



CONNECT

October - 2019

Happy *Dussehra*

May you achieve the strength & courage to follow the path of righteousness and be blessed with joy, success and prosperity.



DIRECT TAX



Corporate tax rate cuts: Cutting corporate tax to accelerate growth could be the first step to structural change

India can now become more globally competitive, inducing more investment and boosting exports.

1. Reduction in Income Tax rate in case of domestic companies

Basic Income Tax rate in respect of domestic companies reduced to 22% subject to the following conditions: (Section 115BAA)

The company shall not claim the following:

- a. Special deductions in respect of newly established units in Special Economic Zones u/s 10AA.
- b. Additional Depreciation (35% in case of Plant and Machinery installed in notified backward areas by assessee engaged in the business of production or manufacture, 20% in all other cases where assessee engaged in the business of production or manufacture) u/s 32(1)(iia).
- c. Deduction in respect of investment made in setting up of an undertaking in notified backward areas.
- d. Deduction in respect of deposits made in tea, coffee, rubber development account u/s 33AB.
- e. Deduction u/s 33ABA in respect of site restoration fund by the assessee engaged in the business of prospecting for, or extraction or production of, petroleum or natural gas.
- f. Special deductions towards expenditure incurred on Scientific research u/s 35(1)(ii),(iia),(iii). 35(2AA), (2AB).
(However deduction u/s 35(1)(i) i.e. expenditure (other than capital expenditure) incurred on scientific research related to business).
- g. Deduction in respect of specified businesses u/s 35AD
- h. Deduction in respect of expenditure incurred on agricultural extension project notified by the board u/s 35CCC.
- i. Deduction in respect of expenditure incurred on skill development project notified by the board u/s 35CCC.
- j. Deduction under chapter VI-A under the heading "C-Deduction in respect of certain incomes" **(other than deduction u/s 80JJAA in respect of employment of new employees).**

Further no set-off and carry forward of losses attributable to the deductions specified will be allowed.

2. Reduction in Income Tax rate in case of certain new domestic companies

Basic Income Tax rate in respect of certain new domestic companies **(i.e. set-up on or after 01.10.2019 and commenced of manufacturing on or before 31.03.2023)** reduced to 15% subject to the following conditions: (Section 115BAB)

- a. The Company is not formed by splitting up or reconstruction of business already in existence. (Condition not applicable undertaking formed as a result of revival, reconstruction as referred to in section 33B)
- b. The does not use machinery or plant or building previously used of any purpose.
- c. The Company is not engaged in any business other than business of manufacture.
- e. The Company doesn't claim any specified deduction and losses.

(As mentioned in respect of companies opting for the tax rate of 22%).

The above provisions (section 115BAA and Section 115BAB) are effective from 01.04.2020 and applicable from AY 2020-21 onwards. The assessee desiring to avail the benefit of the reduced tax rates shall exercise the option on or before the due date for filing return of income u/ s 139(1) and the option once exercised will be applicable to all the subsequent years and cannot be withdrawn.



3. Reduction in rate of minimum alternate tax: Section 115JB.

Rate of Minimum Alternate Tax is reduced from 18.5% of book profits to 15% of book profit.

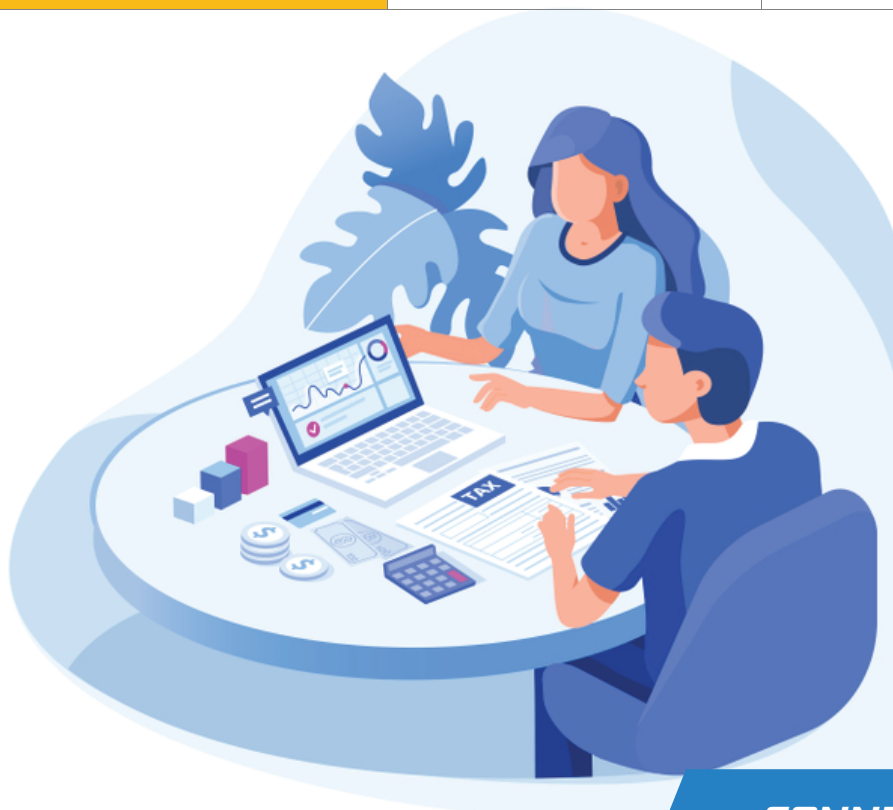
4. Minimum Alternate Tax not applicable to persons exercising the option u/s 115BAA and 115BAB

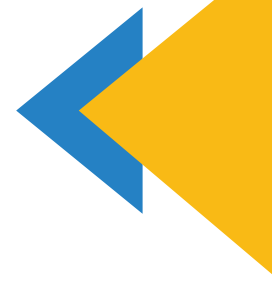
In order to give full benefit of the reduced tax rates u/s 115BAA and 115BAB, the provisions of Minimum Alternate Tax are made **not applicable** to the Companies exercising option u/s 115BAA (22% Income Tax) and u/s 115BAB (15% Income Tax in respect of newly set-up companies engaged in the business of manufacturing).

Therefore the Companies opting for reduced tax rates will not be liable to pay any tax in excess of the tax computed as per the provisions applicable for reduced tax rates.

Rates of Income Tax and Minimum Alternate Tax for AY 2020-21 in respect of different domestic Companies are summarised as under:

Type of Company	Basic Income Tax Rate	Minimum Alternate Tax Rate
Companies Set-up on or after 01.10.2019, commenced manufacturing on or before 31.03.2023 and exercising option u/s 115BAB	15%	Not Applicable
Existing Companies engaged in business of manufacturing (set-up on or after 01.03.2016 and exercised option u/s 115BA)	25%	15%
Companies exercising option u/s 115BAA	22%	Not Applicable
Companies (other than covered above) and having turnover not exceeding Rs. 400 crore in FY 2017-18	25%	15%
All other domestic Companies	30%	15%





News Tit-bits

CBDT provides exception to the restriction on filing of appeal by department based on the monetary limits

CBDT vide circular no. 17/2019 dated 08.08.2019 had enhanced the monetary limits for filing of appeals by department.

Now CBDT vide circular no. 23/2019 dated 06.09.2019 has provided an exception to the restriction on filing of appeal by department based on the monetary limits in cases where the issue involved is pertaining to the bogus long capital gains/short term capital loss in penny stocks. In such cases the monetary limits specified will not be applicable and department can file the appeal irrespective of the disputed tax amount involved.

Relaxation of time limit for filing an application for compounding of offences

CBDT vide circular no. 25/2019 dated 09.09.2019 as a one-time measure has relaxed the condition of filing tan application for compounding of offence within 12 months from filing complaint in the court subject to the condition that such application is filed before the competent authority before 31.12.2019.

Cost inflation index for FY 2019-20 notified

CBDT vide notification no. 63/2019 dated 12.09.2019 has notified cost inflation index number for FY 2019-20 as 289. This shall apply to the Assessment Year 2020-21 and subsequent years.





Judicial Corner

Case Laws

Non disposal of objections by passing a separate speaking order renders the reassessment proceedings invalid

Fomento Resorts & Hotels Ltd vs. ACIT (Bombay High Court) (Goa Bench) - Tax Appeal No.63 Of 2007- order dated 30.08.2019

In a recent landmark judgment, Hon'ble Bombay High Court held that **Assessing officer is bound to dispose objections raised by assessee by passing a speaking order before proceeding with reassessment** and without doing same, Assessing Officer cannot assume the jurisdiction and therefore the proceedings are not sustainable and bad in law.

Assessing Officer recording the reasons u/s 148(2) for reopening and the assessing officer issuing the notice u/s 148(1) has to be same

Pankajbhai Jaysukhlal Shah vs. ACIT (Gujarat High Court) - Order dated 09.04.2019

The Hon'ble Gujarat High Court held that **the officer recording the reasons u/s 148(2) for reopening the assessment & the officer issuing notice u/s 148(1) has to be the same person. If the reasons are recorded by the DCIT but the notice is issued by the ITO, the reassessment proceedings are invalid.** The s. 148 notice is a jurisdictional notice. Any inherent defect therein cannot be cured u/s 292B. The fact that the assessee participated in the proceedings is irrelevant.

If the legal issue is squarely covered in favour of assessee, delay in filing of appeal should be condoned

Atlas Copco (India) Limited vs. DCIT - ITAT Pune - Co. No.34 & 35/PUN/2019 - order dated 29.08.2019

The Hon'ble Pune tribunal condoned the delay of 1018 days and 1965 days in filing of cross objection by holding that "legal issue is squarely covered in assessee's favour by several orders passed by the Tribunal including those by the Pune Benches. Under these circumstances, we condone the delay and take up the Cross objections for disposal on merits"



INDIRECT TAX



37th GST Council meeting was held on September 20, 2019: Here is the gist of the decisions at the meeting

The GST council has met for the 37th time under the chairmanship of Smt. Nirmla Sitharaman on 20 September 2019 in Goa. In an effort to revive the economy from the slowdown the proposals approved by the Council can be lauded.

The host of changes include amendments in rates, introducing new exemptions, simplifying compliance and have an impact on administrative bureaucracy.

We wish to summarize the significant decisions of the council:

LAW AND PROCEDURE RELATED CHANGES

1. Relief in filing of Annual Returns for the FY 2017-18 & FY 2018-19:

- a. GSTR 9A for composition taxpayers has been completely waived.
- b. If the aggregate turnover is up to 2 crores, filing of GSTR 9 is now optional.
- c. A committee of officers to be constituted for examining the simplification of Form GSTR-9 & GSTR-9C.

2. Deferring implementation of new return system:

- a. New return system is to be introduced from April-2020.
- b. GSTR-01 & GSTR-3B filing to continue status quo upto March-2020.

3. Restriction in ITC if vendor has not furnished GSTR-01

With the postponement of the new return mechanism, the government is desirous of implementing a mechanism involving real time of matching of credits with vendor invoices. Implies, if there is a failure by vendor in uploading invoices in form GSTR-01, suitable restrictions are planned to be imposed on the recipient in ITC availment.

4. Integrated refund system with disbursal by single authority to be introduced from 24th September 2019

This is a resolution to all the refund problems of assesses wherein even though refund is appropriately sanctioned by the jurisdictional officer, there are no disbursals by corresponding state / central authority.

5. Clarified that refund application can be filed in FORM GST RFD-01A for a period even if Nil refund application has already been filed

6. Extension of last date for filing of appeals against order of Appellate Authority before GST Appellate tribunal.

7. Linking Aadhar with registration of taxpayers under GST. Possibility of making Aadhar mandatory for claiming refunds will be examined.

8. Treatment under GST for post-sale discount which was notified in Circular No.105/24/2019 dated 28-06-2019 has been rescinded with retrospective affect.

RATE RELATED CHANGES

The rate related changes are effective from October 1, 2019. Detailed notifications in this are expected to be released by September 30, 2019.



GST Rate Changes – Services:

1. Hospitality sector sees a major boost with massive rate reduction as follows:

- Hotels

Transaction value	GST Rate on accommodation	GST rate on catering services
< Rs.1,000	Nil	5% wherein claim on ITC is blocked
Rs.1,001 – Rs.7,500	12%	5% wherein claim on ITC is blocked
> Rs.7,500	18%	18% allowing the claim of ITC

- Job work services – sector based rate reduction

Nature of Job Work	New GST Rates	Existing GST Rates
In relation to diamonds	1.5%	5%
Engineering industry-machine related	12%	18%
Bus body building	18%	18%

2. Exemptions on the following services

- Exemption on export freight by air or sea has been extended till September 30, 2020, previously it was till September 30, 2019.
- Intermediary services when both the supplier and recipient are located outside the taxable territory. The place of supply in case of such services was location of supplier u/s 13 which was creating hardship for small entities being compelled to remit GST. With the said service being now exempt, there is no requirement to remit GST.
- Storage or warehousing of food grains, spices, raw vegetable fibres, unmanufactured tobacco, rice, coffee and tea.
- Life insurance services by the Central Armed Paramilitary Forces Group Insurance Funds to their members under the respective group insurance schemes.
- Services related to FIFA Under-17 Women's World Cup 2020.

3. Reverse charge mechanism is introduced on the following supplies

Nature of Services	Service Provider	Person liable to pay	GST Rate
Renting of vehicles	Registered person other than "Body Corporate"	Body corporate	5%
Security lending	Security Lender	Security borrower	18%

4. Miscellaneous

- Registered authors are given an option to pay GST on the royalty received from publisher's under forward charge. This was mandatorily subjected to reverse charge in the hands of the publisher.
- The grant of liquor licence by State Governments against payment of license fee is notified to be a "no supply." Thereby removing implementational ambiguities.



GST Rate Changes – Goods:

1. Decrease in GST slab rates

Description of Goods	Old Rate	New Rate
Slide fasteners	18%	12%
Marine fuel	18%	5%
Wet grinders	12%	5%
Dried tamarind	5%	NIL
Plates and cups made with leaves/flowers/barks	5%	NIL
Cut and polished semi-precious stones	3%	0.25%

2. Increase in GST slab rates

Description of Goods	Old Rate	New Rate
Railway wagons, coaches	5%	12%
Caffeinated beverages	18%	28%+ (12% compensation cess)

3. Exempted from GST

Following are the supplies which have been exempted from levy of CGST/IGST:

- Supply of goods to FIFA and other specified persons who organises the under-17 women's football world cup in India.
- Supply of goods to Food and Agriculture Organisation (FAO) for specified projects in India
- Import of Silver/ Platinum by specified Nominated agencies (Diamond India Limited has been included in nominated agencies)
- Imported stores for Navy.
- Import of specified Defence goods till 2024.

4. Miscellaneous Amendments:

• Reduction in Compensation Cess rate for vehicles:

There was not much to cheer for the automobile sector except, the rate of GST compensation cess is revised as follows on passenger vehicles with seating capacity of upto 13 persons. The old rate applicable was 15% which is reduced as under based on length and engine capacity as follows:

Conditions	Cess Rate
Diesel > 1500cc > 4000mm	3%
Petrol, LPG, CNG > 1200cc > 4000m	1%



- **Aerated drink manufacturers excluded from Composition scheme:**

Decisions have been taken that suppliers who are engaged in production of soft drinks will not be entitled to register under composition scheme. Further, suppliers who are already registered as composition dealer should be migrated to Normal tax payers.

- **Tax on Goods used for petroleum operations:**

The general rate applicable for the disposal of specified goods for petroleum operations is 5%. However it is at the option of the supplier to remit tax at 18% only if such goods are certified by Director General Hydrocarbon (DGH) as non-replaceable and GST was remitted at 5% during the inward supply of such goods.

- **Restriction on refund of cess on tobacco products:**

The council have decided to restrict in claiming refund of compensation cess paid on tobacco products.

- Uniform GST rate has been imposed on polypropylene/polyethylene woven and non-woven bags and sacks for packing of goods

The above is a summary as per the official press release by the government. It shall not be construed as a professional opinion. The above proposed changes would be given effect through relevant notifications and circulars which shall have the force of law.



Good and Services Tax



Transitional credit hogs the litigation limelight

Even after 2 years of implementation, the row of legacy taxes into GST continues. This time around, rampant issues in transitional credit have hogged the limelight on the litigation front with as many as 3 high court decisions.

Foremost is the decision of **Madras High Court in the case of M/s Sutherland Global services Private Limited. The Madras High Court allowed the writ petition challenging the denial of EC, SHEC & KKC into GST regime through TRAN-1.**

Predominant submissions made by the petitioner are as under:

- Reliance on the unamended provisions of section 140 of the CGST Act, 2017 which made reference to Rule 3 of CENVAT Credit Rules, 2004 to define the term "CENVAT Credit" and this Rule 3 evidently contained EC, SHEC & KKC also in it's ambit.
- Fact that amendment envisaged in section 140 was not given statutory effect and in fact was specifically excluded in Notification 02/2019 CT dated 01 January 2019.
- Even after the abolition of levy of EC & SHEC in 2015, Rule 3 continued to provide taking of CENVAT credit and was never omitted even during GST implementation.
- Absence of a provision to lapse the credit of EC, SHEC & KCC in the cenvat regime. A right which is vested under Rule 3 cannot be denied without a lapsing provision.

The arguments of the petitioner outweighed the vehement opposition put forth by revenue and the Madras High Court allowed the writ petition. Trade and industry is already exasperated with the repeated notices on this front and this decision coming from a significant judicature was much awaited.

In another writ petition allowed by the **Gujarat High Court in the case of Siddharth Enterprises [TS-684-HC-2019(GUJ)-NT], the time limit for filing declaration in TRAN-01 was held to be merely procedural in nature.** Thus, filing of TRAN-01 to avail carry forward credit was held to be directory in nature and not mandatory. The petitioner in this case was not able to file TRAN-01 timely due to technical glitches and hence physically lodged their claim of transitional credit with the jurisdictional officer.

The Hon'ble High court held that section 140 grants a substantive right which cannot be curtailed or defeated on account of procedural lapses. It is arbitrary, irrational and unreasonable to discriminate in terms of the time limit and is violative of Article 14 of the Constitution of India.





Referring to a plethora of judicial precedents in this matter, the court formed the following grounds to allow filing of TRAN-01 even after the due date:

- a. Time line is conditional in nature and a condition which is belonging to the area of procedure cannot be viewed with undue importance;
- b. The right to avail CENVAT credit and transition into GST is vested and indefeasible. No condition can be imposed to destroy a right that is otherwise absolute.
- c. The progressive ideal of India GST would stand defeated if the tax payers are denied the TRAN-01 credit benefit especially in a scenario where the IT platform was new and unacquainted.
- d. If the non -observance of procedure is in conflict with the benefits vested under the policy, then policy shall prevail and the assesses should be able to get the benefit of transitional credit even if TRAN-01 was not filed timely.

With this, another major judicature in the country has upheld the rights of trade in getting substantive benefits in a situation when the conditions to comply were unfavourable and tedious.





October Dates 2019

Sun	Mon	Tue	Wed	Thu	Fri	Sat
29	30	1 Oct	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31	1 Nov	2

NOTES

**07
Oct**

Direct Taxes

- Deposit of Tax deducted / collected in September 2019
- Deposit of Equilisation levy deducted in September 2019

**10
Oct**

Indirect Taxes

- GSTR-07 for Sep-2019;
- GSTR-08 for Sep-2019

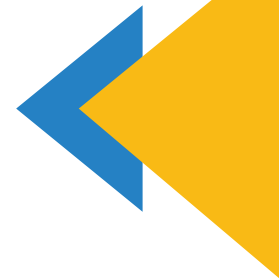
Direct Taxes

- PT due date for payment - for the month of September'2019

**11
Oct**

Indirect Taxes

- GSTR-01 for Sep-2019



**13
Oct**

Indirect Taxes

-GSTR-06 for Sep-2019

**15
Oct**

Direct Taxes

-Due date for issue of TDS certificate for tax deducted in August 2019 under Section 194IA and 194IB
-Furnishing of form 24G by an office of government where TDS for the month of September 2019 has been paid without the production of challan
-PF/ESI Due date for payment- For the month of September 2019
-Quarterly statements of TCS deposited for quarter ending 30 September 2019
-Uploading declarations in form 15G/15H during quarter ending September 2019

**18
Oct**

Indirect Taxes

-CMP-08 for Jul-2019 to Sep-2019

**20
Oct**

Indirect Taxes

-GSTR-3B for Sep-2019;
-GSTR-05 for Sep-2019;
-GSTR-5A for Sep-2019;

**25
Oct**

Indirect Taxes

- GST - ITC -04 for Jul-2019 to Sep-2019

Direct Taxes

PF Return Filing Due date- September'2019

**30
Oct**

Direct Taxes

-Quarterly TCS certificate for quarter ending 30 September 2019
-Due date for furnishing challan-cum-statementfor Tax deducted under 194IA and 194IB for September 2019

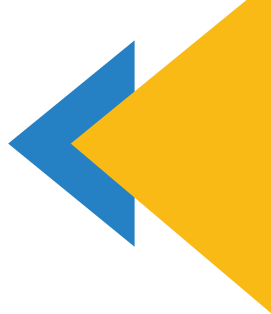
**31
Oct**

Indirect Taxes

-Quarterly GSTR-01 for Jul-2019 to Sep-2019

Direct Taxes

- Due date for furnishing of annual audited accounts for each approved programmes U/s 35(2AA)
-Copies of declaration received in Form No. 60 during 1st Half Year
-Quarterly statement of TDS deposited for quarter ending 30 September 2019
-Filing of Form 3CEAB to whom Sec 92 is applicable
-Audit report u/s 44AB and ITR filing for persons covered U/s 44AB



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FESTIVAL OF LIGHTS

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