KRESTON SGCO

Newsletter

July 2018

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DIRECT TAXES

Press Release and notifications

CBDT extends Due date of filing of returns

CBDT via Notification dated 26th July, 2018 extended the 'due date' of filing return of income for AY 2018-19 to 31st August, 2018 for certain categories of taxpayers for whom the original 'due date' of filing return of income was 31st July, 2018

CBDT extends time for linking of PAN with Aadhaar

CBDT extends the time for linking PAN with Aadhaar till 31st March,2019

Revision of monetary limits for filing of appeals by the department before the ITAT, High court & Supreme court

The CBDT vide its Circular No. 3/2018 dated 11th July 2018 has revised the monetary limits for filing of appeals by the department before the ITAT, High court & Supreme court. The said circular shall supersede the Circular No 21 of 2015 dated 10th December, 2015 As per the Circular, appeals / SLPs shall not be filed in case where the "tax effect" (defined in the Circular) does not exceed the monetary limits as under :

Sr No	Appeals/ SLPs in Income-tax matters	Monetary Limit (Earlier) (Rs.)	Monetary Limit (revised) (Rs.)
1.	Before Appellate Tribunal	10,00,000	20,00,000
2.	Before High Court	20,00,000	50,00,000
3.	Before Supreme Court	25,00,000	1,00,00,000

Where the disputed issues arise in more than one assessment year, appeal can be filed only for those assessment year or years where the 'tax effect' exceeds the monetary limits However, in case of composite order of any High Court or Appellate Authority which includes more than one assessment year, appeals shall be filed in respect of all such assessment years even if the 'tax effect' in any year is less than the monetary limits

In case where appeal has not been filed only on account of tax effect being less than the monetary limit, the PCIT / CIT shall specifically record that "even though the decision is not acceptable, appeal is not being filed only on consideration that tax effect is less than the monetary limit specified in the Circular"

The following issues should be contested on merits even though the 'tax effect' is less than the monetary limits :

a) Where the Constitutional Validity of the provisions of an Act or Rule is under challenge, or

b) Where Board's order, Notification Instruction or Circular has been held to be illegal or ultra vires, or

c) Where Revenue Audit objection in the case has been accepted by the Department, or

d) Where the addition relates to undisclosed foreign assets / bank accounts

In cases where the tax effect is not quantifiable (Eg. Registration of trusts or institution under section 12A or 12AA), filing of appeal shall not be governed by the monetary limits

It is pertinent to note that this circular will apply to SLPs/appeals/cross objections/ references already filed and to be filed. Hence, it applies retrospectively. Pending appeals below the specified tax limits may be withdrawn/not pressed

Amendments in Form 3CD

The CBDT vide Notification No. 33/2018 dated 20th July, 2018 has amended Form 3CD with effect from August 20th, 2018

Few pointers are as under:

1. GST registration number to be furnished if the assessee is liable to pay GST. Breakup of total expenditure of entities whether registered or not under GST needs to be provided in the prescribed format

2. Deduction claimed and deemed profits u/s 32AD (deduction for investment in new P&M in notified backward area) needs to be reported

3. Income chargeable u/s 56(2)(ix) (advance money forfeited relating to transfer of capital assets) and u/s 56(2)(x) (Any sum of money/Capital asset received without consideration / inadequate consideration) needs to be reported

4. Disclosure regarding secondary adjustment (Sec 92CE)
   - Whether primary adjustments to transfer price has been made and if yes, the clause u/s 92CE under which it has been made as well as the amount
   - Whether excess money with Associated Enterprises (AE) is required to be repatriated to India as per Section 92CE(2). If yes, whether repatriated in time and if not in time, the amount of imputed interest income on such excess money

5. Disclosure regarding secondary adjustment (Sec 92CE)
   - Whether assessee has incurred expenditure by way of interest exceeding 1 cr
   - If yes, the amount of interest expenditure, EBITDA and amount of interest expenditure which exceeds 30% of EBITDA and details of interest expenditure brought forward and carried forward needs to be reported

6. Disclosures regarding GAAR i.e. nature of impermissible avoidance arrangement and aggregate tax benefits to all parties to the agreement

7. Details required while reporting particulars of receipts and payments made in cash or cheque or bank draft (not being account payee cheque or account payee bank draft) exceeding the limit
   specified u/s 269ST, are - Name , address , PAN , nature of transaction , amount and date

8. Details of transactions which are not reported in the

statement of tax deducted or collected

9. Details of amounts received as deemed dividend u/s 2(22)(e)

10. Details relating to statement furnished in Form No. 61 or Form No. 61A or Form No. 61B

11. Seeks following details relating to furnishing of CbCR by the assessee or its parent entity or alternate reporting entity

    - Whether report has been furnished by the assessee or its parent entity or an alternate reporting entity
    - Name of parent entity
    - Name of alternate reporting entity (if applicable)
    - Date of furnishing of report

Income Tax

Case Laws

M/s. CLC & Sons Pvt. Ltd. v. ACIT (Delhi Special Bench)

Facts

- The assessee company was incorporated on 21.08.1997 with the original subscribers of shares viz., Shri Mukund Chaudhary, Shri Kapil Chaudhary and Shri Ajay Kumar Chaudhary
- A Partnership firm, M/s CLC & Sons had five partners Shri Mukund Chaudhary, Shri Kapil Chaudhary and Shri Ajay Kumar Chaudhary, Smt. Romila Chaudhary and Smt. Ritu Chaudhary as on 31.03.2000
- Vide an agreement signed on 11.02.2000, the assessee company took over all the assets and liabilities of M/s CLC & Sons, a partnership firm with effect from 01.04.2000
- All the assets in the books of the partnership firm were taken over by the assessee company at book value of Rs. 1,20,54,320/-. In addition, goodwill of the partnership firm valued at Rs.10 crore (Six years purchase of Super Profits Method), was also transferred to the assessee company. On taking over the partnership firm, the first three partners of the firm were appointed as directors of the assessee company
- The AO during the course of assessment proceedings observed as under :
    - Value of goodwill would be Nil on the basis of certain infirmities in the calculation of goodwill and taking into account the past performance of the firm and the declining profits
    - No transfer of goodwill in the real sense involved since it was a case where the firm was succeeded by a company and all the partners had become the shareholders of the company, which was promoted by the partners themselves

      The whole exercise was just aimed at benefitting such partners on one hand with increase in their capitals by Rs.10 crore and on the other hand by claiming depreciation on such goodwill in the hands of the successor company
    - No goodwill of the partnership firm capable of transfer to the assessee company
    - With regards to depreciation on goodwill claimed by the Assessee, the expression "other business or commercial rights of similar nature" employed in section 32(1) did not encompass goodwill of a business as the same was different in nature from know-how, patent, copyrights and trade marks etc., used by the legislature in the earlier part of the provision. Disallowed depreciation on Goodwill
- The CIT(A) accepted the view taken by the AO
- The Division Bench which heard the instant appeal, made a reference for constitution of a Special Bench on the question of entitlement of depreciation on goodwill by mentioning contrary sets of decisions viz., one set allowing depreciation on goodwill and the other not allowing it

Held by the Special Bench

Whether Depreciation allowable on genuine goodwill u/s. 32

- Clause (ii) of Section 32 contains certain specified (know-how, patent and copyrights, etc.) and unspecified species of intangible assets (described with the expression or any other business or commercial rights of similar nature)
- The Special Bench observed that the view of the AO was as under:
    - Expression used in the provision for defining unspecified intangible assets cannot embrace something which is inextricably linked with the business of the assessee
    - Specified assets in the provision are such which are detachable from the business of the assessee and transferrable individually and separately
    - Expression 'or any other business or commercial rights of similar nature' would include only such assets which are transferrable distinctly
    - Goodwill of a business, being, an intangible asset which cannot be transferred separately de hors the transfer of business, was, ergo, held to be not includible in the expression used in the provision to explain the unspecified intangible assets
- The Special Bench held that the issue was no more res integra in view of the judgment of the Hon'ble Summit court in CIT vs. Smifs Securities Ltd. (2012) 348 ITR 302 (SC) in

which it had been held: "that goodwill will fall under the expression 'or any other business or commercial rights of similar nature'" and, hence, qualified for depreciation u/s 32(1) of the Act

- The Special Bench held that Depreciation was available on genuine goodwill

Whether there is transfer of goodwill in real sense when a firm is succeeded by a company and all its net assets vest in the company?

- The said matter was returned to the Division Bench for disposal along with the other grounds raised by the assessee since it did not emanate from the substance of question referred to the Special Bench

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Principal CIT, Kolkata-1, Kolkata Vs. Infinity Infotech Parks Ltd. (Calcutta High Court)

Facts

- M/s Infinity Infotech Parks Ltd. (Assessee) owned a piece of land the possession of which was transferred to a developer pursuant to an agreement of 07.02.2007 wherein the developer was to construct upon the land and in lieu of such work undertaken by the developer, the developer would be entitled to retain 61% of the land and the proportionate constructed area while the balance 39% of the land together with the construction thereon would belong to the Assessee

- The Revenue raised two issues:
  - Relying on the definition of Income u/s 2(47) (v)& (vi) the AO had concluded that there was no transfer
  - However, The Commissioner had invoked his powers u/s. 263 of the Act and concluded that the handing over of the possession by the assessee to the developer was to be construed as transfer and therefore taxable under the Income Tax Act

Held

The HC held as follows:

- It was only the kind of possession that was protected u/s. 53A of the Act of 1882 which was to be regarded as transfer and the mere handing over of possession of an immovable property for any other purpose may not fall within the scope of "transfer" in Section 2(47)(v)

- Where the owner retains any right in the constructed area that may come up in future, it would scarcely be a case of a transfer taking place at the time of the execution of the agreement

- Merely because de facto possession of land was made over to developer for the purpose of making a construction thereon, it would not imply that possession was made for enjoyment of the property, held that de jure possession remains with land owner (assessee)

- Till such time that the construction came up and 39% of the constructed area was made over to the assessee, it could not be said that possession of the balance land, in the sense that the expression carries in Section 2(47)(v) of the Act, had been made over by the assessee to the developer

- The right of the developer to retain possession and protect such possession under Section 53A of the Act of 1882 could never have arisen prior to the construction being completed and the apportionment effected

- With regards to the second issue of treating land as current assets, both the CIT(A) and ITAT held that the immovable property had to be regarded as a fixed asset. Since such issue in respect of the same immovable property had been conclusively dealt with in orders passed by authorities superior to the Commissioner, the HC held that the Commissioner, in exercise of his powers under Section 263 of the Act, could not have reopened the same issue. It was a closed chapter and the Assessing Officer's acceptance of the quantum of depreciation based upon the assessee's representation that such asset had to be treated as the assessee's fixed asset could not have been questioned

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International Tax & Transfer pricing

International Tax

Case Laws

Morgan Stanley Asia (Singapore) Pte Ltd V. Deputy Director of Income Tax (ITAT Mumbai)

Facts

- Morgan Stanley Asia (Singapore) Pte. ('assessee'), resident of Singapore deputed one of its Director/employees- Mr. Nagrani, to India for the period from May 2004 to April 2007 to set up Morgan Stanley Advantage Services Private Limited (MSAS)
- As per contractual agreement between MSAS and assessee, salary was paid by assessee on behalf of MSAS and the same was recharged by the assessee to MSAS. Therefore, the amount received by the assessee was in the nature of reimbursement of cost incurred by the assessee on behalf of MSAS and accordingly, no income arose in the hands of the assessee
- According to the assessee, the payment by MSAS was purely in the nature of salary reimbursement on account of cost incurred by the assessee. Once the payment was in the nature of salary, the same was covered under the exception mentioned in explanation-2 to section 9(1)(vii) of the Act. Therefore, the same could not be regarded as FTS given in the definition of the term of FTS but as salary income in the hands of the deputed employee
- The AO treated the total remittances on account of reimbursement of salary as FTS u/s. 9(1)(vii) and further charged mark-up of 23.3% (on the basis of margin of percentage earned by comparable companies)
- The CIT(A) confirmed the action of the AO and the major observations of CIT(A) were as follows:
  - The case of the Assessee is covered under FTS as per section 9(1)(vii) of the Act and FTS clause under India-Singapore DTAA (make available)
  - Payments were made by MSAS for services rendered by Mr. Nagrani, such services which had been received by MSAS, had been applied by the recipient for its business purposes. If such services were not applied for the purposes of business, such payments would not be allowable u/s 37 (1) of the Act. Further if such services have been applied, then in its generality it could be stated that such services could be considered to be made available to MSAS
  - The expression 'make available' was not defined in the Income Tax Act or DTAA signed by India with various countries. Thus, its meaning should be looked into in other legal enactments or in the general dictionary. Definition of 'make available' under various enactments of USA, Netherlands, Protocol of India USA treaty, etc. were analysed
  - Mr. Nagrani who was a person of high skill, knowledge and experience was deputed to the MSAS and was rendering his services to MSAS was nothing but making his knowledge, skill etc. available to the MSAS, In the process he was also enabling MSAS to acquire such knowledge, skill etc. from him so that after the period of deputation gets over, MSAS could still apply the same for its benefit, and continue to sustain and grow on its own
  - The other decisions relied upon by the assessee were distinguished on the basis of facts

Held

The ITAT held as follows:

- The ITAT placed reliance on decision of Mumbai ITAT in the case of Additional Director of Income Tax (IT) Vs. Mark & Spencer Reliance India (P) Ltd. (2013) 38 Taxmann.com 190 (Mumbai - Trib.) wherein it was observed and held as follows:
  - Certain articles of the secondment agreement would be out of place in a contract for providing technical services such as making the seconded employee responsible and subservient to the assessee company, liability of the assessee company to indemnify the US company from all claims, demands, etc., consequent to any actor omission by the seconded employee
  - Reliance on various case laws such as Mahindra & Mahindra ITAT Spl. Bench
  - Reliance on the judgement Hon'ble Karnataka High court in case of De Beers India Minerals (P.) Ltd. (supra) for meaning of "make available" as follows:
    - The service should be aimed at and result in transmitting technical knowledge, etc, so that the prayer of the service could derive on enduring benefit and utilize the knowledge or know-how on his own in future without the aid of the service provider
    - The technical knowledge, skills, etc, must remain with the person receiving the services even after the particular contract comes to an end
  - Merely providing the employees or assisting the assessee in the business and in the area of consultancy, management etc would not constitute make available of the services of any technical or consultancy in nature.
  - Expatriation of employee under seconded agreement without transfer of technology would not fall under the term make available
- The amount received/receivable by assessee was in the nature of reimbursement of cost incurred by assessee on behalf of MSAS because the same could not be brought within the definition of FTS as defined in explanation to section 9(1)(vii) of the Act provided in exception. The exception provided clearly stated that the income of the recipient chargeable

under the head 'salary' in view of the expenses would not be considered as falling under the definition of FTS. The payment by MSAS being a pure reimbursement of salary cost incurred by the assessee was in the nature of payment of salary which was covered under exception mentioned in explanation 2 to section 9(1)(vii) of the Act and therefore, the same could not be regarded as FTS given in the definition of the term of FTS but as salary in the hands of the deputed employee only

- Being in the nature of reimbursement there was no element of profit in the said payment
- Even otherwise, the entire amount of salary received by Shri Vineet Nagrani, had been subjected to tax in India and accordingly, it could not be taxed in the hands of the assessee
- The ITAT decided in favour of assessee

Transfer Pricing

Case Law

M/s. Sony Mobile Communications (India) Pvt. Ltd Vs. The Addl. C.I.T. (Delhi ITAT)

Facts

- The appeal by the Assessee had been heard pursuant to the order of the Delhi HC wherein the HC had restored the assessee's case for decision on adjustment relating to Advertisement, Marketing and Promotion [AMP] of Rs. 69.95 crores laying down the guidelines while deciding the Tax Appeal
- Sony Mobile Communications India (P) Ltd ('the Assessee"), a subsidiary of Sony Ericsson Mobile Communications AB ("AE"), Sweden, was primarily engaged in the business of importing buying and selling and distributing wide range of mobiles phones in India and providing related post sale support services
- The group companies had their own significant valuable intellectual property rights, know how, patents, copyrights etc and other commercial or marketing intangibles i.e., brand name, trademarks, logos, etc They were involved in complex product development, manufacturing and brand development of the products
- In its transfer pricing report, the assessee has stated that it was a distributor undertaking normal risks associated with such activity. The assessee used TNMM with Operative Profit/Sales as the PLI
- During the course of assessment proceedings, it was noticed that the assessee had incurred huge cost on Advertisement, Marketing and Sales Promotion for promotion of brand name

The assessee had explained as under:

- Trade name "Sony Ericsson Mobile Communication AB, Sweden" was considered to be the economic owner of the brand
- Trade name and trademark had been provided to it without any charges
- Products had been purchased at re-sale price minus transfer price
- The pricing of products between the assessee and the AE was regulated in a manner that ensured that the assessee earned an arm's length return with respect to its distribution activity. Therefore, based on the price level development in the market, if at the year end the assessee was not able to achieve arm's length return with respect to the distribution activity, then as per the policy it received credit notes from the AE to achieve an arm's length return on sales. During the year under consideration, the assessee received credit notes of Rs. 73.83 crores from the AE to in order to achieve an arm's length result
- Advertisement and marketing expense incurred by the assessee were for furthering its own sales in the Indian market and was nowhere related to brand promotion expense, therefore, such transaction did not warrant a reimbursement from AE since these costs represented transactions that were purely domestic in nature and had been undertaken by the assessee to promote its own sale

- The TPO was of the belief that the AMP expenditure had resulted into brand building and increased awareness of the products bearing the brand/trade name 'Sony Ericsson' and the Assessee had not been compensated for the same. Accordingly, the TPO applied the brightline test and made an adjustment of INR 112.72 crores
- This whole exercise by the TPO had been dismissed by the Hon'ble High Court of Delhi in Tax Appeal No. 16/2014
- The HC held/ observed as follows:
  - It accepted that a domestic AE must be compensated for AMP expenses by foreign AE. Such compensation may be included or subsumed in low purchase price or by not charging or charging lower royalty. Direct compensation can also be paid
  - The HC did not accept that the exercise to separate routine' and 'non-routine' AMP or brand building exercise by applying 'bright line test' of non-comparables should be sanctioned and in all cases, costs or compensation paid for AMP expenses would be 'NIL', or at best would mean the amount or compensation expressly paid for AMP expenses
  - It would be conspicuously wrong and incorrect to treat the segregated transactional value as NIL' when in fact

the the two AEs had treated the international transactions as a package or a single one and contribution was attributed to the aggregate package. They added that in a specific case this criteria and even zero attribution could be possible, but facts should so reveal and require

- The HC rejected the Bright Line Test concept

Held

- The ITAT observed and held as follows:

- Functions performed by the assessee are as
  (i) local marketing of mobile phones;
  (ii) distribution of mobile phones/technology products;
  (iii) provision of repair and maintenance services

- The overall marketing strategy was developed by the AEs as they had the requisite experience for undertaking this activity based on the broad guidelines provided by the AEs, the Assessee developed the local advertising and marketing initiatives

- The assessee earned margin of 2.5% after considering AMP expenditure which was much higher than the average margin of comparables. During the year, the assessee company had received two credit notes totalling to Rs. 73.83 crores which were adjusted against purchases in financial statements since the same were received to cover up for short fall in margin under TNMM for transaction of purchase of goods

- Even the OECD suggests that it would be sufficient to compensate the distributor with a service fee and not provide it with a return on marketing intangibles. Where the distributor bears the cost of marketing activity, whether it should be compensated with a return on any intangible created through such expenditures would turn on the contractual rights of the parties

- It was merely a presumption that the assessee had incurred some extra ordinary expense in excess of the normal routine expenses and should have been compensated by the AE. The ITAT did not find any force in the findings of the lower authorities that the above said expenditure on AMP had been incurred exclusively to promote the brand/trade name 'Sony Ericsson' and such expenditure had resulted into brand building and increased awareness of the products bearing brand/trade name 'Sony Ericsson' and also that such expenditure incurred by the assessee company was for the advantage of its AE

- The AEs were responsible for core marketing and pricing decisions of the products. Also the AEs were responsible for undertaking the global sales and distribution functions. Therefore, by incurring advertisement expenses in the domestic market, the assessee could not have done any value addition to the brand name of the AE

- Since this was the first year of business in India, the assessee had to advertise aggressively but could not be considered as expenditure incurred for brand building. At the most, the same could be considered as having been incurred for brand maintenance

- Sony Ericsson being a new entrant in the mobile segment in the year under consideration, the assessee had to incur advertisement expenses to remind the general public of its existence in the domestic market. Such advertisement expenses cannot be considered as being incurred towards brand building

- Testing the functions performed by the assessee vis a vis AMP expenses incurred by it, the assessee had not incurred AMP for the benefit of its AE. All the expenditure incurred by the assessee were in relation to its business and its promotion. Moreover, the net margin earned by the assessee was much higher than the comparables and looking from that angle also, the ITAT did not find any merit in the transfer pricing adjustments

- Assuming, yet not accepting that the assessee should have been compensated by its AE towards AMP and such compensation, then also no adjustment was required since the assessee has received credit notes worth 74.83 crores and had been suitably compensated

- If the AMP expenses were considered as an independent transaction and combined transaction approach was not considered, then also excessive profit derived by bench marking of distribution segment should be adjusted with alleged excessive AMP expenditure thereby providing benefit of set off. In the case in hand, and as mentioned elsewhere, the Assessing Officer/TPO had accepted the comparables adopted by the assessee as bundled transaction and, therefore, it would be illogical and improper to treat the AMP expenses as separate international transaction as mentioned by the Hon'ble High Court

- The ITAT concluded that the assessee company had been suitably compensated by its AEs and, therefore, no further adjustment was required


China
America
France
Japan
Germany
Product 1
Product 2
Product 3
Product 4

IDTX

Amendments under GST Laws – 28th GST Council Meeting

* In its 28th meeting held on 21 July 2018, GST Council recommended following amendments in CGST/ IGST / UTGST / GST(CTS)

Transactions not liable to GST

- Out and Out transactions i.e. purchase and sale of goods,not entering India;
- High Sea Sales;
- Supply of Warehoused goods before clearance for homeconsumption (meaning of warehoused goods asper customs law)

(Schedule III of CGST, new insertion)

For Composition Dealer

- Turnover Limit to be raised from INR 1 crore to INR 1.5 crore;
- Taxpayer friendly measure - Dealer engaged in supply of goods and services can opt for composition scheme provided service turnover does not exceed 10% of previous year turnover of State/UT maximum up to 5 lakhs

(Section 10 (1) & (2) of CGST)

Exports of Services

- Receipt of payment in Indian rupees allowed, in case of export of services, where permitted by RBI

(Section 2(6) (iv) of IGST)

Input Tax Credit (ITC) provisions to be made liberal

- ITC allowed in following cases:
  - Motor Vehicle with capacity of more than 13 persons, Vessels and Aircraft (including insurance, repairs and maintenance);
  - Motor Vehicle for transportation of money for a banking company / financial institution;
  - Goods or services to be provided by employer to employee under any Statutory obligation;
  - Schedule III activities now no reversal required except in case of sale of land and building;
  - No interest applicable for service recipient on reversal of ITC on failure to make a payment to vendor within 180 days

* CGST - Central Goods and Services Tax Act, 2017, SGST - State Goods and Services Tax Act, 2017, IGST- Integrated Goods and Services Tax Act, 2017, UTGST- Union Territory Goods and Services Tax Act, 2017, GST (CTS) - The Goods and Services Tax (Compensation to States) Act, 2017

Compliances made simpler:

- Issuance of consolidated credit/ debit notes in respect of multiple invoices issued in a Financial year

(Section 34(1) & 34 (3) of CGST)

- Introduced quarterly return filing for small taxpayers having turnover below Rs.5 crores as an optional basis

(Section 39(9) of CGST)

- Blanket coverage of RCM applicability on unregistered person may now be restricted only for specified goods and only for class of registered person

(Section 9(4) of CGST)

- Commissioner to be empowered to extend the time limit for return of inputs and capital sent on job work

Refund of accumulated ITC

- Refund of accumulated ITC, on account of inverted duty structure, to fabric manufacturer shall be allowed with prospective effect on purchases made after notification to this is issued

Registration related changes

- Compulsory Registration for e-commerce operators only in case required to collect TCS u/s 52 or turnover crosses specified threshold limit

(Section 24(x) of CGST)

- Taxpayers may opt for multiple registration within a state/union territory in respect of multiple place of business located within the same state/ union territory

(Section 25(2) of CGST)

- Registration to remain suspended while cancellation of registration is under process to allow taxpayer of continued compliance under law
- Tax payers who received provisional ID but are yet register under GST have been provided time till 31st August to register. Late fees have been waived off for GST Return filing

Miscellaneous Provision

- Place of supply to be outside in case of Job work where any treatment or process done on goods temporarily imported into India and then exported without any further use in India

Advance Ruling

Authority for advance ruling Haryana state m/s Loyalty Solutions and Research Pvt Ltd [2018-tiol-100-aar-gst]

The value of points forfeited of the applicant, on which money had been paid by the issuer of points, on account of failure of the end customers to redeem the payback points within their validity period, is to be treated as "supply" of services and consequently be chargeable to GST

Facts

- M/s Loyalty Solutions and Research Pvt. Ltd. (LSRPL or applicant) owns and operates a reward point based loyalty programme that is integrated towards it partners and their customers. Under this programme, LSRPL is providing certain services to its clients/partner

- The applicant is managing the customer loyalty programme for its clients/partners such as M/s Nice Chemicals Pvt. Ltd. (NICE), which is based on issuance of reward points/ payback points by the applicant to end consumer. These reward/payment points have value of 0.25 INR each

- For managing this loyalty programme, LSRPL, is getting Management fee and/or service charges fee. The LSRPL are paying GST on the management fee as well service charges charged by them from NICE

- Client/ Partner transfers amount equivalent to 0.25 INR, per reward points, as issuance charge to LSRPL

- It may happen that the customer does not or is not able to redeem the rewards points, in such cases, as per the agreement, the rewards points are forfeited by LSRPL and the amount equivalent to 0.25 INR per reward point is being retained by LSRPL and not returned back to partners

Issue Involved

- Whether this amount of issuance fee retained/forfeited by LSRPL would amount to consideration for actionable claims, other than lottery, gambling or betting and therefore would not qualify as supply of goods / services in terms of section 7 read with Schedule III of CGST, HGST or IGST Act and therefore would be outside the scope and levy of GST?

- Whether value of points forfeited on account of failure of the end customers, to redeem the payback points within their validity period, can be treated as "supply" of any other goods or services and consequently be chargeable to GST under the CGST, HGST or IGST Act?

Held

- Reward points earned by the end customers for purchase of products of “Partners” to loyalty programme are indeed “actionable claim”

- However, as per the definition of Actionable claim under Section 3 of Transfer of Property Act, no legal action can be taken by the end customer in connection with enforcing their right over redeeming reward/ payback points, after expiry of validity period

- This implies that after expiry of validity period, these reward points are not “actionable claim”

- Further, the action of forfeiture of reward/ payback points, whose validity period has lapsed, does not mean that “actionable claim” been transferred, as after expiry of validity period, these points are no longer “actionable claim”

- In view of above, the money equivalent to these reward points i.e issuance fees given by partners and retained by LSRPL, is noting but revenue to LSRPL owing to the activities of providing services to the said “Partners”
  As per section 15(2) clause (c) of CGST/ HGST Act, 2017 i.e Value of supply includes, any amount charged for anything done by the supplier in respect of supply of goods/ services or both, at the time of delivery, or before delivery of goods or services

- Accordingly, the amount equivalent to forfeited points would liable to be added to the value of services being provided by the LSRPL to their partners

- The value of points forfeited by applicant, on which money has been paid by the partners, on account of failure of the end customers to redeem the payback points within their validity period, is to be treated as "supply" of services and consequently be chargeable to GST under the CGST, HGST or IGST Act as the case may be

SEBI & MCA

SEBI

- SEBI,vide circular No.SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018,inter-alia, mandated RTAs to send a letter under Registered/Speed post seeking PAN and bank details within 90 days of the said circular and two reminders thereof after the gap of 30 days

- The timeline for sending the initial letter by Registered / Speed Post to physical shareholders has been extended to September 30, 2018to enable companies to send the initial letter along with Annual Reports/notice of AGM

- SEBI, vide circular No. IMD/FPIC/CIR/P/2018/114 dated July 13, 2018 mandates that the purchase of equity shares of each company by a single foreign portfolio investor or an investor group as per Regulation 21(7) of SEBI (Foreign Portfolio Investors) Regulations, 2014('FPI Regulations') shall be below ten percent of the total issued capital of the Company

- SEBI (Alternative Investment Funds) Regulations, 2012 ("AIF Regulations") were notified on May 21, 2012repealing and replacing the erstwhile SEBI (Venture Capital Funds) Regulations, 1996.Further, SEBI vide circular no. CIR/IMD/DF/7/2015 dated October 01, 2015 had allowed overseas investment by AIFs and VCFs to the extent of USD 500 million.2.In consultation with Reserve Bank of India, it is now decided to enhance the said limit to USD 750 million

  AIFs/ VCFs shall report the utilization of the overseas limits within 5working days of such utilization on SEBI intermediary portal at https://siportal.sebi.gov.in

MCA

- In exercise of the powers conferred by sub-section (2) of section 1 of the Companies(Amendment) Act, 2017 (1 of 2018), the Central Government hereby appoints the 15th August, 2018 as the date on which the following provisions of the said Act shall come into force, namely :

  1. Section 15-Alteration of memorandum or articles to be noted in every copy
  2. Section 16-Rectification of name of company
  3. Section 75-Damages for fraud
  4. Section 76-Acceptance of deposits from public by certain companies

- In exercise of the powers conferred by subsection (2) of section 1 of the Companies (Amendment) Act, 2017 (1 of 2018), the Central Government hereby appoints the day of 27th July, 2018 as the date on which the following provisions of the said Act shall come into force, namely :

  1. Section 5-Entrenchment of Article of Association
  2. Section 6-Act to override memorandum, articles, etc

Due Dates

Income Tax Department (ITD) Compliances

Sr No.	Due Date	Form No	Description
1	30/08/2018	Form 26QB	Due date for furnishing of challan-cum-statement in respect of tax deducted u/s. 194-IA for the month of July, 2018
		Form 26QC	Due date for furnishing of challan-cum-statement in respect of tax deducted u/s. 194-IB for the month of July, 2018
2	31.08.2018	ITR	AnnualAnnual return of income for the assessment year 2018-19 for all assessee other than: (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) working partner of a firm whose accounts are required to be audited or (d) an assessee who is required to furnish a report under section 92E
3	07/09/2018	Challan No.281	Due date for deposit of Tax deducted/collected for the month of Aug 2018
4	14/09/2018	Form 26QB	Due date for issue of TDS Certificate for tax deducted u/s. 194-IA in the month of July, 2018
		Form 26QC	Due date for issue of TDS Certificate for tax deducted u/s. 194-IB in the month of July, 2018
5	15.09.2018	Challan No.280	Second Installment of Advance Tax for the A.Y. 2019-20

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