



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.

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## DIRECT TAX

- 1. An amount which payable subject to fulfilment of certain conditions cannot create an enforceable right and should be excluded in computing capital gain u/s 45.**

Assessee sold land for a consideration of Rs.521 crores; out of which Rs.50 crores was receivable by him only after receiving development rights under CRZ regulations. Accordingly, the assessee did not include Rs.50 crore as part of sale consideration and was not offered to tax. A.O. made addition of Rs.50 crore on the grounds that contingency cannot determine taxability, capital gains is taxable on transfer of asset and not when consideration is received. This view was confirmed by CIT (Appeals).

In an appeal before the Tribunal it was held that the term "full value of consideration received or accruing" means the amount actually received by the assessee or consideration which has accrued to the assessee. "Accrue" means

a right acquired by the assessee to receive income. An amount can accrue to assessee if he acquires a legally enforceable right to receive it from the debtor.

In view of the aforesaid, it was held that the amount of Rs.50 crore having neither been received by the assessee nor accrued in the relevant assessment year, it cannot be considered as a part of sale consideration for computing capital gain in the impugned assessment year.

*Source: Late Shri Gordhandas S. Garodia vs. DCIT (ITA no.5097/Mum./2015 dated November 1, 2017)*

## 2. Amendments made in the DTAA between India and New Zealand.

Protocol amending the DTAA between India & New Zealand, which was signed on October 26, 2016 has come into force vide Notification No. 93/2017 dated November 2, 2017. Highlights of the amendment are as follows.

### a) Article 26 of DTAA is replaced by the protocol.

As per the existing provision of DTAA, competent authorities of the Contracting States can exchange such information as is necessary for carrying out the provisions of DTAA or domestic laws concerning the taxes covered by the agreement. Further, Article 26(2) provides that, information which is originally regarded as secret shall be disclosed only to persons or authorities involved in the assessment or collection.

As per the amended provisions, information received from Contracting State may also be used for such other purposes by the Other Contracting State if such use is authorised by the competent authority of Contracting State supplying the information. Further, it is provided that, Contracting State cannot decline to supply the information solely on the ground that it has no domestic interest in such information.

### b) New Article 26A – “Assistance in the Collection of Taxes” is inserted in the DTAA.

As per the said article, the Contracting States shall lend assistance to each other in the collection of revenue claims. The competent authorities of the Contracting States may, by mutual agreement, settle the mode of application of this Article.

Article 26A(2) defines the term "revenue claim" means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, in so far as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

Further, this article also envisages the situations wherein, contracting state is not under obligation to provide assistance to the other contracting states.

*Source: Notification No. 93/2017/F.No. 501/1/83-FTD-II dated November 2, 2017*

### 3. Clarification on cash sale of agricultural produce by cultivators/ agriculturist.

On receipt of representations from the stakeholders regarding applicability of income-tax provision to cash sale of agricultural produce by cultivators/ agriculturists to traders, it has been clarified vide Circular No. 27/2017 dated November 3, 2017 that:

Cash sale of the agricultural produce by its cultivator to the trader for an amount less than Rs 2 lakh will not:-

- result in any disallowance of expenditure under section 40A(3) of the Act pertaining to expenditure exceeding Rs. 10,000/- made otherwise than by an account payee cheque/draft or use of electronic clearing system through a bank account in the case of trader.
- attract prohibition under section 269ST of the Act pertaining to receipt of Rs. 2 lakh or more otherwise than by an account payee cheque/draft or by use of electronic clearing system through a bank in the case of the cultivator; and
- require the cultivator to quote his PAN/ or furnish Form No.60 for sale transaction.

Source: Circular No. 27/2017 /F.No. 370149/213/2017-TPL dated November 3, 2017

## INDIRECT TAX

### 1. Extension of furnishing of Form GSTR-3B till March 2018

Requirement of filing Form GSTR-3B (monthly) extended from December, 2017 to March, 2018. Last date for filing GSTR-3B and making payment of taxes, interest, penalty, fees or any other amount notified as 20th of succeeding month.

Source: – Vide Notification No. 56/2017 – Central Tax dated November 15, 2017

### 2. Quarterly furnishing of Form GSTR-1

Taxpayers having aggregate turnover up to Rs. 1.5 Crores in the preceding financial year or current financial year shall file Form GSTR-1 on quarterly basis as per due dates notified below:

Period	Due Date
July – September, 2017	December 31, 2017
October-December, 2017	February 15, 2018
January – March, 2018	April 30, 2018

The special procedure or extension of time limit for furnishing Form GSTR-2 and Form GSTR-3 for the months of July, 2017 to March, 2018 shall be subsequently notified.

Source: – Vide Notification No. 57/2017 – Central Tax dated November 15, 2017

### 3. Extension of time limit for filing monthly Form GSTR-1

Taxpayers having aggregate turnover of more than Rs. 1.5 Crores in the preceding financial year or current financial year shall file Form GSTR-1 on monthly basis as per due dates notified below:.

Period	Due Date
July – October, 2017	December 31, 2017
November, 2017	January 10, 2018
December, 2017	February 10, 2018
January, 2018	March 10, 2018
February, 2018	April 10, 2018
March, 2018	May 10, 2018

The extension of time limit for furnishing Form GSTR-2 and Form GSTR-3 for the months of July, 2017 to March, 2018 shall be subsequently notified.

*Source: – Vide Notification No. 58/2017 – Central Tax dated November 15, 2017*

#### 4. Exemption from payment of tax on advances received in case of supply of goods

Exemption provided to registered dealers (other than Composition Dealers) from payment of tax on advances received in case of supply of goods

*Source: Vide Notification No. 66/2017-Central Tax dated November 15, 2017*

#### 5. Reduction in GST rates for Restaurants

CGST rate on restaurants, eating joints, mess etc. located in hotels, inn, guest houses, etc. having declared tariff of INR 7500 and above per unit per day or equivalent shall be 9%.

In other cases, CGST rate shall be 2.5% (credit of input tax on goods and services used in supplying the service shall not be allowed)

*Source: Vide Notification No. 46/2017-Central Tax (Rate) dated November 14, 2017*

## FEMA & OTHER LAWS

### 1. Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017

The Reserve Bank of India (RBI) has simplified the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, to regulate investment in India by a Person resident outside India. The regulations consolidate all the amendments introduced from 2000 till now and supersedes of Notification No. FEMA 20/2000-RB and Notification No. FEMA 24/2000-RB both dated May 3, 2000.

Some of the key highlights of the notification are as below:

- The New Regulations have replaced the definition of ‘Capital’ with ‘Capital Instruments’. Capital instruments include warrants and shares that can be issued to a person resident outside India. In case of partly-paid warrants and shares, 25 percent of the total consideration shall be received upfront and the balance amount shall be received within 12 months and 18 months respectively.
- Foreign Direct Investment (FDI) means investment through capital instruments by a person resident outside India in an unlisted Indian Company; or in 10 percent or more of the post issue paid-up equity capital on a fully diluted basis of a listed Company.
- Foreign Investment means any investment made by a person resident outside India on a repatriable basis in capital instruments of an Indian Company or to

the capital of LLP; If a declaration is made by persons as per the provisions of The Companies Act, 2013 about a beneficial interest being held by a person resident outside India, then even though the investment may be made by a resident Indian citizen, the same shall be counted as Foreign Investment.

- d. Foreign Portfolio Investment (FPI) means any investment made by a person resident outside India through capital instruments where such investment is less than 10 percent of the post issue paid-up share capital on a fully diluted basis of a listed Indian Company or less than 10 percent of the paid up value of each series of capital instruments of a listed Indian Company.
- e. Downstream Investment shall mean investment made by an Indian entity or Investment Vehicle in the Capital Instrument/Capital of another Indian entity; Approval of Board of Directors as per Shareholder Agreement, if any, is required in case of downstream investment.
- f. If a scheme of issue of shares under merger, demerger or amalgamation, has been approved by National Company Law Tribunal (NCLT)/other competent authority, as the case may be, the transferee Company or the new Company may issue capital instruments to the existing holders of the transferor Company resident outside India, subject to the entry routes, sectoral caps or investment limits.
- g. Capital Instrument will have to be issued within 60 days of the receipt of considerations as compared to 180 days earlier. This is to align the relevant provisions under The Companies Act, 2013.
- h. The new regulations allow delayed reporting subject to payment of late submission fees in case of filing documents beyond the designated time; Under old regulation, compounding was the only solution in case of delayed filings.

*Source: [https://www.rbi.org.in/scripts/FS\\_Notification.aspx?fn=5](https://www.rbi.org.in/scripts/FS_Notification.aspx?fn=5) dated November 07, 2017*

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