

April, 2020

Pandemic Legal intelligence
Direct Tax & International Tax Perspective-Part I



COVID-19



Legal intelligence Series - COVID XIII | Tax

AHMEDABAD | BENGALURU | NEW DELHI | KOLKATA | MUMBAI

Income Tax Returns

1. Whether there is any extension of due dates in filing the belated returns for the Financial Year 2018-19?

Answer: Yes, due date income tax return for Financial Year 2018-19 was 31st March 2020.

The Ministry of Finance, vide Press Release dated 24.03.2020 has extend the due date of filing of belated for Financial Year 2018-19 from 31st March 2020 to 30th June 2020.



Tax
return

Interest on delayed Tax Returns

2. Whether the person filing belated for Financial Year 2018-19 will be liable to pay interest under section 234A or section 234B of Income Tax Act, 1961?

Answer: The Press release issued by Ministry of Finance dated 24.03.2020 is silent on the same and no clarification has been issued in this regard.

It is advisable to wait for the clarification on the same or take an expert opinion.



Revised Returns

3. Whether time period for extension of filing of belated returns for Financial Year 2018-19 would also be applicable to revised returns under Income Tax Act, 1961?

Answer: Yes, the extension given, vide the Press Release dated 24.03.2020, for filing of belated return would equally apply to revised returns.

Ministry of Finance vide Press Release dated 31.03.2020 clarified that all taxpayers who have filed their returns for Financial Year 2018-19 can revise their return till 30th June 2020.

In normal course, belated income tax return cannot be filed after the end of the relevant assessment year.



Extension of Tax Payments & Lower Interest

4. Whether any extension is being given for payment of Advance Tax, Tax Deduction at Source (TDS), Tax Collection at Source (TCS), Self-assessment tax, Equalisation levy, Security Transaction Tax (STT, Commodity Transaction Tax (CTT) due between 20th March 2020 to 30th June 2020 ?

Answer: No, the Central Government has not extended the due date for payment of Advance Tax, TDS, TCS, Self-assessment tax, Equalisation levy, STT, CTT due between 20th March 2020 to 30th June 2020.

5. Whether the person making delayed payment of Advance Tax, TDS, TCS, Self assessment tax, Equalisation levy, STT, CTT due between 20th March 2020 to 30th June 2020 will be liable to interest or penalty or late fees under Income Tax Act, 1961?

Answer: According to Ministry of Finance vide Press Release dated 31.03.2020, the person making delayed payment of Advance Tax, TDS, TCS, Self-assessment tax, Equalisation levy, STT, CTT due between 20th March 2020 to 30th June 2020 will be charged interest at reduced rate of 9% p.a. instead of 12% or 18% p.a, as the case may be. Further, such person will not be liable for any penalty or late fees for the above period.



Procedural Compliance's

6. Whether any extension is being provided with respect to filing of appeal, furnishing of return, statements, applications, reports, any other documents and any compliance under Income Tax Act, Wealth Tax Act, Benami Property Transaction (Prohibitions) Act 1988, Black Money Act, STT law, CTT Law, Equalization Levy law, Vivad Se Vishwas law where the time limit is expiring between 20th March 2020 to 29th June 2020?

Answer: Yes, the Ministry of Finance, vide press release dated 24.03.2020, has extended the due date for compliance, falling between 20th March 2020 to 29th June 2020, under the above mentioned law. The extended due date is 30th June 2020.

7. Whether there is any extension of date for issuance of order or notice by Income Tax Department with respect to direct tax or Benami Property Transaction (Prohibitions) Act 1988?

Answer: Yes. Ministry of Finance vide Press Release dated 31.03.2020 has extended the date for order or notice by Income Tax Department with respect to direct tax or under Benami Property Transaction (Prohibitions) Act 1988 up to 30th June 2020.



Audit Reports & Income Tax Returns for FY 2019-20

8. Whether the due dates for filing of Audit Reports or Income Tax Returns for Financial Year 2019-20 are extended?

Answer: No, the actual due date for filing of Audit Report and Income Tax Return is 30th September.

The extension has been provided by the Central Government only with respect to compliance due between 20th March 2020 to 29th June 2020.

However, if the situation worsens, there might be a possibility the Central Government may extend the due date for filing Audit Reports or Income Tax Returns for Financial Year 2019-2020.



Deferred Tax Liabilities

9. Whether the deferred tax liabilities of the companies to whom Ind AS is applicable will be affected due to COVID - 19?

Answer: Yes, the COVID – 19 could directly or indirectly affect the future profits of the organisation

Present pandemic situation may also reduce the amount of deferred tax liabilities and/or create additional deductible temporary differences due to various factors.

Accounting Standard ("AS") 22 specifically deals with the accounting of tax income



Tax Reliefs for SEZ Units

10. Whether there is any extension of date for the Special Economic Zones ("SEZ") units for claiming deduction under section 10AA of Income Tax Act, 1961?

Answer: Yes. Ministry of Finance vide Press Release dated 31.03.2020 has extended the date for SEZ units to claim deduction under section 10AA of Income tax Act, 1961.

Section 10AA provides special provisions in respect of newly established units in SEZ who begins to manufacture or produce articles or things or provide any services during the previous year relevant to any assessment year commencing on or after the 1st day of April, 2006, but before the first day of April, 2021.

The due date has been extended from 31st March 2020 to 30th June 2020 subject to necessary approval by 31st march 2020.



Validity of TDS Certificate

11. Whether there is extension of date on validity of Tax Deducted at Source ("TDS")/Tax Collected at Source ("TCS") certificate for nil, lower deduction and collection of TDS for Financial Year 2019-20?

Answer: Yes. Central Board of Direct Tax ("CBDT") vide order no F.NO 275/25/2020-IT(B) dated 31.03.2020 has extended the validity of Tax Deducted at Source ("TDS")/Tax Collected at Source ("TCS") certificate.

The extension of validity of due date for Tax Deducted at Source ("TDS")/Tax Collected at Source ("TCS") certificate shall cover nil, lower deduction and collection of TDS/ TCS for Financial Year 2019-20.

The due date has been extended to 30th June 2020 from 31st March 2020



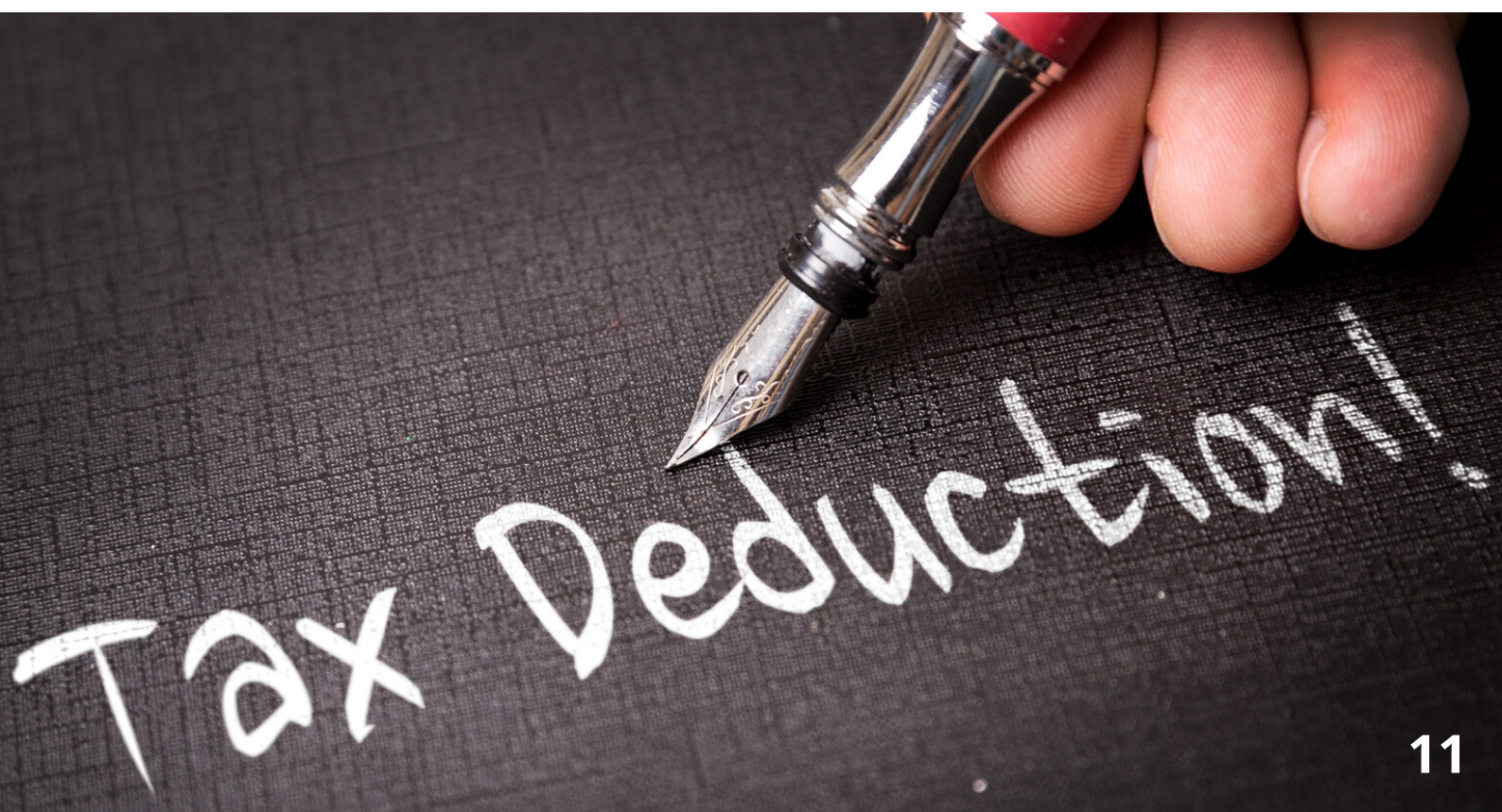
Tax Deductions

12. Whether there is any extension of date for claiming of deduction under provisions of Chapter-VIA-B of Income Tax Act, 1961?

Answer: Yes. Ministry of Finance vide Press Release dated 31.03.2020 has extended the date for investment/payment under section 80C, 80D and 80G of Income Tax Act, 1961 from 31st March 2020 to 30th June 2020 for Financial Year 2019-20.

13. Whether there is any extension of date for claiming of deduction under sections 54 to 54GB of the Income Tax Act, 1961?

Answer: Yes. Ministry of Finance vide Press Release dated 31.03.2020 has extended the date for making investment/construction/purchase in respect of capital gains under section 54 and 54GB of the Income Tax Act, 1961 from 31st March 2020 to 30th June 2020 for Financial Year 2019-2020.



Declaration under Vivad Se Vishwas Scheme

14. Whether the declaration filed under Vivaad se Vishwas Scheme after 31st March 2020 would attract payment of 10% additional amount?

Answer: No, the Ministry of Finance, vide Press Release dated 24.03.2020, has provided that the declaration made under Vivad se Vishwas Scheme even after 31st March 2020 will not attract an 10% additional amount.

Previously, the person making declaration under Vivad se Vishwas Scheme after 31st March 2020 was supposed to pay a 10% additional amount of the disputed tax as the late fee or penalty for delayed declaration.



Disagreement to declaration under Vivad Se Vishwas Scheme

15. What happens when there is a disagreement with respect to calculation of disputed tax amount between the assessee and by the designated officer of the Income Tax Department?

Answer: The Direct Tax Vivad Se Vishwas Act, 2020 and rules made there under are silent on the same.

However, CBDT may come up with an appropriate mechanism to determine correct disputed tax amount in such cases.



Place of Effective Management (PoEM)

16. What would be the Place of Effective Management ("PoEM") for foreign entities in such scenario for the foreign entities that are not engaged in Active Business outside India ("ABOI")?

Answer: The identification of PoEM in case of ABOI involves 2 step tests:

- i. identification of persons who makes key commercial and management decisions.**
- ii. determining the place where decisions are made.**

Therefore, in this regard if the person taking key decisions is stranded in India due to COVID- 19, there is a possibility that PoEM implications may trigger.

It is advisable to take an expert opinion on the above proposition of law.



Tax Residential Status

17. Whether current situation of COVID – 19 will affect the residential status of individuals?

Answer: Interpretations of Section 6(6) of Income Tax Act, 1961, Double Taxation Agreements ("DTAA"), PoEM guidelines, tie breaker rules, provides detail analysis as to the determination of Tax Residential Status of an individual which can only resort the certainty on tax residential status.

Further Indian Government may also legalize by invoking a provisions similar to the new provisions introduced in the United Kingdom, wherein under exceptional circumstance if a person spends time in the UK, such stay will be excluded for determining tax residency.

It is advisable to take an expert opinion on the above proposition of law and for specific queries, please get in touch with our team at covid19@amlegals.com.



Doctrine of Impossibility

18. Whether it is possible to invoke the doctrine of impossibility of performance or even doctrine of force majeure, in situation where a Foreign citizen visited India in the course of his employments of 90 days as per the provision of section 10 (6) (vi) of the Income Tax Act, 1961 and gets stranded in India due to travel ban, to avoid the attraction of provision of Income Tax Act, 1961 where might this employee gets treated as Tax Resident of India?

Answer: In the above situation, it is imperative to note that the **Hon'ble Delhi High Court in case Commissioner Of Income Tax (C)-I vs. Shri Suresh Nanda dated 27.05.2015 held that if the stay of the assessee in India is in lieu of impounding of passport due to unavoidable situations then in such scenario he must be excluded in order to determine tax residential status of India.**

Though the proposition of law seems to be clear on the above aspect still it would be advisable to consider tax experts opinion as to whether this judgement would equally apply to extraordinary situations like COVID 19.

For specific queries, please get in touch with our team at covid19@amlegals.com.



ABOUT US

AMLEGALS is a multi-specialised law firm. We would love to hear your views, queries, feedback and comments on covid19@amlegals.com or rohit.lalwani@amlegals.com.

AHMEDABAD

201 - 203, WestFace, Opp. Baghban Party Plot,
Zydus Hospital Road, Thaltej, Ahmedabad – 380 054,
Gujarat, India.
+91 - 84485 48549 | +91-83478 53565 | +91- 84605 48996
www.amlegals.com | info@amlegals.com

MUMBAI

1207, Dalamal Tower, Nariman Point, Mumbai – 400 021,
Maharashtra, India.
+91 - 84485 48549 | +91-88511 67622 | +91-22-6666 6265
www.amlegals.com | mumbai@amlegals.com

KOLKATA

3rd floor, Surabhi Building,
8/1/2 Loudon Street, Beside Birla high School for Girls,
Kolkata- 700017, West Bengal, India
+91-9999764317 | +91-84485 48549
www.amlegals.com | kolkata@amlegals.com

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