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.India and Hong Kong sign Double Taxation Avoidance Agreement (DTAA) - Notification No. 89/2018, dated 21-12-2018

Under Section 90 of the Income-tax Act, 1961, the Central Government may enter into an Agreement with a foreign country or specified territory outside India for granting of relief in respect of doubly taxed income or for the avoidance of double taxation of income or for exchange of information for the prevention of evasion or avoidance of income tax chargeable under the Income-tax Act, 1961.

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.

The said Agreement entered into force on the 30.11.2018, being the date of the later of the notifications of the completion of the procedures required by the respective laws for entry into force of the said Agreement, in accordance with paragraph 2 of Article 29 of the said Agreement.

The said Agreement provides that the provisions of the Agreement shall have effect in India in respect of income derived in any fiscal year beginning on or after the first day of April following the date on which the Agreement enters into force {sub-paragraph (b) of paragraph 3 of Article 29}.

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. Procedure, Formats and Standards of issue of Permanent Account Number (PAN) - Notification No. 7/2018, dated 27-12-2018

As per Rule 114(6) notified vide notification G.S.R. No. 1128(E) dated 19.11.2018, *the Principal Director General of Income-tax (Systems) or Director-General of Income-tax (Systems) has to specify that formats and standards alongwith procedure for the verification of documents filed with the application under sub-rule (4), intimation of Aadhaar number in sub-rule (5) and issue of permanent account number, for ensuring secure capture and transmission of data in such format and standards and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to furnishing of the application forms for allotment of permanent account number, intimation of Aadhaar number and issue of permanent account number.*

In exercise of the powers delegated by the CBDT vide above notification G.S.R. No. 1128(E) dated 19.11.2018, the PDGIT(Systems) has laid down the procedure, formats and standards for issue of permanent account number as under: -

S. No.	Issuing authority/agency	Procedure for issue of permanent account number	Formats and standards for issue of permanent account number
1	Director of Income-tax (Systems) or respective Commissioner of Income-tax (Computer Operations)	Physical mode	Black & white and laminated permanent account number card

2	Authorised permanent account number service provider	Physical mode	Coloured, laminated and credit card size permanent account number card as per approved design and specifications having one or more security features of only hologram or hologram and QR code/enhanced QR code (having demographic as well as biometric information).
3		Electronic mode (ePAN)	Permanent account number issued electronically in PDF format with enhanced QR code (having demographic as well as biometric information) and digitally signed (class 2 or class 3) by issuing agency as per Information Technology Act, 2000 which provides for legal recognition of electronic records with digital signatures.

3. Procedure, format and standards for filing an application for grant of certificate for deduction of Income-tax at any lower rate or no deduction of Income-tax under section 197(1) / collection of the tax at any lower rate under section 206C(9) through TRACES - Notification No. 8/2018, dated 31-12-2018

As per Section 197(1), where, in the case of any income of any person or sum payable to any person, income-tax is required to be deducted at the time of credit or, as the case may be, at the time of payment at the rates in force under the provisions of Sections 192, 193, 194, 194A, 194C, 194D, 194G, 194H, 194-I, 194J, 194K, 194LA, 194LBB, 194LBC and 195, if the Assessing Officer (AO) is satisfied that the total income of the recipient justifies the deduction of income-tax at any lower rates or no deduction of income-tax, as the case may be, the AO shall, on an application made by the assessee in this behalf, give to him such certificate as may be appropriate. Further, as per Section 206C(9) where the Assessing Officer is satisfied that the total income of the buyer or licensee or lessee justifies the collection of the tax at any lower rate than the relevant rate specified in sub-section (1) or sub-section (1C), the AO shall, on an application made by the buyer or licensee or lessee in this behalf, give to him a certificate for collection of tax at such lower rate than the relevant rate specified in sub-section (1) or sub-section (1C).

Vide CBDT Notification No. 74/2018 dated 25.10.2018, Rule 28/37G has been amended to provide for filing an application for grant of certificate for deduction of Income-tax at any lower rate or no deduction of Income-tax under section 197(1) / collection of the tax at any lower rate under section 206C(9) to be made in Form No. 13 electronically in accordance to the procedures, formats and standards for ensuring secure capture and transmission of data and uploading of documents to be laid down by the PDGIT (Systems).

In exercise of the powers delegated by the CBDT, under Rule 28(2) / Rule 37G(2), the PDGIT (Systems) vide this notification has specified the procedure, format and standards for the purpose of electronic filing of Form No. 13 and generation of certificate under section 197(1) / Section 206C(9) through TRACES. For details regarding:

(a) Procedure for electronic filing of Form 13,

(b) Procedure for assignment of application to the TDS Assessing Officers,

(c) Processing of the tax-payer/ Deductee's request by the TDS Assessing Officer, Range Heads and Commissioners of Income-tax (including role of range Head, CIT), and

(d) Issuance of certificate the said Notification may be referred.

Legal Update

The complete text of the above Notifications can be downloaded from the link below:

http://www.incometaxindia.gov.in/Pages/communications/notifications.aspx

II. CIRCULARS

1. Explanatory Notes to the Provisions of the Finance Act, 2018 - Circular No. 8/2018, Dated 26-12-2018

This Circular contains the Explanatory Notes to the provisions of Finance Act, 2018 which received the assent of the President on 29th March 2018. This circular thus explains the new provisions inserted by the Finance Act, 2018 and the amendments made in the provisions of direct tax laws by the Finance Act, 2018.

2. Extending the due date for furnishing of report under section 286(4) of the Income-tax Act, 1961 & Amendment of the Income-tax Rules, 1962 {Rule 10DB(4} to provide the time limit for furnishing of report by constituent entity of an international group, resident in India - Circular No. 9/2018, Dated 26-12-2018 & Notification No. 88/2018, Dated 18-12-2018

Vide Notification in GSR 1217 (E) {Notification No. 88} dated 18.12.2018 with effect from the date of its publication in the Official Gazette. i.e., 18.12.2018; amendments to the Income-tax Rules, 1962 have been carried out and Rule 10DB(4) has been substituted to provide that the period for furnishing of the report under section 286(4) by the constituent entity referred to in that sub-section shall be twelve months from the end of the reporting accounting year.

It has been further provided that in case the parent entity of the constituent entity is resident of a country or territory, where, there has been a systemic failure of the country or territory and the said failure has been intimated to such constituent entity, the period for submission of the report shall be six months from the end of the month in which said systemic failure has been intimated.

Representations from the stakeholders were received by the CBDT in the matter. It has been, *inter alia*, stated that the constituent entity of an international group, which is resident in India, having parent entity resident in jurisdictions with which India does not have an agreement providing for exchange of the report of the nature referred to in Section 286(2) and where the reporting accounting year is calendar year based, i.e., Ending on December 31 of the year, would need to furnish the report under section 286(4) in India by 31.12.2018.

It has also been represented that read with the amendment to Section 286 and the substituted Rule 10DB(4), the constituent entity in such case for reporting accounting year ending on 31.3.2017 would have been required to furnish the CbCR by 31.3.2018 which is not plausible.

In order to remove the genuine hardship in furnishing of the report under section 286(4) r.w.r. 10DB(4) caused as above and as a one-time measure, the CBDT in exercise of powers conferred under section 119 has extended the period for furnishing of said report by the constituent entities referred to under clause (a) or (aa) of said sub-section in respect of reporting accounting years ending upto 28.2.2018 to 31.3.2019.

1. Income-tax deduction from salaries during the financial year 2018-19 under section 192 of the Income-tax Act, 1961 - Circular No. 1/2019, Dated 01-01-2019

This CBDT Circular contains the rates for deduction of income-tax from the payment of income chargeable under the head "Salaries" during the financial year 2018-19 and explains certain provisions of the Income-tax Act, 1961 and Income-tax Rules, 1962, including the broad scheme of TDS from Salaries, persons responsible for deducting tax at source from Salaries and their duties, computation of income under the head "Salaries" etc.

The detailed circulars can be downloaded from the link below:

http://www.incometaxindia.gov.in/Pages/communications/circulars.aspx

III. PRESS RELEASES/INSTRUCTIONS/OFFICE MEMORANDUM

1. Exception from online filing of application under section 197 and 206C(9) in the cases of NRIs and resident applicants – Press Release, dated 24-12-2018

The CBDT has decided to allow exception from online filing of application under section 197 and 206C(9) in the cases of NRIs and resident applicants.

Vide Notification No. 74/2018 dated 25.10.2018, Rule 28 was amended to prescribe electronic filing of application for lower deduction or no deduction under section 197 using digital signature or

EVC. Similar changes were also made in Rule 37G to prescribe electronic filing of application under section 206C(9) for lower or nil rate of tax collection at source (TCS). The functionality for online filing has since been made available by CPC-TDS through TRACES portal. Form No. 13 is the common form for application under section 197 and 206C(9).

For proper administration of the provisions of Section 197 and 206C(9) and to remove genuine hardship being faced by certain applicants in filing online application in Form No. 13, the CBDT by virtue of the powers conferred under section 119(1) has:

(i) allowed non-resident Indians (NRIs), who are not able to register themselves on TRACES, to file manual application in Form No. 13 before the TDS officer or in ASK Centers till 31.03.2019.

(ii) allowed resident applicants to file manual application in Form No. 13 before the TDS officer or in ASK Centers till 31.12.2018.

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

1. GST

Extension in the time limit for furnishing the Various Forms / returns

S.No.	Particulars	Form Number	Existing / Earlier due date	Extended due date	N. No.
1.	Time period specified in N. No. 31/2018-CT dt. 06th Aug, 2018 for completing migration of taxpayers who received provisional IDs but could not complete the migration process.	**GST REG-01** *(after submitting details to the concerned Jurisdictional officer)*	Part-1 31st Aug, 2018 **Part-2** 30th Sep, 2018	**Part-1** 31st Jan, 2019 **Part-2** 28th Feb, 2019	N No. 67/2018 – CT dt. 31st Dec, 2018
2.	The time limit for furnishing the return for the newly migrated taxpayers for the period Jul, 2017 to Feb, 2019.	GSTR-3B / GSTR-1	31st Dec, 2018	31st Mar, 2019	N No. 68/2018 – CT N No. 69/2018 – CT N No. 70/2018 – CT N No. 71/2018 – CT N No. 72/2018 – CT dt. 31st Dec, 2018
3.	The time limit for furnishing the declaration in respect of goods dispatched to a job worker or received from a job worker, during the period from July, 2017 to December, 2018	FORM GST ITC-04	31st Dec, 2018	31st March, 2019	N No. 78 /2018 – CT dt. 31st Dec, 2018

Legal Update

Waiver of late fees leviable on delayed furnishing of returns

The Central Government vide N No. 75/2018 – CT /N No. 77/2018 – CT dt. 31st Dec, 2018 notified amendment in the N.No 4/2018- CT dt. 23rd January, 2018/ N No 73/2017- CT dt. 29th December, 2017 by inserting the following proviso in the notification:-

"Provided further that the **amount of late fee payable under section 47 of the said Act shall stand waived for the registered persons who failed to furnish the details of outward supplies in FORM GSTR-3B/GSTR-1/GSTR-4 for the months/quarters from July, 2017 to September, 2018** by the due date but furnishes the said details in FORM GSTR-1 between the period from 22nd December, 2018 to 31st March, 2019."

Comment: Late fee shall be completely waived for all such taxpayers who are in default as on the date of this notification for failure to file FORM GSTR-1, FORM GSTR-3B and FORM GSTR-4 for the months / quarters July, 2017 to September, 2018.

[N. No. 75/2018 – CT N. No. 76/2018 /N. No. 77/2018 – CT dt. 31st Dec, 2018]

Exemption from TDS -Supplies made by Government Departments and PSUs to other Government Departments and vice-versa.

Central Government vide N. No. 73/2018 – CT dt. 31st Dec, 2018 notified exemption to supplies made by Government Departments and PSUs to other Government Departments and vice-versa from TDS and thus insert the following proviso after the second proviso, namely:-

"Provided also that nothing in this notification shall apply to the supply of goods or services or both which takes place between one person to another person specified under clauses (a), (b), (c) and (d) of sub-section (1) of Section 51 of the said Act."

[N. No. 73/2018 – CT dt. 31st Dec, 2018]

Amendment in exemption list of certain services

The Central Government vide N. No. 28/2018- CT (R) dt. 31st Dec, 2018 hereby makes the following amendments in the N. No.12/2017- CT (R), dt. the 28th June, 2017, namely:

1. **Insertion of Serial Number 21B:** Services provided by GTA to Government departments/ local authorities exempted which have taken registration only for the purpose of deducting tax under section 51

Sl No	Chapter, Section or Heading	Description of Service	Rate	Condition
(1)	(2)	(3)	(4)	(5)
21B	9965 or 9967	Services provided by a goods transport agency, by way of transport of goods in a goods carriage, to, - (a) a Department or Establishment of the Central Government or State Government or Union territory; or (b) local authority; or (c) Governmental agencies, which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.	Nil	Nil

Comment: Only GTA services are exempted. Care must be taken where goods transport services are provided under fixed-price contracts to these departments.

2. **Insertion of Serial Number 27A:** Services supplied by banks to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY)

Sl. No.	Chapter, Section or Heading	Description of Service	Rate	Condition
(1)	(2)	(3)	(4)	(5)
27A	9971	Services provided by a banking company to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY).	Nil	Nil

Comment: This exemption entry is a clear indication that the said 'services' were taxable for the past period and continues to be taxable in all other cases of account holders. This has been a point attracting much media in the recent past about services at 'no charge' by banks to account holders.

3. Insertion of serial number 74A: Services supplied by rehabilitation professionals recognised under Rehabilitation Council of India Act, 1992 at medical establishments, educational institutions, rehabilitation centers

Sl. No.	Chapter, Section or Heading	Description of Service	Rate	Condition
(1)	(2)	(3)	(4)	(5)
74A	9993	Services provided by rehabilitation professionals recognised under the Rehabilitation Council of India Act, 1992 (34 of 1992) by way of rehabilitation, therapy or counselling and such other activity as covered by the said Act at medical establishments, educational institutions, rehabilitation centers established by Central Government, State Government or Union territory or an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961).	Nil	Nil

4. Insertion of meaning of "financial institution" in clause (zaa)

"(zaa) "financial institution" has the same meaning as assigned to it in clause (c) of Section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934)."

[N. No. 28/2018- CT (R) dt. 31st Dec, 2018]

Services under Reverse Charge Mechanism

Central Government vide N. No. 29/2018- CT (R) dt. 31st Dec, 2018 notified the following amendments in the N. No. 13/2017- CT (R) dt. 28th June, 2017, namely:-

1. Insertion of proviso to item (g) serial number 2:

"Provided that nothing contained in this entry shall apply to services provided by a goods transport agency, by way of transport of goods in a goods carriage by road, to -

(a) a Department or Establishment of the Central Government or State Government or Union territory; or

(b) local authority; or

(c) Governmental agencies,

which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services."

Comment: Services provided by GTA to Government departments / local authorities exempted which have taken registration only for the purpose of deducting tax under section 51 not liable under RCM.

1. Insertion of new services to RCM under section 9(3) of CGST Act under serial number 14, 15 and 16:

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service	*Comment*
(1)	(2)	(3)	(4)	(5)
12	Services provided by business facilitator (BF) to a banking company	Business facilitator (BF)	A banking company, located in the taxable territory	

13	Services provided by an agent of business correspondent (BC) to business correspondent (BC).	An agent of business correspondent (BC)	A business correspondent, located in the taxable territory.	
14	Security services (services provided by way of supply of security personnel) provided to a registered person: Provided that nothing contained in this entry shall apply to, - (i)(a) a Department or Establishment of the Central Government or State Government or Union territory; or (b) local authority; or (c) Governmental agencies; which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under section 51 of the said Act and not for making a taxable supply of goods or services; or (ii) a registered person paying tax under section 10 of the said Act.	Any person other than a body corporate	A registered person, located in the taxable territory.	*Therefore when Security services are provided to registered persons only then no need to take registration as per Section 23 of CGST Act, 2017, However, when supplier of security services provides services to registered as well as unregistered person then such supplier is required to take registration for supply to unregistered recipient and those under composition.*

2. Clause (h) to the explanation inserted:

Clause (h) states that the provisions of this notification, in so far as they apply to the Central Government and State Governments, shall also apply to the Parliament and State Legislatures.

[N. No. 29/2018- CT (R) dt. 31st Dec, 2018]

Explanation inserted in an item in N. No.. 11/2017 – CT (R)

The Central Government vide N. No. 30/2018-CT (R) dt. 31st Dec, 2018 clarified the applicability of N. No.11/2017- CT (R), dt. the 28th June, 2017, hereby inserts the following Explanation in the said notification, in the Table, against serial number 9, in column (3), in item (vi), namely:-

"Explanation 2.-Nothing contained in this item shall apply to supply of a service other than by way of transport of goods from a place in India to another place in India."

Comment: The entry covers only domestic multi-modal transport. This is much needed relief to MMTs.

[N. No. 30/2018-CT (R) dt. 31st Dec, 2018]

Integrated Goods and Services Tax (Amendment) Rules, 2018

Central Government vide *N. No. 04/2018- Integrated Tax dt. 31st Dec, 2018* notified the following rules as Integrated Goods and Services Tax (Amendment) Rules, 2018:-

1. Rule 3 in clause (h):

The words **"the service shall be deemed to have been provided all over India and"** inserted after the words "in the case of advertisements over internet" to clarify that the services provided over internet is not specific to 1 or more State or Union territory and shall be deemed to be provided all over India.

2. Insertion of Rule 4:

The place of supply in case of the supply of services attributable to different States or Union territories, under sub-section (3) of Section 12 of the IGST Act, 2017 shall be:-

a. Where such immovable property or boat or vessel is located in more than one State or Union territory- each of the respective States or Union territories and

b. In the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory- to be determined in the following manner namely:-

i. **Services provided by way of lodging accommodation by a hotel, inn, guest house, club or campsite, by whatever name called and services ancillary to such services**:

ii. *Where such property is a single property located*

in two or more contiguous States or Union territories or both: the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the area of the immovable property lying in each State or Union territory.

iii. *Cases except where such property is a single property located in two or more contiguous States or Union territories or both:* the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the number of nights stayed in such property.

iv. *All other services in relation to immovable property including services by way of accommodation in any immovable property for organising any marriage or reception etc :* the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the area of the immovable property lying in each State or Union territory

v. *Services provided by way of lodging accommodation by a house boat or any other vessel and services ancillary to such services:* the supply shall be treated as made in each of the respective States or Union territories, in proportion to the time spent by the boat or vessel in each such State or Union territory, determined on the basis of a declaration made to the effect by the service provider.

3. Insertion of Rule 5:

The place of supply in case of supply of services attributable to different States or Union territories, under sub-section (7) of Section 12 of the said Act, in the case of-

a. services provided by way of organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, including supply of services in relation to a conference, fair exhibition, celebration or similar events; or

b. services ancillary to the organisation of any such events or assigning of sponsorship to such events,

where the services are supplied to a person other than a registered person, the event is held in India in more than one State or Union territory and a consolidated amount is charged for supply of such services, shall be taken as being in each of the respective States or Union territories, and in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be determined by application of the generally accepted accounting principles.

4. Insertion of Rule 6: Supply under section 12(11) of the IGST Act

In the case of supply of services relating to a leased circuit, where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of such services, shall be taken as being in **each of the respective States or Union territories**, and in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be determined in the following manner, namely:-

a. The number of points in a circuit shall be determined in the following manner:

   i. in the case of a circuit between two points or places, the starting point or place of the circuit and the end point or place of the circuit will invariably constitute two points;

   ii. any intermediate point or place in the circuit will also constitute a point provided that the benefit of the leased circuit is also available at that intermediate point;

b. the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the number of points lying in the State or Union territory.

5. Insertion of Rule 7

In the case of **services supplied in respect of goods** which are required to be made physically available by the recipient to the supplier, or to a person acting on behalf of the supplier, or in the case of **services supplied to an individual**, represented either as the recipient or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, *where the location of the supplier of services or the location of the recipient of services is outside India*, and where such services are supplied in more than one State or Union territory, *shall be taken as being in each of the respective States or Union territories*, and the proportion of value attributable to each such State and Union territory in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the

case maybe, shall be determined in the following manner, namely:-

a. in the case of services supplied on the same goods, by equally dividing the value of the service in each of the States and Union territories where the service is performed;

b. in the case of services supplied on different goods, by taking the ratio of the invoice value of goods in each of the States and Union territories, on which service is performed, as the ratio of the value of the service performed in each State or Union territory;

c. in the case of services supplied to individuals, by applying the generally accepted accounting principles.

6. Insertion of Rule 8

In case of supply of services directly in relation to an immovable property, including services supplied by the experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators, where the location of the supplier of services or the location of the recipient of services is outside India, and where such services are supplied in more than one State or Union territory, in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be determined *by applying the provisions of Rule 4, mutatis mutandis.*

7. Insertion of Rule 9

In case of supply of services by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, where the location of the supplier or the location of the recipient is outside India, and where such services are provided in more than one State or Union territory, in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be determined *by applying the provisions of Rule 5, mutatis mutandis".*

For details, relevant notification may be referred.

[N. No. 04/2018- Integrated Tax dt. 31st Dec, 2018]

Clarification on certain issues related to GST

The Central Government vide Circular No. 76/50/2018-GST dt. 31st Dec, 2018 clarified certain issues under the GST Law as under:-

Sl. No.	Issue	Clarification
1.	Whether the supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by Government departments are taxable under GST?	a. Intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by the Central Government, State Government, Union territory or a local authority is a taxable supply under GST. b. N. No. 36/2017-CT (R) and N. No. 37/2017- IGST (R) notified that such **supply to any registered person would be subject to GST on reverse charge basis.** c. Such supply to **an unregistered person is also a taxable supply under GST** but is not covered under N. No. 36/2017-CT (R) and N. No. 37/2017- Integrated Tax (Rate). d. It is clarified that the respective Government departments shall be liable to get registered and pay GST on intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by them to an unregistered person subject to the provisions of Sections 22 and 24 of the CGST Act.

2.	Whether penalty in accordance with Section 73 (11) of the CGST Act should be levied in cases where the return in FORM GSTR-3B has been filed after the due date of filing such return?	It is clarified that penalty under the provisions of Section 73(11) of the CGST Act is not payable in case of delayed filing of the return in FORM GSTR-3B because tax along with applicable interest has already been paid but after the due date for payment of such tax. It is further clarified that since the tax has been paid late in contravention of the provisions of the CGST Act, a general penalty under section 125 of the CGST Act may be imposed after following the due process of law. *Comment: Penalty cannot be imposed and adjudicated without issuance of SCN.*
3.	In case a debit note is to be issued under section 142(2)(a) of the CGST Act or a credit note under section 142(2)(b) of the CGST Act, what will be the tax rate applicable – the rate in the pre-GST regime or the rate applicable under GST?	It is clarified that in case of revision of prices, after the appointed date, of any goods or services supplied before the appointed day thereby requiring issuance of any supplementary invoice, debit note or credit note, **the rate as per the provisions of the GST Acts (both CGST and SGST or IGST) would be applicable.**
4.	Applicability of the provisions of Section 51 of the CGST Act (TDS) in the context of N. No. 50/2018-CT dt. 13.09.2018.	The doubt regarding the applicability of long line mentioned in clause (a) of N. No. 50/2018- CT dt. 13.09.2018 has been clarified that it is applicable to both the items (i) and (ii) of clause (a) of the said notification. In other words, the provisions of Section 51 of the CGST Act are applicable only to such authority or a board or any other body set up by an Act of parliament or a State legislature or established by any Government in which fifty one per cent or more participation by way of equity or control is with the Government.
5.	What is the correct valuation methodology for ascertainment of GST on Tax collected at source (TCS) under the provisions of the Income -tax Act, 1961?	Section 15(2) of CGST Act specifies that the value of supply shall include "any taxes, duties cesses, fees and charges levied under any law for the time being in force other than this Act, the SGST Act, the UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier." Thus, it is clarified that as per the above provisions, taxable value for the purposes of GST shall include the TCS amount collected under the provisions of the Income-tax Act. *Comment: Although TCS is only a mode of collection of tax, it appears that the amount of TCS paid by Buyer to Supplier will go to settle Buyer's tax liability or may even be refunded. Income-tax is a tax on income and not a tax on Person. As such, seeking its exclusion from valuation on the premise that TCS is not 'retained' by Supplier may not be readily accepted by Government as there is no such premise laid down as a test in Section 15. And objections to inclusion of TCS may be resisted as an aspect that flows from the operation of Section 15(2) and not although not part of 2(31). But the immediate concern is that calculation of GST on 'value + TCS' is cumbersome.* *Please also note that this clarification will have retrospective operation.*

6.	Who will be considered as the owner of the goods for the purposes of Section 129(1) of the CGST Act?	It is hereby clarified that if the invoice or any other specified document is accompanying the consignment of goods, then either the consignor or the consignee should be deemed to be the owner. If the invoice or any other specified document is not accompanying the consignment of goods, then in such cases, the proper officer should determine who should be declared as the owner of the goods.

[Circular No. 76/50/2018-GST dt. 31st Dec, 2018]

Denial of composition option by tax authorities and effective date thereof

Central Government vide Circular No. 77/51/2018-GST dt. 31st Dec, 2018 clarified the issue related to the effective date of withdrawal from the composition scheme as per Rule 6 of the CGST Rules, 2017 in case of :-

A. Where the composition taxpayer has exercised such option to withdraw.

The effective date shall be the **date indicated by him in his intimation/application filed in FORM GST CMP-04** but such date may not be prior to the commencement of the financial year in which such intimation/application for withdrawal is being filed.

If at any stage it is found that he has contravened any of the provisions of the CGST Act or the CGST Rules, action may be initiated for recovery of tax, interest and penalty.

B. Where action has been initiated by the tax authorities to deny such option.

The effective date of such denial shall be from a date, including any retrospective date as may be **determined by tax authorities**, but shall not be prior to the date of contravention of the provisions of the CGST Act or the CGST Rules.

As per Section 10(5) of the CGST Act, the proceedings would have to be initiated under the provisions of Section 73/ 74 of the CGST Act for determination of tax, interest and penalty for the period starting from the date of contravention of provisions till the date of issue of order in FORM GST CMP-07. It is also clarified that the registered person shall be liable to pay tax under section 9 from the date of issue of the order in FORM GST CMP-07. Provisions of Section 18(1)(c) of the CGST Act shall apply for claiming credit on inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the date immediately preceding the date of issue of the order.

[Circular No. 77/51/2018-GST dt. 31st Dec, 2018]

Clarification on export of services under GST

Central Government vide Circular No. 78/52/2018-GST dt. the 31st Dec, 2018 clarified the tax treatment in case where an exporter of services outsources a portion of the services contract to another person located outside India. Hence involve two supplies–

1. Supply of services from the exporter of services located in India to the recipient of services located outside India for the full contract value
2. Import of services by the exporter of services located in India from the supplier of services located outside India with respect to the outsourced portion of the contract.

In this regard it has been clarified that where an exporter of services outsources a portion of the services contract to another person located outside India, full value of consideration will be treated as export of services provided the IGST has been paid on import of services and RBI allow that a part of consideration for such exports can be retained outside India. Care should be taken to maintain correlation between the work outsourced and the export contract in respect of which such outsourcing is involved. It is common to find such arrangements with associated entities where correlation may not be rigorously maintained.

[Circular No. 78/52/2018-GST dt. the 31st Dec, 2018]

Clarification on refund related issues

The Central Government vide Circular No. 79/53/2018-GST dt. 31st Dec, 2018 clarified the following issues related to refunds:

- All documents/undertaking/statements to be submitted along with the claim for refund in FORM GST RFD-01A shall be uploaded on the common portal.
- Manner of calculation of refund amount under inverted rate structure.
- Disbursal of refund amounts after sanction.
- Refund applications that have been generated on the portal but not physically received in the jurisdictional tax offices, before issuance of the Circular.
- Issues related to refund of accumulated ITC of Compensation Cess.
- ITC of GST paid on invoices of earlier tax period availed in subsequent tax period cannot be excluded from the calculation of the refund amount of subsequent tax period.
- The GST paid on inward supplies of stores and spares, packing materials etc. shall be available as ITC as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted under section 17(5) of the CGST Act. Further, Stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods

For further details Refer detailed circular at http://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular-No-79.pdf;jsessionid=DD145F4F415FC1A41ADFE45BBCA24B00

[Circular No. 79/53/2018-GST dt. 31st Dec, 2018]

Applicability of GST on various programmes conducted by the Indian Institutes of Managements (IIMs)

The Central Government has clarified that **Programmes offered by IIMs are exempt from tax as below in brief:**

Period	***Exempt from GST***	**Not exempt from GST**	**Exemption under**
1st July, 2017 to 30th January, 2018	*3 Programmes (mentioned above)*	(i) One- year Post Graduate Programs for Executives, (ii) Any programs other than those mentioned at Sl. No. 67 of NN 12/2017- CT (Rate) (iii) All short duration executive development programs or need based specially designed programs (less than 1 year).	Sl. No. 66 of N. No.. 12/2017- CT (R)
31st January, 2018 onwards	All long duration programs (one year or more) conferring degree/ diploma as recommended by Board of Governors as per the power vested in them under the IIM Act, 2017 including one- year Post Graduate Programs for Executives.	All short duration executive development programs or need based specially designed programs (less than one year) which are not a qualification recognised by law.	**From 31.01.2018 to 31.12.2018-** Sno.66 of NN 12/2017- - CT (R) OR Sno.67 of NN 12/2017- CT (R) **From 1.01.2019-** Sno.66 of NN 12/2017- CT (R)

[Circular No. 82/01/2019- GST dt. 1st January, 2019]

Applicability of GST on Asian Development Bank (ADB) and International Finance Corporation (IFC) -

The Central Government vide Circular No. 83/02/2019- GST dt. 1st January, 2019 clarified that that the services provided by IFC and ADB are exempt from GST in terms of provisions of IFC Act, 1958 and ADB Act. The exemption will be available only to the services provided by ADB and IFC and not to any entity appointed by or working on behalf of ADB or IFC.

The matter has been clarified in the light of order from CESTAT Mumbai in the case of M/s Coastal Gujarat Power Ltd which held

that the enactments that honour international agreements specifically immunise the operations of the service provider from taxability, a law contrary to that in the form of Section 66A of Finance Act, 1994 will not prevail.

IFC Act, 1958 and ADB Act, 1966 not only immune from taxation but also absolved of any obligation to collect and deposit any tax, there is no scope for subjecting the recipient to tax. There is no need for a separate exemption and existing laws enacted by the sovereign legislature of the Union suffice for the purpose of giving effect to Agreements.

[Circular No. 83/02/2019- GST dt. 1st January, 2019]

Clarification on GST rate applicable on supply of food and beverage services by educational institution

The Central Government vide Circular No. 85/04/2019- GST dt. 1st January, 2019 clarified that supply of food and beverage services by educational institution to its students, faculty and staff is eligible for exemption under GST under N. No. 12/2017-CT (R) although the rate of 5% has been prescribed on supply of food and beverages services under N. No. 11/2017-CT (R). However, such supply of food and beverages by any person other than the educational institutions based on a contractual arrangement with such institution is leviable to GST@ 5%.

A supply which is specifically covered by any entry of N. No. 12/2017-CT (R) dt. 28-06-2017 is exempt from GST notwithstanding the fact that GST rate has been prescribed for the same under N. No. 11/2017-CT (R) dt. 28.06.2017.

In order to remove any doubts on the issue, Explanation 1 to Entry 7(i) of N. No. 11/2017-CT (R) dt. 28.06.2017 has been amended vide N. No. 27/2018-CT (R) dt. 31.12.2018 to omit from it the words "school, college". Further, heading 9963 has been added in Column (2) against entry at Sl. No. 66 of N. No. 12/2017-CT (R) dt. 28.06.2017, vide N. No. 28/2018-CT (R) dt. 31.12.2018.

[Circular No. 85/04/2019- GST dt. 1st January, 2019]

Facilitator (BF) or a Business Correspondent (BC) to Banking Company

The Central Government vide Circular No. 86/05/2019- GST dt. 1st January, 2019 clarified that the following two issues regarding Services provided by Business Facilitator (BF) or a Business Correspondent (BC) to Banking Company:-

i. Issue 1: Clarification on value of services by BF/BC to a banking company. It has been clarified that the banking company is liable to pay GST on the entire value of service charge or fee charged to customers whether or not received via business facilitator or the business correspondent.

   Banking company is the service provider in the business facilitator model or the business correspondent model operated by a banking company as per RBI guidelines. Since banks pay reasonable commission/ fee to the BC and the agreement of banks with the BC specifically prohibits them from directly charging any fee to the customers for services rendered by them on behalf of the bank. Thus, it is clearly specified that the bank is responsible to the customer for acts of omission and commission of the Business Facilitator/Correspondent.

ii. Issue 2: Clarification on the scope of services by BF/BC to a banking company with respect to accounts in rural areas.

   It has been clarified that for the purpose of availing exemption from GST under Sl. No. 39 of N. No. 12/2017- CT (R) dt. 28.06.2017 (services provided in relation to "accounts in its rural area branch" by BF/BC to a banking company), the conditions are that the services provided by a BF/BC to a banking company in their respective individual capacities should fall under the Heading 9971 and that such services should be with respect to accounts in a branch located in the rural area of the banking company.

[Circular No. 86/05/2019- GST dt. 1st January, 2019]

Central Goods and Services Tax (Amendment) Act, 2018- Clarification regarding Section 140(1) of the CGST Act, 2017

The Central Government vide Circular No. 87/06/2019- GST dt. 2nd January, 2019 clarified that the CENVAT credit of service tax paid under section 66B of the Finance Act, 1994 was available as transitional credit under section 140(1) of the CGST Act and that legal position has not changed due to amendment of Section 140(1) on account of following reasons:

1. The transition of credit of taxes paid under section 66B of the Finance Act, 1994 was never intended to be disallowed under section 140(1) and therefore no such remark was present in the "Rationale/ Remarks" column (at Sl. No. 37) of the draft proposals for amending the GST law.
2. Under tax statutes, the word "duties" is used interchangeably with the word "taxes" and in the present context, the two words should not be read in a disharmonious manner.
3. The amendment in provisions of Section 140(1) and the explanations to Section 140 need to be read harmoniously such that neither any provision of the amendment becomes otiose nor does the legislative intent of the amendment get defeated.

Further, it has been decided not to notify the clause (i) of sub-section (b) of Section 28 and clause (i) of sub-section (c) of Section 28 of CGST (Amendment) Act, 2018 which link Explanation 1 and Explanation 2 of Section 140 to Section 140(1). This would ensure that the credit allowed to be transitioned under section 140(1) is not linked to credit of goods in stock, as provided under Explanation 1, and credit of goods and services in transit, as provided under Explanation 2.

[Circular No. 87/06/2019- GST dt. 2nd January, 2019]

Extension in the due date for availing ITC on the invoices or debit notes issued during the FY 2017-18

With a view to remove difficulties arising in giving effects to the provisions of sub-section (4) of Section 16 and sub-section (3) of Section 37, the Central Government vide Order No. 02/2018-CT dt. 31st Dec, 2018 bought in **Central Goods and Services Tax (Second Removal of Difficulties) Order, 2018** providing for :-

1. Insertion of proviso to sub-section (4) of Section 16 of the Act

"Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of Section 37 **till the due date for furnishing the details under sub-section (1) of said Section for the month of March, 2019.**"

2. Insertion of proviso to sub-section (3) of Section 37 of the Act

"Provided further that the rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the month of September, 2018 **till the due date for furnishing the details under subsection (1) for the month of March, 2019 or for the quarter January, 2019 to March, 2019**."

Comment: Please note that there is no requirement to await another specific extension of time for filing GSTR 1 for 17-18.

[Order No. 02/2018-CT dt. 31st Dec, 2018]

Extension in due date for furnishing of annual returns in FORM GSTR-9, GSTR-9A and reconciliation statement in FORM GSTR-9C for the FY 2017-2018 till 30.06.2019.

With a view to remove difficulties arising in filing annual return, the Central Government

vide Order No. 03/2018-CT dt. 31st Dec, 2018 bought in **Central Goods and Services Tax (Third Removal of Difficulties) Order, 2018** providing for extension in filing of annual return by substituting letters and word "31st March, 2019" with "30th June, 2019" under section 44 of the CGST Act, 2017.

Comment: Extension of due date is a positive step providing enough time for taxpayers to understand and furnish the required details as well as preparation and testing time to GSTIN. Trade expected a complete overhaul of this Form but Government's intention seems conspicuous by the limited number of changes in the form and the paucity of explanation in the special instructions appended.

[Order No. 03/2018-CT dt. 31st Dec, 2018]

Extension in due date for furnishing FORM GSTR-8 by e-commerce companies for the months of October to December, 2018 till 31.01.2019

With a view to remove difficulties in giving effect to the provisions of sub-section (4) of Section 52 of the CGST Act, 2018, the Central Government vide Order No. 04/2018-CT dt. 31st Dec, 2018 bought in **Central Goods and Services Tax (Fourth Removal of Difficulties) Order, 2018** providing for extension in filing of statement electronically, containing the details of outward supplies of goods or services or both effected through it by every electric commerce operator for the months of October, November and December, 2018 to the 31st January, 2019.

Comment: Such extensions only aggravate the working capital liability of the Suppliers who may have already reported their outward supplies assuming the flow of TCS-credit in the respective months.

[Order No. 04/2018-CT dt. 31st Dec, 2018]

2. CUSTOMS

Exemption of temporary importation of private road vehicles from IGST and compensation cess

The Central Government vide N. No.. 86/2018 – Customs dt. 31st Dec, 2018 notified amendments to the N. No. 296/76-Customs, dt. the 2nd August, 1976, namely:-

i. *Insertion of the words, brackets and figures, "and sub-section (12) of section 3 of Customs Tariff Act, 1975 (51 of 1975) after the words, figures and brackets, "the Customs Act, 1962 (52 of 1962)", in the opening paragraph:* The exemption powers of the Central Government are provided under both Customs Act, 1962 as well as Customs Tariff Act, 1975.

ii. *Substitution of words "additional duty" with the words "integrated tax and goods and services compensation cess":* Temporary importation of private road vehicles are exempted from IGST and compensation cess, earlier called as additional duty in pre-GST regime.

[N. No. 86/2018 – Customs dt. 31st Dec, 2018]

Deferment of circular regarding Electronic Sealing-Deposit in and removal of goods of goods from Customs Bonded Warehouses

Central Government vide Circular No. 54/2018 dt. 31st Dec, 2018 provides for the deferment of the Circular No. 19/2018 dt. 18th June, 2018- RFID sealing of goods deposited and removal from Customs Bonded Warehouses. The implementation of the said circular was earlier deferred vide Circular No. 41/2018 dt. 30th October, 2018 to 1st January, 2019. The implementation of the circular thus stands deferred till the date notified.

[Circular No. 54/2018 dt. 31st Dec, 2018]

Central Goods and Services Tax (Fourteenth Amendment) Rules, 2018.

The Central Government vide N. No.74/2018 dt. 31st Dec, 2018 has notified Central Goods and

Services Tax (Fourteenth Amendment) Rules, 2018 particulars of which are explained below:

1. Insertion of sub-rule 1A in Rule 12 : It provides that a person applying for registration to collect tax in accordance with the provisions of Section 52, in a State or Union territory where he does not have a physical presence, shall mention the name of the State or Union territory in PART A of the application in FORM GST REG-07 and mention the name of the State or Union territory in PART B thereof in which the principal place of business is located which may be different from the State or Union territory mentioned in PART A.

2. **Omission in Rule 45 sub-rule 3:** After the words – received from a job worker, the words, – or sent from one job worker to another shall be omitted.

   Comment: It will relax the condition for reporting information in ITC-04 from one job worker to other job worker in relation to principal goods.

3. Signature or digital signature of the supplier or his authorised representative shall not be required in the case of issue of Invoice/ Bill of Supply/Consolidated Invoice/Issuance of tickets etc.

4. In explanation (b) to sub-rule (5) of Rule 89, Adjusted Total turnover" and "relevant period" shall have the same meaning as assigned to them in sub-rule (4).

5. In Rule 96, in sub-rule (1), in clause (a), after the words "export goods duly files", the words "a departure manifest or" shall be inserted.

6. In Rule 101, in sub-rule (1), after the words "financial year", the words "or part thereof" shall be inserted.

7. After Rule 109A, the following Rule shall be inserted, namely:-

   "109B. Notice to person and order of revisional authority in case of revision. - (1) Where the Revisional Authority decides to pass an order in revision under section 108 which is likely to affect the person adversely, the Revisional Authority shall serve on him a notice in FORM GST RVN-01 and shall give him a reasonable opportunity of being heard.

   (2) The Revisional Authority shall, along with its order under sub-section (1) of Section 108, issue a summary of the order in FORM GST APL-04 clearly indicating the final amount of demand confirmed."

8. In Rule 138, in sub-rule (1), for Explanation 1, the following Explanation shall be substituted,

   "Explanation 1. - For the purposes of this rule, the expression "handicraft goods" has the meaning as assigned to it in the Government of India, Ministry of Finance, notification No. 56/2018-Central Tax, dated the 23rd October, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1056 (E), dated the 23rd October, 2018 as amended from time to time."

9. In the said rules, after Rule 138D, from a **date to be notified later**, the following rule shall be inserted, namely:

   "138E. Restriction on furnishing of information in PART A of FORM GST EWB-01.- Notwithstanding anything contained in sub-rule (1) of Rule 138, no person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) shall be allowed to furnish the information in PART A of FORM GST EWB-01 in respect of a registered person, whether as a supplier or a recipient, who, -

   (a) being a person paying tax under section 10, has not furnished the returns for two consecutive tax periods; or

   (b) being a person other than a person specified in clause (a), has not furnished the returns for a consecutive period of two months:

Provided that the Commissioner may, on sufficient cause being shown and for reasons to be recorded in writing, by order, allow furnishing of the said information in PART A of FORM GST EWB 01, subject to such conditions and restrictions as may be specified by him:

Provided further that no order rejecting the request of such person to furnish the information in PART A of FORM GST EWB 01 under the first proviso shall be passed without affording the said person a reasonable opportunity of being heard:

Provided also that the permission granted or rejected by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be granted or, as the case may be, rejected by the Commissioner.

Explanation:– For the purposes of this rule, the expression "Commissioner" shall mean the jurisdictional Commissioner in respect of the persons specified in clauses (a) and (b).".

10. In rule 142, in sub-rule (5), after the words "Section 74", the words "or sub-section (12) of Section 75" shall be inserted.

11. Application of Refund FORM GST RFD-01 /01A have been changed to incorporate the changes related to e-declarations associated with refunds etc.

12. **Substitution in Form GSTR-9 & 9C:**

Following are the major changes which have been carried out in Form GSTR 9 and GSTR 9C in the format and the instructions:

• Amendment of headings in the forms to specify that the return in FORM GSTR-9 would be in respect of supplies etc. 'made during the year' and not 'as declared in returns filed during the year';

• All returns in FORM GSTR-1 & FORM GSTR-3B have to be filed before filing of FORM GSTR-9 & FORM GSTR-9C;

• HSN code may be declared only for those inward supplies whose value independently accounts for 10% or more of the total value of inward supplies;

• Additional payments, if any, required to be paid can be done through FORM GST DRC-03 only in cash;

• ITC cannot be availed through FORM GSTR-9 & FORM GSTR-9C;

• All invoices pertaining to previous FY (irrespective of month in which such invoice is reported in FORM GSTR-1) would be auto-populated in Table 8A of FORM GSTR 9;

• Value of "non-GST supply" shall also include the value of "no supply" and may be reported in Table 5D, 5E and 5F of FORM GSTR-9;

• Verification by taxpayer who is uploading reconciliation statement would be included in FORM GSTR-9C.

[N. No.74/2018 dt. 31st Dec, 2018]

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

Borrowing and Lending Regulations

Notification No. FEMA.3(R)/2018-RB dated December 17, 2018

In supersession of Notification No. FEMA 3/2000-RB dated May 3, 2000 and Notification No. FEMA 4/2000-RB dated May 3, 2000, as amended from time to time, RBI in accordance with powers conferred to in Section 6(3), issues Notification No. FEMA 3(R)/2018-RB dated December 17, 2018 as regulations for borrowing and lending between a person resident in India and a person resident outside India. ■