

LOVI MEHROTRA & ASSOCIATES

CHARTERED ACCOUNTANTS

MONTHLY UPDATE FOR JULY 2019

(Circulars/Notifications released in July 2019)

30th July 2019

[Income Tax](#)

[GST](#)

[Customs Duty](#)

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I. INCOME TAX

S.NO.	CIRCULAR/ NOTIFICATION NO.	PARTICULARS	SHORT SUMMARY
1.	CBDT Circular No.14/2019 dated 03.07.2019	Clarification on taxability of income earned by a non-resident investor from off-shore investments routed through an Alternate Investment Fund(AIF)	<p>CBDT has issued clarifications (as below) in order to remove any ambiguity of interpretation regarding taxability of Income from Investments made by the non-resident Investor outside India through AIFs.</p> <ul style="list-style-type: none">- Investment made by the Category I or II AIFs are deemed to have been made by the investor directly.- Any Income in the hands of the non-resident investor from off -shore investments routed through the Category I or II AIF, <i>is not taxable in India under section 5(2) of the Act</i> being considered a deemed direct Investment outside India by the non-resident investor.- Loss arising from the off-shore investment related to Non-resident, 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 II AIF. <p>Circular No. 14</p>

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II. GOODS AND SERVICE TAX

S.NO.	CIRCULAR/ NOTIFICATION NO.	PARTICULARS	SHORT SUMMARY								
1.	CBIC Notification No. 34/2019-Central Tax - dated 18.07.2019	Extension of due date for furnishing FORM GST CMP - 08 for the quarter of April, 2019 to June, 2019.	<p>Due date for furnishing FORM GST CMP-08 (furnishing of details of self- assessed tax) for the quarter of April, 2019 to June, 2019. extended till 31.07.2019.</p> <p>Notification No. 34</p> <p>The date has been further extended till 31.08.2019 in the 36th GST Council meeting held on 27th July 2019.</p>								
2.	CBIC Circular No. 107/2019-Central Tax - dated 18.07.2019	Clarification on various issues related to supply of Information Technology enabled Services (ITeS services)	<p>CBIC has issued clarification on issues related to supply of Information Technology enabled Services(hereinafter referred to as “ITeS services”) such as call center, business process outsourcing services, etc. and “Intermediaries” to overseas entities under GST law and whether they qualify to be export of services”</p> <table><tr><th>Issues</th><th>Clarification</th></tr><tr><td>Definition of Intermediary</td><td>The definition of intermediary provides specific exclusion of a person who supplies such goods or services or securities on his own account. Therefore, the supplier of services would not be treated as „intermediary“ even where the supplier of services qualifies to be „an agent/ broker or any other person“ if he is involved in the supply of services <i>on his own account</i>.</td></tr><tr><td>Scenario I- Supplier of ITes service supplies back end services</td><td>A supplier “A” supplying back end services on his own account to his client “B” or to the customer “C” of his client would not be intermediary in terms of sub-section (13) of section 2 of the IGST Act.</td></tr><tr><td>Scenario II- Supplier of back end services located in India arranges or facilitates the supply of goods or services for a client or on the behalf of client located abroad. Such backend services may include support</td><td>Supplier will be covered in definition of Intermediary according to section 2(13) of IGST Act.</td></tr></table>	Issues	Clarification	Definition of Intermediary	The definition of intermediary provides specific exclusion of a person who supplies such goods or services or securities on his own account. Therefore, the supplier of services would not be treated as „intermediary“ even where the supplier of services qualifies to be „an agent/ broker or any other person“ if he is involved in the supply of services <i>on his own account</i> .	Scenario I- Supplier of ITes service supplies back end services	A supplier “A” supplying back end services on his own account to his client “B” or to the customer “C” of his client would not be intermediary in terms of sub-section (13) of section 2 of the IGST Act.	Scenario II- Supplier of back end services located in India arranges or facilitates the supply of goods or services for a client or on the behalf of client located abroad. Such backend services may include support	Supplier will be covered in definition of Intermediary according to section 2(13) of IGST Act.
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			<p>services,during pre-delivery, delivery and post-deliveryof supply (such as order placement and delivery and logistical support, obtaining relevant Government clearances, transportation of goods, post-sales support and other services, etc.).</p> <p>Scenario III- Back end services provided on his own account along with supply of various support service for a client or on the behalf of client located abroad. In this case, supplier of service provides two set of services, namely ITeS service and various support service,</p> <p>Whether the supplier of such services would fall under the ambit of Intermediary u/s 2(13) of IGST Act will need to be determined based on facts & circumstances of each case and keeping in view which set of services is the principal/main supply.</p> <p>It is also clarified that supplier of ITeS service who is not Intermediary can avail the benefit of export of services if he satisfies the criteria mentioned for export of service u/s 2(6) of IGST Act.</p> <p>Circular No. 107</p>
3.	CBIC Circular No. 108/2019-Central Tax - dated 18.07.2019	Clarification in respect of goods sent/taken out of India for exhibition or on consignment basis for export promotion	<p>CBIC has clarified various issues brought by the trade and industry in respect of goods sent/taken out of India for exhibition or on consignment basis for export promotion(herein after referred to as "Specified goods").</p> <p>Such Illustrative Issues are as under:</p> <p>a) Whether any records are required to be maintained by registered person for sending / taking specified goods out of India?</p> <p>b) What is the documentation required for sending / taking the specified goods out of India?</p> <p>c) When is the supply of specified goods sent / taken out of India said to take place?</p> <p>d) Whether invoice is required to be issued when the specified goods sent / taken out of India are not brought back, either fully or partially, within the stipulated period?</p> <p>e) Whether the refund claims can be preferred in respect of specified goods sent / taken out of India but not brought back?</p> <p>Circular No. 108</p>

S.NO.	CIRCULAR/ NOTIFICATION NO.	PARTICULARS	SHORT SUMMARY														
4.	CBIC Circular No. 109/2019-Central Tax – dated 22.07.2019	Clarification on issues related to GST on monthly subscription/contribution charged by a Residential Welfare Association from its members.	CBIC has clarified various issues regarding GST payable on the amount charged by a Residential Welfare Association (RWA) for providing services and goods for the common use of its members in a housing society or a residential complex.														
			<table><tr><th>Issues</th><th>Clarification</th></tr><tr><td>Are Maintenance charges paid by resident to RWA (unincorporated body or a non-profit entity registered under any law) exempt from GST?</td><td>Supply of service by RWA to its own members by way of reimbursement of charges or share of contribution up to an amount of Rs. 7500/month per member for providing services and goods for the common use of its members are exempt from GST. (Earlier such limit was Rs 5,000 per month which was further increased w.e.f 25/01/2018)</td></tr></table>	Issues	Clarification	Are Maintenance charges paid by resident to RWA (unincorporated body or a non-profit entity registered under any law) exempt from GST?	Supply of service by RWA to its own members by way of reimbursement of charges or share of contribution up to an amount of Rs. 7500/month per member for providing services and goods for the common use of its members are exempt from GST. (Earlier such limit was Rs 5,000 per month which was further increased w.e.f 25/01/2018)										
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			<table><tr><td rowspan="4">A RWA has aggregate turnover of Rs.20 lakh or less in a financial year. Is it required to take registration and pay GST on maintenance charges if the amount of such charges is more than Rs. 7500/- per month per member?</td><th>Annual turnover of RWA</th><th>Annual turnover of RWA</th><th>Whether exempt</th></tr><tr><td rowspan="2">More than Rs. 20 lakhs</td><td>More than Rs. 7500/-</td><td>No</td></tr><tr><td>Rs. 7500/- or less</td><td>Yes</td></tr><tr><td rowspan="2">More than Rs. 20 lakhs</td><td>More than Rs. 7500/-</td><td>Yes</td></tr><tr><td>Rs. 7500/- or less</td><td>Yes</td></tr></table>	A RWA has aggregate turnover of Rs.20 lakh or less in a financial year. Is it required to take registration and pay GST on maintenance charges if the amount of such charges is more than Rs. 7500/- per month per member?	Annual turnover of RWA	Annual turnover of RWA	Whether exempt	More than Rs. 20 lakhs	More than Rs. 7500/-	No	Rs. 7500/- or less	Yes	More than Rs. 20 lakhs	More than Rs. 7500/-	Yes	Rs. 7500/- or less	Yes
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	Rs. 7500/- or less	Yes															
More than Rs. 20 lakhs	More than Rs. 7500/-	Yes															
	Rs. 7500/- or less	Yes															
Is the RWA entitled to take input tax credit of GST paid on input and services used by it for making supplies to its members and use such ITC for discharge of GST liability on such supplies where the amount charged for such supplies is more than Rs. 7,500/- per month per member?	RWAs are entitled to take ITC of GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fillings etc.) and input services such as repair and maintenance services																
Where a person owns two or more flats in the housing society or residential complex, whether the ceiling of Rs. 7500/- per month per member on the maintenance for the exemption to be available shall be applied per residential apartment or	A person who owns two or more residential apartments shall normally be a member of the RWA for each residential apartment owned by him separately. The ceiling of Rs. 7500/- per month per member shall be applied separately for each residential																

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			per person?	apartment owned by him.
			How should the RWA calculate GST payable where the maintenance charges exceed Rs. 7500/-per month per member? Is the GST payable only on the amount exceeding Rs. 7500/-or on the entire amount of maintenance charges?	Exemption from GST on maintenance charges charged by a RWA from residents is available only if such charges do not exceed Rs. 7500/-per month per member. In case the charges exceed Rs. 7500/-per month per member, the entire amount is taxable
			Circular No. 109	
5.	CBIC Press Release dated- 03.07.2019	Clarification regarding Annual Returns and Reconciliation Statement	CBIC has clarified various issues regarding Annual Return (Form GSTR-9 / Form GSTR-9A) and Reconciliation Statement (Form GSTR-9C) . A brief summary of the clarifications is e highlighted in <u>Annexure-I</u> to this News Letter.	
6.	GST Council Press release dated - 27.07.2019	36 th Meeting of the GST Council	Recommendations made during 36 th Meeting of the GST Council held on 27 th July, 2019 are highlighted in <u>Annexure-II</u> to this News Letter.	

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III. CUSTOMS DUTY

S.NO.	CIRCULAR/ NOTIFICATION NO.	PARTICULARS	SHORT SUMMARY
1.	CBIC Notification No. 52/2019-Cus (NT) dated 18.07.2019	Rate of Exchange	CBIC has notified the rate of exchange of conversion of foreign currency for import and export of goods for 20 currencies specified in Schedule I & Schedule II effective from 19-07-2019. Notification No. 52/NT

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Goods & Service Tax

Clarifications regarding Annual Returns and Reconciliations Statements

- a) **Payment of any unpaid tax:** If a taxpayer has not paid, short paid or has erroneously obtained/been granted refund or has wrongly availed or utilized input tax credit and where some information has not been furnished in Form **GSTR-1 and Form GSTR- 3B** then before the service of a notice by any tax authority, the taxpayer may pay the amount of tax with interest through **Form GST DRC -03**. In such cases, no penalty shall be leviable on such tax payer. The annual return provides an additional opportunity for such taxpayers to declare the summary of supply against which payment of tax is made.
- b) **Primary data source for declaration in annual return:** Ideally, information in FORM **GSTR-1, FORM GSTR-3B** and **books of accounts** should be synchronous and the values should match across different forms and the books of accounts. If the same does not match, there can be broadly two scenarios, either tax was not paid to the Government or tax was paid in excess. In the first case, the same shall be declared in the annual return and tax should be paid and in the latter all information may be declared in the annual return and refund (if eligible) may be applied through **FORM GST RFD-01A**. Further, no input tax credit can be reversed or availed through the annual return. If taxpayers find themselves liable for reversing any input tax credit, they may do the same through **FORM GST DRC-03** separately.
- c) **Premise of Table 8D of Annual Return:** The input tax credit which is declared / computed in Table 8D is basically credit that was available to a taxpayer in his **FORM GSTR-2A** but was not availed by him between **July 2017 to March 2019**. Now there is no question of lapsing of any such credit, since this credit never entered the electronic credit ledger of any taxpayer. Therefore, taxpayers need not be concerned about the values reflected in this table. This is merely an information that the Government needs for settlement purposes. It may also be noted that **FORM GSTR-2A** continues to be auto-populated on the basis of the corresponding **FORM GSTR-1** furnished by suppliers even after the due date (**March, 2019**). In such cases there would be a mis-match between the updated FORM GSTR-2A and the auto-populated information in Table 8A. It is important to note that Table 8A of the annual returns is auto populated from FORM GSTR-2A as on 1st May, 2019.
- d) **Difficulty in reporting of information not reported in regular returns:** It has been observed that smaller taxpayers are facing a lot of challenge in reporting information in Table 16A (Supplies received from Composition taxpayers) or 18 (HSN wise summary of inward supplies) of Annual return in FORM GSTR-9 due to non- availability of Information that was also not being explicitly reported in their regular statement/returns (FORM GSTR-1 and FORM GSTR-3B). **Therefore, taxpayers are advised to declare all such data /**

details (which are not part of their regular statement/returns) to the best of their knowledge and records. This data is only for information purposes and reasonable/explainable variations in the information reported in these tables will not be viewed adversely.

- e) **Information in Table 5D (Exempted), Table 5E (Nil Rated) and Table 5F (Non-GST Supply):** There is some confusion regarding what values are to be entered in **Table 5D (Exempted supplies), 5E (Nil rated supplies) and 5F (Non-GST supplies) of FORM GSTR-9**. Since, there is some overlap between supplies that are classifiable as exempted and nil rated and since there is no tax payable on such supplies, ***if there is a reasonable/explainable overlap of information reported across these tables, such overlap will not be viewed adversely.*** The other concern raised by taxpayers is the inclusion of **no supply** in the category of **Non-GST supplies in Table 5F**. For the purposes of reporting, non-GST supplies includes supply of alcoholic liquor for human consumption, motor spirit (commonly known as petrol), high speed diesel, aviation turbine fuel, petroleum crude and natural gas and transactions specified in Schedule III of the CGST Act.
- f) **Reverse charge in respect of Financial Year 2017-18 paid during Financial Year 2018-19:** Tax which was to be paid on reverse charge basis for the FY 2017-18 but was paid during FY 2018-19, since the payment was made during FY 2018-19, the input tax credit on such payment of tax would have been availed in FY 2018-19 only. Therefore, such details will not be declared in the annual return for the FY 2017-18 and will be declared in the annual return for FY 2018-19. If there are any variations in the calculation of turnover on account of this adjustment, the same may be reported with reasons in the reconciliation statement (FORM GSTR-9C).
- g) **Role of chartered accountant or a cost accountant in certifying reconciliation statement:** There are apprehensions that the chartered accountant or cost accountant may go beyond the books of account in their recommendations under **FORM GSTR-9C**. The GST Act is clear in this regard. With respect to the reconciliation statement, their role is limited to reconciling the values declared in annual return (FORM GSTR-9) with the audited annual accounts of the taxpayer.
- h) **Treatment of Credit Notes / Debit Notes issued during FY 2018-19 for FY 2017-18:** No credit note which has a tax implication can be issued after the month of September 2018 for any supply pertaining to FY 2017-18; a financial/commercial credit note can, however, be issued. If the credit or debit note for any supply pertaining to FY 2017-18 was issued and declared in returns of FY 2018-19 and the provision for the same has been made in the books of accounts for FY 2017-18. The same shall be declared in ***Pt. V of the annual return***. However there is no provision in ***Pt. II of the reconciliation statement*** for adjustment in turnover in lieu of debit notes issued during FY 2018-19 although provision for the same was made in the books of accounts for FY 2017-18. In such cases, they may be adjusted in **Table 50 of the reconciliation statement** in **FORM GSTR-9C**.

- i) **Reconciliation of input tax credit availed on expenses:** Table 14 of the reconciliation statement calls for reconciliation of input tax credit availed on expenses with input tax credit declared in the annual return. It may be noted that only those expenses are to be reconciled where input tax credit has been availed. Further, the list of expenses given in Table 14 is a representative list of heads under which input tax credit may have been availed. The taxpayer has the option to add any head of expenses.



Annexure-II

Goods & Service Tax

Recommendations made during 36th Meeting of the GST Council held on 27th July, 2019

In the meeting, the Council has recommended the following changes:

[A] Reduction in the GST rate on Supply of goods and services :

- (1) GST rate on all electric vehicles reduced from 12% to 5%.
- (2) GST rate on charger or charging stations for Electric vehicles reduced from 18% to 5%.
- (3) Hiring of electric buses (of carrying capacity of more than 12 passengers) by local authorities be exempted from GST.
- (4) These changes shall become effective from 1st August, 2019.**

[B] Changes in GST Law:

- (1) Last date for filing of intimation, in **FORM GST CMP-02**, for availing the option of payment of tax (6% as per new scheme under composition scheme brought under notification No. 2/2019-Central Tax (Rate) dated 07.03.2019 (by exclusive supplier of services), to be extended from 31.07.2019 to 30.09.2019.
- (2) The last date for furnishing statement containing the details of the self-assessed tax in **FORM GST CMP-08** for the quarter April, 2019 to June, 2019 (by taxpayers under composition scheme), to be extended from 31.07.2019 to **31.08.2019**.

Disclaimer:

This is not a complete listing of all circulars/notifications issued during the month.

Instead it is only a listing of some of the circulars/notifications that we considered important