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chartered accountants

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CONNECT
JANUARY 2020

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AUDIT

CONNECT - JANUARY 2020

SEBI mandates disclosures on loan defaults by listed entities

In order to address the critical gap in the availability of information to investors with respect to disclosure of default in loans taken from banks and Financial Institutions by listed entities SEBI vide its circular No. SEBI/HO/CFD/CMD1/CIR/P/2019/140 dated 21st November 2019, effective from 1st January 2020 has brought in some amendments to disclosure requirements (in the prescribed Format) in the said circular

- The circular shall be applicable to all listed entities which have any of the following listed:
 - Equity and convertible securities
 - Non-Convertible Debentures
 - Non-convertible Redeemable Preference Shares
- The disclosures shall be made to the stock exchanges when the entity has defaulted in payment of interest / instalment obligations on loans, including revolving facilities like cash credit, from banks / financial institutions and unlisted debt securities

SEBI mandates disclosures on loan defaults by listed entities

UNDERSTANDING THE TERM 'DEFAULT'

- 'Default' for the purpose of this circular shall mean non-payment of the interest or principal amount in full on the date when the debt has become due and payable.
- Provided that for revolving facilities like cash credit, an entity would be considered to be in 'default' if the outstanding balance remains continuously in excess of the sanctioned limit or drawing power, whichever is lower, for more than 30 days.

'TIMING' OF DISCLOSURE

- Listed entities shall make disclosure of any default on loans, including revolving facilities like cash credit, from banks /financial institutions which continues beyond 30 days. Such disclosure shall be made promptly, but not later than 24 hours from the 30th day of such default.
- In case of unlisted debt securities i.e. NCDs and NCRPS, the disclosure shall be made promptly but not later than 24 hours from the occurrence of the default.

SEBI mandates disclosures on loan defaults by listed entities

OUR COMMENTS

- Regulation 51 of the SEBI LODR, 2015 requires specific disclosures in certain matters such as delay or default in payment of interest and/or principal on debt securities such as Non-Convertible Debt (NCDs), Non-Convertible Redeemable Preference Shares (NCRPS) etc. It has been observed that similar disclosures are generally not made by listed entities with respect to loans from banks and financial institutions.
- Corporates in India are primarily reliant on loans from the banking sector. Many banks and financial institutions are presently under considerable stress on account of large loans to the corporate sector turning into stressed assets / Non-performing Assets (NPAs). Some companies have also been taken up for initiation of insolvency and bankruptcy proceedings

An illustration of a hand holding a stopwatch over a laptop. The stopwatch is black with a white face and orange accents. The laptop is orange and brown. The background is teal with a light green horizontal band.

AUDIT - EXTENSION OF DUE DATES

EXTENSION OF DUE DATES

Extension of last date for filing BEN-1 and BEN-2

General Circular No. 1/2020 dated 01 January, 2020, Ministry of Corporate Affairs (MCA) has extended the time limit of filing e-form BEN-2 from December 31, 2019 to March 31, 2020.

Form BEN-2 is the declaration that a company is required to file with respect to the Significant Beneficial owners of the company disclosing their interest in the company by way of shareholding or voting rights

Extension of last date of filing of CRA-4 (Cost Audit Report) for FY 2018-19

General Circular no. 17/2019 dated December 30, 2019 the last date of filing CRA-4 (cost audit report) for all eligible companies for the FY 2018-19 without payment of additional fees has been extended to February 29, 2020

A hand holding a tablet, a pink cup of tea, and a notebook with handwritten notes and a diagram. The notebook has the word 'PLAN' written in a cloud shape, with arrows pointing to 'A' and 'B'. There are also mathematical expressions like 'A+B = ...', 'B+C = ...', and 'C/D = ...'. A target symbol is also visible on the notebook page.

DIRECT TAX

CONNECT - JANUARY 2020



CASE LAWS

The omission of the AO to make an assertion in the reasons that there was a failure to disclose fully and truly all material facts necessary for the assessment is sufficient to set aside the reassessment notice. Also, a notice issued on change of opinion is bad

Hon'ble Bombay High Court held that if the assessment is reopened after 4 years from expiry of the relevant assessment year and there is no assertion made by AO in the reasons recorded for reopening regarding failure on the part of assessee to disclose fully and truly all the material facts necessary for the assessment, then such reassessment is liable to be set aside. Further the High Court also confirmed the well settled position that reopening on the basis of mere change of opinion is bad in law.

[Usha Exports Vs. . Vs. Assistant Commissioner Of Income Tax – Bombay High Court - order dated 12.12.2019 in Writ petition no. 2506 of 2019]



CASE LAWS

If the sanction for reopening is obtained from CIT in place of JCIT then such reopening is without jurisdiction and the reassessment order liable to be quashed

Hon'ble Bombay High Court held upheld the order of Tribunal which in turn upheld the order of CIT(A) in which it was held that where sanction for reopening was obtained from CIT when as per section 151 the same had to be obtained from JCIT, the reopening notice is without jurisdiction and the reassessment order is liable to be quashed.

[Pr. Commissioner of Income Tax, Central 2 Vs. . Vs. Khusbu Industries – Bombay High Court - order dated 11.11.2019 in Income Tax Appeal no. 1035 of 2017]

An illustration of a hand holding a stopwatch. The stopwatch has a white face with black markings and a red second hand. The hand is rendered in a stylized, flat style with orange and brown tones. The background is a teal color with a horizontal light green band. The text 'DIRECT TAX - EXTENSION OF DUE DATES' is centered over the stopwatch.

DIRECT TAX - EXTENSION OF DUE DATES

EXTENSION OF DUE DATES

Extension of time for enabling specified person to comply with the provisions of section 269SU

To encourage digital economy and move towards cash less economy w.e.f 01.01.2020 providing that any specified person (i.e. person having a business turnover of more than Rs 50 Crore) shall mandatorily provide facilities for accepting payments through prescribed electronic modes. Failure to do so attracts penalty of five thousand rupees per day. Circular no. 32/2019 dated 30.12.2019 has clarified that penalty u/s 271DB shall not be levied if the specified person installs and operationalizes the facilities on or before 31.01.2020.

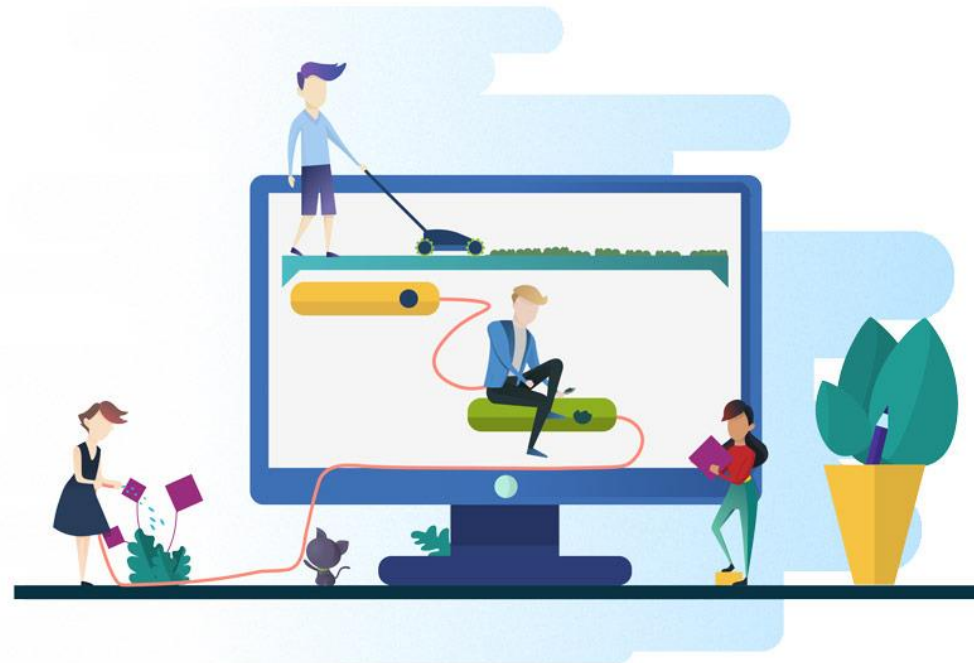
Relaxation of time limit for filing an application for compounding of offences

Circular no. 25/2019 dated September 9, 2019 had relaxed the condition of filing an 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 December 31,2019. Circular no. 1/2020 dated January 3, 2020 has extended the date to January 31, 2020.

EXTENSION OF DUE DATES

Time Limit for linking PAN and Aadhaar extended

CBDT vide Notification no. 107/2019 dated December 30, 2019 has extended the time limit for linking PAN with Aadhaar to March 31, 2020.



A background image showing a business meeting. In the center, two men in dark suits are shaking hands. To the right, a hand is pointing at a document on a table. The document contains various financial charts, including a pie chart and several bar charts. The text 'INDIRECT TAX' is overlaid in large, bold, blue capital letters across the middle of the image. Below it, the text 'CONNECT - JANUARY 2020' is written in a smaller, blue, sans-serif font.

INDIRECT TAX

CONNECT - JANUARY 2020

Government sets timeline for e-invoicing, Releases FAQ

- E-Invoicing is a system in which invoices are authenticated electronically by GSTIN for further use on common GST portal.
- It has been implemented voluntarily from 01 January 2020;
- E-invoicing is mandatory from 01 April 2020.
- E-invoicing is mandatory for all B2B transactions where the aggregate turnover in a financial year exceeds Rs. 100 crores.
- For B2C transactions, e-invoicing becomes mandatory only in cases where the aggregate turnover in a financial year exceeds Rs. 500 crores.
- Every registered person has to now issue a tax invoice containing the mandated particulars as per GST-INV-01.
- This invoice has to be generated in the ERP / software that is being currently used. No new software is required to generate the invoice.
- However, once invoice is generated, unique IRN, QR code has to be affixed on the invoice by generating the code on the common portal.

Government sets timeline for e-invoicing, Releases FAQ

- **The flow of the e-invoice generation, registration and receipt of confirmation can be logically divided into two major parts:**
 - The first part being the interaction between the business (supplier in case of invoice) and the Invoice Registration Portal (IRP).
 - The second part is the interaction between the IRP and the GST/E-Way Bill Systems and the Buyer.
- **The following are the activities performed by IRP:**
 - Generation of invoice in own accounting or billing system - *Invoice however generated should confirm to the scheme of mandatory contents;*
 - Conversion of the invoice so generated into JSON format for upload on the common portal – IRP;
 - IRP will generate an IRN /QR code for the invoice checking duplication etc;
 - Generate a unique IRN / QR code and affix the same on the invoice.
 - This digitally signed invoice would again need to be downloaded as a JSON file and decrypt for further use.

Government sets timeline for e-invoicing, Releases FAQ



The Finance Ministry has come up with 'Frequently Asked Questions (FAQs) on 'e-invoicing' under the GST system, reaffirming the government's intent to implement 'e-invoicing' for GST.

With specifications for E-Invoice API being released to various companies, the government's intent to soon implement E-Invoicing in India is reinforced. The FAQs released further provides clarification on various ambiguities like no requirement of invoice registration portal (IRP) validation for delivery challans and bill of supply, 10,000 line items being allowed per e-invoice, amendments in the GST law on invoicing to align with e-invoices, etc. and its timely release should help businesses gear up better for this new system.



GST TIT-BITS

'Blocking of E-way bill'- A new ploy to reduce the pendency in filing of GST returns

- The Government had amended the CGST Rules wherein it had imposed restriction for generation for e-way bills in case of assesses who had not filed the GST returns for certain length of time. The said provisions were initially said to be effective from June 01, 2019 which got extended time and again before finally being effective from December 2019.
- The Government has initiated these measures, as a part of fresh efforts to tighten the noose around non-filers and evaders of GST.
- This time again, the Government has extended the blocking of e-way bill provisions in those cases where assesses have not furnished the Form GSTR-1 (Statement of Outward supplies) for two months or two quarters with effect from January 11, 2020.



GST TIT-BITS

Document Identification Number (DIN) a new mandate for communication by the GST Department.

- Circular No. 122/41/2019 dated 05 November 2019 and Circular No. 128/47/2019 dated 23 December 2019 “Quoting of DIN shall be done in respect of all communications (including e-mails) sent to tax payers and other concerned persons by any office of the CBIC across the country”. Any communication which does not bear a DIN number shall be deemed to have never been issued at all.
- The format of DIN is CBIC-YYYY-MM-ZCDR-NNNNNN, which means the YYYY denotes Calendar year, MM denotes Calendar month, ZCDR denote the Zone, Commissionerate, Division and Range office and 6-Digit ‘NNNNNN’ shall be the Random number allotted to the communication.
- Any validly generated DIN would be available on www.cbicddm.gov.in, and any person can verify the authenticity of the documents so issued by the department.



CASE LAWS

The Company is engaged in the business of providing consultancy services has sought ruling on applicability of RCM to the remuneration paid to directors

- The authority by referring to Notification No. 13/2017 – Central Tax (Rate) dated 28-06-2017 i.e. services which are liable to be paid on reverse charge basis, had provided that as the recipient of service in the present case is a company as defined u/s 2(93) of the Companies Act, 2013 and the service provider is a director, any amount paid to the said person would be liable to reverse charge.
- The amount paid to the director would not qualify under Clause 1 of Scheduled III of the CGST Act, 2017 which provides for the service supplied by employee to the employer and therefore not under the purview of GST.
- Therefore, the ruling was pronounced for company to remit tax on the remuneration paid to directors under RCM.

[M/s. Alcon Consulting Engineers (India) Pvt Ltd by Karnataka AAR]



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