

TAXTIME

NEWSLETTER

DIRECT TAX NEWS

POSSIBLE DELAY IN FILING OF TAX AUDIT REPORTS: ICAI BATS FOR PENALTY WAIVER TILL MARCH 31



The Institute of Chartered Accountants of India

In view of the prevailing Covid-19 situation, the CA Institute has knocked the doors of Central Board of Direct Taxes (CBDT) seeking waiver of penalty and other consequences for any delay in filing of audit reports (for AY21-22) of certain taxpayers beyond January 15, the recently extended due date for filing such reports. No penalty or other consequences should be visited on taxpayers filing the tax audit reports between January 16 and March 31, the Institute of Chartered Accountants of India (ICAI) has suggested in a memorandum to the CBDT Chairperson JB Mohapatra. The ICAI representation detailed the issues and concerns faced by assesses in meeting the extended statutory timeline of January 15, 2022 for furnishing audit reports under the income tax law.

SC REINSTATES ITS ORDER EXTENDING THE WINDOW FOR FILING APPEALS

The Supreme Court on Monday took into consideration the rising COVID-19 cases to bring back its suo motu direction extending the limitation or the time period within which litigants ought to file appeals in the top court. A Bench led by Chief Justice N.V. Ramana accepted the plea made by the Supreme Court Advocates-on-Record Association (SCAORA) to reinstate the order extending the window for filing the cases.

I-T SEARCHES: ₹800 CRORE DETECTED IN A.P., TELANGANA

The Income-Tax Department's searches on three real estate developers in Andhra Pradesh and Telangana have led to the detection of unaccounted transactions worth over ₹800 crore.

The groups are engaged in the business of land development and construction activities in Kurnool and other mofussil areas of Andhra Pradesh and Telangana. "More than two dozen premises have been covered in the search operation spread over Kurnool, Ananthapur, Kadapa, Nandyal, Bellary, etc.," said the agency.

The I-T Department said digital data was seized from a specialised software application and other electronic gadgets. During another operation against two groups engaged in quarry operation business, the agency searched over 35 premises in Kottayam, Ernakulam, Thrissur, Palakkad and Kannur of Kerala. It is alleged that the operators were indulging in large-scale suppression of sales made in cash.

"The assesseees of the group have been found to have sold immovable properties without duly accounting for the capital gains arising from such transactions," it said, adding that the group's estimated unaccounted income was about ₹200 crore.

OECD'S 'COMPLEX' MINIMUM TAX RULES HAVE 'MAJOR POLICY ISSUES,' BIAC SAYS



In a January 6 letter to the OECD, business advisory group Business at OECD (BIAC) criticizes “significant policy inconsistencies” in the OECD’s global minimum tax model rules that it considers “potentially fatal” to their operation. Moreover, it contends efforts must be made to reduce the overall complexity of the rules, which could lead to “years of ... uncertainty and instability.”

BIAC acknowledged that it found no single technical issue that would impede the operation of the model rules, which the OECD released last month. However, taken together, the rules have a “cumulative” complexity that is going to be a “struggle” for taxpayers to comply with and for tax authorities to administer. This is especially true given the tight timeline for implementation with laws that are still largely unwritten. Accordingly, BIAC urges the OECD to focus work on safe harbors and reducing complexity.

The first of two “inconsistencies” BIAC notes in the model rules is a provision (article 4.1.5) that the group says applies global anti-base erosion (GloBE) top-up tax on multinational groups even when they have no income in a jurisdiction in a year. It acknowledges that there is a policy reason for the way the provision was written related to avoiding sheltering undertaxed income, but it suggests that there are alternative ways to address the issue without imposing a tax in the absence of income.

Regarding the other flagged policy inconsistency, BIAC states that the model rules depart from a policy principle set out in the OECD’s 2020 blueprint that the effective tax rate should be looked at over a period of time to “neutralize the consequences stemming from application of the annual accounting concept under the GloBE rules.” BIAC contends that this objective is undermined by a provision (article 4.4.1) that recasts deferred tax balances at the minimum rate. Such an approach, BIAC argues, will result in double taxation.

The letter adds that there are other potential double taxation issues in the rules, which BIAC intends to comment on in further correspondence. As an example, it notes that the rules require an adjustment to be made to GloBE calculations for a previous year when there is a decrease in the entity’s tax liability for the previous year. However, there is no corresponding ability to adjust GloBE calculations for a previous year when there is an increase in an entity’s tax liability for the previous year.



TAXMAN TO TAKE 'EXPLANATION-FIRST' APPROACH IN SHORT PAYMENT CASES

Goods and Services Tax (GST) assesseees can breathe easy, as the Central Board of Indirect Taxes & Customs (CBIC) has prescribed explanation first before initiating recovery of unpaid taxes, which is part of self-assessed liability.

The CBIC has issued a detailed guidelines for recovery proceedings under the provisions of section 79 of the CGST Act, 2017 in cases covered under explanation to sub-section (12) of Section 75 of the same law. The new provisions have come into effect from January 1. Guidelines for new provision have been issued to remove the apprehension of unauthorised visits of the GST officials to the premises of the taxpayers for such recoveries.

GST-1, GSTR-3B mismatch

According to the guidelines, where self-assessed tax reported in GSTR-1 is found to be short paid or not paid in GSTR-3B, the proper officer may send a communication to explain the reasons for such short payment or non-payment within a reasonable time. There may not be any requirement to initiate proceedings for recovery under Section 79, where the explanations are proper.

However, “if the said registered person either fails to reply, or fails to make the payment of such amount short paid or not paid, within the time prescribed in the communication, then the proceedings for recovery of the said amount as per the provisions of Section 79 may be initiated by the proper officer,” the guidelines added. Under the present system, the registered person declares his outward supplies in GSTR-1, and is required to discharge his tax liability through GSTR-3B return. The recipient is able to avail input tax credit (ITC) on supplies declared by his suppliers in their GSTR-1 and in respect of which tax has been paid.

There are instances when suppliers either do no file GSTR-3B return, or do not discharge full tax liability in GSTR-3B return in respect of declared outward supplies in GSTR-1. This not only results in short payment of tax to the government, but also adversely impacts the recipients, as they are not entitled to avail input tax credit in respect of such supplies, on which tax has not been paid by their suppliers. In many cases, the recipient may already have settled the payment for the supply too.

1% GST ON SWEETS, NAMKEENS SOLD OVER COUNTER, RULES KARNATAKA AAR



A sweet shop manufacturing and selling sweets and namkeen over the counter only will be required to pay Goods & Services Tax (GST) at the rate of 1 per cent provided it is under composition scheme, Karnataka' Authority for Advance Ruling (KAAR) has said.

This ruling is critical as restaurants, opting for composition scheme, are required to pay GST at the rate of 5 per cent. Also, a sweet shop not opting composition scheme will require to pay at different rates for shops and namkeens.

A business including restaurants not serving alcohol with annual turnover up to ₹1.5 crore can opt for composition scheme. For service providers, the threshold is ₹50 lakh. For businesses engaged in manufacturing of goods or if it is a dealer of goods, it is required to pay GST at the rate of 1 per cent. For restaurants not serving alcohol and service providers, GST rates are 5 per cent and 6 per cent respectively. These businesses can not collect GST from customers and also will not get Input Tax Credit (ITC).

The applicant in the said matter, Bengaluru-based Chikkaveeranna Sweet Stall, is owning a sweet stall and is engaged in manufacturing of sweets and doing counter sales on retail basis. It moved an application for advance ruling with a question: "For composition tax payers, what is the applicable rate of GST for the manufacturing of sweet and namkeens and selling the goods over the counter not having any facility of restaurant or hotel or not a part thereof and not giving for human consumption at the place of shop."

The applicant submitted that it is not having any facility or restaurant or hotel. He informed about paying GST at the rate of 1 per cent under composition mechanism as "he is a manufacturer of sweet and not providing any goods for human consumption at the place of shop." AAR noted the arguments and after going through facts, it held that the applicant is the manufacturer under composition scheme and thus liable to pay GST at the rate of 1 per cent.

TODAY'S QUOTE

*Faith:
It does not make things easy, it
makes them possible.*

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