Date of Issue: 10/08/2020

BASCO BULLETIN...

We are glad to present thereof our Newsletter "BASCO Bulletin". I would also like to extend my thanks to my peers, friends and to the team of BASCO for having contributed to this edition. I shall be glad to receive all kinds of suggestions for our future editions. Through our newsletter we are taking this initiative, keeping in mind such evolving informative needs of our clients and peers and to be a part of the Global Village of our fraternity.

We are glad to present the **10TH Edition** of our Newsletter "BASCO Bulletin" amidst these challenging times where the entire Nation and the economy is facing the tough challenge by wake of outbreak of COVID-19 Pandemic. The COVID-19 pandemic is having a catastrophic effect on all sectors of work and overnight physical interaction & collaboration reduced to online meetings and calls over skype and Zoom calls.
The lockdown has forced Companies around the world to adapt to new ways of working and doing business which experts believe will become the "New Normal".

On the other hand, various Economic and Non-economic measures have been taken to fight these difficult situations and the Central Government has provided further relief to taxpayers by extending various time limits of Compliances. The situation the world is facing is a truly unprecedented one. The global coronavirus pandemic is affecting all of our families, our businesses and our communities. Our people's health is our top priority and as the situation escalates we must take strict precautions to protect our colleagues and families by maintaining proper hygiene and maintaining social distancing norms.

We are sure and positive that our economy will come out stronger from this difficult situation and we at BASCO is committed to handholding all our clients and peers amongst these difficult times and are fully committed and available to all your queries and needs.

Taxability U/s 115BBE

Introduction

Finance Act, 2012 inserted, w.e.f. 01-04-2013, section 115BBE in the Income Tax Act so as to tax unaccounted income covered u/s 68 to 69D in Chapter VI, at a flat rate of 30% plus surcharge and cess as applicable. It also provided to disallow deduction in respect of any expenditure or allowance.

In order to tax, cash deposited in bank after demonetization of high value currency notes, Taxation Laws (Second Amendment) Bill, 2016 enhance the rate of tax to 60% as against 30%. After amendment, the effective tax incidence came to 77.25% (surcharge @ 25 per cent of tax + education cess). Taxation Laws (Second Amendment) Bill, 2016 also introduced penalty provision u/s 271AAC, w.e.f. 01-04-2017, to provide for levy of penalty @ 10%, in addition to tax u/s 115BBE, if income computed by the AO included income covered u/s 68 to 69D. The effective tax incidence after penalty u/s 271AAC, came to 83.25 % of unexplained/undisclosed income.

The real purpose of introducing this provision was to charge higher tax at the maximum marginal rate in respect of income/expenditure/investment on the assessee who fails to explain the nature and source of said income/expenditure/investment. The relevant sections which enable the AO to assess such income/expenditure/investment are contained in sections 68, 69, 69-A, 69-B, 69-C, and 69-D.

Cash credits. (Section 68): Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited maybe charged to income-tax as the income of the assessee of that previous year:
Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—
(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and
(b) Such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:
Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.

Unexplained investments (Section 69): Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.

Unexplained money, etc. (Section 69A): Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.

Amount of investments, etc., not fully disclosed in books of account. (Section 69B.) Where in any financial year the assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article, and the Assessing Officer finds that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income, and the assessee offers no explanation about such excess amount or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the excess amount may be deemed to be the income of the assessee for such financial year.

Unexplained expenditure, etc. (Section 69C.): Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year:

Provided that, notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income.

Amount borrowed or repaid on hundi. (Section 69D.): Where any amount is borrowed on a hundi from, or any amount due thereon is repaid to, any person otherwise than through an account payee cheque drawn on a bank, the amount so borrowed or repaid shall be deemed to be the income of the person borrowing or repaying the amount aforesaid for the previous year in which the amount was borrowed or repaid, as the case may be:

Provided that, if in any case any amount borrowed on a hundi has been deemed under the provisions of this section to be the income of any person, such person shall not be liable to be assessed again in respect of such amount under the provisions of this section on repayment of such amount.

Explanation. — For the purposes of this section, the amount repaid shall include the amount of interest paid on the amount borrowed.

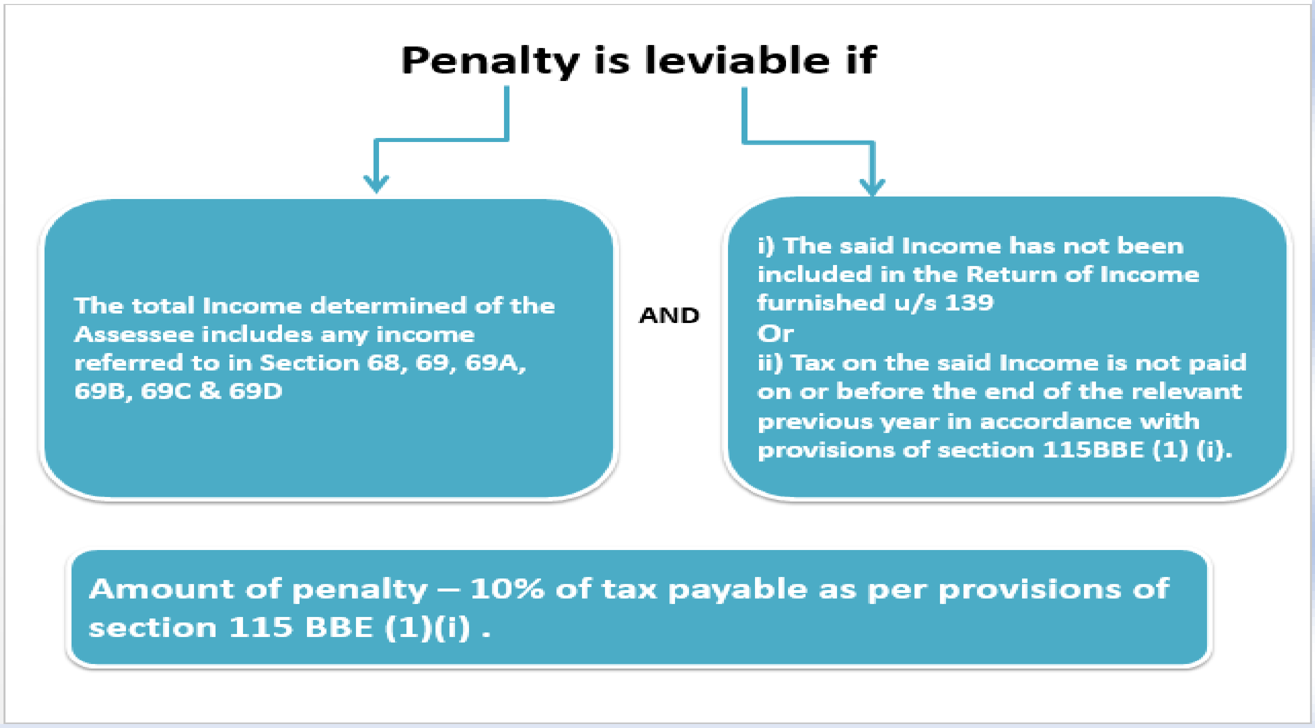
Section 115BBE was amended vide Finance Act 2016 w.e.f. 01.04.2017 to the effect that no setting off of any loss shall be allowed against income of the nature referred to in the specified sections. This section was further amended vide Taxation Laws (Second Amendment) Act 2016 w.e.f. 01.04.2017 (A.Y 2017-18).

Reasons for Amendment

- Prior to the amendment by the Taxation Laws Second Amendment Act, 2016 (hereinafter in this presentation referred to as "Amendment Act") it could have been debated as to whether an assessee could, in the return of income, include in his total income amounts of the nature referred to in Sections 68, 69, 69A, 69B, 69C or 69D of the Act.
- Consequent to de-monetization, views were expressed by professionals that the undisclosed income held in the form of demonetized currency can be deposited in the bank and the said amount can be offered for taxation under Specified Sections and tax thereon paid at the rates mentioned in Section 115BBE i.e. 30% plus applicable surcharge and cess.

- If this was done, the pre-pondrant legal view was that the person doing so would not be liable to any penalty under the Act. It was with a view to prevent such a disclosure and to overcome the views expressed that the Taxation Laws Second Amendment Act, 2016 amended the provisions of Section 115BBE of the Act.

Penalty u/s 271AAC



- No penalty u/s 270A due to under reporting of income shall be imposed in respect of the income on which penalty can be levied u/s 271 AAC.
- Penalty imposable u/s 271 AAB due to search being conducted u/s 132, simultaneous penalty can be levied u/s 271 AAC.
- Provisions of Section 274, dealing with 'Procedure for levy of penalty' and section 275, dealing with Bar of limitation for imposing penalty are applicable
- Order levying penalty u/s 271 AAC is appealable before C.I.T. (A), because 271 AAC is covered under chapter XXI which is covered u/s 246 A(1) (q).
- Section 273A: Power to reduce or waive penalty, etc., in certain cases Section 270A is covered, however section 271AAC is not covered.

Financial Planning by Kids

This article is meant for teenage kids. Money comes in when a child is born and it is there till child starts earning of his own. Child's source of money is gifts and pocket money. This is the story of a child named Tuni. When he was born, certain gifts came which were invested for long term purpose by his father in Fixed Deposit. His mother purchased one Piggy Bank, where Tuni used to put all the money in the bank.

One day, his friend sent one WhatsApp to Tuni whereby list of richest persons in the world were given. Tuni was very much impressed by the success story of Warren Buffet. The quote as mentioned below motivated him very much.

Warren Buffet, world famous investor, regrets not starting saving early enough, even though he started saving at the age of 11.

On every birthday in the family, he used to open the Piggy Bank and gave money to her mother for buying gifts on occasions. He used to feel proud that it is he who is buying gifts. It was purely fun activity but developed a sense of ownership and pride into the mind of Tuni. When he was 9, he learnt the meaning of saving 'smart'.

Smart Saving means opening of various small denominated investments for various purposes, like one for marriage anniversary of parents, one for brother's birthday and many more. Smart saving means earning income on saving.

Tuni started smart saving as and when he used to get pocket money. Then he started cutting costs of various things. Papa used to give him money for various purposes like Movies, Burger, Pizzas and many more. Tuni was now a different child altogether. He became intelligent in spending. He used to forgo things which were in comfort or luxurious zone. In this fashion, good amount of investments stood in the name of Tuni. Parents were very happy to see this habit in Tuni.

Tuni learnt the art of making budget. He used to get pocket money on monthly basis. He planned in such a way that something is saved out of pocket money.

He learnt at very early age about the quote of Benjamin Franklin that penny saved is penny earned. Ultimately he was an earning member of the family rather than a kid.

Seeing his maturity level, parents started taking his opinion on various financial issues. Everybody was happy in the family as small step of smart saving by Tuni brought smiles on the faces of the family members.

Initially, his friends used to taunt him for not eating pizzas or throwing parties. But when they learnt about the power smart saving, they started loving Tuni.

The name Tuni is just a symbol. Every successful businessman will tell you the similarity between the story of Tuni and theirs.

Contributed by
-CA Arun Patodia

Impact of COVID on International Taxation

The rapid outbreak of Coronavirus has had a huge impact on the international trade. The whole world is operating under the fear of imminent collapse of the financial markets and recession.

The Covid-19 has hit at a time when many countries annual income tax filing and payment deadlines occur. Requirement for the whole world to quarantine themselves and operate under these testing circumstances had led to disruption of workforces and interruption of businesses' ability to manage information and meet compliance requirements.

In an effort to stimulate the activities , many Countries have come up with relaxation measures including extending deadlines for filing Income tax returns, making tax payments and compliance relaxations. This article throws some light on the elements which affect the cross- border taxation and impact of Covid-19 on them.

The OECD issued an analysis on April 3, 2020 examining tax treaties and the impact of the COVID-19 crisis on cross-border workers. The OECD has set out their view that the current global situation is highly exceptional and should not normally impact on a company or individual's tax status under tax treaties in a particular jurisdiction.

AREAS OF IMPACT:-

- RESIDENTIAL STATUS OF A COMPANY
- RESIDENTIAL STATUS OF AN INDIVIDUAL
- CROSS-BORDER WORKERS
- RISKS OF PERMANENT ESTABLISHMENT

IMPACT ON RESIDENTIAL STATUS OF A COMPANY

A company is said to be tax resident in India if it is incorporated in India or if it has its 'Place of Effective Management in India' ('POEM').

According to the Explanation to section 6(3) of Income tax Act, 1961, POEM means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance, made. The OECD has also defined the concept of POEM on similar lines. POEM is also an internationally recognized residency concept and settles cases of dual residency by mutual agreement between the authorities.

The Central Board of Direct Taxes ('CBDT') vide its guidelines issued in context of POEM stated that in absence of active business outside India , the location of the head office shall be one of the key determinant factor. Also, in cases where all the meetings are held virtually over telephone or video-conferencing, the location of head office shall be the place where the highest level of management & their direct support staff are located.

In the present scenario, there is a compulsory mandate to self-quarantine. Following which the management of all the companies are working from home and unable to travel to the habitual workplace and may have to attend the Board meetings via video-conferencing or telephone. Now these actions may lead to a concern as to the place/jurisdiction from which decisions are being taken.

OECD'S take on the matter:-

OECD in its Secretariat Analysis of Tax Treaties and the Impact of Covid-19 states that 'it is unlikely that the Covid-19 situation will create any changes to an entity's residence status under a tax treaty. A temporary change in location of the CEOs and other senior executives is an extraordinary and temporary situation due to the Covid-19 crisis and such change of location should not trigger a change in residency, especially once the tie breaker rule contained in tax treaties is applied'.

IMPACT ON RESIDENTIAL STATUS OF AN INDIVIDUAL

The basic condition for determining the status of an individual for the purposes of tax residency is the stay of number of days. Although, several countries determine the tax residency on the basis of citizenship or apply territorial based taxation.

The Covid-19 outbreak has given rise to two important situations:-

CASE1:- Mr. X was temporarily away from his home country-India (work assignment for few weeks) and gets stranded in Austria because of the global lockdown and attains tax residency there as per their domestic tax laws.

OECD View: - *As per OECD, it is unlikely that the person would acquire residence status because of global lockdown which is an extraordinary circumstance. Also, in a case where the person becomes a resident under domestic rules, if a tax treaty is applicable, the person would not be a resident of that country for purposes of the tax treaty. Such a temporary dislocation should therefore have no tax implications.*

CASE 2:- Mr. left India to work in UAE and is a resident there, but he was on a visit to India during early March and was unable to return back to UAE because of global lockdown.

OECD View: - As per OECD, it is unlikely that the person would regain residence status for being temporarily and exceptionally in the previous home country. Also, in this case even if, the person becomes a resident under domestic rules, if a tax treaty is applicable, the person would not become a resident of that country under the tax treaty due to temporary dislocation.

CLARIFICATIONS ISSUED BY VARIOUS COUNTRIES

USA : The US government has recently issued a clarification which states that up to 60 consecutive calendar days of presence in the USA that are presumed to arise from travel disruption caused by Covid-19 will not be counted for purposes of determining US tax residency.

INDIA: CBDT has issued a clarification through Circular No.11 of 2020 dated 8th May, 2020 in respect of determination of residency u/s 6 due to Covid-19. Relaxations will be provided subject to:-

- This circular is applicable only for determination of residency for FY 2019-2020.
- Applicable to Individuals who came on visit to India on or before 22nd March, 2020 and have continued to be in India in different scenarios (explained below)

SCENARIO 1:

Mr. X was on a visit to India and was unable to leave India before 31st March 2020.

- The circular has given relaxation in this case i.e. the period of stay between 22nd and 31st March, 2020 (both inclusive) shall not be counted for determining presence in India.

SCENARIO 2:

Mr. X was on a visit to India but was quarantined on or after 01st March, 2020 and Mr. X was unable to depart or departed on an evacuation flight before 31st March, 2020.
The circular has given relaxation in this case i.e. the period starting from the start of the quarantine period up to 31st March, 2020 or date of actual departure shall not be counted for determining presence in India.

SCENARIO 3:

Mr. X was on a visit to India but departed on an evacuation flight before 31st March, 2020.
The circular has given relaxation in this case i.e. the period of stay between 22nd March, 2020 and date of his departure shall not be counted for determining presence in India.

*Another circular is expected in this regard in due course for FY 2020-2021.

IMPACT ON CROSS BORDER WORKERS

Cross-border workers are persons who commute to work in one state but live in another state where they are resident.

As per the Tax Treaties, Income from Employment Article deals with taxation of cross-border workers. It states that income from employment is taxable only in a person's state of residence unless the employment is exercised in the other state. In order to tax employment income in a state where employment is exercised, following conditions should be fulfilled:-

- Presence of employee in that state not exceeding 183 days (basic rule)
- Remuneration paid by Non Resident of that state
- Remuneration is not borne by Non Resident's PE in that state

Due to COVID-19, there may be a situation where there were travel restrictions and such cross border workers have crossed the threshold of 183 days. Taxability of such workers would be under conflict.

OECD's view:-

The income should be attributable to the state where they used to work before the crisis.

RISKS OF PERMANENT EMPLOYMENT

BASIC RULE:-

A Permanent Establishment is defined as "a fixed place of business through which the business of an enterprise is carried on".

Impact on 'FIXED PLACE PE'

Certain factors need to be considered for considering a 'Home Office' into a Fixed Place PE, such as :-

- ✓ Permanence
- ✓ Continuous
- ✓ Place At the disposal of the Foreign Enterprise

OECD's view:-

OECD in its Secretariat Analysis of tax Treaties has stated that:-

- Individuals who stay at home to work remotely are typically doing so as a result of government directives; force majeure, not an enterprise's requirement (to the extent that it does not become a new norm to work from home)
- Conclusion cannot be drawn that location is at the disposal of that enterprise simply because that location is used by an individual (e.g. an employee) who works for the enterprise. The carrying on of intermittent business activities at the home of an employee does not make that home a place at the disposal of the enterprise.

- Such Home offices lack degree of permanency and continuity as except through that one employee, the enterprise has no access or control over the home office.

IMPACT ON 'AGENCY PE'

BASIC RULE: - If a tax resident of a particular country earns income through another person in different country and in that different country the other person can conclude contracts, then such other person creates an Agency PE.

Due to COVID-19, there may be a situation where the activities of an individual temporarily working from home for a non-resident employer could give rise to a dependent agent PE.

We should evaluate the fact that whether the employee performs these activities in a "habitual" way

OECD's view:-

OECD in its Secretariat Analysis of tax Treaties has stated that:-

An employee's or agent's activity in a State is unlikely to be regarded as habitual if he or she is only working at home in that State for a short period because of force majeure and/or government directives extraordinarily impacting his or her normal routine.

IMPACT ON 'CONSTRUCTION PE'

BASIC RULE: - Profits generated from construction works shall be taxed in the country in which the permanent establishment (construction site) is placed or located.

In general, a construction site will constitute a PE if it lasts more than 12 months under the OECD Model or more than six months under the UN Model. Due to COVID-19, many activities on construction sites are being temporarily interrupted and this event was completely unpredictable.

OECD's view:-

OECD in its Secretariat Analysis of tax Treaties has stated that:-

The duration of such an interruption of activities should however be included in determining the life of a site and therefore will affect the determination whether a construction site constitutes a PE.

Contributed by

CA Ritika Agarwal

Reboot India- "To The New Normal"

It's my immense pleasure to be a part of BAS & Co. and releasing my first article in my career of practical training and company accepting me with open hands.

The corona-Virus outbreak is causing widespread concern and economic hardship for consumers, business & communities across the globe.

Investors started pulling out their money, the stock market of the world crashed, the Central Bank has injected liquidity to keep the economy moving. But nothing can be done until a sign of a vaccine to cure this is developed. We are multiplying daily with approximate 22000 + cases all over India.

The government has finally opened the gates to trade for continuing a flow of income in the market. It was all new for every person to carry sanitizers, mask and disinfect their places regularly. With time people have also adapted this and continuing their life to New Normal.

It was so great were all the family stayed together and learnt how to cook new dishes and played board games. Many companies started their work from home policies. Many attended meetings & weddings through online apps .This was something which no one imagined and never looked upon. But this was the new normal which everyone was going through.

Moreover, All over the world- there are public health challenges, but these are issues that can be managed. We have to accept life under the Omni-present threat of disease as an ordinary. But what exactly is normal about this pandemic? It is not normal for society en masse to get isolated, but if this becomes normal, then we are supposed to have control over the situation. Even if we feel loss or despair, we have to expect & get used to it — accepting this morbid reality is the only way to overcome it.

Allowing ourselves to cope/understand doesn't mean normalizing our situation, jumping straight to the solution and quickly moving forward, but giving ourselves the time to truly process it.

Psychologists advise that it's important to identify the losses we are feeling and to honor the grief surrounding through methods like meditation, communicating our struggle, and expressing ourselves through art or by keeping a journal

Surrounded by uncertainty, it’s okay to admit that things are not normal. It’s okay to allow ourselves to grieve or to be scared. It’s okay not to be comfortable with what is going on. In fact, all of us should feel uncomfortable with our present condition because the 'new normal' describes a reality to which many do not have access too.

The language of a 'new normal' is being deployed almost as a way to quell/suppress a feeling of uncertainty & guide somewhere by the corona-virus. With no cure in sight, everyone from politicians to the media, friends and family has perpetuated this rhetoric as they imagine settling into life under this 'new normal' is tough but the only solution.

If your existence is founded on a day-to-day income, you do not have the luxury to 'stay home and stay safe' because you have the responsibility to feed your family.

This framing is inviting: it contends that things will never be the same as they were before — so welcome to a new world order.

By using this language, we re-imagine where we were previously- relative to where we are now, appropriating our present as the standard.

Let’s hope too almighty that we soon operate as before and let our business shine

Contributed by

Sarvash Nainsukha

Important Due Dates

Particulars	Due date
1. Last date for filing of Income Tax Return for FY 2018-19(AY 2019-20)	30th September 2020
2. Filing of Income Tax Return for FY 2019-20(AY 2020-21)	30th November 2020
3. Tax Audit Report (AY 2020-21)	31st October 2020
4. Investment to be eligible for deduction under chapter VI-A i.e. 80C,80D,80G etc for the FY 2019-20 (AY 2020-21)	31st July 2020
5. Date for making Investment /construction/purchase for claiming roll over benefit/deduction in respect of capital gains under section 54 to 54 GB of the IT Act for FY 2019-20	30th September 2020
6. Return Filing for quarter ending 31st March 2020(Q4-2019-20);	
TCS Return	15th July2020
TDS Return	31st July 2020
Issuance of Form 16/16A for the Q4 of FY 2019-20	15th August 2020
7. The date for commencement of operation for the SEZ units for claiming deduction under deduction 10AA of the IT Act for the units which received necessary approval by 31.03.2020.	30th September 2020
8. The Direct Tax Vivad se Vishwas Act,2020- The timeline for payment of disputed arrears	31st Dec 2020
9. Timeline for Aadhaar-PAN linking	31st March 2021

Contributed by

Swati Agrahari

The Obstacle In Our Path (Opportunity)

In ancient times, a King had a boulder placed on a roadway. He then hide himself and watched to see if anyone would move the boulder out of the way. Some of the king's wealthiest merchants and courtiers came by and simply walked around it.

Many people loudly blamed the King for not keeping the roads clear, but none of them did anything about getting the stone out of the way.

A peasant then came along carrying a load of vegetables. Upon approaching the boulder, the peasant laid down his burden and tried to push the stone out of the road. After much pushing and straining, he finally succeeded.

After the peasant went back to pick up his vegetables, he noticed a purse lying in the road where the boulder had been.

The purse contained many gold coins and a note from the King explaining that the gold was for the person who removed the boulder from the roadway.

Moral of the story:

Every obstacle we come across in life gives us an opportunity to improve our circumstances, and whilst the lazy complain, the others are creating opportunities through their kind hearts, generosity, and willingness to get things done.

-Contributed by Swati Agrahari

We have been engaged in the profession of Chartered Accountants since 1997. We have a professional team of young and energetic individuals having dynamic approach towards offering high quality professional services to our clients which has helped us immensely in building long term mutual benefit relationships.

AREAS OF SERVICES:-

- Audit
- Taxation (Direct Tax)
- International Taxation
- Consultancy
- Secretarial works
- Valuation
- Registration

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