CASC BULLETIN

THE CHARTERED ACCOUNTANTS STUDY CIRCLE

Prince Arcade, 2-L, Rear Block, Second Floor,
22-A, Cathedral Road (Next to Stella Maris College)
Chennai - 600 086. Phone : 044 - 28114283
Website : www.casconline.org

Volume 65 | Issue 5 | Monthly | August 2019 | Rs.25/-

INDEX

MEETINGS

Date	Time	Speaker	Topic
08.08.2019 Thursday	05.45 pm*	CA. Jomon K George	41st AGM Followed by Meeting - Special Considerations in Company Audits
22.08.2019 Thursday	06.30 pm**	CA. Jharna B. Harilal	Recent Judicial Pronouncement Effecting Tax Audit

*Please refer Page No.44 for the Venue Details. Meeting will be followed by Dinner.

** Preceded with High Tea Half an hour before the Scheduled time of Meeting

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Address	:	No 24/20, Thirumangalam Road, Villivakkam, Chennai - 600 049. (Near IOB Kambar Colony Branch)

***Approach Changes – Budget*:**

India witnessed one of the longest and lengthiest Budget Speech presented by the First full time woman Finance Minister, lasting over 2 hours without much of stoppages due to disruption from the opposition. The Finance Minister also did not stop in between to sip water. However, the finance minister also did not refer and or thank her immediate predecessor in her entire speech. This time around even the way the Budget was carried to the Parliament has gone for a change from Briefcase to the traditional "Lal Potli".

It would be more appropriate to state that the budget speech was more of report card than policy declaration as it contained many of the facts which were already in the public domain like the new return forms under GST law, faceless e-assessment, etc., without much of policy for the future. May for the first time the Budget Speech contained annexures which was not read on the floor of the Parliament. May this the first time the net and gross impact of the tax proposals both on the Direct taxes front as well as on indirect taxes front was stated and the reason could be one the impact is not known which is not possible and two the Government does not want to divulge the same as the impact is substantial considering the fact that the proposals in Direct Taxes is increase in effective tax rates and in indirect taxes particularly on the customs front, there is increase in tax rates. It could decades to bring down the tax rates on the direct tax front to so called maximum tax rate of 30% which would now be 42.5% including the Surcharges and Cesses. Instead of increasing the maximum rate, the Government has been consistently increasing the surcharge though at that the time of levy it is stated that the same is for a short term. The Finance Minister in para 107 of the Budget Speech had the direct tax revenue has increased by over 78% (major increase has happened post demonization – Rs. 7.41 Lakh Crores to 11.37 Lakh Cores, the number assessees have also increased during the said period 6.92 lakh assessees to 8.44 lakh assessees) though the economy has not grown at that speed. It is acceptable that more assessees have come on board, but the method in which the taxes has been collected of which we professionals are witness to greater extent, is not as envisaged in the Income Tax Act nor as per the election agenda of this Government in the first term namely tax terrorism. The Income Tax Department uses all kinds of methods which are not envisaged under the Income tax Act like tax recovery survey even at the residence of an assessee who does not carry on any business. The excessive method is just not applied by the Assessing Officer but also by CBDT and on CBDT by the Ministry of Finance. Unrealistic targets are thrusted upon down the line like collection targets, assessment completion targets (Demonization related time barring assessments are to be completed by 31st July, 2019), etc. and to achieve the same the officials take actions which outside their power and or complete the work in manner which is detrimental to growth. According

to some news report the CBDT has now extended the time for cases relating to demonization cases by another 2 months till September considering "Various difficulties (being faced by assessing officers) related to completion of assessments in Operation Clean Money (OCM) cases" and this has been done based on the Assessing Officer's petition stating it was "humanly impossible" to finish the task by July as it requires a lot of "paperwork and manpower".

It seems that the Finance Minister is not properly briefed and or updated as it could be seen from the fact that the Finance Minister in her budget speech in Para 122 states that "……., I propose to make PAN and Aadhaar interchangeable and allow those who do not have PAN to file Income Tax returns by simply quoting their Aadhaar number and also use it wherever they are required to quote PAN." and whereas in clause 1.5 of annexure to Part B "**Interchangeability of PAN and Aadhaar**: It is proposed to provide interchangeability of PAN and Aadhaar to enable a person who does not have PAN but has Aadhaar to use Aadhaar in place of PAN under the Act. **The Income Tax Department shall allot PAN to such person on the basis of Aadhaar** after obtaining demographic data from the Unique Identification Authority of India (UIDAI). It is also proposed to provide that a person who has already linked his Aadhaar with his PAN may at his option use Aadhaar in place of PAN under the Act." Accordingly the proposal seems to be for the first time one can use Aadhaar and there is no amendment In the Income Tax Act for the interchangeability.

Be so at it may, the Budget Proposals in particular relating to the Buy Back tax as well as increase in the limit of public holding in listed entities had its impact with the share markets tumbling as well as news flowing that the funds may move away from India. The Finance Minister has come out with a suggestion to the Trust Funds to convert into corporates without coming out with any views about whether the GAAR provisions will or will not be invoked under such conversions.

Our author CA. Vivek Rajan V. who has been of late providing the write-ups of direct taxes proposals in the Budget, has attempted to give a detailed write up covering every aspect of the proposals which is a maiden attempt even for CASC. There is a separate write up on indirect taxes proposal as well which is carried in this Bulletin.

Appeal

The Annual General Body meeting is scheduled on 8th August, 2019, of which a Notice has been issued and the same was carried in the July, 2019, month Bulletin. Request our members to attend the same.

Members are requested to attend the programs conducted by CASC and are also requested to send their suggestions and / or value additions to the services provided by CASC including this Bulletin. The same can be sent by hard copy to the office of the CASC or emailed to admin@casconline.org or any of the Members on the Management Committee.

For and on behalf of Editorial Board

CA. Uttamchand Jain

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ANNOUNCEMENTS

1. The copies of the material used by the speakers and provided to CASC for distribution, for the regular meetings held twice in a month is available on the website and is freely downloadable.
2. Earlier issues of the bulletin are also available on the website in the "News" column.

The soft copy of this bulletin will be hosted on the website shortly.

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You may please send your Feedback Contributions / Queries on Direct Taxes, Indirect Taxes, Company Law, FEMA, Accounting and Auditing Standards, Allied Laws or any other subject of professional interest to ***admin@casconline.org***

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RECENT JUDGMENTS IN VAT & CST

Stay Order:

Writ Petitions are filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records in S.P.Nos.29, 30, 31 and 32 of 2019 in AP No.53/2019 dated 24.05.2019 on the file of the first respondent and quash the same in so far as it relates to the furnishing of security bond or bank guarantee of balance of arrears as illegal and direct the second respondent to accept the personal bond to be executed by the petitioners in lieu of security. Identical requests made have been considered by this Court favourably and the conditional order modified by permitting the petitioner to furnish a personal bond in the place of bank guarantee as directed by the appellate authorities. The order of this Court, dated 31.08.2018 in Writ Petition No. 22427 of 2018 is one such. Hence, the petitioner is permitted to furnish a personal bond in respect of the penalty of within a period of seven days from date of receipt of a copy of this order. **M/s. Hari Plastics, Vs. The Appellate Deputy Commissioner (ST) (FAC), Trichy and the State Tax Officer, Thiruverumbur Assessment Circle, W.P(MD).Nos.14096 to 14099 of 2019 DATED : 24.06.2019**

CA. V.V. SAMPATHKUMAR

Opportunity:

For the observation in the notice of the AO that the dealer may also avail the opportunity of being heard in person within the above said period of 15 days, the court held that an opportunity of personal hearing has to be fixed by date and time to be effective. The petitioner cannot be expected to visit the office of the Assistant Commissioner, at random, and expect to be heard nor can the officer be expected to be available in his seat and in a position to take up the matter at all times. The officer is expected to stipulate a specific date and time, when the assessee should appear before him and put forth its submissions. It is only in the aforesaid circumstances that an argument may be taken to the effect that an opportunity was extended but not availed of. **Tvl. Maruthi Hospital Vs. The Assistant Commissioner (CT), Woraiyur Assessment Circle, W.P. [MD] No.9830 of 2019 DATED: 17.06.2019**

Natural Justice:

This writ petition has been filed for issuance of writ of Certiorari to quash the proceedings of the Assistant Commissioner, Commercial Tax, Palayamkottai dated 20.04.2015. The impugned order refers to a pre-assessment notice dated 24.02.2015. The Assessing Officer states that there was no response to the notice as a result the proposals contained stood confirmed, rejecting the claim of the petitioner for exemption. The records reveal that the petitioner had sent a reply on 11.12.2014 along with annexures, duly received and acknowledged by the Assessing Officer on 12.12.2014. In the aforesaid circumstances, there has been a violation of the principles of natural justice and the impugned assessment order is thus liable to be set aside. **Tvl. Vivek Scientific Industrial Suppliers, Vs. The Assistant Commissioner (CT) Thirunelveli Junction Assessment Circle, W.P (MD) No.17073 of 2015 DATED: 11.06.2019**

Input tax credit:

An order of assessment dated 04.09.2010 is assailed in this writ petition. The only issue in the assessment relates to availment of input tax credit in terms of Section 19 (11) of the Tamil Nadu Value Added Tax Act, 2006. The vires of Section 19(11) of the Act was challenged by several assesses and has been ultimately upheld by the Supreme Court in the case of ALD Automotive Private Limited Vs. The Commercial Tax Officer [AIR 2018 SC 5235] confirming the decision of the Madras High Court and hence there is no merit in this writ petition. However, in the interests of justice, the petitioner is permitted to file a statutory appeal challenging the impugned order of assessment. Such appeal, if filed within a period of two weeks from today (i.e., 11.06.2019), shall be taken on file by the appellate authority without reference to limitation and disposed, after hearing the petitioner and in accordance with law, as expeditiously as possible. **N. Gnanasekaran Vs. The Commercial Tax Officer, Lalgudi Assessment Circle, W.P (MD) No.7401 of 2010 DATED: 11.06.2019**

Personal Hearing:

The short point that arises in the challenge to impugned order dated 31.08.2015 is the lack of personal hearing prior to completion of assessment proceedings. This Court has been taking a consistent view that it is incumbent on the authority to afford an opportunity of personal hearing prior to completion of assessment. In fact, the Department has also issued several Circulars reiterating this position

and informing the Assessing Officers of the proper procedure to be followed in the matter of framing of assessment, which should include the grant of personal hearing. The Commissioner states that the dealer shall be afforded an opportunity of personal hearing irrespective of whether it has been sought. In the light of the above discussion, the Court set aside the impugned order. **Tvl.ESS ESS Exports, Vs. Commercial Tax Officer (Addl.), Sattur, Virudhunagar District. W.P. (MD) No.17350 of 2015 DATED: 10.06.2019**

Industrial Input Certificate:

It is submitted that Industrial Input Certificate is a statutory requirement and it is a certificate which is essentially under Rule 6(3)(b) of TNVAT Rules. As the Industrial Input Certificates being Certificates within the meaning of Rule 6(3)(b) of TNVAT Rules, were made available to the writ petitioner post Assessment Order, writ petitioner filed a rectification petition under Section 84 of TNVAT Act and this rectification petition is dated 06.02.2019. Respondent, adverting to Section 84 of TNVAT Act submitted that the provision is intended to correct the errors apparent on the face of the Assessment Order and it cannot be used as a gateway for filing supporting documents post assessment, rejected this rectification petition on the ground that there is no provision to accept aforesaid certificates post assessment. Writ petitioner submitted, in reply, that the instant case stands on a different footing as the writ petitioner wants the respondent to look into only the statutorily required certificates under Rules 6(3)(b) of TNVAT Rules and no other documents. As stated supra, these are certificates which are statutory requirements. Considering these, this Court deems it appropriate to set aside the impugned order of the sole respondent being order dated 01.03.2019 bearing reference TIN 33453361961/2012-13 and direct the respondent to consider the Industrial Input Certificates, which have already been filed by the writ petitioner along with his representation dated 06.02.2019, which have been styled as "Rectification Petition "under Section 84 of TNVAT Act and pass an Assessment Order afresh as expeditiously as possible and in any event, within a period of six weeks from the date of receipt of a copy of this order **Tvl. Duracon Automation vs. Assistant Commissioner (ST) Hosur (South) W.P.No.17622 of 2019 Dated : 27.06.2019**

Remand directions:

The assessing officer had, in the previous round, concluded assessments to his best of judgements. Prior to completion, a pre-assessment notice dated 18.03.2019 had

been issued that had not received any response from the petitioner. The reason put forth before this Court for non-compliance with the aforesaid notice had been that the petitioner had met with a very serious accident on 02.05.2013 suffering brain as well as spinal injuries. This Court, vide its earlier order, has been of the view that the seriousness of the accident justified non-compliance by the petitioner with the pre-assessment notice issued by the Officer. In the circumstances as noted above, particularly the fact that petitioner was under medical treatment from 02.05.2013, the Court was of the view that the petitioner should be afforded one opportunity to set things in order. Stating so, the impugned orders of assessment are set aside with specific directions: **Vijay Industries, Vs. The Assistant Commissioner, Commercial Taxes, Palani, W.P (MD).Nos.14259 and 14260 of 2019 DATED: 26.06.2019**

Remand directions:

The assessing officer had, in the previous round, concluded assessments to his best of judgements. Prior to completion, a pre-assessment notice dated 18.03.2019 had been issued that had not received any response from the petitioner. The reason put forth before this Court for non-compliance with the aforesaid notice had been that the petitioner had met with a very serious accident on 02.05.2013 suffering brain as well as spinal injuries. This Court, vide its earlier order, has been of the view that the seriousness of the accident justified non-compliance by the petitioner with the pre-assessment notice issued by the Officer. In the circumstances as noted above, particularly the fact that petitioner was under medical treatment from 02.05.2013, the Court was of the view that the petitioner should be afforded one opportunity to set things in order. Stating so, the impugned orders of assessment are set aside with specific directions: **Vijay Industries, Vs. The Assistant Commissioner, Commercial Taxes, Palani, W.P (MD).Nos.14259 and 14260 of 2019 DATED: 26.06.2019**

Alternative Remedy:

In the light of alternate remedy or in other words by applying the rule of alternate remedy on the touchstone of Satyawati Tandon principle, this Court is not interfering with the impugned order. In other words, this Court does not express any opinion on the merits of the matter. It is open to the writ petitioner to

prefer an appeal to the aforesaid Appellate Authority i.e., Appellate Deputy Commissioner of Commercial Taxes (East). It is open to the writ petitioner to seek Condonation of Delay (COD for brevity) and the benefit of Section 14 of Limitation Act and if the writ petitioner chooses to do so, the same shall be dealt with and disposed of by the Appellate Authority on its own merits. Subject to COD, if the Appellate Authority entertains the matter on merits in the light of sub-sections (2) and (3) of Section 27 of TNVAT, it is made clear that it is open to the Appellate Authority to look into books of accounts, sales / purchase bills and other documents, if the writ petitioner is able to convince the Appellate Authority that sufficient reasons exist for the Appellate Authority to look into the documents. **Tvl.Jeyapathi Marketing Vs. The Assistant Commissioner (ST) Madipakkam Assessment Circle W.P.No.16888 of 2019 DATE: 21.06.2019**

Valid objections:

A revision notice dated 30.10.2012 was received by petitioners on 24.01.2013, pursuant to which, they had also given their objections on 12.02.2013, specifically mentioning that the earlier notice was received by them only on 24.01.2013. Subsequently, the impugned order was also received by them on 21.02.2013 though it is dated 11.02.2013. Hence, the learned counsel would submit that even before the expiry of 15 days' notice period and without any enquiry, the impugned order came to be passed. The objections raised by the petitioner in his reply dated 12.02.2013 is that the sales turnover of Rs.88,67,335/- are only sales of Information Technology products and therefore, the tax that was assessed at 4% is in order. Since the petitioner's claim of having received the notice belatedly, but by taking into consideration that the petitioner seems to have raised valid objection, which of course, requires to be considered by the Authorities, this Court is of the view that the petitioner can be given an opportunity to raise his objections once again before the respondents herein and set-aside the order and remanded the matter. **M/s. Young Computers (India) Pvt. Ltd., V. The Assistant Commissioner (CT), Saligramam Assessment Circle, W.P.No.5341 of 2013 DATED: 20.06.2019.**

(The author is a Chennai based Chartered Accountant in practice. He can be reached at vvsampat@yahoo.com)

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CASE LAWS - SERVICE TAX & GST

1. <u>SERVICE TAX – PROVISION OF CASH VAN WITH SECURITY GUARDS – NOT TO BE CLASSIFIED UNDER SECURITY SERVICES</u>

In Arman Khan V. CCE & ST., Lucknow, 2019 (25) GSTL 103 (Tri.-All.), the appellants are engaged in providing security services to the bank as well as cash van to the bank for carrying the cash from one place to another. The adjudicating authority confirmed the demand on the amounts received towards providing cash van to the banks under "Security Services" along with penalties. On appeal, the tribunal observed as under:-

1. As per the agreement, the appellants are providing security service under a separate contract and also providing cash van, with security guards, to the banks for transporting the cash from one place to another place.

2. In this case, the main service provided by the appellant is cash van service and the question is whether this service shall do qualify as "Security Service" or "Supply of Cash Van Service".

CA. VIJAY ANAND

3. In Kingfisher Airlines Ltd. v. CST, Mumbai- reported in 2015 (40) S.T.R. 1159 (Tri.-Mumbai), wherein service tax sought to be recovered on excess baggage charges, it was held that the dominant service is transportation of passenger by air and Service Tax is not payable on excess baggage charges under the transportation of goods by air. This order was affirmed by the Hon'ble Apex Court in the case of Commissioner v. Jet Airways (I) Ltd. reported in 2017 (48) S.T.R. J42(S.C.).

4. Consequently, providing of cash van service with security guard is covered under 'cash van service' and cannot be termed as 'security services' as the dominant service is transportation of cash from one place to another through these cash vans.

Hence, the appeal was allowed and the impugned order set aside.

2. <u>SERVICE TAX – SCIENTIFIC AND TECHNICAL CONSULTANCY SERVICE – REPORTS SUPPLIED OUTSIDE INDIA – REMAINING WORK RENDERED IN INDIA – EXPORT OF SERVICES</u>

In Bayer Bio Science P. Ltd. V. CCu.,CE. & S.T., Hyderabad-II, 2019 (25) GSTL 230 (Tri.-Hyd.), the appellant has an agreement with M/s Aventis Crop Science GmbH (herein after referred to as M/s Aventis) located in Germany under which they provide services to their client. The appellant has a plant breeding team which looks for specific traits from the germplasm and then they cross pollinate such plants with existing parental lines. After cross pollination, they test the varieties so produced continuously for 7 to 9 years across the country in different agro climatic zones to check their performance and stability. After evaluating, they send their reports to their client to M/s Aventis who file a patent application and obtain Intellectual Property Rights (IPR) for hybrid seeds so produced.

The appellant also has another set of agreements with the farmers under which they engage farmers to multiply the seeds so developed. The appellant has exclusive right to multiply the hybrid seeds which they provide to farmers for multiplication and purchase the seeds so produced for a price as decided. In order to enable the farmers to multiply these seeds effectively the appellant also provides them technical guidance and support and charges a fee from the farmers for such guidance.

The adjudicating authority confirmed the demand on these two activities under 'scientific and technical consultancy service', against which appeal was filed before the Tribunal which observed as under:-

1. The activities undertaken by the appellant form the heart and soul of the entire plant breeding programme which results in development of new varieties such seeds are the essence of modern agriculture and green revolution. These activities start from testing germplasm to cross pollination to developing varieties and testing them in agro climatic zones continuously for a period of 7 to 9 years to ascertain their performance in Indian conditions. The activity undertaken by the overseas client is accepting those reports and filing for necessary patents. He also provides guidance to the appellant on conducting the research.

2. Under these circumstances, the appellant is only rendering scientific and technical consultancy services& there is no force in the argument of the appellant that they are not a scientific or technical research institution or an organisation. They are definitely an organisation engaged in doing scientific research.

3. Scientific research is not confined to fundamental research but can also be applied research. If plant breeding is not a science at all then nothing in the modern agriculture which resulted in green revolution is science. Under the first agreement, the appellant rendered scientific and technical consultancy services to their overseas client and received consideration in foreign exchange.

4. For the period 01.04.2004 to 14.03.2005, they are not liable to pay service tax as they were covered by the exemption notification 21/2003-ST.

5. With respect to the service tax post introduction of the Export of Service Rules, in terms of Rule 3(1), where the taxable services are performed partly outside India and partly in India it shall be treated as an export of taxable service. In this case, the entire research including cross pollination and testing of the germplasm and testing the variety so developed is done within the country but the reports were delivered to Germany.

6. The service is complete only when the reports are also sent to their client as per the agreement in Germany. Until the report is delivered the service is not complete and the appellant is not entitled to the consideration for the service.

7. Therefore, the service by the appellant is rendered partly outside India and partly in India although the part rendered outside India is very small. In terms of Rule 3(1) of the Export of Services Rules such services should be treated as export of services.

8. The adjudicating authority denied the benefit because the overseas client ultimately uses for promotion of his sales of the new varieties developed in India and the services provided by the assessee will be utilized in India cannot be sustained.

9. The scientific and technical consultancy services provided to their overseas client is one leg of transaction which ends when the reports are delivered

to their client in Germany. The service tax proposed to be charged is on this leg of transaction. After having received the reports the clients in Germany files applications for and obtains IPR and thereafter the second phase of the activity viz., multiplication of the seeds developed and their sale in India begins. The service in question is not relatable to the second phase of the activity which begins only after they have obtained IPR.

10. Therefore, services in question are delivered partly outside India and partly within India and the payment for the services is received in foreign exchange and hence these services should be treated as export of services and therefore they are not liable to service tax on these services.

11. In so far as the second element of demand is concerned, the appellant is providing guidance to farmers in cultivating crops to multiply the seeds of the variety so developed. The appellant himself buys the seeds so multiplied by the farmers and pays a price for that. In order to help the farmers multiply these seeds effectively the appellant provides guidance. Such guidance, in the field of agriculture is known as extension-education which is a branch of agricultural science which deals with transferring the knowhow to farmers. This does not involve any scientific or technical research but only in passing on knowhow to the farmers about the agronomic practices to be followed and guiding them from time to time if there are any pest infestations, diseases etc.

12. These services cannot be termed as scientific or technical consultancy services. Therefore, the demand on this element also fails.

Hence, the appellant is not liable to pay service tax on both the services rendered by them and the appeals were allowed and the impugned orders set aside.

3. SERVICE TAX – GRANT OF LICENCE/PRIVILEGE BY TASMAC TO PRIVATE PARTIES TO RUN A BAR ADJACENT TO ITS RETAIL VENDING SHOPS, SELL EATABLES, COLLECT EMPTY BOTTLES AND CARTONS THEREIN ON A FEE – LIABLE TO SERVICE TAX ON THE 1% REVENUE RETAINED BY THEM AS AGENCY COMMISSION WHILE REMITTING THE BALANCE TO THE STATE GOVERNMENT VIDE RULE 9A OF TAMIL NADU LIQUOR RETAIN VENDING (IN SHOPS AND BARS) RULE 2003

In Tamilnadu State Marketing Corporation Ltd. V. Pr. Commr. of GST & C. EX., Chennai North, 2019 (25) GSTL 539 (Mad.),the appellants grant licence / privilege to parties to run a bar adjacent to their retail vending shops to sell eatables, collect empty bottles & cartons therein for a fee. The appellants retain 1% of the revenue generated towards commission while the remaining 99% of the revenue is passed on to the State of Tamil Nadu under rule 9A of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003 (Retail Vending Rules for short). The adjudicating authority issued a SCN demanding tax under business auxiliary services that was sustained by the Tribunal for the period from (a) October 2008 to June 2012, (b) from July 2012 to March 2013 and (c) from April 2013 to till date. However, the demand pertaining to the first period was dropped entirely while for the third period, the demand was sustained only to the extent of 1% of the amount retained by the appellant while the entire demand for the second period was sustained. These were also sustained by the Tribunal.

A further appeal was filed before the high court raising the following substantial questions of law:

i. Whether, on the facts and in the circumstances of the case, the Tribunal erred in not appreciating that impugned payments by bar contractors were made in accordance with the provisions of Statute, representing devolution of sovereign rights of the State through the appellant and hence, is not exigible to service tax?

ii. Whether, on the facts and in the circumstances of the case, the Tribunal erred in upholding service tax payment for period from 01.7.2012 to 31.3.2013 without appreciating that character of impugned payments are not modified by the introduction of Negative List and these payments were as per Statute and in effect made only to the State of Tamil Nadu and is not exigible to service tax? and

iii. Whether on the facts and in the circumstances of the case, the Tribunal erred in not adjudicating the alternate prayer of the appellant, without prejudice to other claims, that from 01.7.2012, only 1% of the payments made by the contractors can be subject to service tax, as has been done from 01.4.2013 onwards?

The High Court observed as under:-

1. W.r.t. the period from July 2012 to March 2013 is concerned, the Tribunal held against the appellant and made them liable to pay service tax on the ground that after introduction of Negative List with effect from 01.7.2012, Section 65B(44) of the Finance Act, 1994 was given a broader scope by defining the expression 'service' to mean 'any activity carried out by a person for another for consideration'. Therefore, the appellant has challenged the levy of service tax for the said period from July 2012 to March 2013.

2. With regard to the period from April 2013 to till date, the appellant is not aggrieved in the sense that the Tribunal, taking note of the amendment to the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003 (for brevity, the Retail Vending Rules) by insertion of Rule 9A, held that the appellant is liable to pay service tax only on 1% of the revenue generated, as the remaining 99% of the revenue is passed on to the State of Tamil Nadu.

3. Rule 9A of the Retail Vending Rules deals with grant of privilege to run the bar. It states that the privilege of running bar may be granted to private parties by tender, that the Board of the appellant may decide the upset price and other terms and conditions from time to time with the prior approval of the Commissioner of Prohibition and Excise, that the appellant, as agency, shall collect the tender amount from the successful tenderers and remit the same to the Government on or before 25th of the following month and that the appellant may retain 1% of the amount so collected as agency commission.

4. Although the said Rule states that it has a privilege of running bars, the appellant has not authorized private parties to vend liquor in the shops, which are annexed to the retail vending shops. It is no doubt true that the Retail Vending Rules empower the appellant to vend liquor not only in the shops established by them, but also in the bars. But, the factual scenario in the State of Tamil Nadu is that in the retail vending shops, vending alone is permissible and in the bars attached to the retail vending shops, a facility is provided for consumption of liquor thereby the liquor purchased in the retail vending shops is taken by the customer to be consumed inside the premises and this is with a view to prevent the customer to consume liquor in the open area causing nuisance to the general public.

5. The Retail Vending Rules also permit the licences to be used by certain categories of establishments where they are permitted to vend liquor and allow the persons to consume the liquor within the same premises. Some examples are certain categories of hotels, resorts, etc.

6. Therefore, the grant of privilege in the instant case, which we are presently dealing, is for the purpose of selling eatables and collecting empty bottles and cartons in the bars, which are adjacent or annexed to the retail vending shops.

7. The statutory right conferred on the appellant under the provisions of the Tamil Nadu Prohibition Act, 1937 read with the Retail Vending Rules is on account of a policy decision taken by the Government whereby the State of Tamil Nadu enacted the Tamil Nadu Prohibition Act, 1937 and framed various Rules. Therefore, there is no vested right granted to any private individual to trade in alcohol in the State of Tamil Nadu and already, the privilege has been vested with the appellant, which is a State Owned Corporation.

8. Therefore, if the appellant is to part away with such a statutory right, there should be a statutory authorization permitting the appellant to part away with that statutory right. Rule 9A of the Retail Vending Rules, though states that it is a grant of privilege to run the bars, private parties are not allowed to vend liquor in the premises, but are only entitled to sell eatables and collect empty bottles and cartons. Therefore, to state that the right to sell eatables and collect empty bottles is a statutory right is an absurd proposition, which cannot be accepted.

9. Thus, there is no question as to whether such a right or privilege to sell eatables and collect empty bottles can be treated as a statutory right.

10. In in the case of Karnataka Government Insurance Department Vs. ACCE, Bangalore [reported in (2012) 26 STR 521, it was held that even when a Governmental Authority performs a service, which is not in the nature of a statutory activity, the same has to be held leviable to service tax.

11. Consequently, the substantial question of law 1 and 2 are answered against the assessee.

12. With regard to the third substantial question of law, which is an alternate argument, rule 9A of the Retail Vending Rules. The said Rule was notified in exercise of the powers conferred under Sections 17C, 17D, 21 and 22D read with Section 54 of the Tamil Nadu Prohibition Act, 1937. By virtue of this Notification, there has been amendment to the Retail Vending Rules w.e.f. April 1, 2013, by insertion of a new Rule namely Rule 9A. This Notification was pursuant to examination of the proposal given by the Commissioner of Prohibition and Excise. Thus, when a new Rule is inserted, it would take effect from the date, on which, it is notified unless the Notification specifically fixes an anterior date. In the relevant Notification, there is no indication that it is retrospective. Therefore, the Notification is, therefore, held to be prospective.

13. The Notification can never be held to be retrospective or clarificatory because if at all a privilege is granted in favour of a private party, it can be only prospective and cannot apply for the period prior to April 2013

14. For the above reasons, the third substantial question of law is answered against the assessee.

Hence, the appeals were dismissed.

4. <u>GST- ADVANCE RULING – CONTRACT AWARDED FOR RESUSCITATION BY RE-EXCAVATION OF RIVER ALONG WITH RAISING AND STRENGTHENING OF EMBANKMENT ON BOTH SIDES OF THE RIVER – STATE GOVT. ACTIVITY COVERED UNDER SL.NO.5 OF ELEVENTH SCHEDULE OF CONSTITUTION OF INDIA, EXEMPT UNDER SL.NO.3A OF NOTIFICATION NO.9/2017</u>

In RE: NEO Built Corporation, 2019 (25) G.S.T.L 594 (A.A.R. - GST), the Irrigation and Waterways Directorate, Govt of West Bengal has awarded the Applicant a contract for the resuscitation by re-excavation of river Palaspai from Banskhal to Mahisghata, along with raising and strengthening of embankment on both sides of the river in Block Daspur - 1 & 2 and P.S Daspur in Paschim Medinipur. An application was filed seeking advance ruling as to whether exemption under SI No. 3 or 3A of Notification No.9/2017 - Integrated Tax (Rate) dated 28/06/2017 (hereinafter the Exemption Notification), as amended from time to time, applies to the above supply. The authority observed as under:-

1. Circular No.51/25/2018-GST dated 31/07/2018 has clarified that the service tax exemption at serial No.25(a) of NotificationNo.25/2012 dated 20/06/2012 (hereinafter the ST Notification) has been substantially, although not in the same form, continued under GST vide SI No. 3 and 3A of the Exemption Notification. Sl. No. 25(a) of the ST notification under the service tax exempts "services provided to the Government, a local authority or a governmental authority by way of water supply, public health, sanitation, conservancy, solid waste management or slum improvement and up-gradation." The Circular further explains in relation to the specific issue of ambulance service to the Government by a private service provider (PSP) that such service is a function of 'public health' entrusted to Municipalities under Art 243W of the Constitution, and, therefore, eligible for exemption under SI No. 3 or 3A of the Exemption Notification.

2. Under the previous service tax regime, the exemption was limited to certain functions specified in SI No. 25(a) of the ST Notification, whereas, under the GST the ambit has been broadened to include any such functions that are performed by a panchayat or a municipality under specific provisions of the Constitution.

3. These functions are in the nature of public welfare service that the governments on their own, and sometimes through governmental authorities/entities, do provide to the citizens. When the activity is in relation to any such function, the supply to the governments or governmental authorities/entities or local authorities is exempt from paying GST under Sl No. 3 or 3A of the Exemption Notification, provided it is a pure service or a composite supply where supply of goods does not constitute more than 25% of the value.

4. The Applicant's eligibility under Sl. No.3 or 3A of the Exemption Notification should, therefore, be examined from three aspects: (1) whether the supply being made is pure service or a composite supply, where supply of goods does not exceed more than 25% of the value of the supply, (2) whether the recipient is government, local authority,

governmental authority or a government entity, and (3) whether the supply is being made in relation to any function entrusted to a panchayat or a municipality under the Constitution, as clarified in the above paragraphs.

5. The recipient is the State Government. The contract is meant for resuscitation of Palaspai River. It involves pumping out the water from the clogged channels, excavation of the drainage channels, lifting and deposit of the excavated materials to specified locations, and compacting earthwork for strengthening the embankment.

6. Cost of supplying materials is included in the compacting cost. The supply of goods, however, does not constitute any significant portion in terms of value. As such, compacting, in the course of which goods are to be supplied, constitutes only 2% of the value of the contract.

7. It is, therefore, a composite supply primarily of various services, principal supply being the service of resuscitation of the river, where the supply of goods constitutes well below the threshold mentioned in Sl No. 3A of the Exemption Notification.

8. The recipient is engaged in the development of irrigation and waterways, which includes activities in relation to the function listed under Sl. No.5 of the Eleventh Schedule. Resuscitation of a river means reviving the water flow. It is, therefore, relatable to the function listed under Sl. No.5 of the Eleventh Schedule, especially when undertaken by a department of the State Government, which is primarily entrusted to execute such functions.

Hence, the authority held that the Applicant's services to the Irrigation and Waterways Directorate, Govt. of West Bengal, is exempt under Sl. No.3A of the Exemption Notification. The Applicant's supply, as mentioned in para 1.1, is exempt from the payment of GST under Sl. No.3A of Notification No.9/2017 - Integrated Tax (Rate) dated 28/06/2017, as amended from time to time.

(The Author is Chennai based Chartered Accountant in practice. He can be reached at reachanandvis@gmail.com)

WRITE UP ON DUE DATES FOR FILING UNDER COMPANIES ACT 2013

CA. CS. DHANAPAL

The Ministry of Corporate Affairs recently in the year 2019 has issued/introduced the following amendments notification / changes under the Companies Act 2013 (the Act):

a. Changes in Companies (Significant Beneficial Owners) Rules 2018 to identify individuals/ entities having significant control over the affairs of a company

b. Companies (Incorporation) Rules, 2014 mandating all the companies incorporated prior to 31 December 2017 to upload all their particulars of various compliances including details of registered office in Form INC 22A Active.

c. Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019, mandating all the companies who receives goods or services from MSME and the payment for which is not made within 45 days from the date of acceptance or the date of deemed acceptance of goods or services from MSME to report such transactions in MSME Form I.

d. Changes in Companies (Acceptance of Deposits) Rules, 2014 mandating all companies to file a return of deposits in Form DPT 3 with the MCA, furnishing information about file the transactions that have not been considered as deposit or both under the Companies (Acceptance of Deposits) Rules 2014 (Deposit Rules).

This article takes you through various categories of reporting compliance and related filing on certain important due dates and annual filing requirements under the Companies Act 2013, which are applicable for financial year 2018-2019 as well as applicable compliance subsequent thereto as below;

ANNUAL FILING FORMS UNDER THE COMPANIES ACT 2013				
FORM NO.	**PURPOSE**	**DUE DATE OF FILING**	**Last date for filing (Considering AGM on 30.09.2019)**	**SIGNED DOCUMENTS REQUIRED**
MGT 14 (only for public cos)	Resolution of Board of Directors approving financial statements and board's report	Within 30 days from the date of Board meeting (Including the date of meeting)		Resolution for approving financial statements and approving board's report.
ADT 1	Appointment / re-appointment of auditor only for fresh appointment	Within 15 days from the date of AGM (Including the date of AGM)	14.10.2019	Eligibility cum consent letter by the Auditor and Resolution for appointment of auditor and copy of Appointment letter.
AOC 4	Filing of financial statements	Within 30 days from the date of AGM (Including the date of AGM)	29.10.2019	✓ Notice of AGM ✓ Directors report with all annexure ✓ Auditors report with all annexure ✓ Financial statements (balance sheet, P&L, Cash Flow, notes)
Form AOC-4 (CFS)	Consolidated Financial Statements	Within 30 days from the date of AGM (Including the date of AGM)	29.10.2019	✓ Companies which have Subsidiary Company,Associate Company and Joint Ventures.
MGT 7	Annual Return	Within 60 days from the date of AGM (Including the date of AGM)	28.11.2019	• List of Shareholders • MGT 8, if applicable (certificate by PCS)

There are certain classes of Companies which are required to file their Balance sheet and Profit and Loss or Financial Statements in XBRL.

- All companies listed with any Stock Exchange(s) in India and their Indian subsidiaries; or
- All companies having paid up capital of Rupees five crore and above; or,
- All companies having turnover of Rupees one hundred crore and above; or
- All companies which were hitherto covered under the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2011: However, Banking, Power, NBFC and Insurance Companies are exempted from XBRL filing till further orders.

DUE DATES FOR FILING OF VARIOUS OTHER FORMS

FORMS	DUE DATES	COMPLIANCE REQUIREMENTS
Form NFRA-1 (Not applicable to Companies as defined under sub section (20) of Section 2 of the Companies Act 2013)	31.07.2019	Every existing body corporate other than a company governed by the NFRA Rules (Rule 3(1)), shall inform the ("NFRA") about details of the auditor(s) as on 13th November 2018. As per NFRA portal, eForm NFRA-1 is required to be filed only by bodies corporate covered by following rule: a) Rule 3(1)(c) b) Rule 3(1)(d) c) Rule 3(1)(e)
eForm BEN – 2 (Pl ignore this if already filed)	30.07.2019	Declaration in Form BEN-1 (physical form) is required to be obtained from the Significant Beneficial Owner by the Company. Upon receipt of BEN-1, the Company shall file eForm BEN-2 with MCA attaching the BEN-1.
Active Form INC -22A (ignore this if already filed)	On or before 15.06.2019 (eForm can be filed after said due date with a fee of Rs.10,000 (one time fee)	Every company incorporated on or before 31.12.2017 shall file INC-22A. A company which has failed to file INC-22A, shall not be allowed to file the following forms until it files INC-22A by paying an one time penalty of Rs. 10,000/-: 1. Form DIR-12 (Appointment of Directors) 2. Form P AS-3 (Allotment of Share) 3. Form INC 22 (Shifting of Registered office) 4. orm SH-7 5. Form INC- 28

E-Form DIR – 3 KYC (yearly) (Applicable only to those Directors whose DIN is active as on date)	Within 30 Days from the date of deployment of revised e-form in the MCA Portal (Yearly DIR 3 KYC)	DIR 3 KYC eForm is an Annual Exercise, however, the e-form presently is not designed in such manner and thus the due date for filing the e-form would be 30 days from the date of deployment of revised e-form. (Revised E-Form not yet deployed).
E-Form DIR – 3 KYC(for director whose DIN is deactivated)	Filing of E-Form DIR – 3 KYCto activate the DIN	DIR 3 KYC eForm filing can be done with the Penalty of Rs. 5,000/- (one time).
E-Form PAS – 6 (E-Form, not yet deployed) (Applicable only to public cos)	within 60 days from the conclusion of each half year	Reconciliation of Share Capital Audit Report (Half-yearly) Pursuant to sub-rule Rule 9A (8) of Companies (Prospectus and Allotment of Securities) Rules, 2014. Applicable w.e.f. 30.09.2019
E -Form DPT -3 (One Time Return)	29.06.2019	ONE TIME DPT-3 for amounts which are NOT deposits (exempted deposits) outstanding as on 31.3.2019 AND received on or after 1.4.2014 Auditor's certificate is NOT mandatory. Can be filed after complying with the penal provisions.
E -Form DPT -3 (Yearly Return)	30.06.2019	Transaction during the year, which are deposits as well as and which are not deposits (exempted deposits) Auditor's Certificate is mandatory. This is to be filled every year. Can be filed after complying with the penal provisions.
MCA E- Form INC 20A (Pl ignore this if already filed)	Within 180 Days from the date of Incorporation of the Company. (Not applicable to those companies incorporated before 2nd November 2018)	As per Section 10A (Commencement of Business) of the Companies Act, 2013, inserted vide the Companies (Amendment) Ordinance, 2018 w.e.f 2nd November 2018, a Company Incorporated after the ordinance and having share capital shall not commence its business or exercise any borrowing powers unless a declaration is filed by the Director within 180 days from the date of Incorporation of the Company with the ROC.

(The author is a Chennai based practicing Company Secretary. He can be reached at csdhanapal@gmail.com)

UNION BUDGET 2019-2020 - INDIRECT TAX IMPLICATIONS

CA. DEBASIS NAYAK

The Finance Minister presented the maiden Budget of the Modi Government 2.0 on 5th July 2019. In the budget speech, it is provided that Modi-led-NDA-Government, between 2014-2019, provided a rejuvenated Centre-State dynamic, cooperative federalism, GST Council, and a strident commitment to fiscal discipline. The union budget lays down the blueprint to project India to a US$ 5 Trillion economy by 2024.

With respect to the indirect taxation, the Finance minister rightfully given the credit to the GST council for monumental reform by way of introduction of GST and fulfilling the dream of *"one nation, one tax, one market"*. It is also proposed to move to an electronic invoice system by Janurary 2020 and subsequent phasing out of e-way bill requirement.

Key Budget Highlights

Section 1 - Goods and Service Tax

We have bifurcated the budget highlights for Goods and Services Tax in 4 buckets as Trade Facilitation, Administration, Improving Compliances and others.

1. Trade Facilitation

a) Threshold limit for registration enhanced from 2 Million to 4 Million for taxpayers exclusively engaged in supply of goods

b) Specified class of suppliers to mandatorily offer facility of digital payments to their recipients; in a manner to be prescribed by the Government.

c) Facility to taxpayer to transfer an amount of tax, interest, penalty and fees from one head to another in Electronic Cash ledger within the same registration. However, this will be subject to such manner and restriction as prescribed by the Government.

d) Interest to apply only on net tax liability (after considering eligible input tax credit) except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period.

e) The Central Government may disburse the refund of State taxes as well to taxpayers.

2. Administration

a) Authorizing Commissioner to extend the due date for furnishing of returns in the following cases:

- Annual return (GSTR-9/9A) and Reconciliation statement (GSTR-9C) for specified class of taxpayers as may be prescribed
- Monthly and annual statement by the person collecting Tax at source (TCS)

b) Constitution of an Appellate forum namely National Appellate Authority for Advance Ruling (NAAAR):

- To deal with conflicting rulings pronounced on the same question by Appellate Authorities of Advance Ruling of two or more states/Union Territory.
- Appeal can be filed by any officer authorised by the Commissioner or an applicant, being distinct person referred to in section 25 aggrieved by such advance ruling
- Every appeal before NAAAR shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the applicants, concerned officers and jurisdictional officers. However, officer authorised by commissioner may file appeal within a period of ninety days. NAAAR if satisfied that appellant is prevented by sufficient cause may allow such appeal to be presented within a further period not exceeding thirty days.
- NAAAR shall pass order within a period of ninety days from the date of filing of the appeal
- NAAAR order is binding on Applicants having same PAN number and the jurisdictional officers of such Applicants

3. <u>Improving Compliances</u>

a) There will be an alternative composition scheme for suppliers of services or mixed suppliers having an annual turnover up to INR 5m in the preceding FY

b) Aadhaar authentication mandatory for specified class of new taxpayers. However, if an Aadhaar number is not assigned; such person shall be offered alternate and viable means of identification.

In case of failure to undergo authentication or furnish proof of possession of Aadhaar number or furnish alternate and viable means of identification, registration allotted to such person shall be deemed to be invalid and the other provisions of this Act shall apply as if such person does not have a registration

4. <u>Others</u>

Empowering National Anti-Profiteering Authority to impose penalty equivalent to 10% of the profiteered amount. However, no penalty shall be leviable if the profiteered amount is deposited within thirty days of the date of passing of the order by the Authority.

Section 2 – Customs Act

We have segregated the budget highlights with respect to the Customs Act in three buckets namely Powers of officers, Prosecution and Penalties.

1. Power of Officers

- ✓ Attachment of bank account for the period of 6 months (further extended to 6 months) for reasons to be recorded in writing and with prior approval of commissioner
- ✓ Customs officer is empowered to arrest any person, who has committed an offence outside India or Indian Customs waters
- ✓ New provision shall be introduced for Verification of Identity of a person and Compliance to empower Proper Officer to carry out verification of a person for ascertaining compliances
- Proper Officer can verify through Aadhar or other alternatives
- In case of failure of authentication, Principal Commissioner can suspend clearances, refunds, drawback, exemptions, licenses under this act or any monetary or other benefits arising out of imports
- Order of suspension will remain in force until the person concerned complies with the requirements or furnish correct documents or information
- ✓ Proper officer can screen or scan any person if he believes that goods liable for confiscation are secreted inside the body of such person with prior approval of AC/ DC of customs

2. Prosecutions

Section 104 of Customs shall be amended to include the following as cognizable and non-bailable offence

- fraudulently availing of or attempting to avail drawback or any exemption from duty provided under this Act, where the amount of drawback or exemption from duty exceeds fifty lakh rupees; or
- fraudulently obtaining an instrument for the purposes of this Act or the Foreign Trade (Development and Regulation) Act, 1992 (scrip or authorisation or licence or certificate as per Section 28AAA of the Customs Act), and such instrument is utilised under this Act, where duty relatable to such utilization of instrument exceeds fifty lakh rupees

3. Penalties

❖ Penalty for fraudulently obtaining the instruments

A new section 114AB is proposed to be inserted in Customs Act to levy the penalty not exceeding the face value of such instrument in cases where any person has obtained any instrument by fraud, collusion, willful misstatement or suppression of facts and such instrument has been utilised by such person or any other person for discharging duty.

❖ Increase in quantum of General Penalty

Penalties for contravention etc., not expressly mentioned anywhere else in this act has been increased from INR 1 lakh to INR 4 lakhs

Penalties for contravention of Rules and Regulations has been increased from INR 50,000 lakh to INR 2 lakhs.

4. Rate Rationalization

Customs duty rates have been reduced on raw materials to incentivise indigenous manufacturing. Further, in order to give level playing field basic customs duty is being increased on items such as cashew kernels, PVC, Vinyl flooring, tiles, metal fittings, mountings for furniture, auto parts, certain kinds of synthetic rubbers, marble slabs, optical fibre cable, CCTV camera, IP camera, digital and network video recorders etc. In addition, exemptions from custom duty on certain electronic items which are now being manufactured in India are being withdrawn.

Section 3 – Central Excise and Service Tax

Exemption from Service Tax

- Service by State government by way of grant of liquor license during the period April 1, 2016 to June 30, 2017
- Specified services by IIM to be exempt from service tax for the period July 1, 2003 to March 31, 2016
- Upfront amount for granting long term lease of plots for development of infrastructure for financial business provided by government to developers in industrial or financial business area during the period October 1, 2013 to June 30, 2017

Central Excise

- Proposal to increase in special additional excise duty on Motor spirit commonly known as petrol and High-speed diesel oil by INR 2 per litre.
- Proposal to basic central Excise duty on certain tobacco products falling under Tariff 2402 and 2403.

Section 4 – Dispute Resolution Scheme

Dispute resolution cum amnesty scheme called **"The Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019"** is a onetime measure for resolution of pending disputes related to Central Excise, Service Tax and other 26 indirect tax enactment. The scheme provides relief by way of waiver of certain percentage of tax dues, and full waiver for interest and penalty. The proposed Scheme covers past disputes of taxes which have got subsumed

in GST namely Central Excise, Service Tax and Cesses. All persons are eligible to avail the scheme except a few exclusions including as those convicted under the act in the case for which he intends to make declaration and those who have filed an application before the Settlement Commission.

The scheme shall be enforceable from a date to be notified by the Central Government. The designated committee to be constituted in this regard, who will verify the correctness of declarations made under this scheme.

Relief under this scheme

The relief under the scheme varies from forty percent to seventy percent of the tax dues for cases other than voluntary disclosure cases, depending on the amount of tax dues involved. The scheme also provides relief from payment of interest and penalty.

Particulars	Amount of relief (% of tax dues)	
	Amount of duty* < or = INR 50 lacs	Amount of duty > INR 50 lacs
Tax dues relate to an SCN or an appeal(s) pending as on June 30, 2019	70%	50%
Tax dues relate to an amount in arrears**	60%	40%
Tax dues relate to an amount in arrears and where an amount of duty has been reported as payable in returns but tax has not been paid	60%	40%
Tax dues are linked to an enquiry, investigation or audit	70%	50%
Tax dues payable on account of voluntary disclosure	No relief with respect to tax dues	

*Amount of duty - Amount of central excise duty, service tax and cess payable under indirect tax enactment.

**Amount in arrears - Amount of duty which is recoverable as arrears of duty either because no appeal was filed against an order before expiry of the time period for filing appeal, or towards an order in appeal attaining finality, or because tax liability has been admitted in the return filed on or before June 30, 2019 but such tax has not been paid.

(The author is Chennai based Chartered Accountant. He can be reached at debasis.nayak@pwc.com)

LS #5 ON MLI : LEGAL RAMIFICATIONS ON MLI RATIFICATION - INDIA PERSPECTIVE

Mr. SUDARSHAN RANGAN
Advocate
&
CA. VIGNESH KRISHNASWAMY

Introduction

Treaty Laws have increasingly become universal and an essential form of binding arrangements either as law or as cooperative arrangements between states. From a tax perspective, double tax avoidance agreements entered bilaterally between countries are a common practice. An evolution to the bilateral tax treaties is the multilateral agreement (MLI) entered between two or more countries, more recently in the limelight thanks to G20 OECD Base Erosion Profit Shifting ("BEPS') agenda to which India is privy.

The Indian brick to the foundation of the OECD's MLI convention was initialled and laid before the Secretariat of OECD during the mass MLI signing ceremony on 07 June 2017. This was preceded by the in-principle approval for signing of the MLI by the Union Cabinet, issued vide press release was issued dt. 17 May 2017[1]. Further, the MLI was ratified by the Union Cabinet notified through the press release dated. 12 June 2019[2], the ratification will now be tabled for the Presidential assent before the Government formally introduces and implements the MLI convention alongside the existing tax treaties. The MLI is technically to be effective from 1 October 2019.

In this article, we now seek to bring out the potential legal ramifications of the Indian ratification process of MLI convention. Also, what could be the systemic method of ratification, if the instrument is to be accepted and be integrated along with the domestic tax laws in India to ensure the working of tax treaty-related measures to prevent Base Erosion and Profit Shifting under Action Plan 15.

B . Treaty-Making Power in India

Tax treaties form an essential aspect of international laws in framing the taxing rules between the states. International law recognises that every Sovereign state has the right to enter into International treaties. In India, the Supreme Court states that "*The State is a creature of the Constitution*" in the case of S.R. Bommai v. Union of India[3]. International

[1]http://pib.nic.in/newsite/PrintRelease.aspx?relid=161885
[2]http://www.pib.nic.in/Pressreleaseshare.aspx?PRID=1574096
[3]AIR 1994 SC 1918

law includes tax treaties, which have been entered into between countries on the fundamental premise to protect the interest of the taxpayers in the respective country. Therefore, it becomes extremely relevant in understanding the role, scope and the power under which a treaty agreement (or) a convention (or) an instrument is being entered into by a sovereign state, more importantly in the Indian Context.

India, being a parliamentary democracy, derives its power from its Constitutional sanctions. Treaty-making power of a country is also one such sanction by the Constitution. Therefore, the right exercise of the powers and sanctions are critical concerning the specific powers of the enshrined in Constitution on the treaty-making power. In India, as far as the tax treaties are concerned, the power vested in the Executive through a delegated legislative power from the Constitution.

Section 90(1) of the Income tax Act, 1961 (''ITA') is the legislative sanction provided by the Constitution, in terms of entry 14 of Seventh Schedule read with Art. 253, without which this enabling power of entering into tax treaty shall not available. India generally follows a dualistic approach, wherein the municipal law and international law are separate & distinct. However, in the context tax treaties India adopts a Monist view, wherein by virtue of the delegated legislated powers, the international law (tax treaties) gets transposed into the domestic law. What becomes worthy to note is that Executive power of the Union is co-extensive with the legislative power of the Parliament to the extent of the powers delegated. It is imperative to note that India does not have a ratification mechanism through a Parliamentary approval process. Therefore, in the adoption of tax treaties through the objects and the framework work of the Model Conventions[4], the delegated powers shall need to be heedfully exercised, in the right manner.

Therefore, the question that becomes relevant in the introduction of the MLI is that, would the ITA need a fresh delegation of power to bring the MLI framework to effect and not stop with the ratification of the cabinet and the Presidential Assent? It may be imperative at this stage to recall the principles[5] laid down by the Supreme Court in the case of Azadi Bachao Andolan[6] In the treaty law context. In the implementation of the MLI, it becomes essential to look at the sanctions carefully as the impact that MLI may have on the tax treaties are significant.

[4]United Nations Model Convention ("UN MC'), OECD Model Convention ("OECD MC')

[5]"Our Constitution makes no provision making the legislation a condition for the entry into an international treaty in time either of war or peace. The executive power of the Union is vested in the President and is exercisable in accordance with the Constitution. The Executive is qua the State competent to represent the State in all matters international and may by agreement, convention or treaty incur obligations which in international law are binding upon the State."

[6]Union of India & ANR v. Azadi Bachao Andolan (2003) 263 ITR 0706 (SC)

The fundamental treaty-making powers are vested under Art. 51 of the Constitution. Unlike other international treaties India enters with other countries (or) associations, it is well known that the tax treaties are specifically entered into by way of the specific delegation of power under section 90 of the ITA. This delegation is derived from the powers vested in the Constitution under Art. 253[7] read with Item 14[8] of List I of Seventh Schedule. Hence Art. 246 dealing with the powers of the Union to levy taxes on income is to be read along with the delegated treaty-making powers under Art. 253 to the Executive, which enables tax treaty making by the Union.

Therefore, to summarise the above and as we move forward in understanding legal ramification on ratification of MLI, following are the aspects of the delegation of powers to the Executive which merits consideration:

- First, the Executive carries the torch under the auspices of the sovereign state under the Constitution and undertakes the duty of negotiating and entering into an international convention is vested upon by the powers under Art. 73(1)(b) (delegated through legislation).

- Second, the framework of the Bilateral Tax Treaty historically is recognised for the avoidance of Double Taxation and provide relief to residents of the other state. Therefore, if MLI is to be effected, there appears a need to make legislative changes through the Parliament under section 90 of the ITA, to provide valid sanctions to its implementation.

- Lastly, given the existing Indian framework of the domestic law does not accommodate the structure of an MLI and for the objects that it seeks to achieve in implementing tax treaty measures to prevent base erosion and profit shifting, would this ratification of the Union Cabinet be at sufficient under the domestic law context?

[7]253. Legislation for giving effect to international agreements Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has the power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body"

[8]"14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries."

C. MLI- Legal Ramifications

Before we proceed further, it may be relevant to note the principle laid down by the Supreme Court[9] on the power of the Executive, that the executive power of the Central Government extends to the same subjects and the same extent as that of Parliament as long as it does not infringe any provision of law made by the Parliament or the Constitution. This would mean that MLI ratification in the Indian context is complete only if a necessary legislative sanction is provided by the Parliament.

Let's take an instance of the recent ruling of the High Court in Kenya (common law country) on the Kenya-Mauritius tax-treaty, where the Government through a legal order ratified the said treaty without following appropriate ratification procedures under the Kenyan legal system. The question that came up before the court, was with regard to the process adopted in ratification of the tax treaty and in this matter the court affirmed the plea of the petitioner and struck down the tax treaty as unconstitutional for want of appropriate procedures to be followed in ratification of a tax treaty having regard to the constitutional provisions of the state.

Therefore, in light of the above and in the Indian context it is imperative that in order to implement the MLI convention the scope provided by the legislature under section 90[10] of ITA shall require the proper exercise of the delegated power, which is (i) whether the sanction of the legislature to enter into such a tax treaty is fulfilled; (ii) in exercising such executive power whether the legislature and Executive have followed due procedures under our Indian law.

The treaty-making power under the ITA is provided for under section 90(1), which enables the Central Government to enter into a treaty with the Government of another country for the purposes specified thereunder. This is an administrative delegation given by a statute to the Central Government to enter into a tax treaty.

[9](2006) 9 SCC 69, Sathya Narain Shukla V. UOI

[10]Those aspects discussion under this article shall apply in respect of section 90A also, as section 90A is akin to section 90 of the ITA but for its applicability to specified associations.

Section 90(1) of ITA is reproduced as follows:

"90. (1) The Central Government may enter into an agreement with the Government of any country outside India or specified territory outside India, –

(a) for the granting of relief in respect of –

(i) income on which have been paid both income-tax under this Act and income-tax in that country or specified territory, as the case may be, or

(ii) income-tax chargeable under this Act and under the corresponding law in force in that country or specified territory, as the case may be, to promote mutual economic relations, trade and investment, or

(b) for the avoidance of double taxation of income under this Act and under the corresponding law in force in that country or specified territory, as the case may be, or

(c) for exchange of information for the prevention of evasion or avoidance of income-tax chargeable under this Act or under the corresponding law in force in that country or specified territory, as the case may be, or investigation of cases of such evasion or avoidance, or

(d) for recovery of income-tax under this Act and under the corresponding law in force in that country or specified territory, as the case may be, and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement."

With reference to each of the above clauses, the Executive's role to conclude agreements with each of the countries have undergone a change and evidently, so, the changes correlate to the amendments made to the ITA to suit and satisfy the economic needs of the country at various instances. As regards the scope of section 90(1), the law kept evolving since the first amendment that took place through the Finance Act, 1972. Consequently, the treaty-making power has also consistently undergone several changes. Therefore, it becomes evident that unless the delegated power is being backed by the statutory blessing (as contemplated under Art. 253 of the Constitution) the power to expand the scope of the treaty does not get the sanction. Arbitrary power and the rule of the Constitution cannot co-exist.

The Supreme Court in the case of *Azadi Bacho Andolan (supra),* has set out the law on tax treaties with reference to the Indo-Mauritius DTAC[11]. In its decision, of the Hon'ble Supreme Court though on a prima facie impression on the reading of the statute book on the treaty-making power under the ITA, agrees to the view of section 90 being a

[11]Post amendment of the section 90(1) by Finance Act, 2003;

delegated power which enables the Central Government to conclude and implement DTACs. However, it later comes to a conclusion that the validity of section 90 under the ITA does not come within the purview of the court in the case before it. Further, the Supreme Court holds that executive power of the Union extends only in respect of matters to which the Parliament has powers to make laws. This seemingly has created some confusion, as rightly observed by the Madras High Court[12], leaving it open as to "*whether a Treaty entered into by India, need not always be translated into an Act of Parliament?*". Even in case of the powers of the Union vested in the President, are exercisable only in accordance with the Constitutional sanctions. What has not vested a power cannot be accepted to be law even if appropriate sanctions are issued. The administrative law principles laid down by the House of Lords in Anisminic Ltd[13] are extremely important that, an error of law by a public authority shall result in its decision being ultra vires. What was made as an amendment to section 90 by the amendment of the Finance Act, 2003 to accommodate the India-Mauritius tax treaty, "*to promote mutual economic relations, trade and investment*", may now come back to haunt the Government after almost 15 years since the amendment if such a similar amendment is not brought in to accommodate the aspects of MLI.

It is laudable on the efforts and the commitment of the Government of India to implement an inclusive tax framework of MLI Convention. But as much relevant, it is to implement the MLI framework having regard to systemic constitutional and legislative sanctions in India. Hence, the authors are of the considered view that the Government of India, in their efforts to ratify the MLI convention for its implementation with the domestic tax law and the existing tax treaties, needs more legislative sanction, beyond Cabinet Approval and the Presidential assent, should make necessary delegations to vest with the Executive, the power to enter into the MLI convention.

It is therefore essential to follow what enables the delegated treaty-making power. It is widely perceived that the aspects of prevention of double non-taxation, opportunities for tax evasion or avoidance, treaty-shopping arrangements could widely fall under the terms of "for the avoidance of double taxation of income", however if such be the intention of the statute a separate scope for "granting relief in respect of taxes paid in both countries or relief in respect of rates of taxes" would not have been necessary. Such division of scope with reference to treaty-making would not have been appropriate.

[12]T. Rajkumar v. UOI [2016] 383 ITR 385 (Madras)

[13]Anisminic Ltd v Foreign Compensation Commission [1968] UKHL 6

Even in case of amendment carried out for providing relief on income-tax chargeable in order to promote mutual economic relations, trade and investment, was with object to attract more foreign investments into India given the economic situation of the India at the time when amendment was carried out[14].

Hence, it is imperative to amend the legislative sanctions under which the MLI convention is sought to be implemented under section 90 of the Income tax Act, where the Supreme Court in *Azadi Bacho Andolan (Supra)* acknowledges the need for inclusion of such the legal sanction where the power to enter into treaty is by way of a delegation. Interestingly, the Ministry of External Affairs (MEA) had released its guidelines[15] on concluding international treaties between India and other foreign countries. However, in an international tax treaty context, the instructions may have less relevance concerning the matters contained thereunder. A function of MEA on treaty signing is different from that of a tax treaty concluded by the Ministry of Finance and more so the tax treaties negotiation, conclusion and ratification/accession is delegated to the Executive (CBDT) and not with the Union Cabinet and hence in our humble view may not act as a guiding document.

Every cricket tournament would require a ground, pitch and definite boundaries to create a level playing field for the teams to play the match. Similarly, unless the ground is set by way of legislative delegation through the parliamentary amendment, the pitch is curated through delegation of powers to the Executive and the boundaries are determined to define the powers and extent to which the delegation should operate, ratification of the MLI may be left hanging. The result may be a that someday it should be a decision pending before our courts before the law on this subject crystallises.

D. Conclusion

In India, treaty-making power through the parliamentary legislation under the ITA is a specific delegation of power under the Indian Constitution. Therefore, such powers are to be exercised within the scope of the four corners of the statute and cannot transgress the constitutional limits. This is a well-accepted and settled principle under the administrative law, and more so in respect of the constitutional delegation of powers, the scope shall be restrictive unless explicitly expressed.

Therefore, in our humble view, avoidance of double taxation of income will not encompass[16] To include in it, prevention of double non-taxation, opportunities for tax evasion or avoidance and treaty-shopping arrangements. This would necessarily require

[14]as Inferred by the Supreme Court in Azadi Bachao Andolan (supra)
[15]http://www.mea.gov.in/Images/pdf1/652annex.pdf
[16]Relying on Azadi Bachao Andolan (supra)

legislative sanction by the Parliament under the ITA for implementation of an International tax treaty concerning our Constitution. The true spirit of a treaty is served even under the principle of *''pacta sunt servanda*' only if the sovereign country implements the treaty in accordance with its domestic laws.

In light of these developments and the recent decision of the Kenyan High Court on the validity of the Kenya-Mauritius tax treaty, it is appropriate at this point to recall what was envisioned in the context of India-Mauritius by the Delhi High Court as "*The bilateral treaty can be entered into by two independent Governments but bilateral treaties for political expediency and bilateral treaty in terms of a statute stand on different footing. a treaty which is entered into in terms of Article 73 of the Constitution of India, the political expediency may have a role to play but not when the same is done under a statutory provision.*". This appears to be the accurate and right line of that the makers of our Constitution would have thought as far as the delegated powers in the context of treaty-making are concerned. In short, the principles on which the treaty-making powers were dealt with by the Delhi High Court[17] is worth reconsideration to align with the constitutional principles on tax treaties.

Our Constitution is meticulously designed with checks and balances on all three pillars (Parliament, Judiciary & Executive), it ultimately narrows down to how well they are sustained by practice. Hence in this line of thought and as a measure to achieve the balance, the lawmakers could ponder and seek to implement a mechanism for effective , where a tax treaty aims to frame any other aspect apart from allocation of taxing rights and ascribing tax rates thereunder (for example: incentivise investment, differential tax treatment due to best friend arrangement or such other policy arising out of political conformities, etc.,.), then in such cases statute may mandate the approval of Parliament to consider such treaties with a special status.

One can hope that the upcoming Budget No. 2 of 2019 provides for amendments to the ITA paves the way to for systemic implementation of the MLI.

Disclaimer:

The views expressed in this article are personal and does not intend to deter or derogate any view that has been expressed by any court in India, international bodies (or) courts outside India.

This article first appeared in www.taxsutra.com

(The authors are Chennai Based Advocate and Chartered Accountant respectively. They can reached at sudarshan@inbox.com and vignesh.krishnaswamy@outlook.com respectively)

[17]Shiva Kant Jha v. Union of India [2002] 256 ITR 563 (Delhi)

EXCEL TIPS

CA DUNGAR CHAND U JAIN

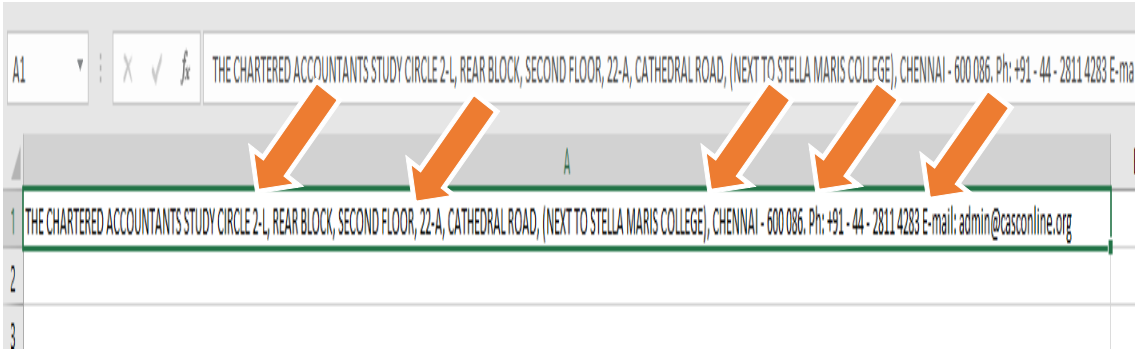
Tricks to Excel in Excel

1) Line Breaks and Wrapping Text

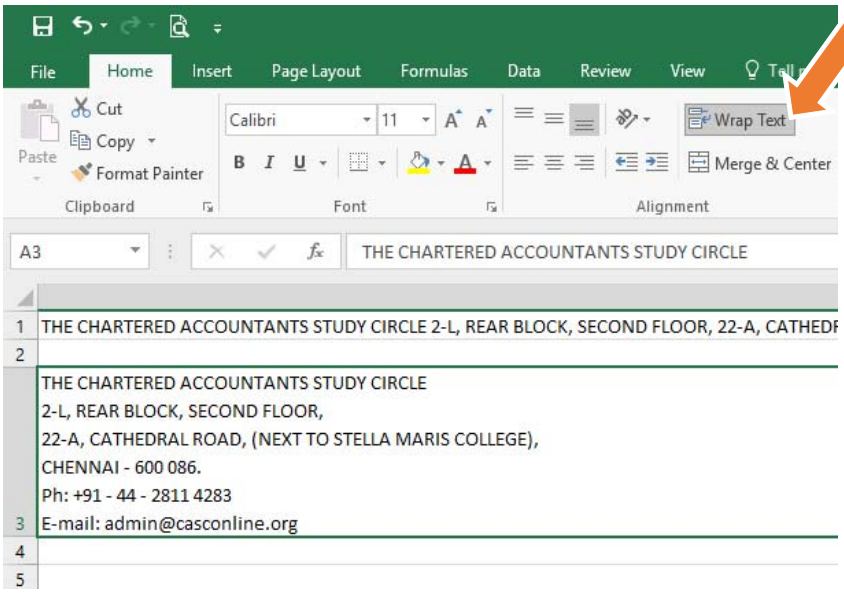
Typing into spreadsheet cells can be frustrating, as the default for text you type continues forever, without wrapping back down to a new line.

It can be changed. We can create a new line by typing **Alt+Enter** (as hitting Enter alone takes us to next cell).

Also, click the **Wrap Text** option under the Home tab at the top of the screen, which ensures that all text wraps the cell in use.

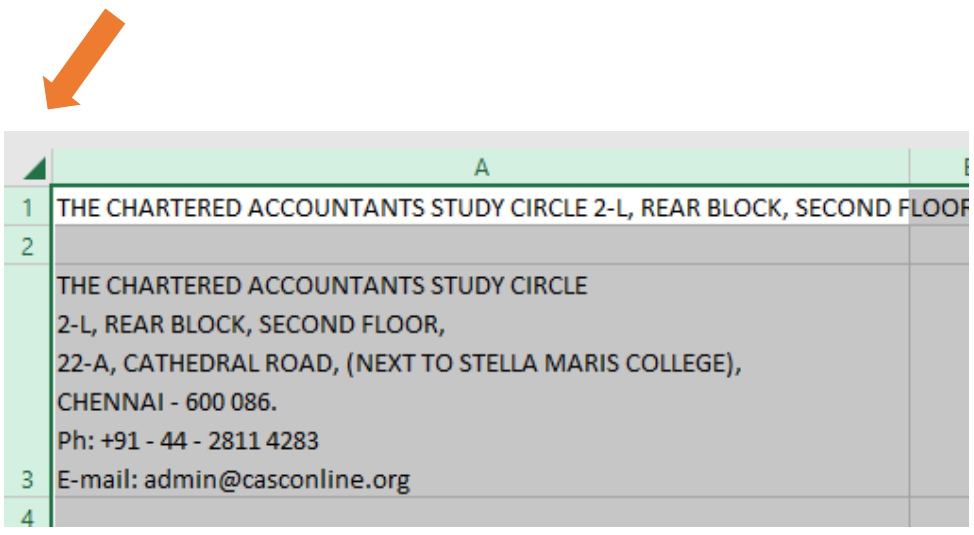


After ensuring that **Wrap Text** is selected, **Alt + Enter** will ensure that the contents start in the fresh line next in the same cell.



2) One Click to Select All

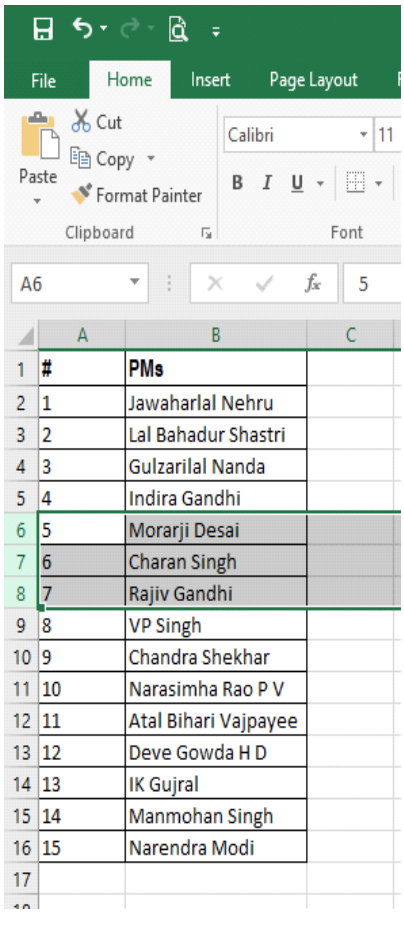
Where one needs to select the entire cells in a sheet, the same can be done by a single click.



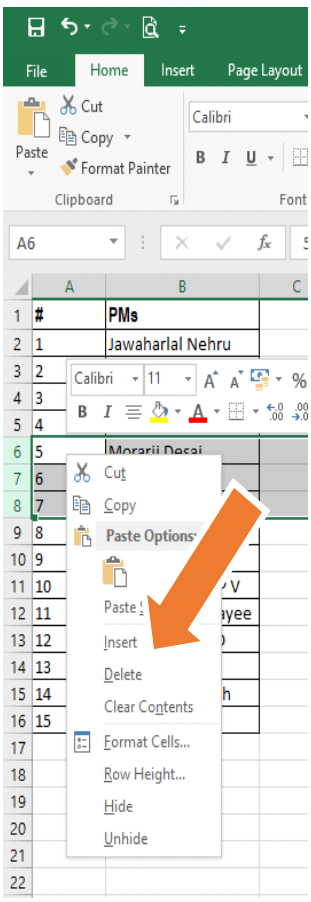
Shortcut **Ctrl+A** also does the same. However **Ctrl+A** first selects a smaller range of cells (depending upon the type / structure of data used in the worksheet) first and using it again selects the entire cells in the worksheet.

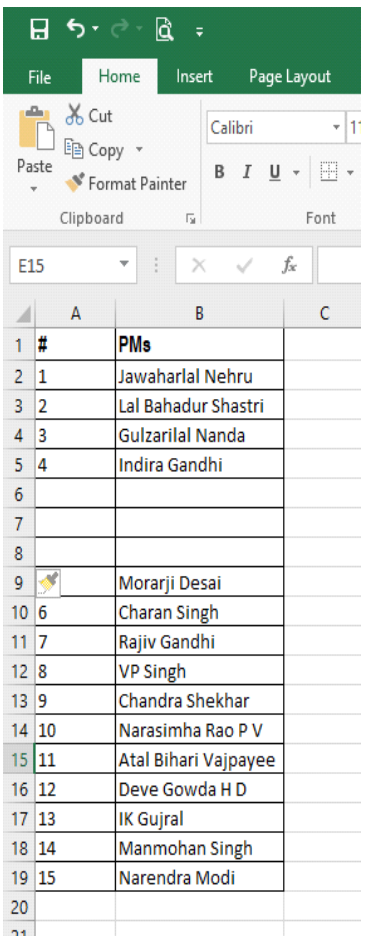
3) Insert more than one rows and Columns

We know the way to add one new row or column whereby we right click on the cell / row / column and insert. But lot of time is wasted when we need to insert more than one of these by repeating this action x number of times. The best way is to drag and select x rows or columns (where x is two or more) when we want to add x rows or columns above or left. Right click the highlighted rows or columns and choose Insert from the drop down menu. New rows will be inserted above the row or to the left of the column (as we choose) we first selected.



	A	B	C
1	#	PMs	
2	1	Jawaharlal Nehru	
3	2	Lal Bahadur Shastri	
4	3	Gulzarilal Nanda	
5	4	Indira Gandhi	
6	5	Morarji Desai	
7	6	Charan Singh	
8	7	Rajiv Gandhi	
9	8	VP Singh	
10	9	Chandra Shekhar	
11	10	Narasimha Rao P V	
12	11	Atal Bihari Vajpayee	
13	12	Deve Gowda H D	
14	13	IK Gujral	
15	14	Manmohan Singh	
16	15	Narendra Modi	
17			





	A	B	C
1	#	PMs	
2	1	Jawaharlal Nehru	
3	2	Lal Bahadur Shastri	
4	3	Gulzarilal Nanda	
5	4	Indira Gandhi	
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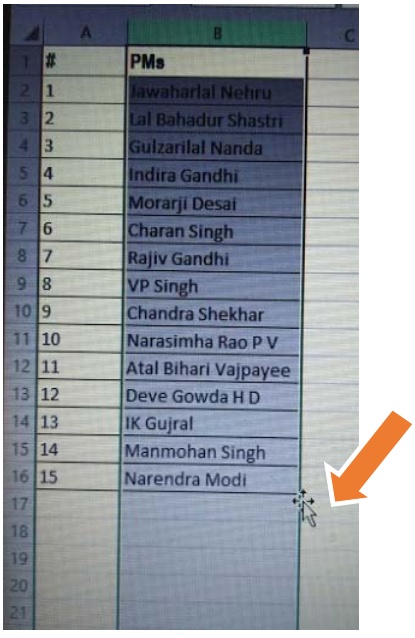
9		Morarji Desai	
10	6	Charan Singh	
11	7	Rajiv Gandhi	
12	8	VP Singh	
13	9	Chandra Shekhar	
14	10	Narasimha Rao P V	
15	11	Atal Bihari Vajpayee	
16	12	Deve Gowda H D	
17	13	IK Gujral	
18	14	Manmohan Singh	
19	15	Narendra Modi	
20			

4) Speedily Move and Copy Data in Cells

Where we want to move one column of data in a worksheet, the fast way is to Select the column and move the pointer to the border, where a crossed arrow icon appears. Drag to move the column freely.



	A	B
1	#	PMs
2	1	Jawaharlal Nehru
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11	10	Narasimha Rao P V
12	11	Atal Bihari Vajpayee
13	12	Deve Gowda H D
14	13	IK Gujral
15	14	Manmohan Singh
16	15	Narendra Modi
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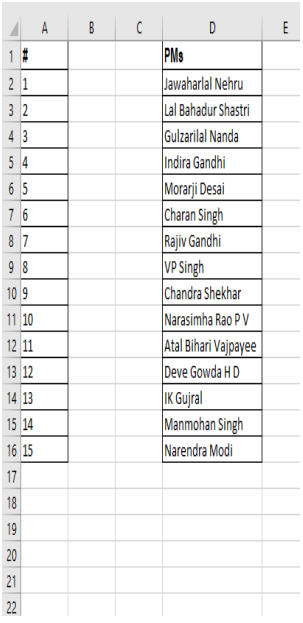

	A	B	C	D	E
1	#			PMs	
2	1			Jawaharlal Nehru	
3	2			Lal Bahadur Shastri	
4	3			Gulzarilal Nanda	
5	4			Indira Gandhi	
6	5			Morarji Desai	
7	6			Charan Singh	
8	7			Rajiv Gandhi	
9	8			VP Singh	
10	9			Chandra Shekhar	
11	10			Narasimha Rao P V	
12	11			Atal Bihari Vajpayee	
13	12			Deve Gowda H D	
14	13			IK Gujral	
15	14			Manmohan Singh	
16	15			Narendra Modi	
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	A	B
1	#	PMs
2	1	Jawaharlal Nehru
3	2	Lal Bahadur Shastri
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12	11	Atal Bihari Vajpayee
13	12	Deve Gowda H D
14	13	IK Gujral
15	14	Manmohan Singh
16	15	Narendra Modi
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Also, we can press the Ctrl button before dragging, if we want to copy the data. The New column will copy all the selected data.

	A	B
1	#	PMs
2	1	Jawaharlal Nehru
3	2	Lal Bahadur Shastri
4	3	Gulzarilal Nanda
5	4	Indira Gandhi
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13	12	Deve Gowda H D
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17		
18		

	A	B	C	D	E
1	#	PMs		PMs	
2	1	Jawaharlal Nehru		Jawaharlal Nehru	
3	2	Lal Bahadur Shastri		Lal Bahadur Shastri	
4	3	Gulzarilal Nanda		Gulzarilal Nanda	
5	4	Indira Gandhi		Indira Gandhi	
6	5	Morarji Desai		Morarji Desai	
7	6	Charan Singh		Charan Singh	
8	7	Rajiv Gandhi		Rajiv Gandhi	
9	8	VP Singh		VP Singh	
10	9	Chandra Shekhar		Chandra Shekhar	
11	10	Narasimha Rao P V		Narasimha Rao P V	
12	11	Atal Bihari Vajpayee		Atal Bihari Vajpayee	
13	12	Deve Gowda H D		Deve Gowda H D	
14	13	IK Gujral		IK Gujral	
15	14	Manmohan Singh		Manmohan Singh	
16	15	Narendra Modi		Narendra Modi	
17					

5) Ctrl+Shift to Select

There are many ways to select cells using the mouse and dragging the cursor. By Clicking in the first cell or any cell in between, and by selecting and holding down **Ctrl+Shift,** hitting the down arrow will get us to select all data in the column below, up arrow will get us to select all the data above. Selecting Left or right arrow will get us everything in the row (to the left or right, of course).

Combining these directions, We can get the whole column and everything in the rows on the left or right selected. It will however only select cells with data (including invisible data, if any) and stop at cells which have no data.

If we use **Ctrl+Shift+End**, the cursor will jump to the lowest right-hand cell with data, selecting everything in between. So if the cursor is in the upper-left cell (A1), then everything is selected.

And to be even faster: **Ctrl+Shift+*** (the asterisk) will select the whole data set (in the nearest range) no matter what cell is selected.

(The author is Madurai based Chartered Accountant in practice. He can be reached at dungarchand@hotmail.com)

THE 41st ANNUAL GENERAL BODY MEETING

is Scheduled on **8th August, 2019, at 5.45 p.m.**
followed by the regular meeting and Dinner thereafter.

Kindly Note the change in Venue :

The Young Men's Indian Association
No. 54-57/2, Royapettah High Road
Mylapore, Chennai - 600 004

A DISCUSSION PAPER ON CHAPTER III- DIRECT TAXES PROPOSALS IN THE FINANCE BILL (No.2), 2019

CA. VIVEK RAJAN V

Introduction- ***Thanking everyone for our Discussion Papers of 2016, 2017 & 2018 & 2019 (Interim Budget of 2019)***

The Finance (No.2) Bill, 2019 (Bill No. 55 of 2019) was presented in Lok Sabha on 05th July 2019 by Ms. Nirmala Sitharaman, Union Finance Minister. In Chapter III of Finance (No.2) Bill, 2019, there has been 66 amendments proposed the Income-tax Act, 1961.

Scope of the Discussion Paper

This discussion paper attempts to **cover all sections of the Finance (No.2) Bill, 2019** relating only to Direct Taxation. This discussion paper attempts to cover all the aspects about the amendments broadly and **not in detail.** Further unless otherwise specifically mentioned, sections discussed in this paper, relates to Income-tax Act, 1961 and the Finance (No.2) Bill, 2019. Please refer to Finance (No.2) Bill, 2019 and the relevant pronouncements before taking any decision. The readers are requested to contact the author, in case of errors (which are unintentional) and also in case of divergent views with the author's note.

An Attempt

We are attempting to extend the coverage of the discussion paper **to all the sections of the Finance Bill**. Giving due consideration to the volume of the discussion paper and the challenges involved in publishing, we intend to present this in a phased manner (August 2019 and September 2019). ***The sections which are not covered in this month's bulletin, would be covered in the subsequent months***. We sincerely hope that this effort is of value addition to the readers.

Acronym and Description

FA	Finance Act
CG	Capital Gains
IFHP	Income from House Property
LTCG	Long Term Capital Gain
The Act	Income Tax Act, 1961
PY	Previous Year
AY	Assessment Year
PCIT	Principal Commissioner of Income-tax
CIT	Commissioner of Income-tax
NRI	Non- resident Indian

NRI	Non- resident Indian
RBI	Reserve Bank of India
NCLT	National Company Law Tribunal
FMV	Fair Market Value
TDS	Tax Deducted at Source
TCS	Tax Collected at Source

1. Corporate tax rate reduced to 25% - Beneficial to 99.3% of all the companies

The corporate rate of tax has been reduced to 25% for companies **with turnover upto ☐ 400 Crores in FY 2017-18.** This turnover limit was earlier fixed at ☐ **250 Crores.** This move intends to benefit 99.3% of all the companies and comes at a cost of ☐ **4000 Crores a year** to the CG.

The following tables has effective tax rates for the domestic companies

a. For domestic companies having total turnover not exceeding ☐ **400 Crores in FY 2017-18,** but falling in any of the three slabs of **taxable income**

Particulars	Taxable Income <=? 1 Crore	Taxable Income > ? 1 Crore but <=? 10 Crore	Taxable Income> ? 10 Crore
Corporate tax	25.00%	25.00%	25.00%
Surcharge	0	7.00%	12.00%
Corporate tax + Surcharge	25.00%	26.75%	28.00%
Health and Education Cess	4.00%	4.00%	4.00%
Effective Tax Rate	**26.00%**	**27.82%**	**29.12%**

b. For domestic companies having total turnover exceeding ☐ **400 Crores in FY 2017-18,** but falling in any of the three slabs of **taxable income**

Particulars	Taxable Income <=? 1 Crore	Taxable Income > ? 1 Crore but <=? 10 Crore	Taxable Income> ? 10 Crore
Corporate tax	30.00%	30.00%	30.00%
Surcharge	0	7.00%	12.00%
Corporate tax + Surcharge	30.00%	32.10%	33.60%
Health and Education Cess	4.00%	4.00%	4.00%
Effective Tax Rate	**31.20%**	**33.38%**	**34.94%**

Author's note

For large companies (companies with turnover **> ₹ 400 Crores),** India would remain less competitive as the above total effective tax rate along with dividend distribution tax would make it a combined higher rate than the global counterparts.

2. Facilitating demerger of Ind-AS compliant companies- Amendment of Section 2

With effect from 01st April 2020 and will apply in relation to AY 2020-21 and onwards

Present scenario and reference to Explanatory Memorandum

Demerger entails transfer of property and liability of an existing company to one or more new or existing companies. This transfer was exempt from the capital gains tax u/s 47, if the transfer is made at valuation in the books of the demerging company immediately before the transaction.

However Indian Accounting Standards (Ind-AS) compliant companies being the resulting companies were required to record the property and liabilities of the undertaking based on "Fair Value" concept, which was in compliance with the Companies (Indian Accounting Standards) Rules, 2015.

The compliance with the Fair Value" concept caused a mismatch between valuations assigned by the demerging entity and the resulting company and the resultant ambiguity affected the tax neutrality of the demergers.

Amendment

Section 2 has been suitably amended to grant relief by making the above requirement not applicable to companies which are in compliance with the Indian Accounting Standards specified in the Companies (Indian Accounting Standards) Rules, 2015.

Henceforth, the transactions will be considered as demerger even in the case of mismatch

Author's note

The amendment is clarificatory is nature and will

a. Harmonise Indian Accounting Standards and Income-tax law

b. Facilitate demerger of companies

However , had this been a retrospective clarification , it would have reduced the complications in the scrutiny assessments.

3. Increased Surcharge- Higher tax on all super-rich

With effect from 01st April 2020 and will apply in relation to AY 2020-21 and onwards

Reference to the Budget Speech

The Finance Minister in her budget speech mentioned that "in view of the rising income levels, those in the highest income brackets need to contribute more to the nation's development". Accordingly, the surcharge on individuals has been increased by around 3% and 7%.

Amendment

The increase in surcharge in comparison to the previous year is summarised as under

Total Taxable Income	Rate of Surcharge- FY 2018-19	Rate of Surcharge- FY 2019-20
50 Lakhs to 1 Crore	10%	10%
1 Crore and above	15%	
1 Crore to 2 Crore		15%
2 Crore to 5 Crore	15%	25%
5 Crore and above	15%	37%

Author's note

This increase in surcharge is expected to earn the government an additional □ **12,000 Crores** and with this increase the maximum marginal rate has increased to **42.4%.**

The impact of the surge in surcharge is explained as under

Particulars	Scenario 1 (in)	Scenario 2(in)	Scenario 3(in)
Gross Total Income	1,20,00,000	4,00,00,000	8,00,00,000
Less: Deduction u/s 80C	1,00,000	1,25,000	1,50,000
Less: Deduction u/s 80D	25,000	25,000	25,000
Less: Deduction u/s 80EEB	1,50,000	1,50,000	1,50,000
Total Taxable Income	1,17,25,000	3,97,00,000	7,96,75,000
Income-tax at slab rates – **A**	33,30,000	1,17,22,500	2,37,15,000
Add: Surcharge- **B**	3,33,000 [33,30,000*10%]	29,30,625 [1,17,22,500*25%]	87,74,550 [2,37,15,000*37%]
Add: Health and Education Cess [A+B]*4% - **C**	1,46,520	5,86,125	12,99,582
Total Tax Liability – **A+B+C**	**38,09,520**	**1,52,39,250**	**3,37,89,132**
Effective Tax Rate	**32.49%**	**38.38%**	**42.40%**

The following table compares the maximum marginal rate of India with few other countries as under

Country	Rate of Tax
The USA	40%
Germany	Progressive 14% to 42%
Japan	55.95%
China	Progressive 3 to 45%
Australia	Progressive up to 45.50%
United Kingdom	Progressive up to 45%

Impact on Foreign Portfolio Investors (FPI's)

Most FPI's operate as trusts or association of persons. Since earnings of non-corporates (like trusts, association of persons) are taxed at individual rates , the effective long-term capital gains tax for FPI's operating as trusts would increase as under

Long-term Capital Gains tax	Before Budget- Income more than 1 Crore	Budget Proposal - Income 2 Crore to 5 Crore	Budget Proposal - Income > 5 Crore
Basic Rate	10	10	10
Surcharge	1.5 [10*15%]	2.5 [10*25%]	3.7 [10*37%]
Basic Rate plus Surcharge	11.50	12.50	13.70
Health and Education Cess	0.46 [11.50*4%]	0.50 [12.50*4%]	0.55 [13.70*4%]
Effective Tax Rate	**11.96 [11.50+0.46]**	**13.00 [12.50+0.50]**	**14.25 [13.70+0.55]**

This looks like a compensatory increase for the reduction in corporate tax rate. To avoid this increased surcharge, FPI's could opt for the corporate structure, as this tax could not have been built into their business models.

4. Deemed accrual of gift made to NRI- Amendment of Section 9 - Gift tax loophole plugged

With effect from 01st April 2020 and will apply in relation to AY 2020-21 and onwards Present scenario and reference to Explanatory Memorandum

Gifts given by Indian residents to Non-resident Indians (except in certain circumstances) was claimed to be tax free receipt owing to the current provisions of the law which put the onus on the recipient to disclose such gifts and then pay the tax thereon.

The amendment intends to cover the above loophole by a subtle change of words.

Amendment

The amendment is as under

Section 9 (1)(viii)

"Income of the nature referred to in Section 2(24) (xviia), arising from any sum of money paid, or any property situated in India, transferred, on or after the 5th day of July 2019, by a person resident in India to a person outside India"

Author's note

The amendment's emphasis is on the origin of the gift rather than the destination. Thus, gift of any kind exceeding ☐ 50,000 to anyone apart from specified relatives would be taxed subject to the provisions of the relevant article of applicable DTAA.

NRI's would now be mandated to file their return of income in case of gift in excess of ₹ 50,000, if received from a person other than specified relative and the maximum rate of tax along with the increased surcharge would apply in such scenarios.

5. Tax Incentive for Electric Vehicles – Insertion of Section 80EEB

With effect from 01st April 2020 and will apply in relation to AY 2020-21 and onwards

Present scenario and reference to Explanatory Memorandum

With a move to improve environment and to reduce vehicular pollution, Section 80EEB is introduced to give a deduction in respect of purchase of electric vehicle

Amendment

The salient features of the amendment is presented as under

Benefit applicable to	Individual
Deduction given for	Interest payable on loan taken from a financial institution for the purpose of purchase of an electric vehicle.
Quantum of deduction	Not to exceed Rs. 1,50,000
Period of deduction	For loan taken between April 2019 to March 2023
Restriction	No deduction for such interest under any other provision of the Act.
Electric Vehicle	Defined u/s 80EEB(5)

Author's Note

This coupled with budget allocation of ₹ 10,000 Crores to **Faster Adoption and Manufacturing of Electric Vehicles (FAME II) scheme** is a welcome measure and there has been much discussion on the effect of this on the automobile industry and its associated peripheral markets.

However it is desirable if equal attention is given to importance of battery recycling (lithium battery) and environment friendly handling of solid waste. If the technology of Electric Vehicles is to have a great effect in terms of reducing the levels of pollution, then there has to be complete product lifecycle system along with effective recycling and the same should develop and travel parallelly along the main stream Electric Vehicles industry.

6. Cancellation of registration of the Trust or Institution – Amendment of Section 12AA- Noose tightened

With effect from 01st September 2019

Present scenario and reference to Explanatory Memorandum

At present, cancellation of Section 12AA registration can be on the following two grounds

a. If the PCIT or CIT is satisfied that the activities of the trusts is not genuine or are not carried out in accordance with its objects and
b. It is noticed that activities are carried out in a manner that the corresponding income would become taxable.

The present provisions do not cover a scenario where by

a. At the time of registration, satisfactory compliance with any other law which is material for the purpose of achieving its objects was not a essential prerequisite.
b. After registration, it is noticed that the trust or institution has violated requirements of any other law which was material for the purpose of achieving its objects.

Consequential remedial amendments are carried out to ensure that the trust or institution do not deviate from the objects.

Amendment

Section 12AA is amended suitably to provide that

a. At the time of granting the registration to a trust or institution, the PCIT or CIT shall *inter alia,* also satisfy about the compliance of the trust or institution to requirements of any other law which is material for the purpose of achieving its objects.

b. Consequent to registration, upon the trust or institution violating the requirements of any other law which was material for the purpose of achieving its objects and the order, direction or decree has either not been disputed or has attained finality, the PCIT or CIT may by order in writing cancel the registration. This is subject to affording a reasonable opportunity of being heard.

7. Incentives to National Pension Scheme (NPS) subscribers- Amendment of Section 80C

With effect from 01st April 2020 and will apply in relation to AY 2020-21 and onwards

Present scenario and reference to Explanatory Memorandum

To enable the employees of the CG to have more options of tax saving investments under National Pension System, it is proposed to amend Section 80C so as to provide that any amount paid or deposited by the employee of CG as a contribution to his Tier-II account of the pension scheme shall be eligible for deduction

Amendment

The contribution to a specified account of the pension scheme referred to in Section 80CCD subject to

a. It being for a fixed period of not less than 3 years and

b. It is in accordance with the scheme notified by the CG in the Official Gazette.

Specified account means an additional account referred to in Section 20(3) of the Pension Fund Regulatory and Development Authority Act, 2013.

8. Prescription of electronic mode of payments – Promotion of less cash economy- Amendment of Section 13A, Section 35AD, Section 40A, Section 43, Section 43CA, Section 44AD, Section 80JJAA

With effect from 01st April 2020 and will apply in relation to AY 2020-21 and onwards

Present scenario and reference to Explanatory Memorandum

There are various provisions in the Act which prohibit cash transactions and encourage payment through account payee cheque/ account payee draft or electronic clearing system through a bank account.

In order to encourage other electronic modes of payment, it is proposed to amend the above sections so as to include such other electronic mode as may be prescribed in addition to already existing modes of payments.

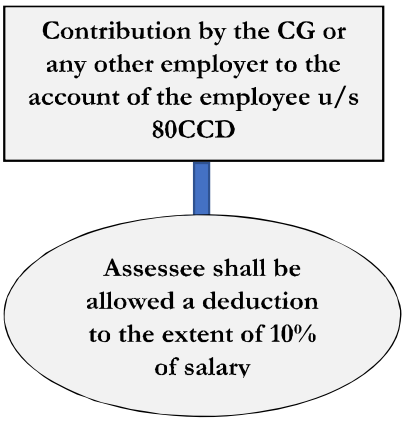
Amendments

All the above sections are amended to include in its permissible modes of payment "such other electronic mode" as may be prescribed.

9. Incentives to National Pension Scheme (NPS) subscribers- Amendment of Section 80CCD

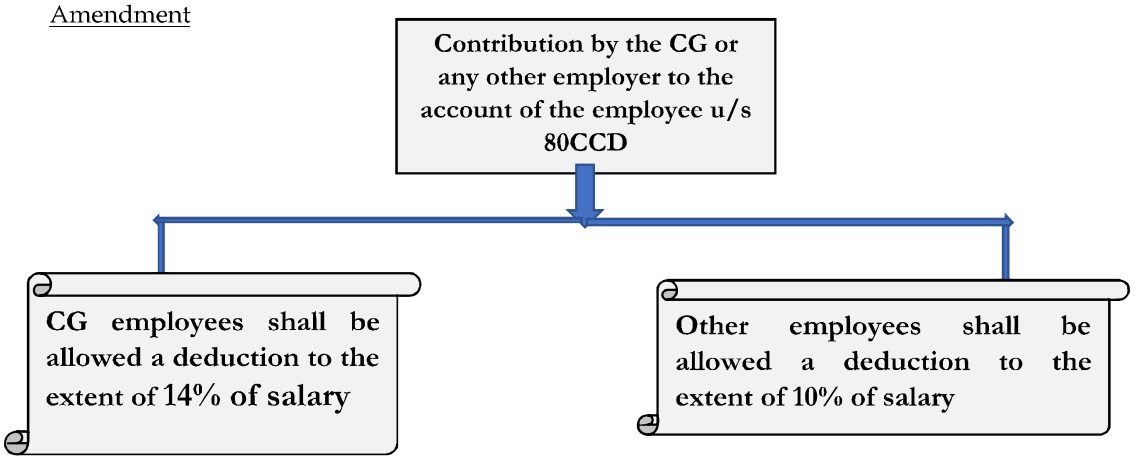
With effect from 01st April 2020 and will apply in relation to AY 2020-21 and onwards

Present scenario and reference to Explanatory Memorandum



In order to ensure that CG employees get full deduction of the enhanced contribution, the amendment to increase the limit is proposed.

Amendment



10. Tax incentive for affordable housing- Insertion of Section 80EEA - ***Benefit of ? 7 Lakhs to middle class home buyers over a loan period of 7 years***

With effect from 01st April 2020 and will apply in relation to AY 2020-21 and onwards

Present scenario and reference to Explanatory Memorandum

At present deduction u/s 24 for self-occupied property is available to the extent of □ 2 Lakhs. In order to provide an impetus to the "Housing for all" objective of the CG and to enable the home buyer to have low-cost funds at his disposal, it is proposed to insert Section 80EEA.

Amendment

The salient features of the section are as under

Applicable to	Individual not claiming deduction u/s 80EE
Interest means	Interest payable on loan taken by individual from any financial institution for the purpose of acquisition of residential house property
Quantum of deduction	Deduction shall not exceed 1,50,000
Period of deduction	AY 2020-21 and subsequent AY's
Conditions	1. Loan has been sanctioned by the financial institution in FY 2019-20 2. Stamp duty value of residential house property does not exceed 45 Lakhs 3. The assessee does not own any residential house property on the date of sanction of loan 4. Deduction shall not be allowed for the interest u/s 80EEA under any other provision of the Act for the same or other AY
Terms "Financial Institution" and "Stamp Duty Value"	Defined u/s 80EEA(5)

11. Mandatory Filing of Return of Income in some High Value Transactions even if the total income is less than minimum threshold limit – Amendment of Section 139

With effect from 01st April 2020 and will apply in relation to AY 2020-21 and onwards

Present scenario and reference to Explanatory Memorandum

A person other than a company or a firm is required to furnish the return of income only if his total income exceeds the maximum amount not chargeable to tax, subject to certain exceptions.

Therefore, person entering into certain high value transactions is not necessarily required to furnish his return of income. The amendment is proposed to ensure that such persons do furnish their return of income.

Amendment

The following persons who are not required to furnish return of income u/s 139(1) for the PY and who during the PY, **shall furnish a return of income subject to the provisions of Section 139.**

a. Has deposited an amount or aggregate of the amounts exceeding ₹ 1 Crore in one or more current accounts maintained with a banking company or a co-operative bank or

b. Has incurred expenditure of an amount or aggregate of the amounts exceeding ₹ 2 Lakhs for himself or any other person for travel to a foreign country.

c. Has incurred expenditure of an amount or aggregate of the amounts exceeding ₹ 1 Lakh towards consumption of electricity or

d. Fulfils such other conditions as may be prescribed

12. Mandatory Filing of Return of Income in case of claiming rollover benefit – Amendment of Section 139

With effect from 01st April 2020 and will apply in relation to AY 2020-21 and onwards

Present scenario and reference to Explanatory Memorandum

Persons claiming rollover benefit of exemption from capital gains tax on investment in specified assets, is not required to furnish return of income, if consequent to the claim of the roll over, the total income is less than basic exemption limit.

This amendment is to make the furnishing of return of income compulsory for such persons

Amendment

The crux of the amendment is that the persons claiming benefits of rollover under the following sections are required to file their return of income even if the total income is less than the basic exemption limit

a. Section 54 b. Section 54B c. Section 54D d. Section 54EC e. Section 54F
f. Section 54G g. Section 54GA h. Section 54GB

13. Provision of credit of relief under Section 89- Amendment of Section 140A, Section 143, Section 234A, Section 234B, Section 234C- *Genuine hardship addressed*

With retrospective effect from 01st April 2007 and will apply from AY 2007-08 and subsequent AY's

Present scenario and reference to Explanatory Memorandum

Presently, the provisions of Section 140A, Section 143, Section 234A, Section 234B and Section 234C provide for relief in the form of prepaid taxes, admissible reliefs, credits.

However, relief u/s 89 is not specifically mentioned in these sections, which resulted into genuine hardship in case of eligible taxpayers. The amendment is intended to extent relief under these circumstances.

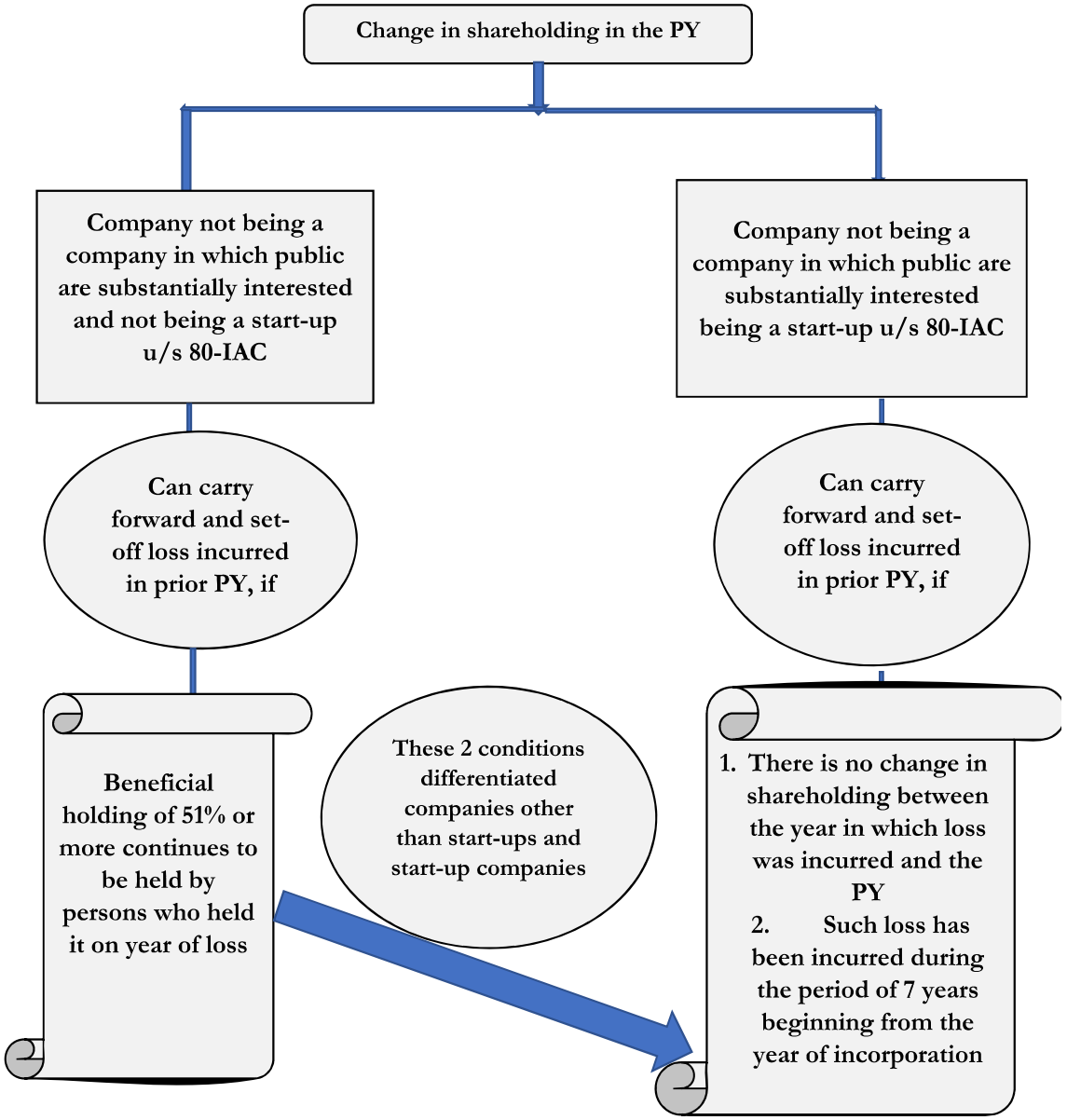
Amendment

Section 140A, Section 143, Section 234A, Section 234B and Section 234C are all suitable amended to include the relief u/s 89 in its scope.

14. Conditions of Section 79 relaxed for eligible start-ups- Substitution of Section 79

With effect from 01st April 2020 and will apply in relation to AY 2020-21 and onwards

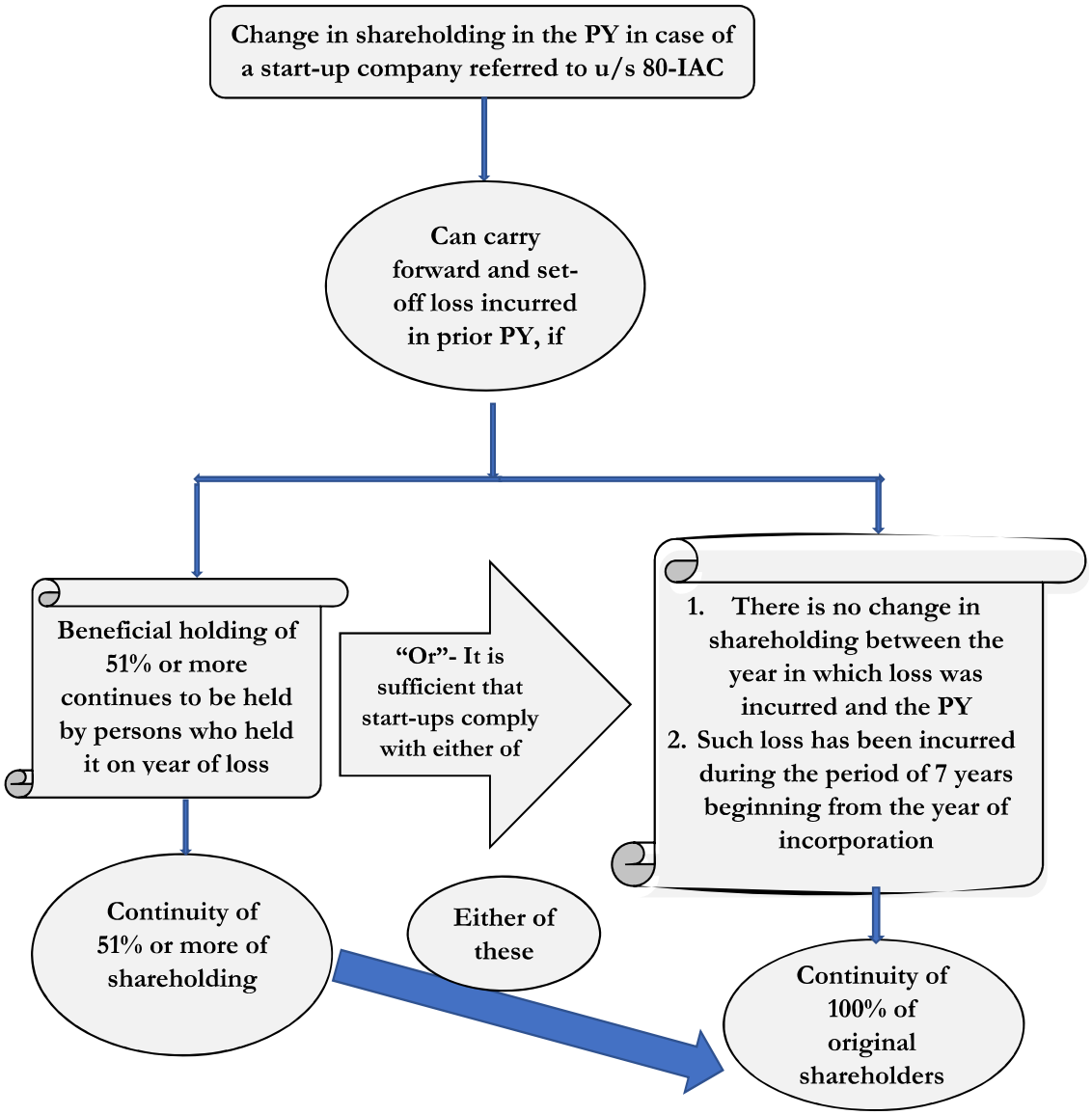
Present scenario and reference to Explanatory Memorandum



To further facilitate ease of doing business in the case of an eligible start-up, it is proposed to amend Section 79 so as to enable start-ups to carry forward and set off the loss on satisfaction of either of the two conditions.

Amendment

The amended provisions with respect to start-ups is as under



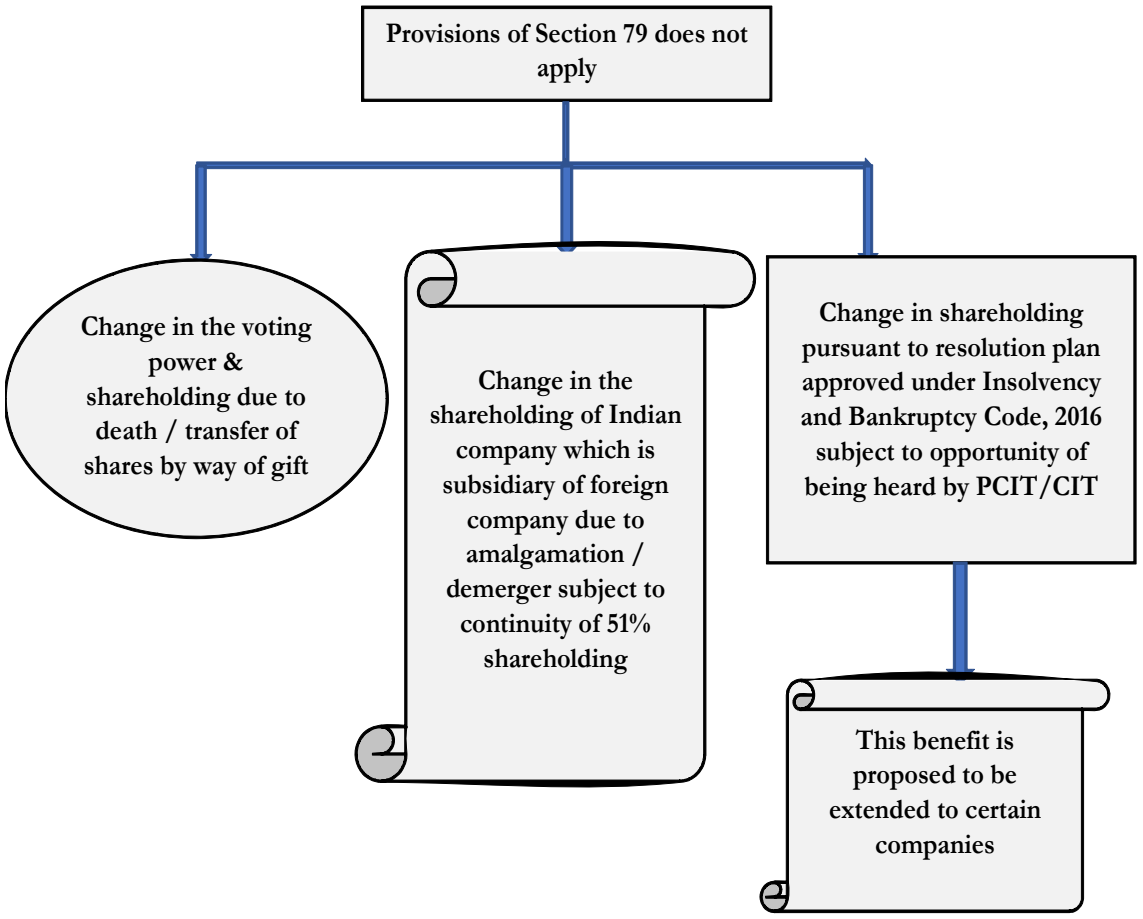
Author's note

For other closely held companies, there would be no change and the loss incurred in any year prior to the PY shall be carried forward and set off only on satisfaction of condition of continuity of 51% or more of shareholding.

15. Relief provided to distressed companies- Amendment of Section 79

With effect from 01st April 2020 and will apply in relation to AY 2020-21 and onwards

Present scenario and reference to Explanatory Memorandum



Amendment

The amendment extends the above highlighted benefit to a company, and its subsidiary and the subsidiary of each subsidiary where

a. The NCLT on an application moved by the CG u/s 241 of Companies Act, 2013 has suspended the Board of Directors of such company and has appointed new directors nominated by the CG u/s 242 of Companies Act, 2013 and

b. Change in shareholding of such company, and its subsidiary and the subsidiary of such subsidiary, has taken place in PY pursuant to resolution plan approved by the NCLT u/s 242 of Companies Act, 2013 after affording a reasonable opportunity of being heard to the jurisdictional PCIT/CIT

16. Prescription of exemption from deeming of FMV of shares for certain transactions- Amendment of Section 50CA

With effect from 01st April 2020 and will apply in relation to AY 2020-21 and onwards

Present scenario and reference to Explanatory Memorandum

The provisions of section 56(2)(x) of the Act, provide for chargeability of income in case of receipt of money or specified property for no or inadequate consideration. For the determination of income for receipt of shares, FMV is taken into account.

Section 50CA provides for deeming of FMV value of unquoted shares. For both section 50CA and 56(2)(x), FMV is determined based on prescribed method.

Certain transactions are exempt from the provisions of Section 56(2)(x). However similar exemptions are not available for Section 50CA.

Determination of fair market value based on the prescribed rules may result into genuine hardship in certain cases where the consideration for transfer of shares is approved by certain authorities and the person transferring the share has no control over such determination.

In order to provide relief to such types of transactions from the applicability of sections 56(2)(x) and 50CA, it is proposed to amend these sections to empower the Board to prescribe transactions undertaken by certain class of persons to which the provisions of section 56(2)(x) and 50CA shall not be applicable.

Amendment

A proviso has been inserted to provide that the provisions of Section 50CA shall not apply to any consideration received or accruing as a result of transfer by such class of persons and subject to condition, the CG may prescribe.

17. TDS on non exempt portion of life insurance pay-out on net basis- Amendment of Section 194DA-*Partly beneficial and partly taxing*

With effect from 01st September 2019 and will apply from AY 2020-21 onwards

Present scenario and reference to Explanatory Memorandum

1. Presently, payments made to a resident under a life insurance policy not exempt u/s 10(10D) is subject to tax deduction at the rate of 1% on the gross amount.

2. Several concerns have been expressed that deducting tax on the gross amount creates difficulties to the assessees who has to pay tax on net income (after deducting the premium paid from the total sum received)

3. On the administrative front, deducting TDS on net income, would facilitate better matching of TDS return filed by insurance company and the return of income by the assessee.

Amendment

Section 194DA is suitably amended such that tax would be deducted at the rate of 5% on the amount of income comprised therein

Author's note

The impact of the amendment is analysed as under

Particulars	**As per Existing Provisions**	**As per Finance (No.2) Bill, 2019**
Maturity proceeds received from Life Insurance Policy	25,00,000	25,00,000
Less: Premium paid	18,00,000	18,00,000
Net Proceeds (Income)	7,00,000	7,00,000
TDS u/s 194DA	**25,000** [25,00,000*1%]	**35,000** [7,00,000*5%]

18. TDS on cash withdrawals to discourage cash transactions-Insertion of Section 194N

With effect from 01st September 2019 and will apply from AY 2020-21 and onwards

Present scenario and reference to Explanatory Memorandum

In order to further discourage cash transactions and move towards less cash economy, it is proposed to insert a new section 194N to provide for levy of TDS on certain cash withdrawals. At present, there is no TDS on cash withdrawals made.

Amendment

The salient features of the amendment is as under

Deductor	1. Banking company to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in Section 51 of the Act) 2. Co-operative society engaged in carrying on the business of banking 3. Post Office
Payment	Any sum or aggregate of sums, **in cash,** in excess of **1 Crore** during the PY.
Payment made to	Any person (recipient) from an account maintained by the recipient with the deductor
Time of TDS	At the time of payment
Rate of deduction	2% of sum exceeding 1 Crore
Section not applicable to	Payments made by 1. CG or SG 2. Any banking company or co-operative society engaged in the carrying on the business of banking or a post-office 3. Any business correspondent of a banking company or co-operative society engaged in the business of banking, in accordance with the guidelines issued by RBI 4. Any white label automated teller machine operator of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the authorization issued by the RBI under the Payment and Settlement Systems Act, 2007 5. Such other persons or class of persons, which the CG may specify.

Author's note

1. The language used by the section is "from an account maintained with it.." , meaning that the limit is applicable for each such account. For instance, XYZ Limited has Cash Credit Account, Overdraft Account and Current Account, ☐ 1 Crore limit is applicable for each such account.

2. If the aggregate payments made till the last payment is ☐ 99,70,000 and the present payment exceeds [1]† 50,000, the aggregate payment reaches ☐1,00,20,000. So, the tax would be deducted at 2% of ☐20,000 = ☐400 and the net payment to be made by the banker is ☐19,600(☐20,000 - ☐400).

3. It needs to be seen as to how the tax deduction would get posted to the Form 26AS as the cash withdrawal cannot become the income of the assessee and how the assessee gets credit for the tax collected while reckoning the advance tax. Ideally the amendment should have been named as a TCS provision.

4. Significant efforts has to be deployed by the banks in order to comply with this and from the assessee's standpoint, banks should not charge any service charge for this and as such it is possible that banks might start charging for this.

5. Since this is applicable from 01st September 2019, the e-TDS returns for Q2 of FY 2019-20(July - September 2019) would have to be modified to facilitate better compliance.

19. TDS at the time of purchase of immovable property- Amendment of Section 194-IA- Expansion of scope

With effect from 01st September 2019 and will apply from AY 2020-21 and onwards

Present scenario and reference to Explanatory Memorandum

This section relates to payment on transfer of certain immovable property other than agricultural lands and provides for TDS at the rate of 1% on the amount of consideration paid or credited for transfer.

The term "consideration for immovable property" is presently not defined for the purposes of this section. In course of these transactions, there are other transactions besides the sale consideration and the buyer is contractually bound to make the payments.

The amendment is intended to bring these payments under the scope of TDS.

Amendment

Section 194-IA has been suitably amended to include the following as "consideration for immovable property", which are incidental to transfer of immovable property.

a. All charges of the nature of club membership fees

b. Car Parking fees

c. Electricity or water facility fee

d. Maintenance fee

e. Advance fee or any other charges of similar nature

Author's note

There was a confusion earlier whether the TDS was to be deducted on the basic selling price of the property or whether the parking charges, maintenance fees etc would be included. The budget has clarified the same.

For example, if the total value of a apartment is ☐ 1.20 Crore and the amount would have to be paid in 6 equal instalments of ☐ 0.20 Lakhs each. The demand letter for the last instalment by the builder would have the following items

Basic Selling Price	17 Lakhs
Parking Fees, IDS etc	3 Lakhs
Total	20 Lakhs

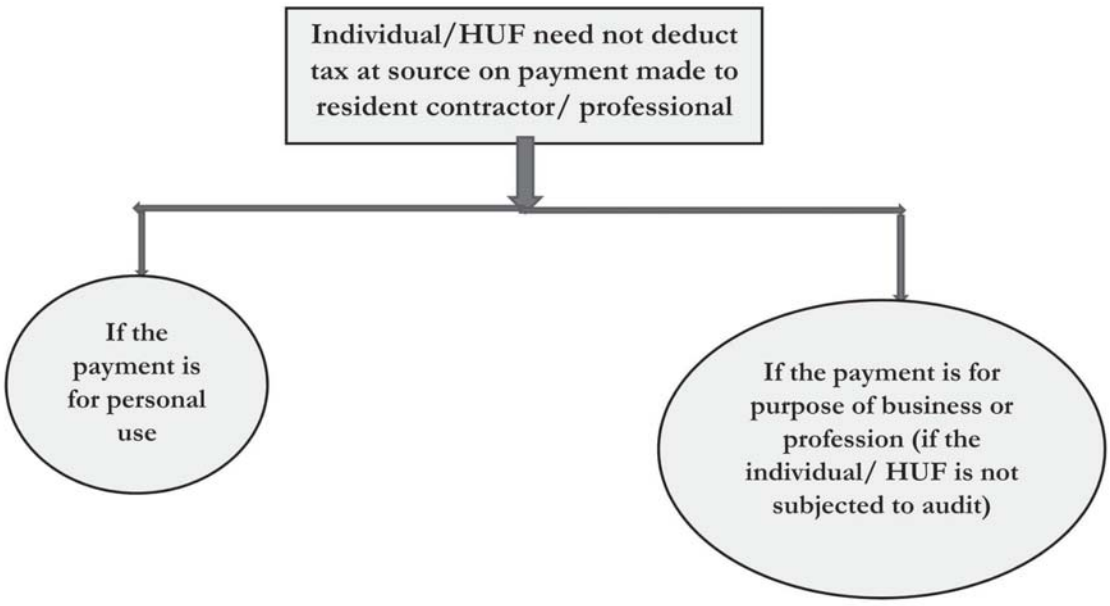
The confusion was whether the TDS was to be deducted on ☐ 17 Lakhs or ☐ 20 Lakhs. Now the budget has clarified that TDS has to be deducted at ? 20 Lakhs.

20. Tax Deduction at Source (TDS) on payment by Individual/HUF to contractors and professionals- Insertion of Section 194M

With effect from 01st September 2019 and will apply from AY 2020-21 onwards

Present scenario and reference to Explanatory Memorandum

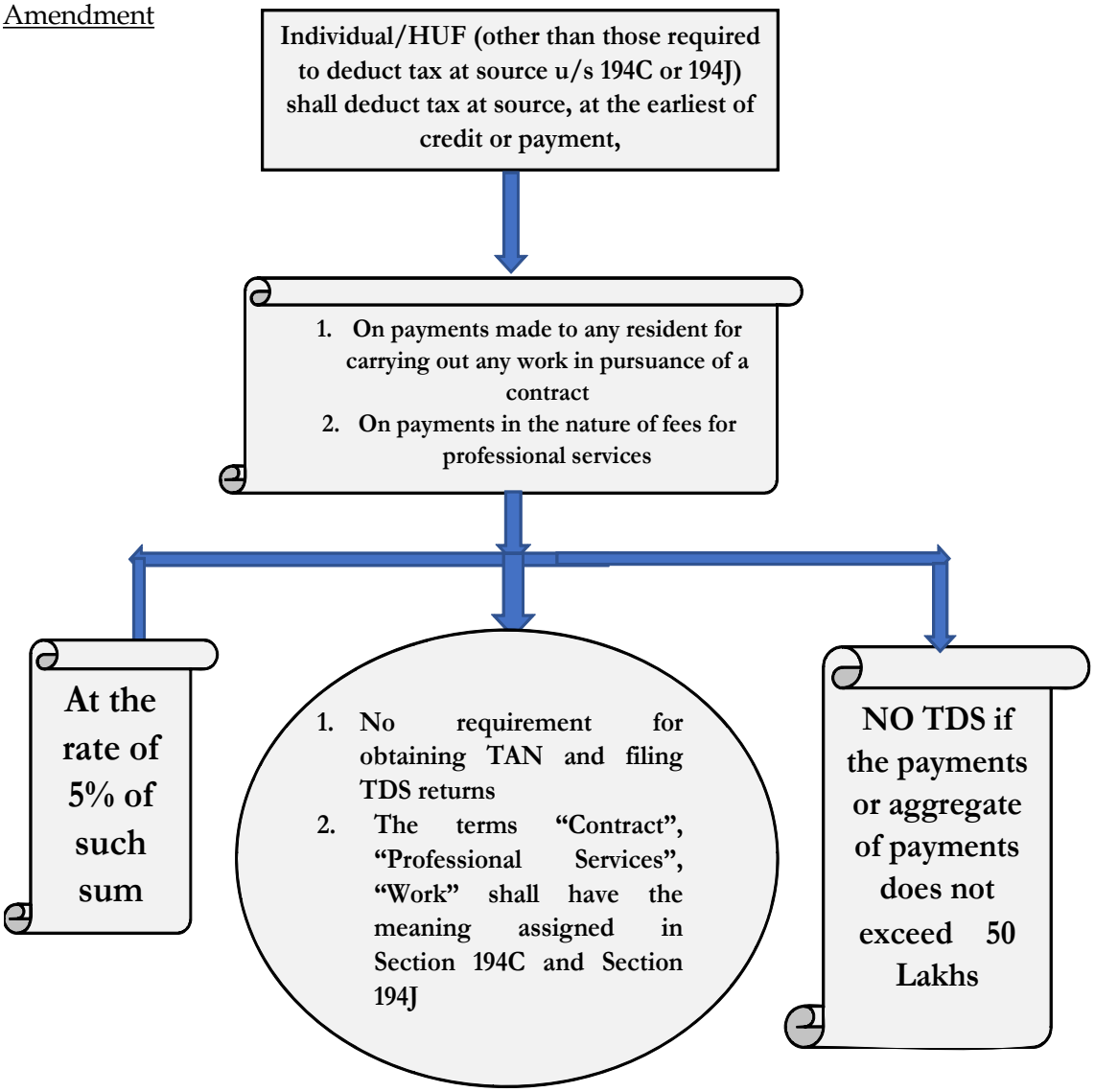
Present scenario



Reference to Explanatory Memorandum

Due to the above exemption, substantial amount by way of payments made by individuals/ HUF's in respect of contractual work or professional service is escaping the levy of TDS, leaving a loophole for possible tax evasion. The insertion of the new section to curb this evasion.

Amendment



(The author is a Chennai based Chartered Accountant in Practice. He can be reached at vvr@vvrcas.com)

Registered with Register of News Paper of India - TNENG/2002/9058 Postal Regd.No.TN/CH/(C)/170/15-17
Licenced to Post at Egmore RMS/1 (Pathirka Channel) Publication 26th of Every Month.

Published by : Anil Kumar Khicha on behalf of the Chartered Accountants Study Circle,
2-L, Prince Arcade, 22-A, Cathedral Road, Chennai - 600 086. Phone : 2811 4283
Printed by : D. Srikanth at Super Power Press, No.1, Francis Joseph Street, Chennai - 600 001. Phone : 6536 1540
Editor : Anil Kumar Khicha