

Circulars/Notifications

Given below are the important Circulars and Notifications issued by the CBDT, CBEC and FEMA besides those related to GST, issued since the publication of the last issue of the journal, 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. Feedback and suggestions on this column can be submitted at eboard@icai.in



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

I. NOTIFICATIONS

1. Inter-Governmental Agreement for exchange of country by country reports between India and the United States of America notified - Notification No. 37/2019, dated 25-04-2019

The CBDT vide its *Press release dated 27.03.2019* announced that India and the United States of America had signed an Inter-Governmental Agreement for Exchange of Country-by-Country (CbC) Reports. CBDT has through this notification, notified the said agreement.

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

https://www.incometaxindia.gov.in/communications/notification/notification_37_2019.pdf

2. Procedure, format and standards for issuance of certificate for TDS in Part B of Form No. 16 through TRACES - Notification No. 09/2019, dated 06-05-2019

Section 203 read with the Rule 31 stipulates furnishing of certificate of tax deduction at source (TDS) by the deductor to the deductee specifying therein the prescribed particulars such as amount of TDS, valid permanent account number (PAN) of the deductee, tax deduction and collection account number (TAN) of the deductor, etc. The relevant form for TDS certificate in case of deduction under section 192 is Form No. 16 which is to be issued annually. TDS Certificate in Form No 16 has two parts viz. Part A and Part B (Annexure). Part A contains details of tax deduction and deposit and Part B (Annexure) contains details of income.

Vide Notification No. 36/2019 dated 12.04.2019, 'Part B (Annexure) of Form 16' and 'Annexure II of Form no. 24Q' in Appendix II have been amended. In exercise of the powers delegated by the CBDT,

under Rule 31(6A), the PDGIT (Systems) vide this notification has specified the procedure, formats and standards for the purposes of generation and download of certificates from "TDS Reconciliation Analysis and Correction Enabling System" (TRACES Portal) or (<https://www.tdscpc.gov.in>), as below:

Issue of Part B of Form No. 16 for deduction of tax at source made on or after 01.04.2018:

All deductors (including Government deductors who deposit TDS in the Central Government Account through book entry) shall be able to issue the TDS certificate in Part B of Form No. 16 (by generation and download through TRACES Portal) in respect of all sums deducted on or after 01.04.2018 under the provisions of Section 192 provided that the relevant TDS statement for the fourth quarter i.e. Form 24Q is furnished alongwith duly filled in Annexure II of Form 24Q as substituted vide Notification No. 36/2019 dated 12.04.2019. To ensure generation of accurate TDS certificate in Part B of Form No. 16, the deductor(s) need to report correct data in Annexure II of Form 24Q. The TRACES generated Form No. 16 shall have a unique TDS certificate number.

Authentication of TDS certificate in Form No. 16:

The deductor, issuing the TDS certificate in Form No. 16 by downloading it from the TRACES Portal, shall, before issuing to the deductee authenticate the correctness of contents mentioned therein and verify the same either by using manual signature or by using digital signature in accordance with Rule 31(6).

'Part B (Annexure)' of Form No. 16 item nos. 2(f) and 10(k):

The item nos. 2(f) and 10(k) in Part B (Annexure) of Form 16 required to be filled-in by the deductor manually shall be made available at the bottom of the TRACES generated Form 16 (Part B) and the

deductor shall duly fill details, where available, in item numbers 2(f) and 10(k) before furnishing of Part B (Annexure) to the employee. The deductors who opt to authenticate Part B of Form No. 16 manually will be provided with the download of the Part B of Form No. 16 alongwith these item nos. 2(f) and 10(k) appearing at the bottom of the Form. The deductor shall duly fill details, where applicable, in item numbers 2(f) and 10(k) before furnishing of Part B (Annexure) to the employee. The deductors who opt to authenticate Part B of Form No. 16 using Digital Signature Certificate (DSC) will be provided with the download of Part B of Form No. 16 without item nos. 2(f) and 10(k) and therefore these details shall be required to be prepared by the employer and issued to the employee, where applicable, before furnishing of Part B to the employee.

Rule 31(3) prescribes the time limit for issuance of Form 16 by the deductor to the employee. Currently, Form 16 should be issued by 15th June of the Financial Year immediately following the financial year in which income was paid and tax deducted.

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

https://www.incometaxindia.gov.in/communications/notification/notification_09_2019.pdf

II. CIRCULARS

1. Reporting under clause 30C and clause 44 of Form 3CD kept in abeyance till 31.03.2020 - Circular No. 9/2019, dated 14-05-2019

Section 44AB read with Rule 6G requires specified persons to furnish the Tax Audit Report (TAR) along with the prescribed particulars in Form No. 3CD. The existing Form No. 3CD was amended vide notification no. GSR 666(E) dated 20.07.2018 w.e.f. 20.08.2018. However, the reporting under clause 30C and clause 44 of the TAR was kept in abeyance till 31.03.2019 vide Circular No. 6/2018 dated 17.08.2018.

Representations were received by the CBDT that the implementation of reporting requirements under clause 30C [pertaining to General Anti-Avoidance Rules (GAAR)] and clause 44 [pertaining to Goods and Services Tax (GST) compliance] of the Form No. 3CD may be deferred further.

After examination of the matter, CBDT has decided

that the reporting under clause 30C and clause 44 of the TAR shall be kept in abeyance till 31.03.2020.

The detailed Circular can be downloaded from the link below:

https://www.incometaxindia.gov.in/communications/circular/circular_9_2019.pdf

III. PRESS RELEASES / INSTRUCTIONS / OFFICE MEMORANDUM / ORDER

1. CBDT directs PDGIT (Systems) or DGIT (Systems) to be specified income-tax authority for furnishing specified information to the Nodal Officer, GSTN – Order under section 139(1)(a), dated 30-04-2019

The CBDT under section 138(1)(a)(i) has, vide this Order, directed PDGIT (Systems) or DGIT (Systems), New-Delhi to be specified authority for furnishing information to the Nodal Officer, Goods and Service Tax Network (GSTN). The information to be furnished shall be:

- (a) Request based exchange of data, wherein, important financial fields which are captured in the Income Tax Returns (ITRs) such as
 - (i) status of filing of ITR;
 - (ii) turnover;
 - (iii) gross total income;
 - (iv) turnover ratio;
 - (v) GTI range;
 - (vi) turnover range and
 - (vii) any other field,
- (b) Spontaneous exchange of data,
- (c) Automatic exchange of data, the modalities of which shall be decided by the concerned specified authorities.

It is also provided that while furnishing the information, the specified income-tax authority shall form an opinion that sharing of such information is necessary for the purposes of enabling the specified authority in GSTN to perform its functions under the Goods and Service Tax.

It is further specified that to facilitate the process of furnishing information, PDGIT (Systems) or DGIT (Systems) would enter into a Memorandum of Understanding ('MoU') with nodal officer, GSTN which *inter-alia* would include modalities of exchange of data, maintenance of confidentiality, mechanism for safe preservation of data, weeding out after usage etc. The time line for furnishing

information shall also be decided by PDGIT (Systems) or DGIT (Systems) in consultation with the concerned nodal officer and included in the said MoU.

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

<https://www.incometaxindia.gov.in/Lists/Latest%20News/Attachments/309/Order-Us-138-1-a-of-the-Income-Tax-Act-1961.pdf>



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

1. GST

Amendment in Central Goods and Services Tax Rules, 2017

The Central Government vide *N No. 20/2019-CT dated 23rd April, 2019* has amended Central Goods and Services Tax Rules, 2017. Amendments made are explained below:

Rule	Revised Provision	Comment
Rule 23: (Revocation of cancellation of registration)	<p>Insertion of second proviso: - Provided further that all returns due for the period from the date of the order of cancellation of registration till the date of the order of revocation of cancellation of registration shall be furnished by the said person within a period of thirty days from the date of order of revocation of cancellation of registration.</p> <p>Provided also that where the registration has been cancelled with retrospective effect, the registered person shall furnish all returns relating to period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration within a period of thirty days from the date of order of revocation of cancellation of registration.</p>	<p><i>Comment: Proviso has been inserted to provide post revocation order compliance.</i></p> <p><i>Now, registered person shall furnish all returns due for the period from the date of order of cancellation of registration till revocation within 30 days of the order of revocation.</i></p> <p><i>Also, where registration is cancelled retrospectively, all returns due till revocation needs to be filed within 30 days of revocation order.</i></p>
Rule 62: (Form and manner of submission of quarterly return by the composition supplier)	<p>Change in Heading :</p> <p>"Form and manner of submission of statement and return"</p> <p>Every registered person paying tax under section 10 or paying tax by availing the benefit of notification No. 02/2019– CT (R), dated 7th March, 2019, shall –</p> <p>(i) furnish a statement, every quarter or, as the case may be, part thereof, containing the details of payment of self-assessed tax in FORM GST CMP08, till the 18th day of the month succeeding such quarter; and</p> <p>(ii) furnish a return for every financial year or, as the case may be, part thereof in FORM GSTR-4, till the thirtieth day of April following the end of such financial year.</p>	<p><i>Comment: Substitution in Rule 62 is made to provide that now onwards composition dealers or persons availing the benefit of N No. 2/2019 are required to furnish details of self-assessed tax quarterly and only one return at year end in Form GSTR 4 is required to furnish till 30th April of following year as compared to quarterly returns earlier.</i></p>

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	(2) Every registered person furnishing the statement under sub-rule (1) shall discharge his liability towards tax or interest payable under the Act or the provisions of this Chapter by debiting the electronic cash ledger.	<i>Comment: This substitution is to make the provision in harmony with previous changes made.</i>
	(4) A registered person who has opted to pay tax under section 10 or by availing the benefit of N No. 02/2019– CT (R), dated the 7th March, 2019 , from the beginning of a financial year shall, where required, furnish the details of outward and inward supplies and return under rules 59, 60 and 61 relating to the period during which the person was liable to furnish such details and returns till the due date of furnishing the return for the month of September of the succeeding financial year or furnishing of annual return of the preceding financial year, whichever is earlier.	<i>Comment: It is inserted to provide that person availing the scheme of payment of tax @ 6% on intra-state supply of goods or services are also required to furnish the details of outward and inward supplies till due date of return for the month of September or annual return whichever earlier</i>
	(5) A registered person opting to withdraw from the composition scheme at his own motion or where option is withdrawn at the instance of the proper officer shall, where required, furnish a statement in FORM GST CMP-08 for the period for which he has paid tax under the composition scheme till the 18th day of the month succeeding the quarter in which the date of withdrawal falls and furnish a return in FORM GSTR-4 for the said period till the thirtieth day of April following the end of the financial year during which such withdrawal falls.	<i>Comment: Much needed clarity is now available for 'exit from composition'</i>
	Insertion of sub rule (6): A registered person who ceases to avail the benefit of notification of the Government of India, Ministry of Finance, Department of Revenue No. 02/2019– Central Tax (Rate), dated the 7 th March, 2019, shall, where required, furnish a statement in FORM GST CMP-08 for the period for which he has paid tax by availing the benefit under the said notification till the 18 th day of the month succeeding the quarter in which the date of cessation takes place and furnish a return in FORM GSTR - 4 for the said period till the 30 th day of April following the end of the financial year during which such cessation happens.	<i>Comment: Machinery provisions for exit from composition made applicable to exit from 02/2019</i>

The Form GSTR CMP-08 (Statement for payment of self-assessed tax) has also been provided vide this notification.

Further, an instruction has been inserted in FORM GST REG-01 to provide that taxpayers who want to pay tax by availing benefit of notification No. 2/2019 – Central Tax (Rate) dated 07.03.2019, as amended, shall indicate such option at serial no. 5 and 6.1(iii) of Form GST REG-01.

Special procedure for furnishing of return and payment of tax

The Central Government vide *N. No. 21/2019-CT dated 23rd April, 2019* has provided the special procedure to be followed by persons paying tax under the provisions of Section 10 or persons availing the benefit of N No. 02/2019 CT (R) for furnishing of return and payment of tax which is explained as below:

- (i) The said persons shall furnish a statement, every quarter or, as the case may be, part thereof containing the details of payment of self-assessed tax in FORM GST CMP-08 of the CGST Rules, 2017, till the 18th day of the month succeeding such quarter.
- (ii) The said persons shall furnish a return for every financial year or, as the case may be, part thereof in FORM GSTR-4 of the CGST Rules, 2017, on or before the 30th day of April following the end of such financial year.
- (iii) The registered persons paying tax by availing the benefit of the said notification, in respect of the period for which he has availed the said benefit, shall be deemed to have complied with the provisions of Section 37 and Section 39 of the said Act if they have furnished FORM GST CMP-08 and FORM GSTR-4 as provided in para 2 and para 3 above.

Comment: Being a special dispensation under section 148, this notification requires updated reporting prior to exit from composition tax payment schemes.

Restriction on furnishing of information in PART A of FORM GST EWB01

The Central Government vide *N No. 22 /2019 –*

CT dated 23rd April, 2019 has notified 21st June, 2019 as a date from which the provision of Rule 138E shall come into force.

Rule 138 E provides that no person 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.

Comment: To compel timely filing of returns Government has used e-way bill procedure as leverage. Trade needs to get accustomed to file returns promptly.

Clarification in respect of utilisation of input tax credit under GST

The Central Government vide *circular no. 98/17/2019-GST dated 23rd April, 2019* has clarified regarding the manner of utilisation of ITC.

As per Section 49 credit of IGST has to be utilised first for payment of IGST then CGST and then SGST in that order mandatorily. Also, newly inserted Section 49 A provides that the input tax credit of Integrated tax has to be utilised completely before ITC of Central tax / State tax can be utilised for discharge of any tax liability which will lead certain taxpayers to discharge of liability on account of one type of tax through electronic cash ledger while other tax ITC remain unutilised in credit ledger.

In view of above, Rule 88A has been inserted to allow utilisation of ITC of IGST towards the payment of Central tax and State tax, or as the case may be, Union territory tax, in any order

From above two set of opinion can be drawn:

1. Available ITC of account of IGST will first be utilised for payment of IGST, then CGST/SGST and then for SGST/CGST or vice-versa
2. Available ITC of account of IGST will first be utilised for payment of IGST and then

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for payment of CGST and SGST (in any proportion). E.g.,

	ITC available	Liability	ITC Utilisation OPTION-I		ITC Utilisation OPTION-II
IGST	₹ 2000	₹ 1200	IGST- ₹ 1200	IGST- ₹ 1200	IGST- ₹ 1200
CGST	₹ 500	₹ 1800	IGST- ₹ 800	IGST- ₹ 0	IGST- ₹ 400
			CGST- ₹ 500	CGST- ₹ 500	CGST- ₹ 500
			Cash- ₹ 500	Cash- ₹ 1300	Cash- ₹ 900
SGST	₹ 300	₹ 1800	IGST- ₹ 0	IGST- ₹ 800	IGST- ₹ 400
			SGST- ₹ 300	SGST- ₹ 300	SGST- ₹ 300
			Cash- ₹ 1,500	Cash- ₹ 700	Cash- ₹ 1,100

Comment: This is a welcome circular and it now becomes clear that Section 49A intended the appropriation of IGST credit against CGST and SGST/UTGST only required that IGST be paid off first.

Clarification regarding filing of application for revocation of cancellation of registration in terms of Removal of Difficulty Order (RoD)

In light of the onetime opportunity provided

by issuing removal of difficulty order and corresponding changes made in respective rule to apply for revocation of cancellation of registration. The central Government vide *Circular no. 99/18/2019-GST dated 23rd April, 2019* has clarified the issues relating to the procedure for filing of application for revocation of cancellation of registration which are explained in the table below:

Description	Time period for filing all returns due till the date of such cancellation	Time period for filing returns in respect of the period from the date of order of cancellation till the date of order of revocation
Where registration has been cancelled with effect from the date of order of cancellation	Before the date of application for revocation	Within a period of thirty days from the date of the order of revocation.
Where the registration has been cancelled with retrospective effect	Within a period of thirty days from the date of the order of revocation.	

One time opportunity to apply for revocation of cancellation of registration

A large number of registrations have been cancelled by the proper officer by serving notices by e-mail or making available at portal and the period of 30 days provided for revocation of cancellation order has been elapsed as taxpayers were not familiar with the manner of service of notice by e-mail or making available at portal in comparison to earlier regime where manual service of notice was provided, as a result many registered persons have missed the opportunity of applying for revocation.

Therefore, The central Government vide *Removal of difficulty order no., 5/2019 dated 23rd April, 2019* has provided that the registered persons who were unable to file application for revocation of cancellation of registration against order passed up to 31.03.2019, shall now be allowed to file application for revocation of cancellation of the registration upto 22.07.2019.

Comments: Numerous difficulties faced by trade are being addressed swiftly. Kudos to the Government machinery where difficulties of trade are given utmost priority.



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

Investment by Foreign Portfolio Investors (FPI) in Debt – Review

A.P. (DIR Series) Circular No. 33 dated April 25, 2019

As a measure to broaden access of non-

resident investors to debt instruments in India, Foreign Portfolio Investors (FPI) are now permitted to invest in municipal bonds. FPI investment in municipal bonds shall be reckoned within the limits set for FPI investment in State Development Loans (SDLs). All other existing conditions for investment by FPIs in the debt market remain unchanged.

Gist of some Compounding Orders passed by Reserve Bank of India

Sr. No.	Subject Matter	Party Name	Contraventions Compounded	
1.	Borrowing and Lending in Foreign Exchange – FEMA Notification No. 3	SNC Lavalin Engineering Private Limited	<ul style="list-style-type: none"> ➤ Receipt of inward remittances as parental support (and supposed to be repaid) from overseas parent, remaining outstanding for more than 3 years. ➤ Not eligible borrower, utilisation of funds towards non-permitted end uses. ➤ Drawdown without obtaining Loan Registration Number (LRN) 	<ul style="list-style-type: none"> ➤ Indian Company received funds from its overseas parent in nature of parental support. Due to liquidity problems it could not repay the advances and the same remained outstanding for period of more than 3 years resulting in deemed ECB. ➤ The company contravened the provisions of Regulation 6 of Notification No. 3 read with para 1(i) – not an eligible borrower, para 1(iv) not permitted end use, para (xi) – drawing advance without obtaining LRN, para 1(xii) – non reporting ECB transaction.