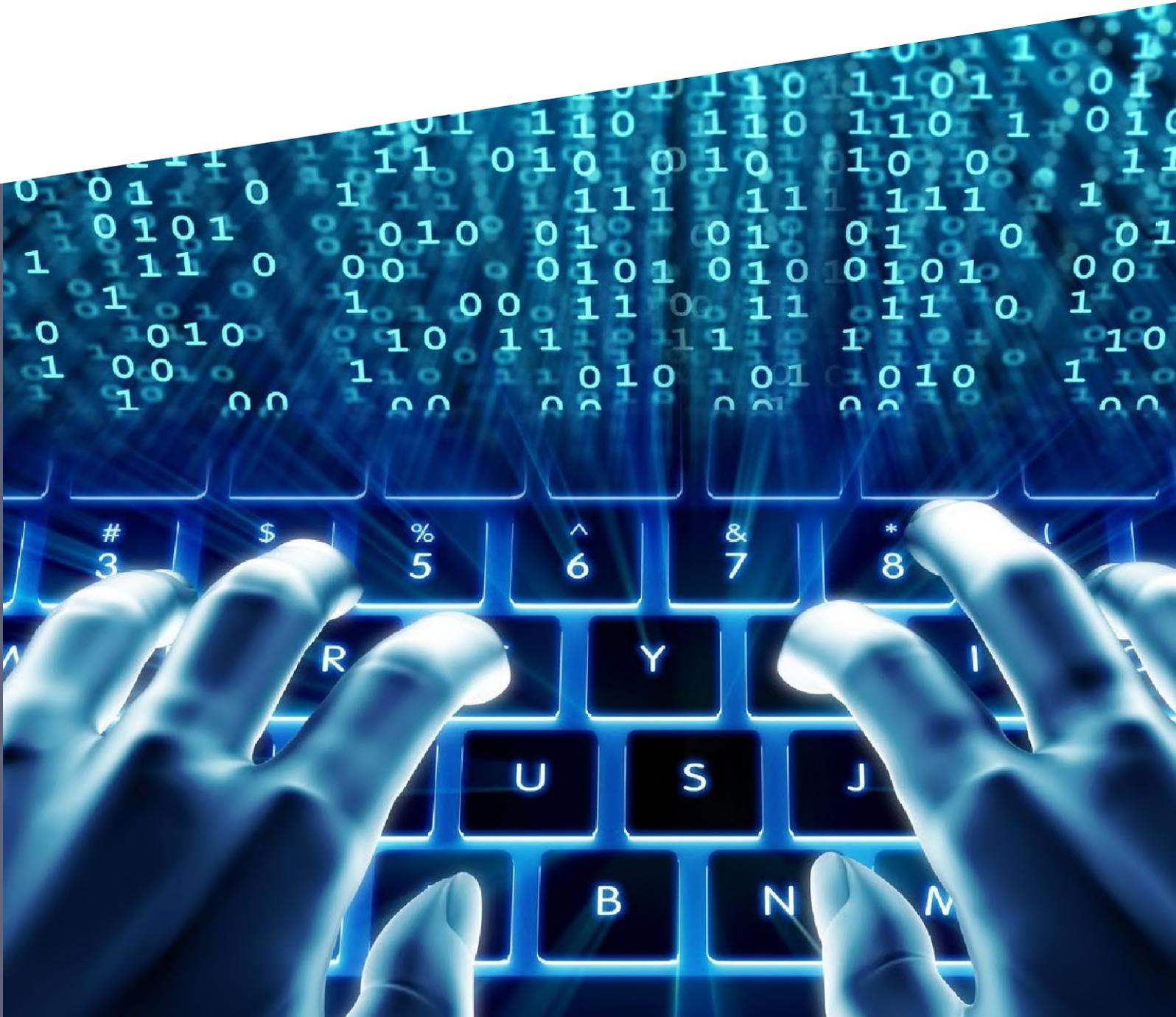


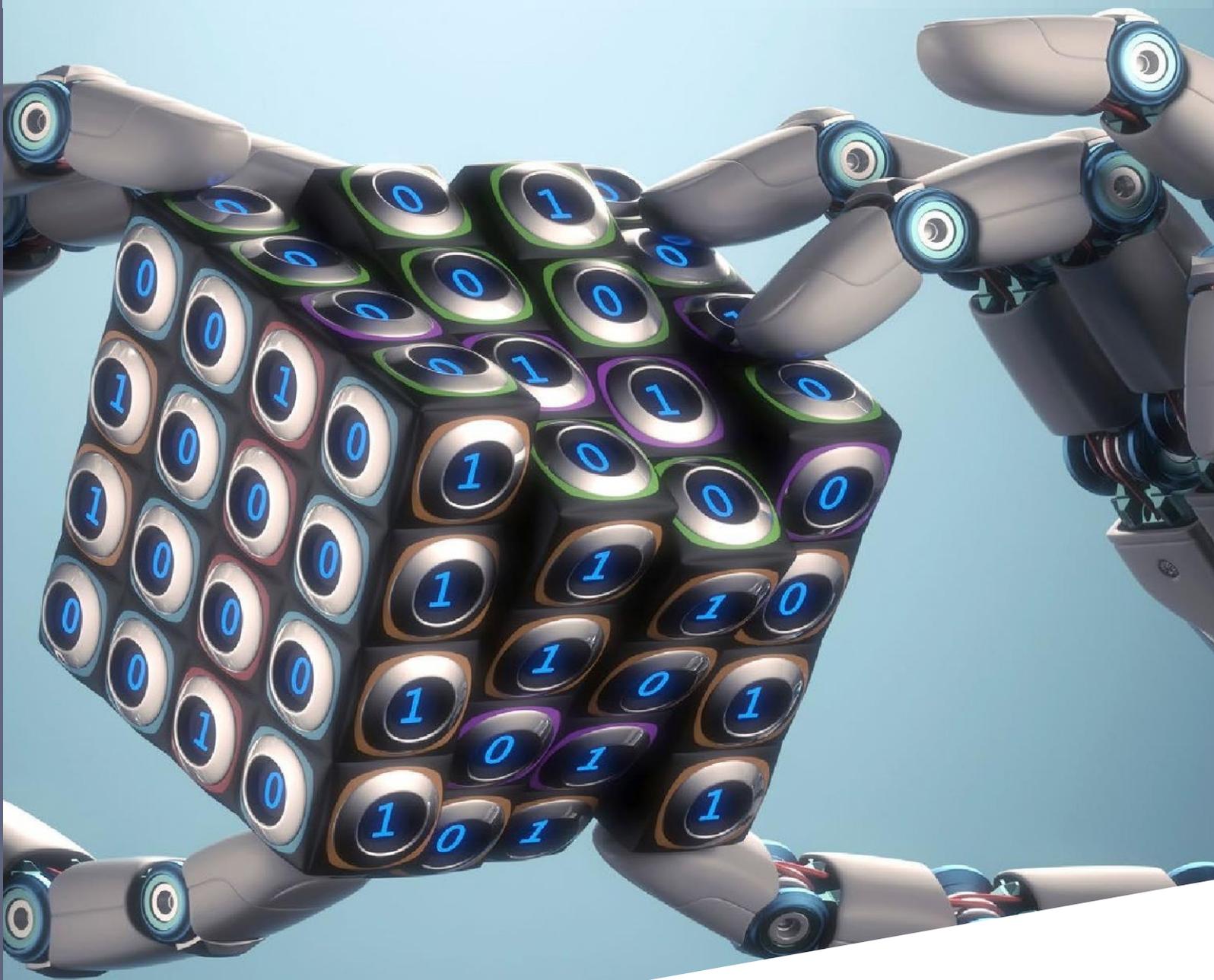
# TAXATION TIMES

June 2020



Taxation Times is a monthly newsletter published by UJA specifically with an intent and object to simplify and provide clarity on certain provisions of the Income Tax Act, discuss the implications of various amendments and circulars notified time and again, understand the judicial precedents as decided by various courts and interpret these.

The Taxation Times is an initiative to keep you abreast with the latest development in the realm of the Direct Taxes in India.



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The year 2020 has been a roller coaster ride for the world! The pandemic has brought about a change extraordinaire. No one would have ever imagined the far reaching consequences the outbreak of COVID – 19 would bring with itself. Though most countries have started resuming after the lockdown with certain restrictions and limitations – the world economy is reeling under the impact of huge and unprecedented losses.

Our Hon'ble Prime Minister Shri Narendra Modi has rolled out an economic package of INR 20,000 lakh crores to help the economy revive. This package has been provided relief measures to certain sectors of the economy. To what extent would these be useful and how would the economy bounce back – only time would say.

Coming back to this month's edition of Taxation Times, here's what in store :

1. Technology has truly transformed the world. How are tax departments adapting themselves to the rapidly changing and evolving businesses to cope with such technological advancements? Let's take a look.
2. Relevant decisions pronounced by various Tribunals.
3. The tax compliances for June 2020 and the CBDT notifications issued in May 2020 have been included in the latter part of this newsletter.

We hope that you find this edition of the Taxation Times interesting & useful.

What do you think about this issue? Do you have any inputs to make the forthcoming issues more interesting and relevant? Please share your feedback at [info@uja.in](mailto:info@uja.in)

We look forward to hearing from you!

Best Wishes,  
UJA Tax Team

# Digitalization of the Tax Administration

## How technology impacted the tax function?

The world has witnessed a complete transformation in the last decade or so. Digitalization & technological advancements have been instrumental in this transformation. Businesses and industries have evolved rapidly over the last few years again due to technological advancements. What coincides with such rapid development are opportunities as well as threats for tax functions around the world to keep up with the pace of globalization and to increase transparency in transactions.

Governments around the world are leveraging technology to build robust tax systems to increase efficiency, mitigate / reduce tax evasions, increase transparency, widen the tax base etc. Taking cue from this, the Ministry of Affairs has also risen to the opportunity to digitalize the tax systems in India.

## Tax Technology and India

The first step towards technological advancement was initiated way back in 2003 when India outsourced the allotment of PAN to UTI. The idea was to outsource certain non – core activities in order to accelerate digitalization even though the department was low on in house capacity. Thereafter, the department facilitated E-filing of tax returns and E-processing of these returns by the Central Processing Centre (CPC). The introduction of the E-filing system helped eliminate the cumbersome and time consuming physical filing of tax returns. The refund procedure was also automated and taxpayers were pleasantly surprised to find refunds credited to their bank accounts earlier than usual.

Another measure which was recently introduced was Auto populated forms being generated based on income information of the taxpayer available at the end of the department. Thus, the forms are partially pre-filled and only certain additional information needs to be filled in by the taxpayer before submitting the form. Such pre-filled forms ensure that correct and fair information is being submitted to the department and additionally also enable taxpayers to self-file their tax returns quickly. The concept of Form 26AS was also introduced in which income earned & TDS deducted on such income was made available to the taxpayer.

With an intention to widen and deepen the taxbase as well as deal with tax evasion, the department undertook to create a 360 – degree profile of taxpayers by amalgamating several fragmented databases into a single one. This database enabled the department to have complete information about taxpayers. A more comprehensive and detailed report is available with the Income Tax Department and non – filers or taxpayers defaulting or providing inaccurate information are identified and accordingly notices are issued.

The interface of the income tax department has also been made user friendly and taxpayers can launch their grievances and expect their queries to be resolved without visiting the Income Tax Department. With a view to further boost and encourage taxpayers confidence, the Income Tax Department launched the CP-GRAMS of the Prime Minister where taxpayers can upload their tax related grievances and incase these remain pending beyond 30 days, the department shall be taken to task.

The Income Tax Department also enabled the e-assessment function in 2017. In 2019, they came up with 'faceless' and 'jurisdiction less' assessments. Through this function the department intends to bring about complete transparency in concluding assessments.

In the Budget Speech 2020, the Hon'ble FM had announced that in order to ease the process of allotment of PAN, online PAN would be allotted on the basis of Aadhaar without filling up of any detailed application forms. The FM formally launched the facility for instant allotment of PAN. This allotment process is paperless and e-PAN can be allotted to applicants free of cost. The launch of this step is yet another step by Income Tax Department towards Digital India.

All of the aforesaid measures ensured that the direct tax regime was digitized thus enabling large and accurate information to be collected and completely eliminating the process of manual verification and checking.

### **Tax Technology around the Globe**

Government's across the world are stepping up to enforce and strengthen the tax administration of their countries. This has become imperative bring transparency to attract foreign investors to make their countries attractive for doing business. Apart from this tax administration in various countries are also looking for innovations to effectively manage their tax function in order to reduce revenue leakage as well as build robust systems to effectively manage the large volumes of data that can form a basis for better decision making & policy formulation.

Almost all countries around the world have done away with manual filing of returns and adopted e-filing of tax returns. This facilitates greater collection of data and also more accurate information.

India has signed Tax Exchange Information Agreements with various countries around the world. These agreements enhance transparency and ensure full and true disclosure of tax related information between countries.

The Organization for Economic Co-operation and Development (OECD) has clearly emphasized the need to bring about

transparency in tax related information. Therefore, the Country - By - Country Reporting (CbCR) was introduced and is expected to have a significant impact on the tax function.

Base Erosion & Profit Shifting (BEPS) refers to tax planning strategies used by multinational enterprises that exploit gaps and mismatches in tax rules to avoid paying tax. The BEPS Project has been initiated by the G20 countries and also effectively encompasses other OECD Member States. The idea behind the implementation of BEPS project was to bring coherence, transparency and substance to international tax rules.

The introduction of Country - By - Country Reporting (CbCR) was the beginning to ensure transparency in the tax function. CbCR will widen the reporting requirements for organizations in different tax jurisdictions. Tax administrations have access to all the relevant information from MNEs located across different countries. As a matter of fact, the MNEs operating in different tax jurisdictions pose challenge in the escaping of tax and risk of potential revenues at stake.

### **What Next?**

Now with the COVID – 19 pandemic, there will be a paradigm shift in landscape of businesses. Businesses will need to evolve in order to sustain and adopt new practices. Infact, there could be a possibility of new set of business arising which would never be heard of in the past. It would be interesting to see how the tax administration would respond to these. Additionally, though, most of the tax administration is more or less automated, there are certain areas in which face to face interaction between the taxpayers and the department continues. How would these be addressed going ahead – would video conferencing between the taxpayer and the department be introduced and become the new normal? It's but a matter of time to see what comes up next.

A simplified and unambiguous Direct tax code with stable tax law along with wide tax base and honest tax compliance holds the key to a robust implementation and success of digitization of Tax laws and its administration.



## Case Law

The Hon'ble Delhi Tribunal in a recent decision has upheld that surcharge & cess is not leviable if tax rate is prescribed as per DTAA.

### Case Walkthrough :

The taxpayer<sup>1</sup> is an assessee company incorporated under the laws of France. The taxpayer is a holding company of the 'JCDecaux' group.

The taxpayer filed its return of income for AY 2011 – 2012 and AY 2012 – 2013 declaring income which was taxed at the rate of 10% on gross basis. The returns for both the years were selected for scrutiny. The Assessing Officer (hereinafter referred to as the 'AO') issued draft assessment orders for both the years & the issues raised were identical.

The Ld. AO levied surcharge and education cess on receipts in the nature of royalties and reimbursement of other expenses, which was offered to tax by the taxpayer under the India France DTAA.

The taxpayer has preferred an appeal against the order passed by the DRP.

### Matter before the Authority :

- Is surcharge and cess leviable when taxes have been paid by the taxpayer on royalties and reimbursement of other expenses as per the India – France DTAA.

### Decision :

1. The Ld. Council for the taxpayer relied on the decision of the Hon'ble Kolkata ITAT in the case of DCIT V/s BOC Group Ltd<sup>2</sup>, wherein it was held that the rate prescribed in the DTAA shall have to be followed strictly without any additional taxes thereon in the form of surcharge or education cess. While concluding, the Kolkata Tribunal relied on Article 2 of India – UK DTAA and also Finance Act 2004 wherein the concept of 'education cess' was introduced.

Additionally, reliance was also placed on the decisions in the case of DIC Asia Pacific Pte Ltd V/s Asst. Director of Income Tax<sup>3</sup>, Sunil V Motiani V/s ITO<sup>4</sup>, Parke Davis and Company LLC V/s ACIT<sup>5</sup>, CIT V/s Arthusa Offshore Co<sup>6</sup>, ITO (Intl taxn) V/s M Far Hotels Ltd<sup>7</sup>.

<sup>1</sup>JC Decaux V/s ACIT [2020] 116 taxmann.com 408 (Delhi – Trib)

<sup>2</sup>DCIT V/s BOC Group Ltd. [2015] 64 taxmann.com 386

<sup>3</sup>DIC Asia Pacific Pte Ltd. V/s Asst. Director of Income Tax, International Taxation in ITA No. 1458

<sup>4</sup>Sunil V. Motiani V/s ITO (International Taxation) reported in (2013) 33 taxmann.com 252 (Mumbai Trib)

<sup>5</sup>Parke Davis and Company LLC V/s ACIT reported in (2014) 41 taxmann.com 193 (Mumbai Trib)

<sup>6</sup>CIT V/s Athursa Offshore Co (Uttarakhand High Court) 216 CTR 86

<sup>7</sup>ITO (Intl Taxn) V/s M/s M Far Hotels Ltd in ITA Nos 430 to 435/Coch/2011 dtd. 05.4.2013

2. The Tribunal relied on the India – France DTAA wherein it has been held that the rates prescribed for FTS includes income – tax & surcharge thereon.
3. Following the decision of the Tribunal in BOC Group Limited, it was held that is taxes have been paid by the taxpayer as per the provisions of the India France DTAA, the education cess & secondary and higher education cess levied ought to be deleted.

**In a recent decision, the Hon'ble Indore ITAT has held that no TDS on payment made for import of goods if agent appointed by NR had independent status in India.**

#### Case Walkthrough:

The taxpayer<sup>8</sup> is a partnership firm engaged in business of trading of various agro commodities. The taxpayer imported agro commodities from the non – residents during the year under consideration and also filed Form 15CA and 15CB. Remittances were made to non – residents without deduction of TDS under s. 195 of the Income Tax Act.

The Ld. Assessing Officer ('AO') held that the non – residents had agents in India who was securing orders habitually for non – residents, thus non – residents had place of business in India & accordingly the taxpayer was eligible to deduct TDS under s. 195 of the ITA on impugned payments made to non – residents.

The Ld. CIT(A) upheld the order of the Ld. AO. Aggrieved, the taxpayer has preferred an appeal before the Hon'ble ITAT

#### Matter before the Tribunal :

Did the non – residents have a place of business in India merely because of the fact that agents were securing orders for them habitually and TDS ought to be deducted on payments made to such non – residents.

#### Decision :

1. The taxpayer during the course of the assessment proceedings had brought on record facts of the case in regard the

payments made to non – residents. The agents through whom non – residents had procured their orders were general commission independent agents. The agents work on a principal to principal basis and are not controlled by non – residents. There is no specific contract between the agents and the non – residents and like they procure orders for other customers, they also procure orders for both the non – residents. Accordingly, the agency clause under Explanation 2 to s. 9(1)(i) is not attracted.

2. The taxpayer has relied on Circular 23/1969 dtd. 23<sup>rd</sup> July 1969 to support its contention no liability will arise on accrual basis to non – residents on profits made by him where transactions of sale between two parties are on principal – to – principal basis.
3. The taxpayer had discharged his liability to prove that the non – residents had no business connection in India. Now, primarily the onus was to establish that non – residents had business connection in India. No inquiry was conducted from non – residents & there was no evidence to establish a real and intimate connection in India. No enquiry was conducted from the non – residents. There has to be a common ness of interest. This could be by way of management control or financial control or sharing of profits. Reliance was placed on decision of Hon'ble A.P. High Court<sup>9</sup> and also on the declaration given by respective parties from their agents.
4. Accordingly, the Tribunal has held that since the taxpayer had furnished all relevant documentation to prove that the agent was a general commission agent. Therefore, no liability for deduction of tax cannot be fastened on the taxpayer. Hence, the additions made by the Ld. AO to be deleted.

<sup>8</sup>RSV Global V/s Income – Tax Officer (International Taxation & TP), Bhopal  
<sup>9</sup> CIT V/s Hindustan Shipyard Ltd. [1977] 109 ITR 158 (A.P.)

# Due dates for Compliance under Income tax

**7<sup>th</sup>**  
June 2020

Due date for deposit of Tax deducted/collected for the month of May, 2020. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan

- Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of April, 2020
- Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of April, 2020
- Due date for issue of TDS Certificate for tax deducted under section 194M in the month of April, 2020

**14<sup>th</sup>**  
June 2020

**15<sup>th</sup>**  
June 2020

First installment of advance tax for the assessment year 2021-22

- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of May, 2020
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of May, 2020
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of May, 2020

**30<sup>th</sup>**  
June 2020

**Note :**

The CBDT vide the [Taxation and Other Laws \(Relaxation of Certain Provisions\) Ordinance, 2020](#) dated 31-03-2020 has extended all respective due dates, falling during the period from 20-03-2020 to 29-06-2020, till June 30, 2020.

The benefit of extended due date shall not be available in respect of payment of tax. However, any delay in payment of tax which is due for payment from 20-03-2020 to 29-06-2020 shall attract interest at the lower rate of 0.75% for every month or part thereof if same is paid after the due date but on or before 30-06-2020.



## Notifications & Circulars

### **Circulars :**

Certain modifications in the provisions related to the Vivad se Vishwas Scheme were made by the CBDT  
[https://www.incometaxindia.gov.in/communications/circular/circular\\_no\\_9\\_2020.pdf](https://www.incometaxindia.gov.in/communications/circular/circular_no_9_2020.pdf)

After examining the current situation the CBDT has issued a circular regarding the tax audit reporting.  
[https://www.incometaxindia.gov.in/communications/circular/circular\\_no\\_10\\_2020.pdf](https://www.incometaxindia.gov.in/communications/circular/circular_no_10_2020.pdf)

In the wake of the ongoing pandemic, The CBDT has issued a clarification in respect of residency under section 6 of the Income Tax Act, 1961.

[https://www.incometaxindia.gov.in/communications/circular/circular\\_no\\_11\\_2020.pdf](https://www.incometaxindia.gov.in/communications/circular/circular_no_11_2020.pdf)

The CBDT has also issued a clarification in respect of the prescribed electronic modes under section 269SU of the Income Tax Act, 1961.

[https://www.incometaxindia.gov.in/communications/circular/circular\\_no\\_12\\_2020.pdf](https://www.incometaxindia.gov.in/communications/circular/circular_no_12_2020.pdf)

### **Notifications :**

The CBDT notified the “SHRI RAM JANMABHOOMI TEERTH KSHETRA” (PAN: AAZTS6197B) to be place of historic importance vide a notification.

[https://www.incometaxindia.gov.in/communications/circular/circular\\_no\\_12\\_2020.pdf](https://www.incometaxindia.gov.in/communications/circular/circular_no_12_2020.pdf)

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