

Anil Nambiar & Associates

Providing proactive financial and professional service excellence that you can trust.

Newsletter June-2020

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Dear Friends,

"Every dark cloud has a silver lining."

After nearly 75 days of disruption, the government has slowly but cautiously lifted the lockdown. It is not clear if we are out of danger since cases are being reported. Taking necessary precaution is of utmost importance. We are yet to come to terms with this pandemic and its impact on the economy.

The Central and State Government have come out with lots of schemes to revive the economy.

The extension of the due dates for statutory filings, reduction in interest rates for noncompliance due to Covid-19 Pandemic, Company Fresh Start Scheme, LLP Settlement Scheme -2020 etc. has given an opportunity to revive our business and strengthen them.

The economic packages like moratorium of loans, emergency loans to business house, support to Micro, Small and Medium Enterprises are all welcoming.

The recent Amnesty Scheme announced by the State Government to clear all the pending dues under the old KAT Act, waiver of late fees for non-filing of returns under GST will provide a great relief to the business community.

Sincerely hoping that we will see positive changes soon.

Praying for the health and wellbeing of you and your family.

Best Regards,

CA. Anil Kumar, B.Sc. FCA

INCOME TAX RETURNS NOTIFIED FOR ASSESSMENT YEAR 2020-21

Central Board of Direct Taxes has notified the Income Tax Returns for the Assessment Year 2020-21. The following forms are notified.

FORM ITR 1 (SAHAJ)	<p>APPLICABLE TO AN INDIVIDUAL WHO IS A RESIDENT OTHER THAN NOT ORDINARILY RESIDENT AND WHOSE INCOME IN THE YEAR 2019-20 DOES NOT EXCEED Rs.50 LAKHS AND WHO HAS INCOME UNDER THE FOLLOWING HEADS</p> <ul style="list-style-type: none"> ➤ INCOME FROM SALARY/PENSION, OR ➤ INCOME FROM ONE HOUSE PROPERTY, OR ➤ INCOME FROM OTHER SOURCES <p>It is not for an individual who is either Director in a company or has invested in Unlisted Equity Shares.</p>
FORM ITR 2	<p>APPLICABLE TO INDIVIDUAL OR HUF WHO IS NOT ELIGIBLE TO USE FORM ITR 1 AND WHO IS NOT HAVING INCOME UNDER PROFITS AND GAINS OF BUSINESS OR PROFESSION</p>
FORM ITR 3	<p>APPLICABLE TO INDIVIDUAL OR HUF HAVING INCOME UNDER THE HEAD PROFITS & GAINS FROM BUSINESS OR PROFESSION AND WHO IS NOT ELIGIBLE TO FILE FORM ITR-1 OR FORM ITR-2 OR FORM ITR-4</p>
FORM ITR 4	<p>APPLICABLE TO INDIVIDUALS OR HUF WHO IS A RESIDENT OTHER THAN NOT ORDINARY RESIDENT OR A FIRM (OTHER THAN LLP) WHICH IS RESIDENT AND WHOSE INCOME DURING THE FINANCIAL YEAR 2019-20 DOES NOT EXCEED Rs.50 LAKHS AND WHO HAS INCOME UNDER THE FOLLOWING HEADS</p>

	<ul style="list-style-type: none"> ➤ INCOME FROM BUSINESS WHERE SUCH INCOME IS COMPUTED UNDER PRESUMPTIVE BASIS UNDER SECTION 44AD OR UNDER SECTION 44AE ➤ INCOME FROM PROFESSION WHERE INCOME IS COMPUTED UNDER PRESUMPTIVE BASIS UNDER SECTION 44ADA ➤ INCOME FROM SALARY/PENSION ➤ INCOME FROM ONE HOUSE PROPERTY ➤ INCOME FROM OTHER SOURCE
FORM ITR 5	APPLICABLE TO FIRMS, LLP, ASSOCIATION OF PERSONS, BODY OF INDIVIDUALS, ARTIFICIAL JURISDICTIONAL PERSON, LOCAL AUTHORITY, REPRESENTATIVE ASSESSEE, SOCIETY REGISTERED UNDER SOCIETY REGISTRATION ACT, OR UNDER ANY LAW OF ANY STATE, TRUST OTHER THAN TRUST ELIGIBLE TO FILE FORM ITR-7, ESTATE OF A DECEASED PERSON OR ESTATE OF INSOLVENT BUSINESS.
FORM ITR 6	APPLICABLE TO COMPANIES OTHER THAN COMPANIES REQUIRED TO FILE IN FORM ITR-7.
FORM ITR 7	APPLICABLE TO PERSONS INCLUDING COMPANIES REQUIRED TO FILE RETURN UNDER SECTION 139(4A), 139(4B), 139(4C) OR 139(4D).

The ITR now requires information on whether the taxpayer has cash deposits exceeding Rs 1 crore, expenditure on foreign travel exceeding Rs 2 lakhs or electricity expenses exceeding Rs 1 lakh during the previous year.

Investments made from 01.04.2020 to 30.06.2020 also qualify for deduction for the financial year 2020-2021. These are to be shown separately in Schedule D1

GOODS & SERVICE TAX

1. Recommendation of the GST Council.

The GST Council in its 40th meeting on 12th June 2020 has recommended:

a. Reduction in Late Fee for non-filing of past returns.

The late fee for non-furnishing of Form GSTR 3B for the tax period from July 2017 to January 2020 has been waived/reduced as under

- If there is no tax liability the late fee has been waived.
- If there is tax liability the late fee is capped at Rs.500 per return.

The reduced late fee will be applicable for all the GSTR-3B returns filed between 01.07.2020 to 30.09.2020.

b. Relief for taxpayers for late filing of returns for February, March & April 2020.

For Small taxpayers with aggregate turnover up to Rs.5 crores no interest will be charged for the returns of February, March and April ,2020 filed till the notified dates for relief (staggered till July 6th, 2020). For the returns filed thereafter 9% interest will be charged.

2. Validity of E-way bill extended.

The Central Board of Indirect taxes and Customs has extended the validity of e-way bill generated on or before 24.03.2020 the validity of which expired on or after 20.03.2020 to 30.06.2020.

3. Filing NIL Form GSTR-3B through SMS on GST Portal

A taxpayer may now file NIL Form GSTR-3B, through an SMS, apart from filing it through online mode, on GST Portal.

- For a taxpayer to file NIL Form GSTR-3B through SMS:
 - ✓ They must be registered as Normal taxpayer/ Casual taxpayer/ SEZ Unit / SEZ Developer.
 - ✓ They have valid GSTIN.
 - ✓ Phone number of Authorized signatory is registered on the GST Portal.
 - ✓ There is no pending tax liability for previous tax periods, interest or late fee.
 - ✓ All GSTR-3B returns for previous tax periods are filed.
 - ✓ No data should be in saved stage for Form GSTR-3B on the GST Portal, related to that respective month.
 - ✓ NIL Form GSTR-3B can be filed anytime on or after the 1st of the subsequent month for which the return is to be filed.

4. LEVY OF GST ON DIRECTOR'S REMUNERATION

Central Board of Indirect taxes and Customs has vide Circular No.140/10/2020 dated 10th June 2020 clarified the levy of GST on Director's Remuneration.

➤ **REMUNERATION PAID BY COMPANIES TO INDEPENDENT DIRECTORS**

- GST is payable on Remuneration paid by Companies to Independent Directors who are not employees of the Company on reverse charge basis by the recipient of the service.

➤ **REMUNERATION PAID BY COMPANIES TO DIRECTORS WHO ARE ALSO EMPLOYEES OF THE COMPANY**

- GST is not leviable on that part of Remuneration paid as Salary to a Director who is also an employee of the Company and on which tax is deducted under section 192 of the Income Tax Act.
- Part of Employee Director's remuneration which is declared separately and on which tax is deducted under section 194J of the Income Tax Act as Fees for Professional or Services shall be taxable. The recipient of the service shall discharge the GST on reverse basis.

Interesting Articles

1. INPUT TAX CREDIT ON MOTOR VEHICLE AND OTHER CONVEYANCES - CA. VIDHYA MURALY

The Central Government has with effect from 01-02-2019 amended sub-section (5) of Section 17 of the CGST Act to rationalise the provisions relating to allowability of input tax credit on motor vehicles and other conveyances. For a better understanding we need to analyse the provisions before and after the amendment of Section 17(5) of the CGST Act.

Position up to 31st January 2019

Up to 31-01-2019, the Input Tax Credit on Motor Vehicle and Other Conveyances was available only when they are used:

- for making the following taxable supplies, namely-
 - Further supply of such vehicles or conveyances; or
 - Transportation of passengers; or
 - Imparting training on driving, flying, navigating such vehicles or conveyances; or
 - For transportation of goods.

Hence no input tax credit was available in respect of any motor vehicle purchased by a businessman even if it was put to use by him partly for his business purpose. There was no restriction on taking input tax credit on general insurance, servicing and repairs of any vehicles.

Position from 1st February 2019

With effect from 01-02-2019 input tax credit on motor vehicles with approved seating capacity of not more than 13 persons including driver is allowed only when they are used for making the following taxable supplies-

- Further supply of such vehicles; or
- Transportation of passengers; or
- Imparting training on driving such motor vehicles.

Hence there is no restriction on taking input tax credit in respect of the following motor vehicles.

- Motor Vehicles for transportation of persons having an approved seating capacity of more than 13 persons including the driver.
- Motor Vehicles and other conveyances used for specific purpose.
- Excavators, road rollers and tippers.

Input tax credit on general insurance, servicing, repairs and maintenance are eligible only when they are related to motor vehicles mentioned above.

To summarise in view of the amended position from 01.02.2019, input tax credit is available in respect of the following:

- Motor vehicle used for transportation of persons having approved seating capacity of more than 13 passengers is allowed.

However, Motor vehicles used for transportation of persons having seating capacity up to 13 persons will be allowed only if it is used for further supply of such motor vehicles, transportation of passengers and imparting training on driving such motor vehicles.

- The motor vehicle and other conveyances used for other purposes including personal purposes are not eligible for input tax credit.
- GST paid on Excavators, Road Rollers and Tippers will be available as they are not regarded as motor vehicles for transportation of persons.
- Input Tax Credit can be availed for Motor car purchased for Demonstration purposes as input tax credit on capital goods.
- Input Tax Credit can be availed on Repairs, Maintenance and Insurance of motor vehicles used for transportation of goods. In the case of motor vehicles used for transportation of persons with a seating capacity of more than 13 persons Input Tax Credit on Repairs, Maintenance and Insurance will be admissible.

2. PARTNERSHIP-AN IMPROVEMENT OVER 'SOLE-TRADE BUSINESS' - ASHWIN MALLAYA

What Is The Nature Of Partnership?

Partnership is a form of business organization, where two or more persons join together for jointly carrying on some business. It is an improvement over the 'Sole –trade business', where one single individual with his own resources, skill and effort carries on his own business. Due to the limitation of resources in large business requiring more investments and resources a partnership can be preferred to a sole trade business as number of persons can pool their resources and efforts. In case of loss the burden gets divided amongst the partners.

Partnership vs Company

Basis	Partnership	Company
Legal Status	A firm is not a legal entity. Therefore, it has no legal identity distinct from the personalities of its constituent members	A company is considered a separate legal entity distinct from its members.
Agency In a firm	All the partners are an agent for each other, as well as of the firm	In a company, a member is not an agent of any other member nor the company. A member's actions do not bind either
Distribution of Profits	The profits of a firm must be distributed among the partners according to the terms stated in the partnership deed	There are no compulsions to distribute its profits among its members. A portion of the profits becomes distributable among the shareholders when dividends are declared
Extent of Liability	In a partnership, the liability of the partners is unlimited. This means	In a company that is limited by shares, the liability of a shareholder

	that every partner is liable for the debts of a firm incurred during the business of the firm. These debts may be recovered the partner's private property if the joint estate is insufficient to meet the needs entirely	is limited to the amount, if any, unpaid on his shares. In the case of a guarantee company, the responsibility is limited to the amount for which the shareholder has agreed to be liable. However, there may be companies where the liability of a member is unlimited
Property	The firm's property is that which is called a "Joint Estate" of all the partners. It does not belong to anybody distinct in law from its members	In a company, its properties are separated from that of its members who can receive it back only in the form of a dividend or a refund of the capital
Management	If there is no express agreement formed to the contrary, all the partners of the firm are entitled to participate in the control	Company members are not entitled to participate in management unless they are appointed as a director. In such a case, they may participate. Members, however, enjoy the right of attending general meetings and voting where they can decide specific questions such as the election of directors, appointment of auditors etc
Duration of existence	If no contracts are existing to the contrary, death, retirement or an insolvency of a partner that results in the dissolution of a firm	A company has the advantage of having perpetual succession

Registration of Partnership

As per the Partnership Act 1932, it is not compulsory to register a partnership firm. The firm does not have a separate legal identity and registration will not alter this fact. However, registration is the definite proof of the existence of the firm and its legality.

Non-registration of a firm has some real-life legal consequences for the partners and the firm itself. So it is always advisable to draw up a written partnership deed and register the firm with the Registrar of Firms. The consequences of not doing so are as follows,

- a. The firm cannot file legal proceedings against any third party for any situation. For example, if the client has not paid his dues to the firm, the firm cannot sue him if it is unregistered.
- b. An unregistered firm cannot file a case against a partner for any reason (like mismanagement, theft etc)
- c. A partner of an unregistered firm cannot file a suit against one of the other partners either.

Procedure of Registration

According to the India Partnership Act 1932, there is no time limit as such for the registration of a firm. The firm can be registered on the date when it is incorporated or any such date after so. The procedure for registration is as follows,

- a. Application to the Registrar of Firms in the prescribed form (Form A). The application must contain certain details about the firm such as,
 - i. Name of the Partnership Firm
 - ii. Name and address of all partners
 - iii. Place of business (address of main and branch offices)
 - iv. Duration of the partnership
 - v. Date of joining of partners
 - vi. Date of commencement of business

- b. The duly signed copy of the Partnership Deed must be filled with the Registrar
- c. Pay the necessary fees and stamp duties
- d. Once the Registrar approves the application, the firm will be entered into the records. And the registrar will also issue a certificate of incorporation.

Provision related to Interest & Remuneration to Partners U/s. 40(b) of the Income Tax Act, 1961

Section 40(b) of Income Tax Act places some restrictions and conditions allowability of remuneration and interest payable to the partners of such firm. The deductions regarding salary to partners and any payment of interest to partners cannot exceed the monetary limits specified u/s 40(b) and are available subject to the fulfilment of conditions mentioned therein.

- a. Partner to be paid Interest & Remuneration must be a working partner
- b. Remuneration or interest to Partners must be authorized by the Partnership Deed
- c. Quantification of remuneration to Partners in Partnership Deed is must
- d. No Interest & Remuneration to Partner to be allowed which relates to any period falling prior to the date of such partnership deed

Remuneration paid to Partners exceeding the limit prescribed u/s 40(b) to be disallowed.

Any interest to any partner exceeding 12% disallowed.

It is easy to form a partnership firm and it has its own flexibility. However, it has got its own disadvantages when the volume of the business increases and it is exposed to large borrowings.