

# **CONNECT** **2019**





# INDIRECT

# TAX





## Sigh of relief for exporters, automated GST refunds to be enabled from June 2019

Exporters of goods and services as well as suppliers to SEZ units are likely to get GST refunds automatically from June as the Revenue Department plans to introduce faceless scrutiny of refunds and faster claim settlement, an official said.

Under GST, every person making a claim of refund on account of 'zero-rated' supplies has two options. Either he can export without payment of integrated tax under Bond/ LUT and claim a refund of accumulated Input Tax Credit (ITC) or he may export on payment of integrated tax and claim refund thereof.

Currently, the facility of automatic refund is available only for those exporters who have paid Integrated Goods and Services Tax (IGST) while exporting goods. Since the GST Network (GSTN) systems are integrated with Customs, refunds are generally transferred to the bank accounts of such exporters within a fortnight.

However, manufacturing exporters and suppliers to SEZ, who want to claim a refund of ITC, have to file an application in Form GST RFD-01A on the common portal and thereafter manually submit a print out of the form along with other documents to the jurisdictional officer.

Once implemented, the time period for such refunds will come down to about a fortnight from months at present.

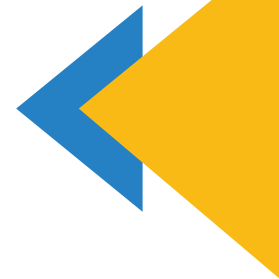
## Kerala to impose 1% flood cess on goods and services from July 01

The Kerala government will impose an additional cess of 1% on goods and services 5% from June 1. This additional cess is meant to raise funds to rebuild the state, which was struck by devastating floods in August 2018. The flood cess will be imposed for two years starting from June 1.

Kerala Flood Cess (KFC) shall be levied and collected on intra-state supplies of goods and services made by a taxable person to unregistered person in respect of specified supplies. Every person liable to KFC shall file a monthly return in Form No. KFC-A on or before due date of filing the GSTR-3B returns. The returns are to be filed on [www.keralataxes.gov.in](http://www.keralataxes.gov.in)

The cess shall not be leviable on following:

- Supplies made by Composition dealer
- Supplies of exempted good and services
- Supplies of goods by registered taxable person to another registered taxable person



Following table summarizes the applicability of KFC:

S.No.	Particulars	Cess Rate
1.	Supplies of goods for which the tax rate is fixed at 0.125% in KGST Act, 2017	NIL
2.	Supplies of goods for which the tax rate is fixed at 1.5% in KGST Act, 2017	0.25%
3.	Supplies of goods for which the tax rate is fixed at 5% in KGST Act, 2017	NIL
4.	Supplies of goods for which the tax rate is fixed at 6% /9%/14% in KGST Act, 2017	1%

## GST returns filings – Is India Inc ready for GST Returns 2.0?

GST Network has released a demo tool for the new and simplified return filing form which will be launched likely from July 01, 2019. The prototype available on webportal gives stakeholders a feel of what the new return filing system will look like.

The new returns are being introduced replacing the GSTR-1 and GSTR-3B. The new returns which are being introduced are dependent on two important factors:

- Turnover Limit
- Type of transactions

Return Form	Name of the return
RET-01	Normal
RET-02	Sahaj
RET- 03	Sugam
ANX-01	Outward liability, imports, and inward supplies attracting reverse charge
ANX-02	Details of auto-drafted inward supplies





## Summary of the key features of the new return forms:

Particulars	Sahaj	Sugam	Normal
<b>Turnover Threshold</b>	Below Rs. 5 crore (Optional)	Below Rs. 5 Crore (Optional)	Above Rs.5 Crore (Mandatory) Below Rs.5 Crore (Optional)
<b>Periodicity of GST payment</b>	Monthly	Monthly	Monthly
<b>Periodicity of returns</b>	Quarterly	Quarterly	Monthly (Quarterly for those who have opted for Normal returns but threshold below Rs. 5 Crore)
<b>Forms to fill</b>	RET-02 ANX-01 ANX-02	RET-03 ANX-01 ANX-02	RET-01 ANX-01 ANX-02
<b>Output</b>	B2C	B2C & B2B	B2C, B2CS, B2B, Exports, E-Commerce
<b>Not allowed Output</b>	B2B, Exports, E-Commerce	Exports, E-Commerce	Not Available
<b>Input</b>	Auto-populated ITC only	Auto-populated ITC only	Suo-moto ITC (With requirement to ensure that the such ITC availed suo-moto is auto-populated within specified period)

## Other features of the new return filing system:

- Interest would be auto-populated by the systems
- HSN to be maintained at Six-digit level for Sugam & Normal returns
- Unregistered RCM Supplier – Disclosure of Vendor PAN Mandatory
- Real-time uploading of invoices is allowed
- Import of goods to auto-populate from ICEGATE

## Key Issues:

- Operations could lead to choosing of vendors based on top compliant vendors
- Accepting only auto-populated ITC can have challenge in working capital requirements
- ERP/Software to be customized to meet new system requirements



## Case Laws

### **Orissa HC: Reads down Section 17(5) which blocks ITC of works contract service to a person who offers premises on lease/rent, extends ITC on inputs / services used for mall construction**

Orissa HC extends credit on input materials/services used for construction of shopping malls against CGST/SGST payable on rent received from tenants on account of letting of units in mall. HC finds force in assessee's plea that denial of ITC in respect of building meant and intended to be let out would amount to treating it as identical to a building meant and intended to be sold, and that the tax chain is not broken in cases where building is constructed for purpose of letting out. Further, HC also notes assessee's contention that treatment of these two different types of buildings as one for the purpose of GST is itself contrary to the basic principles regarding classification of subject matter of tax levy and, therefore, violative of Article 14 of the Constitution. Holds that the narrow interpretation put forward by the Department frustrates the very objective of the Act as assessee has to pay huge amount without any basis. Observes that, in the present case, assessee is retaining the property and not using it for his own purpose but letting it out on which he is covered under GST. Consequently, if the assessee is required to discharge GST on the rental income arising out of investment on which GST is paid, it is eligible to avail the ITC of GST. HC concludes that, "provisions of Section 17(5)(d) is to be read down and the narrow restriction as imposed.

*[TS-350-HC-2019(ORI)-NT]*





## Input tax credit on Post-supply discounts cannot be availed – Tamil Nadu, ARA

MRF approached the Advance Ruling Authority (ARA) to check if it legally could avail of the input tax credit on the entire GST charged on the supply of invoice, or if a proportionate reversal of the tax was required if the vendor gave a post-purchase discount, based on their early payment. The ARA said the company can avail of the input tax credit only to the extent of the invoice value raised by the suppliers, less the discounts as given by the C2FO software. If input tax credit was taken on the full amount, it should reverse the difference.

It held that as per proviso to Section 16, the recipient is entitled to avail the credit of input tax on the payment made by him alone and if any amount is not paid as per the value of supply and the recipient has availed full input tax credit, the same would be added to his output tax liability.

Circular issued by the board in March 2019 had dealt with the issue of financial credit notes, however, the said circular did not deal with the aspect of input tax credit. Now, this ruling can have large ramification of on all post-supply discounts offered by the suppliers.

*[MRF Limited (2019-TIOL-AAR-GST)]*

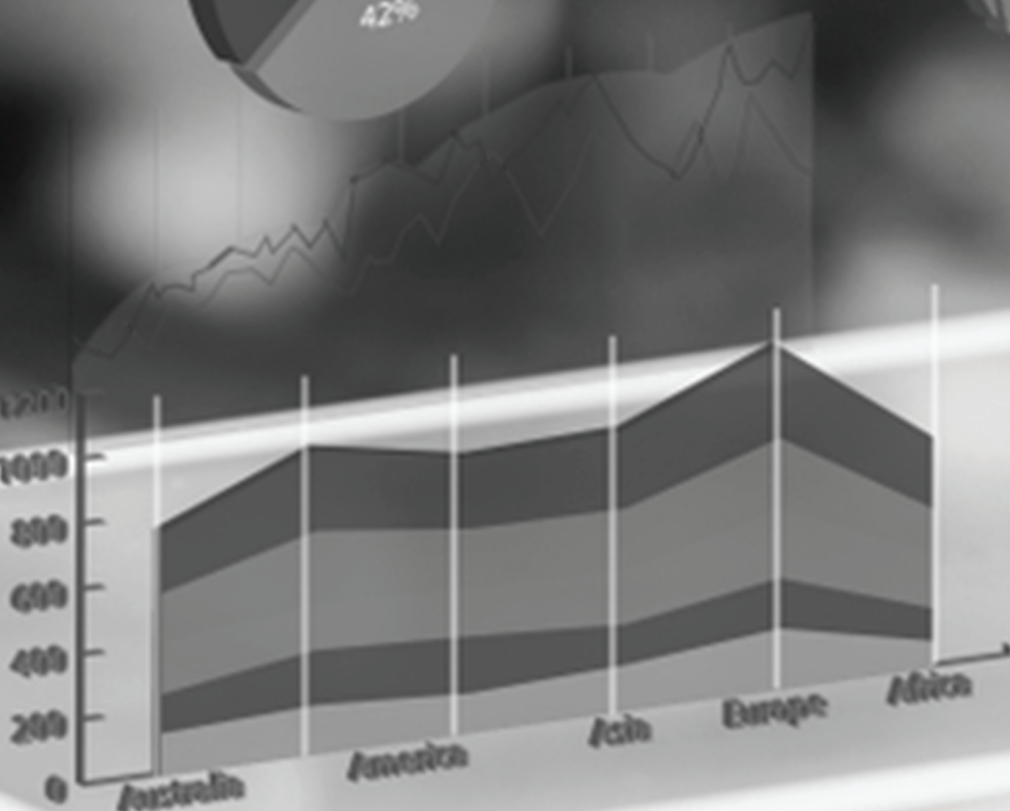
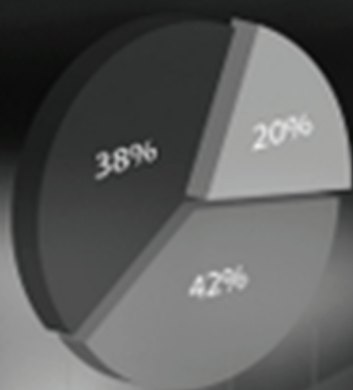
## Delhi HC in case of M/s Landmark Lifestyle restricts coercive action against interest recovery on total liability without adjusting ITC

Delhi HC issues notice to Revenue and restricts coercive action towards recovery of interest on total tax liability without adjusting ITC. Notes assessee's plea that interest has been calculated even on the amount constituting ITC which is in fact to be adjusted against tax liability and that interest liability works out to 8.19 crores against the total tax liability of Rs.3.31 crores which makes it unreasonable and erroneous. Lists the matter before the Registrar on August 05 for completion of pleadings and before this Court on September 30 : Delhi HC

*[TS-378-HC-2019(DEL)-NT]*



# DIRECT TAX







# Tax Audit Reports

## CBDT defers GST and GAAR reporting till March 2020

CBDT earlier in July 2018 had enhanced the disclosure and reporting requirement in Form 3 CD by introducing **Clause 30 C** and **Clause 44** in the FORM 3CD.

**Clause 30 C** - Reporting of General Anti Avoidance Rule (GAAR) impacted transactions – to report whether assessee has entered into an impermissible avoidance agreement.

**Clause 44** - Bifurcation of total expenditure with GST registered vendors and non-registered entities, also disclosure of the exempt supply covered under composition scheme and other registered entities;

The CBDT on examination of representations received has decided to keep the above mentioned reporting clause 30C and clause 44 of Form 3 CD in abeyance till March 31, 2020.

*Reference: Circular No.9/2019 dated May 14, 2019.*

## Employers to mandatorily issue Form 16 Part B in the specified format:

Presently Form 16 has two parts i.e. Part-A and Part-B. Part –A is standardized one however for Part-B no format was specified.

Now CBDT has made it mandatory for employers to issue Part B of form 16 in the specified format which requires employers to give detailed computation of total income and tax liability of the employee specifying the particular section/sub-section/clause in which any exemption or deduction is claimed.

Now every organization will have to follow a standardized format to fill the relevant exempted allowances and deductions against the specified earmarked fields in Annexure II of Form 24 Q. Corresponding amendment/changes have been made in Form 24Q for appropriate disclosure.

*Reference: Notification No. 09/2019 dated May 6, 2019.*





## Return filing manually or electronically to be filed with quoting of Aadhar number:

To give effect to various judgements/orders of Hon'ble Supreme Court in case of

1. Binoy Viswam Vs. Union of India reported in (2017) 396 ITR 66
2. Final Judgment and order of the Constitution Bench of Hon'ble Supreme Court dated 26.09.18 in Justice K. S. Puttaswamy (Retd.) and another {Writ Petition (Civil) No. 494 of 2012}; &
3. Shreya Sen & Anr. In SLP (Civil) Diary No(s) 34292/2018 dated 04.02.2019, Hon'ble Supreme Court has upheld validity of Sec 139AA

Therefore from 01.04.2019 onwards, Board has decided that provision of clause(ii) of sub-section (1) of section 139AA of the Act would be implemented and it is mandatory to quote Aadhar while filing the return of income unless specifically exempted as per any notification issued under sub-section (3) of section 139AA of the Act. Thus, returns being filed either electronically or manually from 01.04.2019 onwards cannot be filed without quoting the Aadhar number.

*Reference: Circular No.6/2019 dated March 31, 2019.*





## Case Laws

### Even in case of NBFC's, Interest on Non-Performing Assets to be taxed only on receipt basis

Pr. Commissioner of Income Tax -5 Vs. Bajaj Finance Limited – Bombay High Court - Income Tax Appeal No. 237 Of 2017 With Income Tax Appeal No 485 Of 2017

The Bombay High Court held that even though the special provision in s. 43D for taxing interest income on NPAs on receipt basis does not apply to NBFCs, it does not mean that NBFCs have to offer interest on bad or doubtful debts to tax on accrual basis. Such interest is not taxable on the real income theory.

### Assessment order passed u/s 143(3) r.w.s 147 without issuing the notice u/s 143(2) is invalid

ITO, Ward 3(1), Jaipur. Vs. Shri Hans Raj Sharma – ITAT Jaipur - ITA No. 504/JP/2016

S. M. Batha Education Trust Vs. ITO (Exemptions), Ward-1, Pune – ITAT Pune - C.O. No.56/PUN/2018

Tribunal(s) held that requirement to issue statutory notice u/s 143(2) is mandatory and therefore reassessments order passed u/s 143(3) r.w.s 147 without issuing the statutory notice u/s 143(2) is invalid and illegal.

### No penalty u/s 271(1)(c) if the show cause notice doesn't clearly specify the charge as to whether proceedings are initiated for "Concealment of Income" or "Furnishing of Inaccurate particulars of income"

Amarender Reddy Kondakini Vs. ITO, Ward-15(1), Hyderabad. – ITAT Hyderabad - ITA No. 960/HYD/2018

Thakur Chaplot Vs. Assistant Commissioner Of Income Tax – ITAT Jodhpur - ITA No. 105/Jodh/2019

Tribunals held that the show cause notice doesn't clearly specify the charge as to whether proceedings are initiated for "Concealment of Income" or "Furnishing of Inaccurate particulars of income", such notice is vague and invalid and therefore penalty imposed by the assessing officer is cancelled.

### Deduction u/s 54F allowed even if construction of new house property started before the sale of original asset.

Kapil Kumar Agarwal Vs. DCIT, Circle-1(1) Gurgaon – ITAT Delhi - ITA No. 2630/Del/2015

The Tribunal held that Section 54F is a beneficial provision and should be liberally interpreted. An assessee who has purchased a house property is entitled to exemption u/s 54F despite the fact that construction activities of the new house has started before the date of sale of the original asset.



## Levy of fee u/s 234E while processing statement of TDS u/s 200A pertaining to the period prior to 01.06.2015 not sustainable

GNA Udyog Ltd. Vs. Asst. Commissioner of Income Tax Centralized processing Cell TDS Ghaziabad (U.P) – ITAT Amritsar - ITA Nos.126 to 133/Asr./2017

The Tribunal held that as the amendment made under Sec.200A was effective from 01.06.2015 and applicable prospectively, hence no computation of fee under Sec.234E could be made for the Tax deducted prior to 01.06.2015.





# AUDIT



## Amendments to Ind AS

Ind AS	Ind AS 23: Borrowings
Key Amendment	Borrowing costs eligible for capitalisation
Amendment	To the extent that an entity borrows funds generally and uses them for the purpose of obtaining a qualifying asset, the entity shall determine the amount of borrowing costs eligible for capitalisation by applying a capitalisation rate to the expenditures on that asset. The capitalisation rate shall be the weighted average of the borrowing costs applicable to the borrowings of the entity that are outstanding during the period, other than borrowings made specifically for the purpose of obtaining a qualifying asset. The amount of borrowing costs that an entity capitalises during a period shall not exceed the amount of borrowing costs it incurred during that period.
Effective date	01-Apr-19
MCA Notification	<a href="http://www.mca.gov.in/Ministry/pdf/RuleIndAsSecondEng_30032019.pdf">http://www.mca.gov.in/Ministry/pdf/RuleIndAsSecondEng_30032019.pdf</a>

Ind AS	Ind AS 103: Business Combinations
Key Amendment	Clarification regarding previously held investments in a joint company
Amendment	When a party to a joint arrangement (as defined in Ind AS 111, Joint Arrangements) obtains control of a business that is a joint operation (as defined in Ind AS 111), and had rights to the assets and obligations for the liabilities relating to that joint operation immediately before the acquisition date, the transaction is a business combination achieved in stages. The acquirer shall therefore apply the requirements for a business combination achieved in stages, including remeasuring its previously held interest in the joint operation in the manner described in paragraph 42. In doing so, the acquirer shall remeasure its entire previously held interest in the joint operation."
Effective date	01-Apr-19
MCA Notification	<a href="http://www.mca.gov.in/Ministry/pdf/RuleIndAsSecondEng_30032019.pdf">http://www.mca.gov.in/Ministry/pdf/RuleIndAsSecondEng_30032019.pdf</a>

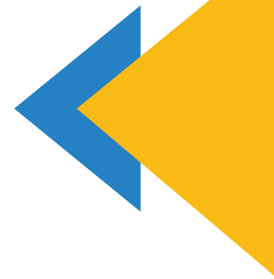
Ind AS	Ind AS 111 : Joint Arrangements
Key Amendment	Previously held interests in a joint operation
Amendment	A party that participates in, but does not have joint control of, a joint operation might obtain joint control of the joint operation in which the activity of the joint operation constitutes a business as defined in Ind AS 103. In such cases, previously held interests in the joint operation are not remeasured.
Effective date	01-Apr-19
MCA Notification	<a href="http://www.mca.gov.in/Ministry/pdf/RuleIndAsSecondEng_30032019.pdf">http://www.mca.gov.in/Ministry/pdf/RuleIndAsSecondEng_30032019.pdf</a>



## Release of Ind As Technical Facilitation Group Bulletin 19

Introduction	Release of ITFG Clarification Bulletin 19
Details	<p>Ind AS Technical Facilitation Group (ITFG) considered some issues received from members and decided to issue following clarifications May 08, 2019 majorly pertaining to the following Ind Ass -</p> <ol style="list-style-type: none"> <li>1. Ind AS 101, First-time Adoption of Indian Accounting Standards,</li> <li>2. Ind AS 115, Revenue from Contracts with Customers:</li> <li>3. Ind AS 103, Business Combinations</li> </ol>
Link	<a href="https://www.icaai.org/new_post.html?post_id=12745">https://www.icaai.org/new_post.html?post_id=12745</a>





## Dates

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						June 1
2	3	4	5	6	7 <b>Direct Taxes</b> -Deposit of TDS/TCS of May 2019 -Deposit of Equalization levy of May 2019	8
9	10 <b>Indirect Taxes</b> GST-07 for May-2019 <b>Direct Taxes</b> PT(TS) payment of May 2019	11 <b>Indirect Taxes</b> GST-01 for May-2019	12	13 <b>Indirect Taxes</b> GST-06 for May-2019	14 <b>Direct Taxes</b> TDS certificate for tax deducted in Apr 2019 under Section 194IA and 194IB	15 <b>Direct Taxes</b> -First installment of Advance Tax for the FY 2019-20 (AY 2020-21) -Form 16 for the Tax deducted during FY 2018-19 -PF/ESI payment of May 2019
16	17	18	19	20 <b>Indirect Taxes</b> -GST-3B for May-2019; -GST-05 for May-2019; -GST-5A for May-2019;	21	22
23	24	25 <b>Direct Taxes</b> PF Return Filing May 2019	26	27	28	29
30 <b>Indirect Taxes</b> <b>Direct Taxes</b>	<div> <b>Indirect Taxes</b>            GST-09 for FY 2017-18;            GST-09 for FY 2017-18;            GST-09C for FY 2017-18;         </div> <div> <b>Direct Taxes</b>            -Challan-cum-statement for Tax deducted under 194IA and 194IB for May 2019            -Report by an approved institution / PSU u/s 35AC for year ending March 2019            -Statement of income distributed by business trust to its unit trust during the F.Y 2018-19            -Equilisation levy statement for FY 2018-19         </div>					

**Notes:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_





## Head office – Hyderabad

6-3-569, 4th Floor, Above BMW Showroom,  
Opp. RTA Office, Khairatabad, Hyderabad - 500 082,  
Telangana, India.

+91 - 40 - 2324 0700 / 2324 0900 | [Lnco@Lncofirm.com](mailto:Lnco@Lncofirm.com)

## Branch offices

Hyderabad | Bangalore | Mysuru | Chennai | Visakhapatnam

## Global Offices

UAE | Dubai

---

For private circulation only.

This publication does not constitute professional advice. Readers of this publication are advised to seek their own professional advice before taking any course of action or decision, for which they are entirely responsible.