Pay Taxes ● Not Less ● Not More

# TAXtribune
## NEWS & VIEWS

(For Members Only)

• Year 2019-2020 • December 2019 • Issue No. : 3

**Sharad Suryawanshi** — President
**Vilas Aherkar** — Vice-President
**Shripad Bedarkar** — Secretary
**Narendra K. Sonawane** — Editor


*Happy New Year*

**The Western Maharashtra Tax Practitioners' Association**

*13th Certificate Course -*
*Felicitation of Chief Guest Shri Sanjay Nahar*

*13th Certificate Course -*
*Felicitation of Guest of Honor CA Suresh Unecha*

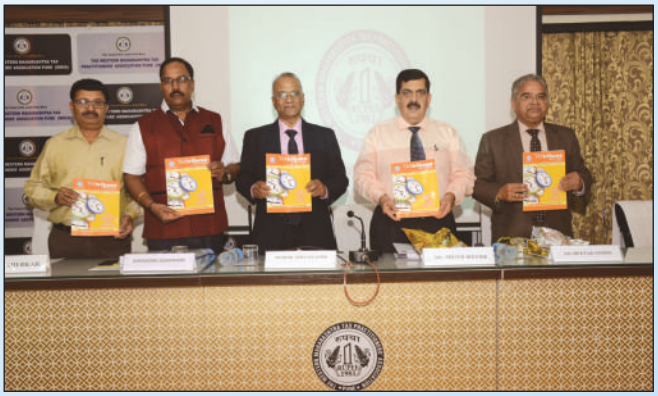
*13th Certificate Course - Publication of Course Study Book*

*13th Certificate Course Opening -*
*Adv.V.G.Shah Chairman addressing the audiance*

*13th Certificate Course Opening*

*13th Certificate Course Opening*

*13th Certificate Course Opening*



*Publication of Tax Tribune for Nov-19*

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| Shri. Narendra Sonawane | CMA Shripad Bedarkar | Adv.G. Y. Patwardhan,<br>Adv.Milind Bhonde,<br>CMA Rahul Pore,<br>CA Swapnil Munot,<br>Adv.Sukrut Deo &<br>CA Anup Shah |


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# Editorial

**NARENDRA SONAWANE**

Dear Members,

GST Annual Return & GST Audit for FY 2017-18 is now an unending saga. Every time government extend the due dates some time on our demand or on its own due to non-readiness of GSTIN. Original Due Date for filing GSTR-9 & 9C for FY 2017-18 was 31/12/2018 but it was extended up to 30/06/2019, then up to 31/08/2019 & again up to 30/11/2019. The same will also get extended further due to non-availability of simplified GSTR-9 & 9C Forms as declared in the meeting. Government already appealed all the taxpayers to use existing utility to file the GSTR-9 & 9C and not to wait for new formats. Now we also plan to complete the work as early as possible because as the days pass it will become difficult for us to gather data & compile it. Also, interest burden on additional liability goes on increasing. We all are presently very much busy in complying the various due date targets like GST Audit, SVLDRS and other compliance work. I am very much sure that all our members are competent enough to take the task as challenge and complete it within specified due dates. I appeal all the members that in coming year we should make a resolution that from this year we all will try to complete all our work within specified due dates and will not ask for any extension, as government is also not in a mindset to give any extension on our request. At various forums it is clear that the departmental authorities feel that tax professionals are creating hurdles in compliances. So henceforth if any hardship is caused let the trade & industry come forward with us for any representation. We are off course demanding relaxation / extensions many times on behalf of our clients & it is also our professional duty.Now the time has come when we should create awareness among trade that you are real sufferer of interest, penalty or additional liability on account of non-compliances.Now joint representations are required for effective results, so we request all the members to create awareness among clients for all this.

Extended working hours, work pressures, tensions of complying various due dates is now our routine. Let us try to come out of all this. To spare some quality time with our family & friends is need of hour. We at our association are trying to arrange some events to help the members to come out of daily stress. Recently we had arranged a program of Shri Makarand Tillu on Laughter Therapy. Further such events will be arranged shortly to benefit the members. In order to build strong bond with professional colleagues and for happy professional life, participate in all association activities educational as well as cultural.

It is said health is real wealth, so on eve of the new year let us resolve to lead heathy life. It is not only important for you but also to your dear ones - family and clients.

Let this coming New Year 2020 bring all Happiness, Health, Wealth and Success to you and your family.

Wish you Very Happy New Year…

With best regards,

**Narendra Sonawane**

Chief Editor

# Presidents Message

**Sharad Suryawanshi**

There has been a big recession in Automobile Industry, Construction Business and in all various Manufacturing Products, who are facing this on large scale since September 2019 Central Government has announced some schemes on it and this will definitely need some time to see it's positive effects.

Central Government has reduced Income Tax rate on the companies Likewise it will be beneficial to take the decision to reduce the tax rate on other tax payers. In this there is a demand from all the sectors to reduce the tax as per the companies for Partnership Firm, Proprietary, Local Authority etc. It is necessary to reduce the GST rates in order to give relief to Automobile Industry.

The Automobile Industry is expecting that the present 28% rate will come down to 18%, but the Government has not taken any decision till today.

The Income Tax task force has given a recommendation to the Central Government to change the arrangement in Income Tax Slab and Capital Gain. Due to this the Government has started taking into consideration, the recommendation given by the task force and there is great possibility in the change in Income Tax Slab during the current Budget.

The member of CBDT Mr Akilesh Ranjan has stated that this report is already handed over to the Government on 19th August and they are trying to give relief to the tax payers. The Central Government should take in to consideration the Tax Payers.

The Supreme Court finally delivered its verdict on the Ram Temple at Ayodhya and I must say that the people of India have gracefully and peacefully accepted it's verdict. The issue of my mind really is that God resides within each of us and we, by accepting the Courts verdict, and choosing to continue to live in harmony, have once again shown that to the common man, religion takes a back seat as compared to day to day existential issue.

I would like to sign off by quoting PANDIT NEHRU, whose birthday. We recently celebrated as Children's Day

"WE LIVE IN WOUNDERFUL WORLD THAT IS FULL OF BEAUTY, CHARM AND ADVENTURE. THERE IS NO END TO THE ADVENTURE WE CAN HAVE, IF ONLY WE SEEK THEM WITH OUR EYES OPEN "

**Sharad Suryawanshi**
President

**Shripad Bedarkar**
Joint Secretary

# ASSOCIATION NEWS

**Sanket Amate**
Joint Secretary

1) **GST Crash Course :** GST Crash Course was arranged from 20th November, 2019 to 22nd November, 2019 with Full Day Seminar on 23rd November, 2019. Nearly 44 participants attended the Complete Crash Course &172 participants attended Full Day Seminar. Eminent Speakers like Adv.Milind Bhonde, Adv.Abhay Bora, CA Manoj Malpani, Adv.Vidyadhar Apte, CA Ravi Somani, CA Yogesh Ingale delivered lecture in Crash Course and CA Pritam Mahure, CA Bimal Jain, Adv.Aditya Surte, CMA Rahul Chincholkar delivered lecture in Full Day Seminar. Shri.V.Shridharan (Senior Advocate Mumbai High Court) was Chief Guest and Shri.Vinayak Patkar (Senior Advocate Mumbai High Court) was Guest of Honor Adv. Dinesh Tambde (President GSTPAM), Shri Rajkumar Bhambare (Convener Outstation Committee GSTPAM) attended the seminar. Adv.Milind Bhonde was Conference Chairman and Shri Narendra Sonawane was Chief Co- Ordinator for this Course. Full Day Seminar jointly organized with Goods & Service Tax Practitioners Association, Mumbai.

2) **13th Certificate Course in Taxation Laws (GST Special) :**Certificate Course was commenced from 1st December, 2019. Shri Sanjay Nahar was Chief Guest for the opening ceremony of the course and CA Suresh Unecha was Guest of Honor. Course Duration is 1st December, 2019 to 25th January, 2020. Eminent speakers are delivering lecture in this course on various topics like GST, Income Tax, Accountancy, Profession Tax, Partnership Act, Professional Ethics etc. Fees for the course is Rs.8,500/- (including GST). Our association successfully conducting this unique course continuously from last 12 years and this is 13th year of the course. Overwhelming response was received for this course.

3) 'शासन आपल्या दारी' : An Interactive session was arranged in our association hall on 7th December, 2019 with CGST & SGST Authorities. Government has taken initiative to know the ground level problems faced by stakeholders for better implementation of GST. Dy. Commissioner CA Himani Dhamija Madam & Supreitendent Shri Amit Shrivastav from CGST Department address the participants. Dy. Commissioner Shri Mandar Kelkar, Dy. Commissioner Shri Nandkumar Sorate, Dy. Commissioner Shri. Rajendra Kurhade & Asst. Commissioner Shri Rahul Gorde from SGST Dept. also attended the program and guided nearly 150+ participants.

4) **Future Events :**

a. International RRC will be arranged in the month of May, 2019 & the details will be informed to members shortly.

**Shripad Bedarkar**
Joint Secretary

**Sanket Amate**
Joint Secretary

# Important Advance ruling GST on Housing Society charges

**Adv. Govind Patwardhan**

**M/S. PRESTIGE SOUTH RIDGE APARTMENT OWNERS' ASSOCIATIONAAR Karnataka Dated:- 17-9-2019**

**FACTS :**

The Applicant is a welfare association of owners of residential apartments.

Association collects maintenance charges from its members for upkeep and maintenance of Apartments as well as common areas and facilities in building. The maintenance charges are charged on the basis of the ratio of area of each apartment to the total area of all apartments. Based on area of occupancy, some of the members pay more than Rs.7,500/- per month and members of few units pay less than Rs.7,500/- per month towards maintenance charges.

Association procures Goods and Services from third parties and collects the monies from its members to pay third party vendors.

the applicant pays electricity charges to electricity Board and recovers by raising a debit note indicating their share of charges towards electricity charges from each of the units for power consumed towards lighting the common area of the apartment, including parks, community hall, security room, sports area committee room, pumping water to various units, etc.

The Association also collects sinking fund from members as per rules. The purpose of creation of sinking fund is making provision for future contingent liability of substantial repairs and renovation to building.

***Questions raised by applicant and decision of Authority for Advance Ruling is as follows :***

***Question 1:***

***Whether the activity of procuring Goods and Services from third parties for upkeep and maintenance of Apartments and collecting the monies from its members to pay third party vendors is an activity liable to GST?***

It was contended that association and it's members are not distinct persons and there is no profit motive. Hence goods and services are procured collectively by collecting contribution and there is no service liable to tax.

The applicant is a registered entity as an Association of Persons and has a legal existence separate from its members.

As per Section 2(17) of CGST Act 2017, the term "business" includes the provision, by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members Section 7(1) of the CGST Act 2017 deals with the Scope of Supply and stipulates that for the purposes of the said Act, the expression "supply" includes all forms of supply of goods or services or both made or agreed to be made for a consideration by a person in the course or furtherance of business In view of the above, the applicant association is supplying the services of maintenance of the common areas including repairs and upkeep and since the common areas belongs to all apartment owners, the maintenance charges are charged on the basis of the ratio of area of each apartment to the total area of all apartments and

hence the applicant is providing a service of maintenance of apartments, buildings and property to all members and this is in the course of business. Hence this would amount to a taxable supply of services.

***Question2 :***

*If liable to GST, whether the exemption entry no 77 of* ***notification 12/2017 Central Tax (Rate) dated 28.06.2017*** *apply for maintenance charges collected from members?*

The applicant is a non-profit organisation and is registered under the Karnataka Apartment Owners Association Act 1972.

The applicant provides services only to its members and collects the share of contribution or reimbursement of charges.

The recipients of services provided by the applicant are its own members i.e. members of a residential complex.

In view of the above, the exemption under entry number 77 of **Notification No.12/2017 Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 2/2018 Central Tax (Rate) dated 25.01.2018** is available for an amount, up to Rs.7,500/- per month per member, collected for sourcing of goods or services from a third person for common use of the members.

***Question3:***

***If exemption is available, whether it is available on per member basis or per flat basis, as some members could have more than one flat?***

As per general business sense, a person who owns two or more residential apartments in a housing society or a residential complex shall normally be a member of the Residential Welfare Association (RWA) for each residential apartment owned by him separately. The ceiling of Rs.7,500/ per month per member shall be applied separately for each residential apartment owned by him.

In view of the above, in the applicant's terms, the exemption is applicable to eligible members on per flat basis.

***Question4:***

***Whether the exemption as per entry no 77 of Notification I2/2017 Central Tax (Rate) is a standard exemption that can be claimed irrespective of amount collected towards maintenance? i.e. if maintenance charges from a member for a month is Rs 10,000/ -, whether Rs 10,000/- liable to GST or Rs 2,500/ (Rs 10,000 7,500) liable to GST?***

The applicant contends that when the monthly subscription exceeds Rs.7,500/-, the amount exceeding Rs.7,500/- only is liable to tax as the said exemption of Rs.7,500/- is allowed as deduction from the total monthly subscription.

The issue is dealt with and clarified, in the **Circular No. 109/28/2019-GST dated 22.07.2019,** at para 1, issue 5 and the same reads as under:

The exemption from GST on maintenance charges charged by a Resident Welfare Association (RWA) from resident is available only if such charges do not exceed Rs.7,500/- per month per member. In case the charges exceed Rs.7,500/- per month per member, the entire amount is taxable. For example, if the maintenance charges are Rs.9,000/ per month per member, GST @ 18% shall be payable on the entire amount of Rs.9,000/- and not on Rs.1,500/-. (Rs. 9,000 Rs. 7,500/-]

In view of the above, the exemption of Rs.7,500/- is not available when the maintenance charges exceed Rs.7,500/- per month per member. Therefore the members are required to discharge GST on the entire maintenance charges and not on just the amount in excess of Rs 7500/-. The same ratio applies to the earlier period when the exemption was available on maintenance charges uptoRs 5000/-

***Question5:***

***Whether the electricity charges paid to***

***BESCOM (Electricity supply authority) for the power consumed towards common facilities and separately recovered from members, liable to GST?***

The applicant, in this regard, admitted that they pay electricity charges and recover the amount from members for the electric power consumed towards lighting of common areas. Further they propose to recover the actual charges paid to Electricity Suppliers, in respect of the power consumption for common area, from the members proportionate to the carpet area owned by them, by raising a debit note indicating the proportionate electricity charges

The electricity bill received in relation to the consumption of electricity for the common utilities is in the name of the applicant. The applicant is not involved in the supply of electrical energy to the members but is involved in providing the service of upkeep and maintenance of the common utilities of the apartments and for this the electricity consumed by them becomes an input. Though the electricity bill is distributed to all its members, it is not the consideration for the supply of electrical energy to the members but the value is a part of the consideration for the supply of services to its members and hence is liable to tax at appropriate rates.

Hence this value of electricity charges separately shown in the invoices is to be added to the considerations shown towards the same service of upkeep and maintenance charged to individual members and then the consideration for the supply of such service is to be arrived and the taxable value shall be determined.

***Question 6:***

***Whether the Corpus/ Sinking Fund collected from members is liable to GST?***

The applicant collecting the amounts towards corpus / sinking fund for future supply of services meant for its members. It is a fact that the corpus fund or sinking fund is mandatory under the Bye-laws of the Co-operative Societies / Resident Welfare Associations and is in the nature of a deposit towards unforeseen events or planned events. Clause (31) of section 2 of the CGST Act, 2017 defines the term "consideration" which is as under:

"(31) "consideration" in relation to the supply of goods or services or both includes

(a) any payment made or to be made, whether in money or otherwise, in respect of, **in response to, or for the inducement of the supply of goods or services or both,** whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) *The monetary value of any act or forbearance, in respect of in response to, or for the inducement of the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:*

*Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;"*

The proviso to the above clause states that the deposit given in respect of a future supply shall not be considered as payment made for such supply until the supplier applies such deposit as consideration. In the instant case the corpus / sinking fund so collected is the amount collected towards the future supply of service and accordingly gets applied as consideration towards supply of services only at the time of actual supply of services. Therefore the amounts collected towards Corpus / Sinking Fund do not form part of consideration towards supply of services at the time of collection and hence are not liable to GST, at the time of collection. However the amounts so utilized for provision of service are liable to tax at the time of actual supply of service.

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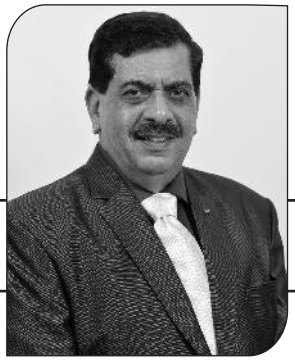

# SOMETHING ABOUT ADVANCE RULING .

**Adv. Milind Bhonde**

GST law has brought sea changes in indirect tax administration. Earlier enacted laws i.e. Act and rules made thereunder used to define and determine the rights, duties and responsibilities of the tax payers. The provisions of the act and rules used to undergo the amendments to meet the contemporary needs of administration and the tax payers.

But under GST regime, the system implemented by the Governments have become prominent and overshadowed the Act & Rules. On top of it law developed through advance rulings has dominated the administration of GST law.

Advance Ruling was not new to state administered sales tax laws nor to service tax administration. But access to the remedy of A.R. was restricted and limited subject to the circumstances stated in relevant section, whereas under GST regime, in order to secure the certainty in future the registered persons liable to pay GST prefer to seek confirmation by way of AR.

Referring to number of AAR (Authority for Advance Ruling) as on date one can notice that the taxable persons prominently sought AAR on the subjects relating to export of services, supply relating to SEZ units, Deemed export, classification of goods with reference to chapter Heading , chapter Sub Heading and Tariff items and so on. Thus analytical study of subject wise AAR has become need of the time. Before proceeding further for subject wise analysis of AAR, it would be important to understand about the primary and basic things about Advance Ruling of GST Act.

Section 95 to sec. 98 deals with the provisions of Advance Ruling and Rule which is / are the off shoot of enacted sections. As on date eventhough AAR has been an order of the day, still it would be necessary to state few important points relating to AR . Those are as under :-

1. The Authority on AR can be sought by any one including unregistered person.
2. Application for AAR to be made in prescribed form ARA- 01 and fees to be paid Rs. 5000/- both under CGST and SGST. And in case of appeal against AAR to be made in the prescribed form ARA-02 and fees to be deposited Rs.10000/- both under CGST and SGST Act.

   Thus availing the remedy of AR is a costly affair, can not be availed casually.
3. AAR are given in person and not to the world at large. Thus, the AAR is binding on applicant only and not on another registered person supplying goods or services or both of similar nature.

   One risk is involved in applying for AR is once ruling.

But statutory amendment has been made in respect of subject matter of AAR and new provisions have been made overriding the effect of AAR or jurisdictional High Court or Supreme Court decided otherwise then decision of AR will not have binding force.

Thus AR is also not free from the uncertainty.

6. The sequence of AR is the applicant who desires to find any answer on the querry needs to frame the facts and circumstances and legal position on which applicant relied while applying for AR.

Representative of revenue receives notice from AR authority to frame reply relating to the issue involved . Need less to say, revenue authority represents the fact and figures against the relief sought by the applicant.

AR authorities comprising one authority under CGST Act and another one under SGST Act evaluates the argument made by applicant and department authorities and add their views referring to the subject matter of AR and decide the issue before them. And their decision becomes authority on Advance Ruling.

Here it would not be out of to place to state that the AR authorities whether under CGST or SGST belong to the department and therefore without being impartial tend to protect the revenue of particular Government unless the facts and law argued are in favour of the applicant beyond doubts.

After focusing on the issue of AR, it would be an attempt to enlist AAR on particular topic of common interest . First one is relating to " export of service".

All of us are well aware that export of goods and normally, exist but export of services has invited services have been covered under zero rated supply and not liable to GST. As far as export of goods complexity of determining export does not, normally, exist but export of services has invited application for AR from inception of GST. In order to claim export of service the conditions narrated u/s 2 ( ) of CGST Act needs to be satisfied. Important condition is the services should be provided out of India. Here it would be worthwhile to state latest AAR on export of goods and services.

1. **Export of Goods :-**

Allahabad High Court decided that supply of goods from duty free shop would amount to goods (2019) 75 GST 272 while deciding the relevant issue the Allahabad High Court has relied on Apex Court finding in the case of DFS India Pvt.Ltd. v/s Commissioner of Customs where the apex court opined even in GST regime, duty free shops at international airports are considered non taxable area and their sales whether at arrival or departure lounge are considered as export.

2. **Export of Services :-**

While deciding on advance ruling application referred by Nes Global Specialist Engineering Services (P) Ltd., the authority opined that where applicant located in India and client situated in Abu Dhabi, have proposed to enter into a service agreement through which applicant will provide support service in respect of foreign business carried on by client as per Master Services

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# Detailed notes on New GST Returns under Scheme Normal, Sahaj and Sugam (Part-2).

B. S. SEETHAPATHI RAO

Instructions (FORM GST ANX-1).

**A. General Instructions:**

1. Terms used:

   (a). GSTIN: Goods and Services Tax Identification Number

   (b). UIN : Unique Identity Number

   (c). HSN Code: Harmonized System of Nomenclature Code

   (d). POS : Place of Supply (Respective State/UT)

   (e). B2B : Supplies made to registered persons having GSTIN or UIN

   (f). B2C : Supplies made to consumers and un-registered persons , not having GSTIN OR UIN

   (g). Type of document: Invoice (including revised invoices), debit/credit note, bill of supply, bill of entry etc.,

   (h). ARN:Acknowledgement Reference Number.

2. Registered person can upload the details of documents any time during a month/quarter to which it pertains or of any prior period but not later than the due date for furnishing of return for the month of September or second quarter following the end of the financial year to which such details pertains or the actual date of furnishing of relevant annual return whichever is earlier except that

   (i) the taxpayer filing the return on monthly basis will not be able to upload the details of documents from 18th to 20th of the month following the tax period.

   (ii) the taxpayer filing the return on quarterly basis will not be able to upload the details of documents from 23rd to 25th of the month following the quarter.

3. Supplier can upload the documents for any supply on real time basis. Facility for accepting such documents by the recipient shall be made available. Details of documents uploaded by the supplier will be shown to the concerned recipient also on near real time basis.

1. Details of the documents issued during the tax period or of any prior period by the supplier and uploaded by him after filing of the return for such prior period will be accounted for towards the tax liability of the supplier in the return in which such details have been uploaded.

2. Advances received on account of supply of services shall not be reported here. The same shall be reported in Table 3C(3) and adjustment thereof shall be reported in table 3C(4) of FORM GST RET-1.

3. Recipient will get credit during a tax period on the basis of the details of documents uploaded by the supplier upto the 10th of the month following the month for which the return is being filed for. Such credit can be availed i.e. credited to the ledger of the recipient only on filing of his (i.e. recipient's) return. There may be following two scenarios:

   (i) If the recipient files his return on a monthly basis, say, for the month of January, 2019 on 20th February, 2019, he shall be eligible to take credit in his return based on the documents uploaded by the supplier upto the 10th of February, 2019 irrespective of whether the supplier files his return on monthly or quarterly basis.

   (ii) If the recipient files his return on a quarterly basis (Normal, Sahaj or Sugam), say for the quarter January March, 2019 on 25th April, 2019, he shall be eligible to take credit in his return based on the documents uploaded by the supplier upto the 10th of April, 2019 irrespective of whether the supplier files his return on monthly or quarterly basis.

4. Supplies attracting reverse charge will be reported only by the recipient and not by the supplier in this annexure. Such supplies shall be reported GSTIN wise and amount of tax and taxable value will be net of debit / credit notes and advance paid (on which tax has already been paid at the time of payment of advance), if any.

5. All suppliers with annual aggregate turnover of more than Rs. 5 crore and that in relation to exports, imports and SEZ supplies will upload HSN level data. HSN code shall be reported at least at six digit level for goods and at least at six digit level for services. Other taxpayers (turnover upto Rs. 5 crore) shall have an optional facility to report HSN code in the relevant table or leave it blank.

6. Tax amount shall be computed by the system based on the taxable value and tax rate. The tax amount so computed will not be editable except by way of issue of debit / credit notes. However, the tax amount under cess will be reported by the taxpayer himself.

7. Place of supply shall have to be reported mandatorily for all supplies. For intra-State supplies, the POS will be the same State in which the supplier is registered.

8. Tax rate applicable on IGST supplies can be selected from the drop down menu. For intra- State supplies, the tax rate shall be applied at half the rate of Integrated tax equally for Central tax and State / UT tax. Cess, if applicable, shall be reported under the cess column.

9. Value of supplies and amount of tax shall be reported in whole number or upto two decimal points at the most.

10. GSTIN/UIN of the recipient of supplies shall be reported in respect of supplies reported in table 3B, 3E, 3F and 3G.

11. GSTIN of the supplier shall be reported (wherever available) in table 3H, 3K and 3L from whom the supplies have been received. PAN may be reported in Table 3H if supplies attracting reverse charge are received from un-registered persons.

12. Wherever supplies are reported as net of debit/credit notes, the values may become

negative in some cases and the same may be reported as such e.g. ( -100).

13. Details of documents of the period prior to introduction of the current return filing system can also be uploaded in the relevant tables of this annexure. Only those details shall be uploaded which have not been included in the erstwhile FORM GSTR-1. All supplies that are declared in this annexure will be accounted for payment of tax. Following scenarios may happen:

(i) Document has not been reported in FORM GSTR-1 and tax has also not been accounted for in FORM GSTR-3B In this case, document shall be uploaded and tax shall also be paid along with applicable interest except in case of issuance of credit notes.

(ii) Document has not been reported in FORM GSTR-1 but tax has been accounted for in FORM GSTR-3B In this case, document shall be uploaded and adjustment of tax accounted for shall be made in table 3C(5) of FORM GST RET-1, but in case of issuance of credit notes, upward adjustment shall be made in table 3A(8) of FORM GST RET-1.

(iii) Document has been reported in FORM GSTR-1 but tax has not been accounted for in FORM GSTR-3B In this case, uploading of the document shall not be required but adjustment of tax shall be made in table 3A(8) or 3C(5) of FORM GST RET-1, as the case may be.

**B. Table wise Instructions for fillup:**

| Sr. No. | Table No. | Instructions for filling up. |
|---|---|---|
| 1 | 3A | All supplies made to consumers and u-registered persons (i.e. B2C) shall be reported in this table. Supplies shall be reported tax rate wise and net of debit/credit notes. HSN Code is not required to be reported in this table. |
| 2 | 3B | ➢ All supplies (other than those attracting RCM) made to registered persons (GSTIN/UIN holders i.e. B2B) shall be reported in this table. Reporting of supplies made to Government department and other entities having TDS registration or through persons having TCS registration shall also be reported here. This would include amendments, if any.<br>➢ Supply of goods made by SEZ units/ developers to persons located in domestic tariff area (DTA) shall not be reported in this table as the same will be treated as imports by the recipient who shall report the same in table 3K.<br>➢ Supply of services made by SEZ unit to persons located in domestic tariff area (DTA) shall be reported by the SEZ unit /developers in this table. |

| | | |
|---|---|---|
| | | ➢ Supply of goods or services made to SEZ units/developers shall not be declared in this table and shall be reported in table 3E or 3F, as the case may be.<br>➢ The "Value" in column 6 shall be the "invoice value" whereas the "taxable value" shall be reported in column 9. |
| 3 | 3C&3D | Export with payment of tax (IGST) shall be reported in table 3C while those without payment of tax shall be reported in table 3D. Shipping bill/Bill of export number available (till the date of filing of return) may be reported against export invoices. Details of remaining shipping bills can be reported after filling the return. A separate functionality for updation of details of shipping bill/ Bill of export in table 3C or table 3D will be made available on the portal. |
| 4. | 3E&3F | ➢ All supplies made to SEZ units/developers shall be reported in table 3E &3F depending upon whether the supplies are made with payment or without payment of tax respectively. This would include amendments, if any.<br>➢ In case of supplies made with payment of tax, the supplier will have an option to select if the supplier or the SEZ units/ developers will claim refund on such supplies. If the supplier is not availing refund, only then the SEZ units/ developers will be eligible to avail input tax credit and claim refund for such credit after exports by them. |
| 5. | 3G | ➢ All supplies treated as deemed exports shall be reported in this table. This would include amendments, if any,<br>➢ Supplies shall declare whether refund will be claimed by him or the recipient of deemed export supplies will be availing refund on such supplies. If refund is to be claimed by the supplier, then recipient will not be eligible to avail input taxcredit on such supplies. |
| 6. | 3H | ➢ All supplies attracting RCM shall be reported by the recipient. Only GSTIN wise details have to be reported. Invoice wise details are not required to be reported in this table.<br>➢ The amount of advance paid for such shall to be declared in the month in which the same was paid.<br>➢ The value of supplies reported shall be net of debit/credit notes and advances on which tax has already been paid at the time of payment of advance, if any. |

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| | | ➢ Where only advance had been paid to the supplier, on reporting the same, the credit shall flow to the return( FORM GST RET-1) and shall be reversed in table 4 of the said return. This credit can be availed only on receipt of the supply and issue of invoice by the supplier. |
| 7 3I | | ➢ Import of services shall be reported in this table. The value of supplies shall be net of debit/credit notes and advances paid on which tax has already been pad at the time of payment of advance, if any. The amount of advance paid has to be paid declared in the month in which the same was paid. Invoice wise details are not required to be reported in this table.<br>➢ Services received from SEZ units/developers shall not be reported in this table.<br>➢ Where only advance has been paid to the supplier, on reporting the same, the credit shall flow to the main return (FORMM GST RET-1) and shall be reversed in table 4 of the said return. This credit can be availed only on receipt f the supply ad issue of invoice by the supplier. |
| 8 | 3J | ➢ Details of taxes paid on import of goods shall be reported in this table. These goods have already suffered IGST at the time of import and are not subject to taxation in this return. The exact amount of IGST and Cess paid at the port of import may be reported here, to avail input tax credit.<br>➢ Any reversal an account of in-eligibility of credit or otherwise is to be carried out in table 4B of the main return ( FORM GST RET-1). |
| 9. | 3K | ➢ Goods received from SEZ units/ developers on Bill of entry shall be reported in this table by the recipient. These goods have already suffered IGST at the time of clearance into DTA and have been cleared on a Bill of Entry and are not subjected to taxation in this return.<br>➢ SEZ units/developers making such supplies shall not include such outward supplies in table 3B.<br>➢ Reporting in table 3J and 3K shall be required till the time the data from ICEGATE and SEZ to GSTN system starts flowing online. |
| 10 | 3L | The recipient shall provide document wise details of the supplies for which credit has been claimed but the details of supplies are yet to be uploaded by the supplier (s) concerned as detailed below:<br>(i). Where the supplier has failed to report the supplies after a lapse of |

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| | | two tax periods in case of monthly return filers and after a lapse of one tax period in case of quarterly return filers.<br>(ii). Where the supplier uploads the invoice subsequently (after reporting in this table by the recipient), then such credit has to be reversed by the recipient in table 4B(3) of the main return( FORM GST RET-1) as this credit cannot be availed twice.<br>For example: in case where the supplier has made a supply in April but has not reported the same in FORM GST ANX-1 till 10th May and the recipient has claimed input tax credit by reporting the same in the main return (FORM GST RET-1) in table 4A(10) , reporting is required in the following situation:<br>Where the supplier concerned has not uploaded the invoices in FORM GST ANX-1 of April, May or June tax period till 10th July, the recipient shall report the same, document wise in this table in FORM GST ANX-1 of June. |
| 11 | All Tables (3 series) | Debit / Credit notes issued by the supplier with respect to supplies) other than supplies attracting RCM shall be reported in the respective tables. If debit/credit note is issued for the difference in tax rate only, then taxable value shall be reported as "Zero" , so that the liability computation is not disturbed. Only tax amount shall be reported in such cases. |
| 12 | 4 | Supplies made through e-commerce operators liable to collect tax under section 52 shall be reported at the consolidated level in this table even though these supplies have already been reported in table 3. |

C. Edit/Amendment of uploaded documents:-

1. **Editing of documents up to the 10th of the following month:-** Details of the documents uploaded up to the 10th of the following month may be edited by the supplier up to the said date (10th of the following month) only if such documents are not accepted by the recipient. If a document has already been accepted (up to 10th )by the recipient, then such document has to be reset/unlocked by the recipient and only then, it can be edited by the supplier up to the 10th of the following month, Following two scenarios may arise.

(i) In case, the recipient files his return on monthly basis, all the documents uploaded by any supplier (irrespective of the fact whether the supplier files his return on monthly or quarterly (Normal, Sahaj, Sugam) basis) shall be available for acceptance by such recipient up to the 10th of the month following the month for which the return is being filed. The

supplier can edit the documents so accepted by the recipient only if the same are reset /unlocked by the recipient by the said date.

(ii) In case , the recipient files his return on quarterly ( Normal, Sahaj or Sugam) basis, all the documents uploaded by any supplier (irrespective of the fact whether the supplier files his return on monthly or quarterly (Normal, Sahaj, Sugam ) basis)shall be available for acceptance by such recipient up to the 10th of the month following the quarter for which the return is being filed. The supplier can edit the documents so accepted by the recipient only if the same are re-set/ unlocked by the recipient by the said date.

2. **Supplier side Amendment:** The return system provides for all editing or amendments from the supplier's side only. The recipient will have the option to reset/ un-lock or reject a document but editing of or amendment to the same shall be made by the supplier only.

3. **Edit/Amendment after 10th of the following month:** The details of the documents uploaded by the supplier up to 10th of the month following the month or quarter for which the return is being for will be auto-populated and made available to the recipient in FORM GST ANX-2 to accept, reject or to keep the document pending.\

4. Instructions regarding acceptance, rejection, or kept pending by the recipient may be referred to in the instructions to FORM GST ANX-2.

5. Documents rejected by the recipient shall be conveyed to the supplier only after filling of the return by the recipient.

6. The rejected documents may be edited before filing any subsequent return for any month or quarter by the supplier. However, credit in respect of the document so edited or uploaded shall be made available through the next open FORM GST ANX-2 for the recipient. However, the liability for such edited documents will be accounted for in the tax period (month or quarter) in which the documents will be accounted for in the tax period (month or quarter) in which the documents have been uploaded by the supplier.

7. Shifting of documents: In certain situations, the particulars of the document may be correct but the document has been reported in the wrong table. Therefore, when such documents are rejected by the recipient, instated of amending the document, a facility of shifting such documents to the appropriate table will be provided.

8. **Amendment of documents relating to supplies made to persons other than persons filing return in FORM GST RET-1/2/3 (e.g. supplies made to composition taxpayers, ISD, UIN holders etc.)** The documents relating to such supplies may be amended by the supplier at any time and the same shall not be dependent upon the action taken (accept/reject/pending) by the recipient.

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# GST शास्त्र : Joint Development Agreement - Taxability and other aspects

**CA. Yogehs Ingale**

■ **Introduction :–**

In the real estate industry, tri-partite business model known as Joint Development Agreements are often observed model. Due to sky high reaching prices of the land, option to enter into such agreements has become a normal practice in the industry.

After 1st April, 2019, real estate sector has undergone massive changes as far as GST implications are concerned. Hence, it is important to revisit law, understand taxability impacts and other aspects in respect of joint development agreement. Joint development agreements are normally entered into either on revenue sharing basis or area sharing basis. In this article, we will have a walk through provisions relating to area sharing agreement.

■ **The model :-**

In such business model, 3 parties are involved

1) The land owner
2) The builder / developer
3) Contractor who undertakes construction

In area sharing agreement, landowners enter into an agreement with the developer, whereby, the landowner gives development rights to construct or develop a complex to the developer. In return,developer agrees to assign a portion of the constructed area in the form of flats.

In this case, flow of consideration from both ends is as follows –

Landowner to Developer – Rights to construct or develop a complex

Developer to Landowner – A portion of the constructed area in the form of flats

■ Tax implications :-

Tax implications for 1st limb of transaction i.e transfer of development rights is as follows.

In pre ]GST regime, it was a settled principal that land includes benefits arise out of land. Various judicial pronouncements have also upheld the same view. However, in GST regime the legislative intention is to make it taxable. To understand the issue, kindly refer our previous article **"GST शास्त्र: Mystery of applicability of GST on Transferable Development Rights (TDR)".**

Hence, the legislative principal that any benefit arising out of land will form part and parcel of landi.e immovable property is no more applicable in GST and transfer of development rights will be treated as supply of service.

It is needless to mention that 2nd limb of transaction i.e assignment of a portion of the constructed area in the form of flats is taxable under pre ]GST regime as well as in GST regime also.

Let's understand various aspects of both the limbs in detail.

**Part I: Service by way of transfer of development rights- Rate of tax, Exemption, Valuation,**

Reverse charge mechanism, Time of supply

**a) <u>Rate of Tax</u> –**

In the absence of any specific entry of concessional rate, such activity is taxable @18%.

**b) Exemption –**

As per notification no. 4/2019 '- Central Tax (Rate) dt. 29th March, 2019, exemption has been provided to service by way of development rights **on or after 1st April, 2019** for construction of **residential apartments** by landowner. However, such exemption is subject to sale of flats before date of issuance of completion certificate or first occupation of project whichever is earlier.

It implies that GST is payable in proportion to area of flats remained unbooked as on date of issuance of completion certificate or first occupation of project whichever is earlier. **Also, exemption is granted to abovementioned service for construction of residential apartments and not for the construction of commercial apartments.**

**c) Valuation –**

Valuation mechanism has been provided in notification no. 4/2019 – Central Tax (Rate) dt. 29th March, 2019 as follows –

Value shall be calculated according to paragraph 1A as mentioned below. However, such value shall not exceed 1% of the value in case of affordable residential apartments and 5% of the value of non-affordable residential apartments. Value of apartments remained unbooked is \o be calculated according to paragraph 1B.

As per pragraph 1A, value of supply of service by waof transfer of development rights by a

person to the promoter against consideration in the form of residential or commercial apartments shall be deemed to be equal to the **value of similar apartments** charged by the promoter **from the independent buyers nearest to the date on which such development rights is transferred** to the promoter.

As per paragraph 1B, value of portion of residential apartments remaining un-booked on the date of issuance of completion certificate or first occupation, as the case may be, shall be deemed to be equal to the **value of similar apartments** charged by the promoter **nearest to the date of issuance of completion certificate or first occupation,** as the case may be.

Thus, valuation mechanism of service by way of transfer of development rights has two fold effects.

1) Calculate value **on the date of transfer of development rights** for entire area of project considering value charged for similar apartment from independent buyer **nearest to the date on which such development rights are transferred.**

   The value calculated as per above mechanism pertains to complete area of the project including area of flats remain unsold. Hence, in case of residential apartments, proportionate tax payable on value of flats remained unbooked is to be calculated as follows –

   Value as calculated above (x) area of flats remain unsold (÷) complete area of project.

   As there is no exemption to service provided by way transfer of development rights for construction of commercial apartments, there is no need to calculate proportionate value for unbooked apartments.

2) In case of residential apartments, tax payable calculated @ 18% on value calculated as above shall not exceed 1% of value of similar affordable and 5% of value of similar nonaffordable apartments charged by the promoter **nearest to the date of issuance of completion certificate or first occupation, whichever is earlier.**

Thus, tax payable on value of flats remained unbooked is to be calculated as follows –

Value of unbooked affordable flats (x) 1% (+) value of unbooked non affordable flat (x) 5%

Value is to be considered nearest to the date of issuance of completion certificate or first occupation, whichever is earlier.

Final tax liability on service by way of transfer of development rights for construction of residential apartments shall be lower of tax calculated as per step 1 and step 2. In case of commercial apartments, final tax liability will be calculated @18% on value as prescribed in paragraph 1A.

**d) Reverse charge mechanism –**

As specified in notification no. 5/2019 – Central Tax (Rate) dated 29th March, 2019, where service is supplied by way of transfer of development rights for construction of residential as well as commercial apartments, tax is to be paid by recipient as specified in section 9(3) of CGST

Act, 2017. Hence, developer, who is recipient, shall pay tax on service specified above.

**e) Time of supply –**

As per entry (i) read with entry (a) of notification no. 6/2019 – Central Tax (Rate) dated 29th March, 2019, time of supply shall arise on the date of issuance of completion certificate for the project or on its first occupation whichever is earlier.

Hence, liability payable is deferred as prescribed above.

**Part II: Supply of construction service] Rate of tax, Exemption, Valuation, Time of supply, additional points**

a) Rate of Tax –

As per notification no. 3/2019 – Central Tax (Rate) dt. 29th March, 2019, new rates have been specified along with option to opt for old rates.

**Applicability of new tax rates are as follows :]**

| New rates / Old rates | Category of apartments | Definition | Gross tax rate | Effective tax rate |
|---|---|---|---|---|
| New rate | Affordable residential apartment | Apartments having carpet area of upto 90 sq. mtr (968.75 sq. ft) **and** having gross amount charged upto Rs. 45 lakhs | 1.5% (Without ITC) | 1% (Without ITC) |
| New rate | Non-affordable residential apartment | Other than affordable apartments | 7.5% (without ITC) | 5% (without ITC) |
| Old rate | Affordable residential apartment | As per various schemes | 12% (with ITC) | 8% (with ITC) |
| Old rate | Non-affordable residential apartment<br>Commercial apartments | Other than affordable apartments<br>- | 18 % (with ITC)<br>18% (with ITC) | 12 % (with ITC)<br>12% (with ITC) |

b) Exemption – No exemption to construction service provided by developer to landowner

c) Valuation –

Valuation mechanism has been provided in notification no. 3/2019 – Central Tax (Rate) dt. 29th March, 2019 as follows –

As per paragraph 2A of the said notification, where a **registered*** person transfers development right or FSI (including additional FSI) to a promoter against consideration, wholly or partly, in the form of construction of apartments, the **value of construction service** in respect of such apartments shall be deemed to be equal to the **Total Amount charged for similar apartments** in the project from the independent buyers, other than the person transferring the development right or FSI (including additional FSI), **nearest to the date on which such development right or FSI (including additional FSI) is transferred** to the promoter, **less the value of transfer of land**, if any as per paragraph 2.

*(*The word registered has been omitted vide notification no. 20/2019 – Central Tax (Rate) dt. 30th September, 2019. It implies that the said valuation mechanism is applicable to any such kind of transaction irrespective of status of registration of landowners. However, in the absence of clarity, whether the word omitted has retrospective effect or prospective effect is another open debate.)*

As per paragraph 2, value of land is deemed to be 1/3rd of the gross amount charged.

Thus, such value shall be calculated considering **value of similar apartments** charged by the promoter developer **nearest to the date on which such development rights are transferred** where development rights have been transferred against consideration in the form of residential as well as commercial apartments.

d) Time of supply-

As per entry (i) read with entry (d) of notification no. 6/2019 – Central Tax (Rate) dated 29th March, 2019, time of supply shall arise on the date of issuance of completion certificate for the project or on its first occupation whichever is earlier.

Hence, liability payable is deferred as prescribed above.

e) Additional points –

(i) As prescribed in notification no. 3/2019 – Central Tax (Rate) dt. 29th March, 2019, landowner will be eligible to claim input tax credit of tax charged on such construction service.

(ii) However, to claim such ITC ]

(a) Land owners must be registered under GST.

(b) Land owners shall sale flats buyers before completion certificate or first occupation whichever is earlier.

(c) Land owner shall charge tax which is not less than amount of tax charged by developer.

*(Above article was written on 5th December, 2019 & jointly authored by CA. Yogesh Ingale, CA. Tushar Ajmera and CMA. Anuj Chordiya. Views expressed are strictly personal. For any queries & feedback, reach us at yogesh.ingale@talentax.in)*

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# RERA | REAL ESTATE AGENT | PART II

**Adv. Sanket Suhas Bora**

## A. RESPONSIBILITIES OF A REAL ESTATE AGENT

### a. Registration:

As per Section 9(1), no real estate agent shall facilitate the sale or purchase of or act on behalf of any person to facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being the part of the real estate project registered under section 3, being sold by the promoter in any planning area, without obtaining registration from Authority.

### b. Registration Number:

As per Section 9(5)r.w.r. 14(1) and 14(2), the Real Estate Agent shall quote his RERA Registration Number in every sale facilitated by him/her and on all the documents relating to advertisement, marketing, selling or purchase issued by the him/her.

Further, the Real Estate Agent shall prominently display number of his Registration Certificate at the principal place of business and at its branch offices

### c. Registered Real Estate Project:

As per Section 10(a), the Real Estate Agent shall not facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being sold by the promoter in any planning area, which is not registered with the Authority

### d. Maintenance of Records:

As per Section 10(b)r.w.r. 16, the Real Estate Agent shallmaintain and preserve such books ofaccounts, records and documents as he may be required in accordance with the provisions ofthe Income Tax Act, 1961 or the Companies Act, 2013 or under any other law applicable forthe time being in force or rules and regulations framed there under and will be required toproduce them for inspection if so needed for grant or renewal of the registration

### e. Fair Trade Practices

As per Section 10(c) r.w.r 17(i) and 17(ii), the Real Estate Agent shall not involve himself in any unfair trade practices, namely:

(i) the practice of making any statement, whether orally or in writing or by visible representation which

(A) falsely represents that the services are of a particular standard orgrade;

(B) represents that the promoter or himself has approval or affiliation

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(C) makes a false or misleading representation concerning the services;

(ii) permitting the publication of any advertisement whether in any newspaper or otherwise of services that are not intended to be offered.

### f. Facilitate Possession

As per Section 10(d) r.w.r. 17(iii), the Real Estate Agent shall facilitate the possession of all the information and documents, as the allottee, is entitled to, at the time of booking of any plot, apartment or building or as the case may

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# UPDATES
# SELF REGULATORY ORGANISATION

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# Clause by clause - 44AD

**CA Anup Shah**

Finance Act 2016 amended section 44AD to a larger extent which changed the whole scenario and planning under this presumptive section. With changes in turnover limit and addition and deletion of certain clauses has made this section more stringent and costly. Further, professionals are enjoying a 50-50 situation with the introduction of section 44ADA which has almost similar provisions to that of section 44AD.

Let us now dissectthis section part by part:

*"44AD. (1) Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of an eligible assessee engaged in an eligible business, a sum equal to eight per cent of the total turnover or gross receipts of the assessee in the previous year on account of such business or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the eligible assessee, shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession" :*

*Provided that this sub-section shall have effect as if for the words "eight per cent", the words "six per cent" had been substituted, in respect of the amount of total turnover or gross receipts which is received by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account during the previous year or before the due date specified in sub-section (1) of section 139 in respect of that previous year."*

It is very important to note that this section is only applicable to eligible assessee which has been defined as an resident individual, a HUF or a firm who has turnover below Rs. 2 crore but has specifically excluded LLP. Further it has also excluded persons carrying their business in free trade zones as notified by the Government, Special Economic Zones, hundred percent export oriented units, and have taken such deduction as allowed under section 10A, 10AA, 10B. Further it has also excluded undertakings taking exemption under chapter VI-C.

Without restricting itself to the aforesaid provisions the Act also speaks about non-applicability of the provisions of the said section to :

- A person carrying on profession under section 44AA ( 44ADA is applicable to such person)
- A person earning income by way of commission or who earns brokerage
- A person carrying on the business of agency. Further the said section is applicable to any

business except the business of plying, hiring or leasing goods carriage subject to its reference under section 44AE of the Act.

Also it is pertinent to know that recent amendments has encouraged banking transaction to which 6% of the such total turnover would be considered as total taxable income of the assessee.

*"(2) Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed"*

This clause prevents the assessee from taking any deductions against the income for which section 44AD is applicable. With recent amendment in the said section wherein clause (3) has been omitted which allowed for deduction of interest and remuneration paid to partners of partnership firms, such deduction which is allowed under section 37 of the Act shall not be allowed henceforth. So the criteria of profit of 8% should be considered after debiting the partner's remuneration.

*"(3) The written down value of any asset of an eligible business shall be deemed to have been calculated as if the eligible assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years."*

The aforementioned clause states that in case of a person to whom section 44AD is applicable, shall at the time of valuation of WDV of any asset calculate depreciation at the rates applicable under the Act from the year in which such asset is acquired and as per normal provisions of the Act. As the assesse is not required to maintain the books once he opts for 44AD, such provision would help him to calculate the WDV in case of sale of any asset or the undertaking as a whole in a slump sale.

*"(4) Where an eligible assessee declares profit for any previous year in accordance with the provisions of this section and he declares profit for any of the five assessment years relevant to the previous year succeeding such previous year not in accordance with the provisions of sub-section (1), he shall not be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of sub-section (1).*

*(5) Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee to whom the provisions of sub-section (4) are applicable and whose total income exceeds the maximum amount which is not chargeable to income-tax, shall be required to keep and maintain such books of account and other documents as required under sub-section (2) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB."*

It is imperative to read clause (4) and (5) together for a smooth understanding of the intent of these amended clauses. Vide amendments brought vide insertion of clause (4), now it would be necessary for the assessee to maintain books of accounts and get them audited u/s 44AB of the Act if he, after declaring profits in accordance with the provisions of section 44AD for the initial year,

fails to do so in any 5 subsequent years. Such necessity would be for 5 years i.e. after opting out of this section, the assesse can't enjoy opting this section for next 5 years. However, it is imperative to note that in case wherein the turnover of assessee crosses the limit as specified under the said section, provisions of clause (4) would not be applicable to such assessee and he would continue to enjoy the privileges under the said section in the subsequent years when his turnover is well within the limits as permitted.

In the past blog we have basic concepts related to section 44AD. However, there are certain intricate things to be pondered on which are as follows:

1. **If the turnover is below 1 crore and the books have to be audited u/s 444AB as the profit of the asssessee is below 8% of the total turnover, then, is the provisions of TDS applicable?**

   TDS on payment of salary u/s 192 shall be applicable as it is mandatory to all the persons paying salary and if such salary along with other income and after deduction of loss from house property exceeds maximum amount not chargeable to tax i.eRs. 2,50,000/-. However, in case of transactions wherein TDS needs to be deducted u/s 194C, 194H, 194I, no such deduction is necessary as it is only applicable for an individual or HUF whose total income exceeds the monetary limit as specified u/s 44AB, clause (a) and (b) i.e. Rs. 1 crore and Rs. 50 lakh respectively if AY 2017-18 is taken into consideration.

2. **Applicability of ICDS:**

   With revised FAQ vide CBDT notification dated 29th September 2016, ICDS will be applicable for the assessee's who are covered under the provisions of section 44AB. In view of the aforesaid facts, an assessee who gets covered under section 44AB due to turnover less that as prescribed under section 44AD of the total turnover, ICDS shall be applicable.

3. **Is 44AD compulsory to all the individual and HUF assessees's?**

   On careful reading of subsection (4) and (5) it can be noticed that the assessee is required to maintain books of accounts and get them audited under subsection 5 only if the provisions of subsection 4 are applicable. Subsection 4 in turn takes the base of the year in which the assessee has first declared profit under subsection 1 and has opted out of the scheme within any 5 years from such assessment year. Thus, in the opinion of the author, when the assessee has not resorted to such section in any of the previous 5 years, provisions of section 44AD are not obligatory on the assessee even when his total income is below the prescribes limit under section 44AD. It implies that a new business set-up, who has not opted for section 44AD, can now declare his profit at less than 8% / 6% till he takes benefit of section 44AD or exceeds the turnover prescribed for tax audit u/s 44AB.

❖❖❖

GST law has brought sea changes in indirect tax administration. Earlier enacted laws i.e. Act and rules made thereunder used to define and determine the rights, duties and responsibilities of the tax payers. The provisions of the act and rules used to undergo the amendments to meet the contemporary needs of administration and the tax payers.

But under GST regime, the system implemented by the Governments have become prominent and overshadowed the Act & Rules. On top of it law developed through advance rulings has dominated the administration of GST law.

Advance Ruling was not new to state administered sales tax laws nor to service tax administration. But access to the remedy of A.R. was restricted and limited subject to the circumstances stated in relevant section, whereas under GST regime, in order to secure the certainty in future the registered persons liable to pay GST prefer to seek confirmation by way of AR.

Referring to number of AAR (Authority for Advance Ruling) as on date one can notice that the taxable persons prominently sought AAR on the subjects relating to export of services, supply relating to SEZ units, Deemed export, classification of goods with reference to chapter Heading , chapter Sub Heading and Tariff items and so on. Thus analytical study of subject wise AAR has become need of the time. Before proceeding further for subject wise analysis of AAR, it would be important to understand about the primary and basic things about Advance Ruling of GST Act.

Section 95 to sec. 98 deals with the provisions of Advance Ruling and Rule which is / are the off shoot of enacted sections. As on date eventhough AAR has been an order of the day, still it would be necessary to state few important points relating to AR . Those are as under :-

1. The Authority on AR can be sought by any one including unregistered person.
2. Application for AAR to be made in prescribed form ARA- 01 and fees to be paid Rs. 5000/- both under CGST and SGST. And in case of appeal against AAR to be made in the prescribed form ARA-02 and fees to be deposited Rs.10000/- both under CGST and SGST Act.

   Thus availing the remedy of AR is a costly affair, can not be availed casually.
3. AAR are given in person and not to the world at large. Thus, the AAR is binding on applicant only and not on another registered person supplying goods or services or both of similar nature.

   One risk is involved in applying for AR is once AAR is given in particular issue then the nodal or proper authority can not apply his own mind eventhough such application favours to the applicant.
4. Any question other than relating to place of supply can be referred for AAR before or after undertaking the supply of goods or service or both

   But in case , any issue related to AR is pending or decided under any statutory proceedings of the applicant then such issue can not be referred for AR.
5. AAR becomes ruling law in case of the applicant and any transaction made by the applicant would be taxed according to the AAR and nodal or proper officer will not have option to deviate from authority of advance

# MONTHLY TAX PANCHANG
# DECEMBER 2019

**Amol N. Shaha**
Tax Consultant - Advocate

| DATE | SUBJECT | NATURE OF COMPLIANCE |
|---|---|---|
| 07-DEC-2019 | INCOME TAX | PAYMENT OF TDS/TCS FOR THE MONTH OF NOVEMBER 2019. |
| 11-DEC-2019 | GST | DUE DATE FOR FILING RETURN IN FORM GSTR-1 FOR THE MONTH NOVEMBER 2019, FOR REGISTERED PERSONS WITH AGRREGATE TURNOVER IN A STATE EXCEEDING RS.1.5 CRORES OR OPTED TO FILE MONTHLY RETURN. |
| 15-DEC-2019 | INCOME TAX | DUE DATE FOR ISSUE OF TDS CERTIFICATE IN FORM NO.16B FOR TAX DEDUCTED U/S 194-IA IN THE MONTH OF OCTOBR 2019. |
| 15-DEC-2019 ` | INCOME TAX | DUE DATE FOR ISSUE OF TDS CERTIFICATE IN FORM NO.16C FOR TAX DEDUCTED U/S 194-IB IN THE MONTH OF OCTOBER 2019. |
| 15-DEC-2019 | INCOME TAX | DUE DATE FOR FURNISHING OF FORM 24G BY AN OFFICE OF THE GOVERNMENT WHERE TDS FOR THE MONTH OF NOVEMBER 2019 HAS BEEN PAID WITHOUT THE PRODUCTION OF A CHALLAN. |
| 15-DEC-2019 | INCOME TAX | DUE DATE FOR PAYMENT OF 3RD INSTALLMENT OF ADVANCE INCOME TAX FOR THE A.Y.2020/2021. |
| 15-DEC-2019 | PROVIDENT FUND | DUE DATE FOR MONTHLY PROVIDENT FUND (PF) PAYMENT FOR NOVEMBER 2019. |
| 15-DEC-2019 | ESIC | DUE DATE FOR MONTHLY EMPLOYEES`S STATE INSURANCE CORPORATION (ESIC) PAYMENT FOR NOVEMBER 2019. |
| 20-DEC-2019 | GST | DUE DATE FOR PAYMENT OF GST FOR THE MONTH OF NOVEMBER 2019 AND TO FILE SUMMARY RETURN IN FORM NO.GSTR-3B FOR THE MONTH OF NOVEMBER 2019. |
| 25-DEC-2019 | PROVIDENT FUND | DUE DATE FOR FILING PROVIDENT FUND (PF) RETURN FOR NOVEMBER 2019. |
| 30-DEC-2019 | INCOME TAX | DUE DATE FOR FURNISHING OF CHALLAN-CUM-STATEMENT I.R.O.TAX DEDUCTED U/S 194-IA AND U/S 194-IB IN THE MONTH OF NOVEMBER 2019. |
| 31-DEC-2019 | GST | EXTENDED DUE DATE FOR THOSE WHO ARE LIABLE TO FILE GST ANNUAL RETURN AND AUDIT REPORT IN FORMS GSTR 9/9A/9C FOR F.Y.2017 /2018. |
| 31-DEC-2019 | PROFESSION TAX | MONTHLY E-PAYMENT AND E-FILING OF RETURN FOR DECEMBER 2019. |

NOTE:-- 1] PLEASE NOTE THAT,BANKS REMAIN CLOSED ON 2ND AND 4TH SATURDAY OF EVERY MONTH, HENCE MAKE ALL THE STATUTOR PAYMENTS ACCORDINGLY.

2] THE ABOVE INFORMATION IS PREPARED ON 07TH DECEMBER 2019.ANY AMENDMENDS/CHANGES IN DATES ,ETC.,IF ANY, DONE BY THE GOVERNMENT AFTER 07TH DECEMBER 2019,WILL BE APPLICABLE ACCORDINGLY.

*GST Full Day Seminar Opening Ceremony*

*GST Full Day Seminar Opening Ceremony*

*GST Full Day Seminar -*
*Committee Members with CA Bimal Jain*

*GST Full Day Seminar - Felicitation of*
*Adv Dinesh Tambde (President GSTPAM)*

*GST Full Day Seminar -*
*Felicitation Speaker Adv Aditya Surte*

*GST Full Day Seminar -*
*Felicitation Speaker CA Bimal Jain*

*GST Full Day Seminar -*
*Felicitation Speaker CA Pritam Mahure*

*GST Full Day Seminar -*
*Felicitation Speaker CMA Rahul Chincholkar*

*GST Full Day Seminar Felicitation of Chief Guest*
*Shri V. Shridharan (Senior Advoate Mumbai High Court)*

*GST Full Day Seminar Felicitation of Guest of Honor*
*Shri Vinayak Patkar (Senior Advoate Mumbai High Court)*

*Feedback Divas - Felicitation of*
*CA Himani Damija Madam DY Comm CGST*

*Feedback Divas - Representation from our*
*Association submitted to CGST & SGST Authorities*

*Opening of New Projector &*
*Other Facilities in our Association Hall*

*"Birthday of Shri Vilas Aherkar (Vice President), Adv Pranav Sheth (Treasurer),*
*Adv Sanket Amate (Joint Secretary) & CA Anvesh Vakharia celebrated.*
*Shri Aherkar had given donation of Rs.5000 to association.*


Pay Taxes ● Not Less ● Not More

# The Western Maharashtra Tax Practitioners' Association

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