



THE INSTITUTE OF CHARTERED  
ACCOUNTANTS OF INDIA



# KAAAM

NEWSLETTER OF SILIGURI BRANCH OF EIRC OF ICAI

December • 2017



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## From The Desk of Editorial Team

It is a pleasure for us to present before you the newsletter of Siliguri Branch of EIRC of ICAI.

Happie Reading....

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## Managing Committee of Siliguri Branch of EIRC of ICAI for the year 2017-18



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## *From The Chairman's Desk*

CA. SANJAY DAS  
Chairman  
Siliguri Branch of EIRC of ICAI

Dear Members,

As we step into the new year 2018, its time to look back at our mistakes in the last year and learn from them as well as cherish the good moments and our achievements. I extend my warm wishes and greetings to each and every member of the Siliguri Branch on this New Year 2018.

The last year witnessed the introduction of Goods & Services Tax from 1st July, 2017 which coincided the Foundation Day of ICAI. With the support of all my Managing Committee Members of Siliguri Branch and all other members we were able to celebrate the big day with grand success. The rollout of GST has changed the scenario of Indirect Taxation in India and further boosted it to make it parallel with Indirect Taxation globally.

As part of one of my last communication with my dear members of Siliguri Branch as the Branch Chairman I would like to thank each and every member of my branch to have helped me in discharging my responsibilities as the Chairman in the past one year. A leader is nothing without his teammates, henceforth I congratulate my team members of the Managing Committee to have worked together in the last year in order to discharge our duties for the Siliguri Branch. I also express my sincere gratitude to our visionary Past Chairmen for their timely advice whenever we approached them. Above all it is the unity of the Siliguri Branch that has given me immense confidence and support to carryout my work smoothly.

My best wishes to the new upcoming Managing Committee. I am sure that the new officer bearers shall continue to keep the branch's flag rising high.

Good Days were there, Good Days are there, Good Days shall remain in future as well. Let us keep working unless goal is accomplished.

"Be bold enough to use your voice, brave enough to listen to your heart, and strong enough to live the life you have always imagined."

Thanking You,

CA. SANJAY DAS  
Chairman  
Siliguri Branch of EIRC of ICAI.



# Tax Rate on Intra-State Supply of Taxable Goods for Export

CA SHIV KUMAR BANSAL  
M. No. - 311400



## BACKGROUND

- Unlike the Excise law, under Goods and Services Tax ('GST') law, there is no provision for issuance of CT-1 form which enables merchant exporters to purchase goods from a manufacturer without payment of GST.
- The transaction between a manufacturer ('supplier') and a merchant exporter ('recipient') is in the nature of supply and same is liable to GST as any other normal taxable supply.
- The GST Council in its 22nd meeting had decided that merchant exporter can pay a nominal GST of 0.1 percent for procuring goods from a domestic supplier for export.

## RATE OF GST

GST rate would be as under :

GST Type	Rate (percent)	Relevant notification no.
CGST	.05	40/2017 - Central Tax (Rate)
SGST	.05	See Note
IGST	.10	41/2017- Integrated Tax (Rate)

Note : This is subject issuance of notification under respective State

## PROCEDURE

The procedure for supplying goods to a merchant exporter shall be as follows:

### Step 1: Placing an order by a merchant exporter and furnishing copy thereof to the Department

- Merchant exporter shall place an order on registered supplier for procuring goods at concessional rate
- Copy of the order shall also be provided to the jurisdictional tax officer of the registered supplier.

### Step 2 : Supply of goods

For exporting the goods, the recipient shall

- directly move the said goods from supplier's place to the port/inland container depot (ICD)/airport/land custom station (LCD) from where the said goods are to be exported; or
- directly move the said goods to a registered warehouse from where the said goods shall be move to the port/inland container depot (ICD)/airport/land custom station (LCD) from where the goods are to be exported



**Option to aggregate the inward supplies :**

- If merchant exporter intends to aggregate supplies from multiple suppliers and then export, he can move goods to registered warehouse and thereafter to the port/ICD/airport or LCD and then export therefrom, then in this case merchant exporter shall endorse receipt of goods on the tax invoice and also obtain an acknowledgement of receipt of goods from the warehouse operator
- The endorsed tax invoice and the acknowledgement of the warehouse operator shall be provided to the registered supplier as well as to the jurisdictional tax officer of such supplier

**Step 3: Post-export compliance:**

Once the goods are exported, merchant exporter shall provide following documents to the supplier and the jurisdictional tax officer of the supplier:

- Copy of shipping bill/ Bill of export (incorporating supplier's GSTIN)
- Tax invoice provided by supplier
- Export General Manifest/ Export report

**CONDITIONS**

Following are the conditions to be satisfied for availing benefit of concessional rate of GST on supply to a merchant exporter:

- Supplier shall supply goods under a tax invoice
- Goods must be exported within a period of 90 days from the date of issue of tax invoice by the supplier. The exemption would not be available to the supplier if the merchant exporter fails to export the said goods within a period of 90 days from the date of issue of tax invoice
- Merchant exporter shall indicate the GSTIN of the supplier and tax invoice number issued by the supplier in the shipping bill/ bill of export
- Merchant exporter must be registered with an Export Promotion Council or a Commodity Board recognized by the Department of Commerce.





# DIRECT TAX

(Compiled by CA. PRASUN BANERJEE)

**Section 143 of the Income-tax Act, 1961 - Assessment - Prima facie adjustments - Processing of returns in Form ITR-1 under section 143(1) - Applicability of Section 143(1)(a)(vi) [250Taxman (st) 17]**

The CBDT vide instruction No. 9/2017 dated 11/10/2017 clarifies as under.

The section 143(1) (a) (vi) of the Income-tax Act w.e.f. 1/4/2017 prescribes that while processing the return of income, the total income or loss shall be computed after making adjustment of addition of income appearing in Form 26AS or Form 16A or Form 16 (the three forms) which have not been included in computing the total income in the return.

In this regard, the doubts have arisen while processing income tax return filed in ITR 1 regarding the nature, extent and scope of comparison of information as contained in return of income with the three forms which might lead to issuance of intimation proposing adjustment to the returned income.

The CBDT clarified as under :-

- ❖ In returns filed in ITR-1 Form, information about a particular head/item of income is only on net basis and thus, complete data/information may not be available therein which may enable comparison with the data/ information as contained in the three forms in a meaningful manner. Therefore, in exercise of its powers under section 119 of the Act, the Board hereby directs that provision of section 143(1)(a)(vi) of the Act would not be invoked to issue intimation proposing adjustment to the income/loss so filed in ITR-1 Form in such situations.
- ❖ Where any head/item of income has been altogether omitted to be included in the return of income filed in ITR-1 while the three forms contain specific detail in this regard pertaining to that item/head of income, section 143(1)(a)(vi) of the Act shall continue to apply. Further, for purpose of section 143(1)(a)(vi) of the Act, only the three forms specified therein would be taken into consideration.
- ❖ The pending intimations proposing adjustments under section 143(1)(a)(vi) wherein the taxpayer has tendered an explanation without revising the return or has not tendered any response till now shall be dealt with in accordance with the above direction. However, in cases where on receiving the intimation u/s. 143(1)(a)(vi) of the Act, the concerned assessee has already filed a revised return, such returns shall be treated as valid and handled accordingly

## GST

**Central Government vide Notification No. 50/2017-** Central Tax dated 24th October, 2017 waives the late filing fees leviable for delay in filing form GSTR 3B within due date for the months of August & September, 2017 for all registered persons.

**Central Government vide Notification No. 51/2017-** Central Tax dated 28th October, 2017 has made following amendment in Central Goods & Services Tax rules, 2017.

- 1) Due date for cancellation of registration extended from 30th September, 2017 to 31st December, 2017.
- 2) Powers granted to Commissioner to extend the due date for filing Form GST ITC-04 in respect of details to be furnished for goods sent to or received from Job worker during the quarter.



- 3) Where due date for filing Form GSTR-1 is extended, supplier shall furnish the information relating to exports as specified in Table 6A of Form GSTR-1 after Form GSTR 3B has been furnished & same shall be transmitted electronically by common portal to system designated by custom. Information in Table 6A furnished shall be auto drafted in Form GSTR-1.

**Central Government vide Notification No. 52/2017- Central Tax dated 28th October, 2017** extends the due date for furnishing declaration in form GST ITC-01 from 31st October, 2017 to 30th November, 2017.

**Central Government vide Notification No. 53/2017- Central Tax dated 28th October, 2017** extends the due date for furnishing declaration in form GST ITC-4 to 30th November, 2017.

## FEMA

### Risk Management and Inter-Bank Dealings - Simplified Hedging Facility

**A.P. (DIR Series) Circular No.11 dated November 9, 2017 and Notification No. FEMA 388/2017-RB dated October 24, 2017**

Consequent to the announcement made in the Statement on Developmental and Regulatory Policies, Reserve Bank of India dated August 02, 2017 (para 7) on the simplified hedging facility, the RBI has introduced scheme of simplified hedging facility with a view to simplify the process for hedging exchange rate risk by reducing documentation requirements, avoiding prescriptive stipulations regarding products, purpose and hedging flexibility and to encourage a more dynamic and efficient hedging culture.

The detailed guidelines of this facility are given in Annex I to aforesaid circular and this facility will be effective from January 1, 2018.

The RBI has issued Notification No. FEMA 388/2017-RB dated October 24, 2017 to amend the Foreign Exchange Management (Foreign Exchange Derivatives Contracts) Regulations, 2000 (Notification No. FEMA.25/RB-2000 dated May 3, 2000) to give effect to the above scheme.

## Know the Month

DATE	IMPORTANCE
3rd December	Celebrated as World Disability Day by United Nations since 1992 to promote an understanding of disability issues and mobilize support for the dignity, rights and wellbeing of persons with disabilities.
4th December	Celebrated as the National Navy Day in India to commemorate the courageous attack on the Karachi Harbor during the Indo-Pakistan War on this day in 1971 by the Indian Naval Missile Boats as well as to reverence all the martyrs of that war.
10th December	Celebrated as the Human Rights Day across the world to honor the United Nations General Assembly's adoption and proclamation on this date in 1948 of the Universal Declaration of Human Rights (UDHR), the first global enunciation of human rights and one of the first major achievements of the new United Nations.
19th December	Celebrated as Goa's Liberation Day as Indian military troops conducted military operations on 18th and 19th December 1961 to free Goa from Portuguese Rule and include it in the Union of India.
23rd December	Celebrated as Kisan Divas (Farmers' Day) in the honor the birth anniversary of the 5th Prime Minister of India Shri Chaudhary Charan Singh. As a statesman and Prime Minister he introduced several policies to improve the life of Indian Farmers.



# CIRCULAR OF SILIGURI BRANCH

Cir.No.09/2017-18

Dt:07/12/2017

Respected Members,

At the outset I would like to wish you all a very happy ensuing Christmas & Best Wishes for upcoming year 2018.

In continuation of my duties I have pleasure in informing you about some of the forthcoming Programs scheduled for the month of December 2017 to be organised by the Siliguri Branch of EIRC of ICAI.

## 1. ONE DAY SEMINAR ON PROJECT FINANCING, MUTUAL FUND AND APPLICATION OF TALLY ON GST :

Date & Time	Program	Speakers	Fees	Venue
2nd Dec, 2017 (Saturday) 1.00PM to 7.00PM	Seminar on Project Financing, Mutual Fund & Application of Tally in GST.	<b>1) CA Aditya Kr. Maheshwari</b> (Past Chairman Siliguri Branch).  <b>2) CA Ritesh Rampuria.</b>  <b>3) CA Shiv Bansal</b>	6 hrs  Fee : 300/-	ICAI Bhawan, Teenbatti More, Siliguri

## 2. CRICKET TOURNAMENT.

I have pleasure to announce that we will have a cricket tournament on 17-12-2017 among members and student of Siliguri Branch of EIRC of ICAI. The program coordinator is CA Bishal Goyal. Contact number - 9832343887.

## 3. Due to many fold due dates of various obligations under various statutes & various Extensions, we have tried to update obligation's due date, month wise, for members ready reference.

### OBLIGATIONS FOR THE MONTH OF DECEMBER :

Sr. No.	Act	Type	Last Date
1	Income Tax Act	Deposit of TDS/TCS collected in the month of November	7th December
2	GST ACT	GSTR-1 (Turnover less than Rs.1.5 cr (Quarterly ) (For the month of July, August & September)) (Turnover greater than Rs. 1.5 cr (Monthly) (For the month of July, August, September & October))	31st December
3	GST ACT	TRAN-1	27th December
4	GST ACT	GSTR-3B (For November)	20th December





Sr. No.	Act	Type	Last Date
5	GST ACT	GSTR-4 (For the month of July, August & September 2017)	24th December
6	GST ACT	GSTR- 6 (For the month of July), (August, September & October 2017)	31st December To be notified
7	GST ACT	GSTR-5 (For July, August, September & October)	11th December
8	GST ACT	GSTR-5A (For the month of July, (August, September & October 2017)	15th December
9	GST ACT	ITC-1 & 04	31st December
10	PROFESSIONAL TAX (EMPLOYEE)	Deposit of Professional Tax deducted in the month of November	21st December
11	EMPLOYEE PROVIDENT FUND	Deposit of EPF deducted in the month of November	15th December
12	EMPLOYEE PROVIDENT FUND	Filing of PF Return for the month of November	15th December
13	ESIC	ESIC payments for the month of November.	15th December
14	ESIC	Filing of ESIC Return for the month of November	15th December

#### 4. 42nd REGIONAL CONFERENCE

EIRC is organising 42nd Regional Conference on 22nd & 23rd of December 2017 at Science City Kolkata. Members are being informed to register themselves on EIRC website [www.eirc-icai.org](http://www.eirc-icai.org) or locally with CA Rahul Timani @ 97359-18002 or Vishal Jain @ 98326-98326.

#### STUDENT PROGRAMME :

Date & Time	Program	Speakers	Fees	Venue
3rd December	Education Tour	NA	300/-	Namchi, South Sikkim, Sikkim
9th December	Industrial Visit	NA	Nil	Millinium Exim Pvt Ltd, Khaprail, Siliguri
16, 17, 23, 24, 30 & 31st, December	Refresher Course on GST	NA	1500/-	ICAI, Bhawan Siliguri
16th December	Industrial Visit	NA	Nil	Isan Snacks Pvt Ltd, Siliguri
25th December	Seminar on How to Face CA Exam		100/-	ICAI, Bhawan Siliguri
30th December	Social Responsibility Project	NA	Nil	Isan Snacks Pvt Ltd, Siliguri



## LEGAL UPDATE - DIRECT TAX

### 244A Assessee was entitled for the interest on refund

Pursuant to the order of the Settlement Commission, interest u/s. 234A to 234C was partially waived off and assessee was entitled for refund. It was held on such refund assessee is entitled for interest u/s 244A - K. Lakshmanya & Co. vs. CIT [2017] 87 taxmann.com 190 (SC).

### S. 145 Certain provisions of ICDS including circulars have been struck down as ultra vires

Article 265 of the Constitution of India states that no tax shall be levied or collected except under the authority of law. The power under Section 145 (2) of the Act cannot permit changing the basic principles of accounting that have been recognised in the various provisions of the Act unless of course corresponding amendments are carried out to the Act itself. Such amendments would be consistent with an acknowledgment that as far as the Act is concerned, changing the method of accounting for computation of taxable income, would partake of an essential legislative function.

- (i) Section 145(2), as amended, has to be read down to restrict power of the Central Government to notify ICDS that do not seek to override binding judicial precedents or provisions of the Act. The power to enact a validation law is an essential legislative power that can be exercised, in the context of the Act, only by the Parliament and not by the executive. If Section 145 (2) of the Act as amended is not so read down it would be ultra vires the Act and Article 141 read with Article 144 and 265 of the Constitution.
- (ii) The ICDS is not meant to overrule the provisions of the Act, the Rules thereunder and the judicial precedents applicable thereto as they stand.
- (iii) The decision in J. K. Industries Ltd. (supra) is distinguishable in its application to the case on hand.
- (iv) ICDS-I which does away with the concept of 'prudence' is contrary to the Act and binding judicial precedents and is therefore unsustainable in law.
- (v) ICDS-II pertaining to valuation of inventories and eliminates the distinction between a continuing partnership business after dissolution from one which is discontinued upon dissolution is contrary to the decision of the Supreme Court in Shakti Trading Co. (supra). It fails to acknowledge that the valuation of inventory at market value upon settlement of accounts of the outgoing partner is distinct from valuation of the inventory in the books of the business which is continuing. ICDS-II is held to be ultra vires the Act and struck down as such.
- (vi) The treatment to retention money under Paragraph 10(a) in ICDS-III will have to be determined on a case to case basis by applying settled principles of accrual of income. By deploying ICDS-III in a manner that seeks to bring to tax the retention money, the receipt of which is uncertain/ conditional, at the earliest possible stage, irrespective of the facts, the Respondents would be acting contrary to the settled position in law as explained in the decisions referred to in para 68 and to that extent para 10(a) of ICDS-III would be rendered ultra vires.
- (vii) Para 12 of ICDS-III read with para 5 of ICDS-IX, dealing with borrowing costs, makes it clear that no incidental income can be reduced from borrowing cost. This is contrary to the decision of the Supreme Court in Bokaro Steel Limited (supra) and is therefore struck down.



## INTERNATIONAL TAXATION

**Saipem India Projects Pvt Ltd. vs. ITAT [TS-484-ITAT2017(CHNY)] dated 23rd October, 2017**

### FACTS

The assessee Saipem India Projects Pvt. Ltd. is engaged in the business of providing engineering Procurement assistance services, construction supervision and commissioning assistance in the design and execution of large scale oil and gas onshore and offshore projects, cryogenic tanks, etc.

During the relevant assessment years the assessee had purchased operational and administrative software licenses from Saipem SPA, Italy against which remittance were made without deduction of tax.

During assessment, the AO held that the software licence agreements were for limited fixed term, and they were not off the shelf software, but were licences for which annual fees was paid. Thus, AO held that assessee should have deducted tax on the same.

Assessee relied on 'copyright' definition under Copyright Act, 1957 and contended that there was no exclusive right assigned to it, moreover there was no infringement of copyright vested with principal. Assessee also relied on Article 13(3) of DTAA between India and Italy which provides that payment for right to use copyright alone could be treated as royalty. Relying on the narrower definition of 'royalty' provided in DTAA, assessee contended that, DTAA provisions would apply since they were more beneficial than the provisions of Income-tax Act, 1961.

Rejecting these arguments, the AO held assessee's payments were covered under 'royalty' definition under DTAA as well as Sec.9(1)(vi).

On appeal, CIT(A) upheld AO's order. Aggrieved, assessee filed an appeal before Chennai ITAT.

### ISSUE

Whether the payment made by the assessee for supply of software, is taxable in India as royalty in India under section 9(1)(vi) or under Article 12(3) of India-USA DTAA or both?

### HELD

ITAT referred to the agreement with the Italian parent company, ITAT clarified that though assessee and its principal could make unlimited copies of the licensed software it could be used only for assessee's internal business use. ITAT stated that, since it was a non-exclusive and non-transferable license assessee could not sub-license, assign or transfer such software. ITAT observed that, only assessee had the right to use the copyrighted software which continued with the owner Intergraph, Italy. Thus, the assessee was given only right to use the copyrighted software for a limited term. It further observed that only parting of intellectual property rights inherent in and attached to the software product in favour of the customer triggers royalty characterisation under the treaty.

ITAT thus held that, assessee was justified by relying on DTAA and not deducting tax u/s 195. Thus ruled in favour of assessee.



# Photo Gallery



CA. Sanjib Sanghi, faculty during the counseling programme



Prize is being awarded to the winner team



Sitting on dias (LtoR)  
CA.Yogesh Kumar Agarwal, Secretary,  
CA. Subodh Kumar Agarwal, Speaker,  
CA. Sanjay Das, Chairman &  
CA.Pawa Kumar Lahoti, Vice-Chairman



CA.Pawan Kr.Lahoti, Chairman, Siliguri Branch of EICASA is delivering his inaugural speech. CA.Arijit Chakraborty, faculty is seen sitting on the dias.



CA.Pawan Kr.Lahoti, Chairman, Siliguri Branch of EICASA is presiding over the meeting. CA.Aditya Mitruka and CA.Vishal Jain is sitting in his left. EICASA members are also seen in the photograph.

