Legal Update

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 Income Tax Return Forms for Assessment Year 2018-19-Notification No. 16/2018, dated 3-4-2018

The CBDT has notified Income-tax Return Forms (ITR Forms) for the Assessment Year 2018-19 vide this notification. For Assessment Year 2017-18, a one page simplified ITR Form-1 (Sahaj) was notified. This initiative benefited around 3 crore taxpayers, who have filed their return in this simplified Form. For Assessment Year 2018-19 also, a one page simplified ITR Form-1 (Sahaj) has been notified. This ITR Form-1 (Sahaj) can be filed by an individual who is resident other than not ordinarily resident, having income upto ₹50 lakh and who is receiving income from salary, one house property/other income (interest etc.). Further, the parts relating to salary and house property have been rationalised and furnishing of basic details of salary (as available in Form 16) and income from house property have been mandated.

ITR Form-2 has also been rationalised by providing that Individuals and HUFs having income under any head other than business or profession shall be eligible to file ITR Form-2. The Individuals and HUFs having income under the head business or profession shall file either ITR Form-3 or ITR Form-4 (in presumptive income cases).

In case of non-residents, the requirement of furnishing details of any one foreign Bank Account has been provided for the purpose of credit of refund. Further, the requirement of furnishing details of cash deposit made during a specified period as provided in ITR Form for the Assessment Year 2017-18 has been done away with from Assessment Year 2018-19.

There is no change in the manner of filing of ITR Forms as compared to last year. All these ITR Forms are to be filed electronically. However, where return is furnished in ITR Form-1 (Sahaj) or ITR-4 (Sugam), the following persons have an option to file return in paper form:-

(i) an Individual of the age of 80 years or more at any time during the previous year; or

(ii) an Individual or HUF whose income does not exceed five lakh rupees and who has not claimed any refund in the Return of Income.

2. Procedure for submission of Form No. 60 by any person who does not have a PAN and who enters into any transaction specified in Rule 114B-Notification No. 1/2018, dated 5-4-2018

As per second proviso of Rule 114B (Transactions in relation to which PAN is to be quoted in all documents for the purpose of Section 139A(5)(c)), any person who does not have a Permanent Account Number (PAN) and who enters into any transaction specified in Rule 114B, has to make a declaration in Form No. 60 giving therein the particulars of such transaction either in paper form or electronically under the electronic verification code.

As per Rule 114D(1) (Time and manner in which persons referred to in Rule 114C shall furnish a statement containing particulars of Form No. 60), the persons referred to in clauses (a) to (k) of Rule 114C(1) and Rule 114C(2) are required to furnish a statement in Form 61 containing particulars of declarations received in Form 60 to the DIT (Intelligence and Criminal Investigation) or the JDIT (Intelligence and Criminal Investigation) through online transmission of electronic data to a server designated for this purpose and obtain an acknowledgement number.

Rule 114B provides that the declaration in Form No.60 can be submitted either in paper form or electronically under the electronic verification code in accordance with the procedures, data structures, and standards specified by the PDGIT (Systems) or DGIT (Systems).

In exercise of the powers delegated by CBDT under Rule 114B, the PDGIT (Systems) vide this Notification has laid down the procedures for submitting Form No. 60. For details pertaining to the said procedure, Notification may be referred.

3. Procedure for registration and submission of Form No. 61 as per Rule 114D of Income-tax Rules, 1962 - Notification No. 2/2018, dated 5-4-2018

Rule 114D requires every person referred to in clauses (a) to (k) of Rule 114C(1) and Rule 114C(2) and who is required to get his accounts audited under Section 44AB who has received any declaration in Form No. 60, in relation to a transaction specified in Rule 114b, to furnish a statement in Form No. 61.

As per sub-rule (1)(i) and sub-rule (4) of Rule 114D, the statement in Form No. 61 has to be furnished through online transmission of electronic data to a server designated for this purpose and in accordance with the data structure specified in this regard by the PDGIT (Systems). The statement has to be furnished:

(i) Where the declarations are received till 30th September, by the 31st October of that year; and

(ii) Where the declarations are received till 31st March, by the 30th April of the financial year immediately following the financial year in which the form is received.

Modification/changes in the schema/data structure of Form No. 61: The values under Statement Type of Form No. 61 have been modified/enhanced. The detailed list of modification/changes in scheme/data structure of Form No.61 is given in Annexure A to this notification.

In exercise of the powers delegated by CBDT under Rule 114D(4), the PDGIT (Systems) has, vide this notification, laid down the procedure for registration and submission of Form No.61. For details pertaining to the said procedure, Notification may be referred.

4. Procedure for registration and submission of statement of financial transactions (SFT) as per Section 285BA of Income-tax Act, 1961 read with Rule 114E of Income-tax Rules, 1962 - Notification No. 3/2018, dated 5-4-2018

Section 285BA requires specified reporting persons to furnish statement of financial transaction (SFT). Rule 114E specifies that the SFT required to be furnished under Section 285BA(1) shall be furnished in Form No. 61A. The nature and value of transaction to be furnished by the reporting person under Rule 114E is as per Annexure A to this notification.

As per of Rule 114E(6)(a), every reporting person/entity has to communicate to the PDGIT (Systems) the name, designation, address and telephone number of the Designated Director and the Principal Officer and obtain a registration number. The procedure for registration for SFT was specified in Notification No. 13/2016, dated 30.12.2016. The functionality for submission of SFTs had been enabled on e-filing portal vide Notification No.1 /2017, dated 17.1.2017 and the earlier instruction is being updated in the light of newly launched "Reporting Portal" (https://report.insight.gov.in).

As per Rule 114E(4)(a), the SFTs have to be furnished through online transmission of electronic data to a server designated for this purpose under the digital signature of the person specified in sub-rule (7) and in accordance with the data structure specified in this regard by the PDGIT (Systems). The Post Master General or a Registrar or Sub-registrar or an Inspector General have the option to furnish the statement in a computer readable media, being a Compact Disc or Digital Video Disc (DVD), alongwith verification in Form-V on paper. The SFTs have to be furnished on or before the 31st May, immediately following the financial year in which the transaction is registered or recorded.

As per Rule 114E(4)(b), PDGIT(Systems) have to specify the procedures, data structures and standards for ensuring secure capture and transmission of data, evolving and implementing appropriate security, archival and retrieval policies.

The values under Statement Type & Person Type and field number in Part B of Form No. 61A have been modified/enhanced in exercise of the power delegated under Rule 114E(4)(b) by the PDGIT (Systems). The detailed list of modification/changes in schema/data structure of the Form No.61A is as per Annexure D to this notification.

In exercise of the powers delegated by CBDT under sub-rule (4)(a) and (4)(b) of Rule 114E, the PDGIT (Systems) vide this notification has laid down the procedure for registration and submission of SFT. For details pertaining to the said procedure, Notification may be referred.

5. Procedure for registration and submission of Statement of Reportable Account as per Section 285BA of Income-tax Act, 1961 read with Rule 114G of Income-tax Rules, 1962 - Notification No. 4/2018, dated 5-4-2018

Section 285BA requires prescribed reporting financial institution to furnish Statement of Reportable Account. Rule 114G specifies that the Statement of Reportable Account required to be furnished under Section 285BA(1)(k) has to be furnished by a reporting financial institution in respect of each account which has been identified, pursuant to due diligence procedure specified in Rule 114H, as a reportable account in Form No. 61B.

As per Rule 114G(10)(a), every reporting financial institution has to communicate to the PDGIT (Systems)

the name, designation, address and communication details of the Designated Director and the Principal Officer and obtain a registration number. Procedure for registration for submission of Statement of Reportable Account has been published on e-filing portal (https://incometaxindiaefiling.gov.in/) vide Notification No.4/2016, dated 6.4.2016 and this is being modified in view of the newly launched "Reporting Portal" (https://report.insight.gov.in).

As per Rule 114G(9)(a), the Statement of Reportable Account has to be furnished through online transmission of electronic data to a server designated for this purpose under the digital signature of the person specified in sub-rule (10)(b) and in accordance with the data structure specified in this regard by the PDGIT(Systems). The statement of Reportable Account has to be furnished on or before the 31st May, immediately following the calendar year in which the transaction is registered or recorded.

As per Rule 114G(9)(b), PDGIT(Systems) has to specify the procedures, data structures and standards for ensuring secure capture and transmission of data, evolving and implementing appropriate security, archival and retrieval policies.

Modification/changes in the schema/data structure of Form No. 61B: The values under Statement Type of Form No. 61B have been modified/enhanced in exercise of power under Rule 114G(9)(b) by PDGIT(Systems). The detailed list of modification/changes in schema/data structure of the Form No.61B perhaps been given in Annexure A to this notification.

In exercise of the powers delegated by CBDT under sub-rule (9)(a) and (9)(b) of Rule 114G, the PDGIT (Systems) has, vide this notification, laid down the procedure for registration and submission of statement of reportable account. For details pertaining to the said procedure, Notification may be referred.

6. Transport allowance of ₹1600/- pm omitted w.e.f. AY 2019-20 and onwards under Rule 2BB - Notification No. 17/2018, dated 6-4-2018

In exercise of the powers conferred by Section 295 read with Section 10(14) of the Income-tax Act, 1961, the CBDT has amended Rule 2BB with effect from A.Y.2019-20. Accordingly, the transport allowance granted to an employee (other than an employee who is a blind or deaf or dumb or orthopedically handicapped employee with disability of lower extremities) for the purpose of commuting between the place of his residence and the place of his duty, which can be claimed as an exemption upto ₹1,600 per month has been withdrawn with effect from A.Y.2019-20. The withdrawal is in accordance with the budget speech of Hon'ble Finance Minister on 1.2.2018 wherein it was proposed to provide standard deduction @ ₹40,000 to assessees having income under the head salary in lieu of withdrawal of transport allowance and medical reimbursement exemption. Accordingly, since standard deduction of ₹40,000 would be available from A.Y.2019-20, and the same is in lieu of, *inter alia*, exemption for transport allowance upto 1,600 per month, the said allowance has been withdrawn with effect from A.Y.2019-20. However, exemption for transport allowance upto ₹3,200 per month would continue to be available to an employee who is blind or deaf or dumb or orthopedically handicapped.

7. Minor Amendment in Form 49A/49AA - Notification No. 18/2018, dated 9-4-2018

Section 139A provides for various situations wherein an assessee is mandatorily required to apply for Permanent Account Number (PAN). Further, Rule 114 provides that application for allotment of PAN would be in Form 49A or 49AA. Vide this Notification, an amendment has been made in column no. 4 "Gender (for individual applicants only)" and entries relating thereto in Form 49A/49AA i.e., a tab for opting 'transgender' has been provided for individual applicants in addition to the 'male' or female' gender option already available therein.

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 MEMO-RANDUM

1. India and Hong Kong sign Double Taxation Avoidance Agreement (DTAA) – Press Release, dated 19-3-2018

On 19.03.2018, Government of India and the Hong Kong Special Administrative Region (HKSAR) of People's Republic of China have signed an Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income.

In so far as India is concerned, the Central Government is authorised under Section 90 of the Income-tax Act, 1961 to enter into an Agreement with a foreign country or specified territory for avoidance of double taxation of income, for exchange of information for the prevention of evasion or avoidance of income tax chargeable under the Income-tax Act, 1961.

The Agreement will stimulate flow of investment, technology and personnel from India to HKSAR & vice versa, prevent double taxation and provide for exchange of information between the two Contracting Parties. It will improve transparency in tax matters and will help

curb tax evasion and tax avoidance. The Agreement is on similar lines as entered into by India with other countries.

2. CBDT issues clarification regarding requirement for furnishing of Country-by Country report under Section 286(4) of IT Act, 1961 – Press Release, dated 23-3-2018

In keeping with India's commitment to implement the recommendations of 2015 Final Report on Action 13, titled "Transfer Pricing Documentation and Country-by-Country Reporting", identified under the OECD Base Erosion and Profit Shifting (BEPS) Project, Section 286 was inserted vide Finance Act, 2016, which provides for furnishing of a Country-by-Country (CbC) report in respect of an international group.

The CbC report is to be furnished by the ultimate parent entity of an international group in the country or territory of its residence. As specified under Section 286(2), prior to amendment by the Finance Act, 2018, the said report was to be furnished on or before the due date specified under Section 139(1) for furnishing of return of income for the relevant accounting year. The date for furnishing of CbC report under Section 286(2) for FY 2016-17 was subsequently extended to 31st March, 2018 vide CBDT Circular No. 26/2017 dated 25th October, 2017. It may be noted that the Finance Act, 2018 has amended Section 286(2) w.e.f. 1.4.2017 to require furnishing of such report within a period of 12 months from the end of the said reporting accounting year.

Section 286(4) specifies situations in which the said report shall be furnished in India by the constituent entity of an international group, resident in India, namely, those in which there is failure to obtain CbC Report on account of the parent entity being resident of a country or territory with which India does not have an agreement providing for exchange of CbC reports or where there has been a systemic failure of the country or territory and the same has been intimated to such constituent entity.

It has been brought to the notice of the Government that constituent entities of international groups, resident in India, have apprehensions that the due date of furnishing of CbC report under Section 286(4) is also 31st March, 2018.

In order to allay the aforesaid apprehensions, it is hereby clarified that the due date of 31st March, 2018 applies for furnishing of CbC report under Section 286(2) only and not under sub-Section (4) of the said Section.

The Finance Act, 2018 has amended Section 286(4) to require furnishing of CbC report within the period as may be prescribed in the specific situations mentioned therein. Accordingly, in such cases, the time for furnishing of CbC report under Section 286(4) is not specified in the Section but would be prescribed.

3. CBDT extends date for linking of Aadhaar with PAN – Press Release, dated 27-3-2018

CBDT had allowed time till 31st March, 2018 to link PAN with Aadhaar while filing the Income Tax Returns. Upon consideration of the matter, CBDT, further extends the time for linking PAN with Aadhaar till 30th June, 2018.

4. Indian Advance Pricing Agreement regime moves forward with the signing of 16 APAs by CBDT in March, 2018 – Press Release, dated 3-4-2018

The CBDT has entered into 14 Unilateral Advance Pricing Agreements (UAPA) and 2 Bilateral Advance Pricing Agreements (BAPA) during the month of March, 2018. The 2 bilateral APAs have been entered into with the United States of America. With the signing of these Agreements, the total number of APAs entered into by the CBDT has gone up to 219. This includes 199 Unilateral APAs and 20 Bilateral APAs. A total of 67 APAs (9 Bilateral and 58 Unilateral) have been signed in the F.Y. 2017-18.

The 16 APAs entered into during March, 2018 pertain to various sectors of the economy like Telecommunication, Information Technology, Automobile, Pharmaceutical, Beverage, Trading, Manufacturing and Banking, Finance & Insurance. The international transactions covered in these agreements include payment of royalty fee, provision of business support services, provision of corporate guarantee, contract manufacturing, provision of marketing support services, provision of engineering design services, provision of engineering support services, merchanting trade of agro commodity, import/export of components, provision of IT services, provision of IT enabled services, provision of investment advisory services, availing of technical services, etc.

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.

5. Clarification regarding applicability of standard deduction to pension received from former employer – Press Release, dated 5-4-2018

The Finance Act, 2018 has amended Section 16 of the Income–tax Act, 1961 to provide that a taxpayer having income chargeable under the head "Salaries" shall be allowed a deduction of ₹40,000/- or the amount of salary, whichever is less, for computing his taxable income.

Representations were received by the CBDT seeking clarification as to whether a taxpayer, who receives

pension from his former employer, shall also be eligible to claim this deduction.

The pension received by a taxpayer from his former employer is taxable under the head "Salaries". Accordingly, any taxpayer who is in receipt of pension from his former employer shall be entitled to claim a deduction of ₹40,000/- or the amount of pension, whichever is less, under Section 16.

6. CBDT notifies the Protocol amending the Double Taxation Avoidance Convention (DTAC) between India and Kazakhstan – Press Release, dated 13-4-2018

A Protocol to amend the existing Double Taxation Avoidance Convention (DTAC) between India and Kazakhstan, earlier signed on 9.12.1996 for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income, was signed on 06.01.2017. The said Protocol has entered into force on 12.03.2018 and was notified in Official Gazette on 12.04.2018.

Salient features of the Protocol are as under:

(i) The Protocol provides internationally accepted standards for effective exchange of information on tax matters. Further, the information received from Kazakhstan for tax purposes can be shared with other law enforcement agencies with the authorisation of the competent authority of Kazakhstan and vice versa.

(ii) The Protocol inserts a Limitation of Benefits Article, to provide a main purpose test to prevent misuse of the DTAC and to allow application of domestic law and measures against tax avoidance or evasion.

(iii) The Protocol inserts specific provisions to facilitate relieving of economic double taxation in transfer pricing cases. This is a taxpayer friendly measure and is in line with India's commitment under Base Erosion and Profit Shifting (BEPS) Action Plan to meet the minimum standard of providing Mutual Agreement Procedure (MAP) access in transfer pricing cases.

(iv) The Protocol replaces the existing Article on Assistance in Collection of Taxes with a new Article to align it with international standards.

7. Requirement for obtaining PAN card u/s 139A of IT Act, 1961 eased for corporate assessees–Press Release, dated 14-4-2018

In case of a company, an application for incorporation, allotment of Permanent Account Number (PAN) and allotment of Tax Deduction and Collection Account Number (TAN) may be made through a Common Application Form submitted to the Ministry of Corporate Affairs (MCA). In these cases, the Certificate of Incorporation (COI) issued by MCA contains a mention of both PAN and TAN.

The Finance Act, 2018 amended Section 139A of the Income-tax Act, 1961 and removed the requirement of issuing PAN in the form of a laminated card. Hence, it is clarified that PAN and TAN mentioned in the COI issued by MCA shall also be treated as sufficient proof of PAN and TAN for the said company assessees.

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

CUSTOMS

1. Pre-Notice Consultation Regulations, 2018

The Central Government vide *Notification no. 29/2018-Customs (N.T.) dated 2nd April, 2018* has provided the Pre-Notice Consultation Regulations, 2018 which are as follows:

Pre-notice consultation shall be made in the following manner: -

(1) Before the notice is issued, the proper officer shall inform, in writing, the person chargeable with duty or interest of the intention to issue the notice specifying the grounds and the process of pre-notice consultation shall be initiated as far as possible at least 2 months before the expiry of the time limit mentioned in sub-Section (3) of Section 28 of the Act.

(2) The person chargeable with duty or interest may, within 15 days from the date of communication referred to in sub-regulation (1), make his submissions in writing on the grounds so communicated. Provided if no response received, the proper officer shall proceed to issue the notice to the said person without any further communication: Provided further that while making the submissions, the person chargeable with duty or interest shall clearly indicate whether he desires to be heard in person by the proper officer.

(3) The proper officer, may if requested, hear the person within 10 days of receipt of the submissions referred to in sub-regulation (2) and subject to the provisions of Section 28, decide whether any notice is required to be issued or not: Provided that no adjournment for any reason shall be granted in respect of the hearing allowed under this regulation.

(4) Where the proper officer, after consultation, decides not to proceed with the notice with reference to the grounds communicated under sub-regulation (1), he shall, by a simple letter, intimate the same to the person concerned.

(5) The consultation process provided in these regulations shall be concluded within sixty days from the date of communication of grounds as provided in sub-regulation (1).

(6) Where the proposed show cause notice is in respect of a person to whom a notice on the same issue but for a different period or documents has been issued after pre-notice consultation, the proper officer may proceed to issue the show cause notice for subsequent periods without any further consultation.

[Notification no. 29/2018-Customs (N.T.) dated 2nd April, 2018]

2. International courier terminals

The Central Government vide *Notification no. 27 /2018-Customs (N.T.) dated 28th March, 2018* has appointed the Mumbai, Delhi, Chennai, Kolkata, Bengaluru, Hyderabad, Jaipur, Trivandrum, Cochin, Coimbatore, Calicut, Tiruchirappalli, additionally as international courier terminals.

[Notification no. 27 /2018-Customs (N.T.) dated 28th March, 2018]

3. Refund of IGST on Export-Extension of date in SB005 alternate mechanism cases & clarifications in other cases-reg.

Central Government vide *Circular No. 08/2018-Customs dated 23rd March, 2018* extended the facility to resolve invoice mismatch cases and for correction in SB005 through officer interface till 23rd February, 2018 in case of those shipping bills where SB005 was allowed to be corrected through officer interface for SBs filed up to 31.12.17.

Further, representations have also been received from:

(i) field formations seeking resolution of SB006 errors due to discontinuance of transference copy of shipping bill. It has been proposed by the field formations that in lieu of transference copy either the final Bill of Lading issued by the shipping lines or written confirmation from the custodian of the gateway port, may be treated as valid document for the purposes of integration with the EGM. The proposal from the field formation has been examined in the Board. The proposal sent from field formation in such EGM error cases has been agreed.

(ii) exporters that by mistake they have mentioned the status of IGST payment as "NA" instead of mentioning "P" in the shipping bill. In other words, the exporter has wrongly declared that the shipment is not under payment of IGST, despite the fact that they have paid the IGST. As a one-time exception, it has been decided to allow refund of IGST through an officer interface wherein the officer can verify and satisfy himself of the actual payment of IGST based on GST return information forwarded by GSTN. DG (Systems) shall open a physical interface for this purpose.

[Circular No. 08/2018-Customs dated 23rd March, 2018]

4. Clarification regarding EGM related cases in case of Refund of IGST on Export

Central Government vide *Circular No. 06/2018-Customs dated 16th March, 2018* clarified the Export General Manifest related issues which leads to holding up the refunds in Inland Container Depots (ICD). Filing of EGM, apart from filing of shipping bill and Form GSTr-3B is a mandatory requirement for processing refund claim.

The shipping lines have been filing EGM electronically for exports originating from gateway ports. However, for cargo originating from ICDs, the Shipping lines/agents were filing EGM in manual form. In order to overcome this major obstacle in processing of refund claims, the Shipping lines have been mandated to include shipping bills originating from ICDs while filing electronic EGMs at the gateway ports. In case EGMs have not incorporated shipping bills pertaining to ICDs, supplementary EGMs will be filed. In case, shipping lines/agents fail to file either regular or supplementary EGMs electronically for the cargo originating from ICDs, the jurisdictional officers may initiate penal actions.

In order to ensure a hassle-free processing of refund claims, the following steps may be ensured by the jurisdictional officers in ICDs:

a) filing of local EGM i.e train or truck summary, as the case may be, immediately after cargo leaves the port,

b) liaising with jurisdictional officers at gateway port for incorporation of Shipping Bills pertaining to the cargo originating in ICDs, in the EGMs filed at gateway port by the Shipping lines/agents

c) rectification of errors in local and gateway EGM, wherever necessary.

The jurisdictional officers should strictly monitor the EGM pendency and error reports available in ICES so as

to resolve the EGM errors in an expeditious manner. In cases, where there are errors either in the shipping bill or in the local EGM (i.e. truck or train summary), the remedial action has to be taken by jurisdictional officer in ICD.

It has been observed that mis-match of information provided in local and gateway EGM mainly occurs because of:

i. incorrect gateway port code in local EGM (error M),
ii. change in container for LCL cargo or mistakes committed while entering container number (error C),
iii. incorrect count of containers (error N),
iv. mistakes in entering the nature of cargo - LCL or FCL (error T),
v. the let export order is given in ICES after sailing date of the vessel (error L),

ICES has provision to correct all aforementioned errors. The procedure to be followed for each type of error has been clearly delineated in the step by step guide issued by the Directorate of Systems for dealing with the errors. In case of specific difficulties, the same may be taken with the errors. In case of specified difficulties, the same may be taken up with Directorate of Systems.

There is a shared responsibility between officers working at ICDs and gateway ports in ensuring an error free filing and integration of local and gateway EGMs. The officers at both locations should also ensure swift rectification of errors and effective coordination between the domestic carriers, who file local EGMs, and Shipping lines/agents, who file gateway EGMs. The error free filing and integration of EGMs is a pre-requisite for smooth processing of refunds. Recognising this necessary outreach may be done to sensitise domestic carriers as well as Shipping lines/agents with regard to due diligence that is required in filing of EGMs and its critical importance in hassle free processing of IGST refunds.

[Circular No. 06/2018-Customs dated 16th March, 2018]

GST

1. Processing of Claims for Refund

The Central Government vide *Circular No. 37/11/2018-GST dated 15th March, 2018* has clarified various issues in relation to processing of claims for refund which are discussed below:

1) Non-availment of drawback:
   - It has been clarified that the drawback of Central Tax and Integrated Tax should not have been availed while claiming refund of accumulated ITC on zero rated supplies made without payment of tax.
   - A supplier availing of drawback only with respect to basic customs duty shall be eligible for refund of unutilised input tax credit of Central tax/State tax/Union territory tax/ Integrated tax/Compensation cess under sub Section (3) of Section 54.
   - It is further clarified that refund of eligible credit on account of state tax shall be available even if the supplier of goods or services or both has availed of drawback in respect of central tax.

Comment: (i) Rule 2(a) of C & CE Drawback Rules, 2017 already excludes GST paid on imported material and this clarification does not lay any new tax position. As such, drawback and zero-rated benefit can co-exist and operate simultaneously;

(ii) Rule 96(10) which places a restriction in case claim of IGST refund also implies that IGST refund can co-exist with drawback of non-GST Central duties (NGCDs). Note that refund of IGST arises when exports are on 'payment of IGST' under Section 16(3(b) of IGST Act;

(iii) Further, please note that the restriction in Rule 96(10) is to ensure that the domestic Supplier and Exporter/Deemed-Exporter cannot both claim refund (language appears to place an embargo on refund to exporter);

48/2017-CT	*Notifies deemed exports*	*Supplier to claim refund due to 'rate inversion' in his hands. As no refundable taxes paid by deemed-exporter, no refund remains to be availed*
40/2017-CT (R)	*Specifies CGST of 0.05% on supply to deemed exports*	
41/2017-Int. (R)	*Specifies IGST of 0.1% on supply to deemed exports*	
78/2017-Cus.	*Exempts IGST on imports*	*No refund since no IGST paid*
79/2017-Cus.	*Exempts IGST on imports*	

(iv) As clarified in para 13.2 of this circular, the GST at 0.5%/0.1% in case of supplies to Merchant Exporters causing 'rate inversion' in the hands of Supplier, while the Supplier is eligible to refund of relatable ITC, the ME is eligible to ITC of the (nominal rates of) GST paid;

(v) Please also note that NGCDs are neutralised through drawback, all GSTs are neutralised

through zero-rated supply as clarified here. It is therefore clear that SGST is refundable vide zero-rated supply facility without being affected by drawback provisions.

2) Amendment through Table 9 of GSTR-1:
In this it has been clarified that if a taxpayer has committed an error while entering the details of an invoice/shipping bill/bill of export in Table 6A or Table 6B of FORM GSTR-1 due to which refund claims are not being processed, so now taxpayer can rectify the same in Table 9 of FORM GSTR-1 in order to get the refund.
Comment: Rectification does not limit the number of times such rectification may be made. It is prudent to ensure that the correct amounts are reflected in Table 9 of GSTR-1 so as to facilitate refund claims.

3) Exports without LUT:
It has been clarified that the facility for export under LUT may be allowed on *ex post facto* basis taking into account the facts and circumstances of each case.
Comment: While an ex post facto filing of LUT greatly undermines the prescriptions of Section 16(3)(a) of IGST Act, as it is a beneficial circular, trade may avail this relaxation. This clarification must not be assumed to apply to all 'pre-conditions' of a technical nature in GST. LUTs must nevertheless be filed at least post facto. Failure to file LUT does not avail this procedural relaxation.

4) Exports after specified period:
It has been reported that the exporters have been asked to pay integrated tax where the goods have been exported but not within 3 months from the date of the issue of the invoice for export. In this regard, it is emphasised that exports have been zero rated under the Integrated Goods and Services Tax Act, 2017 (IGST Act) and as long as goods have actually been exported even after a period of three months, payment of integrated tax first and claiming refund at a subsequent date should not be insisted upon.
Therefore, in such cases, the jurisdictional Commissioner may consider granting extension of time limit for export as provided in the said sub-rule on post facto basis keeping in view the facts and circumstances of each case. The same principle should be followed in case of export of services.
Comment: This is a significant clarification where, merely because technical aspects are not complied, it does not alter the basic character of the export rendering it a taxable supply. Also, this clarification would not be applicable in case of 'export of services' even if it is an export by way lease of goods.

5) Deficiency memo:
In this connection, a clarification has been provided that once an applicant has been communicated the deficiencies in respect of a particular application, the applicant shall furnish a fresh refund application after rectification of such deficiencies and once an application has been submitted afresh, pursuant to a deficiency memo, the proper officer will not serve another deficiency memo with respect to the application for the same period, unless the deficiencies pointed out in the original memo remain unrectified, either wholly or partly, or any other substantive deficiency is noticed subsequently.
Comment: Care should be taken to resolve all deficiencies in order for any refund claim or other application to be legally recognised as having been filed. With this clarification that further deficiencies will not be issued, ensuring that all deficiencies are satisfactorily resolved in imperative to preserve validity of refund claims/applications filed.

6) Self-declaration for non-prosecution:
In terms of Notification No. 37/2017-CT dated 4th October, 2017, the facility of export under LUT is available only to those who have not been prosecuted for any offence under the CGST Act or the IGST Act for which a person intending to export under LUT is required to give a self-declaration at the time of submission of LUT that he has not been prosecuted. In this regard it has been clarified that requirement is already satisfied in case of exports under LUT and asking for self–declaration with every refund claim where the exports have been made under LUT is not warranted.
Comment: Self-declaration by an authorised signatory of a legal entity may include a declaration that the affirmations in the declaration are from extant records of the entity and not personal knowledge.

7) Refund of transitional credit:
As per Section 54 refund of unutilised input tax credit availed on inputs and input services during

the relevant period is allowed. In this regard it has been clarified that the transitional credit pertains to duties and taxes paid under the existing laws viz., under Central Excise Act, 1944 and Chapter V of the Finance Act, 1994, the same cannot be said to have been availed during the relevant period and thus, cannot be treated as part of 'Net ITC' therefore, not refundable.

Comment: Apprehension of industry that transitional credits will not be reckoned as 'net ITC' for claiming GST refund is not settled. All refunds under earlier laws must be claimed under earlier laws but if those credits have transitioned under Section 140(1), except by utilisation or rebate claim, no other refund mechanism would be available.

8) Discrepancy between values of GST invoice and shipping bill/bill of export:

In this regard it has been clarified that in case of discrepancy in value of the goods declared in the GST invoice and shipping bill/bill of export than the value in the GST invoice and corresponding shipping bill/bill of export should be examined and the lower of the two values should be sanctioned as refund.

Comment: This clarification brings to light the practice that was common under Central Excise for 'assessable value' to be different from 'commercial value'. Invoice under Section 31 would be for 'assessable value' which can be different from 'commercial value'. Clue can be taken from here for issuing Tax Invoice for exchange and barter transactions and for supplies where consideration is in non-monetary form. Tax Invoice is required in all these cases even though no 'price' may exist.

9) Refund of taxes paid under existing laws:

- Section 142 of the CGST Act provides that refunds of tax/duty paid under the existing law shall be disposed of in accordance with the provisions of the existing law. It is observed that certain taxpayers have applied for such refund claims in FORM GST RFD-01A also. In this regard, it has been advised through this circular to reject such applications and pass a rejection order in FORM GST PMT-03 and communicate the same on the common portal in FORM GST RFD-01B.
- Furthermore, it has been clarified that the amount arising out of refund claims under existing laws shall be refunded in cash only. Also it should be insured that no refund of the amount of CENVAT credit is granted in case the said amount has been transitioned under GST.

10) Filing frequency of Refunds:

In this regard, it is hereby clarified that the exporter, at his option, may file refund claim for one calendar month/quarter or by clubbing successive calendar months/quarters. The calendar month(s)/quarter(s) for which refund claim has been filed, however, cannot spread across different financial years.

Comment: This is a welcome and much awaited clarification (which may soon be permitted on the portal). In a month where there is no ETO, taxable persons may carry forward ITC in the following quarter and file a consolidated refund for the 'net ITC of quarter' and 'ETO/TTO of quarter'. Care should be taken not to skip any month and maintain refund claims consequtively.

11) BRC/FIRC for export of goods:

In case of export of goods, realisation of consideration is not a pre-condition. Therefore it is clarified that, insistence on proof of realisation of export proceeds for processing of refund claims related to export of goods has not been envisaged in the law and should not been insisted upon.

Comment: Another welcome clarification but this applies only in respect of refund claims relating to export of 'goods' and not services.

12) Supplies to Merchant Exporters:

It is clarified that the benefit of supplies at concessional rate is subject to certain conditions and the said benefit is optional and the goods may be procured at the normal applicable tax rate. It is also clarified that the supplier who supplies goods at the concessional rate is also eligible for refund on account of inverted tax structure as per the provisions of Section 54 of the CGST Act.

Comment: It must be ensured that there is no duplication of claims and suitable documentary proof must be provided by the claimant of the refund that the counter party has not claimed refund.

13) Requirement of invoices for processing of claims for refund:

A list of documents required for processing the various categories of refund claims on exports

is provided in the Table below. Apart from the documents listed in the Table below, no other documents should be called for from the taxpayers, unless the same are not available with the officers electronically:

Table

Type of Refund	Documents
Export of Services with payment of tax (Refund of IGST paid on export of services)	• Copy of FORM RFD-01A filed on common portal • Copy of Statement 2 of FORM RFD-01A • Invoices w.r.t. input, input services and capital goods • BRC/FIRC for export of services • Undertaking/Declaration in FORM RFD-01A
Export (goods or services) without payment of tax (Refund of accumulated ITC of IGST/ CGST/SGST/ UTGST/Cess)	• Copy of FORM RFD-01A filed on common portal • Copy of Statement 3A of FORM RFD-01A generated on common portal • Copy of Statement 3 of FORM RFD-01A • Invoices w.r.t. input and input services • BRC/FIRC for export of services • Undertaking/Declaration in FORM RFD-01A

** These instructions shall apply to exports made on or after 1st July, 2017. It is also advised that refunds may not be withheld due to minor procedural lapses or non-substantive errors or omission.*

2. Introduction of e-way bill

The Central Government vide *Notification No. 15/2018 – Central Tax dated 23rd March, 2018* has notified that the provisions of sub-rules (ii) [other than clause (7)], (iii), (iv), (v), (vi) and (vii) of Rule 2 of Notification No. 12/2018 – Central Tax, dated the 7th March, 2018 shall come into force from 1st day of April, 2018.

Comments: (i) 9/2018-CT dated 23rd January, 2018 appoints "www.ewaybillgst.gst.in" to be the official website for generation of EBN

(ii) Rule 138 of CGST Rules has been brought into force by notification under Section 164 of the CGST Act

(iii) Similarly, notification(s) under Section 164 of the SGST Act(s) are required for EWB applicability to intra-State movement of goods

(iv) In the absence of corresponding State/UT notifications, all intra-State movements will be free from requirement of EWB until notified (except State of Karnataka which has issued its SGST notification)

(v) Notifications issued under CGST Act are mutatis mutandis applicable to IGST Act as such, inter-State movements attract the requirement of EWB immediately (from 1st April, 2018)

(vi) There is no need not for any concern about CGST officers inspecting vehicles during intra-State movement without EWB because generation of EWB is not possible where 'dispatch' and 'delivery' are in same State (except in case of Karnataka).

[Notification No. 15/2018 – Central Tax dated 23rd March, 2018]

3. Clarification on issues related to Job Work

The Central Government vide Circular No.38/12/2018–Central Tax dated 26th March, 2018 has clarified various issues related to Job work which are as follows:

- The registered principal may, without payment of tax, send inputs or capital goods to a job worker for job work and on completion of the job work, the principal shall either bring back the goods to his place of business or supply (including export) the same directly from the place of business/premises of the job worker within 1 year in case of inputs or within 3 years in case of capital goods (except moulds and dies, jigs and fixtures or tools).

  Sending goods for job work is not a supply as such, but it acquires the character of supply only when the inputs/capital goods sent for job work are neither received back by the principal nor supplied further by the principal from the place of business/ premises of the job worker within 1/3 years of being sent out.

Comment: This is a welcome clarification that eliminates doubts both to industry and administration that 'sending goods for job-work is not a supply' as it does not satisfy any limb in the definition in Section 7 of CGST Act. It is for this reason that Section 19(3)/19(6) of CGST Act 'deems' non-return of goods within the time limit to be a supply. From this, it can be clearly appreciated that 'sending moulds for job-work' is also not supply.

- It may be noted that the responsibility of keeping proper accounts of the inputs and capital goods sent for job work lies with the principal.
- Scope/ambit of job work: The job worker is expected to work on the goods sent by the principal only. In this regard it is clarified that the job worker, in addition to the goods received from the principal, can use his own goods for providing the services of job work.

- Requirement of registration for the principal/job worker: It is clarified that a job worker is required to obtain registration only in cases where his aggregate turnover, to be computed on all India basis, in a financial year exceeds the threshold limit regardless of whether the principal and the job worker are located in the same State or in different States.
- Supply of goods by the principal from job worker's place of business/premises: It is clarified that the supply of goods by the principal from the place of business/premises of the job worker will be regarded as supply by the principal and not by the job worker.
- Movement of goods from the principal to the job worker and the documents and intimation required therefor: The following is clarified with respect to the issuance of challan, furnishing of intimation and other documentary requirements in this regard:
  i. Where goods are sent by principal to only one job worker: The principal shall prepare in triplicate, the challan in terms of Rules 45 and 55 of the CGST Rules, for sending the goods to a job worker. Two copies of the challan may be sent to the job worker along with the goods. The job worker should send one copy of the said challan along with the goods, while returning them to the principal. The FORM GST ITC-04 will serve as the intimation as envisaged under Section 143 of the CGST Act, 2017.
  ii. Where goods are sent from one job worker to another job worker: In such cases, the goods may move under the cover of a challan issued either by the principal or the job worker. In the alternative, the challan issued by the principal may be endorsed by the job worker sending the goods to another job worker, indicating therein the quantity and description of goods being sent. The same process may be repeated for subsequent movement of the goods to other job workers.
  iii. Where the goods are returned to the principal by the job worker: The job worker should send one copy of the challan received by him from the principal while returning the goods to the principal after carrying out the job work.
  iv. Where the goods are sent directly by the supplier to the job worker: In this case, the goods may move from the place of business of the supplier to the place of business/premises of the job worker with a copy of the invoice issued by the supplier in the name of the buyer (i.e. the principal) wherein the job worker's name and address should also be mentioned as the consignee, in terms of Rule 46(o) of the CGST Rules. The buyer (i.e., the principal) shall issue the challan under Rule 45 of the 7 CGST Rules and send the same to the job worker directly in terms of para (i) above. In case of import of goods by the principal which are then supplied directly from the customs station of import, the goods may move from the customs station of import to the place of business/premises of the job worker with a copy of the Bill of Entry and the principal shall issue the challan under Rule 45 of the CGST Rules and send the same to the job worker directly.
  v. Where goods are returned in piecemeal by the job worker: In case the goods after carrying out the job work, are sent in piecemeal quantities by a job worker to another job worker or to the principal, the challan issued originally by the principal cannot be endorsed and a fresh challan is required to be issued by the job worker.
  vi. Submission of intimation: Rule 45(3) of the CGST Rules provides that the principal is required to furnish the details of challans in respect of goods sent to a job worker or received from a job worker or sent from one job worker to another job worker during a quarter in FORM GST ITC-04 by the 25th day of the month succeeding the quarter or within such period as may be extended by the Commissioner. It is clarified that it is the responsibility of the principal to include the details of all the challans relating to goods sent by him to one or more job worker or from one job worker to another and its return therefrom. The FORM GST ITC-04 will serve as the intimation as envisaged under Section 143 of the CGST Act.
- Liability to issue invoice, determination of place of supply and payment of GST: On conjoint reading of all the related provisions the following is clarified with respect to the issuance of an invoice, time of supply and value of supply:
  i. Supply of job work services: The job worker, as a supplier of services, is liable to pay GST on the value of supply of such service if he is liable to be registered. In this regard, it is clarified that the value of moulds and dies, jigs and fixtures or tools may not be included in the value of

job work services provided its value has been factored in the price for the supply of such services by the job worker. It may be noted that if the job worker is not registered, GST would be payable by the principal on reverse charge basis in terms of the provisions contained in Section 9(4) of the CGST Act. However, the said provision has been kept in abeyance for the time being.

ii. Supply of goods by the principal from the place of business/premises of job worker: Section 143 of the CGST Act provides that the principal may supply, from the place of business/premises of a job worker after completion of job work or otherwise. Since the supply is being made by the principal, it is clarified that the time, value and place of supply would have to be determined in the hands of the principal irrespective of the location of the job worker's place of business/premises. Further, the invoice would have to be issued by the principal. It is also clarified that in case of exports directly from the job worker's place of business/premises, the LUT or bond, as the case may be, shall be executed by the principal.

Illustration: The principal is located in State A, the job worker in State B and the recipient in State C. In case the supply is made from the job worker's place of business/premises, the invoice will be issued by the supplier (principal) located in State A to the recipient located in State C. The said transaction will be an inter-State supply. In case the recipient is also located in State A, it will be an intra-State supply.

iii. Supply of waste and scrap generated during the job work: Sub-Section (5) of Section 143 of the CGST Act provides that the waste and scrap generated during the job work may be supplied by the registered job worker directly from his place of business or by the principal in case the job worker is not registered. The principles enunciated in Para (ii) above would apply *mutatis mutandis* in this case.

- Violation of conditions laid down in Section 143: If the inputs or capital goods are neither returned nor supplied from the job worker's place of business/premises within the specified time period, the principal would issue an invoice for the same and declare such supplies in his return for that particular month in which the time period of one year/three years has expired. The date of supply shall be the date on which such inputs or capital goods were initially sent to the job worker and interest for the intervening period shall also be payable on the tax. If such goods are returned by the job worker after the stipulated time period, the same would be treated as a supply by the job worker to the principal and the job worker would be liable to pay GST if he is liable for registration in accordance with the provisions contained in the CGST Act read with the rules made thereunder.
- Availability of input tax credit to the principal and job worker: In this regard, it is clarified that the input tax credit would be available to the principal, irrespective of the fact whether the inputs or capital goods are received by the principal and then sent to the job worker for processing, etc. or whether they are directly received at the job worker's place of business/premises, without being brought to the premises of the principal. It is also clarified that the job worker is also eligible to avail ITC on inputs, etc. used by him in supplying the job work services if he is registered.

[Circular No.38/12/2018 – Central Tax dated 26th March, 2018]

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

1. Liberalised Remittance Scheme for Individuals – Daily Reporting of Transactions

A.P. (DIR Series) Circular No. 23 dated April 12, 2018

In order to improve monitoring and ensure compliances with LRS Limits, AD banks are required to upload daily transaction wise information undertaken by them under LRS at the close of business of the next working day. In case no data is to be furnished, AD banks shall upload a 'NIL' report.

For more circulars with regard to Indirect Taxes the readers may visit our website http://idtc.icai.org/notifications-circulars.html

2. Foreign Exchange Management (Cross Border Merger) Regulations, 2018

Notification No. FEMA.389/2018-RB dated March 20, 2018

Reserve Bank of India has notified regulation relating to merger, amalgamation and arrangement between Indian Companies and Foreign Companies vide notification dated 20th March 2018.

Legal Update

Full notification can be accessed at– https://rbidocs.rbi.org.in/rdocs/notification/PDFs/CBM28031838E18A1D866A47F8A20201D6518E468E.PDF

3. Foreign Investment in India

Notification No. FEMA.20(R)(1)/2018-RB dated March 26, 2018

Amendment to Regulation 16B

The existing sub-regulation 5 shall be substituted with new sub-regulation. Accordingly, foreign investment in investing companies not registered as NBFC and in core investing companies both engaged in activity of investing in the capital of other Indian Companies will require prior government approval. Foreign Investment in investing companies registered as NBFC will be 100% under automatic route.

RBI has also made amendments in relation to sectoral limits and sector specific conditions in certain sectors.

Amendment has also been made to Schedule 1, whereby issue of capital instruments against swap of capital instruments, import of capital goods/machinery/equipment (excluding second hand machinery) or pre-operative/pre-incorporation expenses will be under automatic route if the investee company is in an automatic sector. Government Approval shall be obtained if Indian Investee company is engaged in sector under government approval route.

4. Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India), Regulations, 2018

In supersession of Notification No. FEMA 21/2000-RB dated May 3, 2000, as amended from time to time, the Reserve Bank of India notifies revised regulations.

The revised regulation can be accessed at– https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NTF21R0904182AB07CBE3672402A91BB19E46B81F3D5.PDF

5. Gist of some Compounding Orders passed by Reserve Bank of India

Sr. No.	Subject Matter	Contraventions Compounded
1.	Foreign Investment in India – FEMA Notification No. 20	➢ Consideration for Foreign Investment by Foreign Company in Indian Company was received from third party intermediary i.e. a Transfer wise. ➢ Receipt of sale consideration through channels other than banking channels is a contravention.
2.	Foreign Investment in India – FEMA Notification No. 20	➢ Non-resident investors had invested in 2010 in equity shares of Indian Company which was a power exchange registered with Central Electricity regulatory Commission (Power Market) Regulations, 2010. At the time of investment it was under automatic route. ➢ Subsequently in 2012, foreign investment in power exchanges was limited to 49% provided no non-resident investor will hold more than 5%. ➢ Non-resident investors applied for *post facto* approval. FIPB directed the company to bring down the shareholding pattern in line with FDI Policy within one year. ➢ Whereas the company did not comply the conditions as stipulated for receiving foreign investments in the company. ➢ This was in contravention to Regulation 5(1)(i) of FEMA Notification No. 20. Foreign Company opened a NRO account with bank in India.
3.	Overseas Direct Investment related – FEMA Notification No. 120	➢ Indian Company was engaged in business of providing management and consultancy services to organisations in various sectors such as healthcare, mining, entertainment and media. ➢ The Company made Overseas Direct Investment in an entity in Singapore. This Singapore entity raised funds overseas and invested the same in another Indian Company resulting in ODI-FDI structure. ➢ FDI through ODI is not a bonafide business activity and is in contravention of Regulation 6(2)(ii) of FEMA 120. ➢ It further contravened provisions relating to delay in reporting of step down investment by WOS in Singapore and there was also delay in filing of Annual Performance Reports also.

Miscellaneous

The Central Board of Direct Taxes vide *Notification No. 79/2017/F. No. 370142/18/2017-TPL* has notified that in exercise of the powers conferred by clause (ba) of Explanation to Section 54EC of the Income-tax Act, 1961, any bond redeemable after three years and issued by the Indian Railway Finance Corporation Limited, a company formed and registered under the Companies Act, 1956 (1 of 1956), on or after the date of publication of this notification in the Official Gazette, as 'long-term specified asset' for the purposes of the said section.

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