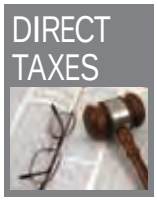
Circulars/Notifications

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. CIRCULARS

1. Clarification regarding non-allowability of set-off of losses against the deemed income under section 115BBE prior to AY 2017-18 - Circular No. 11/2019, dated 19-06-2019

With effect from 01.04.2017, Section 115BBE(2) provides that where total income of an assessee includes any income referred to in Section(s) 68/69/69A/69B/69C/69D, no deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed to the assessee under any provisions of the Act in computing the income referred to in Section 115BBE(1).

In this regard, CBDT noticed that in assessments prior to AY 2017-18, while some of the AOs have allowed set-off of losses against the additions made by them under section(s) 68/69/69A/69B/69C/69D, in some cases, set-off of losses against the additions made under section 115BBE(1) have not been allowed. As the amendment inserting the words 'or set-off of any loss' is applicable w.e.f. 01.04.2017 and applies from AY 2017-18 onwards, conflicting views have been taken by AOs in assessments for years prior to AY 2017-18. The matter was referred to the CBDT so that a consistent approach is adopted by the AOs while applying provision of Section 115BBE in assessments for period prior to the AY 2017-18.

The CBDT examined the matter. The Circular No. 3/2017 dated 20.01.2017 which contains Explanatory notes to the provisions of the Finance Act, 2016, at para 46.2, regarding amendment made in Section 115BBE(2) mentions that currently there is uncertainty on the issue of set-off of losses against income referred to in Section 115BBE. It also further mentions that the pre-amended provision of Section 115BBE did not convey the intention that losses shall not be allowed to be set-off against income referred to in Section 115BBE and hence, the amendment was made vide the Finance Act, 2016.

Thus keeping the legislative intent behind amendment in Section 115BBE(2) vide the Finance Act, 2016 to remove any ambiguity of interpretation, the CBDT is of the view that since the term 'or set-off of any loss' was specifically inserted only vide the Finance Act 2016, w.e.f. 01.04.2017, an assessee is entitled to claim set-off of loss against income determined under section 115BBE till the AY 2016-17.

The detailed Circular can be downloaded from the link below:

https://www.incometaxindia.gov.in/communications/circular/circular_11_2019.pdf

2. 'Assessment of Firms' - some of the important issues to be kept under consideration by AOs while framing assessment - Circular No. 12/2019, dated 19-06-2019

C&AG had carried out a Performance Audit regarding 'Assessment of Firms' under the Income-tax Act, 1961 ('Act') and in its Report No. 7/2014, has made certain suggestions so that in future, assessments in these cases are handled in a more effective manner by the Assessing Officers (AOs). Various recommendations made by the C&AG in its Report have been duly considered by the CBDT. In order to improve the quality of assessments being framed in these cases and also to reduce the scope for committing errors, the CBDT desired that AOs should duly take into consideration the issues specified in this Circular while making assessments in case of firms:

(i) Expenses in the hands of the firm such as interest on capital paid to the partners, remuneration payable to the working partners etc. are taxable in the hands of respective partners. Therefore, while framing assessment in case of firms, a cross-verification of such amounts with income-tax return of firm's partner will be desirable and any discrepancy between the tax return of a firm and its partners should be dealt with as per provisions of the Act. Further, AOs should invariably call for a copy of the partnership deed during the course of assessment proceedings and examine it carefully so that instances of payment of remuneration to any non-working partner or remuneration payment for period prior to the date of partnership deed but claimed as deductible are identified and cognizance of these are duly taken in assessment.

(ii) Section 40(b)(iv) stipulates following three conditions for allowability of interest to the partners of a firm:

a) the payment should be in accordance with the terms of the partnership deed; and

b) it should relate to any period falling after the date of such partnership deed; and

c) it should not exceed the amount calculated at the rate of twelve percent simple interest per annum.

Instances have been noticed where the interest in the partnership deed was stated to be below twelve percent, yet, the same was allowed at the rate of twelve percent by the AO. Such mistakes should be avoided. Further, in case the rate prescribed in the partnership deed is in excess of twelve percent, the excess should be disallowed in assessment. The AO is also required to ascertain whether payment of interest is duly authorised by the partnership deed or not. Further, while calculating interest payable to the partners for purposes of Section 40(b)(iv), AOs are taking different yardsticks for calculating interest viz. opening balance of capital, closing balance of capital, fixed capital or current capital etc. In this regard, Section 40(b)(iv) prescribes that payment of interest to partners should be authorised by and be in accordance with the partnership deed. Therefore, while framing assessment, AOs should refer to the terms of the partnership deed for purpose of computation of interest on capital payable to a partner.

(iii) Clause (ii) and (v) of Section 40(b) lays down that payment of remuneration to a working partner should be authorised by the partnership deed, be in accordance with the terms of the partnership deed, should relate to a period after the partnership deed and should also not exceed the maximum amounts prescribed therein. However, it has been noticed that in some assessments, AOs had allowed expenditure on remuneration to the working partners though the same was either not authorised by the partnership deed or was in excess of the amount specified therein. In order to prevent recurrence of mistakes and allowing the expenditure strictly as per provisions of the Act, the AOs should ensure that claim under section 40(b)(v) is allowed only after a thorough verification of the partnership deed. Further, while computing remuneration which is allowable to a working partner under section 40(b)(v), the term 'in accordance with the terms of the partnership deed' in clauses (ii) and (v) of Section 40(b) implies that remuneration should not be undetermined or undecided. Hence, in all situations, partnership deed should form the basis for determination of remuneration payable to the working partners. Furthermore, in situations where the remuneration either so specified in the partnership deed or computed as per the method indicated therein falls short of the amount allowable under section 40(b)(v), it would be restricted to the figure computed on the basis of the partnership deed.

(iv) While computing remuneration payable to the working partners under section 40(b)(v), the remuneration should not exceed a particular aggregate amount which is based upon the figure of 'book profit'. The Explanation 3 to Section 40(b) contains definition of 'book profit' for the purposes of determination of remuneration of the partners and provides that 'book profit' shall mean the net profit, as shown in the profit & loss account for the relevant previous year, computed in the manner laid down in Chapter IV-D as increased by the aggregate amount of the remuneration paid or payable to all the partners of the firm if such amount has been deducted while calculating the net profit. Therefore, while computing 'book profit' for purposes of Section 40(b)(v), all incomes such as capital gain, interest, rental income, income from other sources etc. which do not fall under the head 'profit or gain of business or profession', should be excluded.

(v) AOs are advised to apply the provisions of Chapter XVI of the Act in assessment of firms whenever required. It should be taken into consideration that under section 185, any non-compliance by the firm or its partners with provisions of Section 184 may result in denial of expenses such as remuneration, interest etc. payable to the partners which are otherwise allowable under the provisions of the Act.

(vi) It has also come to notice that some firms try to inflate the profits eligible for deduction under section 80-IA by not claiming expenditure towards remuneration, salary, interest etc. which are payable to the partners. In such situations, AOs may examine these transactions in light of provisions of Section 80-IA(10) which empower AO to re-compute profit of the eligible business after excluding the profits of the related activity/business which produced the excessive profit.

(vii) While framing assessments in case of firms claiming carry forward and set off of losses, AOs are requested to verify such claims taking into consideration provisions of Section 78 which disallow such a carry forward and set off in case of change in constitution of the firm or on succession.

(viii) Regarding the issue concerning possible action against the tax auditor for furnishing incomplete information in the Tax Audit Report (TAR) and effective utilisation of information in the TAR by the AOs, it is reiterated that directions given earlier viz. Instruction No. 09/2008 dated 31.07.2008 should be followed scrupulously by the field authorities.

It has been clarified that this circular would also be applicable to limited scrutiny cases if the assessee is a registered firm.

The detailed Circular can be downloaded from the link below:

https://www.incometaxindia.gov.in/communications/circular/circular_12_2019.pdf

3. Exemption of service element and disability element of disability pension granted to disabled personnel of armed forces who have been invalided on account of disability attributable to or aggravated by such service - Circular No. 13/2019, dated 24-06-2019

Under the existing provisions of Section 297(2)(l), any notification issued under section 60(1) or Section 60A of the Indian Income-Tax Act, 1922 (now repealed) and in force immediately before the commencement of the Act shall continue to be in force to the extent to which no provision has been made under the Act. Previously, in exercise of powers conferred under section 60 of the Indian Income -Tax Act, 1922, vide Notification no. 878-F dated 21.03.1922, it was ordered at para 19 that *"pensions granted to members of His Majesty's naval, military or air forces who have been invalided for naval, military or air force service on account of bodily disability attributable to or aggravated by such service would be exempt from tax under the Indian Income -Tax Act, 1922".*

In furtherance to the above, instruction no. 136/1970 dated 14.01.1970 in F.No. 34/3/68-IT(AI) and instruction no. 2/2001 dated 02.07.2001 in F.No. 200/51/99-ITA-I have been issued to clarify that the entire disability pension, i.e. "disability clement" and "service clement" of a disabled officer of the Indian Armed Forces continues to be exempt from income tax under the Income-tax Act, 1961.

Representations were received by the CBDT, requesting to clarify whether the exemption is applicable only to the disabled officers of Armed Forces or all disabled Armed Forces Personnel (i.e. including officers and Jawans). Representations were also received to clarify as to whether the Income Tax exemption would be limited to only such disabled Armed Forces Personnel who are invalided out of service due to disability attributable to or aggravated by military service condition or to even those who retire after full service with some disability.

The matter has been examined by the CBDT. The notification no. 878-F dated 21.03.1922, provides income tax exemption to all members of Armed Forces who have been invalided for naval, military or air force service on account of bodily disability attributable to or aggravated by such service. Thus, income- tax exemption under above clause would be available to all armed forces personnel (irrespective of rank) who have been invalided for such service

on account of bodily disability attributable to or aggravated by such service.

Further, such tax exemption will be available only to armed forces personnel who have been invalided from service on account of bodily disability attributable to or aggravated by such service and not to personnel who have been retired on superannuation or otherwise.

The detailed Circular can be downloaded from the link below:

https://www.incometaxindia.gov.in/communications/circular/circular_13_2019.pdf

4. Clarification regarding taxability of income earned by a non-resident investor from off-shore investments routed through an Alternate Investment Fund - Circular No. 14/2019, dated 03-07-2019

In the context of Alternate Investment Funds (AIFs), references have been made to the CBDT seeking clarity regarding taxability of income from investments made by the non-resident investor through these AIFs, outside India (off-shore investment).

The incidence of tax arising from off-shore investment made by a non-resident investor through the AIFs would depend on determination of status of income of non-resident investor as per provisions of Section 5(2). As per Section 5(2), the income of a person who is non-resident, is liable to be taxed in India if it is received or is deemed to be received in India in such year by or on behalf of such person; or accrues or arises or is deemed to accrue or arise to him in India.

Chapter XII-FB contains special provisions relating to tax on income of investment funds and income received from such funds. Under Chapter XII-FB, Section 115UB (Tax on income of investment fund and its unit holders) is the applicable provision to determine the income and tax-liability of investment funds and their investors. In this context, 'Investment fund" is defined in Explanation 1 of Chapter XII-FB to mean any fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which has been granted a certificate of registration as a Category I or Category II Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, made under the Securities and Exchange Board of India Act, 1992. Thus, provisions of Section 115UB apply only to Category I or Category II AIFs, as defined in SEBIs regulations.

By an overriding effect over other provisions of the Act, Section 115UB(1) provides that any income accruing or arising to, or received by, a person, being a unit holder of an investment fund, out of investments made in the investment fund, shall be chargeable to income-tax in the same manner as if it were the income accruing or arising to, or received by, such person had the investments made by the investment fund been made directly by him and not through the AIF.

This matter has been considered by the CBDT. As Section 115UB(1) provides that the investments made by Category I or Category II AIFs are deemed to have been made by the investor directly, it is hereby clarified that any income in the hands of the non-resident investor from off-shore investments routed through the Category I or Category II AIF, being a deemed direct investment outside India by the non-resident investor is not taxable in India under section 5(2).

It has been further clarified that loss arising from the off-shore investment relating to non-resident investor, being an exempt loss, shall not be allowed to be set-off or carried-forward and set off against the income of the Category I or Category II AIF.

The detailed Circular can be downloaded from the link below:

https://www.incometaxindia.gov.in/communications/circular/circular_no_14_2019.pdf

5. Issues in respect of payment of third installment under the Income Declaration Scheme, 2016 - Clarification on certain procedural issues under section 195 of the Income Disclosure Scheme, 2016 read with Section 119 of the Income-tax Act, 1961 - Circular No. 15/2019, dated 12-07-2019

Under the Income Declaration Scheme, 2016 (IDS), declarants were required to pay their determined liability towards tax, surcharge and penalty pertaining to the third installment as per the Form-2 issued by the Pr. CIT/CIT, by 30.09.2017. In this regard, several references have been filed by the stakeholders with the CBDT regarding difficulties faced by the declarants while effecting payment of third installment of IDS around 30.09.2017 due to closure of banks on account of holidays due to which they couldn't effect payment of third installment within the stipulated time. Hence, a request has been made to the CBDT under section 119 of the Income-tax Act, 1961 (Act) read with Section 195 of the IDS to grant appropriate relief in such cases.

Bank Holidays towards the due-date for the third installment: A clarification has been sought by the stakeholders regarding the third instalment stating that since 30.09.2017 was a closed national holiday, whether the payments effected or completed on next working day of the banks would be treated as an on-time payment of the statutory liability towards the third installment. It is seen that 01.10.2017 and 02.10.2017 were also closed bank holidays,

therefore, regular banking transactions could take place only on 03.10.2017 after 30.09.2017. Therefore, in accordance with provisions of Section 10 of the General Clauses Act, 1897, the CBDT has directed that all payments made/effected by the declarants on 03.10.2017 shall also be deemed to have been paid by the due date for the third installment i.e. 30.09.2017.

Delayed credit by the Bank while payment was tendered by the declarant in a timely manner: In some of the references, it is stated that payment through cheque, RTGS, electronic transfer etc. towards payment of liability was tendered in the bank on or before 30.09.2017. However, on bank's endorsement, the date is mentioned after 30.09.2017, which could render these declarations void. The genuine hardship of the declarants on account of procedural/technical issues with the banks has been considered by the CBDT. It has been decided that payments effected through cheque/RTGS/ electronic transfer by the declarant by 03.10.2017 (the deemed extended date for the third installment as per para above) which were credited by the banks till 05.10.2017 shall be deemed to have been paid by 30.09.2017. In this regard, the concerned Pr. CIT/CIT shall furnish a report to the Pr. DGIT (Systems) after necessary verification; to treat such payments to have been paid by the due date for the third installment i.e. 30.09.2017.

All actions which are to be completed as a consequence of this order either by the declarants or the departmental authorities are to be completed, by 31.08.2019.

The detailed Circular can be downloaded from the link below:

https://www.incometaxindia.gov.in/communications/circular/circular_no_15_2019.pdf

II. PRESS RELEASES/INSTRUCTIONS/OFFICE MEMORANDUM/ ORDER

1. Task Force for drafting a New Direct Tax Legislation – Expansion of terms of reference- Office Order, dated 24-06-2019

In order to review the existing Income-tax Act, 1961 and to draft a new direct tax law in consonance with economic needs of the country, the Government had constituted a Task Force vide Office Order in F No 370149/230/2017 dated 22.11.2017, the Terms of Reference (ToR) being drafting an appropriate direct tax legislation keeping in view:

(i) the direct tax system prevalent in various countries,

(ii) the international best practices,

(iii) the economic needs of the country, and

(iv) any other matter connected there to.

The Task Force was reconstituted under the convenorship of Shri Akhilesh Ranjan, Member (Legislation), CBDT vide Office Order in F No 370149/230/2017 dated 26.11.2018, and the convenor was authorised to co-opt any person as Member. Accordingly, Ms Pragya S Saksena, IRS 87004 has been co-opted as Member on 21.12.2018.

Shri Arvind Subramanian, Chief Economic Advisor (CEA) was a permanent special invitee to the Task Force as per Order dated 22.11.2017. He has since demitted the office and Shri Krishnamurthy Subramanian has taken over as the CEA. It has been decided to nominate Shri Subramanian as member of the task force.

It has been further decided that the ToR shall be broadened to include:

(i) The Faceless and anonymous verification/scrutiny/ assessment

(ii) The mechanism for system based cross verification of the financial transactions

(iii) Reduction in litigation and expeditious disposal of appeals before the CIT(Appeals), ITAT, High Courts and Supreme Court

(iv) Reduction of compliance burden by simplification of procedures

(v) Sharing of information between GST, Customs, CBDT and FIU

In view of the expanded ToR which includes sharing of data between agencies, it has been decided to nominate Shri Ritvik Pandey, Joint Secretary (Revenue) as member of the task force as well. Other terms and conditions of the orders issued till now shall remain same.

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

https://www.incometaxindia.gov.in/Lists/Latest%20News/Attachments/324/task-force-office-order-dated-24-06-2019.pdf

2. Ratification by India of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting – Press Release, dated 02-07-2019

India has ratified the Multilateral Convention to implement Tax Treaty related measures to prevent Base Erosion and Profit Shifting (MLI), which was signed by the Hon'ble Finance Minister at Paris on 07.06.2017 on behalf of India, alongwith representatives of more than 65 countries. On 25.06.2019, India has deposited the Instrument of Ratification to OECD, Paris alongwith its Final Position in terms of Covered Tax Agreements (CTAs), Reservations, Options and Notifications under the MLI, as a result of which MLI will enter into force for India on 01.10.2019 and its provisions will have effect on India's DTAAs from FY 2020-21 onwards.

The Multilateral Convention/MLI is an outcome of the OECD / G20 Project to tackle Base Erosion and Profit Shifting (the "BEPS Project") i.e. tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid. India was part of the Ad Hoc Group of more than 100 countries and jurisdictions from G20, OECD, BEPS associates and other interested countries, which worked on an equal footing on the finalisation of the text of the Multilateral Convention.

The MLI will modify India's tax treaties to curb revenue loss through treaty abuse and base erosion and profit shifting strategies by ensuring that profits are taxed where substantive economic activities generating the profits are carried out.

The MLI will be applied alongside existing tax treaties, modifying their application in order to implement the BEPS measures. Out of 93 CTAs notified by India, 22 countries have already ratified the MLI as on date and the Double Taxation Avoidance Agreement (DTAA) with these countries will be modified by MLI. For the remaining CTAs, effect of MLI will take place as and when these countries ratify the MLI. Depending on the position taken under MLI by a country, India's DTAA with it shall get modified in the following prominent ways:-

a) The minimum standard under BEPS Action 6 to tackle treaty abuse, i.e., insertion of new Preamble and the Principal Purposes Test (PPT) in the DTAAs shall be achieved.

b) The minimum standard under BEPS Action 14 relating to the mutual agreement procedure shall get implemented.

c) Artificial avoidance of Permanent Establishment (PE) status through commissionaire arrangements and similar strategies would be prevented. Avoidance of PE formation through specific activity exemptions and splitting up of contracts would also be prevented.

d) Avenues leading to avoidance of capital gains from alienation of shares/ interests value principally from immovable property would be plugged.

e) Certain dividend transfer transactions that are intended to lower withholding taxes payable on dividends artificially would be prevented.

The date of entry into force of the MLI for India is 01.10.2019. In respect of the 22 treaty partners of India who have deposited the Instrument of Ratification on or before 30.06.2019, entry into effect for India under MLI with respect to the DTAA shall be from financial year 2020-21 onwards.

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

https://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/770/PressRelease-Ratification_India_Multilateral_Convention_3_7_19.pdf

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

1. GST

GST Council decision relating to changes in law and procedure

In the 35th GST Council Meeting held on 22nd June, 2019, The GST Council has recommended the following changes related to law and procedure:

Changes related to GST Return filing

In order to give ample opportunity to taxpayers as well as the system to adapt, the new return filing system to be introduced in a phased manner, as described below:

i) Between July, 2019 to September, 2019, the new return system (**FORM GST ANX-1&FORM GST ANX-2** only) to be available for trial for taxpayers. Taxpayers to continue to file **FORM GSTR-1&FORM GSTR-3B** as at present;

ii) From October, 2019 onwards, **FORM GST ANX-1** to be made compulsory. Large taxpayers (having aggregate turnover of more than ₹ 5 crores in previous year) to file **FORM GST ANX-1** on monthly basis whereas small taxpayers to file first **FORM GST ANX-1** for the quarter October, 2019 to December, 2019 in January, 2020;

iii) For October and November, 2019, large taxpayers to continue to file **FORM GSTR-3B** on monthly basis and will file first **FORM GST RET-01** for December, 2019 in January, 2020. It may be noted that invoices etc. can be uploaded in **FORM GST ANX-1** on a continuous basis both by large and small taxpayers from October, 2019 onwards. **FORM GST ANX-2** may be viewed simultaneously during this period but no action shall be allowed on such **FORM GST ANX-2**;

iv) From October, 2019, small taxpayers to stop filing **FORM GSTR-3B** and to start filing **FORM GST PMT-08**. They will file their first **FORM GST-RET-01** for the quarter October, 2019 to December, 2019 in January, 2020;

v) From January, 2020 onwards, **FORM GSTR-3B** to be completely phased out.

Extension in Due Dates

On account of difficulties being faced by taxpayers in furnishing the annual returns in **FORM GSTR-9**, **FORM GSTR-9A** and reconciliation statement in **FORM GSTR-9C**, the due date for furnishing these returns/reconciliation statements to be extended till 31.08.2019.

Last date for filing of intimation, in **FORM GST CMP-02**, for availing the option of payment of tax under notification No. 2/2019-Central Tax (Rate) dated 07.03.2019, to be extended from 30.04.2019 to 31.07.2019.

E-way Bill

Rule 138E of the CGST rules, pertaining to blocking of e-way bills on non-filing of returns for two consecutive tax periods, to be brought into effect from 21.08.2019, instead of the earlier notified date of 21.06.2019.

GST Tribunal

The Council took a decision regarding location of the State and the Area Benches for the Goods and Services Tax Appellate Tribunal (GSTAT) for various

Legal Update

States and Union Territories with legislature. It has been decided to have a common State Bench for the States of Sikkim, Nagaland, Manipur and Arunachal Pradesh.

National Anti-Profiteering Authority

The tenure of National Anti-Profiteering Authority has been extended by 2 years.

GST Council decisions on rate changes on supply of good and services

The Council has recommended following GST rate related changes on supply of goods and services.

Electric Vehicles

On issues relating to GST concessions on electric vehicle, charger and hiring of electric vehicle, the Council recommended that the issue be examined in detail by the Fitment Committee and brought before the Council in the next meeting.

Solar Power Generating Systems and Wind Turbines

In terms of order of the Hon'ble High Court of Delhi, GST Council directed that the issue related to valuation of goods and services in a solar power generating system and wind turbine be placed before next Fitment Committee. The recommendations of the Fitment Committee would be placed before the next GST Council meeting.

Lottery

Group of Ministers (GoM) on Lottery submitted report to the Council. After deliberations on the various issues on rate of lottery, the Council recommended that certain issues relating to taxation (rates and destination principle) would require legal opinion of Learned Attorney General.

[PIB Update]

Extension of due dates

The Central Government vide *Notification No. 26/2019 – CT dated 28th June, 2019*; *Notification No. 27/2019 – CT dated 28th June, 2019*; *Notification No. 28/2019 – CT dated 28th June, 2019* ; *Notification No. 29/2019 – CT dated 28th June, 2019*; *Notification No. 32/2019- Central tax dated 28th June, 2019* has provided/extended the due dates of the following Forms.

S No.	Form	For the period	Due date
1.	**FORM GST ITC-04** (Form for furnishing details in respect of goods dispatched to a job worker or received from a job worker)	July, 2017 to June, 2019	31st day of August, 2019.
2.	**FORM GSTR-3B** (Form to furnish monthly summary of data)	July, 2019; August, 2019 and September, 2019	20th day of the month succeeding such month
3.	**FORM GSTR-1** (Form for furnishing the details of outward supply of goods or services or both.)	**July –September, 2019** (For registered persons having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year)	31st October, 2019
		For each of the months from July, 2019 to September, 2019 (For registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year)	11th day of the month succeeding such month.
4.	**FORM GSTR-7** (Form for furnishing the return by a registered person required to deduct tax at source under the provisions of Section 51)	For the months of October, 2018 to July, 2019	31st day of August, 2019

[Notification No. 26/2019 – CT dated 28th June, 2019; Notification No. 27/2019 – CT dated 28th June, 2019; Notification No. 28/2019 – CT dated 28th June, 2019; Notification No. 29/2019 – CT dated 28th June, 2019; Notification No. 32/2019- Central tax dated 28th June, 2019]

Exemption from furnishing of Annual Return / Reconciliation Statement for suppliers of OIDAR services

The Central Government vide *Notification No. 30/2019- Central tax dated 28th June, 2019* prescribed the special procedure in respect of persons supplying online information and data base access or retrieval services from a place outside India to a person in India, other than a registered person which is as follows:-

a. He shall not be required to furnish an annual return in FORM GSTR-9 under section 44(1) of the CGST Act read with sub-rule 80(1).

b. He shall not be required to furnish reconciliation statement in FORM GSTR-9C under section 44(2) of the CGST Act read with sub-rule 80(3).

[Notification No. 30/2019- Central tax dated 28th June, 2019]

Amendment in Central Goods and Services Tax Rules,2017

The Central Government vide *N No. 31/2019- CT dated 28th June, 2019* has amended Central Goods and Services Tax Rules, 2017. Amendments made are explained in the table on the next page:

Rule	Revised Provision
Rule 10A: (Furnishing of Bank Account Details)	**Insertion of Explanation:-** After a certificate of registration in FORM GST REG-06 has been made available on the common portal and a Goods and Services Tax Identification Number has been assigned, the registered person, except those who have been granted registration under Rule 12 or, as the case may be Rule 16, shall as soon as may be, but not later than 45 days from the date of grant of registration or the date on which the return required under section 39 is due to be furnished, whichever is earlier, furnish information with respect to details of bank account, or any other information, as may be required on the common portal in order to comply with any other provision. i.e Now, bank account details can be furnished even after obtaining the registration (Rule 10A)
Insertion in Rule 21: (Registration to be cancelled in certain cases)	**Insertion of clause (d):** The registration granted to a person is liable to be cancelled, if the said person,- (d) Violates the provision of Rule 10A.
Insertion of Rule 32A: (Value of supply in cases where Kerala Flood Cess is applicable)	The value of supply of goods or services or both on which Kerala Flood Cess is levied under clause 14 of the Kerala Finance Bill, 2019 shall be deemed to be the value determined in terms of Section 15 of the Act, but shall not include the said cess. (Amendment effective w.e.f 1st July,2019)
Insertion of proviso to Rule 46	Provided also that the Government may, by notification, on the recommendations of the Council, and subject to such conditions and restrictions as mentioned therein, specify that the tax invoice shall have Quick Response (QR) code.
Insertion of proviso to Rule 49	Provided also that the Government may, by notification, on the recommendations of the Council, and subject to such conditions and restrictions as mentioned therein, specify that the bill of supply shall have Quick Response (QR) code.
Substitution in Rule 66 : (Form and manner of submission of return by a person required to deduct tax at source)	In order to align with the GST portal, substitution is made to provide that the details furnished by the deductor under sub-rule (1) shall be made available electronically to each of the **deductees** on the common portal after filing of FORM GSTR-7 **for claiming the amount of tax deducted in his electronic cash ledger after validation.** *Earlier such information was made available in Part C of FORM GSTR-2A and FORM-GSTR-4A after the due date of filing.*

Legal Update

Rule	Revised Provision
Substitution in Rule 67 : (Form and manner of submission of statement of supplies through an ecommerce operator)	In order to align with the GST portal, substitution is made to provide that the details furnished by the operator under sub-rule (1) shall be made available electronically to each of the suppliers on the common portal after the due date of filing of FORM GSTR-8 **for claiming the amount of tax collected in his electronic cash ledger after validation.** *Earlier such information was made available in Part C of FORM GSTR-2A after the due date of filing.*
Rule 87: (Electronic Cash Ledger)	Transfer of money between different cash ledger's (e.g. IGST to CGST, etc.) will be permitted from the date notified.
Insertion in Rule 92: (Order sanctioning refund)	W.e.f date to be notified later, disbursement of refunds will be made on consolidated payment advice.
Insertion of new Rule 95A: (Refund of taxes to the retail outlets established in departure area of an international Airport beyond immigration counters making tax free supply to an outgoing international tourist.)	W.e.f 1st July, 2019, refund procedure has been provided for the retail outlets established in departure area of an international Airport beyond immigration counters making tax free supply to an outgoing international tourist. According to the procedure, application for such refund can be filed in **Form GST RFD -10B** on monthly or quarterly basis through the common portal.
Insertion in Rule 128, 132 & 133	Procedural changes in Anti-profiteering proceedings.
Insertion in Rule 138: (Information to be furnished prior to commencement of movement of goods and generation of e-way bill.)	• Extended validity for E-way bill for multimodal shipment in which at least one leg involves transport by ship. • Validity of the e-way bill can be extended within eight hours from the time of its expiry (Rule 138). Restriction on generation of E-way bill on failure to file returns for two consecutive periods extended to persons paying tax under composition as per NN 02/2019 (service providers) (Rule 138 e).
Changes in Form	Following forms have been notified/amended: • GSTR - 4 (to also cover service providers), • CMP - 08 (to discharge tax on monthly basis for quarterly filers • GSTR - 9 (Part - V to carry figures reported in 18-19 related to 17-18), • PMT - 09 (for transfer within cash ledger), • RFD - 10B (refund by duty free shops), • DRC - 03 (cause of payment to be stated).

[N No. 31/2019- CT dated 28th June, 2019]

Refund of Tax on inward supply of goods

The Central Government vide *N No. 11/2019- CT dated 29th June, 2019* has specified retail outlets (established in the departure area of an international airport, beyond the immigration counters, making tax free supply of goods to an outgoing international tourist) as class of persons who shall be entitled to claim refund of applicable central tax paid on inward supply of such goods.

[*N No. 11/2019- CT dated 29th June, 2019*]

Clarification regarding applicability of GST on additional / penal interest

The Central Government *vide Circular no.102/21/2019-GST dated 28th June, 2019* has clarified regarding applicability of GST on additional /penal interest on the overdue loan. Clarification provided is as follows:

S No.	Case	Treatment
1.	If such additional /penal interest is charged by the supplier of goods in respect of which such delayed payment is received.	Additional/penal interest on delayed payment of EMI would be included in the value.
2.	If such additional /penal interest is charged by a third party providing the finance.	Additional/penal interest on delayed payment of EMI would be exempt.

[Circular no. 20/16/04/2018 – GST dated 28th June, 2018]

Clarification regarding determination of place of supply in certain cases

The Central Government vide *Circular no. 103/22/2019-GST – GST dated 28th June,2019* has clarified certain issues in respect of determination of place of supply of following services:

S. No	Service	Clarification
1.	Various services being provided by the port authorities to its clients in relation to cargo handling. Some of such services are in respect of arrival of wagons at port, haulage of wagons inside port area up-to place of unloading, siding of wagons inside the port, unloading of wagons etc.	Such services are ancillary to or related to cargo handling services and are not related to immovable property. Accordingly, the place of supply of such services will be determined as per the provisions contained in sub-section (2) of Section 12 or sub-section (2) of Section 13 of the IGST Act, as the case may be, depending upon the terms of the contract between the supplier and recipient of such services.
2.	Services on unpolished diamonds such as cutting and polishing activity which have been temporarily imported into India and are not put to any use in India.	In case of cutting and polishing activity on unpolished diamonds which are temporarily imported into India are not put to any use in India, the place of supply would be determined as per the provisions contained in sub-section (2) of Section 13 of the IGST Act.

[Circular no. 103/22/2019-GST – GST dated 28th June,2019]

Clarification regarding application for Refund in Form GST RFD-01A

The Central Government vide Circular No. 104/23/2019-GST dated 28th June, 2019 has clarified that since the reassignment of refund applications to the correct jurisdictional tax authority is not yet available on the common portal, the processing of the refund claim should not be held up and it should be processed by the tax authority to whom the refund application has been electronically transferred by the common portal. After the processing of the refund application is complete, the refund processing authority may inform the common portal about the incorrect mapping with a request to update it suitably on the common portal so that all subsequent refund applications are transferred to the correct jurisdictional tax authority.

[Circular No. 104/23/2019-GST dated 28th June, 2019]

Clarification on treatment of secondary or post-sales discounts under GST

The Central Government vide *Circular no. 105/24/2019 dated 28th June,2019* has clarified various issues regarding treatment of secondary or post-sales discount which are as follows:

1. It is clarified that if the post-sale discount is given by the supplier of goods to the dealer without any further obligation or action required at the dealer's end, then the post sales discount given by the said supplier will be related to the original supply of goods and it would not be included in the value of supply.
2. I f the additional discount given by the supplier of goods to the dealer is the post-sale incentive requiring the dealer to do some act like undertaking special sales drive, advertisement campaign, exhibition etc., then such transaction would be a separate transaction and the additional discount will be the consideration for undertaking such activity and the dealer being supplier of services, would be required to charge applicable GST on the value of such additional discount and the supplier of goods, being recipient of services, will be eligible to claim input tax credit of the GST so charged by the dealer.
3. If the additional discount is given by the supplier of goods to the dealer to offer a special reduced

price by the dealer to the customer to augment the sales volume, then such additional discount would represent the consideration flowing from the supplier of goods to the dealer for the supply made by dealer to the customer and this additional discount as consideration, payable by any person (supplier of goods in this case) would be liable to be added to the consideration payable by the customer, for the purpose of arriving value of supply, in the hands of the dealer. The customer, if registered, would be eligible to claim ITC of the tax charged by the dealer only to the extent of the tax paid by the said customer to the dealer.

[Circular no. 105/24/2019 dated 28th June,2019]

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

Annual Return on Foreign Liabilities and Assets Reporting by India companies - FLAIR

A.P. (DIR Series) Circular No. 37 dated June 28, 2019

Indian Companies which have received FDI and / or made FDI abroad in current year including previous years are required to file Annual Return on Foreign Liabilities and Assets (FLA) with RBI by 15th July every year.

With objective to enhance the security level in data submission and further improve the data quality, the present email-based reporting system for submission of the FLA return will be replaced by the web-based system online reporting portal. It would facilitate data submission by eligible entities {including the alternative investment funds (AIF) registered with the Securities and Exchange Board of India (SEBI) as also the reporting of foreign investment in the form of capital/profit share contribution received/ transferred in case of LLPs and investment by persons resident outside India in an investment vehicle and as defined in Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations 2017, dated November 7, 2017}.

Important features of FLAIR are as under:

a. Reporting to be done on new web based portal to be provided by RBI on https://flair.rbi.org.in. Every entity will be required to create user registration on the portal.

b. Form will seek investor wise direct investment and other financial details on fiscal year basis as hitherto.

c. Entities will get direct system generated acknowledgement receipt upon successful submission of form.

d. Data can be revised later.

e. Entities can submit FLA information for earlier years after receiving RBI confirmation.

Gist of some Compounding Orders passed by Reserve Bank of India

Sr. No.	Subject Matter	Party Name	Contraventions Compounded	
1.	Acquisition of Immovable Property in India – FEMA Notification No. 21	Sha Mathew	Regulation 8 of Notification No. FEMA 21/2000-RB dated May 03, 2000 states that save as otherwise provided in the Act or regulations, no person resident outside India shall transfer any immovable property in India.	In terms of Regulation 8 of FEMA 21, no person resident outside India shall transfer any immovable property in India. NRIs are not allowed to acquire agricultural land in India. In the instant case, Mr. Mathew being NRI had purchased two agricultural lands without prior RBI approval. Since NRIs are not allowed to own agricultural land, Mr. Mathew was asked to sale the agricultural land

				by RBI and after sale of land RBI compounded the contravention. The undue gain earned by Mr. Mathew was recovered by RBI as compounding fees.
2.	Overseas Direct Investment – FEMA Notification No. 120	Aricent Technologies (Holdings)	The resultant structure of ODI in an entity with pre-existing FDI lead to contravention of Regulation 5(1) of Notification No. FEMA 120/2004-RB. Such investment is not allowed without prior RBI approval.	In terms of Regulation 5(1) of FEMA 120, save as otherwise provided in the Act, rules or regulations made or directions issued or without prior approval of RBI, no person resident in India shall make any direct investment outside India. The transaction of making ODI in an entity with pre-existing FDI without prior approval of RBI is contravention of Regulation 5(1). ODI – FDI structure is regularised by either unwinding FDI leg or unwinding ODI leg of the transaction. RBI considers ODI-FDI structure as round tripping and hence does not consider the same as bonafide business activity for the purposes of overseas investment even though overseas entity may be an operating entity with permitted businesses. The act of investing back to India is considered as 'non bonafide' business activity.