

# FOCAL POINT

Newsletter from Raju and Prasad Chartered Accountants

October 2018

*Dear Reader,*

*The Policy updates and Verdicts of Supreme Court and High Courts are enclosed in this newsletter.*

*Attention of readers is invited to the TDS and TCS provisions under GST, Participation of Eligible Foreign Entities in commodities derivatives market, extension of due date for furnishing Tax Audit reports and the decision of Honorable High Court of Madras in Sun Direct TV Pvt. Ltd. V. Assistant Commissioner of Income-tax, Chennai.*

*Regards*

*For Raju and Prasad*

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# Contents

<b>Contents</b> .....	<b>1</b>
<b>Policy Watch</b> .....	<b>2</b>
Indirect Taxes .....	2
TDS and TCS provisions under GST .....	2
SEBI.....	3
Monthly report of FPI registration on SEBI's website.....	3
Participation of Eligible Foreign Entities (EFEs)in the commodity derivatives market.....	3
Direct Tax .....	4
Extension of due date of furnishing ITRs and Tax Audit Reports of AY 2018-19 .....	4
Company Law .....	4
Relaxation of additional fees and extension of last date of in filing of forms MGT-7 (Annual Return) and Aoc-4 (Financial statement) under the Companies Act, 2013- State of Kerala.....	5
RBI Updates .....	5
External Commercial Borrowings (ECB) Policy – Liberalisation .....	5
<b>Verdicts</b> .....	<b>6</b>
Direct Tax.....	6
<b>Verdicts</b> .....	<b>7</b>
Indirect Taxes - GST.....	7

# Policy Watch

## Indirect Taxes



### TDS and TCS provisions under GST

The Central Board of Indirect Taxes and Customs Vide Notification No 50/2018 & 51/2018 – Central Tax dated 13<sup>th</sup> September, 2018 has notified that the provisions of Section 51 & 52 shall come into force from 1st October 2018.

#### Key provisions of Section 51:-

➤ Following people shall be required to deduct tax at source @2% ( CGST 1% + SGST 1%) on the payment made or credited to the supplier where the total value of supply under a contract exceed Rs.2,50,000/-excluding GST: -

- (a) a department or establishment of the Central or State Government, or
- (b) local authority, or
- (c) governmental agencies, or
- (d) such persons or category of persons as may be notified, by the Central or a State Government on



the recommendations of the Council.

- The amount deducted shall be paid to the Government within ten days after the end of the month in which such deduction is made.
- No deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory, which is different from the State, or as the case may be, Union Territory of registration of the recipient.

#### Key provisions of Section 52:-

- Every electronic commerce operator, shall collect tax at the rate of 1%( CGST 0.5% + SGST 0.5%) of the net value of taxable supplies made through it by other suppliers and the consideration with respect to such supplies is collected by the operator.

- The amount deducted shall be paid to the Government within ten days after the end of the month in which such deduction is made.
- <http://cbic.gov.in/resources//htdocs-cbec/gst/notfctn-50-central-tax-english.pdf;jsessionid=11FB13296B64CDBE19D1028632E45674>
- <http://cbic.gov.in/resources//htdocs-cbec/gst/notfctn-51-central-tax-english-new.pdf;jsessionid=2C3518409B9139B7113EF45E5857AB8F>

## SEBI



### Monthly report of FPI registration on SEBI's website

The Securities Exchange Board of India (SEBI) vide its Circular No SEBI/HO/FPIC/CIR/P/2018/135 dated 10th October 2018 has decided that – For the purpose of ensuring transparency in processing of applications for FPI (Foreign Portfolio Investors) registration, the average time taken by the DDP (Designated Depository Participant) shall be disseminated on SEBI's website on a monthly basis.

[https://www.sebi.gov.in/legal/circulars/oct-2018/monthly-report-of-fpi-registration-on-sebi-s-website\\_40694.html](https://www.sebi.gov.in/legal/circulars/oct-2018/monthly-report-of-fpi-registration-on-sebi-s-website_40694.html)

### Participation of Eligible Foreign Entities (EFEs) in the commodity derivatives market

Currently, foreign entities are not permitted to directly participate in the Indian commodity derivatives market, even if they import/export various commodities from/to India. It has been decided to permit foreign entities having actual exposure to Indian commodity markets, to participate in the commodity derivative segment of recognized stock exchanges for hedging their exposure. Such foreign entities shall be known as "Eligible Foreign Entities" (EFEs).

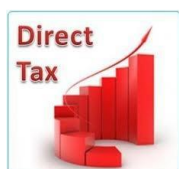
#### Criteria for Eligible Foreign Entity:

1. Minimum net-worth of US \$ 5,00,000.
2. Such FE shall have actual exposure to Indian physical commodity markets.
3. Such FE is resident in a country/jurisdiction whose securities market regulator and/or commodity derivatives market regulator is a signatory to IOSCO's MMoU or a signatory of a bilateral MoU with SEBI.

4. If such EFEs are also registered with SEBI as Foreign Portfolio Investors or Foreign Venture Capital Investors, they are permitted to participate in commodity derivatives markets as EFE provided that they have actual exposure to Indian physical commodity markets and subject to conditions that there is a clear segregation of funds/ securities/ commodities under the respective registrations.

[https://www.sebi.gov.in/legal/circulars/oct-2018/participation-of-eligible-foreign-entities-efes-in-the-commodity-derivatives-market\\_40649.html](https://www.sebi.gov.in/legal/circulars/oct-2018/participation-of-eligible-foreign-entities-efes-in-the-commodity-derivatives-market_40649.html)

## Direct Tax



### Extension of due date of furnishing ITRs and Tax Audit Reports of AY 2018-19

The Central Board of Direct Taxes vide its Order under Section 119 of the Act dated 24<sup>th</sup> September, 2018 has extended the due date for filing of Income Tax Returns & Tax Audit reports till 15<sup>th</sup> October 2018. However, liability

to pay interest under Section 234A remains.

Further, pursuant to the order of Bombay High Court in case of Rajasthan Tax Consultants Association v. Union Of India, the due date has been further extended till 30<sup>th</sup> October 2018 vide Order dated 8<sup>th</sup> October 2018.

- [https://www.incometaxindiaefiling.gov.in/eFiling/Portal/StaticPDF\\_News/Order\\_MiscComm\\_24\\_9\\_2018.pdf](https://www.incometaxindiaefiling.gov.in/eFiling/Portal/StaticPDF_News/Order_MiscComm_24_9_2018.pdf)
- [https://www.incometaxindiaefiling.gov.in/eFiling/Portal/StaticPDF\\_News/Extension-of-due-date-for-auditable-cases-order-us-119-of-the-Act-08-10-2018\\_\(1\).pdf](https://www.incometaxindiaefiling.gov.in/eFiling/Portal/StaticPDF_News/Extension-of-due-date-for-auditable-cases-order-us-119-of-the-Act-08-10-2018_(1).pdf)

## Company Law



### Amendments made in Schedule III(Preparation of Financial Statements) of Companies Act, 2013

The Ministry of Corporate affairs vide Notification dated 11/10/2018 has made amendments in Schedule III of the said Act. Key changes are as follows:

1. Loan receivables have been classified further.
2. Description of purpose of each reserve has been specified.
3. Names of headings of Fixed Assets and Securities Premium Reserve have been modified.
4. MSME Disclosures and further classification of Receivables & Payables in IND AS Compliant Financials.
5. Division III has been introduced for the preparation of Financial Statements for NBFC whose Financial Statements are drawn up in compliance of Companies (Indian Accounting Standards) Rules, 2015.

[http://www.mca.gov.in/Ministry/pdf/NotificationScheduleIII\\_12102018.pdf](http://www.mca.gov.in/Ministry/pdf/NotificationScheduleIII_12102018.pdf)

**Relaxation of additional fees and extension of last date of in filing of forms MGT-7 (Annual Return) and Aoc-4 (Financial statement) under the Companies Act, 2013- State of Kerala**

The Ministry of Corporate affairs vide Circular No. 09/2018 dated 5th October 2018 has decided to relax the additional fees payable by companies having registered office in the State of

Kerala on e-forms AOC-4, AOC (CFS) AOC-4 XBRL and e-Form MGT-7 upto 31.12.2018, wherever additional fee is applicable.

[http://www.mca.gov.in/Ministry/pdf/GeneralCircularKerala\\_05102018.pdf](http://www.mca.gov.in/Ministry/pdf/GeneralCircularKerala_05102018.pdf)



## RBI Updates

### External Commercial Borrowings (ECB) Policy – Liberalisation

Reserve Bank Of India vide Circular RBI/2018-2019/54 A.P. (DIR Series) Circular No.10 dated 3<sup>rd</sup> October 2018 has liberalized the norms relating to External Commercial Borrowings. As per the present norms, ECB up to USD 50 million or its equivalent can be raised by eligible borrowers with minimum average maturity period of 3 years. It has been decided to allow eligible ECB borrowers who are into manufacturing sector to raise ECB up to USD 50 million or its equivalent with minimum average maturity period of 1 year.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11384&Mode=0>

# Verdicts

## Direct Tax

### Direct Tax

#### Completed Assessment reopened on the ground that certain transactions were not disclosed during the original assessment

- Vide Decision of High Court of Madras in Sun Direct TV Pvt. Ltd. V. Assistant Commissioner of Income-tax, Chennai

#### Facts of the case:

1. Completed assessments were sought to be reopened by the revenue after a lapse of six years on ground that there were some materials on record and informations that assessee had received money from company SAEHL in name of share subscription along with share premium of Rs.203.98 crores.
2. Assessee has also allotted shares to Kalanithi Maran and his wife only at Rs.10 per share without any premium.
3. Revenue contended that the Share premium invested by SAEHL was clearly excess value received and had not been disclosed in return of income which was required to be



assessed to tax under Section 68 of the Act.

Judgement : The Honorable High Court of Madras in the above case has held that the reopening of assessment was valid and in accordance with the law

<https://www.taxmann.com/filecontent.aspx?Page=CASELAWS&multipage=false&id=10101000000184450&isxml=Y&search=&tophead=true&tophead=true>

#### Judgements relating to linking of Aadhar

The Honorable Supreme Court Of India vide Justice K.S. Puttaswamy (RETD.) V. Union of India has held the following –

Aadhaar Constitutionally valid - The Aadhaar Act serves legitimate State interest and good governance to ensure fruits of welfare schemes reach to unprivileged and marginalized



section of the society by preventing leakages, pilferages and corruption in the implementation of welfare schemes. It does not violate right to privacy, nor is it unconstitutional.

Aadhaar for students not mandatory - For admission of children in schools, requirement of Aadhaar would not be compulsory. Identity may be proved on the basis of any other documents.

Inclusion of Aadhaar in Income-tax Act valid - Section 139AA of the Income Tax Act, 1961 is not unconstitutional.

Aadhaar-bank account linking invalid - Rule 9 of the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 and the notifications issued thereunder which mandates linking of Aadhaar with bank accounts are unconstitutional.

Aadhaar-mobile linking invalid - Circular dated March 23, 2017 mandating linking

of mobile number with Aadhaar is not backed by any law, hence, unconstitutional.

<https://www.taxmann.com/filecontent.aspx?Page=CASELAWS&id=101010000000184180&isxml=Y&search=&tophead=true&tophead=true>

## Verdicts

### Indirect Taxes - GST

**Where it was alleged that Rule 89(5) of CGST Rules, 2017, as amended vide Notification Nos. 21/2018-CT and 26/2018-CT, denies grant of refund of unutilized tax credit in respect of tax paid on input services which is ultra vires to Constitution as well as CGST Act, 2017 and demand notice was to be stayed**

- Decision of High Court Of Gujarat in Shree Rama Newsprint Ltd. V. Union of India

Facts of the case : The assessee has challenged the validity of Section 89(5) as amended by notifications issued later on the following grounds:



Section 54(3) of the CGST Act, 2017 – A registered person may claim refund of any unutilised input tax credit at the end of any tax period :

Provided that no refund of unutilised input tax credit shall be allowed in cases other than –

- i. zero-rated supplies made without payment of tax;
- ii. where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies).

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

Rule 89(5) of CGST Rules(as amended by Notification Nos. 21/2018-CT and 26/2018-CT) –

With effect from 1<sup>st</sup> July 2017, In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula-

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services.

Explanation: For the purposes of this sub-rule, the expressions -

- Net ITC shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both
- Adjusted Total turnover shall have the same meaning as assigned to it in sub-rule (4).

The provisions of the rule and the section stated above are contradictory to each other.

Judgement :

Considering the above, High Court of Gujarat has issued a Notice to Union Of India returnable on 10.10.2018. The demand notice dated 21.06.2018 issued to the assessee was stayed.

<https://www.taxmann.com/filecontent.aspx?Page=CASELAWS&id=101010000000184092&isxml=Y&search=&tophead=true&tophead=true>

### **No levy of Service Tax/GST on the fee paid for award of license for sale of liquor**

- Vide Decision Of High Court Of Punjab And Haryana in Rajwinder Singh V. Commissioner, CGST Commissionerate, Jalandhar

#### Facts of the Case:

The petitioner(Rajwinder Singh) has received notices dated 29.05.2017, 14.07.2017 and 11.01.2018 asking him to furnish certain information with reference to levy of service tax on the fee paid for award of license for sale of liquor.

The respondent(CGST Commissionerate, Jalandhar) fairly submitted that he has received instructions to the State that in 26th meeting of GST Council held on 10.03.2018 it has been decided that no GST/Service Tax is leviable on the fee paid for grant of license sale of liquor for human consumption.

#### Judgement :

Keeping in view the statement made by the respondent, Honorable High Court of Punjab and Haryana has rendered the present petition infructuous and disposed the petition accordingly.

<https://www.taxmann.com/filecontent.aspx?Page=CASELAWS&id=101010000000183936&isxml=Y&search=&tophead=true&tophead=true>

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