

Corporate Update

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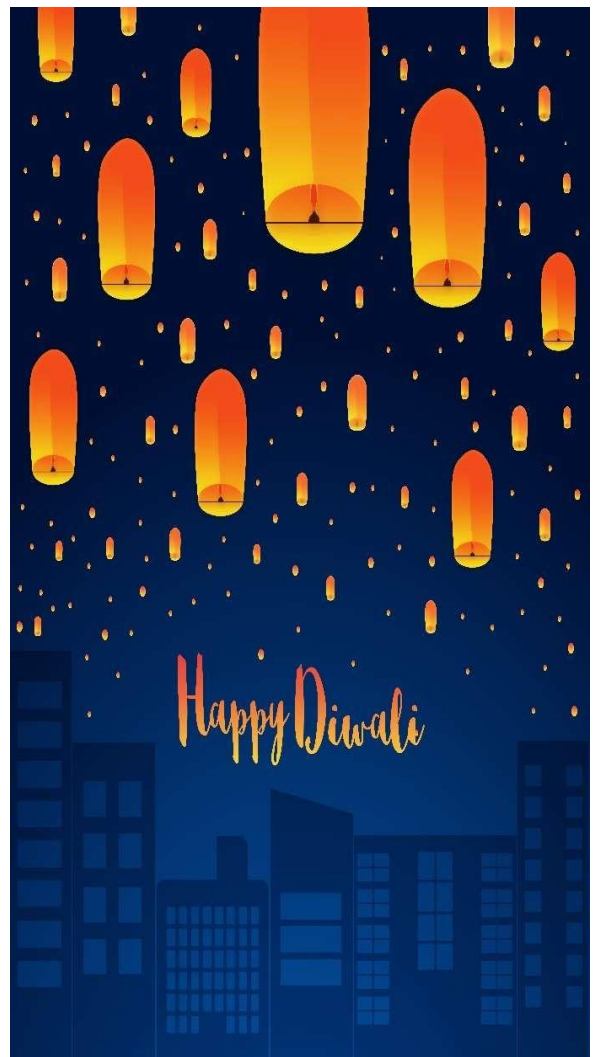
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September | 2019

FOREWORD



Dear Reader,

The past month has witnessed some key developments in the arena of direct tax in India, which could be regarded as game changers.

Firstly, the Government has slashed the corporate tax rate applicable for specified domestic companies. The move comes at a time when the country is grappling with economic slowdown and therefore, required a boost in the industrial sector. Domestic companies which were hitherto taxed at 30% (25% in case of specified manufacturing companies), may now avail an option to be taxed at 22%, subject to satisfaction of certain conditions. Moreover, new domestic manufacturing companies (setup and registered after October 1, 2019) may avail an option to be taxed at a reduced tax rate of 15%, subject to prescribed conditions. Also, companies which opt to be governed by such special schemes will also be exempted from the provisions of Minimum Alternate Tax (as per which, companies are taxed on their book profit).

Another key development is the introduction of a scheme of faceless tax assessment under which tax scrutiny cases shall be conducted by the tax authorities electronically, without any need of a personal interaction with Income tax authorities. For this purpose, various assessment units will be created which shall coordinate with each other electronically for the smooth functioning of the assessment proceedings. However, only the centralized National Assessment Unit shall act as the interface between the tax assessee and the tax authorities. This scheme has already been implemented for tax cases relating to financial year 2017-18. Moreover, as per certain press reports, the Government has already issued more than 58,000 notices under this e-assessment scheme for the tax year 2017-18. All taxpayers will be required to realign their preparation for tax assessments as per the new procedure. A detailed note on this Scheme shall be circulated shortly.

On the GST front, the GST Council has now relaxed the requirement of filing Annual Return (GSTR 9) for Financial Years 2017-18 and 2018-19 for normal registered taxpayers, whose turnover is up to INR Twenty Million. The Council has also reduced the applicable GST rates on hotel accommodation services, based on the daily transactional value.

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Domestic Taxation

New depreciation rates on vehicles purchased between August 23, 2019 and March 31, 2020

Notification No. 69/2019

In order to boost the Automotive Sector which has been most affected by the economic slowdown, Central Board of Direct Taxes ('CBDT') has enhanced the depreciation claim on vehicles purchased between August 23, 2019 and March 31, 2020 and put to use before March 31, 2020.

The depreciation rates applicable for motor cars (other than those used in a business of running them on hire) has been enhanced from 15% to 30%. Similarly, for commercial vehicles such as motor buses, motor lorries and motor taxis (used in a business of running them on hire), the depreciation rate has been increased from 30% to 45%.



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Notice and assessment order framed in name of amalgamating company is a nullity

PCIT v Maruti Suzuki India Ltd. [2019] 107 taxmann.com 375 (SC)

In a recent decision, the Supreme Court has held that the assessment made in the name of amalgamating company is a nullity since the entity had been amalgamated under an approved scheme of amalgamation and was not in existence.

The amalgamating entity, Suzuki Power Train

India Ltd. ("SPIL") was amalgamated into Maruti Suzuki India Ltd. ("MSIL"). SPIL filed its return of income on November 28, 2012 before amalgamation for AY 2012-13. A scheme for amalgamation of SPIL and MSIL was approved by the High Court on January 29, 2013 w.e.f. April 01, 2012. MSIL intimated the same to the Assessing Officer on February 04, 2013.

The Assessing Officer issued a notice for assessment under section 143(2) and 143(1) to the amalgamating company viz SIPL on September 26, 2013. MSIL participated in assessment proceedings of the amalgamating entity through its authorized representatives and officers at various stages:

- a) The case was referred to TPO, who proposed an upward adjustment to the income.
- b) Draft assessment order was passed in the name of "Suzuki Powertrain India Ltd. (amalgamated with Maruti Suzuki India Ltd)" proposing the aforesaid adjustment.
- c) MSIL filed appeal before DRP as successor in interest of the erstwhile SPIL, since amalgamated. No ground for objecting that the draft assessment order was passed in the name of SPIL was taken.
- d) DRP issued its order in the name of "MSIL (as successor in interest of erstwhile SPIL since amalgamated)".
- e) Final assessment order was passed in the name of "SPIL (amalgamated with MSIL)" making an addition of INR 78.97 crore.

The Assessee filed an appeal before the Tribunal raising an objection that the assessment proceedings were continued in the name of the non-existent or merged entity (SPIL) and hence the final assessment order would be invalid. The Tribunal set aside the final assessment order stating that it was void ab initio as the same is passed in the name of a non-existent entity. The decision of Tribunal was further affirmed by the High Court in an appeal under section 260A.

The Department raised the objections before the Supreme Court that High Court was not justified in quashing the assessment order as the names of both the amalgamated and amalgamating company were mentioned in the assessment order and if the assessment order was framed incorrectly then the same is curable under section 292B of the Income-Tax Act. Since, during the assessment and subsequent proceedings in appeal, the amalgamating company was duly represented by the amalgamated company and as such no prejudice was caused to any of the parties by the assessment order. The department also contended that in case of **Spice Entertainment Ltd. Ltd. v CST [2012] 280 ELT 43 (Del)** relied by the Assessee, the final assessment order was passed in the name of amalgamating company which is not the present case as in this case both the names of amalgamating and the amalgamated company were mentioned. The department also relied on the decision of **Skylight Hospitality LLP v ACIT [2018] 405 ITR 296 (Delhi)** wherein the AO issued notice under section 148 on a non-existent private limited company. In that case, the court held that the defect in recording the name of a non-existent company is a procedural defect or a mistake curable under section 292B of the Income-Tax Act.

The Assessee relied on various legal and judicial pronouncements wherein it was held that a notice to the amalgamating company, subsequent to the amalgamation becoming effective and despite the fact of the amalgamation having been brought to the notice of the assessing officer, is void ab initio.

The Supreme Court held that the basis on which jurisdiction was invoked by the Assessing Officer was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approval of the scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law.

As regards reliance placed by the revenue on the decision of Delhi High Court in Skylight Hospitality, which was affirmed by SC, the SC observed that in such case the wrong name stated in the notice issued by the Assessing Officer under section 147/148 was merely a clerical error, capable of being corrected under section 292B. Such decision is distinguishable on the present facts, and is not in conflict with another decision of SC in the case of Spice Infotainment (Civil Appeal No. 285 of 2014), wherein the proposition that once the assessment is framed in the name of non-existing entity, it does not remain a procedural irregularity curable under section 292B, was approved.

The SC relying on its earlier decision in the case of Spice Infotainment, which was also followed in Assessee's own case for earlier Assessment Year 2011-12, held that same view ought to be consistently followed, the absence of which only results in uncertainty and displacement of settled expectations. As such, the appeal of the revenue was accordingly dismissed.



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CBDT Circulars on Prosecution Matters

Circular No. 24/2019 and 25/2019

The CBDT has recently issued two circulars on prosecution matters.

In terms of the first circular, the CBDT has laid down the criteria for launching prosecution in respect of the following categories of offences in order to ensure that only deserving cases get prosecuted:

- Offence under section 276B/ 276BB of the Income-tax Act: Failure to pay TDS/ TCS - Cases where non-payment of TDS/ TCS is upto INR 25 Lakhs and the delay in deposit is less than 60 days from due date, shall not be processed for prosecution in normal circumstances. In case of exceptional cases like, habitual defaulters, based on particular facts and circumstances of each case, prosecution may be initiated only with prior administrative approval of the Collegium of two CCIT/DGIT rank officers.
- Offences under section 276C (1) of the Income-Tax Act: Willful attempt to evade taxes, etc. – Cases where the amount sought to be evaded or tax on under reported income is upto INR 25 Lakhs, shall not be processed for prosecution except with the prior administrative approval of the Collegium of two CCIT/DGIT rank officers. Further, prosecution under this section shall be launched only after the confirmation of order imposing penalty by the Tribunal.
- Offences under section 276CC of the Income-Tax Act: Failure to furnish return of income – Cases where the amount of tax, which would have been evaded, if the failure had not been discovered is upto INR 25 Lakhs, shall not be processed for prosecution except with the prior administrative approval of the Collegium of two CCIT/DGIT rank officers.

Collegium of two CCIT/DGIT rank officers shall include one officer being the CCIT/DGIT in whose jurisdiction the case lies. The circular shall come into effect immediately and shall apply to all pending cases where the complaint is yet to be filed.

Under the second circular, the CBDT has aimed to mitigate the unintended hardship to taxpayers in deserving cases and to reduce pendency of existing prosecution cases

before the courts. It has relaxed the existing condition of the compounding application within 12 months under the following situations:

- Such application shall be filed before the Competent Authority i.e. the Pr. CCIT/CCIT/Pr. DGIT/DGIT concerned, on or before December 31, 2019;
- Relaxation shall not be available in respect of an offence which is generally/normally not compoundable, in view of Para 8.1 of the Guidelines dated June 14, 2019

Application filed before the Competent Authority on or before December 31, 2019 shall be deemed to be filed in time in terms of Para 7(ii) of the Guidelines dated June 14, 2019.

Accordingly, a taxpayer can now file compounding application in the following cases:

- Where prosecution proceedings are pending before any court of law for more than 12 months; or
- Where any compounding application for an offence filed previously was withdrawn solely for the reason that such application was filed beyond 12 months; or
- Where any compounding application for an offence had been rejected previously solely for technical reasons.



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Transfer Pricing

Most appropriate Method applied consistently over years cannot be rejected unless material change in facts or law

PCIT v. Vishay Components India Pvt. Ltd.
 [2019] 103 taxmann.com 421 (Bom)

In a recent judgement, the Hon'ble High Court of Bombay upheld the order of Tribunal that Most Appropriate Method (MAM) consistently applied and accepted over the years cannot be rejected unless the tax department proves there is a material change in the facts or law.

On the facts of the case, the Assessee is engaged in the manufacturing of resistors and capacitors. In its Transfer Pricing study, the Assessee aggregated all its International Transactions and adopted Transactional Net Margin Method (TNMM) as MAM. However, the Transfer Pricing Officer did not agree with aggregation of all transactions with its AE and applied Resale Price Method (RPM) and Cost Plus Method (CPM) for bench marking international transaction of import of finished goods for resale and export of finished goods, respectively. Accordingly, transfer pricing adjustment was made by Transfer Pricing Officer.

On appeal, CIT(A) upheld the order of Transfer Pricing Officer. Aggrieved, the Assessee filed appeal before Tribunal, which observed that the tax department has consistently applied TNMM (on aggregate basis) as MAM in the preceding as well as subsequent year. The Tribunal held that, even though the doctrine of res judicata is not applicable to the tax proceedings, but at the same time, where there is no change in the facts in respect of a particular transaction and/or issue or proceedings, then it is the requirement of law that consistency should be maintained and the methodology adopted by the assessee for benchmarking its international transactions should not be disturbed.

Before High Court, the tax department submitted that the Assessee had to establish that the facts in the present case were identical/ similar to the facts for the other Assessment Years. However, the High Court held that since the tax department has been accepting TNMM as MAM over the years, it is for the tax department to show the difference in facts warranting a different view in the assessment year in question to that taken in the preceding and subsequent assessment years.

In view of the same, appeal of the tax department was dismissed.

Transfer pricing tolerance range for Assessment Year 2019-20 notified

Notification No. 64/2019

In terms of second proviso to section 92C(2) of the Income-Tax Act, if the variation between the Arm's Length Price and the price at which the international / specified domestic transaction has been undertaken falls within the tolerance range (i.e. the variation does not exceed percentage notified by CBDT), the transaction is deemed to be at Arm's Length Price.

In view of the aforesaid provisions of the Income-Tax Act, the CBDT has notified variance limit of 1% for wholesale trading and 3% for all other transactions for AY 2019-20. The same variance limit was applicable for the earlier year AYs', i.e. 2013-14 to 2018-19 as well. The aforesaid notification also lays down the conditions for a transaction to qualify as wholesale trading.



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Goods and Services Tax

Relaxation in Annual Return and Audit Report (GSTR 9 and 9C)

The GST Council has announced the following changes in the provisions of GST Law:

PARTICULARS	Post GST Council Meeting
<i>GSTR 9A (Composition Taxpayer)</i>	No requirement to file for FY 2017-18 and FY 2018-19.
<i>GSTR 9 (Normal Registered Taxpayer)</i>	<p>For normal registered taxpayer whose turnover is up to INR 2 Crores, GSTR 9 is optional for FY 2017-18 & FY 2018-19.</p> <p>However, the same is mandatory for taxpayers whose turnover is above INR 2 Crores.</p> <p>Furthermore, such form would be simplified in due course.</p>
<i>GSTR 9C (Audit Report)</i>	<p>Mandatory for all taxpayers having turnover above INR 2 Crores.</p> <p>A committee of Officers would be constituted to simplify form.</p>

Deferment of New Returns

- New return system (GST RET-01, ANX-1 and ANX 2) has been deferred and would be applicable from April, 2020. Therefore, GSTR 1 and GSTR 3B would Continue to be filed for the period October, 2019 to March, 2020.

Input Tax Credit

- Availment of input tax credit by recipient would be subject to proper furnishing of outward supply details by the supplier in its GST returns. In other words, recipient of goods and services would have to keep track of GSTR 2A of Supplier.

Reduction in GST Rates

PARTICULARS	OLD	NEW
Dried Tamarind	5%	NIL
Cut and polished semi-precious stones	3%	0.25%
Supply of machine job work (except job work related to bus body building)	18%	12%

Exemption from GST/IGST

- Imports of specified Defense goods not being manufactured indigenously (up-to 2024)
- Supply of Goods and services to Food and Agriculture Organization (FAO) for specified projects in India.
- Exempt prospectively services by way of storage or warehousing of cereals, pulses. fruits, nuts, raw vegetable fibers such as cotton, flax, jute, etc.
- Services provided by an intermediary to a supplier or recipient of goods only when both the supplier and recipient are located outside the taxable territory

Increase in GST tax rates

PARTICULARS	OLD	NEW
Goods falling under chapter 86 of tariff like railway wagons, coaches, rolling stock (without refund of accumulated ITC)	5%	12%
Caffeinated Beverages	18%	28% + 12% compensation cess

Reverse Charge Mechanism (RCM) Inclusion of Service in the ambit of RCM

- Renting of Vehicles by a **registered person (not being a company)** to body corporate entities has come under the purview of RCM at 5%. Please note that LLP would not be considered as body corporate for this purpose.
- IGST to be discharged on Securities lending service under RCM at the rate of 18%. Further, on period prior to applicability of RCM, liability to discharged on forward charge basis and if any CGST/SGST/UTGST has been paid instead of IGST, then no further tax is to be paid.

Sector Wise Changes

- **Solar Power Sector**- It has been clarified that parts like solar evacuation tubes for solar power-based devices like solar water heater, solar steam, generation systems would be taxable to GST at 5%.
- **Vehicles**: Compensation cess has been reduced on Passenger Vehicles designed to carry persons between 10 to 13 persons.
- **Hotel and Tourism**: Reduction in rate of GST on Hotel Accommodation services as under:

Transaction Value per unit INR per day	GST
INR 1000 and less	Nil
INR 1001 to INR.7500	12%
INR 7501 and more	18%

Other Changes

- **Post Sales Discount**: Circular No.105,24/2019-GST dated June 28, 2019 regarding post sales discount has been rescinded.
- As the Appellate Tribunals are yet not functional, the last date of filing appeals before GST Appellate Tribunal extended.
- To make amendments in CGST Act, UTGST Act and corresponding SGST Act for the new Union Territories of Jammu & Kashmir and Ladakh.
- A clarification would be made on supply of Information Technology enabled Services (ITeS) being made on own account or as intermediary, in supersession of Circular No.107/26/2019 - GST dated July 18, 2019.
- Aerated drink manufactures excluded from composition scheme.
- Reduction in rate of GST on outdoor catering to 5% without ITC (other than in premises having daily tariff of unit of accommodation of INR 7,501/-).

Government of India has issued notifications vide which tax rate changes on various goods & services have been notified with effect from **October 1, 2019**.



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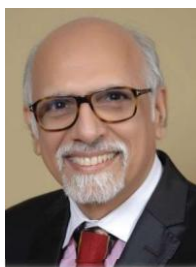
Important dates to remember

Particulars	Date
Filing of TDS Return for quarter ended September 2019	31.10.2019
Deposit of TDS for the month of October 2019	07.11.2019
Filing of GSTR I for the month of October 2019	11.11.2019
Filing of GSTR 3B for the month of October 2019	20.11.2019

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