VOLUME 67, MARCH 2020

Chir Amlit Legal LLP
Jaipur | Mumbai | Delhi
www.chiramritlaw.com

THE NEWSLETTER

Update Yourself

INSIDE THIS ISSUE:

CBDT has Notified Rules & Forms to be Submitted for Availing Benefit of Reduced Corporate Tax Rate u/s 115BAA & 115BAB

The Central Board of Direct Taxes ("CBDT") has incorporated the new Rules and Forms through the Income Tax (4th Amendment) Rules, 2020 on 12.02.2020 under Sec 115BAA & 115BAB of the Income Tax Act, 1961.

Central Board of Direct Taxes (CBDT)

Sec 115BAA was inserted in the Income Tax Act, 1961 to provide reduced effective corporate tax rate of 25.17% to the domestic companies from AY 2020-21 with certain conditions. The above amendment has inserted Rule 21AE and has notified Form No. 10-IC which needs to be furnished electronically under digital signature or electronic verification code on or before the due date of furnishing return of income to avail the benefit of Sec 115BAA.

Similarly, Sec 115BAB was also inserted in the Income Tax Act, 1961 to provide effective corporate tax rate of 17.16% to the new specified domestic manufacturing companies from AY 2020-21. Rule 21AF has been inserted through the above amendment and notified the Form No. 10-ID which needs to be submitted electronically under digital signature or electronic verification code on or before due date of furnishing return of income to avail benefit of reduced tax rate u/s 115BAB.

Big Relief Direction to file GSTR 9 and 9C without late fees till 12th Feb by Hon'ble Rajasthan High Court in PIL filed by TBA, JODHPUR vs UOI

In PIL No 1805/2020 Adv. Sanjay Jhanwar, Adv Rahul Lakhwani and Adv. Prateek Gattani appearing for the Petitioner apprised the Court regarding technical glitches being faced by the taxpayers in filing of GSTR 9/9C on the GSTN portal.

Herein, the court after taking into consideration screenshots submitted by the Petitioner regarding the unsuccessful attempts of the tax professionals time and again during the extended period, was satisfied that GSTN portal does not have requisite capacity to handle the filing of pending returns within the deadline.

The PIL was strongly opposed by the Counsel of Union of India and State of Rajasthan on the ground that why the taxpayers are waiting for last date for filing of the return. The High Court turned down the arguments of UOI on the basis that it is a legal right of the taxpayers to file return up till the last date. Further, advocate of the Petitioner Association Mr. Sanjay Jhanwar demonstrated various instances of the technical difficulties as faced by the taxpayers through various screenshot up to 04.02.2020 during the extended period.
The division bench of Hon'ble Chief Justice InderjitMahanty and Hon'ble Justice Pushpendra Singh Bhati directed the responders to file a detailed reply by 12.02.2020 about their preparedness and GSTN capacity.

Further, Hon'ble Supreme Court said that no further extension would be given post 12.02.2020 through interim order. Further, Hon'ble Supreme Court **also** directed the UOI to file detailed reply to address the bottlenecks especially lower capacity of the server of GSTN before Hon'ble High Court and the High Court to decide issue finally on the basis of facts without getting influenced by this ad-hoc order.

This directs down towards the emphasis on the inability of GSTIN Portal to handle the increasing taxpayers on the server and due actions need to be taken for the same.

MCA Simplifies Company Incorporation Procedure

The Ministry of Corporate Affairs ("**MCA**") *vide* its notification No. G.S.R 128(E) dated 18.02.2020 effective w.e.f. 23.02.2020 has come up with Companies (Incorporation) Amendment Rules, 2020 ("Rules") which will simplify the procedure for incorporation of Companies and will also allow registration under various other laws like Goods and Service Tax Identification Number (GSTIN), Employee State Insurance Corporation (ESIC) registration, Employees' Provident Fund organisation (EPFO) Registration and Profession Tax Registration at the time of filing the company incorporation form.

The new procedure involves filing form SPICe+ **INC-32** (**S**implified**P**roformafor **I**ncorporating **C**ompany **E**lectronicallyPlus) in two steps, first part is filing form SPICe+ INC-32 Part A and the second part is filing SPICe+ INC-32 Part B.

As per the rules, the application for reservation of name shall be made by using webform-SPICe+ PART A and the existing RUN service can be used for change of name only. Further, Incorporation of new companies to be done by filing Web Form SPICe+ PART B. Form SPICe+ Part A can either be submitted individually only for name reservation or can be submitted together with SPICe+ Part B for both name reservation as well as for incorporation.

SPICe+ now act as the single application form for reservation of name, incorporation of a new company and/or application for allotment of DIN upto 3 directors and/or application for PAN and TAN. It also allows for opening of a bank account at the time of incorporating a company without going to bank personally.

The form is also accompanied by linked web forms **INC-33** (E-MOA) ,**INC-34** (E-AOA) and **INC-35** (AGILE-PRO). Form AGILE-PRO would also offer 10 services

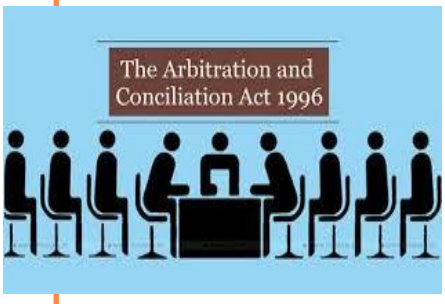
which are provided by 3 central government ministries & departments like GSTIN, ESIC, EPFO and Profession Tax Registration along with the facility to open bank account. The EPFO/ESIC/ Profession Tax (for Maharashtra) and Opening of a bank account has been made mandatory through web form AGILE-PRO. However, applicant may choose whether they want to apply for issuance of GSTIN.
Hence, the revised form saves a significant time, procedure and cost for starting a business in India.

Disclosure Standards for Alternative Investments Funds (AIFs)

The following disclosures have been made by SEBI via Circular dated February 05, 2020:

- SEBI has decided to mandate a template for Private Placement Memorandum (PPM) where certain minimum level of information shall be disclosed in simple and comparable format.
- The template for PPM shall contain two parts where Part A shall include section for minimum disclosures and Part B shall include supplementary section to allow flexibility to the fund.
- Further, it shall be mandatory for AIFs to carry an internal audit in order to ensure compliance with terms of PPM.
- The requirement regarding minimum level of information and internal audit shall not be applicable to Angel Funds as defined under SEBI (AIFs) Regulations, 2012 and AIFs in which each investor commits to a minimum capital contribution of INR 70 crores.
- The requirements of template of PPM shall come into effect from March 01, 2020.
- SEBI has decided to introduce mandatory benchmarking of performance of AIFs along with a framework for facilitating the use of data collected by Benchmarking agencies to provide customized performance reports.
- Also the AIFs shall represent 51% of the number of AIFs which shall have to notify one or more Benchmarking Agencies with whom it shall enter into an agreement. All the AIFs which have completed at least one year from date of 'First Close' shall report scheme wise valuation to Benchmarking Agencies in timely manner.
- Association shall appoint Benchmarking Agencies and shall set timeline for reporting of requisite data to Benchmarking Agencies by all registered AIFS.
- This circular is issued in exercise of powers conferred under Section 11(1) of SEBI Act, 1992 to protect the interests of investors and also to regulate and promote the development of securities market.

Applicability of Limitation Act to the Applications Filed under Section 8 of the Arbitration and Conciliation Act, 1996



The Ld. Single Judge bench of the Hon'ble Delhi High Court presided over by Prathiba M. Singh J. in ***SSIPL Lifestyle Private Limited vs. Vama Apparels (India) Private Limited.,*** has recently rules that the period of limitation provided for filing written statements under Civil procedure Code, 1908 (hereinafter referred to as the **"CPC"**) and under the Commercial Court Act, 2015 would apply also to the Written Statements filed under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the **"Act"**).

That the Hon'ble Court for its assistance appointed Senior Counsel DarpanWadhwa as amicus. Upon hearing the submissions made by the parties and with the aid of the amicus the court was of the opinion that the objections as to Section 8 could be contained in the Written Statement itself and it is also settled that a Section 8 application could be moved along with the written statement. Further, the Hon'ble Court while taking into account the recent amendments brought to the CPC in the context of Commercial Court Act concludes that the amendment brought to the CPC is a conscious step towards prescribing a limitation period for filing the Section 8 Application.

The Court further highlighted that the mention of the word "Date" in the amended provision means that it is a precise date and usually incapable of ambiguity. It also held that the entire intention is that those parties who wish to proceed for arbitration ought to do so with alacrity and speed and not merely procrastinate.

The Direct Tax 'Vivad Se Vishwas Scheme'

A Dispute Resolution scheme Vivad Se Vishwas was announced in the Union Budget 2020-2021 for expeditious disposal of disputes pending under Income Tax law. Highlights of the proposed Bill are:

Benefit of the scheme can be availed where as on 31.01.2020-an Appeal or Writ petition or Special leave petition is pending before Appellate forums or Courts; where the time limit for filing an appeal or SLP has not expired against orders passed by various lower authorities; in cases where direction is pending from the Dispute Resolution Panel; revision application is pending u/s 264.

Any person wishing to opt for such scheme has to file a declaration. Then the Designated authority will pass an order in respect of such declaration determining the amount of tax payable. In case of appeal/writ/SLP cases, the declarant is required to pay 100% of the disputed tax (110% after 31.03.2020) and 100% waiver is granted to him in respect of the disputed interest and penalty. If there is no disputed tax, 25% of the disputed interest or penalty or fee shall be paid (30% after 31.03.2020). In search cases, the amount payable will be 125% of disputed tax (135% after 31.03.2020).

In case the appeal/writ/petition has been filed by the Department, the liability will be reduced to half of the aforesaid amounts. Once the order is made and disputed tax is paid, there will be no refund of tax paid, the order shall be conclusive and no further interest or penalty shall be levied in respect of such tax. Further, matters related to such order shall not be reopened in any case in future.

The Bill has also carved out certain cases from its ambit like disputes under Benami Law, Prevention of Money Laundering, cases of undisclosed income from sources outside India, prosecution cases etc.

Conduct of Plaintiff Relevant in Granting Relief of Specific Performance

The Hon'ble Supreme Court ("**SC**") in the matter of ***Atma Ram vs. CharanjitSingh*** *[SLP No. 27598/2016 dated 10.02.202]*, held that conduct of a plaintiff is crucial in a suit for specific performance. In the instant case, the plaintiff was a party to agreement for sale dated 12.10.1994. The date for performance of the contract was fixed as 07.10.1996. After more than three years, the plaintiff filed a suit for the relief of mandatory injunction, valued only at Rs. 250 and paid a fixed court fee of Rs. 25. On an application filed by defendant challenging the maintainability of the suit, the Trial Court held that the suit was one for specific performance of an agreement of sale and the objection regarding the maintainability could be overcome by directing the petitioner/plaintiff to pay the requisite court fee. Subsequently, plaintiff paid the deficit court fee and the trial court chose to treat the suit as one for specific performance, which was ultimately decreed by it. This decree was later set aside by the First Appellate Court and later on affirmed by High Court. The SC observed the doubtful conduct of the plaintiff in filing the suit (after more than three years of the date of performance) only as one for mandatory injunction, and valuing the same as such and paying court fee but choosing to pay proper court fee after being confronted with an application of dismissal. The SC further observed that the conduct of the plaintiff is crucial in a case for specific performance. A person who issued a legal notice on 12.11.1996 claiming readiness and willingness, but instituted a suit only on 13.10.1999 and only with a prayer for a mandatory injunction having a fixed court fee relatable only to the said relief, is entitled to the discretionary relief of specific performance.

FAQ's on New Regime for Taxation of Dividends Proposed vide Finance Bill, 2020

1. Whether there is any change in taxability of dividend in hands of the Company distributing, declaring or paying the dividend?

Ans. Yes, currently as per section 115-O of the Income-tax Act ("***Act***" in short) the company distributing, declaring or paying the dividend is liable to pay DDT @ 15% (subject to grossing up) on the said dividend. However, vide Finance Bill, 2020 it is proposed that the said taxability u/s 115-O of the Act will be in effect only for the dividend distributed, declared or paid on or before 31.03.2020. Thereafter, no taxability will arise in hands of the company for dividend distributed, declared or paid after 31.03.2020.

2. **Whether there is any change in taxability of dividend income in hands of the Shareholders?**

Ans. Yes, currently the dividend income received by the shareholders is exempt in their hands u/s 10(34) of the Act as DDT has already been paid by the company on dividend distribution; however, with the proposed amendment no exemption u/s 10(34) of the Act will be available to the shareholders for dividend received on or after 01.04.2020 and the dividend received on or after 01.04.2020 will be taxable in hands of the shareholders due to removal of DDT in hands of company.

3. Whether there is any change in provisions of deduction of tax at source on dividends paid to the shareholders?

Ans. Yes, currently tax is required to be deducted at source u/s 194 and 195 of the Act on the dividends paid to resident shareholders and NRI shareholders respectively by the company, **except for the dividend referred to in u/s 115-O of the Act** as the same is exempt in hands of the shareholders. By virtue of the proposed amendment as all the dividends are made taxable in hands of the shareholders, TDS provisions in respect of dividends will be as follows:

Tax will be required to be deducted u/s 194 of the Act @10% on all the dividends paid by the company in excess of Rs. 5,000/- by any mode to its resident shareholders.

Tax will be required to be deducted u/s 195 of the Act on all the dividends paid by the company to an NRI at the rates in force, subject to the provisions of DTAA.

4. Whether there is any change in taxability u/s 115R of the Act?

Ans. As per Section 115R of the Act, currently where any income is distributed by a specified company or a mutual fund to its unit holders, tax is required to be paid by such specified company or mutual fund at the rates specified in the said section. However, due to the proposed changes in taxability u/s 115-O, amendments have also been proposed u/s 115R on account of which now mutual funds or specified companies shall not be liable to pay tax on income distributed on or after 01.04.2020.

5. Whether there is any change in exemption u/s 10(35) of the Act?

Ans. Currently under section 10(35) of the Act, any income of the unit holder, except the income from transfer of units of mutual fund specified u/s 10(23D), Administrator of the specified undertaking or specified company, is exempt in his hands. However, by virtue of proposed amendment since the income is made taxable in the hands of the receiver, exemption u/s 10(35) has been removed w.e.f. 01.04.2020.

6. Whether there is any change in Section 115BBDA of the Act based on aforesaid amendments?

Ans. Section 115BBDA of the Act imposes additional tax liability of 10% on the specified assessee's who are having dividend income exceeding Rs. 10,00,000/-. Since, w.e.f. 01.04.2020 dividends are proposed to be taxable in hands of the receiver assessee itself, the said additional tax liability has been proposed to be restricted to the dividends declared, distributed or paid till 31.03.2020.

7. Whether there is any change in provisions of TDS in respect of amounts paid by a business trust to a unit holder?

Ans. Yes, currently TDS u/s 194LBA is required to be deducted on any interest income referred u/s 10 (23FC)(a) of the Act paid to a unit holder, at the rate of 10% for resident unit holder and @5% for non-resident or a foreign company unit holders. Now, it has been proposed to deduct tax at source on dividend income also u/s 194LBA of the Act and the proposed rates for tax deduction are:

- TDS @10% on interest and **dividend** income of a resident unit holder.
- TDS @5% on interest to a non-resident or a foreign company unit holder.
- TDS @10% on **dividend** to a non-resident or a foreign company unit holder.

8. Whether there is there any change in deductions from income taxable under head "income from other sources" available u/s 57 of the Act?

Ans. Section 57 of the Act provides for certain deductions from income taxable under head "income from other sources". It has been proposed to eliminate said deductions in respect of dividend income or income in respect of units of a Mutual Fund specified u/s 10(23D) of the Act or income in respect of units from a specified company defined in explanation to Section 10(35) of the Act and restrict the deductions for said incomes only to the extent of interest expense up to a maximum of 20% of said incomes.

9. If a company receives dividend from another company, then whether any deduction in respect of dividend already distributed by such company is available?

Ans. By virtue of proposed amendments, a new Section 80M has been proposed to be inserted to provide that an assessee being a domestic company while computing tax on the dividend income received by it can claim deduction of the dividend distributed by it to its shareholders on or before the due date which will be the date 1 month prior to the date for furnishing the return of income u/s 139 (1).

10. Whether there is any change in TDS provisions u/s 196A of the Act?

Ans. Section 196A of the Act deals with TDS on income received by NRI or foreign companies from Units of Mutual Fund or 'Unit Trust of India'. Now, by virtue of proposed amendment, instead of "Unit trust of India", said tax will be deducted in respect of units of Mutual funds or units of a "**specified company**" as referred to in 2(h) of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002).

11. What are the TDS provisions for Indian residents w.r.t. income from units of Mutual Fund referred u/s 10(23D) or units of Administrator of Specified Undertaking or units of Specified Company?

Ans. As per the proposed amendment, a new Section 194K has been proposed to be inserted to provide that any income of a resident from units of Mutual Fund referred u/s 10(23D) or units of Administrator of Specified Undertaking or units of Specified company exceeding Rs. 5,000/- shall be chargeable to TDS @10% u/s 194K. The terms"Administrator", "Specified Undertaking" and "Specified company" are defined in the proposed section.

Applicability of Anti-Profiteering under GST Law

By CA Prateek Sharma

Section 171 of the Central Goods and Services Act, 2017 ('***CGST Act***') provides for anti-profiteering measures. In light of said section, as anti-profiteering measures, (i) any reduction in rate of GST on any supply of goods or services or (ii) the benefit of input tax credit shall be passed on to the buyer/customer by way of proportionate reduction in prices instead of proportionate increase in profit by the supplier. Thus, a supplier is expected to reduce the price under the GST regime, i.e. after 01.07.2017, on account of reduction in GST rates or better availment of input tax credit. The objective of this section is to ensure that with the introduction of GST, suppliers shall not get excessive profits due to GST, but shall pass on the benefit of GST by way of proportionate reduction in price to the buyers. For better understanding, the two cases under said Section 171, where the prices are to be reduced due to benefit of GST, are discussed in detail below:

Reduction in rate of tax on outward supply:

In this case supplier must pass benefit due to GST rate reduction to the buyers by reducing the final price i.e. by charging only the applicable GST rate on the price from the buyers. This can be divided into two major parts (i) Price exclusive of tax and (ii) Price inclusive of tax.

In first scenario, where the price is exclusive of tax, the supplier has to charge the reduced rate only on the price and the final price will automatically get reduced with the differential rate of tax. This case is not a big task as reduction in tax rate will directly be evidenced by the invoices and the recipient will get benefit of the rate reduction.

In second scenario, where the Price is inclusive of taxes, the supplier is liable to reduce the price due to reduction in rate of taxes. This is majorly shown in FMCG products which are normally sold on MRP basis i.e. price is inclusive of tax. In such cases, if there is any reduction in rate of tax, the MRP has to be reduced and the benefit of reduction in rate of tax has to be passed on to the customer.

Illustration 1: Reduction in rate of tax on outward supply

Cost (Rs.)	**Profit (Rs.)**	**Price (Rs.)**	**Tax Amount (Rs.)**	**Total Price (Rs.)**	**Profiteering done?**
Before 01.07.2017 (VAT Rate 14%)					
90	10	100	14	**114**	**N.A.**
W.E.F. 01.07.2017 (GST Rate 5%)					
90	19	109	5	**114**	**Yes, total price not reduced due to reduction in rate of tax.**
90	10	100	5	**105**	**No, total price reduced due to reduction in rate of tax.**

Benefit of Input tax Credit:
In this case benefit of input tax credit has to be passed by the supplier to the extent of non-available/blocked input tax credit, which is earlier included in cost and now allowed to be availed/not blocked under the GST regime. Thus, the benefit of excess input tax credit available, which is earlier included in cost due to disallowance, has to be passed to the buyer by way of reduction in price.

Illustration 2: Benefit of Input tax Credit

Cost (Rs.)	Blocked ITC (Rs.)	Total Cost (Rs.)	Profit (Rs.)	Price+ GST (Rs.)	Total Price (Rs.)	Profiteering done?
Before 01.07.2017 (No tax rate change, thus, tax assumed to be Rs. 5) (Total ITC 15, Available ITC 5, Blocked ITC 10)						
80	**10**	90	**10**	100+5	**105**	**N.A.**
W.E.F. 01.07.2017 (No tax rate change, thus, tax assumed to be Rs. 5) (Total ITC 15, Available ITC 15, Blocked ITC 0)						
80	**0**	80	**20**	100+5	**105**	**Yes, as due to benefit of ITC of Rs.10 i.e. reduction in blocked ITC, the price has not been reduced by Rs.10.**
80	**0**	80	**10**	90+5	**95**	**No, as due to benefit of ITC of Rs.10 i.e. reduction in blocked ITC, the price has been reduced by Rs.10.**

Project was commenced in April 2017. The price of the unit in the project offered is exclusive of tax and is charging the applicable rate of GST on such price. Therefore, the price offered to the buyers is already with the adjustment required under first scenario discussed above under Section 171.

Further, at the time of launching the project, GST law had already received the assent of the President on 12.04.2017 wherein specific provisions were enacted to allow input tax credit of goods or services or both along with the abovementioned Section 171 dealing with anti-profiteering. Thus, the point to note is that at the time of determining the cost of the project before its launching, the provisions of GST law were already in knowledge of Uniqueshree. Therefore, Uniqueshree had not included any benefit of input tax credit component in the price of the unit in the project and the same price was offered to buyers even after the implementation of GST w.e.f. 01.07.2017. Hence, it can be observed that the price offered in the project by the Uniqueshree is already without including any input tax credit component and it does not need any adjustment of input tax credit component as required under Section 171.

Moreover, as per the rulings of National Anti-Profiteering Authority for determining whether the benefit of input tax credit under GST regime is passed on to the buyer, the input tax credit on the goods or services procured prior to implementation of GST and after implementation of GST are compared. However, in the present case no procurement of goods or services or both was done prior to implementation of GST by Uniqueshree. Thus, no data

exists in the present case for comparing the input tax credit available/blocked prior to implementation of GST and after implementation of GST to ascertain the benefit as required under Section 171 of the CGST Act.

Accordingly, it can be observed that in the present case there is no violation of Section 171 CGST Act as the price offered by Uniqueshree is in accordance with Section 171 of the CGST Act.

Chir Amrit Legal LLP
Jaipur | Mumbai | Delhi
www.chiramritlaw.com

WE ARE ON THE WEB

www.chiramritlaw.com

For any queries regarding '**THE NEWSLETTER**', please get in touch with us at:
newsletter@chiramritlaw.com

DISCLAIMER

The views expressed and the information provided in this newsletter are of general nature and are not intended to address the circumstances of any particular individual or entity. Further, the above content should neither be regarded as comprehensive nor sufficient for making decisions. No one should act on the information or views provided in this publication without appropriate professional advice. It should be noted that no assurance is given for any loss arising from any actions taken or to be taken or not taken by anyone based on this pub-

Jaipur- 6th Floor, 'Unique Destination', Opp. Times of India, Tonk Road, Jaipur - 302 015
Off: +91-141-4044500

Surat– 202, 2nd Floor, SNS Square, Opp. Reliance Market, Vesu Main Road, Vesu, Surat—395007

New Delhi– The Executive Centre– DLF Cyber City,
Level 18, DLF Building No. 5, Tower A, Phase III, DLF Cyber City, Gurgaon-122002

Mumbai– The Executive Centre, The Capital, Level 7, B– Wing, The Capital, Bandra Kurla Complex, Bandra (East), Mumbai–400051