

Global Tax Update

India

Deloitte Tohmatsu Tax Co.

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1. E-assessment / Faceless assessment¹ in India

The CBDT² had notified the E-assessment Scheme 2019 and relevant amendments to the provisions of the ITA³; to impart greater efficiency, transparency and accountability in the audit proceedings by, inter alia, eliminating interface between the taxpayer and the AO⁴.

The government on 13 August 2020, launched “Transparent Taxation - Honouring the Honest” platform, the main features of which are faceless assessment; faceless appeal; and the Taxpayers’ Charter.

The CBDT has now issued notifications⁵ to align the E-assessment Scheme 2019 and relevant provisions of the ITA, with the new “Transparent Taxation - Honouring the Honest” platform. Further, the CBDT has also issued orders to re-constitute the Regional E-Assessment Centres⁶ (ReAC), to amend the jurisdiction of income-tax authorities and to notify the income-tax authorities of the ReAC that would exercise powers and functions of the AO. The highlights of the scheme are:

- National E-assessment Centre (NeAC) has been set-up to facilitate the conduct of e-assessment proceedings in a centralised manner.
- NeAC shall assign the case selected for the purposes of e-assessment to a Specific Assessment Unit (SAU) in any one Regional e-assessment Centre through an automated allocation system⁷.
- Verification unit and Technical unit, which will be set up separately, would assist the SAU in undertaking any verification / provide technical inputs. These units would also be selected through an automated allocation system at the NeAC.
- Review unit⁸: The NeAC will be required to forward the suggestions received from the review unit (for modifications to the draft assessment order) to a different SAU (i.e. assessment unit not involved in the preparation of the draft assessment order) through an automated allocation system.
- The Principal Chief Commissioner or the Principal Director General of NeAC can now transfer the case to the jurisdictional AO, only with the prior approval of the CBDT.
- The taxpayer in addition to the assessment order can now also file an appeal against the penalty order issued under the Scheme.

1 Tax audits are referred to as assessments in India

2 Central Board of Direct Taxes

3 Income-tax Act, 1961

4 Assessing Officer

5 https://www.incometaxindia.gov.in/communications/notification/notification_60_2020.pdf and

https://www.incometaxindia.gov.in/communications/notification/notification_61_2020.pdf

6 Regional E-assessment Centre to facilitate the conduct of e-assessment proceedings in a centralised manner in the jurisdiction of Pr.CCIT

7 Automated allocation system means an algorithm for randomised allocation of cases, by using suitable technological tools, including artificial intelligence and machine learning, with a view to optimise the use of resources

8 A unit set-up under the Scheme to carry out the function of review of draft assessment orders prepared by the assessment units.

- The assessment will be conducted in electronic mode except to enquiry made by verification unit. The records will be maintained electronically and the documents will have to be authenticated digitally using a digital signature/ electronic verification code by all parties.
- For more details, please visit <https://www2.deloitte.com/content/dam/Deloitte/in/Documents/tax/Global%20Business%20Tax%20Alert/in-tax-gbt-alert-amendment-to-e-assessment-scheme-noexp.pdf>

2. Certain non-residents not required to obtain/ furnish Permanent Account Number⁹ (PAN)

CBDT has issued a notification¹⁰ to notify that non-residents deriving income only from investment in certain specified funds¹¹ are not required to obtain PAN on satisfaction of certain conditions. Further, they are not required to furnish PAN to the payer of income for withholding tax purposes.

As per the provisions of the ITA¹², in the absence of furnishing of PAN by payee, payer is required to withhold tax (wherever applicable) at a higher rate i.e. at least at 20% (and at least 5% in case of payment by e-commerce operator to an e-commerce participant).

The higher rate of withholding tax is not applicable in case of non-residents who earn income such as interest, royalty, fees for technical services, dividends¹³ and payments on transfer of any capital asset and if the non-resident furnishes information / documents as prescribed under Rule 37BC of the Income-tax Rules, 1962 (Rules)

The CBDT has now¹⁴ provided further exceptions to certain income of non-residents, with respect to the requirement of obtaining and furnishing PAN for the purposes of withholding, provided certain conditions are satisfied¹⁵. Conditions, among others, would include the following:

- Non-resident's income from India (during the relevant financial year) is only from investment in the specified fund.
- Withholding tax as applicable under section 194LBB of the ITA is deposited by the specified fund while making payments to non-residents.
- The non-resident furnishes basic information like name, contact details, address, tax residency certificate, tax identification number in country of residence.

3. Gujarat High Court allows GST¹⁶ refund of input services under inverted duty structure

Inverted duty structure is where the GST rate applicable on procurements is more than the GST rate on outward supply and therefore, input tax credit (ITC) keeps getting accumulated. Under the GST laws, while the GST Act¹⁷ provides that refund of accumulated ITC should be allowed under inverted duty structure, the rules¹⁸ provide that refund of only "inputs" is allowed and refund of "input services" cannot be granted. On an appeal filed, the Gujarat High Court has held that provisions of CGST Rules, restricting the refund of input services in case of refund under inverted duty structure to be ultra-vires the provisions of CGST Act and allowed the grant of refund of input services as well.

Please note that the department may appeal before the Supreme Court.

9 Permanent Account Number (PAN) [i.e. the Indian tax identification number] is required to be obtained as per the provisions of section 139A of the Income-tax Act, 1961 (ITA) by persons earning income taxable in India and other prescribed categories of persons, unless specified otherwise.

10 No.499 (E) dated 11 August 2020

11 Specified fund means any fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which has been granted a certificate of registration as a Category I or Category II Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012, and which is located in any 'International Financial Services Centre' (IFSC)

12 section 206AA

13 vide Notification No. 464 (E) dated 24 July 2020

14 vide Notification No. GSR 499 (E) dated 10 August 2020 (Notification)

15 Rule 114AAB

16 Goods and Services tax

17 Central Goods and Services Tax Act, 2017 (CGST Act)

18 Central Goods and Services Tax Rules, 2017

4. Clarification on extension of Annual General Meeting (AGM) for the financial year ended on March 31, 2020

The Ministry of Corporate Affairs (MCA)¹⁹ has provided a clarification on extension²⁰ of Annual General Meeting (AGM) for Companies for the financial year ended as on March 31, 2020. The Ministry has stated that companies which are unable to hold their AGM for the financial year ended on March 31, 2020, despite availing the relaxations given under General Circular 20/ 2020 dated May 05, 2020, shall file an application in Form GNL-1 for seeking extension of time for holding AGM for the financial year ended on March 31, 2020, with the concerned Registrar of Companies (ROC), on or before September 29, 2020. The applications so filed with the concerned ROC, shall be viewed liberally and an extension of up to three months shall be provided.

¹⁹ vide General Circular No. 28/2020 dated August 17, 2020

²⁰ Generally, the AGM is required to held on or before 6 months from the end of the financial year – in most cases, it is 30 September (considering that the financial year ends 31 March every year)

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