

**R C JAIN AND ASSOCIATES LLP**

**NEWSLETTER**

**October**

**2019**

*“Better three hours too soon than a  
minute too late....”*



# INDEX

1. Income Tax _____	01
2. GST _____	09
3. RBI _____	21
4. Corporate Law _____	23
5. Hunar Haat _____	30

## EDITORIAL TEAM

### CHIEF EDITOR

CA R. C. Jain

### EDITOR

CA Dixita Vora

### MEMBERS

Praanav Vatani

Jyoti Sharma

Kajal Jagiasi

Pritha Chandra

Rasika Nalawade

### SUPPORT TEAM

Ulhas Jain

CA Meera Joisher

Mangesh Kolekar

Tejashree Wanarkar

Radhika Yadav

The contents provided in this newsletter are for information purpose only and are intended, but not promised or guaranteed, to be correct, complete and up-to-date. The firm hereby disclaims any and all liability to any person for any loss or damage caused by errors or omissions, whether such errors or omissions result from negligence, accident or any other cause.

**Income Tax**

❖ **SECTION 115BAA - CERTAIN DOMESTIC COMPANIES, HAVING OPTION TO PAY TAX AT THE LOWER RATE**

1. Section 115BAA, with effect from April 1, 2020 –

- a) a domestic company shall, at its option, pay tax at a lower rate of **22 per cent** for any P.Y, relevant to A.Y. beginning on or after 1st April 2020(provided that total income being computed without claiming any exemption or deduction, and subject to other conditions)
- b) the option is required to be exercised by the company before the due date of furnishing return of income; and
- c) The option, once exercised, cannot be withdrawn and shall apply to all subsequent A.Ys.

2. Amendment to section 115JB, relating in Minimum Alternate Tax (MAT), provides that the provisions of the section 115JB shall not apply to a person who has exercised the option under newly inserted section 115BAA.

3. Clarifications regarding allowability of brought forward loss on account of additional depreciation and allowability of brought forward MAT credit are given in the following paras;

- a) As regards allowability on account of additional depreciation, the total income shall be computed without claiming any deduction under clause (iia) of sub-section (1) of section 32 (additional depreciation)
- b) A domestic company which would exercise option for availing benefit of lower tax rate (u/s 115BAA) shall not be allowed to claim set off of any brought forward loss on account of additional depreciation for an A.Y. for which the option has been exercised and for any subsequent A.Y.
- c) Further as there is no time line within which option under section 115BAA can be exercised, a domestic company having brought forward losses on account of additional depreciation may, if it so desires, exercise the option after set off of the losses so accumulated.
- d) As regards allowability of brought forward MAT credit, provisions of section 115JB relating to MAT shall not be applicable to the domestic company which exercises option under section 115BAA, it is hereby clarified that the tax credit of MAT paid by the domestic company exercising option under section 115BAA of the Act shall not be available consequent to exercising of such option.
- e) Further, as there is no time line within which option under section 115BAA can be exercised, it may be noted that a domestic company having credit of MAT may, if it so desires, exercise the option after utilising the said credit against the regular tax payable.

❖ **SECTION 143- 'E-PROCEEDING' FACILITY DURING FINANCIAL YEAR 2019-20**

CIRCULAR NO. 27/2019 [F.NO. 225/249/2018-ITA.II], DATED 26-9-2019

- (i) In all cases other than the cases covered under the 'e-Assessment scheme, where assessment is to be framed under section 143(3) of the Act during the financial year 2019-20, it is hereby directed that such assessment proceedings shall be conducted electronically. Consequently, assesseees are required to produce/cause to produce their response/evidence to any notice/communication/show-cause issued by the Assessing Officer electronically (unless specified otherwise) through their 'E-filing' account on the 'E-filing' portal.
- (ii) In following cases, where assessment is to be framed during the financial year 2019-20, 'E-Proceeding' shall not be mandatory:
  - a. Where assessment is to be framed under section(s) 153A,153C(assessments related to search) and 144(best judgment assessments) of the Act. In respect of assessments to be framed under section 147(re-assessment) of the Act;
  - b. In set aside assessments;
  - c. Assessments being framed in non-PAN cases;
  - d. Cases where Income-tax return was filed in paper mode and the assessee concerned does not yet have an 'E-filing' account;
  - e. In all cases at stations connected through the VSAT or with limited capacity of bandwidth;
  - f. In cases covered under para 1(i) above, the jurisdictional Pr. CIT/CIT, in extraordinary circumstances such as complexities of the case or administrative difficulties in conduct of assessment through 'E-Proceeding', can permit conduct of assessment proceedings through the conventional mode. It is hereby further directed that Pr.CIT/CIT is required to provide such relaxation only in extraordinary circumstances after examining the necessity for such relaxation and recording the reasons for providing such relaxations.
- (iii) However, it is clarified that issue of notices and departmental communications in such cases shall be strictly governed by the guidelines issued by CBDT regarding generation/allotment/quoting of Document Identification Number (DIN).
- (iv) In cases where assessment proceedings are being carried out through the 'E-Proceeding', personal hearing/attendance may take place in following situation(s):
  - a. Where books of account have to be examined;

- b. Where Assessing Officer invokes provisions of section 131(summon) of the Act;
- c. Where examination of witness is required to be made by the assessee or the Department;
- d. Where a show-cause notice contemplating any adverse view is issued by the Assessing Officer and assessee requests through their 'E-filing' account for personal hearing to explain the matter.

**❖ INCOME-TAX (ELEVENTH AMENDMENT) RULES, 2019 -AMENDMENT IN RULE 10CB**

Following amendments have been made :

**Short title and commencement**

(II) In sub-rule (1), –

(A) For clause (iii), the following clause shall be substituted, namely: –

"(iii) in a case where primary adjustment to transfer price is determined by an advance pricing agreement entered into by the assessee under section 92CC of the Act in respect of a previous year, –

- (a) from the date of filing of return under sub-section (1) of section 139 of the Act if the advance pricing agreement has been entered into on or before the due date of filing of return for the relevant previous year;
- (b) from the end of the month in which the advance pricing agreement has been entered into if the said agreement has been entered into after the due date of filing of return for the relevant previous year";

(B) For clause (v), the following clause shall be substituted, namely: –

"from the date of giving effect by the Assessing Officer under rule 44H to the resolution arrived at under mutual agreement procedure, where the primary adjustment to transfer price is determined by such resolution under a Double Taxation Avoidance Agreement entered into under section 90or section 90A of the Act";

(III) After sub-rule (2), the following sub-rule shall be inserted, namely: –

"(3) The interest referred to in sub-rule (2) shall be chargeable on excess money or part thereof which is not repatriated –

- (a) in cases referred to in clause (i), in sub-clause (a) of clause (iii) and clause (iv) of sub rule(1), from the due date of filing of return under sub-section (1) of section 139 of the Act;
- (b) in cases referred to in clause (ii) of sub-rule(1), from the date of the order of Assessing Officer or the appellate authority, as the case may be;
- (c) in cases referred to in sub-clause (b) of clause (iii) of sub-rule(1), from the end of the month in which the advance pricing agreement has been entered into by the assessee under section 92CC of the Act;
- (d) in cases referred to in clause (v) of sub-rule (1), from the date of giving effect by the Assessing Officer under rule 44H to the resolution arrived at under mutual agreement procedure.

❖ **SECTION 269SU OF THE INCOME- TAX ACT, 1961 - ACCEPTANCE OF PAYMENT THROUGH PRESCRIBED ELECTRONIC MODES**

A new provision namely Section 269SU was inserted, which provides that every person having a business turnover of more than Rs. 50 Crore shall mandatorily provide facilities for accepting payments through prescribed electronic modes.

1. A new provision namely Section 10A was also inserted in the Payment and Settlement Systems Act, 2007, which provides that no Bank or system provider shall impose any charge on a payer making payment, or a beneficiary receiving payment, through electronic modes prescribed under section 269SU.

2. These provisions shall come into force with effect from 1st November, 2019. The Central Government proposes to prescribe certain electronic modes of payment for the purposes of Section 269SU.

**-Compiled by Praanav Vatani**

***Case Laws:***

**1) *Issue Involved:***

***"WHERE ASSESSEE COMPANY, ENGAGED IN BUSINESS OF CONSTRUCTION AND SALE OF RESIDENTIAL AND COMMERCIAL BUILDING COMPLEXES, SOLD A BUILDING WHICH WAS UNDER CONSTRUCTION AT TIME OF SALE AND INCURRED EXPENDITURE FOR COMPLETING ITS CONSTRUCTION DURING FINANCIAL YEAR SUBSEQUENT TO SALE OF BUILDING, WHETHER SUCH EXPENDITURE WAS LIABLE FOR DEDUCTION UNDER SECTION 37(1)"***

**➤ *High Court of Kerala, Commissioner of Income-tax v. Oberon Edifices & Estates (P.) Ltd. [2019] 110 305 (Kerala)***

***Gist of the Case:***

The assessee was a company engaged in business of construction and sale of residential and commercial building complexes. During the assessment year 2009-10, the assessee sold a portion of the mall building constructed by it. The construction of the building was not completed at that time. The assessee incurred expenditure during the financial years 2009-10 and 2010-11 for completing the construction of the building and claimed same as deduction. The Assessing Authority disallowed same. On appeal, the Commissioner (Appeals) held that in a situation where at the time of assessment the building remains incomplete, estimated future expenditure to be incurred was also considered along with the expenditure already incurred and was taken as cost relatable to the total saleable area i.e. saleable area already built and the saleable area to be built in future, for arriving at the estimated cost of construction per sq ft. Therefore the contentions of the assessee were accepted and it was held that the Assessing Officer was not justified in not taking the value of building work-in-progress during the financial year 2009-10 and 2010-11 for working out the cost per square ft. It was therefore, directed that the cost per sq.ft would be taken as total expenditure incurred in construction divided by total saleable area for the purpose of working out the profit from sale of commercial area. In instant appeal, the revenue contended that the claim for deduction of future expenses made by the assessee could

## **DIRECT TAX**

not be allowed. It contended that there was a distinction between amount spent to pay off an actual liability and a liability that would be incurred in future which was only contingent. It was contended that the former was deductible but not the latter.

### **Held:**

The dispute raised by the revenue is only with regard to the deduction claimed by the assessee in respect of the expenses incurred in future, that is, after the sale of the building, during the subsequent financial years, and not in respect of the expenses incurred by it during the relevant financial year. Section 37 is a residuary section for allowability of business expenditure. The expression 'profits and gains' has to be understood in its commercial sense and there can be no computation of such profits and gains until the expenditure which is necessary for the purpose of earning the receipts is deducted therefrom - whether the expenditure is actually incurred or the liability in respect thereof has accrued even though it may have to be discharged at some future date. The profit of a trade or business is the surplus by which the receipts from the trade or business exceed the expenditure necessary for the purpose of earning those receipts. It is the meaning of the word 'profits' in relation to any trade or business. Whether there be such a thing as profit or gain can only be ascertained by setting against the receipts the expenditure or obligations to which they have given rise. Expenditure' is not necessarily confined to the money which has been actually paid out and it covers a liability which has accrued or which has been incurred although it may have to be discharged at a future date. However, a contingent liability which may have to be discharged in future cannot be considered as expenditure. It also covers a liability which the assessee has incurred in present although it is payable in future. In order to claim deduction of business expenditure, it is not necessary that the amount has been actually paid or expended during the relevant accounting year itself and it is sufficient that the liability for payment had incurred or accrued during the relevant accounting year and the actual payment of amount or discharge of liability may occur in future and what is crucial is the accrual of liability for payment or expenditure during the relevant accounting year. But, a contingent liability that may arise in future, cannot be treated as



expenditure. Thus, the substantial question of law is answered in favour of the assessee and against the revenue. In the instant case, the revenue has no case that the sale deed executed in respect of the building did not provide that the assessee was liable to complete the construction of the building. Whether the tribunal was right in confirming the finding of the appellate authority holding that, the expenditure incurred by the assessee company during the financial years subsequent to the sale of the building, is eligible for deduction in computation of taxable income.

**2) *Issue Involved:***

***ASSESSEE A COMPANY INCORPORATED UNDER LAWS OF CYPRUS BEING BENEFICIAL OWNER OF INTEREST ON COMPULSORILY CONVERTIBLE DEBENTURES (CCDS) IN AN INDIAN PRIVATE LIMITED COMPANY WOULD BE ENTITLED TO BENEFICIAL PROVISIONS OF ARTICLE 11 OF DTAA BETWEEN INDIA AND CYPRUS.***

- *In the ITAT Mumbai Bench 'T', in case of Golden Bella Holdings Ltd. v. Deputy Commissioner of Income-tax [Assessment Year : 2013-14], [2019] 109 83*

***Gist of the Case:***

Appellant a company incorporated under laws of Cyprus filed its return of income showing income from interest on Compulsorily Convertible Debentures (CCDs) in ABPL, an Indian private limited company and such interest was duly offered to tax at the rate of 10 percent in accordance with the beneficial provisions of Article 11 of the DTAA between India and Cyprus (Cyprus Treaty). The Assessing Officer held that the investment in CCDs was a mere back-to-back loan transaction and denied the benefit of the Cyprus Treaty on the basis that the appellant was not the 'beneficial owner' of interest income and brought to tax the interest income earned at the rates in force (approximately 42 per cent).

***Held:***

The assessee invested in CCDs and received interest income thereon for its own exclusive benefit, and not for or on behalf of any other entity. The mere fact that the investment was funded using a portion of an interest-free shareholder loan and share capital does not affect the assessee's status as the 'beneficial owner' of interest income, as the entire interest income was the sole property of the assessee. The mere fact that the CCDs were funded using monies received by the assessee from its immediate shareholder does not make the arrangement a back-to-back transaction. The assessee had absolute control over funds received from its immediate shareholder. Further, in the instant case the assessee wholly assumed and maintained foreign exchange risk on CCDs (as they were INR denominated), and the counter party risk on interest payments arising on the CCDs. Further, Assessing Officer/DRP have failed to prove that (i) the assessee did not have exclusive possession and control over the interest income received, (ii) the assessee was required to seek approval or obtain consent from any entity to invest in ABPL, or to utilize the interest income received at its own discretion and (iii) the assessee was not free to utilize the interest income received at its sole and absolute discretion, unconstrained by any contractual, legal, or economic arrangements with any other third party. Thus, transaction between assessee and ABPL cannot be considered a mere back-to-back transaction lacking economic substance. Therefore, Assessing Officer is directed to accept the return of income filed by assessee disclosing income from interest on CCDs in ABPL, wherein it has offered such interest to tax at rate of 10 per cent. In the result, the appeal is allowed.

**-Compiled by Jyoti Sharma**

**GST****Notifications****1) Notification No. 44/2019 – Central Tax, Dated 09th October, 2019**

Every registered person furnishing the return in FORM GSTR-3B for each of the months from October, 2019 to March, 2020, shall, subject to the provisions of section 49 of the said Act, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the said Act by debiting the electronic cash ledger or electronic credit ledger, as the case may be, not later than the twentieth day of the month succeeding such month.

**2) Notification No. 45/2019 – Central Tax, Dated 09th October, 2019**

Every registered person having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year, shall furnish the details of outward supply of goods or services or both in FORM GSTR-1 under the Central Goods and Services Tax Rules, 2017, effected during the quarter as specified in column (2) of the Table below till the time period as specified in the corresponding entry in column (3) of the said Table, namely:-

<b>Quarter for which details in FORM GSTR-1 are furnished</b>	<b>Time period for furnishing details in FORM GSTR-1</b>
October, 2019 to December, 2019	31st January, 2020
January, 2020 to March, 2020	30th April, 2020

**3) Notification No. 46/2019 – Central Tax, Dated 09th October, 2019**

Every registered person having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year, shall furnish the details of outward supply of goods or services or both in FORM GSTR-1 under the Central Goods and Services Tax Rules, 2017, for each of the months from October, 2019 to March, 2020 till the eleventh day of the month succeeding such month.

The time limit for furnishing the details or return, as the case may be, under sub-section (2) of section 38 of the said Act, for the months of October, 2019 to March, 2020 shall be subsequently notified in the Official Gazette.

**4) Notification No. 47/2019 – Central Tax, Dated 09th October, 2019**

The Central Government, on the recommendations of the Council, hereby notifies those registered persons whose aggregate turnover in a financial year does not exceed two crore rupees and who have not furnished the annual return under sub-section (1) of section 44 of the said Act read with sub-rule (1) of rule 80 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules) before the due date, as the class of registered persons who shall, in respect of financial years 2017-18 and 2018-19, follow the special procedure such that the said persons shall have the option to furnish the annual return under sub-section (1) of section 44 of the said Act read with sub-rule (1) of rule 80 of the said rules:

Provided that the said return shall be deemed to be furnished on the due date if it has not been furnished before the due date.

## **INDIRECT TAX**

### **5) Notification No. 48/2019 – Central Tax, Dated 09th October, 2019**

Amendment has been made in Notification No. 41/2019- Central Tax, dated 31<sup>st</sup> August,2019 by stating that :

Central govt. on the recommendation of GST council hereby waives the amount of late fee payable under section 47 of the said Act, by the following class of taxpayers: –

- (i) The registered person whose place of business is in the state of Jammu & Kashmir for the following GST Returns upto the date mentioned below :

Return	Last Date
GSTR 1 (Monthly) For July'19 & August'19	11 <sup>th</sup> October'2019
GSTR 7 For July'19 & August'19	10 <sup>th</sup> October'2019
GSTR 3B For July'2019 & August'2019	20 <sup>th</sup> October'2019

### **6) Notification No. 49/2019 – Central Tax, Dated 09th October, 2019**

Government hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:-

- 1) In the Central Goods and Services Tax Rules, 2017, in rule 21A,-

- a) The following Explanation has been inserted :

For the purposes of this sub-rule, the expression –shall not make any taxable supply shall mean that the registered person shall not issue a tax invoice and, accordingly, not charge tax on supplies made by him during the period of suspension.

## **INDIRECT TAX**

- 2) In the Central Goods and Services Tax Rules, 2017, in rule 36, after sub-rule (3), the following sub-rule shall be inserted, namely:-

“(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.”

- 3) In the Central Goods and Services Tax Rules, 2017, in rule 83A, in sub-rule (6), for clause (i), the following clause shall be substituted, namely:-

Every person referred to in clause (b) of sub-rule (1) of rule 83 and who is enrolled as a goods and services tax practitioner under sub-rule (2) of the said rule is required to pass the examination within the period as specified in the second proviso of sub-rule (3) of the said rule.”

- 4) In the Central Goods and Services Tax Rules, 2017, in rule 97

- a) after sub-rule (7), with effect from the 1st July, 2017, the following sub-rule shall be inserted, namely,-

“(7A) The Committee shall make available to the Board 50 per cent. of the amount credited to the Fund each year, for publicity or consumer awareness on Goods and Services Tax, provided the availability of funds for consumer welfare activities of the Department of Consumer Affairs is not less than twenty-five crore rupees per annum.”;

- (b) in sub-rule (8), with effect from the 1st July, 2017, clause (e) shall be omitted.

- 5) In the Central Goods and Services Tax Rules, 2017, in rule 142,-

Amendments have been made in the said Rule regarding “Demands & Recovery of Tax”

## **INDIRECT TAX**

Kindly follow the below link for the detailed amendments :

[http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-49\\_central-tax-english\\_2019.pdf;jsessionid=4E6F0018112496FBEF9E4E415AD04447](http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-49_central-tax-english_2019.pdf;jsessionid=4E6F0018112496FBEF9E4E415AD04447)

### **7) Notification No. 50/2019 – Central Tax, Dated 24th October, 2019**

Seeks to extend the last date for filing of FORM GST CMP-08 for the quarter July-September 2019 by four days from 18/10/2019 till 22/10/2019.

### **8) Notification No. 51/2019 – Central Tax, Dated 31st October, 2019**

Amendment has been made in Notification No. 2/2017 – Central Tax, dated 19<sup>th</sup> June, 2017 in order to notify jurisdiction of Jammu Commissionerate over UT of Jammu & Kashmir & UT of Ladakh.

## **Circulars :**

### **1) Circular No. 110/29/2019 – GST, Dated 03rd October, 2019**

Seeks to clarify the eligibility to file a refund application in FORM GST RFD-01 for a period and category.

It is now clarified that a registered person who has filed a NIL refund claim in FORM GST RFD-01A/RFD-01 for a given period under a particular category, may again apply for refund for the said period under the same category only if he satisfies the following two conditions:

- a. The registered person must have filed a NIL refund claim in FORM GST RFD-01A/RFD-01 for a certain period under a particular category; and
- b. No refund claims in FORM GST RFD-01A/RFD-01 must have been filed by the registered person under the same category for any subsequent period.

## **INDIRECT TAX**

It may be noted that condition (b) shall apply only for refund claims falling under the following categories:

- i. Refund of unutilized input tax credit (ITC) on account of exports without payment of tax;
- ii. Refund of unutilized ITC on account of supplies made to SEZ Unit/SEZ Developer without payment of tax;
- iii. Refund of unutilized ITC on account of accumulation due to inverted tax structure;

In all other cases, registered persons shall be allowed to re-apply even if the condition (b) is not satisfied

Registered persons satisfying the above conditions may file the refund claim under “Any Other” category instead of the category under which the NIL refund claim has already been filed. However, the refund claim should pertain to the same period for which the NIL application was filed. The application under the “Any Other” category shall also be accompanied by all the supporting documents which would be required to be otherwise submitted with the refund claim.

On receipt of the claim, the proper officer shall calculate the admissible refund amount as per the applicable rules and in the manner detailed in para 3 of Circular No.59/33/2018-GST dated 04.09.2018, wherever applicable. Further, upon scrutiny of the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the taxpayer in writing, if required, to debit the said amount from his electronic credit ledger through FORM GST DRC-03. Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in FORM GST RFD-06 and the payment order in FORM GST RFD-05.



**2) Circular No. 111/30/2019 – GST, Dated 03rd October, 2019**

Seeks to clarify procedure to claim refund in FORM GST RFD-01 subsequent to favourable order in appeal or any other forum.

Kindly follow the below link for the detailed procedure:

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-111.pdf?jsessionid=764D7E0B9603D5924159C5B890A15608>

**3) Circular No. 112/31/2019 – GST, Dated 03rd October, 2019**

Kind attention is invited to Circular No. 105/24/2019-GST dated 28.06.2019 wherein certain clarifications were given in relation to various doubts related to treatment of secondary or post-sales discounts under GST.

In view of these apprehensions and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017, hereby withdraws, ab-initio, Circular No. 105/24/2019-GST dated 28.06.2019.

**4) Circular No. 113/32/2019 – GST, Dated 11th October, 2019**

Clarification has been issued regarding GST rates & classification (goods) :

The GST rates & classification of the following items have been clarified :

- (i) Classification of leguminous vegetables such as grams when subjected to mild heat treatment (ii) Almond Milk (iii) Applicable GST rate on Mechanical Sprayer (iv) Taxability of imported stores by the Indian Navy (v) Taxability of goods imported under lease. (vi) Applicable GST rate on parts for the manufacture solar water heater and system (vii) Applicable GST on parts and accessories suitable for use solely or principally with a medical device

Kindly follow the below link for the detailed Circular :

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-113.pdf;jsessionid=93D80BFB26613BF42D1C5E049C9CD93C>

**5) Circular No. 114/33/2019 - GST, Dated 11th October, 2019**

Clarification on scope of support services to exploration, mining or drilling of petroleum crude or natural gas or both.

Explanatory Notes to the Scheme of Classification of Services adopted for the purposes of GST, which is based on the United Nations Central Product Classification describe succinctly the activities associated with exploration, mining or drilling of petroleum crude or natural gas under heading 9983 and 9986 has been inserted which are as follows :

- 1) 998341 Geological and geophysical consulting services
- 2) 998343 Mineral exploration and evaluation
- 3) 998621 Support services to oil and gas extraction
- 4) 998622 Support services to other mining n.e.c

Kindly follow the below link for the detailed Notes :

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-114.pdf;jsessionid=F7386CAB834640A8773D0D02D95C0EB0>

**6) Circular No. 115/34/2019 - GST, Dated 11th October, 2019**

Clarification on issue of GST on Airport Levies

Passanger Service Fee (PSF) & User Development Fee (UDF) are charged by airport operators for providing the services to passengers.

Section 2(31) of the CGST Act states that “consideration” in relation to the supply of goods or services or both includes any payment made or to be

## **INDIRECT TAX**

made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person. Thus, PSF and UDF charged by airport operators are consideration for providing services to passengers. Thus, services provided by an airport operator to passengers against consideration in the form of UDF and PSF are liable to GST. UDF was also liable to service tax. It is also clear from notification of Director General of Civil Aviation AIC Sl. No. 5 /2010 dated 13.09.2010, which states that UDF approved by MoCA, GoI is inclusive of service tax. It is also seen from the Air India website that the UDF is inclusive of service tax. Further in order No. AIC S. Nos. 3/2018 and 4/2018, both dated 27.2.2018, it has been laid down that GST is applicable on the charges of UDF and PSF.

Kindly refer the below link for further clarification :

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-115.pdf;jsessionid=9F04C5544858344F5AECF382F0CAB32D>

### **7) Circular No. 116/35/2019 - GST, Dated 11th October, 2019**

Clarification has been issued regarding levy of GST on the service of display of name or placing of name plates of the donor in the premises of charitable organisations receiving donation or gifts from individual donors.

It is noticed that there is no reference or mention of any business activity of the donor which otherwise would have got advertised. Thus where all the three conditions are satisfied namely the gift or donation is made to a charitable organization, the payment has the character of gift or donation and the purpose is philanthropic (i.e. it leads to no commercial gain) and not advertisement, GST is not leviable.

**8) Circular No. 117/36/2019 – GST, Dated 11th October, 2019**

services by way of education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force. Clarification on applicability of GST exemption to the DG Shipping approved maritime courses conducted by Maritime Training Institutes of India.

Under GST Law, vide Sl. No. 66 of the notification No. 12/2017- Central Tax (Rate) dated 28.06.2017, services provided by educational institutions to its students, faculty and staff are exempt from levy of GST. In the above notification, “educational institution” has been defined to mean an institution providing

GST exemption on services supplied by an educational institution would be available, if it fulfils the criteria that the education is provided as part of a curriculum for obtaining a qualification/ degree recognized by law.

From the above, it is seen that the Maritime Training Institutes and their training courses are approved by the Director General of Shipping which are duly recognised under the provisions of the Merchant Shipping Act, 1958 read with the Merchant Shipping (standards of training, certification and watch-keeping for Seafarers) Rules, 2014. Therefore, the Maritime Institutes are educational institutions under GST Law and the courses conducted by them are exempt from levy of GST. The exemption is subject to meeting the conditions specified at Sl. No. 66 of the notification No. 12/ 2017- Central Tax (Rate) dated 28.06.2017.

**9) Circular No. 118/37/2019 - GST, Dated 11th October, 2019**

Clarification regarding determination of place of supply in case of software/design services related to Electronics Semi-conductor and Design Manufacturing (ESDM) industry.

It is clarified that the place of supply of software/design by supplier located in taxable territory to service recipient located in non-taxable territory by using sample prototype hardware / test kits in a composite supply, where such testing is an ancillary supply, is the location of the service recipient as per Section 13(2) of the IGST Act. Provisions of Section 13(3)(a) of IGST Act do not apply separately for determining the place of supply for ancillary supply in such cases

Kindly refer the below link for further clarification :

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-118.pdf?jsessionid=A93329DEDADDFC939A1D579C75418B2F>

**10) Circular No. 119/38/2019 - GST, Dated 11th October, 2019**

Clarification regarding taxability of supply of securities under Securities Lending Scheme, 1997

Securities and Exchange Board of India (SEBI) has prescribed the Securities Lending Scheme, 1997 for the purpose of facilitating lending and borrowing of securities. Securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 are not covered in the definition of goods under section 2(52) and services under section 2(102) of the CGST Act. Therefore, a transaction in securities which involves disposal of securities is not a supply in GST and hence not taxable.

## **INDIRECT TAX**

The supply of lending of securities under the scheme is classifiable under heading 997119 and is leviable to GST@18% under Sl. No. 15(vii) of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 as amended from time to time.

With effect from 1st October, 2019, the borrower of securities shall be liable to discharge GST as per Sl. No 16 of Notification No. 22/2019-Central Tax (Rate) dated 30.09.2019 under reverse charge mechanism (RCM). The nature of GST to be paid shall be IGST under RCM.

### **11) Circular No. 121/40/2019 – GST, Dated 11th October, 2019**

GST on license fee charged by the States for grant of Liquor licences to vendors

To implement GST Council's recommendation, Central Government decided to exempt service provided or agreed to be provided by way of grant of liquor licence by the State Government, against consideration in the form of licence fee or application fee, by whatever name called, during the period from 01.04.2016 to 30.06.2017. Clause No. 117 of Finance (No. 2) Act, 2019 may be referred in this regard.

*-Compiled by Kajal Jagiasi*

**RBI****1. RBI/2019-20/64****DBS.CO.ARS.No.BC.01/08.91.021/2019-20****Concurrent Audit System**

This circular deals with the Concurrent Audit System in Commercial Banks – Revision of RBI's Guidelines .

The expert Committee headed by **Shri Y H Malegam** have recently made certain recommendations in the areas of Concurrent Audit .

**A. Coverage**

- Scope of work entrusted to Concurrent Auditors
- Coverage of business/ branches to be determined with the prior approval of Audit Committee of BOD or Local Management Committee in case of foreign banks.
- Areas of coverage based on the Identified Risk of the unit and random transaction testing of sufficiently large sample of such transactions wherever required.
- To ensure that all Centralized Processing Centres (business origination and monitoring) are covered under concurrent audit

**B. Appointment of Auditors**

- Option to recruit own Staff or External Auditors left at the discretion of the Bank.
- Head of the Internal Audit responsible for selection of Concurrent Auditors , if outsourced and responsible for QUALITY REVIEW of the work ( including the Staff Employees ) .
- Note- If any partner of a Chartered Accountant firm is a Director on the Board of a bank, no partner of the same firm should be appointed as concurrent auditor in the same bank.
- If own officials are employed , then to ensure that are experienced , well trained and sufficiently senior . Ensuring **Independence** from the branch/ business unit .

**C. Accountability**

- If External Firms are appointed – any acts of omission or commission- Appointment may be cancelled after giving them the

opportunity of being heard – Fact shall be reported to Audit Committee of the Board of Directors (ACB)/Local Management Committee ((LMC) of the Bank , RBI & ICAI.

- If Staff employees / Retired Staff are appointed – Framing an appropriate policy for fixing Accountability.

#### **D. Tenure**

- Tenure of the External Concurrent Auditors to be determined by the ACB/LMC . Generally the term doesn't exceed 5 years. However, no concurrent auditor shall be allowed to continue with a branch/business unit for a period of more than three years.

#### **E. Remuneration**

- Remuneration of the Concurrent Auditors to be fixed by the ACB/LMC .

#### **F. Review of effectiveness of Concurrent Audit**

- ACB/ LMC of the bank should review the effectiveness of the Concurrent Audit system as well as the performance of the concurrent auditors on an annual basis and take necessary measures to suitably strengthen the system.

#### **G. Reporting System**

- Reporting System to be determined by **Internal Audit Department with the approval of ACB/LMC.**
- Minor Irregularities to be resolved on the spot .
- Major deficiencies / aberrations to be brought to the notice of Head Office / Controlling Office .
- QUARTERLY REVIEW to be placed before the ACB/LMC. Zone wise findings may be reported to ACB/LMC on quarterly basis.
- If any fraudulent transactions – Reporting to be done to the Internal Audit Department ( Head Office ) , Chief Vigilance Officer as well as Branch Managers ( if not involved in fraud ).
- Follow-up action on the concurrent audit reports and rectification of the deficiencies should be accorded high priority.

*-Compiled by Pritha Chandra*



**RULES:**

**1. Companies (Meetings of Board & its Powers) Amendment Rules, 2019**

In exercise of the powers conferred by sections 173, 177, 178 and section 186 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Meetings of Board and its Powers) Rules, 2014, namely:-

(1) These rules may be called the Companies (Meetings of Board and its Powers) Amendment Rules, 2019.

(2) They shall come into force on the date of their publication in the Official Gazette.

(3) In the Companies (Meetings of Board and its Powers) Rules, 2014, in rule 11, in sub-rule (2), for the words "business of financing of companies", the words "business of financing industrial enterprises" shall be substituted.

**2. Companies Incorporation 8th Amendment Rules, 2019**

In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Incorporation) Rules, 2014, namely: -

In the Companies (Incorporation) Rules, 2014 (herein after referred to as the said rules),

I. in rule 8A, in sub-rule(1), in clause (b), the words and figure “or applicant for registration,”, shall be omitted.

II. in rule 25A,-

In sub-rule (1), in the fourth proviso, for the item (iii), the following shall be substituted, namely.

“(iii) DIR-12 (changes in Director except in case of:

(a) cessation of any director or

(b) appointment of directors in such company where the total number of directors are less than the minimum number provided in clause (a) of sub-section (1) of section 149 on account of disqualification of all or any of the director under section 164.

(c) appointment of any director in such company where DINs of all or any its director(s) have been deactivated. (d) appointment of director(s) for implementation of the order passed by the Court or Tribunal or Appellate Tribunal under the provisions of this Act or under the Insolvency and Bankruptcy Code, 2016)."

III. In the said rule 28, after sub-rule (1), the following rules shall be inserted, namely:-

"(2) The Regional Director shall examine the application referred to in sub-rule (1) and the application may be put up for orders without hearing and the order either approving or rejecting the application shall be passed within fifteen days of the receipt of application complete in all respects.

(3) The certified copy of order of the Regional Director, approving the alternation of memorandum for transfer of registered office company within the same State, shall be filed in Form No.INC-28 along with fee with the Registrar of State within thirty days from the date of receipt of certified copy of the order."

### **3. Companies (Appointment & Qualification of Directors) 5th Amendment Rules, 2019**

In exercise of the powers conferred by section 149 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Appointment and Qualification of Directors) Rules, 2014, namely:-

(1) These rules may be called the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019.

(2) They shall come into force with effect from the 01/12/2019.

(3) Compliances required by a person eligible and willing to be appointed as an independent director.—

- Every Individual-

Who has been appointed as an independent director in a company, on the date of commencement of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019, shall within a period of 3 months from such commencement; or who intends to get appointed as an independent director in a company after such commencement, shall before such appointment,

- Procedure-

Apply online to the institute for inclusion of his name in the data bank for a period of 1 year or 5 years or for his life-time, and from time to time take steps as specified in sub-rule (2), till he continues to hold the office of an independent director in any company:

Provided that any individual, including an individual not having DIN, may voluntarily apply to the institute for inclusion of his name in the data bank.

- Every individual-

whose name has been so included in the data bank shall file an application for renewal for a further period of 1 year or 5 years or for his life-time, within a period of 30 days from the date of expiry of the period upto which the name of the individual was applied for inclusion in the data bank, failing which, the name of such individual shall stand removed from the data bank of the institute:

Provided that no application for renewal shall be filed by an individual who has paid life-time fees for inclusion of his name in the data bank

- Every independent director-

shall submit a declaration of compliance of sub-rule (1) and sub-rule (2) to the Board, each time he submits the declaration required under sub-section (7) of section 149 of the Act.

- Every individual-

whose name is so included in the data bank under sub-rule (1) shall pass an online proficiency self-assessment test conducted by the institute within a period of 1 year from the date of inclusion of his name in the data bank, failing which, his name shall stand removed from the databank of

the institute: Provided that the individual who has served for a period of not less than ten years as on the date of inclusion of his name in the databank as director or key managerial personnel in a listed public company or in an unlisted public company having a paid-up share capital of rupees ten crore or more shall not be required to pass the online proficiency self-assessment test: Provided further that for the purpose of calculation of the period of 10 years referred to in the first proviso, any period during which an individual was acting as a director or as a key managerial personnel in 2 or more companies at the same time shall be counted only once.

➤ **Explanation:** For the purposes of this rule,-

(a) the expression “institute” means the ‘Indian Institute of Corporate Affairs at Manesar’ notified under sub-section (1) of section 150 of the Companies Act, 2013 as the institute for the creation and maintenance of data bank of Independent Directors;

(b) an individual who has obtained a score of not less than 60% in aggregate in the online proficiency self-assessment test shall be deemed to have passed such test;

(c) there shall be no limit on the number of attempts an individual may take for passing the online proficiency self-assessment test.”

#### **4. Companies (Creation & Maintenance of Databank Of Independent Directors) Rules, 2019**

**In exercise of the powers conferred by section 150 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules, namely:—**

- (1) These rules may be called the Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019.
- (2) The provisions of these rules, other than rule 2 and 5, shall come into force with effect from the 1/12/2019.
- (3) The provisions of rule 2 and 5 shall come into force on the date of publication of this notification in the Official Gazette.
- (4) Creation and maintenance of data bank.—

- The institute shall create and maintain a databank of persons willing and eligible to be appointed as independent directors, and such databank shall be an online databank which shall be placed on the website of the institute.
- The data bank referred to in sub-rule (1) shall contain the following details in respect of each person included in the data bank to be eligible and willing to be appointed as independent director –
  - (a) DIN (Director Identification Number), if applicable;
  - (b) Income Tax PAN;
  - (c) the name and surname in full;
  - (d) the father's name;
  - (e) the date of Birth;
  - (f) gender;
  - (g) the nationality;
  - (h) the occupation;
  - (i) full Address with PIN Code (present and permanent);
  - (j) phone number;
  - (k) e-mail id;
  - (l) the educational and professional qualifications;
  - (m) experience or expertise, if any;
  - (n) any pending criminal proceedings as specified in clause (d) of sub-section (1) of section 164;
  - (o) the list of limited liability partnerships in which he is or was a designated partner along with – (i) the name of the limited liability partnership; (ii) the nature of industry; and (iii) the duration- with dates;
  - (p) the list of companies in which he is or was director along with – (i) the name of the company; (ii) the nature of industry; (iii) the nature of directorship – Executive or Non-executive or Managing Director or Independent Director or Nominee Director; and (iv) duration – with dates.

- The information available in the data bank shall be provided only to companies required to appoint independent director after paying a reasonable fees to the institute.
- A person whose name is included in the data bank, may restrict his personal information to the institute, to be disclosed in the data bank.
- Any individual whose name appears in the data bank, shall make changes in his particulars within 30 days of such change through web based framework made available by the institute for this purpose.
- A disclaimer shall be conspicuously displayed on the website hosting the data bank that a company must carry out its own due diligence before appointment of any person as an independent director.
- The institute, shall with the prior approval of the Central Government, fix a reasonable fee to be charged from : – individuals for inclusion of their names in the data bank of independent directors; and companies for providing the information on independent directors available on the data bank.

Explanation:- For the purpose of this rule, the expression “persons willing and eligible to be appointed as independent director” shall include individual already serving as independent directors on the Board of companies.

(5) Duties of the institute-

The institute shall comply with the following:

Conduct an online proficiency self-assessment test covering companies law, securities law, basic accountancy, and such other areas relevant to the functioning of an individual acting as an independent director; prepare a basic study material, online lessons, including audio-visuals for easy reference of individuals taking the online proficiency self-assessment test; provide an option for individuals to take advanced tests in the areas specified in clause (a) and prepare the necessary advanced study material in this respect: Provided that no separate fees shall be charged by the institute in respect of clauses (a), (b) and (c).

- (6) The institute shall daily, share with the Central Government, a cumulative list of all individuals –
- whose names have been included in the data bank along with the date of inclusion and their Income Tax PAN or Passport number in case of foreign director (not required to have Income-Tax PAN);
  - whose applications for inclusion in the data bank have been rejected along with grounds and the dates of such rejection; and
  - whose names have been removed from the data bank along with grounds and the dates of such removal.

**5. Companies (Accounts)Amendment Rules, 2019**

**In exercise of the powers conferred by section 134 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Accounts) Rules, 2014, namely:—**

- (1) These rules may be called the Companies (Accounts) Amendment Rules, 2019.
- (2) They shall come into force with effect from the 1/12/2019.
- (3) A statement regarding opinion of the Board with regard to integrity, expertise and experience (including the proficiency) of the independent directors appointed during the year.

**Explanation.** – For the purposes of this clause, the expression “proficiency” means the proficiency of the independent director as ascertained from the online proficiency self-assessment test conducted by the institute notified under sub-section (1) of section 150.

*-Compiled By Rasika Nalawade.*



# HUNAR HAAT







*-Sagar Mohite*

Allow us to tell you more!



**R.C. JAIN & ASSOCIATES LLP**  
**Chartered Accountants**  
**Website: [www.rcjainca.com](http://www.rcjainca.com)**

**Head Office:**

**Mumbai -**

622-624, The Corporate Centre,  
Nirmal Lifestyles, L.B.S. Marg,  
Mulund (W),  
Mumbai – 400080.  
Email: [info@rcjainca.com](mailto:info@rcjainca.com)  
Phone: **25628290/91, 67700107**

**Branch Offices:**

**Bhopal -**

302, Plot No. 75 B, First Floor,  
Above Apurvi Supermarket,  
Near Chetak Bridge,  
Kasturba Nagar, Bhopal.  
Madhya Pradesh– 462 001  
Email: [hmjainca@rediffmail.com](mailto:hmjainca@rediffmail.com)  
Phone: **0755-2600646**

**Aurangabad -**

Su-Shobha, Plot No.7,  
Mitranagar, Behind Akashwani,  
Near Maratha Darbar Hotel,  
Aurangabad - 431001.  
Email: [sskasliwal@gmail.com](mailto:sskasliwal@gmail.com)  
Phone: **0240-2357556**

