Connection

Volume XII, Issue IV July 2024

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Volum XII, Issue IV Innovate Create Lead July 2024

Just to Remind You:

- Jul 11 - Due date for GST 1 of June 2024
- Jul 15 - Due date for Payment of ESIC & PT.
- Jul 20 - Due date for GST 3b of June 2024
- Jul 31 - TDS Return for June Quarter
- Jul 31 - Monthly Payment & Return Maharashtra PT
- Jul 31 - Filing of IT Return (without Audit)

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Guidelines for issuance of notice u/s 148 of the Income Tax Act, 1961

1. In supersession of the earlier guidelines as referred above, the following new guidelines are hereby issued. 2. The salient features of Section 148 to 151A of the Income-tax Act, 1961 (the Act) till amendments made by Finance Act, 2023 w.r.t. assessment/ reassessment/ recomputation are as under: 2.1 Before issuing notice u/s 148, the Assessing Officer (AO) must observe the following procedures laid down u/s 148A except in certain categories of cases (specified in the proviso to section 148A): i. Notice under section 148 can be issued only if there is an "information" with the assessing officer which suggest that income chargeable to tax has escaped assessment in the case of assessee for the relevant assessment year. Information has been defined as per Explanation 1 of Section 148 of the Act. Explanation 1- For the purposes of this section and section 148A, the information with the assessing officer which suggest that the income chargeable to tax has escaped assessment means, (i) any information in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time; (ii) any audit objection to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act; or (iii) any information received under an agreement referred to in section 90 or section 90A of the Act; or (iv) any information made available to the Assessing Officer under the scheme notified under section 135A; or (v) any information which requires action in consequence of the order of a Tribunal or a Court. ii. Further, explanation 2 to section 148 provides the incidence where assessing officer shall be deemed to have information. Explanation 2- For the purposes of this section, where, (i) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April, 2021, in the case of the assessee; or (ii) a survey is conducted under section 133A, other than under sub-section (2A) of that section, on or after the 1st day of April, 2021, in the case of the assessee; or (iii) the Assessing

Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or (iv) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee, the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee where the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person. Books or books of account as defined by section- 2(12A) as under- "books or books of account" includes ledgers, day-books, cash books, account-books and other books, whether kept in the written form or in electronic form or in digital form or as print-outs of data stored in such electronic form or in digital form or in a floppy, disc, tape or any other form of electro-magnetic data storage device. iii. Proviso to section 148A provides that in the following category of cases the provisions of Section 148A shall not apply, if, (a) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of the assessee on or after the 1st day of April, 2021; or (b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under section 132 or requisitioned under section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or (c) the Assessing

Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee; or (d) the Assessing Officer has received any information under the scheme notified under section 135A pertaining to income chargeable to tax escaping assessment for any assessment year in the case of the assessee. In other words, in above mentioned category of cases, notice under section 148 can be issued with the prior approval of specified authority without following the procedure mentioned in the section 148A. iv. The "specified authority" for the seeking approval for conducting enquiry u/s 148A(a), passing order u/s 148A(d) and issuance of notice u/s 148 shall be: Specified Authority for sanction for issue of notice u/s 148/ 148A (a)/ 148A (d) Time limit (Calculated from the end of the relevant AY) PCIT or PDIT or CIT or DIT (ref Section 151 (i)) Upto 3 years* -PCCIT or PDGIT or CCIT or DGIT (ref Section 151(ii)) More than 3 years but upto 10 years * As per the proviso to section 151 of the Act "the period of three years for the purposes of clause (1) shall be computed after taking into account the period of limitation as excluded by the third or fourth or fifth provisos or extended by the sixth proviso to sub-section (1) of section 149." v. Explanation 2 to section 148 of the Act provides that if a survey u/s 133A of the Act (other than under section 133A (2A)) was conducted in the case of the assessee on or after 1st April, 2021, the Assessing officer shall be deemed to have information which suggests that income chargeable to tax has escaped assessment. However, it is to clarify that the due procedure as prescribed u/s 148A needs to be followed in such cases before issuing a notice u/s 148 of the Act. (refer proviso to section 148A). vi. a. Information for cases covered under Explanation 1(i) to Section 148 of the Act shall be uploaded to the CRIU/VRU for RMS. b. As per F.No. 299/44/2022-Dir. (Inv.III)/1264 dated 12.01.2024, information, which is covered by explanation 2 to the section 148 of the Act, inter-alia including information arising out of Search / Survey cases, should not be uploaded on CRIU/VRU but should be sent directly to the JAO for taking action as per the Act, since it does not require RMS. c. Similarly, information for cases covered under clauses (ii), (iii), (iv) and (v) of Explanation 1 to Section 148 are not required to be uploaded to the CRIU/VRU for RMS. vii. The AO shall, if required, undertake enquiries on any "information" received/available with him which suggests that the income chargeable to tax has escaped assessment in a previous year only with the prior approval of "specified authority". [refer to section 148A(a) of the Act] viii. If the result of enquiry/information available suggests that the income chargeable to tax has escaped assessment, the AO shall provide an opportunity of being heard to the assessee by issuing a show cause notice u/s 148A(b) of the Act. The said notice shall provide between 7 to 30 days time to the assessee for submitting the reply. A template of show cause notice is enclosed at Annexure-AI. ix. Exclusion period of 15 days:- Proviso 3 & 4 to section 149 of the Act have been inserted by the Finance Act, 2023 w.e.f. 01.04.2023 which provide for exclusion of a period of 15 days for computation of limitation period in the cases of search u/s 132 / requisition u/s 132A of the Act or information emanating from a statement recorded or document impounded u/s 131 or 133A, in consequence to such search initiated / requisition made after 15th day March of financial year. The same are reproduced as under, for ready reference:- "Provided also that for the cases referred to in clauses (i), (iii) & (iv) of Explanation 2 to section 148, where- (a) A search is initiated under section 132; or (b) A search under section 132 for which the last of authorisations is executed; or (c) Requisition is made under section 132A, after the 15th day of March of any financial year and the period for issuance of notice under section 148 expires on the 31st day of March of such financial year, a period of fifteen days shall be excluded for the purpose of computing the period of limitation as per this section and the notice issued under section 148 in such case shall be deemed to have been issued on the 31st day of March of such financial year: Provided also that where the information as referred to in Explanation 1 to section 148 emanates from a statement recorded or documents impounded under section 131 or section 133A, as the case may be, on or before the 31st day of March of a financial year, in consequence of,- (a) A search is initiated under section 132; or (b) A search under section 132 for which the last of authorisations is executed; or (c) Requisition is made under section 132A, after the 15th day of March of such financial year, a period of fifteen days shall be excluded for the purpose of computing the period of limitation as per this section and the notice issued under clause (b) of section 148A in such case shall be deemed to have been issued on the 31st day of march of such financial year." x. As per 5th proviso to

section 149, for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded. xi. Further, as per 6t1i proviso to section 149, where immediately after the exclusion of the period referred to in the immediately preceding proviso (i.e. 5th proviso), the period of limitation available to the Assessing Officer for passing an order under clause (d) of section 148A does not exceed seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly. xii. If an assessee requests for a personal hearing, the same may be dealt with, in a manner, to ensure the principle of natural justice, by giving a reasonable period for compliance of notice specifying the date of hearing. xiii. The AO has to consider the reply of assessee furnished, if any, in response to the show-cause notice u/s 148A(b) of the Act or during personal hearing, if requested before passing the order u/s 148A(d). xiv. The AO shall mandatorily pass a speaking order u/s 148A(d) in all cases with the 'prior approval of the specified authority' (Annexure- A3) for such order u / s. 148A (d), except in the cases covered in Para 2.1 (iii) (search and requisition cases) above of these guidelines, irrespective of whether issuance of notice u/s 148 is being recommended or not. A template of such order u/s. 148A (d) is enclosed at Annexure- A4. For cases covered in Para 2.1 (iii) above of these guidelines, template for 'prior approval of the specified authority' is enclosed at Annexure A2. xv. Once an order under section 148A(d) has been passed, no further approval is required for issuance of notice u/s 148 by the AO, with effect from 1.4.2022. xvi. In the cases emanating out of Audit objection, AO has to ensure that extant instructions/ guidelines/ SOPs have been duly adhered with. xvii. The confidential information such as from FIU, Foreign Jurisdictions, LEAs, etc. would be governed by respective guidelines governing sharing of such information. xviii. Information relevant to the case of the assessees' income escaping assessment must be provided, to the assessee and information not relevant to the case of the assessee must be redacted. 2.2 Notices along with annexures shall be sent to assessee as follows- Category of case Order/sanction document to be sent along with notice u/s 148 Cases covered under para 2.1 (iii) above Notice u/s. 148 (Annexure B) Prior approval of specified authority u/s 151 of the Income Tax Act (Annexure A2) Other cases Notice u/s. 148 – (Annexure B), the Order u/s. 148A (d) – (Annexure A4) approval of the specified authority for such order u/s 148A(d) – (Annexure A3) (Proforma of above notices/orders are illustrative and suggestive in nature and may be modified suitably based on the facts and circumstances of the case, if required. 3. For the purposes of assessment or reassessment or recomputation under section 147 read with section 148/ 148A, the Assessing Officer may assess or reassess or recompute the income in respect of any other issue, which has escaped assessment, and such other issue comes to his notice subsequently in the course of the proceedings u/s 147, irrespective of the fact that the provisions of section 148A have not been complied with, in respect of that issue. In this regard, if any information which pertains to Income escaping assessment is received during the pendency of assessment proceedings for a particular year by Jurisdictional AO, it shall be communicated to Faceless AO. 4. The statutory timelines given in Section 149 for issue of notice specified shall not apply for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision or by a Court in any proceeding under any other law. (refer to section 150(1) and 150(2) of the Act). 5. As far as possible the Assessing officer to make endeavor that at the stage of compliance of provisions u/s 148A/ issuance of notice u/s 148, all issues even if spread over more than one assessment year may be taken up simultaneously i.e. information suggesting escapement of income relating to a particular assessee for more than one AY may be reopened at one go. 6. The Assessing Officer, as far as possible, may dispose-off all such pending matters relating to passing of orders u/s 148A (d)/ issuance of notice u/s 148 on a continuous basis rather than towards close to time barring date. This will enable passing of reasoned orders. Supervisory authorities are hereby advised to keep an effective supervision and monitor the progress of disposal of these work on continuous basis. 7. The present guidelines are only indicative, illustrative and not exhaustive. The AO may take suitable decision on a case-to-case basis for the situations not specifically covered in these guidelines. However, in doing so, he/she shall follow the general principles enunciated in these guidelines. 8. These guidelines are to be brought to the notice of all officers working under your jurisdiction for information and compliance.

Section 10(46) exemption to Kerala Co-operative Deposit Guarantee Fund Board

In exercise of the powers conferred by clause (46) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies for the purposes of the said clause, 'Kerala Co-operative Deposit Guarantee Fund Board' (PAN: AANFK3180E), a Board constituted by the Govt. of Kerala, in respect of the following specified income arising to that Board, namely: a) Contribution received from the Government of Kerala b) Contribution received from society (ies) as defined in paragraph 2(k) of the Kerala Co-operative Deposit Guarantee Scheme. c) Interest on bank deposits 2. This notification shall be effective subject to the conditions that Kerala Co-operative Deposit Guarantee Fund Board- (a) shall not engage in any commercial activity; (b) its activities and the nature of the specified income shall remain unchanged throughout the financial year(s); and (c) shall file return of income in accordance with the provision of clause (g) of sub-section (4C) of section 139 of the Income-tax Act, 1961. 3. This notification shall be deemed to have been applied for assessment years 2019-2020, 2020-2021, 2021-2022, 2022-2023 and 2023-24 relevant for the financial years 2018-2019, 2019-2020, 2020-2021, 2021-2022 and 2022-23 respectively.

Income Tax Section 10(46) exemption notification: Real Estate Appellate Tribunal Punjab

In exercise of the powers conferred by clause (46) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies for the purposes of the said clause, 'Real Estate Appellate Tribunal, Punjab' (PAN AAALR2230D), a body constituted by the Government of Punjab, in respect of the following specified income arising to that body, namely: (a) Levy of fees/charges/fines collected under The Real Estate (Regulation and Development) Act, 2016 (Central Act No.16 of 2016) and Punjab State Real Estate (Regulation and Development) Rules, 2017. (b) Government grants. (c) Interest on bank deposits. 2. This notification shall be effective subject to the conditions that Real Estate Appellate Tribunal, Punjab – (a) shall not engage in any commercial activity; (b) its activities and the nature of the specified income shall remain unchanged throughout the financial year(s); and (c) shall file return of income in accordance with the provision of clause (g) of sub-section (4C) of section 139 of the Income-tax Act, 1961. 3. This notification shall be deemed to be applicable for Assessment Year(s) 2023-2024, 2024-2025, 2025- 2026, 2026-2027 and 2027-2028 relevant for the Financial Year(s) 2022-2023, 2023-2024, 2024-2025, 2025-2026 and 2026-2027 respectively.

Non-Filing of MGT-14: MCA Penalty Imposed on Company & its Directors

Hadapsar Urban Multiple Nidhi Limited having CIN U67100PN2018PLC180638 is a company governed by the provisions Act and registered with this office having its office at- Shop No.8, Sr No.3/ 14A, Shreeji Complex, CHS, Gadital, Near Hanuman Temple, Hadapsar, Pune, Maharashtra-411028. 1. Appointment of Adjudicating Officer: Ministry of Corporate Affairs vide its Gazette Notification No. A-42011/112/2014-Ad.II, dated 24.03.2015 (see SO 831(E), dated 24.03.2015) appointed undersigned as Adjudicating Officer in exercise of the powers conferred by section 454(1) of the Companies Act, 2013 (herein after known as Act) r/w Rule 3(1) of Companies (Adjudication of Penalties) Rules, 2014 for adjudging penalties under the provisions of this Act. The undersigned vide Companies (Amendment) Act, 2019 is entrusted to adjudicate penalties under Section 117 of the Companies Act, 2013 w.e.f. 02.11.2018. 2. Company: Hadapsar Urban Multiple Nidhi Limited (U67100PN2018PLC180638)

(herein after referred as Company) is a registered company with this office pursuant to sub-section (2) of section 7 of the Companies Act, 2013 (18 of 2013) and rule 18 of the Companies (Incorporation) Rules, 2014 having its registered office as per MCA21 Registry at address at- “Shop No.8, Sr No.3/ 14A, Shreeji Complex, CHS, Gadital, Near Hanuman Temple, Hadapsar, Pune, Maharashtra-411028.” 3. Relevant provisions of the Companies Act, 2013: Section 117(1) of the Act provides that “a copy of every resolution or any agreement, in respect of matters specified in sub-section together with the explanatory statement under section 102, if any, annexed to the notice calling the meeting in which the resolution is proposed, shall be filed with the Registrar within thirty days of the passing or making thereof in such manner and with such fees as may be prescribed; Provided that the copy of every resolution which has the effect of altering the articles and the copy of every agreement referred to in sub-section (3) shall be embodied in or annexed to every copy of the articles issued after passing of the resolution or making of the agreement. r.w. Section 179(3)(g), to approve financial statement and the Board’s report.”. Section 117(2) of the Act provides that” If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, such company shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of fifty thousand rupees.”. 3. Facts about the Case: a) An Inquiry was conducted by the IO and during the Inquiry and examination of records it has been observed that, the company has not filed for MGT -14 for Board Resolution passed for approval of Accounts with ROC as per section 179(3)(g) of the Companies Act, 2013, and rules made thereunder for the financial year ending on 31/03/2020 and 31/03/2021. Thus, the company and its officers have violated the provisions of section 117(1) r.w. 179(3)(g) of the Companies Act, 2013 and rules made thereunder and are liable for action u/s 117 (2). b) A reasonable opportunity was given to the company and its directors vide order under section 206(4) of the Companies Act, 2013 vide letter no. ROCP/INQ/2022/1064 to 1068 dated 08.09.2022. However, the reply submitted by the Company was not satisfactory and the competent authority has directed to adjudicate the matter. c) Accordingly, the adjudication officer has issued adjudication notice vide No. ROCP/ADJ/Sec-117(1)/JTA (B)/23-24/21/3275 to 3279 dated 05.03.2024 (herein after referred as Adjudication Notice) under Section 454(4) read with 117 of the Companies Act, 2013 read with Rule 3(2) Of Companies (Adjudication of Penalties), 2014 as amended in Amendment Rules, 2019, to the company and its officers in default for the violation of the provisions of the act as mentioned in para “a” above; d) A reply to the Adjudication notice has been received on 22.03.2024 from the company and its Directors stating that there was a communication gap amongst the management and the professional too. Hence compliance u/s 117(1) could not be made. Company is ready to present all the audited and adopted financial statements, Income tax Returns and Annual filing documents with the permission of Registrar of Companies e) However, as the said violation has already been concluded by IO during the course of Inquiry :- no further hearing in physical is required to ascertain the violation of the said section. Furthermore, the Noticee(s) are at liberty to file appeal against this order as per Para. 5.(e) of this order. Hence the Order- 5. ORDER: a. The applicant company and its officers, who have defaulted the provisions of section 117 of the Act as under-. As per examination of records it has been observed that , the company has not filed for MGT -14 for Board Resolution passed for approval of Accounts with ROC as per section 179(3)(g) of the Companies Act, 2013, and rules made thereunder for the financial year ending on 31/03/2020 and 31/03/2021. Thus, the company and its officers have violated the provisions of section 117(1) r.w. 179(3)(g) of the Companies Act, 2013 and rules made thereunder and are liable for action u/s 117 (2); b. In exercise of the powers conferred on the undersigned vide Notification dated 24th March, 2015 and after taking into account the factors mentioned herein above, I do hereby impose the penalty on the company and its officers in default pursuant to Rule 3 (12) of Companies (Adjudication Of Penalties) Rules, 2014 and the proviso of the said Rule and Rule 3 (13) of Companies (Adjudication Of Penalties) Rules, 2014 r/w General Circular No. 1/2020 dated 02.03.2020;

GST on Loans Provided by Overseas Affiliate to Indian Affiliate or Related Persons

Representations have been received from trade and industry seeking clarity on whether there is any supply involved in the transaction of granting of loan by a person to a related person or by an overseas affiliate to its Indian entity, where the consideration being paid is only by way of interest or discount, and whether any GST is applicable on the same. 2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under:

Issue

Whether the activity of providing loans by an overseas affiliate to its Indian affiliate or by a person to a related person, where there is no consideration in the nature of processing fee/ administrative charges/ loan granting charges etc., and the consideration is represented only by way of interest or discount, will be treated as a taxable supply of service under GST or not.

Clarification

As per clause (c) of sub-section (1) of section 7 of the CGST Act, read with S. No. 2 and S. No. 4 of Schedule I of CGST Act, supply of goods or services or both between related persons, when made in the course or furtherance of business, shall be treated as supply, even if made without consideration. Therefore, it is evident that the service of granting loan/ credit/ advances by an entity to its related entity is a supply under GST. 2. Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) are exempted under sub entry (a) of entry 27 of Notification No. 12/2017-Central Tax (Rate). Therefore, it is clear that the supply of services of granting loans/ credit/ advances, in so far as the consideration is represented by way of interest or discount, is fully exempt under GST. 3. It is mentioned that overseas affiliates or domestic related persons are generally charging no consideration in the form of processing fee/ service fee, other than the consideration by way of interest or discount on the loan amount. Doubts are being raised regarding the taxability of the services of processing/ administering/ facilitating the loan in such cases, by deeming the same as supply as per clause (c) of sub-section (1) of section 7 of the CGST Act, read with S. No. 2 and S. No. 4 of Schedule I of CGST Act. The processing fee/ service fee is generally a one-time charge that lenders levy on applicants when they apply for a loan. This fee is generally non-refundable and is used to cover the administrative cost of processing the loan application. Charges of any other nature in respect of loan, other than by way of interest or discount, would represent taxable consideration for providing the facilitation/ processing/ administration services for the loan and hence would be liable to GST. This has been clarified at serial number 42 in the Sectoral FAQ on Banking, Insurance and Stock Brokers Sector issued by CBIC. 4. It is significant to note that the processing/ service fee is generally charged by the bank/ financial institution from the recipient of the loan in order to cover the administrative cost of processing the loan application. An independent lender may carry out a thorough credit assessment of the potential borrower to identify and evaluate the risks involved and to consider methods of monitoring and managing these risks. Such credit assessment may include understanding the business of the applicant, as well as the purpose of the loan, financial standing and credibility of the applicant, how it is to be structured and the source of its repayment which may include analysis of the borrower's cash flow forecasts, the strength of the borrower's balance sheet, and where any collateral is offered, due diligence on the collateral offered may also be required to be carried out. To cover such costs, the independent lender generally collects a fee that is in the nature of processing fee/ administrative charges/ service fee/ loan granting charges, which is leviable to GST. 5. However, when an entity is extending a loan to a related entity, it may not require to follow such processes as are followed by an independent lender. For example, it may not need to go through the same process of information gathering about the borrower's business, his financial standing and credibility and other details, as the required information may already be readily available within the group, or between related persons. The lender may not also take any collateral from the borrower. Accordingly, in case of loans provided between related parties, there may not be the activity of 'processing' the loan, and no administrative cost may be involved in granting such a loan. Therefore, it may not be

desirable to place the services being provided for processing the loans by banks or independent lenders vis-a-vis the loans provided by a related party, on equal footing. 6. Even in case of loans provided between unrelated parties, there may not be any processing fee/ administrative charges/ loan granting charges etc., based on the relationship between the bank/ independent lender and the person taking the loan. The lender might waive off the administrative charges in full, based on the nature and amount of loan granted, as well as based on the relationship between the lender and the concerned person taking the loan. 7. Accordingly, in the cases, where no consideration is charged by the person from the related person, or by an overseas affiliate from its Indian party, for extending loan or credit, other than by way of interest or discount, it cannot be said that any supply of service is being provided between the said related persons in the form of processing/ facilitating/ administering the loan, by deeming the same as supply of services as per clause (c) of sub-section (1) of section 7 of the CGST Act, read with S. No. 2 and S. No. 4 of Schedule I of CGST Act. Accordingly, there is no question of levy of GST on the same by resorting to open market value for valuation of the same as per rule 28 of Central Goods and Services Tax Rules, 2017. 8. However, in cases of loans provided between related parties, wherever any fee in the nature of processing fee/ administrative charges/ service fee/ loan granting charges etc. is charged, over and above the amount charged by way of interest or discount, the same may be considered to be the consideration for the supply of services of processing/ facilitating/ administering of the loan, which will be liable to GST as supply of services by the lender to the related person availing the loan.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular. 4. Difficulties, if any, in implementing this Circular may please be brought to the notice of the Board. Hindi version would follow.

Monetary limits for filing appeals by Department before GSTAT, HC & SC

Reference is invited to the National Litigation Policy which was conceived with the aim of optimizing the utilization of judicial resources and expediting the resolution of pending cases. It underscores the importance of prudent litigation practices by establishing thresholds for filing appeals in Revenue matters. Specifically, the Policy mandates that appeals should not be pursued when the amount involved is below a specified monetary limit set by Revenue authorities. Furthermore, it discourages filing appeals in cases where established precedents from Tribunals and High Courts have settled the matter and have not been contested in the Supreme Court. 1.1 Section 120 of the Central Goods and Services Tax Act, 2017 (hereinafter referred as "the CGST Act") provides for power to the the Central Board of Indirect Taxes & Customs (hereinafter referred to as "the Board") for fixing the monetary limits for filing of appeal or application by the tax authorities as below: "120. Appeal not to be filed in certain cases. — (1) The Board may, on the recommendations of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the officer of the central tax under the provisions of this Chapter. (2) Where, in pursuance of the orders or instructions or directions issued under sub-section (1), the officer of the central tax has not filed an appeal or application against any decision or order passed under the provisions of this Act, it shall not preclude such officer of the central tax from filing appeal or application in any other case involving the same or similar issues or questions of law. (3) Notwithstanding the fact that no appeal or application has been filed by the officer of the central tax pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal or application shall contend that the officer of the central tax has acquiesced in the decision on the disputed issue by not filing an appeal or application. (4) The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the officer of the central tax in pursuance of the orders or instructions or directions issued under sub-section (1)." 2. Accordingly, in exercise of the powers conferred by Section 120 of the CGST Act read with section 168 of the CGST Act, the Board, on the recommendations of the GST Council, fixes the following monetary limits below which appeal

or application or Special Leave Petition, as the case may be, shall not be filed by the Central Tax officers before Goods and Service Tax Appellate Tribunal (GSTAT), High Court and Supreme Court under the provisions of CGST Act, subject to the exclusions mentioned in para 4 below:

GSTAT: 20,00,000/-
High Court—1,00,00,000/-
Supreme Court—2,00,00,000/-

3. While determining whether a case falls within the above monetary limits or not, the following principles are to be considered: i. Where the dispute pertains to demand of tax (with or without penalty and/or interest), the aggregate of the amount of tax in dispute (including CGST, SGST/UTGST, IGST and Compensation Cess) only shall be considered while applying the monetary limit for filing appeal. ii. Where the dispute pertains to demand of interest only, the amount of interest shall be considered for applying the monetary limit for filing appeal. iii. Where the dispute pertains to imposition of penalty only, the amount of penalty shall be considered for applying the monetary limit for filing appeal. iv. Where the dispute pertains to imposition of late fee only, the amount of late fee shall be considered for applying the monetary limit for filing appeal. v. Where the dispute pertains to demand of interest, penalty and/or late fee (without involving any disputed tax amount), the aggregate of amount of interest, penalty and late fee shall be considered for applying the monetary limit for filing appeal. vi. Where the dispute pertains to erroneous refund, the amount of refund in dispute (including CGST, SGST/UTGST, IGST and Compensation Cess) shall be considered for deciding whether appeal needs to be filed or not. vii. Monetary limit shall be applied on the disputed amount of tax/ interest/penalty/late fee, as the case may be, in respect of which appeal or application is contemplated to be filedin a case. viii. In a composite order which disposes more than one appeal/demand notice, the monetary limits shall be applicable on the total amount of tax/interest/penalty/late fee, as the case may be, and not on the amount involved in individual appeal or demand notice. 4. EXCLUSIONS Monetary limits specified above for filing appeal or application by the department before GSTAT or High Court and for filing Special Leave Petition or appeal before the Supreme Court shall be applicable in all cases, except in the following circumstances where the decision to file appeal shall be taken on merits irrespective of the said monetary limits: i. Where any provision of the CGST Act or SGST/ UTGST Act or IGST Act or GST (Compensation to States) Act has been held to be ultra vires to the Constitution of India; or ii. Where any Rules or regulations made under CGST Act or SGST/ UTGST Act or IGST Act or GST (Compensation to States) Act have been held to be ultra vires the parent Act; or iii. Where any order, notification, instruction, or circular issued by the Government or the Board has been held to be ultra vires of the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Actor the Rules made thereunder;or iv. Where the matter is related to – a. Valuation of goods or services; or b. Classification of goods or services; or c. Refunds; or d. Place of Supply; or e. Any other issue, which is recurring in nature and/or involves interpretation of the provisions of the Act /the Rules/ notification/circular/ order/instruction etc; or v. Where strictures/adverse comments have been passed and/ or cost has been imposed against the Government/ Department or their officers; or vi. Any other case or class of cases, where in the opinion of the Board, it is necessary to contest in the interest of justice or revenue. 5. It is pertinent to mention that an appeal should not be filed merely because the disputed tax amount involved in a case exceeds the monetary limits fixed above. Filing of appeal in such cases is to be decided on merits of the case. The officers concerned shall keep in mind the overall objective of reducing unnecessary litigation and providing certainty to taxpayers on their tax assessment while taking a decision regarding filing an appeal. 6. Attention is drawn to sub-sections (2), (3) & (4) of section 120 of the CGST Act, which provide that in cases where it is decided not to file appeal in pursuance of these instructions, such cases shall not have any precedent value. In such cases, the Reviewing Authorities shall specifically record that "even though the decision is not acceptable, appeal is not being filed as the amount involved is less than the monetary limit fixed by the Board." 6.1 Non-filing of appeal based on the above monetary limits, shall not preclude the tax officer from filing appeal or application in any other case involving the same or similar issues in which the tax in dispute exceeds the monetary limit or case involving the questions of law. 6.2 Further, it is re-iterated that in such cases where appeal is not filed solely on the basis of the above monetary limits, there will be no presumption that the Department has acquiesced in the decision on the disputed issues in the case of same taxpayers or in case of any other taxpayers. Accordingly, in case any prior order is being cited or relied upon by the taxpayer, claiming that the same has been accepted by the Department, it must be checked as to whether such order was accepted only on account of the monetary limit before following them in the name of judicial discipline. 6.3 Also, in respect

of such cases where no appeal is filed based on the monetary limit, the Departmental representatives/ counsels must make every effort to bring to the notice of the GSTAT or the Court, as the case may be, that the appeal in such cases was not filed only for the reason of the amount of the tax in dispute being less than the specified monetary limit and, therefore, no inference shall be drawn that the decisions rendered therein were acceptable to the Department. Accordingly, they should draw the attention of the GSTAT or the Court towards the provisions of sub-section (4) of section 120 of the CGST Act, 2017 as reproduced in para 1.1 above. 7. The above may be brought to the notice of all concerned. 8. Difficulties, if any, in implementation of thiscircular may be informed to the Board (gst-cbec@gov.in). 9. Hindi version will follow.

Time Limit under Section 16(4) of CGST Act for RCM Supplies from Unregistered Persons

Representations have been received from trade and industry seeking clarity on the applicability of time limit specified under section 16(4) of Central Goods & Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") for the purpose of availment of input tax credit (ITC)by the recipient on the tax paid by him under reverse charge mechanism (RCM) in respect of supplies received from unregistered persons. It has been represented that in some cases, where tax is payable on reverse charge basis by the recipient, such as, where an activity is performed by the overseas related person for the entity located in India and no consideration is involved, such an activity may not be considered as supply of services by the concerned recipient in India and accordingly, no invoice is issued as well as no tax is paid by the said recipient under RCM in respect of the same. However, later on, either on their own on the basis of some clarification issued by the department or on the basis of some court judgement or on being pointed out by the tax authorities during scrutiny or audit or otherwise, the said recipient issues the invoice and pays the tax under RCM, along with interest, and claims input tax credit on such tax paid. 1.2 It has been represented that some of the field formations are taking the view that in such cases, the relevant year of the invoice for the purpose of section 16(4) of CGST Act is the year in which the said supply was received and accordingly, the time limit for availment of ITC under section 16(4) of CGST Act is only upto the September/ November of the following financial year, i.e. the financial year following the financial year in which the said services was received. On the other hand, industry has represented that as the invoice in respect of such supplies received from unregistered supplier, where tax has to be paid by the recipient on RCM basis, is to be issued by the recipient as per section 31 (3)(f) of CGST Act, the relevant year of invoice for the purpose of section 16(4) of CGST Act is the financial year in which such invoice has been issued and accordingly, ITC should be available on the said invoice under section 16(4) of CGST Act till the September/ November of the financial year following the financial year in which such invoice has been issued. Request has been made to issue clarification in the matter to avoid litigation. 2. The matter has been examined. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, hereby clarifies the issue as follows. 2.1 As per section 16 (2)(a) of CGST Act, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed. 2.2 Rule 36(1) (b) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the CGST Rules) prescribes that input tax credit shall be availed by a registered person inter alia on the basis of an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31 of CGST Act, subject to the payment of tax. 2.3 Further, clause (f) of sub-section (3) of section 31 of CGST Act provides that a registered person, who is liable to pay tax under sub-section (3) or sub-section (4) of section 9, shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both. Accordingly, where the supplier is unregistered and recipient is registered, and the recipient is liable to pay tax on the said supply on RCM basis, the recipient is required to issue invoice as per section 31(3)(f) of CGST Act and pay the tax in cash on the same under RCM. 2.4 Section 16(4) of CGST Act, as amended vide the Finance Act, 2022, deals

with time limit to avail ITC, and is reproduced below- "A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the thirtieth day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier." Section 16(4)of CGST Act, before the said amendment vide the Finance Act, 2022, provided as follows: "A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier." 2.5 It can be seen that section 16(4) of CGST Act links the time limit for ITC availment with the financial year to which the invoice or debit note pertains. As discussed in Para 2.3 above, in case of supplies where the supplier is unregistered and recipient is registered and the tax has to be paid by the recipient on RCM basis, the recipient is required to issue invoice in terms of the provisions of section 31(3)(f) of CGST Act and pay the tax on the same in cash under RCM. Further, as discussed in Para 2.1 above, ITC cannot be availed by a registered person in respect of any supply of goods or services or both received by him, as per the provisions of section 16(2)(a) of CGST Act, unless he is in possession of a tax invoice or debit note or such other tax paying documents as may be prescribed. 2.6 A combined reading of the above provisions leads to a conclusion that as ITC can be availed by the recipient only on the basis of invoice or debit note or other duty paying document, and as in case of RCM supplies received by the recipient from unregistered supplier, invoice has to be issued by the recipient himself, the relevant financial year, to which invoice pertains, for the purpose of time limit for availment of ITC under section 16(4) of CGST Act in such cases shall be the financial year of issuance of such invoice only. In cases, where the recipient issues the said invoice after the time of supply of the said supply and pays tax accordingly, he will be required to pay interest on such delayed payment of tax. 2.7 Accordingly, it is clarified that in cases of supplies received from unregistered suppliers, where tax has to be paid by the recipient under reverse charge mechanism (RCM) and where invoice is to be issued by the recipient of the supplies in accordance with section 31(3)(f) of CGST Act, the relevant financial year for calculation of time limit for availment of input tax credit under the provisions of section 16(4) of CGST Act will be the financial year in which the invoice has been issued by the recipient under section 31(3)(f) of CGST Act, subject to payment of tax on the said supply by the recipient and fulfilment of other conditions and restrictions of section 16 and 17 of CGST Act. In case, the recipient issues the invoice after the time of supply of the said supply and pays tax accordingly, he will be required to pay interest on such delayed payment of tax. Further, in cases of such delayed issuance of invoice by the recipient, he may also be liable to penal action under the provisions of Section 122 of CGST Act. 3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular. 4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

GST liability and ITC Clarifications for Warranty/ Extended Warranty

Reference is invited to Circular No. 195/07/2023-GST dated 17.07.2023 (herein after referred to as "the said circular") clarifying certain issues regarding GST liability and availability of input tax credit (ITC) in respect of warranty replacement of parts and repair services during warranty period. Representations have been received from trade and industry requesting for some further clarifications in related matters. 2. In order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods & Services Tax Act, 2017 (herein after referred to as the "CGST Act"), hereby clarifies the following issues as below. 3. Clarification regarding GST liability as well as liability to reverse input tax credit in respect of cases where goods as such or the parts are replaced under warranty: 3.1 Table in Para 2 of Circular No. 195/07/2023-GST dated 17.07.2023 clarifies regarding GST liability as well as liability to reverse ITC, only in cases involving replacement of 'parts' and not if goods as such are replaced under warranty. Request has been made to also issue a clarification in respect of cases where the goods as such are replaced under warranty. 3.2 In cases where warranty is provided by the manufacturer/ suppliers to the customers in respect of any goods, and if

any defect is detected in the said goods during the warranty period, the manufacturer may be required to replace either one or more parts or the goods as such, depending upon the extent of damage/ defect noticed in the said goods. However, Table in Para 2 of the said circular only clarifies in respect of the situations involving replacement of part/ parts and does not specifically refer to the situation involving replacement of goods as such. It is clarified that the clarification provided in Para 2 of the said circular is also applicable in case where the goods as such are replaced under warranty. 3.3 Accordingly, wherever, 'any part,' 'parts' and 'part(s)' has been mentioned in Para 2 of Circular No. 195/07/2023-GST dated 17.07.2023, the same may be read as 'goods or its parts, as the case may be'. 4. Clarification in respect of cases where the distributor replaces the parts/ goods to the customer as part of warranty out of his own stock on behalf of the manufacturer and subsequently gets replenishment of the said parts/ goods from the manufacturer: 4.1 Sr. No. 4 of Para 2 of the said Circular clarifies about the GST liability as well as liability to reverse ITC in cases where the distributor provides replacement of parts to the customer as part of warranty on behalf of the manufacturer. However, it does not cover the scenario where the distributor replaces the goods to the customer as part of warranty out of his own stock on behalf of the manufacturer to provide prompt service to the customer, and then raises a requisition to the manufacturer for the goods replaced by him under warranty. The manufacturer, thereafter, provides the said goods to the distributor vide a delivery challan, as replenishment for the goods provided as replacement to the customer by the distributor. Request has been made to issue clarification in respect of such a scenario also. 4.2 In cases where the distributor replaces the parts/ goods to the customer as part of warranty out of his own stock on behalf of the manufacturer and subsequently gets replenishment of the said parts/ goods from the manufacturer, the key aspects, viz.(i) distributor providing replacement out of his own stock; (ii) manufacturer replenishing the distributor for the said replacement; and (iii) the replacement being made at no additional cost on the distributor, are all covered in the scenario specified in point (b) of Sr. No.4 of Para 2 of the said Circular. Therefore, GST liability as well as liability to reverse ITC in cases covered by the said scenario should be similar to that in respect of the scenario covered in point (b) of S. No. 4 of Para 2 of the above circular. 4.3 Accordingly, to specifically clarify in respect of such a scenario, in column 3 of the table in Para 2 of the said circular, against S. No. 4, after point (c), point (d)shall be inserted as below: "(d) There may be cases where the distributor replaces the goods or its parts to the customer under warranty by using his stock and then raises a requisition to the manufacturer for the goods or the parts, as the case may be. The manufacturer then provides the said goods or the parts, as the case may be, to the distributor through a delivery challan, without separately charging any consideration at the time of such replenishment. In such a case, no GST is payable on such replenishment of goods or the parts, as the case may be. Further, no reversal of ITC is required to be made by the manufacturer in respect of the goods or the parts, as the case may be, so replenished to the distributor." 5. (i) Nature of supply of extended warranty, at the time of original supply of goods, as a separate supply from supply of goods, if the supply of extended warranty is made by a person different from the supplier of the goods; (ii) Nature of supply of extended warranty, made after original supply of goods: 5.1 It has been represented that in respect of cases, where agreement for extended warranty is made at the time of original supply of goods, and the supplier of extended warranty is different from the supplier of goods, the extended warranty should be treated as a separate and independent transaction from the supply of goods, whereas Sr. No. 6 of Para 2 of the said Circular has treated it to be in the nature of composite supplies, the principal supply being the supply of goods. Request has been made to issue a suitable clarification in the matter. 5.1.1 There may be cases where the supplier of the goods may be the dealer while the supplier of extended warranty may be the OEM or third party. In such cases, the supplies being made by different suppliers cannot be treated as part of the composite supply. It is, therefore, clarified that in cases, where agreement for extended warranty is made at the time of original supply of goods, and the supplier of extended warranty is different from the supplier of goods, the supply of extended warranty and supply of goods cannot be treated as the composite supply. In such cases, supply of extended warranty will be treated as a separate supply from the original supply of goods. 5.2 It has also been represented that in cases where extended warranty is sold subsequent to the original supply of goods, the same should be considered as supply of services only whereas the said Circular clarifies that GST on the same would be payable depending on the nature of the contract (i.e.

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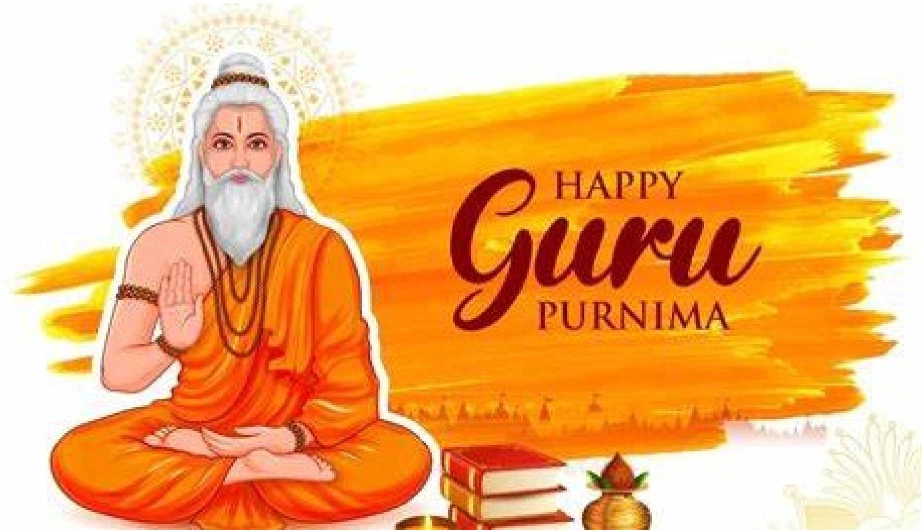
whether the extended warranty is only for goods or for services or for composite supply involving goods and services). Request has been made to issue a revised clarification in respect of the same. 5.2.1 Supply of extended warranty is an assurance to the customers by the manufacturer/ third party that the goods will operate free of defects during the extended warranty coverage period, and in case of any defect attributable to faulty material or workmanship at the time of manufacture, the same will be repaired/ replaced by the said manufacturer/ third party. Further, whether the goods will later on require replacement of parts or just repair service or neither during the said extended warranty period, is also not known at the time of sale/ supply of extended warranty. Thus, extended warranty is in the nature of conveying of an "assurance" and not an actual replacement of part or repairs. 5.3 Accordingly, it is clarified that in cases, where supply of extended warranty is made subsequent to the original supply of goods, or where supply of extended warranty is to be treated as a separate supply from the original supply of goods in cases referred in Para 5.1.1 above, the supply of extended warranty shall be treated as a supply of services distinct from the original supply of goods, and the supplier of the said extended warranty shall be liable to discharge GST liability applicable on such supply of services. 5.4 Accordingly, in Sr. No. 6 of Table in para 2 of the said Circular, in column No. 3 of the table, the following shall be substituted: "(a) If a customer enters into an agreement of extended warranty with the supplier of the goods at the time of original supply, then the consideration for such extended warranty becomes part of the value of the composite supply, the principal supply being the supply of goods, and GST would be payable accordingly. However, if the supply of extended warranty is made by a person different from the supplier of the goods, then supply of extended warranty will be treated as a separate supply from the original supply of goods and will be taxable as supply of services. (b) In case where a consumer enters into an agreement of extended warranty at any time after the original supply, then the same shall be treated as a supply of services distinct from the original supply of goods and the supplier of the said extended warranty shall be liable to discharge GST liability applicable on such supply of services." 6. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.



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