

# Reflections 2018

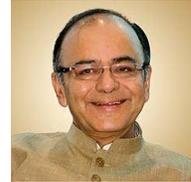
## The Year Gone By in Tax...

## THE BIG NEWSMAKERS/TAX EVENTS OF 2018

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- **Budget 2018:**

- FM proposes 10% long term capital gains tax on stock market transactions
- Finance Bill introduces digital PE concept, amends business connection definition, preserves ICDS



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- **CBDT task force for drafting new direct tax law reconstituted, CBDT member Akhilesh Ranjan appointed convenor of DTC Task Force**



- **CBDT retrospectively revises appeal-filing monetary limits, sans presumption of 'concession'**



- **CBDT: Mandates 'E-Proceeding' for 'all' assessments during 2018-19, carves-out 7 exceptions**



- **CBDT decides to incentivize CITs(A) to pass 'quality orders'. Quality cases would include cases where-**



- (a) enhancement has been made,
- (b) order has been strengthened, in the opinion of the CCIT, or
- (c) penalty u/s 271(1)I has been levied by the CIT(A).involving cases where enhancement is made or Revenue's case is strengthened or penalty u/s 271(1) is levied by CIT(A).

This CBDT policy incentivizing CIT(A)s for 'quality orders' has been challenged before Bombay and Delhi High Courts.

- **Govt. orders restructuring of IT Dept. for enhancing effectiveness, forms Committee**



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- **Cabinet approves NFRA as oversight body for auditors**



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- **Govt. appoints Justice P. P. Bhatt as ITAT President**



- **Angel Tax controversy**

- Angel investors, startups get tax notices despite new norms
- DIPP acts on news reports about angel investors' notices, takes up matter with DoR
- Govt. to set up panel to look into startup tax-issues
- No coercive measures on start-ups to recover demand w.r.t additions u/s 56(2)(viib), directs CBDT



- **OECD releases Interim Report on Digital Economy**



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- **Targeting Tech Giants, Europe Unveils Digital Tax Proposal**
  - **UK announces 2% Digital Services tax on tech giants**
  - **United States ups the ante, warns of retaliatory action over UK Digital Tax**
  - **Europe's Tech Tax Plan Limpers on with Franco-German Agreement**





## INCOME TAX

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### Top 10 Most Viewed Rulings of 2018

1. AAR: MasterCard Interface Processor and MasterCard Network constitute fixed place PE in India

**MasterCard Asia Pacific Pte. Ltd. Singapore** [\[TS-304-AAR-2018\]](#)

2. Delhi ITAT Special bench rules 2:1 in Nokia's favour on PE issue

**Nokia Networks OY** [\[TS-289-ITAT-2018\(DEL\)\]](#)

3. ITAT: Adwords program payment nothing but 'royalty', rejects Google's equalisation levy defence

**Google India Private Limited** [\[TS-235-ITAT-2018\(Bang\)\]](#)

4. SC: Upholds Sec. 14A disallowance on strategic investments; Dominant purpose test irrelevant

**Maxopp Investments Ltd [\[TS-115-SC-2018\]](#)**

5. ITAT: Daikin's Indian subsidiary constitutes DAPE; Attributes profits, TP-analysis not adequately reflecting FAR

**Daikin Industries Ltd [\[TS-274-ITAT-2018\(DEL\)\]](#)**

6. ITAT: No taxable 'capital-gain' arises upon conversion of company into LLP at 'book-value'

**Celerity Power LLP [\[TS-684-ITAT-2018\(Mum\)\]](#)**

7. SC: Capital asset loan waiver neither prerequisite u/s 28(iv) nor cessation of trading liability

**Mahindra and Mahindra Ltd [\[TS-220-SC-2018\]](#)**

8. ITAT: Share buy-back at lower than book value, non-taxable u/s 56(2)(viiia); Fails 'property' test

**Vora Financial Services P. Ltd. [\[TS-346-ITAT-2018\(Mum\)\]](#)**

9. ITAT: Mere TRC non-furnishing cannot disentitle treaty benefits; Explains Sec. 90(4) interplay vis-à-vis treaty override u/s. 90(2)

**Skaps Industries India Pvt Ltd [\[TS-330-ITAT-2018\(Ahd\)\]](#)**

10. SC: Constitution Bench: Exemption Notifications to be interpreted strictly; Assessee cannot take benefit of ambiguity

**Dilip Kumar and Company & ORS [\[TS-421-SC-2018\]](#)**

## Most Viewed Expert Columns of 2018 – Direct Tax

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### Changes to Form 3CD – Clause-by-Clause Analysis!



**Ameet Patel (Partner, Manohar Chowdhry & Associates) and Pearl Freeda Sequeira (Manager)** provided a clause-by-clause analysis for all the 15 changes made in the tax audit form.

The authors highlighted that quite a few changes are the outcome of new provisions inserted in the Statute. The authors also discussed onerous and cumbersome reporting requirements with respect to Sec 92CE (secondary adjustments), deemed dividends, etc. Referring to GST related amendments, the authors discussed possible intent of the Government behind these amendments and cautioned the auditors to be extremely careful. Referring to the fact that auditors need to respond to more than 100 questions in tax audit report now, the authors wondered, *“After having spent so much time and efforts in furnishing such a lengthy audit report, can the auditor ever sleep peacefully?”*

### Conversion of Stock-in-Trade into Capital Asset



**CA Dr. Vardhaman Jain** as part of the Budget Special series, expressed his thoughts on amendments brought in Section 28 and Section 2(24) of the Income Tax Act. He then also went on to decode the consequential amendments in the provisions dealing with Capital Gains in Section 49 and Section 2(42A) which were brought in by clause 18 and 3 respectively. Upon introspection, w.r.t to sec.45(2), the author opined that, *“After more than 3 decades of this amendment, the Memorandum explaining the provisions seek to suggest that there was an asymmetrical treatment and that there was deferment of tax payment by converting of Inventory into Capital Asset. Both these observations seem to be delayed and a fractured response to the need for this amendment.”*

Referring to sec. 28, the author remarked that, *“It is interesting to note that Clause (via) does not refer to profits arising out of conversion but refers to the Fair Market Value. This seems to be an apparent mistake in drafting of the Clause. In this context, it may be relevant to refer to the provisions of Section 45(2) which deals with conversion of Capital Asset into Stock-in-trade.”*

## Depreciation on Goodwill - Ind AS vs. Income Tax Act



**Vinay Kawdia (a practicing Chartered Accountant)** analysed the disparity between treatment of depreciation on goodwill under Ind AS 103 and under the Income Tax Act, 1961 (Act). The author highlighted that under Ind AS provisions, Ind AS 103 states that Goodwill can be recognised only as part of Business Combinations, while Ind AS 38 provides that any self-generated goodwill cannot be recognised as an asset.

The author opined that though Ind AS 103 permits recognition of goodwill as part of business combination, it cannot be claimed as a deductible expense under the Income Tax law.

## Section 112A - impact on tax neutral transactions



**Hiten Kotak (M&A Tax Leader, PwC India) and Falguni Shah (Partner - M&A)**, highlighted some of the key issues arising from the introduction of Sec. 112A. The authors opined that while the amendment provides for grandfathering of all gains accrued up to January 31, 2018,

*“the language of the proposed section has created ambiguities with respect to the methodology of calculating taxable long-term capital gains, especially in the context of tax neutral corporate actions.”*

With respect to transfer of shares by holding company to 100% subsidiary ('WOS') or vice versa before February 1, 2018, the authors questioned as to whether the WOS or holding company, could claim the cost of shares so acquired as higher of the actual cost or fair market value as on 31 January, 2018. Likewise, the authors pointed out that similar issue would arise in case of transfer by inheritance/ gift, split or consolidation or conversion of shares. Lastly, the authors highlighted the vagueness in the language used in the CBDT FAQs with respect to extending grandfathering benefit to FPIs.

## CCDs – A tax maze for Ind AS companies



**Rajiv Bajoria (Partner, Deloitte Haskins & Sells LLP), Shivali Valecha (Senior Manager) and Karishma Jain (Assistant Manager)** highlighted the sea change in accounting treatment for CCDs under the pre and post Ind AS scenarios and pondered over potential tax questions. The authors remarked that, *“the treatment for CCDs under Ind AS could have significant ramifications from a tax perspective.”*

Highlighting that only a portion of interest cost incurred for the year would be debited to P&L account as finance cost under Ind AS, the authors cautioned that this could lead to questions around its deductibility for tax purpose. From MAT perspective, in the absence of specific provisions permitting adjustment while computing book profits, the authors highlighted that the company may face permanent loss of deduction in respect of interest incurred contractually, but not debited to P&L account.



## Most Viewed Tax Ring of 2018 – Direct Tax

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### [Angel tax exemption: Will it finally put a lid on the raging controversy?](#)



When the Government announced its 'Startup India' mission a couple of years ago, it generated a lot of excitement amongst the community of young entrepreneurs. The avowed objective of the scheme was to give a fillip to the startup environment through a combination of regulatory and tax sops. Two years hence, while the startup ecosystem is still going strong, of late some tax cracks have started surfacing. The biggest crack of them all that has spooked not only the startup founders but also the investors is the "angel tax" that is being slapped by the tax

Department. In several cases, the Revenue has challenged the valuation at which the startups have received funding and has sought to tax the so-called 'excess share premium' u/s 56.

The Government, in an attempt to soothe the frayed nerves of the startup investors, has announced exemption from 'angel tax' where the aggregate amount of paid-up share capital and share premium of the startup after funding does not exceed Rs. 10 Cr. The big question is, will this put an end to the raging angel tax controversy or is it a case of 'too little, too late'? What are the three things the Government needs to do on the tax front to keep the startup momentum alive and kicking?

Tax experts **Dinesh Kanabar & Ajay Rotti** (Dhruva Advisors LLP), **Mukesh Butani** (BMR Legal), **Ketan Dalal** (Katalyst Advisors), **Gautam Mehra & Harshal Kamdar** (PwC India), **Girish Vanvari** (Transaction Square), **Hitesh Gajaria** (KPMG in India) and **T. P. Ostwal** (T. P. Ostwal & Associates) **share their views.**

[Click here](#) to read what the above experts have to say.

## TRANSFER PRICING

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### Top 10 Most Viewed Rulings of 2018

1. ITAT: Directs aggregation of Google India's Adwords & ITeS transactions; Adopts PSM as MAM

**Google India Private Limited** [\[TS-335-ITAT-2018\(Bang\)-TP\]](#)

2. HC: Lays-down principles on 'substantial question of law' for TP-appeals on comparables-selection

**Softbrands India P Ltd** [\[TS-475-HC-2018\(KAR\)-TP\]](#)

3. ITAT: Call-options termination constitutes international transaction, Vodafone entities 'acted in concert'; Upholds TP-adjustment

**Vodafone India Services Pvt Ltd** [\[TS-37-ITAT-2018\(Ahd\)-TP\]](#)

4. ITAT: Domestic TP deletion vide Finance Act, 2017 deemed omitted from inception; Remits directors remuneration transaction

**Texport Overseas Private Limited** [\[TS-1032-ITAT-2017\(Bang\)-TP\]](#)

5. AAR: MasterCard Interface Processor and MasterCard Network constitute fixed place PE in India

**MasterCard Asia Pacific Pte Ltd** [\[TS-452-AAR-2018-TP\]](#)

6. ITAT: Daikin's Indian subsidiary constitutes DAPE; Attributes profits, TP-analysis not adequately reflecting FAR

**Daikin Industries Ltd** [\[TS-395-ITAT-2018\(DEL\)-TP\]](#)

7. ITAT: Deletes Sony's AMP-adjustment; Expenditure not for 'brand-building' but 'brand-maintenance' at best

**Soni Mobile Communications [India] Pvt. Ltd [\[TS-741-ITAT-2018\(DEL\)-TP\]](#)**

8. ITAT: Renault India's transaction with Renault Nissan India, not international transaction; Deletes Rs. 178 cr adjustment

**Renault India P Ltd [\[TS-87-ITAT-2018\(CHNY\)-TP\]](#)**

9. ITAT: Deletes AMP-adjustment based on mere brand building agreement assumption; Follows Johnson & Johnson

**Colgate Palmolive (India) Limited [\[TS-319-ITAT-2018\(Mum\)-TP\]](#)**

10. ITAT: Deletes TP-addition on management support and IT-services; Rejects 3 software-development comparables

**Philips India Ltd [\[TS-1088-ITAT-2017\(Kol\)-TP\]](#)**



### Master File & CbCR – India compliances – Dispelling the Ambiguities



**Manoj Pardasani (Partner & Head, Transfer Pricing [North])** from **BSR & Co. LLP** identified and clarified some of the ambiguous aspects around the CbCR rules. The author examined the language used in Sec. 286 and accordingly, concluded that based on the specific mentions of the terms ‘residents in India’ and ‘constituent entity resident in India’ it could be, *“interpreted that section 286 does not require non-residents (including their permanent establishments) to comply with CbC reporting in India”*. He further evaluated this interpretation vis-a-vis the use of the terms in Section 92D(1) and Rule 10DA(1).

The author then proceeded to clarify the computation of ‘aggregate value’, an item critical to determining whether the threshold for Master File Reporting is being met. With the finding that, *“there do not seem to be any words in the Act or Rules that lead to a requirement for aggregating transactions of all group entities in India in determining whether the second threshold has been satisfied,”* he dispelled the ambiguity that existed around whether the value from all Indian constituent entities or all the value of the single entity should be considered.

### Domestic TP's deemed omission from inception- Far reaching impact



**Ashwin Vishwanathan (Partner, Transfer Pricing & International Tax)** and **Sriram Soundararajan (Senior Manager)** from **Ernst & Young LLP** explained that introduction of SDT caused considerable challenge to the taxpayer, in establishing the ALP of certain transactions such as managerial remuneration given that the roles/responsibilities/functioning of each of the directors in a particular company is unique/different and thus may not always be comparable.

Regarding ongoing or recently concluded assessments, the authors suggested that taxpayers could consider exploring alternative remedies such as a Writ to High Court. Also, given that Assessing Officer is bound to provide the reasons for reference of a case to TPO (under Instruction 3/2016), the authors suggested that taxpayers could consider filing their objections at the time of reference itself, if a case has been referred to TPO solely on account of SDT transactions in the nature of expenditure/payments referred to in section 40A(2)(b). Lastly, the authors opined that, *“whether, the tax authorities challenge the decision in Texport’s case before Karnataka High Court, is a matter to watch out for, given its far reaching applicability for many taxpayers”*.

## [Blockchain: An early welcome to Transfer Pricing!](#)



**Kunj Vaidya (Transfer Pricing Leader, PwC India) and Darpan Mehta (Partner –Transfer Pricing)** provided a preliminary hypothesis on potential uses of blockchain for transfer pricing. The authors recognized that it is still early to visualize these use cases but hope that, *“they are seen as a starting point for further debate and analysis”*.

The authors stated that blockchain could essentially aid in documenting a traceable flow of the conduct of related parties establishing their compliance with set Transfer pricing policies. Thereafter, the authors described a few specific areas of Transfer Pricing which could be enhanced by the blockchain technology such as complex inter-company arrangements, intra-group services, availability of data for application of methods, receivables management system, cash pooling etc. Specifically, in case of intra-group services, the authors explained how blockchain would help corroborate the need and benefit of the intra-group services with appropriate documentation.

Finally, the authors stated that while the benefits are obvious, *“blockchain technology represents a significant disruption from the hitherto available structures and may require amendments to the existing regulatory infrastructures and may even require new laws in many areas”*.

## [Section 94B- whether in violation of treaty provision on non-discrimination?](#)



**Rahul K Mitra (Partner, Dhruva Advisors)** analyzed the highly debated question as to whether the introduction of the aforesaid provisions in India’s domestic tax laws runs counter to the non-discrimination clause contained in international tax treaties signed by India with various countries. The author explained how the provisions of Section 94B are not in the nature of thin capitalization and then analyzes various articles [Article 9, Article 11 and Article 24] of the DTAAs to establish that Section 94B does not infringe on the benefits

of non-discrimination granted under the treaty provisions. The author expressed that, *“the Indian Government does not seem to have fallen in error in enacting section 94B on the lines of BEPS Action 4, in violation of the non-discrimination provisions of international tax treaties”*.

Lastly, the author stated that the government may consider the suggestions regarding deferment of application of Section 94B to external commercial borrowings by at least 3 years. Further, in respect of loan granted by third party lenders (with implicit/explicit guarantee or back to back funding from AE), the author suggested that the disallowance may be computed with reference to the benefits actually enjoyed by the non-resident AE.

## Budget 2018 - Proposed Amendments in CbCR regulation

The Memorandum explaining provisions of Finance Bill, 2018 lists amendments to Sec. 286 regarding Country by Country Report (CbCR) under Rationalization Measures. The Memorandum mentions that these amendments have been proposed with a view to “increase effectiveness and reduce the compliance burden arising from these provisions”.



**Manisha Gupta (Partner, Transfer Pricing, Deloitte Haskins & Sells LLP) and Richa Gupta (Senior Director)** remark that *"a minute reading of these amendments shows that there are still several grey areas, which if not clarified, may lead to an increase in compliance burden, especially for the Indian inbound entities that are part of foreign headquartered*

*Multinational Corporations ("MNC")."* The authors analyze the implication of these amendments on Indian taxpayers, dividing the analysis into two main sections: (i) the impact on Indian headquartered MNCs and (ii) the consequent compliance for foreign headquartered MNCs. While authors welcome amendment regarding timelines for submission of CbCR, they believe that extension in the due date for filing of the master file, so as to align it with the CbC timeline, would greatly assist taxpayers. Taking note of some additional ambiguities, the authors suggest that the Government should provide adequate guidance in order not to cause unnecessary hardship to the taxpayer community.





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## GOODS AND SERVICE TAX (GST)

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### Top 10 Most Viewed Rulings of 2018

1. SC : GST Compensation Act, not colourable legislation, upholds levy as mere increment to GST

**Mohit Mineral Pvt. Ltd. [[TS-512-SC-2018-NT](#)]**

2. HC : Restricting dealer's right to carry-forward transitional credit subject to furnishing declarations not unreasonable

**Willowood Chemicals Pvt. Ltd. [[TS-451-HC-2017\(GUJ\)-NT](#)]**

3. HC : Gujarat HC strikes down Section 140(3)(iv), one year time period to avail transitional credit unconstitutional

**Filco Trade Center Pvt. Ltd. [[TS-446-HC-2018\(GUJ\)-NT](#)]**

4. HC : Bombay HC refuses to strike down 1 year transitional credit limitation; Applies SC ratio

**Evergreen Seamless Tubes Pvt. Ltd. [\[TS-109-HC-2018\(BOM\)-NT\]](#)**

5. AAAR : Denies ITC on stock transfer by HO to branches at zero value

**GKB Lens Pvt. Ltd [\[TS-499-AAAR-2018-NT\]](#)**

6. AAAR : Turnkey EPC contract for 'solar power plant' erection constitutes 'composite' 'works contract' supply

**Giriraj Renewables Pvt. Ltd. [\[TS-461-AAAR-2018-NT\]](#)**

7. AAAR : Upholds AAR order; Conversion of coal into electricity does not constitute 'job-work'

**JSW Energy Ltd. [\[TS-287-AAAR-2018-NT\]](#)**

8. AAAR : Activity of supplying food to employees constitutes 'supply', expenses recovered from employees liable to GST



**Caltech Polymers Pvt. Ltd. [\[TS-584-AAAR-2018-NT\]](#)**

9. AAR: Employees' services in corporate office for managing 'distinct' units, constitute "supply" under Schedule I

**Columbia Asia Hospitals Pvt. Ltd. [\[TS-368-AAR-2018-NT\]](#)**

10. AAR : Disallows post supply 'transaction value' deduction towards 'rate difference'/'special discount' on cement

**Ultratech Cement Ltd. [\[TS-331-AAR-2018-NT\]](#)**

## INDIRECT TAX

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### Top 5 Most Viewed Rulings of 2018

1. SC : Upholds HC's quashing of ITC disallowance to bona-fide purchaser for seller's default

**Arise India Limited** [[TS-2-SC-2018-VAT](#)]

2. HC dismisses PIL seeking petrol & diesel under GST; Council recommendations prerogative for Govt.

**K K Ramesh** [[TS-89-HC-2018\(MAD\)-NT](#)]

3. HC : Revenue cannot refuse 'Form C' towards natural gas for electricity generation post GST

**Carpo Power Limited** [[TS-131-HC-2018\(P & H\)-VAT](#)]

4. HC : Delhi HC reverses CESTAT LB, allows credit to telecom infrastructure companies

**Vodafone Mobile Services Ltd.** [[TS-659-HC-2018\(DEL\)-ST](#)]

5. Constitution Bench : Exemption Notifications to be interpreted strictly; Assessee cannot take benefit of ambiguity

**Dilip Kumar and Co. & Ors.** [[TS-336-SC-2018-CUST](#)]

## Most Viewed Expert Columns of 2018 – GST/Indirect Taxes

### ITC on expenses relating to Construction and Plant & Machinery - Deciphering the issue



**Mr. Nitesh Jain (Managing Partner, N J Jain & Associates)** discusses the principles for determining the eligibility of credit on such expenses, under the GST law. In this context, the author lays down 5 critical aspects which should be examined before deciding whether credit restriction contained u/s 17(5) of CGST Act, 2017 shall be applicable or not, viz. - (i) whether the expense is in the nature of a works contract, (ii) whether expense is in the nature of construction, (iii) capital or revenue, (iv) expense being incurred is for an immovable property, and (v) whether expense is in relation to a Plant and Machinery.

### What is the Time Limit for availing ITC in GST?



As per Section 16(4) of CGST Act, 2017, ITC cannot be claimed in respect of invoices or debit note for supply after the due date of furnishing return under Section 39 for the month of September following the end of the financial year or furnishing of the relevant annual return whichever is earlier.

**Mr. K. Vaitheeswaran (Advocate)** in the above context quips whether a GST return in 'Form 3B' can qualify as a return for the purpose of Section 39 while drawing attention to the fact that Rule 61(1) of CGST Rules, 2017 provides that the return specified in Section 39(1) shall be in Form GSTR-3.

### IGST refund for exporters – Conditions & restrictions for opting 'Rebate' route



**Mr. Sagar Shah (Partner, EY India), Ms. Ruchi Bhat and Mr. Ankit Tibrewal (Senior Tax Professionals)** inter alia analyse the retrospective amendment to Rule 96 of CGST Rules, and state that it was unclear whether the restriction on rebate (i.e. refund of IGST) would be applicable if exporter himself is AA holder/ EPCG holder/ EOU or it would apply only if the supplier to exporter is AA holder/ EPCG holder/ EOU availing specified import benefits.

Authors, however, opine that the recent Circular No. 45/19/2018-GST dated May 30, 2018 issued by the CBIC, throws some light on the intention of the Government as it clarifies that restriction on rebate option is applicable to those exporters directly receiving goods from suppliers availing benefit under specified Notifications. Moreover, according to them, said restriction would be inapplicable where the

specified exporter, being AA or EPCG holder or an EOU, imports the goods from an overseas supplier without IGST payment.

### FORM GSTR-9 – A Report Card



**Mr. Prashant Deshpande (Partner, Deloitte India)** along with **Mr. Arpit Desai (Manager)** in their article discusses in detail the potential challenges which a tax-payer might face while preparing the said annual return. Authors opine that information required extends from transactions qualifying as supply to non-supply, transitional credit and GST credit to ineligible credit, and

from assessment to litigation.

Authors highlight that the matching requirement has been reinforced through annual return which has a dedicated table 8 for a reconciliation of input tax details filed by tax-payer in Form GSTR-3B with system generated Form GSTR-2A.

### Joint Venture Development of Land and Indirect Taxation



**Dr. Ravindran Pranatharthy (Advocate)** examines the controversies surrounding taxation of flats allotted to landowners in the joint venture, both under erstwhile Service tax regime and the current GST regime. He remarks, “The Revenue department has displayed a penchant for the position that the value of apartments allotted to the landowners against the tender of their land in the Joint venture is liable to Service tax/GST and that this tax should be remitted by the

Developer”, though the tax law does not have any explicit provisions dealing with such joint development construction where landowners are compensated by ‘free flats’ as against ‘charged flats’.

### [Tax Experts react to 31st GST Council meeting announcements](#)



The **31st GST Council meeting** chaired by Finance Minister on Saturday, December 22, 2018 just before Christmas and New Year showered bonanza with rate reduction for around 23 commonly used goods and services such as movie tickets, digital cameras, power banks, etc. The Council's decision to extend **due date for furnishing Annual Returns upto June 30, 2019** comes as a major breather for taxpayers who were grappling with the complexities surrounding it and is definitely a welcome move.

The Council also bought clarity on **taxation of EPC contracts** thereby resolving ambiguity created by various AAR decisions. In addition, Council provided huge relief to Industry by creating **Centralised Appellate Authority for Advance Ruling**, waiving penalty, entitlement of ITC in relations to invoices for FY 2017-18 till due date of furnishing GSTR-3B for March 2019, etc.

While India Inc. cheered GST Council's decision to **slash tax rates on 23 goods and services**, the Who's Who of the Tax World react to the decisions taken by the GST Council.

**Sachin Menon (KPMG), Bhavana Doshi (BDA LLP), Jigar Doshi (SKP Consulting LLP), Abhishek Jain (EY)** and other experts shared their views.

[Click here](#) to read what the above experts had to say.

## GST – Important Developments

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- [Council recommends GST law amendments, 'Sahaj' & 'Sugam' returns for small taxpayers, migration window upto August 31](#)
- [CBIC : Free moulds & dies sent by OEM to component manufacturer non-taxable, no ITC reversal](#)
- [Modified inverted duty refund formula from July 1, 2017; Copy of amended CGST Rules & more..](#)
- [Govt. enacts GST Amendment Acts; Receive Presidential assent on August 29](#)
- [Cabinet approves proposal to convert GSTN into Govt. entity](#)
- [Govt. releases total Direct and Indirect Tax collection figures for FY 2017-18, 2016-17 & 2015-16](#)
- [Govt. releases month-wise gross collection figures of GST for FY 2017-18 and FY 2018-19](#)
- [Govt. releases GST evasion figures for current FY \(April to November 2018\)](#)
- [Council resolves ambiguity regarding EPC contracts taxability, exempts IIMs degree/diploma, slashes peak 28% rate](#)
- [Due dates for Annual returns extended, new return filing system proposed from April 1](#)

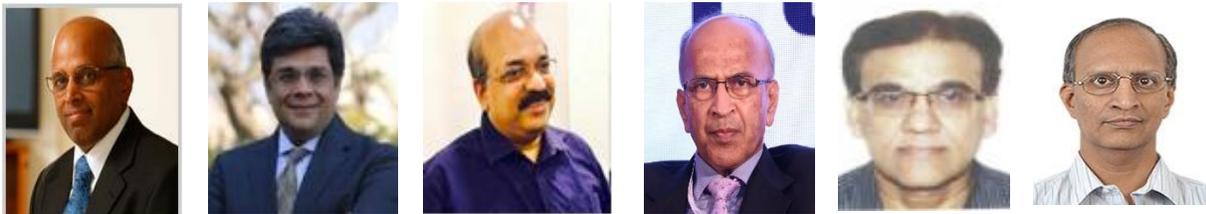


## GST Webinars

### [Catch the recap of Webinar on '1 Year of GST - Taking Stock with Tax Stalwarts'](#)

A year after the midnight launch of GST in the Central Hall of Parliament, touted as the 'Good and Simple Tax' by Prime Minister Mr. Narendra Modi, the jury is still out on whether the new tax regime has delivered the promise of 'One Nation, One Market, One Tax.'

Well...One may say that it has neither been an unqualified success nor an unmitigated disaster. While the Govt. and the GST Council, in particular, should be lauded for the spirit of 'cooperative federalism' over the last 27 meetings as well as the frequent outreach to settle various contentious issues, the big letdown, even by Finance Secretary Dr. Hasmukh Adhia's own admission, has been the technological framework. Nevertheless, the GSTN can certainly not be faulted for lack of effort, given the evolving nature of the GST law.



In our Webinar marathon on June 29, we had an array of Tax stalwarts and legal luminaries – **Mr. V. Lakshmikumaran (Lakshmikumaran & Sridharan, Attorneys)**, **Mr. Rohan Shah (Advocate)**, **Mr. K. Vaitheeswaran (Advocate)**, **Mr. Gautam Doshi (Reliance ADAG)**, **Mr. R. Sridhar (Hindustan Coca Cola Beverages Pvt. Ltd)**, and **Mr. P. V. Srinivasan (Corporate Advisor)** give their take on the hits and misses, practical challenges & the legal issues faced during the first year of implementation, and also do a crystal ball gazing on what's in store for the tax payers over the next 12-18 months.

[Click here](#) to catch the recap of the discussions that took place during our 1-year GST special webinar.

[Click here](#) to listen to the Webinar audio.

## Taxsutra & ELP Present Webinar on 'Litigation Trends in GST

AAR's have also been fairly proactive and responsive in disposing of applications speedily and expeditiously in the past three to four months during which more than 100 advance rulings were pronounced on a range of debatable issues, the majority of which however have been decided against the interest of applicants. An important factor is that the AAR functions at the state level, so there is possibility that contrary rulings are passed on identical issues by two different AARs (as recently witnessed in applications relating to taxability of solar power projects disposed of by the Maharashtra and Karnataka AARs). Many of these AAR's rulings have been referred to the Appellate Advance ruling Authorities (AAAR), but in most of the cases, the decisions of AAR remained unaltered. One has to see the fate when these rulings would be challenged before the Jurisdictional High Courts. The trade and industries are also keeping a tab on the Writ Petitions on some of the key issues.



**Mr. Rohit Jain, Mr. Gopal Mundhra and Mr. Jitendra Motwani (Partners, Economic Laws Practice)** will take you through these important decisions covering the issues of classification, valuation, taxability and Input tax credit etc. They

would talk on the views of the judicial and quasi-judicial authorities on the interpretational issues such as levy of GST on charges for liquidated damages, branding of products, employer-employee relationship, work contract-related transactions, etc. While giving their take on these rulings, the tax experts would also seek to answer your queries on various interpretational aspects.



**TAXSUTRA CONCLAVE 2018: OCTOBER 11, 12 & 13, THE OBEROI, GURGAON**



**Taxsutra Conclave, 2018** presented by Thomson Reuters at **Oberoi, Gurgaon**, with its theme **“BEPS @5- At the cusp of Grand Bargain”**, witnessed an exuberating thought leadership platform with participation of Tax regulators, Tax Heads, Academia and Advisors across the globe. The 3 day conclave witnessed interesting deliberations over latest tax trends, broiling tax debates and unresolved tax controversies.

You can catch the summary by [clicking here](#).

We also leave you with some beautiful memories of the magnum opus – [The Taxsutra Conclave 2018 in pictures!](#) [Click here](#) for highlights of our most prestigious Mega Event of the year!!



Exclusive

**Tete-a-tete with OECD Tax Policy Director Pascal Saint-Amans on the sidelines of 72<sup>nd</sup> IFA Congress at Seoul**



**Taxsutra Group Editor Arun Giri** caught up with **OECD Tax Policy Director Pascal Saint-Amans** for a tete-a-tete and you wouldn't want to miss what the man in the hot seat has to say about the future of the international tax system.

[Click here](#) to watch the interview.



## QUOTABLE QUOTES

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*“2018 has been the year of implementation witnessing MLI implementation, exchange of information and rulings, review of more than 100 regimes by Forum for Harmful Tax Practices.*

*OECD will publish consolidated and anonymised CBC data which would give general public an idea as to where profits are located and where the taxes are paid.”*

- **Pascal Saint Aman (Director, OECD Centre for Tax Policy and Administration) on the sidelines of FIT**

*“A heavy handed reporting under Action Plan 13 applicable to MNEs is detrimental to global productivity and growth. Otherwise Action 13 could be scaled back in future deliberations reflecting concerns over lagging global growth that were in any event the main motivator of G20’s revival while BEPS and revenue increase were only its outcomes.”*

- **Parthasarathi Shome (Chairman, International Tax Research and Analysis Foundation)**

*“BEAT is going to have huge impact on US MNCs having Indian captive affiliates and thus can impact Indian business. BEAT is contradictory to provisions of Non-discrimination clause of India – USA DTAA. The matter is being discussed with USA authorities.”*

- **Pragya Saksena (Joint Secretary, FT&TR-1, Govt. of India)**

*“India is committed to resolve MAP cases on time. However, on India’s reservation on mandatory arbitration, the world has not appreciated India’s stand of losing sovereignty, in proper context. Giving up sovereignty in favour of 3rd person who is not your treaty partner, is very strange and beyond comprehension. There is no scope for relaxation on this point in near future. India will soon ratify the MLI in few months.”*

- **Akhilesh Ranjan (Member, CBDT)**

*“While TNMM will continue to be used where taxpayers are achieving roughly correct results, PSM will be a more helpful method, going forward, to educate the tax administration about one’s business.”*

- **Mr. Jefferson VanderWolk (Head, Tax Treaty, Transfer Pricing & Financial Transactions Division at the OECD Centre for Tax Policy and Administration) on future of Arm’s Length principle**

*“ Whether BEAT is an expression of “No-Confidence” by US legislators on the Arm’s Length Principle (ALP) BEAT seems to be reflecting a view that there is an issue with the current ALP... it is going to have a massive impact on multilateral arena and BEPS.”*

- **Pascal Saint Aman (Director, OECD Centre for Tax Policy and Administration) on BEAT provision in the new in the new US tax code**

*“The United Kingdom’s introduction of a new tax targeting cross-border digital services – which mirrors a similar proposal under consideration in the European Union – is troubling. Singling out a key global industry dominated by American companies for taxation that is inconsistent with international norms is a blatant revenue grab.*

*The ongoing global dialogue on the digital economy through the OECD framework should not be pre-empted by unilateral actions that will result in double taxation. If the United Kingdom or other countries proceed, that will prompt a review of our U.S. tax and regulatory approach to determine what actions are appropriate to ensure a level playing field in global markets.”*

- **House Ways and Means Committee Chairman Kevin Brady after the United Kingdom announced plans to introduce a new tax on digital services**

*“We cannot continue to be taken advantage of by other countries. We cannot continue to let people come into our country and rob us blind and charge us tremendous tariffs and taxes and we charge them nothing. We cannot allow that to happen”*

- **US President Donald Trump while proposing reciprocal tax on imports**

*"We will continue to work together to seek a consensus-based solution to address the impacts of the digitization of the economy on the international tax system with an update in 2019 and a final report in 2020.."*

- **Joint declaration by G20 leaders**

*"The EU DST proposal has been designed to discriminate against US companies and undermine the international tax treaty system creating a significant new transatlantic trade barrier that runs counter to the newly launched US and EU dialogue to reduce such barriers"*

*"We urge the EU to abandon this proposal, urge the member states to delay unilateral action and instead refocus efforts on reaching consensus with other leading economies within the OECD on any new digital taxation models."*

- **The Letter, jointly signed by Republican chairman Orrin Hatch and his Democratic counterpart Ron Wyden**

*"A future road map could well be to work towards a single standard rate instead of two standard rates of 12 per cent and 18 per cent. It could be a rate at some mid-point between the two. Obviously, this will take some reasonable time when the tax will rise significantly,"*

- **FM Arun Jaitley on GST**

*"The GST Council has already reduced rates on 328 items, so you may possibly find some chance (of rate reduction) where there is a meritorious reason. It has to be in balance with revenue considerations,"*

- **Piyush Goyal on GST**

*"Since we had to meet a certain deadline, we needed to hurry up the process. Somewhere, I made a reference about the technology failing us but that does not mean that the people in the GSTN failed us. Marvellous people work in the GSTN and despite their efforts, the GSTN still fails us."*

- **Hasmukh Adhia on GST**

*"The only way it (woes of exporters who have been complaining of delays in refund of taxes under GST regime) can be addressed properly is through e-wallet (mechanism). Finance ministry has to take a call on this. E-wallet will actually address the issue because then you (exporters) do not have to pay and seek refunds,"*

- **Suresh Prabhu on Export**

Coming soon...

## Taxsutra & Wolters Kluwer's Top 100 Income Tax Rulings of 2018!!

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