

technical update

July 2019 / Volume IV / ASA



The key amendments introduced in statutes, policies and procedures in respect of Direct Tax, Indirect Tax, Corporate Laws & Accounting Standards, Foreign Exchange Management Act/ Export Import Policy & Securities and Exchange Board of India related matters are summarized hereunder.

DIRECT TAX

Amendments, Notifications & Court Rulings

- CBDT extends due date for filing of income-tax return for assessment year 2019-20 to August 31, 2019
- Options to taxpayers to make one-time payment for secondary transfer pricing adjustment
- India-China DTAA amended to incorporate BEPS related provisions

INDIRECT TAX

Amendments, Notifications & Court Rulings

- Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019
- Furnishing of Departure manifest/export manifest/export report
- Inter-head transfer in Electronic Cash Ledger
- Goods sent / taken out of India for exhibition or on consignment basis for export promotion
- GST on monthly subscription/contribution charged by a Residential Welfare Association from its members
- Exemption on supply of goods by Retail Outlets at International Airports
- Due date for filing Form CMP- 08 extended

RBI NOTIFICATIONS

Amendments and Notifications

- Annual Return on Foreign Liabilities and Assets Reporting by Indian Companies

MCA NOTIFICATIONS

Amendments and Notifications

- Clarification on filing of Form DIR-3 KYC for the Financial Year 2019-20
- Commencement of Section 406 of the Companies Act, 2013

DIRECT TAX

1. CBDT extends due date for filing of income-tax return for assessment year 2019-20 to August 31, 2019

Central Board of Direct Taxes ('CBDT') has extended the deadline for filing of income tax return for assessment year 2019-20 for taxpayers liable to file income-tax returns by July 31, 2019. The due date has been extended to August 31, 2019 on account of various difficulties faced by taxpayers including delays on account of extension of due date for issuing Form 16 for assessment year 2019-20.

Source: CBDT Order u/s 119 of the Income Tax Act, 1961 [F.No. 225/157/2019 ITA.II] dated July 23, 2019

2. Options to taxpayers to make one-time payment for secondary transfer pricing adjustment

Indian tax laws require taxpayers to repatriate excess funds held outside India, resulting from transfer pricing adjustment. Failure to remit the funds within the required time frame results in imputed interest income by way of secondary adjustment.

The Finance Act 2019, has amended section 92CE of the Income Tax Act, 1961 so as to provide that taxpayer may at his option pay 18% additional tax (plus surcharge and cess) in lieu of the transfer of the excess funds

Source: Finance Act 2019, as assented by President of India on August 1, 2019

3. India-China DTAA amended to incorporate BEPS related provisions

India-China Double Taxation Avoidance Agreement entered in 1995, has been amended to incorporate BEPS related provisions. The key changes are as follows:

- i. Additions have been made to preamble to express the desire of India and China to further develop their economic relationship.
- ii. Scope of persons covered has been enlarged to include income derived by or through fiscally transparent entities.
- iii. Residency of dual resident entities shall be determined under a mutual agreement procedure.
- iv. Various changes have been made in rules for determining permanent establishment.
- v. Provisions have been made for exchange of information to enable transparency among the nations on sharing of information.
- vi. Further, benefits of the tax treaty shall not be granted if obtaining benefit was one of the principal purposes of any arrangement/transaction, except where benefits are in accordance with the object and purpose of the treaty.

Amended treaty will be effective in India for income earned on or after April 1, 2020.

Source: CBDT Notification No. 54/2019 [F.No. 503/02/2008-FTD-II] dated July 17, 2019

INDIRECT TAX

1. Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019

Relief from the existing tax disputes existing as on 30th June, 2019 under pre-GST regime tax enactments like Central Excise Act/Tariff Act, Service Tax Law along with other 26 minor Acts under Central Jurisdiction available vide Amnesty Scheme namely Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. The reliefs are available in different thresholds. The benefits under this scheme need to be utilised within a period of two years from the date of announcement.

Source: Vide Chapter V of Finance Bill, 2019

2. Furnishing of Departure manifest/export manifest/export report:

Facility has been provided where the departure manifest or export manifest can also be furnished by a person notified by the Central Government, in addition to the person-in charge of the conveyance. On failure to deliver such departure manifest to the proper officer within the specified time, penalty upto Rs. 50,000/- shall be levied.

Source: Vide Clause 69- Chapter IV of Finance Bill, 2019

3. Inter-head transfer in Electronic Cash Ledger

CGST/IGST/SGST/UTGST, interest, penalty, fee or any other amount available in electronic cash ledger is allowed to be transferred to another head for IGST, CGST, SGST/UTGST or cess. However, such transfer has to be executed in FORM GST PMT-09.

Source: Vide Notification No. 31/2019 – Central Tax dated June 28, 2019

4. Goods sent / taken out of India for exhibition or on consignment basis for export promotion

The activity of sending/taking the goods out of India for exhibition or consignment basis for export promotion (except in cases of Schedule I transactions) shall not be considered as “Supply” and hence cannot be considered as “Zero rated supply”

Source: Vide Circular No.108/27/2019- GST – Central Tax dated July 18, 2019

5. GST on monthly subscription/contribution charged by a Residential Welfare Association from its members

Supply of service by Residential Welfare Association (being an unincorporated body or a non-profit entity) to its own members by way of reimbursement of charges or share of contribution up to an amount of Rs.7500 per month per member for providing services and goods of common use of its members are exempt from GST.

Source: Vide Circular No.109/28/2019- GST – Central Tax dated July 22, 2019

6. Exemption on supply of goods by Retail Outlets at International Airports

Any supply of goods by a retail outlet in an international airport, beyond the immigration counters, to an outgoing international tourist, has been exempted from the whole of the integrated tax and compensation cess. Such retail outlets established in an international airport, beyond the immigration counters, making tax free supply of goods to an outgoing international tourist being a non-resident in India; are entitled to claim refund of tax paid on inward supply of such goods

Notification No. 11/2019 Integrated Tax (Rate) dated June 29, 2019

Notification No. 11/2019 Central Tax (Rate) & 10/2019 Integrated Tax (Rate) dated June 29, 2019

7. Due date for filing Form CMP- 08 extended

The due date of return in Form CMP- 08 to be furnished by composition dealers for the quarter April to June, 2019 extended, from the July 18, 2019 to July 31, 2019.

Notification No. 34/2019 Central Tax dated July 18, 2019

RBI NOTIFICATIONS

1. Annual Return on Foreign Liabilities and Assets Reporting by Indian Companies

With the objective to enhance the security-level in data submission and further improve the data quality, the present email-based reporting system for submission of the annual return on Foreign Liabilities and Assets (FLA) will be replaced by the web-based system online reporting portal called Foreign Liabilities and Assets Information Reporting ('FLAIR') system by RBI.

Salient features of revised FLAIR system:

- The new feature must be used for the submission due on 15 July 2019 for the financial year ended 31 March 2019.
- Reporting entities will get system-generated acknowledgement receipt upon successful submission of the form.
- Entities can revise the data, if required, and view/download the information submitted.

Source: <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/>

NT226CBAA4706347E46429D5034B4671A6F60.PDF dated June 28, 2019

MINISTRY OF CORPORATE AFFAIRS ('MCA') NOTIFICATIONS

1. Clarification on filing of Form DIR-3 KYC for the Financial Year 2019-20

Ministry has clarified the following in respect to filing of Form DIR-3 KYC for the Financial Year 2019-20:

1. Every person who has already filed e-Form DIR-3 KYC will be required to complete his/her KYC through a simple web-based verification service on or before September 30, 2019.

2. E-Form DIR-3 KYC is only required to be filed in case a person wishes to update his mobile no. or e-mail address.
3. E-Form DIR-6 to be filed (before completion of KYC through the web-based service) in case of updation of any other personal detail.

Every person who has not filed e-Form DIR-3 KYC earlier, will be required to file e-Form DIR-3 KYC on or before September 30, 2019

Source: http://www.mca.gov.in/Ministry/pdf/GeneralCircular_27062019.pdf dated June 27, 2019

2. Commencement of Section 406 of the Companies Act, 2013 {substituted vide Companies (Amendment) Act, 2017}

Ministry has notified Section 406 of the Companies Act, 2013 with effect from August 15, 2018. Ministry has substituted Section 406 vide Amendment Act, 2017, the highlights are as follows:

- Inclusion of Mutual benefit society under Section 406 of the Companies Act, 2013;
- Exhaustive definition of Nidhi Company has been deleted and it is left to the Government to declare a company to be a Nidhi or Mutual Benefit Society by notification in the Official Gazette;
- Every notification proposed to be issued shall be laid in draft before each House of Parliament for their approval/ disapproval;

Source: http://www.mca.gov.in/Ministry/pdf/CommencementNotification_01072019.pdf dated July 1, 2019.

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