shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth".

Therefore, "benefits to arise out of land" is that benefit whose origin can be traced to existence of land. Their existence is solely because of existence of land. It owes its source to land. These benefits cannot exist independent of land.

Further, List II of the Constitution of India is State List, wherein entry 18 reads "Land, that is to say, **right in or over land**, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; and land improvement and agricultural loans; colonization". Entry 49 of same list reads "taxes on lands and buildings". This means Union does not have right to collect GST on land or interest on land.

Therefore, reference to land includes even right in land. Thus it can be concluded that transfer of interest in land amounts to transfer of land, which cannot be subject to the levy of GST.

The Hon'ble Calcutta High Court in **Pasupati Roy vs. State of W.B. [AIR 1974 Cal 99:77 CWN 157]** has observed that the expression "land" includes benefits to arise out of land and, things attached to the earth or permanently fastened to anything attached to the earth. It being rights arising from the land and cannot be parted from the land and hence could be considered as land.

Issue 2: Whether developer would be required to pay GST on construction of 40% of the developed area for the landowner?

Comments: Developer is constructing the entire building in order to sell a part of building. There are common facilities and common spaces which are owned and used jointly by the owners of these units. These units are not having any independent existence. Effectively, developer is providing service to both landowner and the buyers of flats. Consideration can move even from third person as per the definition of consideration given in Section 2(31) of CGST Act. The entire consideration in this arrangement is flowing from the buyers of flats.

The proportionate ownership of land obtained by developer from the landowner would be passed on to the flat buyers. Sale of flat to buyers includes the cost of land in the value of flat. Construction of flats for the landowner is a consideration towards the land on which flats were constructed and offered for sale to buyers. Such sale of flats to buyers would include the consideration paid or payable for value of land. GST is payable on gross amount charged at the rate as prescribed in Notification No. 11/2017-Central Tax Rate (1/3rd deduction from the gross value is granted). In the present facts, the amount attributable to the consideration received by the developer in the form of land rights from the landowner stands included in the value of flats sold to buyers, which means whatever consideration received by Developer in the form of development rights (interest in land) was considered in assessable value. Therefore, it can be concluded that construction of flat for landowner cannot be separately taxable in the hands of the developer. {Refer Hyderabad Tribunal decision in the case of Vasantha Greens Projects in Appeal No. ST/31095/2017}.

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SYNOPSIS OF GST NOTIFICATIONS AND CIRCULARS

Compiled by CA Brijesh M. Cholera

NOTIFICATION

67/2018-CENTRAL TAX DATED 31-12-2018

By this notification dates are extended for the special procedure for completing migration of taxpayers who received provisional IDs but could not complete the migration process by amending Notification No. 31/2018-Central Tax dated 6-8-2018 for filing certain specified details in table to jurisdictional nodal officer of the Central Government or State Government on or before 31-8-2018 now extended to 31-1-2019 and after approval and receiving details such taxpayers are required to furnish the details to GSTN by email, on or before 30-9-2018 now extended to 28-2-2019.

68/2018, 69/2018, 70/2018, 71/2018 & 72/2018- CENTRAL TAX DATED 31-12-2018.

By this notification for migrated taxpayers who received provisional IDs but could not complete the migration process for them due date extended:

For filing Form GSTR-3B extended for the period from July-2017 to February 2019 date extended up to 31-3-2019.

For Form GSTR-1 Quarterly from July 2017 to December 2018 dated extended up to 31-3-2019.

For Form GSTR-1 Monthly from July 2017 to February 2019 dated extended up to 31-3-2019.

73/2018-CENTRAL TAX DATED 31-12-2018.

Section 51 of the CGST Act (provisions related to TDS) do not apply to the supply of goods or services or both which takes place between one person to another person specified under clauses (a), (b), (c) and (d) of sub-section (1) of Section 51 of the said Act.

74/2018-CENTRAL TAX DATED 31-12-2018.

By notification certain further amendments made to the Central Goods and Services Tax Rules, 2017.

75/2018-CENTRAL TAX DATED 31-12-2018.

By this notification the amount of late fee payable under Section 47 of the said Act shall stand waived for the registered persons who failed to furnish the details of outward supplies in FORM GSTR-1 for the months/quarters from July, 2017 to September, 2018 by the due date but furnishes the said details in FORM GSTR-1 between the period from 22-12-2018 to 31-3-2019.

76/2018-CENTRAL TAX DATED 31-12-2018.

By this notification the amount of late fee payable under Section 47 of the said Act shall stand waived for the registered persons who failed to furnish the return in FORM GSTR-3B for the months of July, 2017 to September, 2018 by the due date but furnishes the said return between the period from 22-12-2018 to 31-3-2019.

77/2018-CENTRAL TAX DATED 31-12-2018.

By this notification the amount of late fee payable under Section 47 of the said Act shall stand waived for the registered persons who failed to furnish the return in FORM GSTR-4 for the quarters from July, 2017 to September, 2018 by the due date but furnishes the said return between the period from 22-12-2018 to 31-3-2019.

78/2018-CENTRAL TAX DATED 31-12-2018.

By this notification the Commissioner, hereby extends the time limit for furnishing the declaration in FORM GST ITC-04 of the said rules, in respect of goods dispatched to a job worker or received from a job worker, during the period from July, 2017 to December, 2018 till the 31-3-2019.

CIRCULARS**CIRCULAR NO. 75/49/2018-GST DATED 27-12-2018**

Guidelines for processing of applications for financial assistance under the Central Sector Scheme named 'Seva Bhoj Yojna' of the Ministry of Culture.

CIRCULAR NO. 76/50/2018-GST DATED 31-12-2018

Clarification given on certain issues (sale by Government departments to unregistered person; levibility of penalty under section 73(11) of the CGST Act; rate of tax in case of debit notes / credit notes issued under section 142(2) of the CGST Act; applicability of notification No. 50/2018-Central Tax; valuation methodology in case of TCS under Income-tax Act and definition of owner of Goods) related to GST.

CIRCULAR NO. 77/51/2018-GST DATED 31-12-2018

Clarification given on Denial of composition option by tax authorities and effective date thereof.

CIRCULAR NO. 78/52/2018-GST DATED 31-12-2018

Clarification on certain issues relating to export of services under the GST laws.

CIRCULAR NO. 79/53/2018-GST DATED 31-12-2018

Clarification given on various issues relating to refund.

CIRCULAR NO. 80/54/2018-GST DATED 31-12-2018

Clarification given regarding GST Rates & its Classification (goods).

CIRCULAR NO. 81/55/2018-GST DATED 31-12-2018

Clarification regarding GST tax rate for Sprinkler and Drip Irrigation System including laterals.

**JUDICIAL JUDGMENTS**

Compiled by CA Rupal Shah

**Vodafone Mobile Services Ltd. vs. ACIT, Delhi High Court, [2018] 100 taxmann.com 310 (Delhi), 14th December 2018
Writ petition filed for issue of refunds, where scrutiny assessments were pending and substantial demands expected, dismissed**

Facts of the case

The returns of income of the assessee for four assessment years 2014-15 to 2017-18 were not processed by the AO, which would result in issuance of refunds aggregating to ₹ 4,759.74 crores and interest as per Section 244A. It sought direction upon Assessing Officer to expeditiously process refund claim and issue refund as it was under financial stress.

The Revenue submitted that for AY 2014-15, the assessee has approached the AAR and for AY 2015-16 and 2017-18, scrutiny assessments are pending before AO and AO has exercised discretion under Section 143(1D) not to process the returns given that substantial demand may arise from these assessments.

Also, AY 2012-13 and 2013-14 are under special audit and any demand that would arise from the processing of the said assessment years are to be allowed to be adjusted against the refund claims.

High Court observed as follows:

Under section 143(1D) of the Act as introduced by the Finance Act, 2012 processing of a return under Section 143(1)(a) is not necessary where a notice has been issued under Section 143(2).

Further as per amendment effective from AY 2017-18, if scrutiny notice is issued under Section 143(2), processing of return shall not be necessary before the expiry of one year from the end of the financial year in which return is submitted.

Based on the above, High Court decided that writ petition of the assessee fails.

Anil Murlidhar Deshmukh vs. ITO 3(2). Nashik. [2019] 101 taxmann.com 93 (ITAT Pune). 13th December. 2018

Valuation of property for computation of capital gains given by DVO is binding on AO, where the valuation of assessee was rejected by him.

Facts of the case

The assessee sold a plot for ₹ 42,00,000/-. The stamp duty value on the registered agreement was ₹ 56,19,000/-. The Assessee objected to provision of Section 50C and the matter was referred to DVO. The DVO determined the fair market value of the property at ₹ 46,96,400/-.

The AO computed capital gains by adopting full value of consideration at ₹ 46,96,400/- based on report of DVO instead of the actual sale consideration of ₹ 42,00,000/- shown by the assessee. This resulted into an addition of ₹ 4,96,400/-, which was confirmed by the Id. CIT(A). The assessee is aggrieved by the said addition.

On second appeal:

The assessee challenged the valuation of DVO on various grounds which was effectively dismissed by the ITAT.

ITAT observed that report of the DVO is in fact binding on the AO in terms of sub-Section (3) of Section 50C of the Act, which mandates that higher of value taken by stamp valuation authority or value determined by DVO should be taken as full value of consideration while computing capital gains.



Glimpses of Joint Workshop on GST Law



Dweep Prajwalan by President, Vaibhav Seth at Joint Workshop on GST Laws.



President, Vaibhav Seth addressing the Participants at the Joint Workshop on GST Law



President, Vaibhav Seth presenting MCTC Bulletin to Shri Pradip Kapadia, President of GSTPAM



President, Vaibhav Seth presenting MCTC Bulletin to WIRC Chairman Sandeep Jain

Glimpses of Outreach Programmes



GST Outreach Programme–President, Vaibhav Seth addressing the Participants



GST Outreach Programme–Participants and Faculty



Income Tax Dept. Outreach Programme–President, Vaibhav Seth addressing the Participants



Income Tax Dept. Outreach Programme–Participants and Faculty

Disclaimer : Though utmost care is taken about the accuracy of the matter contained herein, the Chamber and/or any of its functionaries are not liable for any inadvertent error. The views expressed herein are not necessarily those of the Chamber. For full details the readers are advised to refer to the relevant Acts, Rules and relevant Statutes.

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