

Circulars/Notifications

Given below are the important Circulars and Notifications issued by the CBDT, CBEC and FEMA during the last month for information and use of members. Readers are requested to use the citation/website or weblink to access the full text of desired circular/notification. You are requested to please submit your feedback and suggestions on the column at eboard@icai.in



(Matter on Direct Taxes has been contributed by the Direct Taxes Committee of the ICAI)

I. NOTIFICATIONS

1. CBDT notifies the Protocol amending the Double Taxation Avoidance Agreement (DTAA) between India and Kuwait-

Notification No. 21/2018, dated 04-05-2018

A Protocol to amend the existing Double Taxation Avoidance Agreement (DTAA) between India and Kuwait signed on 15.06.2006 for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income was signed on 15.01.2017. The said Protocol has entered into force on 26.03.2018 and is notified in the Official Gazette on 04.05.2018 vide this notification.

The Protocol updates the provisions in the DTAA for exchange of information as per international standards. Further, the Protocol enables sharing of the information received from Kuwait for tax purposes with other law enforcement agencies with authorisation of the competent authority of Kuwait and vice versa.

The complete text of the above Notifications can be downloaded from the link below: <http://www.incometaxindia.gov.in/Pages/communications/notifications.aspx>

II. PRESS RELEASES/INSTRUCTIONS/OFFICE MEMORANDUM

1. CBDT achieves another milestone by signing its 200th UAPA in April, 2018—Press Release, dated 3-5-2018

The CBDT has entered into one Unilateral Advance Pricing Agreement (UAPA) during the month of April, 2018. With the signing of this Agreement, the CBDT has achieved another milestone of having signed its 200th UAPA. The total number of APAs entered into by CBDT has gone up to 220, which, *inter alia* include 20 Bilateral APAs. The UAPA signed in this month also happens to be the first APA in the current financial year.

The UAPA entered into during April, 2018 pertains to provision of sourcing support services.

The progress of the APA scheme strengthens the Government's resolve of fostering a non-adversarial

tax regime. The Indian APA programme has been appreciated nationally and internationally for being able to address complex transfer pricing issues in a fair and transparent manner.



(Matter on Indirect Taxes has been contributed by the Indirect Taxes Committee of the ICAI)

CUSTOMS

1. Clarification regarding Import by EOU/EHTP/STP/BTP without payment of duty by following Rule 5 of Customs (import of

Goods at Concessional Rate of Duty) Rules, 2017

Central Government vide *Circular No. 10/2018 dated 24th April, 2018* clarified the issues faced by EOUs regarding imports due to requirement of submitting information to the DC/AC of Customs at the Custom Station of importation by way of forwarding a copy of such information by the Jurisdictional DC/AC of Customs under the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

As per Rule 5 of Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, EOUs are required to provide information in duplicate regarding estimated quantity and value of goods to be imported to Jurisdictional DC/AC of Customs. EOU is also required to submit one set of the said information to DC/AC of Customs at the Custom Station of importation who shall allow the benefit of exemption notification to the importer. Thus, Rule 5 nowhere prescribes that the information provided by EOU under sub-rule(1)(a) of said Rule 5 is required to be approved by the Jurisdictional DC/AC of Customs on prior basis for imports. It appears that the misconception is arising out of wrong interpretation of sub-rule (3) of Rule 5 of the said rules wherein it has been prescribed that the Jurisdictional DC/AC of Customs shall forward one copy of said information received from importer to DC/AC of Customs at the Custom Station of importation. However, this forwarded copy by Jurisdictional DC/AC of Customs is not a prerequisite for allowing duty free import by the DC/AC of Customs at the Custom Station of importation.

The Board further prescribes that Jurisdictional DC/AC of Customs of EOU/EHTP/STP/BTP shall ensure that the intimation received are properly scrutinised so that only eligible goods granted by Jurisdictional Development Commissioner are imported duty free by the EOUs. After prompt scrutiny, one copy of such information shall be forwarded to DC/AC of Customs at the Custom Station of importation as prescribed under sub-rule (3) of the Rule 5 of said rules. The DC/AC of Customs at Custom Station of importation

would reconcile the Bill of Entry against which goods were imported duty free by EOU on receipt of such information from Jurisdictional DC/AC of Customs. In case of any discrepancies noticed, the DC/AC of Customs at Custom Station of importation would inform the Jurisdictional DC/AC of Customs for taking necessary steps to protect revenue.

[Circular No. 10/2018 dated 24th April, 2018]

GST

1. Central Goods & Service tax (Fourth Amendment) Rules, 2018

The Central Government vide *Notification No. 21/2018- Central Tax dated 18th April, 2018* has notified following rules further to amend the Central Goods and Service Tax Rules, 2017.

Particulars	Existing provision	Revised provision
Rule: 89 Refund of input tax credit on account of inverted duty structure.	Maximum Refund Amount = {(Turnover of inverted rated supply of goods) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods . Explanation: "Net ITC" shall have the same meanings as assigned to them in sub-rule (4).	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: "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.
Rule : 97 Consumer welfare fund	All credits to the consumer welfare fund shall be made under sub rule (5) of rule 92.	All amounts of duty/central tax/ integrated tax /Union territory tax/cess and income from investment along with other monies specified in sub-Section (2) of section 12C of the Central Excise Act, 1944 (1 of 1944), Section 57 of the CGST Act, 2017 (12 of 2017) read with Section 20 of the IGST Act, 2017 (13 of 2017), Section 21 of the UTGST, 2017 (14 of 2017) and Section 12 of the GST (Compensation to States) Act, 2017 (15 of 2017) shall be credited to the Fund.
Audit of consumer welfare fund	-	Accounts of the Fund maintained by the Central Government shall be subject to audit by the Comptroller and Auditor General of India. Remarks: Earlier, there was no provision for audit of consumer welfare fund. Now, by this insertion, fund shall be subject to audit by the Comptroller and Auditor General of India.
Meeting of Committee	The Committee shall meet as and when necessary but not less than once in three months.	The Committee shall meet as and when necessary, generally four times in a year at such time and place as the chairman of the committee deem fit after giving 10 days notice in writing to every member which shall contain the particulars like place, date and hour of the meeting and also contain the statement of business to be transacted thereat. Further, no proceedings of the committee shall be valid, unless it is prescribed over by the chairman or vice- chairman and attended by a minimum of three other members. Remarks: Earlier, it was mandatory for committee to meet once in three months; now, Committee shall meet as and when necessary, generally four times in a year following the prescribed procedure.

Legal Update

Power of Committee	-	The Committee shall make recommendations:- (a) for making available grants to any applicant; (b) for investment of the money available in the Fund; (c) for making available grants (on selective basis) for reimbursing legal expenses incurred by a complainant, or class of complainants in a consumer dispute, after its final adjudication; (d) for making available grants for any other purpose recommended by the Central Consumer Protection Council (as may be considered appropriate by the Committee); (e) for making available up to 50% of the funds credited to the Fund each year, for publicity/ consumer awareness on GST, provided the availability of funds for consumer welfare activities of the Department of Consumer Affairs is not less than twenty five crore rupees per annum.
Explanation to Form GST ITC- 03	The value of capital goods shall be the invoice value reduced by 5 percentage points per quarter of a year or part thereof from the date of invoice.	The value of capital goods shall be the invoice value reduced by 1/60th per month or part thereof from the date of invoice. Remarks: Earlier, the registered person who has availed ITC and later on opt for composition scheme or whose supply become wholly exempt was required to pay an amount equivalent to credit of input tax availed on capital goods by reducing 5 percentage points per quarter Now, the value of capital goods will be taken as invoice value reduced by 1/60th per month.
		Final Return form has been released. Remarks: Section 45 of CGST Act, 2017 provides that every registered person is required to furnish a final return therefore, form for filing final return has been provided.

[Notification No. 21/2018- Central Tax dated 18th April, 2018]

2. Clarification on taxability of “tenancy rights” under GST

Doubts have been raised as to whether tenancy premium shall attract GST when stamp duty and registration charges is levied on the said premium. Further, in case of transfer of tenancy rights, a part of the consideration which accrues to the outgoing tenant is liable to GST or not.

In this regard Central Government vide *Circular no. 44/18/2018 dated 2nd May, 2018* has provided that merely because a transaction or a supply of tenancy rights involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the scope of supply of goods and services and from the payment of GST on tenancy premium.

Further, it has been clarified that transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable. However, grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt [Sl. No.12 of Notification No. 12/2017-Central tax (rate)].

[Circular no. 44/18/2018 dated 2nd May, 2018]

3. Clarification on the manner of filing the Quarterly Return by Composition Dealers in FORM GSTR-4

Doubts are being raised about the manner of filing the quarterly return by composition dealers in **FORM GSTR-4**. In particular, there is a doubt with respect to the instruction at Sl. No. 10 appended to the said FORM which reads as below:

For the tax periods July, 2017 to September, 2017 and October, 2017 to December, 2017, serial 4A of Table 4 shall not be furnished.

In this regard, it is hereby clarified that since auto-population of the details of the inward supplies including supplies on which tax is to be paid on reverse charge is not taking place, taxpayers who have opted to pay tax under the composition levy shall not furnish the data in serial number 4A of Table 4 of **FORM GSTR-4** for the tax periods January, 2018 to March, 2018 and subsequent tax periods.

[PIB Release ID 178724 dated 17th April, 2018]

4. Roll-out of e-Way Bill system for Intra-State movement of goods in the States/Union Territory of Arunachal Pradesh, Madhya Pradesh, Meghalaya, Sikkim and Puducherry from 25th April, 2018

E-Way Bill system for Inter-State movement of goods

has been rolled-out from 01st April, 2018. As on 13th May, 2018, e-Way Bill system for intra-State movement of goods has been rolled out in the States/ Union Territory of Andhra Pradesh, Arunachal Pradesh, Bihar, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Meghalaya, Nagaland, Sikkim, Telangana, Tripura, Uttarakhand, Uttar Pradesh and Pondicherry. E-Way Bills are getting generated successfully and till 13th May, 2018 more than four crore and fifteen lakh e-Way Bills have been successfully generated which includes more than one crore e-Way Bills for intra-State movement of goods.

In addition to it, e-Way Bill system for intra-State movement of goods has been implemented in **Assam from 16th May, 2018 & Rajasthan from 20th May, 2018.**

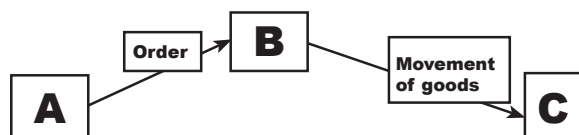
With the roll-out of e-Way Bill system in these States/Union Territory, it is expected that trade and industry will be further facilitated insofar as the transport of goods is concerned, thereby eventually paving the way for a nation-wide single e-Way Bill system. Trade and industry and transporters located in these States/Union Territory may obtain registration/enrolment on e-Way Bill portal namely <https://www.ewaybillgst.gov.in> at the earliest without waiting for the last date.

Comment: The given press release indicates the successful implementation of the E-way bill in majority of the States and it will soon be implemented across India.

[PIB Release ID 178859 dated 23rd April, 2018]

5. Issues regarding “Bill To Ship To” for e-Way Bill under CGST Rules, 2017

- A number of representations have been received seeking clarifications in relation to requirement of e-Way Bill for “Bill To Ship To” model of supplies. In a typical “Bill To Ship To” model of supply, there are three persons involved in a transaction, namely:
 - ‘A’ is the person who has ordered ‘B’ to send goods directly to ‘C’.
 - ‘B’ is the person who is sending goods directly to ‘C’ on behalf of ‘A’.
 - ‘C’ is the recipient of goods.



- In this complete scenario two supplies are involved and accordingly two tax invoices are required to be issued:
 - Invoice-1**, which would be issued by ‘B’ to ‘A’.
 - Invoice-2** which would be issued by ‘A’ to ‘C’.

- Queries have been raised as to who would generate the e-Way Bill for the movement of goods which is taking place from ‘B’ to ‘C’ on behalf of ‘A’. It is clarified that as per the CGST Rules, 2017 either ‘A’ or ‘B’ can generate the e-Way Bill but it may be noted that only one e-Way Bill is required to be generated as per the following procedure:

Case-1: Where e-Way Bill is generated by ‘B’, the following fields shall be filled in Part A of GST FORM EWB-01:

1.	Bill From:	In this field details of ‘B’ are supposed to be filled.
2.	Dispatch From:	This is the place from where goods are actually dispatched. It may be the principal or additional place of business of ‘B’.
3.	Bill To:	In this field details of ‘A’ are supposed to be filled.
4.	Ship to:	In this field address of ‘C’ is supposed to be filled.
5.	Invoice Details:	Details of Invoice-1 are supposed to be filled

Case-2: Where e-Way Bill is generated by ‘A’, the following fields shall be filled in Part A of GST FORM EWB-01:

1.	Bill From:	In this field details of ‘A’ are supposed to be filled.
2.	Dispatch From:	This is the place from where goods are actually dispatched. It may be the principal or additional place of business of ‘B’.
3.	Bill To:	In this field details of ‘C’ are supposed to be filled.
4.	Ship to:	In this field address of ‘C’ is supposed to be filled.
5.	Invoice Details:	Details of Invoice-2 are supposed to be filled

Comment: This is an important clarification which resolves a highly-debated topic and it clarifies that only one E-way bill needs to be generated following the given procedure.

[PIB Release ID 178856 dated 23rd April, 2018]

6. Two Group of Ministers Constituted to consider the issues relating to “Incentivising digital payments in the GST regime” & “Imposition of Cess on Sugar under GST”. Subsequent to the decisions taken in the 27th GST Council meeting, two Group of Ministers (GoMs) have been constituted.

The first GoM shall consider the issues relating to “Incentivising digital payments in the GST regime” headed by Shri Sushil Kumar Modi, Deputy Chief Minister, Bihar and the Second GoM shall consider

Legal Update

issues relating to "Imposition of Cess on Sugar under GST" headed by Shri Himanta Biswa Sarma, Finance Minister, Assam

Both the GoMs shall submit their reports within a period of 15 days.

[PIB Release ID 179138 dated 4th May, 2018]



FEMA Updates

(Matter on FEMA has been contributed by CA Manoj Shah, Mumbai and CA Hinesh Doshi, Mumbai)

1. External Commercial Borrowing (ECB) Policy – Liberalisation and Rationalisation

A.P. (DIR Series) Circular No. 25 dated April 27, 2018

It has been decided to rationalise and liberalise ECB guidelines as under:

i. **Rationalisation of all-in-cost for ECB under all tracks and Rupee Denominated Bonds (RDBs):**

It has been decided to stipulate a uniform all-in-cost ceiling of 450 basis points over the benchmark rate. The benchmark rate will be 6 months USD LIBOR (or applicable benchmark for respective currency) for Track I and Track II, while it will be prevailing yield of government of India securities of corresponding maturity for Track III (Rupee ECBs) and RDBs.

ii. **Revisiting ECB liability to Equity Ratio:**

It is decided to increase the ECB liability to Equity ratio for ECBs raised from direct equity holders under automatic route to 7:1. This ration will not be applicable if total of all ECBs raised by an entity is up to USD 5 million or equivalent.

iii. **Expansion of Eligible Borrowers list:**

It has been decided to permit:

- a) Housing Finance Companies, regulated by the National Housing Bank, as eligible borrowers to avail of ECBs under all tracks. Such entities shall have a board approved risk management policy and shall keep their ECB exposure hedged 100 per cent at all times for ECBs raised under Track I.
- b) Port Trusts constituted under the Major Port Trusts Act, 1963 or Indian Ports Act, 1908 to avail of ECBs under all tracks. Such entities shall have a board approved risk management policy and shall keep their ECB exposure hedged 100 per cent at all times for ECBs raised under Track I.
- c) Companies engaged in the business of Maintenance, Repair and Overhaul and freight forwarding to raise ECBs denominated in INR only.

iv. **Rationalisation of end-use provisions:**

It has now been decided to have only a negative

list of end-use for all tracks. The negative list will include the following:

- a) Investment in real estate or purchase of land except when used for affordable housing as defined in Harmonised Master List of Infrastructure sub-sectors notified by Government of India, Construction and development of SEZ and industrial parks/integrated townships.

- b) Investment in Capital Market.

- c) Equity Investment.

Additionally for Tracks I and III, the following negative end uses will also apply except when raised from Direct and Indirect equity holders or from a Group company, and provided the loan is for a minimum average maturity of five years:

- d) Working capital purposes.

- a) General corporate purposes.

- b) Repayment of Rupee loans.

Finally, for all Tracks, the following negative end use will also apply:

On-lending to entities for the above activities from (a) to (f).

All other provisions remain unchanged.

2. Monitoring of Foreign Investment Limits in Listed Indian Companies

A.P. (DIR Series) Circular No. 27 dated May 03, 2018

Currently, RBI receives data of foreign investment made by FPIs and NRIs on stock exchanges from the custodian banks and Authorised Dealer Banks for their respective clients, based on which restrictions beyond threshold limit is imposed on FPI/NRI investment in listed Indian Companies.

In order to enable listed Indian companies to ensure compliance with the various foreign investment limits, Reserve Bank in consultation with Securities and Exchange Board of India (SEBI), has decided to put in place a new system for monitoring foreign investment limits, for which the necessary infrastructure and systems for operationalising the monitoring mechanism, shall be made available by the depositories. The same has been notified by SEBI vide Circular- IMD/FPIC/CIR/P/2018/61 dated April 05, 2018 read with Circular- IMD/FPIC/CIR/P/2018/74 dated April 27, 2018.

In terms of para 6 of Annexure A of the circular dated April 05, 2018, all listed Indian companies are required to provide the specified data/ information on foreign investment to the depositories. The requisite information may be provided before May 15, 2018. The listed Indian companies, in non-compliance with the above instructions will not be able to receive foreign investment and will be non-compliant with Foreign Exchange Management Act, 1999 and regulations made there under. ■