# Tax Quest

*An e-newsletter from*

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## CONTENTS

# INCOME TAX

## 1. Notifications

1.1 CBDT announced cost inflation index for the year 2020-21 at 301" with effect from 01.04.2021. This shall apply for the assessment year 2021-22 and the subsequent years.

1.2 CBDT released synthesized texts for MLI modified India's DTAAs with Canada, Belgium and Slovenia.

1.3 CBDT vide Notification No. 30 of 2020 dated 27.06.2020 amended Rule 2BB, which prescribes allowances under Section 10(14) of the Income Tax Act, 1961 thereby allowing claim of exemption under Section 10(14) for Assessees filing returns under 115BAC in respect of salaried employees with effect from 01.04.2021 for Assessment Year 2021-22. However, the exemption is only in respect of Tour/ Transfer allowance; daily travel allowance; conveyance allowance; transport allowance for handicapped subject to the conditions. A proviso has also been inserted stating that the exemption provided in the first proviso w.r.t. free food and non-alcoholic beverage shall not apply for assessee-employee who has exercised option under 115BAC (5).

## 2. Amendment to the Taxation and Other Laws (Relaxation Of Certain Provisions) Ordinance, 2020

| Section | Last Date Extension |
|---|---|
| Revised Returns for FY 2018-19 | 31.07.2020 |
| Income Tax Return for FY 2019-20 | 30.11.2020 |
| Tax Audit Report | 31.10.2020 |
| Self- Assessment | 30.11.2020 |
| Investment/Payment for deduction under Chapter – VIA- B of the IT Act for FY 2019-2020 | 31.07.2020 |
| Investment/ Construction/ Purchase for benefit/ deduction w.r.t. capital gains u/s. 54 to 54GB of IT Act | 30.09.2020 |
| Commencement of Operation for the SEZ Units for claiming deduction u/s. 10AA for units having received approval as on 31.03.2020 | 30.09.2020 |
| Furnishing TDS/ TCS statements for FY 2019-2020 | 31.07.2020 |
| Issuance of TDS/ TCS Certificates for FY 2019-2020 | 15.08.2020 |

| | |
|---|---|
| Linking Aadhar and PAN | 31.03.2021 |
| Reduced Rate of 9% for delayed payments of taxes, levies, etc. not applicable after | 30.06.2020 |
| Vivaad Se Vishwas | 31.12.2020 |
| New procedure for approval/ registration/ notification of certain entities u/s 10(23C), 12AA, 35 and 80G | 01.10.2020 |

## 3. Case Laws

### 3.1 Supreme Court

Reassessment – Failure to show non-disclosure of facts by Revenue

The Supreme Court in the case of ***New Delhi Television Ltd. Vs. DCIT (TS-197-SC-2020)*** held that the notice issued to the assessee shows sufficient reasons to believe on the part of the assessing officer to reopen the assessment but since the revenue has failed to show non-disclosure of facts the notice having been issued after a period of 4 years is required to be quashed. The Court however, held that the revenue may issue fresh notice taking benefit of the second proviso of Section 147 if otherwise permissible under law.

Constitutional Validity of Leave Encashment under Section 43B

The Supreme Court in the case of ***Union of India Vs. Exide Industries Ltd. & Anr. [TS-212-SC-2020]*** upheld the constitutional validity of leave encashment under Section 43B of the Income Tax Act, 1961. The Court held that the leave encashment scheme envisages the payment of a certain amount to the employees in lieu of their unused paid leaves in a year. The nature of this payment is beneficial and pro- employee. However, it is not in the form of a bounty and forms a part of the conditions of service of the employee. An employer seeking deduction from tax liability in advance, in the name of discharging the liability of leave encashment, without actually extending such payment to the employee as and when the time for payment arises may lead to abhorrent consequences. When time for such payment arises upon retirement (or otherwise) of the employee, an employer may simply refuse to pay. Consequently, the innocent employee will be entangled in litigation in the evening of his/her life for claiming a hard- earned right without any fault on his part. Concomitantly, it would entail in double benefit to the employer – advance deduction from tax liability without any burden of actual payment and refusal to pay as and when occasion arises. It is this mischief clause (f) seeks to subjugate. The Court held that under Section 43B, clause (f) was enacted to remedy a particular mischief and the concerns of public good, employees' welfare and prevention of fraud upon revenue.

3.2 High Court

ATM Machines are Computers for Depreciation

The Karnataka High Court in the case of ***NCR Corporation Pvt. Ltd. [TS-287-HC-2020]*** has upheld the view of the ITAT and held that ATMs constitute computers for the purpose of depreciation and is eligible for 60% depreciation. The Court held that so long as the functions of the computers are performed with other functions and other functions are dependent on the functions of the computer, ATMs are to be treated as computers and are entitled to higher rate of depreciation.

Accommodation Entries and Addition under Section 68

The Bombay High Court in the case of ***Principal Commissioner of Income Tax Vs. Alag Securities Pvt. Ltd. [TS-278-HC-2020]*** has deleted the addition under Section 68 of the Income Tax Act, 1961. The Court held that in this case, Section 68 would not be attracted as the consistent stand of the assessee that the business of the assessee entered around customers/ beneficiaries making deposits in cash amounts and in lieu thereof taking cheques from the assessee for amounts slightly lesser than the quantum of deposits, the difference representing the commission realised by the assessee. The cash amounts deposited by the customers i.e., the beneficiaries had been accounted for in the assessment orders of these beneficiaries. Therefore, question of adding such credits to the income of the assessee, more so when he assessee was only concerned with the commission earned on providing accommodation entries does not arise. The Court also distinguished the judgment from the Supreme Court's judgment in the case of ***NRA Iron and Steel Pvt. Ltd. (2019) 418 ITR 449*** and held that in the ***NRA Iron and Steel Pvt. Ltd.***, the cash credit claimed by assessee was in the nature of income but the investor companies were non-existent. But in the present case, the assessee never claimed it as an income. The business was to provide accommodation entries. In return for the cash credits it used to issue cheques to the customers / beneficiaries for slightly lesser amounts, the balance being its commission. Moreover, the cash credits had been accounted for in the respective assessment of the beneficiaries. Therefore, the decision in ***NRA Iron and Steel Pvt. Ltd. (supra)*** is clearly distinguishable and not attracted to the facts of the present case.

3.3 ITAT

Quoting of PAN Number

The Kolkata Tribunal in the case of ***Shri. Bijan Kalita Vs. DCIT [TS-294-ITAT-2020(Kol)]*** has held that PAN number is mandatory as per Rule 115B of the Income Tax Rules, vide entry No. 18, which came into force with effect from 01.01.2016. In the case of the assessee, the assessment year is 2014-15 therefore, Rule 115B does not apply to the assessee and as a result, it is not mandatory for the assessee to furnish the PAN

number before the assessing officer. The Tribunal has thus, indicated that the amendment is prospective in nature.

Diversion of funds towards Equity Infusion - Not a Business Purpose

The Delhi Tribunal in the case of ***Abhinav International Pvt. Ltd. Vs. DCIT [TS-265-ITAT-2020(DEL)]*** has held that since the entire fund was diverted for equity infusion, the AO held that the funds borrowed were not utilised for business purposes. Hence, interest expenditure and other associate expenditure were not incurred wholly and exclusively for business purposes. The reliance of the decision of the Hon'ble Supreme Court in case of ***Hero Cycles (P) Ltd. vs. CIT (2015) 379 ITR 347 (SC)*** will not be applicable in the present case as advance to subsidiary company became imperative as a business expediency in view of undertaking given to financial institutions by assessee to effect that it would provide additional margin to subsidiary company to meet working capital for meeting any cash losses. But in the present case, funds were specifically borrowed for infusion of equity in the associate concerns which is totally different aspect from the case of Hero Cycles (Supra) and thus, the assessee's plea for interest deduction was dismissed.

## INTERNATIONAL TAX

**1. Case Laws**

1.1 High Court

Payment under non-compete agreement, whether Salary?

The Karnataka High Court in the case of ***Director of Income Tax and Anr. Vs. Sasken Communication Technologies [TS-285-HC-2020]*** has held that definition of the expression 'salary' is inclusive and it includes any fees, commissions, perquisites or profits in lieu of or in addition to any salary or wages. The expression profits in lieu of salary includes any amount lump sum or otherwise by an assessee from any person before his joining any employment from that person or after cessation of his employment with that person. As the Assessees were in fact employees while receiving the amount, the amount paid to the employees under the non-compete agreement is covered by the expression 'salary/ profits in lieu of salary', which is not taxable in India.

1.2 ITAT

Corporate Guarantee Fee neither Interest nor FTS

The Delhi Tribunal in the case of ***Lease Plan India Pvt. Ltd. Vs. DCIT (ITA No. 6461 & 6462/Del/2015)*** decided on the issue of whether corporate guarantee fee paid by the assessee to the non- resident entity is chargeable to tax as Fee for Technical Services under Article 12 of the DTA or under Article 11 of DTAA as 'interest', if at all chargeable to tax in India. The Tribunal held that guarantee fee income is neither FTS nor

interest under DTAA. For an income to be treated as interest, two criteria need to be satisfied - provision of capital and it should be in the form of debt claim. In this case, however, the AE has not provided any capital to the appellant on which income is earned. It is a corporate guarantee, being a surety to the lender bank of the appellant that, if in a case, in future, the appellant fails to pay the due amount owed to those lenders, the Netherland Company will pay to those lenders. There should be a 'debt claim' and 'form' such claim income should arise to qualify as 'interest'. Thus, the word 'debt claim' predicate the existence of debtor – creditor relationship [lender – borrower]. That relationship can arise only when there is a provision of capital. With regard to FTS, the Tribunal held that the nature of 'Service' provided by the Netherlands company in providing guarantee is a financial service and can by no stretch of imagination be called 'Consultancy services'. Even otherwise, it does not cross the threshold of 'make available' in 12 (5) (b) of the DTAA.

Sale of shares or Sale of Immovable Property – India Cyprus DTAA

The Delhi Tribunal in the case of ***DCIT Vs. Narmil Infosolutions Pvt. Ltd. [TS-261-ITAT-2020(DEL)]*** examined the issue of whether the sale of shares by a Cyprus Company to the assessee of an Indian Company who was holding a technology park (immovable property) as only asset, is taxable n India in view of the DTAA between India and Cyprus. The Tribunal held that the Cyprus Company has sold the shares of an Indian company. The impugned asset sold by the assessee does not fall under the article 6 (2) of the Double Taxation Avoidance Agreement as 'immovable property', therefore article 14 (1) does not apply to the transaction. Further, as the Cyprus entity does not have any permanent establishment or fixed base, the provisions of article 14 (2) does not apply. Further it is not the alienation of any ship or aircraft or movable property pertaining to that, therefore article 14 (3) also do not apply. For this reason, the transaction falls under article 14 (4) of the double taxation avoidance agreement as the impugned property from which the capital gain has arose is shares of an Indian company. Therefore, any gain arising from the alienation of property i.e. shares of an Indian company, shall be chargeable to tax only in the contracting state in which the alienator is resident. Here the alienator is a Cyprus resident. Therefore, such gain is chargeable to tax only in Cyprus.

# GST

## 1. Notifications & Circulars

1.1 Notification No. 44 of 2020 dated 08.06.2020 – Filing of Returns through SMS

Rule 67A of the CGST Rules, 2017 was notified by the CBIC appointing 08.06.2020 as the date on which the CGST (Fifth Amendment) Rules, 2020 comes into force. This enables filing NIL GST Returns in FORM GSTR-3B through SMS.

1.2 Notification No. 45 of 2020 dated 09.06.2020 w.e.f. 31.03.2020

CBIC extends date for transition to GST from 31.05.2020 to 31.07.2020 for transition under GST in respect of merger of Union Territories of Daman and Diu & Dadra and Nagar Haveli.

1.3 Notification in relation to Rejection of Refunds

In view of the spread of the pandemic, CBIC issued a notification (Notification No. 46 of 2020 dated 09.06.2020 w.e.f. 20.03.2020) extending the time limit for issuance of the order rejecting refund claim in full or in part and where the time limit for issuance of order in terms of the provisions of sub-section (5), read with sub-section 54 of the said Act falling during the period 20.03.2020 to 29.06.2020 by 15 days after the receipt of reply to the notice from the registered person or 30.06.2020.

The period of issuance of order has been further extended vide Notification No. 56 of 2020 dt. 28.06.2020.

In this Notification, CBIC modified time limit amending Notification No. 35 of 2020 dated 03.04.2020 & Notification 46 of 2020 dated 09.06.2020 for compliance or completion of action by authorities including issuance of order under Section 54 (rejection of refund) falling within 20.03.2020 to 30.08.2020 up to 31.08.2020.

1.4 Notification No. 47 of 2020 dated 09.06.2020 w.e.f. 31.03.2020

CBIC issued a notification extending the time limit of validity period of e-way bill till 30.06.2020 for e-way bills generated under Section 138 of the CGST Rules, 2017 on or before 24.03.2020 and whose validity expired on or before 20.03.2020.

1.5 Notification No. 48 of 2020 dated 19.06.2020

CBIC issues Notification No. 48/2020 dated 19.06.2020 substituting second proviso to 26(1), providing that a registered person registered under the provisions of the Companies Act, 2013 (18 of 2013) during the period from 21.04.2020 to 30.09.2020, also be allowed to furnish the return under Section 39 in **FORM GSTR-3B** verified through electronic verification code (EVC). Another proviso is also inserted stating that a person registered under the provisions of the Companies Act, 2013 (18 of 2013) shall, during the period from eh 27.05.2020 to the 30.09.2020, also be allowed to furnish the details of outward supplies under Section 37 in Form GSTR-1 verified through electronic verification code (EVC).

1.6 Circular No. 139/09/2020 - GST dated 10.06.2020

CBIC issued a Circular dated 10.06.2020 clarifying that Circular 135/05/2020- GST dated 31.03.2020 does not impact the refund of ITC availed on the invoices/ documents

relating to imports, ISD invoices and the inward supplies liable to Reverse Charge (RCM Supplies), etc. The Circular also clarified that the treatment of refund of such ITC relating to imports, ISD invoices and the inward supplies liable to Reverse Charge (RCM supplies) will continue to be same as it was before the issuance of Circular No. 135/05/2020- GST dated 31st March, 2020.

1.7 Circular No. 140/09/2020 - GST dated 10.06.2020

CBIC issued a Circular dated 10.06.2020 clarifying the leviability of GST on remuneration paid by companies to the independent directors or those directors who are not the employer of the said company. The Circular stated that in respect of directors who are not the employees of the company, the services provided by them to the company, in lieu of remuneration as the consideration for the said services, are clearly outside the scope of Schedule III of the CGST Act and are therefore taxable. In terms of entry at Sl. No. 6 of the Table annexed to notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017, the recipient i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis. Thus, remuneration paid to such independent directors, or those directors, by whatever name called, who are not employees of the said company, is taxable in hands of the company, on reverse charge basis.

It was clarified that the part of Director's remuneration which are declared as "Salaries" in the books of a company and subjected to TDS under Section 192 of the IT Act, are not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III of the CGST Act, 2017.

It was also clarified that the part of employee Director's remuneration which is declared separately other than salaries' in the Company's accounts and subjected to TDS under Section 194J of the IT Act as Fees for professional or Technical Services shall be treated as consideration for providing services which are outside the scope of Schedule III of the CGST Act, and is therefore, taxable on a reverse charge basis on the hands of the company.

1.8 Notification No. 49 of 2020 dated 24.06.2020

Gives effect to amendments made to Section 2, 109, 168 & 172 of CGST Act vide Finance Act, 2020 effective from 30.6.2020.

| Section | Amendment | Effect of Amendment |
|---|---|---|
| 2 (114) – Definition of Union Territory | Amendment done to substitute sub clauses (c) and (d) in section 2(114). Substituted entries are | (i) Effect given to merger of Union Territories of Dadra and Nagar Haveli and Daman and Diu.<br>(ii) Ladakh added as Union Territory |

| | | |
|---|---|---|
| | (c) Dadra and Nagar Haveli and Daman and Diu;<br><br>(d) Ladakh | |
| 109 – Constitution of Appellate Tribunal and Benches thereof | The words "except for the State of Jammu and Kashmir" has been omitted.<br><br>First proviso has been omitted. | (i) Section 109 (6) states that the govt shall by notification specify separate benches of the Appellate Tribunal for each state or Union Territory including for Jammu and Kashmir.<br>(ii) Prior to omission, first proviso read as under: "Provided that for the State of Jammu and Kashmir, the State Bench of the Goods and Services Tax Appellate Tribunal constituted under this Act shall be the State Appellate Tribunal constituted under the Jammu and Kashmir Goods and Services Tax Act, 2017 |
| Section 168 – Power to issue instructions or directions | Inserted the words "section (1) of section 143, except the second proviso thereof" by Substituting the words "Sub-section (5) of Section 66, sub-section (1) of section 143" | Section 168 (2) provides that the Commissioner specified in certain sections shall mean a commissioner or Joint Secretary posted in the Board and such persons who shall exercise the powers with the approval of the Board.<br><br>(i) Commissioner referred to in Section 66(5) who can determine the expenses of the examination and audit of records as specified in Section 66 has been removed from the purview of Section 168(2).<br>(ii) Commissioner referred to in second proviso to Section 143 who can extend the time limit of returning inputs or capital goods to the principal has been excluded from the scope of Section 168(2). |

| | | |
|---|---|---|
| Section 172 – Removal of Difficulties | The words 'five years' has been substituted for the words 'three years' in the proviso to Section 172(1). | The time limit to issue removal difficulty orders has been extended to 5 years from the date of commencement of CGST Act. |

1.9 Notification No. 50 of 2020 - CT dated 24.06.2020

Gives effect to CGST (Seventh Amendment) rules, 2020 with effect from 01.04.2020. Rule 7 of CGST rules which provides for rate of tax under which registered person eligible for composition levy under section 10 shall pay tax levy has been amended as follows:

1. Manufacturers, other than manufacturers of such goods as may be notified by the Government who had opted for composition levy under Section 10(1) and 10(2) shall pay 0.5% of the turnover in the state or union territory.
2. Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II opting for composition levy under Section 10(1) and 10(2) shall pay 2.5% of the turnover in the State or Union Territory.
3. Any other supplier eligible for composition levy under Section 10(1) and 10(2) who opted for composition levy under Section 10(1) and 10(2) shall pay 0.5% of the turnover of taxable supplies of goods and services in the State or Union Territory.

Registered persons not eligible under the composition levy under Section 10(1) and 10(2), but eligible to opt to pay tax under Section 10(2A) shall pay three percent of the turnover of taxable supplies of goods and services in the state or union territory. *This has been inserted for incorporating supplier of services as earlier it was through a separate rate notification.*

1.10 Notification No. 51 of 2020 dated 24.06.2020

Provides for reduced rates of interest applicable for filing of GSTR 3B within the specified due dates as detailed below. After the specified dates, normal rate of interest i.e., 18% shall be applicable for any further period of delay in filing of returns.

**Category I states** - States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep

**Category II states** - States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur,

Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi.

| **Months** | **Applicable rate of interest** | | |
|---|---|---|---|
| | For assessees having aggregate turnover more than Rs. 5 crores | For assessees having turnover of up to Rs. 5 crores in the preceding financial year whose principal place of business is in the Category I states | For assessees having aggregate turnover of up to Rs. 5 crores in the preceding financial year whose principal place of business is in the Category II states |
| February 2020 | Nil for first 15 days from the due date, and 9% interest if GSTR 3B filed on or before 24.06.2020. | Nil if the GSTR 3B returns are filed till 30.06.2020 and 9% thereafter if GSTR 3B returns are filed till 30.09.2020 | Nil interest if GSTR 3B returns are filed till 30.06.2020 and 9% thereafter if GSTR 3B returns are filed till 30.09.2020 |
| March 2020 | | Nil interest if GSTR 3B returns are filed till 03.07.2020 and 9% thereafter if GSTR 3B returns are filed till 30.09.2020 | Nil interest if GSTR 3B returns are filed till 05.07.2020 and 9% thereafter if GSTR 3B returns are filed till 30.09.2020 |
| April 2020 | | Nil interest if GSTR 3B returns are filed till 06.07.2020 and 9% thereafter if GSTR 3B returns are filed till 30.09.2020 | Nil interest if GSTR 3B returns are filed till 09.07.2020 and 9% thereafter if GSTR 3B returns are filed till 30.09.2020 |
| May 2020 | | Nil interest if GSTR 3B returns are filed till 12.09.2020 and 9% thereafter if GSTR 3B returns are filed till 30.09.2020 | Nil interest if GSTR 3B returns are filed till 15.09.2020 and 9% thereafter if GSTR 3B returns are filed till 30.09.2020 |

| | | | |
|---|---|---|---|
| June 2020 | | Nil interest if GSTR 3B returns are filed till 23.09.2020 and 9% thereafter if GSTR 3B returns are filed till 30.09.2020 | Nil interest if GSTR 3B returns are filed till 25.07.2020 and 9% thereafter if GSTR 3B returns are filed till 30.09.2020 |
| July 2020 | | Nil interest if GSTR 3B returns are filed till 27.09.2020 and 9% thereafter if GSTR 3B returns are filed till 30.09.2020 | Nil interest if GSTR 3B returns are filed till 29.09.2020 and 9% thereafter if GSTR 3B returns are filed till 30.09.2020 |

1.11 Notification No. 52 of 2020 dated 24.06.2020

The Central Government vide the above notification has waived the payment of late fee for specific class of persons as mentioned below who failed to furnish returns by due date, and who meet such conditions, for specific periods w.e.f. 24.06.2020. This notification has substituted the third proviso to the erstwhile notification as below:

It provides for one-time amnesty by lowering/waiving of late fees for non-furnishing of FORM GSTR-3B from July, 2017 to January, 2020 and also seeks to provide relief by conditional waiver of late fee for delay in furnishing returns in FORM GSTR-3B for tax periods of February, 2020 to July, 2020. Details as tabulated below:

**Category I states** - States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep

**Category II states** - States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi

| **Months** | **Applicable Late fee** | | |
|---|---|---|---|
| | For tax payers having an aggregate turnover of more than Rs. 5 crores | For taxpayers having aggregate turnover of up to Rs. 5 crores in | For taxpayers having aggregate turnover of up to Rs. 5 crores in |

| | | | |
|---|---|---|---|
| | in the preceding financial year | the preceding financial year whose principal place of business is in category I states | the preceding financial year whose principal place of business is in category II states |
| February 2020 | No late fee if GSTR 3B is furnished on or before 24.06.2020 | No late fee if GSTR 3B is furnished on or before 30.06.2020 | No late fee if GSTR 3B is furnished on or before 30.06.2020 |
| March 2020 | | No late fee if GSTR 3B is furnished on or before 03.07.2020 | No late fee if GSTR 3B is furnished on or before 05.07.2020 |
| April 2020 | | No late fee if GSTR 3B is furnished on or before 06.07.2020 | No late fee if GSTR 3B is furnished on or before 09.07.2020 |
| May 2020 | | No late fee if GSTR 3B is furnished on or before 12.09.2020 | No late fee if GSTR 3B is furnished on or before 15.09.2020 |
| June 2020 | | No late fee if GSTR 3B is furnished on or before 23.09.2020 | No late fee if GSTR 3B is furnished on or before 25.09.2020 |
| July 2020 | | No late fee if GSTR 3B is furnished on or before 27.09.2020 | No late fee if GSTR 3B is furnished on or before 29.09.2020 |

Further, provisos have been inserted which provide for:

- Waiver of late fees which is in excess of an amount of two hundred and fifty rupees* for the registered person who failed to furnish GSTR 3B returns for the months of July, 2017 to January, 2020, by the due date but furnishes the said return between the period from 01st day of July, 2020 to 30th day of September, 2020.

  ** Collection of late fees is capped at Rs. 250/- for CGST & at Rs. 250/- for SGST.*

- Waiver of late fees for the registered person who failed to furnish the GSTR-3B returns for the months of July, 2017 to January, 2020, by the due date but furnishes the said return between the period from 01st day of July, 2020 to 30th day of September, 2020 where total amount of central tax payable in said return is nil.

1.12 Notification No. 53/2020-CT dated 24.06.2020

Amount of Late fee payable under Section 47 is waived for the persons who fail to furnish the GSTR -1 within the due dates but filed before the dates mentioned in the table given below.

*Late fee is waived only if GSTR-1 is furnished before the cut-off date. If the GSTR-1 is not filed up to the cut-off date, late fee shall be applicable from the due date.

| **Month/ Quarter (2)** | **Dates (3)** |
|---|---|
| March 2020 | 10.07.2020 |
| April 2020 | 24.07.2020 |
| May 2020 | 28.07.2020 |
| June 2020 | 05.08.2020 |
| January to March 2020 | 17.07.2020 |
| April to June 2020 | 03.08.2020 |

1.13 Notification No. 54 of 2020 dated 24.06.2020

Notification 29/2020- CT dated 23.03.2020 had prescribed due dates for filing GSTR 3B for the months from April 2020 to September 2020. Notification 54/2020 – CT dated 24.06.2020 has been issued to amend notification 29/2020 to the extent due dates for GSTR 3B has been prescribed for the month of August 2020 for such taxpayers having aggregate turnover of up to Rs. 5 crores.

| **Description** | **Extended Due date for filing GSTR 3B for August 2020** |
|---|---|
| For taxpayers having an aggregate turnover of up to rupees five crore rupees in the previous financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, | On or before 1st October 2020 |

| | |
|---|---|
| Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep | |
| For taxpayers having an aggregate turnover of up to rupees five crore rupees in the previous financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi | On or before 3rd October 2020 |

**2. <u>Removal of Difficulties Order – Application against Cancellation of Registration</u>**

In exercise of the powers conferred by Section 172 of the Central Goods and Services Tax Act, 2017, the Central Government, on the recommendations of the Council, has introduced the Central Goods and Services Tax (Removal of Difficulties) Order, 2020, where it is clarified that for the purpose of calculating the period of 30 days for filing application for revocation of cancellation of registration under Section 30(1) were notices were served under Section 29 in the manner as provided in under Section 169 and where the cancellation order was passed up to 12.06.2020, the later of the following dates shall be considered for calculation of 30 days:

(a) Date of service of the said cancellation order; or

(b) 31.08.2020

For the orders passed beyond 12.06.2020, the normal period of 30 days from the date of service of the cancellation order, will apply.

## 3. Case Laws

### 3.1 High Court

Violation of Natural Justice - COVID-19 Lockdown

The Gujarat High Court in the case of ***Remankhan Belin Vs. State of Gujarat [TS-378-HC-2020]*** set aside an Order of the Revenue as it was passed without hearing the Petitioner. The Petitioner, because of the pandemic Corona Virus COVID-19, could not remain present and/ or preferred to stay safe because of Corona Virus COVID-19 and meanwhile, the impugned order was passed.

TRAN - 1 - A series of Judgments

The Supreme Court dismissed the SLP filed by the Revenue in the case of ***Union of India and Ors. Vs. Chogori India Pvt. Ltd. SLP (Civil) Diary No. 7374/2020*** against the Order of the Delhi High Court which directed the Department to either re-open the Portal to either re-open to enable the Petitioner to file its TRAN-1 Form electronically failing which to permit it to file manually on or before 13.09.2019 as the was no dispute that there have been numerous glitches on the GST Portal in making it difficult for uploading of the TRAN-1 Forms.

The Delhi High Court in the case of ***Mangala Hoist Pvt. Vs. Union of India and Ors. W.P. (C) 3572/ 2020*** through an order dated 17.06.2020 directed the Commissioner, CGST, to open the portal to enable the Petitioner to file its claim of CENVAT tax credit as on 30.06.2017, in Form Tran-1 based on the Delhi High Court's Division Bench judgment in the case of ***Brand Equity Treaties Limited Vs. Union of India W.P. (C)11040/2018*** wherein the court held that the time limit prescribed in Rule 117 of the CGST Rules, 2017 is not mandatory but directory in nature.

The Punjab and Haryana High Court in the case of ***Amba Industrial Corporation Vs. Union of India and Anr. [TS-400-HC-2020(PandH)-NT]*** followed the decision of the Delhi High Court in the case of ***Brand Equity Treaties Limited Vs. Union of India W.P. (C) 11040/2018*** and directed the Department to permit the filing of TRAN-1 by 30.06.2020 and in case Department fails to do so, the Petitioner would be at liberty to avail ITC in question in GSTR-3B of July, 2020.

The Delhi High Court in the case of ***SKM Sheet Metals Components Vs. Union of India and Ors. [TS-373-HC-2020]*** held that in spite of the amendment through Section 128 of the Finance Act, 2020 prescribing time limit for filing TRAN-1 by inserting the phrase 'within such time' in Section 140 with retrospective effect from 01.07.2017, the decision in the case of ***Brand Equity Treaties Limited Vs. Union of India W.P. (C) 11040/2018*** is not entirely resting not he fact that the statute did not prescribe for any time limit for

availing the transition of the input tax credit. The transitional provisions and the language of section 140 of the Act in particular, even after amendment, manifests the intention behind the said provision is to save the accrued and vested ITC under the existing law. If the legislature has provided for saving the same by allowing a migration under the new tax regime, rules have to be interpreted keeping this objective in focus. This is the reason courts have held that CENVAT credit which stood accrued to the Petitioner is a vested right and is protected under Article 300A of the Constitution of India and could not be taken away by the Respondents, without authority of law, on frivolous grounds which are untenable… The Court also cannot decipher any intent to deny extension of time to deserving cases where delay in filing was on account of human error. This interpretation would run counter to the object sought to be achieved under Section 140 of the Act which is the governing provision and exhibits the true legislative intent. Since the consequences for non-consequence are not indicated, the provision has to be seen as directory… If the Court interprets the timelines to be mandatory, the failure to fulfil the obligation of filing TRAN-1 within the stipulated period, would seriously prejudice the taxpayers, for whose benefit section 140 has been provided by the legislature. In view of the above discussion, interpreting the procedural timelines to be mandatory would run counter to the intention of the legislature and defeat the purpose for which the transitionary provisions have been provided and have to be construed as directory and not mandatory.

***However, the Supreme Court on 19.06.2020 under SLP (C) No. 7425-7428/2020 stayed the operation of the order in the case of Union of India Vs. Brand Equity Treaties Limited.***

Filing of Appeal to the GST Appellate Tribunal

The Allahabad High Court in the case of ***M/s. Polo International Vs. State of UP and Ors. Writ Tax No. 292 of 2020*** has held that as the goods have been disposed and no prejudice will be caused to the assessee, the appeal against the Order in Appeal may be filed by the Petitioner in accordance with the CGST (Ninth Removal of Difficulties) Order, 2019 which states that the three months of filing of appeal shall be the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under Section 109, enters office.

**It is pertinent to note that the Madras High Court recently in the case of **Revenue Bar Association Vs. Union of India (2019) 30 GSTL 584** held that the constitution of the GST Appellate Tribunal without a majority of judicial members over technical members is unconstitutional.*

Stay Against Ruling of AAR - Railway Siding

The Chhattisgarh High Court in the case of ***NMDC Limited Vs. Union of India and Ors. Writ Petition (T) No. 53 of 2020*** granted stay against the application of the Order of the Appellate Authority of Advance Ruling where the ITC on construction of Railway Siding was denied to the Petitioner stating that the Railway Siding, being intended to be used for

a fairly long period of time and on the basis of the scope of work itself as forthcoming from the documents supra issued by NMDC, the AAAR came to the conclusion that the said project of private Railway Siding consist of civil structures with foundations and are immovable in nature, which created an immovable property according to Section 17 of the CGST Act, 2017.

*It is pertinent to note that the Orissa High Court has read down Section 17(5) of CGST Act, 2017 in the case of* ***Safari Retreats (P.) Ltd. Vs. Chief Commissioner of Central Goods and Service Tax (2019) 25 GSTL 341*** *and the matter is pending before the SC.*

Confirmation of demand on the day of issue of Show Cause Notice

The Madras High Court in the case of ***Sree Saravana Engineering Bhavani Pvt. Ltd. Vs. The Assistant Commissioner (ST) [TS-347-HC-2020(MAD)-NT]*** directed the respondent for redoing the assessment after giving an opportunity to the petitioner to put forth their case as the show case notice was issued and the proposal in the show cause notice was confirmed on the same day without granting an opportunity to give their objections, going against the very principles of natural justice.

## OTHER INDIRECT TAXES

### 1. Notifications

1.1 DGFT - Notification No. 08/2015-2020 dated 01.06.2020

DGFT vide Notification No. 08/2015-2020 dated 01.06.2020 amended its export policy in relation to hand-sanitisers and clarifies that only 'Alcohol based hand-sanitisers' exported in containers with dispenser pump, falling under any ITCHS Code including the HS Codes ITCHS ex 3004, ex 3402, 380894 are prohibited for export. Alcohol based sanitisers exported in any other form/ package are 'free' for exports, with immediate effect. All other items falling under the above HS Codes are freely exportable.

1.2 DGFT - Notification No. 09/2015-2020 dated 10.06.2020

DGFT vide Notification No. 09/2015-2020 dated 10.06.2020 restricted the export of the following items whether as an individual item or as a part of any diagnostic kits/ reagent.

- VTM kits and reagents
- RNA extraction kits and reagents
- RT-PCR Kits and Reagents
- 15ml falcon tube or cryovials
- Swabs sterile synthetic fiber swabs (Nylon, Polyester, Rayon or Dacron)
- Silicon Columns
- Poly adenylic acid or Carrier RNA
- Proteinase K

- Magnetic stand
- Beads
- Probes (specific for COVID-19 testing)
- Primers (specific for COVID-19 testing)
- Tax Polymerase enzyme
- Reverse transcriptase enzyme
- Deoxy nucleotide triphosphates

All other diagnostic kits/reagents/instruments/apparatus falling under the HS codes above are freely exportable subject to submission of an undertaking by the exporter to the Customs Authorities at the time of export.

1.3 DGFT - Notification No. 13/2015-2020 dated 18.06.2020

DGFT vide Notification No. 13/2015-2020 dated 18.06.2020 amended the export policy of Hydroxychloroquine API and its formulations from 'Prohibited' to 'Free' with immediate effect.

1.4 DGFT - Notification No. 14/2015-2020 dated 22.06.2020

DGFT vide Notification No. 14/2015-2020 dated 22.06.2020 amended the export policy to the extent that only items described in the notification, exported against the mentioned HS Codes in the notification or falling under any other HS code in the notification such as medical coveralls of all classes/ categories; medical goggles, all masks other than non-medical/ non- surgical masks (cotton, silk, wool, polyester, nylon, rayon, viscose - knitted, woven or blended); Nitrile/ NBR Gloves; Face Shield are prohibited for export on personal protection equipment. All other items are freely exportable.

1.5 Customs - Notification No. 16 of 2020 - ADD dated 23.06.2020

In relation to import of 'flat rolled product of steel, plated or coated with alloy of aluminum and zinc' originating in, or exported from China, Vietnam and Korea and imported into India, the Central Government vide Notification No. 16 of 2020 - ADD dated 23.06.2020 is imposing anti-dumping duty at the rate stipulated in the Notification for a period of 5 years from the date of imposition of the provisional anti-dumping duty, that is, the 15th October, 2019 and shall be payable in Indian currency. It shall not be levied for the period commencing from the date of lapse of the provisional anti-dumping duty, that is the 15th April, 2020 up to the preceding day of the publication of this Notification in the Official Gazette.

## 2. Case Laws

### 2.1 High Court

Violation of Natural Justice - COVID-19 Lockdown

The Telangana High Court in the case of ***M/s. Infosys Ltd. Vs. Deputy Commissioner - ST and Anr. W.P. No. 7444 of 2020*** has set aside an Order of Assessment passed and remitted the matter to consider the matter afresh by hold thing that proper opportunity was denied to the petitioner to represent its case and there has been violation of principles of natural justice inasmuch as personal hearing were fixed on 16.03.2020 for the first-time during lockdown period disabling the petitioner and causing serious prejudice to the petitioner. The Court also held that the alternative remedy of appeal available to challenge the impugned Order of Assessment at. 31.03.2020 cannot be a bar for the petitioner to avail the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

SVLDR Filing - Non - mentioning of Penalty Amount - Edit

The Gauhati High Court in the case of ***Assam Cricket Association Vs. Union of India and 4 Ors. WP (C) 2149/2020*** has analysed as to whether the claim of the Petitioner under the Sabka Vishwas Scheme, 2019 would stand rejected due to non-mentioning of the penalty. The Court examined whether the non-mentioning of the penalty is an incurable defect and held that the mistake made by the petitioner by not stating about the penalty imposed upon them in Form SVLDRS-1 cannot be said to be a mistake by which the petitioner claimed an undue benefit which they otherwise are not entitled under the law. When the Court looked into the Scheme 2019, they did not find any provision which provides that a person upon whom a penalty is imposed would not be entitled to the benefit given under the scheme.

Scope of Section 105 of Customs Act, 1962 - Search

The Punjab and Haryana High Court in the case of ***Shri Vishnu Processors Vs. Union of India and Ors. CWP No. 25129 of 2019*** referred to Section 105 of the Customs Act, 1962 and held that the Section is widely worded and search can be conducted if the Assistant or Deputy Commissioner of Customs has reasons to believe that there are any document or thing which in his opinion will be useful or relevant to any proceedings under this Act or secreted at any place. The section does not restrict the search only with regard to importer or exporter, the other premises can also be searched.

Scope of Section 108 of Customs Act, 1962 – Cross Examination

The Madras High Court in the case of ***Jet Unipex Vs. Commissioner of Customs WP No. 5233 of 2016*** laid down the scope of cross-examination Section 108 of the Customs Act, 1962. The Court held that

- A person summoned to give statement under Section 108 of the Customs Act is bound to appear and state truth. Such person is not an accused person when such statements are recorded.
- If such a person gives false statement before such officer, he/she renders himself/herself liable to be prosecuted for an offence under section 193 and section 228 of the Indian Penal Code, 1860 and thus invites a collateral criminal proceeding.
- The statements which are recorded under section 108 of the Customs Act, 1962 is intended for setting the law in motion for officers acting under the Act to investigate and collect evidence for issuing show cause notice whether under section 28 of the Customs Act, 1962 or under section 124 of the Customs Act, 1962 or under other provisions of the Customs Act, 1962.
- Such investigation may result in prosecution before the Magistrates Court in which case, persons may be arrayed as "accused" and the persons whose statements are relied upon may be shown in the list of witnesses.
- Confirmation of demand solely based on statements recorded under Section 108 would require cross examination by the petitioner.
- If such statements are merely intended for corroboration of independent evidence, the cross-examination need not be allowed.
- Adjudication proceedings under the Customs Act, 1962 cannot solely be based on the inculpatory statements of witnesses and noticee alone. Such statements can be only used for corroborating the case which the Department proposes to establish before the quasi-judicial authorities.

2.2 CESTAT

Input Service - Insurance - CENVAT Credit

The Larger Bench Tribunal in the case of ***M/s. South Indian Bank Vs. Commissioner of Customs STA No. 20747 of 2015 - Citation*** held that the insurance service provided by the Deposit Insurance Corporation to the banks is an "input service" and CENVAT credit of service tax paid for this service received by the banks from the Deposit Insurance Corporation can be availed by the banks for rendering 'output services'.

'Know How' and Intellectual Property Right

The Delhi Tribunal in the case of ***M/s. Modi-Mundipharma Beauty Products Pvt. Ltd. Vs. CST [TS-365-CESTAT-2020]*** held that the grant of exclusive right to the Appellant to use the 'know how' in any plant in accordance with the processes, specifications and recipes thereof in connection with the manufacture, marketing, sale and distribution of

Revlon Products would not fall in the definition of 'intellectual property right' so as to make it taxable under section 65(105) (zzr) of the Finance Act.

## CORPORATE LAWS

**1. Notifications**

1.1 Notified amendment under Companies (Meetings of Board and its Powers) Rules, 2014 for the meetings to be conducted through VC or OAVM till 30.09.2020.

1.2 Grants 3 months more for independent directors for inclusion of their name in the data bank as compliance under Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019.

1.3 Amended Companies (Share Capital and Debentures) Rules, 2014 for the start-ups to issue sweat-equity shares not exceeding 50% of its paid-up capital for a period up to 10 years.

1.4 MCA introduced a scheme for relaxation of time for creation and modification of Charges. Period between 01.03.2020 and 30.09.2020 will not be reckoned for calculating timeline.

**2. IBC Ordinance -**

- No fresh insolvency proceedings for defaults which are incurred on or after 25.03.2020 for a period of 6 months. However, petitions can be filed for defaults before 25.03.2020 under Section 7, 9 and 10.
- The suspension may also be extended for a period of 1 year; the power vests with the Central Government to issue such extension.
- New Section 10A has been inserted to issue a perpetual embargo on filing insolvency petition for the period ensuing from 25.03.2020 up to 6 months or the so extended date.
- The amendment places an embargo on the resolution professional from filing an application under section 66(2) based on defaults that occur during the suspension period envisaged in section 10A.

**3. Companies Fresh Start Scheme**

Waiver of Additional Filing fee: No additional fees shall be charged for late filing during a moratorium period from 01st April, 2020 to 30th September, 2020, in respect of any

document, return, statement etc., required to be filed in the MCA-21 Registry, irrespective of its due date.

The Ministry has also introduced the Companies Fresh Start Scheme, 2020 which shall be open from 01.04.2020 to 30.09.2020. The Scheme allows companies belated filing of documents with the MCA portal without payment of additional filing fee and grants immunity from levy of penalty for belated filing. The Scheme is one-time opportunity to make good filing related defaults irrespective of the duration of default.

## 4. Case Laws

### 4.1 Supreme Court

Dissolution of a partnership & Retirement - Distinguished

The Supreme Court in the case of ***Guru Nanak Industries, Faridabad and Anr. Vs. Amar Singh (Dead through LRS Civil Appeal No. 6659-6660 of 2010*** held that there is a clear distinction between 'retirement of a partner' and 'dissolution of a partnership firm'. On retirement of the partner, the reconstituted firm continues and the retiring partner is to be paid his dues in terms of Section 37 of the Partnership Act. When the partners agree to dissolve partnership, it is a case of dissolution and not retirement. In the present case, there were only two partners, the partnership firm could not have continued to carry on business of the firm. A partnership firm must have at least two partners. When there are only two partners and one has agreed to retire, then the retirement amounts to dissolution of the firm.

Lockdown Period – Wages

The Supreme Court in the case of ***Ficus Pax Pvt. Ltd. & Ors. Vs. Union of India & Ors. WP(C) Diary No. 10983 of 2020*** held that

i. The private establishment, industries, employers who are willing to enter into negotiation and settlement with the workers/employees regarding payment of wages for 50 days or for any other period as applicable in any particular State during which their industrial establishment was closed down due to lockdown, may initiate a process of negotiation with their employees organisation and enter into a settlement with them and if they are unable to settle by themselves submit a request to concerned labour authorities who are entrusted with the obligation under the different statute to conciliate the dispute between the parties who on receiving such request, may call the concerned Employees Trade Union/workers Association/ workers to appear on a date for negotiation, conciliation and settlement. In event a settlement is arrived at, that may be acted upon by the employers and workers irrespective of the order dated 29.03.2020 issued by the Government of India, Ministry of Home Affairs.

ii. Those employers' establishments, industries, factories which were working during the lockdown period although not to their capacity can also take steps as indicated in direction No.(i).
iii. The private establishments, industries, factories shall permit the workers/employees to work in their establishment who are willing to work which may be without prejudice to rights of the workers/employees regarding unpaid wages of above 50 days. The private establishments, factories who proceed to take steps as per directions (i) and (ii) shall publicise and communicate about their such steps to workers and employees for their response/participation. The settlement, if any, as indicated above shall be without prejudice to the rights of employers and employees which is pending adjudication in these writ petitions.

Patent Illegality of Arbitral Award

The Supreme Court in the case of ***Patel Engineering Ltd. vs. North Eastern Electric Power Corporation Ltd. [LSI-371-SC-2020(NDEL)]*** upheld the Judgment passed by the Delhi High Court and held that the ground of patent illegality is a ground available under the statute for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or, so irrational that no reasonable person would have arrived at the same; or, the construction of the contract is such that no fair or reasonable person would take; or, that the view of the arbitrator is not even a possible view. The Court held that the High Court was correct in holding that the award ought to be set aside.

4.2 High Court

Force Majeure – Can the lockdown be a reason for non-performance?

The Delhi High Court in the case of ***Halliburton Offshore Services Vs. Vedanta Ltd. and Anr. [LSI-360-HC-2020]*** held that the past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself.

The Delhi High Court in the case of ***Rashmi Cement Ltd. Vs. World Metals and Alloys (FZC) & Anr. [LSI-433-HC-2020]*** has held that mere difficulty in performing contractual obligations cannot be a ground for invoking a Force Majeure Clause.

Multiple Invocation of Arbitration Clause by a Party

The Delhi High Court in the case of ***Gammon India Ltd. Vs. National Highway Authority of India [LSI-434-HC-2020]*** has held that while hearing a petition under Section 34 of the Arbitration and Conciliation Act, 1996, it would be incongruous to hold that a finding in a subsequent award would render the previous award illegal or contrary

to law. The award would have to be tested as on the date when it was pronounced, on its own merits, and not on the basis of subsequent findings which may have been rendered by a later Arbitral Tribunal. In this case, the parties had invoked arbitration thrice, raising various claims before three different Tribunals which have rendered three separate Awards. The Court held that considering that a previously appointed Tribunal was already seized of the disputes between the parties under the same contract, the constitution of three different Tribunals was unwarranted and inexplicable. A situation where multiple Arbitral Tribunals parallelly adjudicate different claims arising between the same parties under the same contract, especially raising overlapping issues, is clearly to be avoided.

4.3 NCLAT

The NCLAT in the case of ***V. Padmakumar Vs. Stressed Assets Stabilisation Fund (SASF) & Anr. Company Appeal (AT) (Insolvency) No. 57 of 2020 (NCLAT – 5-member Bench)*** held that filing of Balance Sheet/ Annual Return being mandatory under Section 92(4) of the Companies Act, 2013, the Balance Sheet/ Annual return cannot be considered as an acknowledgement under Section 18 of the Limitation Act, 1963. Further, the Tribunal held that if the argument that the Balance sheet is an acknowledgement of debt is accepted no limitation would be applicable because every year it is mandatory for the 'Corporate Debtor' to file a Balance Sheet/ Annual Return.

## TAX & THE WORLD

1. Investigation into India's Equalisation Levy by United States

USA, through the United States Trade Representative (USTR) has initiated investigation into India's Equalisation Levy on non-resident e-commerce operators. Investigation has been initiated against the Digital Taxes in European Union, United Kingdom, Indonesia, Brazil, etc. This investigation has been initiated under Section 301 of the Trade Act of 1974.

2. US Releases FAQs for Non- resident Alien Individuals and Foreign Businesses or Agents Impacted by COVID-19 Emergency Travel Disruptions.

The US IRS has released FAQs for Non- resident Alien Individuals and Foreign Businesses or Agents Impacted by COVID-19 Emergency Travel Disruptions. The FAQ primarily states that a non-resident alien, foreign corporation, or a partnership in which either is a partner (Affected Person) may choose an uninterrupted period of up to 60 calendar days, beginning on or after February 1, 2020, and on or before April 1, 2020 (the COVID-19 Emergency Period), during which services or other activities conducted in the United States will not be taken into account in determining whether the nonresident alien or foreign corporation is engaged in a USTB, provided that such activities were performed by one or more individuals temporarily present in the United States and would

not have been performed in the United States but for COVID-19 Emergency Travel Disruptions. The IRS also clarified that during an Affected Person's COVID-19 Emergency Period, services or other activities performed by one or more individuals temporarily present in the United States will not be considered to determine whether the nonresident or foreign corporation has a PE. This is subject to the condition that the Affected Person should retain required documents.

3. UK Supreme Court - Interpretation of DTAA

In the case of ***Fowler (Respondent) Vs. Commissioners for Her Majesty's Revenue and Customs (Appellant) [2020] UKSC 22*** where a qualified diver who is resident in the Republic of South Africa undertook diving engagements in the waters of the UK continental shelf, the United Kingdom Supreme Court has held that the Assessee must be treated as an employee and is subject to UK income tax. The Court held that the expressions in the Treaty such as 'salaries, wages and other remuneration', 'employment' and enterprise' should be given their ordinary meaning unless domestic legislation alters the meaning which they would otherwise have. The Court also held that although section 15 uses the expressions "income", "employment" and "trade", it does not alter the meaning of those terms but takes their ordinary meaning as the starting point for a statutory fiction. Properly understood, it taxes the income of an employed diver in a particular manner which includes the fiction that the diver is carrying on a trade. That fiction is not created for the purpose of rendering a qualifying diver immune from tax in the UK, or for adjudicating between the UK and South Africa as potential recipients of tax, but to adjust the basis of a continuing UK income tax liability. Since the Treaty is not concerned with the manner in which taxes are levied, it would be contrary to the purposes of the Treaty to redefine its scope by reference to ITTOIA. It would also be contrary to the purpose of ITTOIA and would produce an anomalous result.

## WEBINARS

1. 'Taxation of Digital Economy' - https://www.youtube.com/watch?v=S4Lu_Tn9fI8&t=2929s
2. Legal Issues amid COVID 19 and Force Majeure https://www.youtube.com/watch?v=WNiQUc2WlEo

## ARTICLES

1. ROTI, PAROTA AUR JHAGDA https://www.vaithilegal.com/gst/roti-parota-aur-jhagda
2. LSI - IBC (Amendment) Ordinance, 2020 – FAQs and Open Issues https://www.vaithilegal.com/corplawfema/item/110-lsi-ibc-amendment-ordinance-2020-faqs-and-open-issues



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