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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

ICAI/DTC/2018-19/Rep - 36

17th September, 2018

Shri Sushil Chandra Ji,
Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
Government of India,
North Block,
New Delhi-110 001.



Respected Sir,

Reg. Our representation dated 31st August, 2018 and 10th September, 2018 for extension of time for submission of Tax Audit Reports and related returns from 30th September, 2018 to 31st October, 2018 - Recent developments and further submissions:

Sir, majority of CA offices are working overtime till late evenings and on Sundays and holidays due to increased workloads and frequent changes, tax payers and tax auditors are unable to cope up with the additional and frequently changing requirements in effectively curtailed time period.

The prime objective of tax audits will be better served if audits are conducted with less pressure with peace of mind - this is possible if due dates are extended.

At the outset, best compliments from ICAI!

Relevant brief about role of ICAI w.r.t. tax collection by the Government:

As you are kindly aware that ICAI being a partner in nation building, has always supported the efforts of the government to achieve its objective to optimize tax collection and prevent tax evasion on one hand and to ensure timely compliance of statutory obligations by the tax payers on the other hand. Also, ICAI has played a pivotal role in enhancing the relationship between the taxpayers and the Department. We have been bringing to the notice of the Department, from time to time, the genuine hardships being faced by the tax payers and as a consequence by our members for timely redressal of the same.

The Institute of Chartered Accountants of India (ICAI) is a statutory body established on 1st July, 1949 by an Act of Parliament, viz., The Chartered Accountants Act, 1949 for regulating the profession of Chartered Accountants in the country, has five Regional Councils, 163 Branches, 138 Study Circles covering the length and breadth of the country and 31 Chapters abroad. Founded 70 years ago, the Institute has grown to cross the mark of more than 284,000 members and over 800,000 students as of now. Nationally, ICAI engages in dialogues from time to time and on continuing basis *inter alia* with Ministry of Finance, Ministry of Corporate Affairs, Central Board of Direct Taxes, Office of Comptroller and Auditor General and other regulatory bodies and submits its views, inputs and comments as sought and *suo motu* in overall national interests.

Taxation works in the country is pre-dominantly handled by Chartered Accountants all over India. Our members are well connected with the tax-payers at the ground level.

In above background, the tax payers are quite effectively represented by the ICAI for their genuine difficulties and hardships. Therefore, by addressing the issues raised by the ICAI, Hon'ble CBDT will be able to address the issues and hardships concerning tax payers.

Severe consequences to specified assessee for not meeting the deadlines of TAR or filing of returns - not justified in present circumstances:

For non-filing of tax audit report in time, the assessee is liable to heavy penalty under section 271B, for failure to furnish return by due date, disallowance of deductions available under the provisions of 'Chapter VI-C- Deductions in respect of certain incomes', and he is also subjected to restrictions on carry forward of certain losses.

The above consequences are quite harsh and would be suffered by the assessee despite trying their best to cope up with the requirements. We are sure that the Government would like to be strict with those who are willful defaulters and not who are sincere but cannot cope with the changes in time.

Tax payers and tax auditors appreciate and support the efforts of government to capture more information, but they need more time for compliances:

ICAI has always been instrumental in sharing the difficulties being faced by the assessee with the Department for appropriate solution. We fully respect and support

the efforts of the Government to capture more information in the tax returns to prevent tax avoidance/evasion. However, at the same time, it must be ensured that the tax payers and members of the profession are given adequate time to ensure due compliance in an effective manner.

The detailed hardships and issues and the justification for extension were communicated to your good office vide our communications ICAI/DTC/2018-19/Rep - 27 dated 31st August, 2018 and ICAI/DTC/2018-19/Rep - 34 dated 10th September, 2018 with submission to extend the due dates.

CA offices are functioning overtime till very late evenings, as also on holidays, still compliances not possible, prime objective of tax audit will be better served if unreasonable pressure is immediately released:

As the due date for filing tax audit reports and related returns is fast approaching, taxpayers and members are raising their concerns/hardships being faced by them in complying the statutory obligations in a timely and effective manner. Due to the far-reaching changes mid-way and frequent other changes in systems etc., the tax payers have been taking a lot of time to understand the changes, requirements and consequently the tax auditors are also working over-time and most of the CA offices engaged in tax audits are functioning overtime till very late evenings and on Sundays and holidays. This can be easily verified as the uploading details are completely available in the E based transparent system introduced by the Department. This shows the sincerity and dedication of the CA fraternity. However, the increased workload is such that the same cannot be coped up even by such overtime works by the administration.

However, the prime objective of the tax audits and determination of true total income will be better served if the unreasonable pressure due to non-possibility of completions before 30th September, 2018 is reduced by immediate notification of extension impugned due dates. As a Regulator of the audit profession, ICAI is concerned with the quality of the tax audits conducted by the members of our Institute.

In addition, to our above submissions, we make here some further submissions for immediate kind consideration of your good office:

Ideally, and in all fairness to the tax payers and tax auditors, all the relevant forms, related schemas and other logistics arrangements after due testing should have been readied and notified on or before 31st March. This would help both the tax-payers and the professionals in meeting the statutory compliances within the due dates, in a

planned, peaceful manner and without unnecessary wastage of time to understand and cope up with interrupting changes and consequent spending of time also.

1. Delay in release and frequent modification in utilities:

This is to bring to your kind notice that due to the delay in e-enabling of return forms, the effective time available for filing of return of income became very less, causing genuine hardship to the assesseees and members of the profession. The table below shows the effective time available for filing return of income/tax audit report (TAR) for A.Y. 2018-19 whose last date for filing return of income/TAR falls due on 30th September, 2018:

S. No.	ITR Forms /TAR	Time available for filing return of income/TAR (from the end of the relevant financial year)	Date of Notification	Date of enabling E-Filing	Delay in release of enabling e-filing utility	Effective time available for filing of return of income/TAR (from the date of enabling)	Number of times utility modified after release in Java version	Last modified date
1	ITR 3	183 days	03.04.2018	18.05.2018	48 days	135 days	5	07.09.2018
2	ITR 5 & 7	183 days	03.04.2018	21.05.2018	51 days	132 days	5	01.09.2018
3	ITR 6	183 days	03.04.2018	26.05.2018	56 days	127 days	4	14.08.2018
4	Form 3CA,3CB,3CD	183 days	20.07.2018	20.08.2018	143 days	40 days	5	07.09.2018

The above table has already been included in our earlier representation (duly attached). Here, we add as follows:

Whenever there is a schema change and the release of new utility by the CBDT, it requires time to understand the changes made in comparison to the earlier version and results in enormous loss of man hours. **Every change in the utility has resulted in loss of data already stored with respect to the auditee as the new version did not accept the data stored in the previous version.**

Given the fact that there have been frequent changes in the utility hosted on the CBDT website and the last change was as late as 7th September 2018, the time available for completion and filing of the audit reports is too less.

It has also been noticed that whenever the new utility is being released, there are issues specially relating to the additional requirements which are mandatory fields for reporting, resulting in delay for completion of audit. It is also not fair to ask additional information from some taxpayers who file their returns after such changes were carried out whereas the same information is not obtained from early filers.

2. Delay due to software updation:

Many assessees and auditors are using the softwares which are prepared by the private software providers, based on the schema released by the CBDT. Significant and frequent changes made by the Department in the e-filing utilities results in updation of software used by such chartered accountants. The software vendors take time to update the software, due to which the working days get reduced.

3. Due date of filing return of income and audit reports for assessees in the State of Kerala and other states of country:

As you are aware, the State of Kerala was struck by a natural disaster in the month of August, caused devastating floods and landslides. The large flash floods and massive landslides damaged many houses and structures, killed those who were trapped. The roads have been seriously damaged, banking facilities have been impaired, communication channels desecrated, causing undue hardships to the inhabitants of the State of Kerala as well as some of the Northern and Eastern States.

Considering the massive loss of life and property, it is important to mention here that due date of filing of ITRs in respect of assessees residing in or assessed in the State of Kerala who were required to file returns upto 31st August, 2018 only was extended to 15th September, 2018.

The said extension of due date can in no way be considered as extension of due date for those who are required to file return of income and audit report on or before 30th

September, 2018. The assesseees in the state of Kerala are in a state of melancholy and at present even on humanitarian grounds they should not be expected to pay due attention to the works related to filing of Income Tax Returns and Tax Audit Reports, as many of them are struggling to set their houses in order, and some are trying to retrieve or regenerate their destroyed records. Also, there has been reported instances wherein the physical records kept by many of the assesseees have been destroyed due to heavy rains and they have been struggling to re-generate the documents from the material available with them.

Further, the assesseees are not able to get the required information such as TDS Statements and other financial information required for audit and for filing Income tax returns, from the State Government offices and private offices. As a result, the assesseees are expressing their inability to provide the required information to the tax auditors who are conducting audit under section 44AB of Income-tax Act, 1961. There are cases where a unit or branch of auditee is located in one or more of these regions and the branch auditor who is different from the main auditor, is unable to complete his audit. Due to this, not only the auditor is unable to finalise his tax audit report, the auditee too is not able to finalise and furnish his income tax return.

4. Increase in number of returns filed:

The following table shows the growth in filing ITRs (between previous FY and current FY):

S. No.	ITR	FY 2017-18	FY 2018-19	Growth (%)
1	ITR-3	16,97,020	42,15,536	148.41
2	ITR-5	2,03,386	2,83,041	39.16
3	ITR-6	45,505	56,587	24.35
4	ITR-7	34,213	38,089	11.33

FY 2017-18 => From 01/04/2017 to 31/07/2017 FY 2018-19 => From 01/04/2018 to 31/07/2018

It is clear from the above table, there is tremendous increase in filing in volume of ITR Forms. It necessitates the need for extension of time for filing ITRs and TAR.

5. Errors in latest utilities released and non-updation of the utilities as per the law

• Error in the utility of Form No. 3CB-3CD

The changes made in the utility on 1st September, 2018 in Clause No. 9(a) of Form No. 3CB, there is a requirement of mentioning the details of the partners of the firm, which is a mandatory field. The present utility does not allow the assessee to enter any data in this field and the field is locked, despite of the status of the assessee being selected as partnership firm. It is pertinent to note that Representation No. ICAI/DTC/2018-19/Rep - 32 dated 7th September, 2018 has already been submitted to the Chairman, CBDT in this regard.

• Error in the utility of Form ITR-5

As per the provisions of Section 139(1) of the Income-tax Act, 1961, if the assessee is entitled to get the books of account audited as per the provisions of any other Act, then the due date is 30th September and not 31st July (extended to 31st August, 2018 for AY 2018-19). The Limited Liability Partnership is also required to get the books of account audited as per the provisions of the LLP Act. The utility levies the late fee under Section 234F of the Income-tax Act, 1961, which is not correct. The screen shots are enclosed for your ready reference:

Screen Shot for selection of Audit

The screenshot shows the ITR-5 utility interface. A red box highlights the section for (d.ii) and (e). The section (d.ii) is titled "If liable to furnish other audit report under the Income-tax Act, mention the date of furnishing of the audit report? (DD/MM/YYYY) (Please see Instruction 6(ii))". It contains a table with columns: Sl. No., Section Code, and Date (DD/MM/YYYY). The table has one row with Sl. No. 2, Section Code "Select", and Date field. Below the table are "Add" and "Delete" buttons. The section (e) is titled "If liable to audit under any Act other than the Income-tax Act, mention the Act, section and date of furnishing the audit report?". It contains a table with columns: Sl. No., Act, Section Code, and Date (DD/MM/YYYY). The table has one row with Sl. No. 1, Act "LLP", Section Code "99", and Date "15/08/2018". Below the table are "Add" and "Delete" buttons.

Screen Shot for levy of Late Fee

6	Tax relief		
a	Section 90/90A (2 of Schedule TR)	6a	0
b	Section 91 (3 of Schedule TR)	6b	0
c	Total (6a + 6b)	6c	0
7	Net tax liability (5 - 6c) (enter zero if negative)		7 0
8	Interest and fee payable		
a	Interest for default in furnishing the return (section 234A)	8a	0
b	Interest for default in payment of advance tax (section 234B)	8b	0
c	Interest for deferment of advance tax (section 234C)	8c	0
d	Fee for default in furnishing return of income (section 234F)	8d	1000
e	Total Interest and Fee Payable (8a+8b+8c+8d)	8e	1000
9	Aggregate liability (7 + 8e)		9 1000
10	Taxes Paid		
a	Advance tax (from column 2 of 15B)	10a	0
b	TDS (total of column 9 of 15B)	10b	0
c	TCS (total of column 7 of 15C)	10c	0

• Error in the utility of Form ITR-6

Section 115JAA(3A) of the Income-tax Act, 1961 has been amended by the Finance Act, 2017 and accordingly the MAT Credit is now allowed to be carried forward for a period of 15 years as compared to 8 years in the earlier assessment years. This extended period of adjustments has not been made available in the ITR-6 Utility. The screen shot of the same is appended hereto for your ready reference as it has only the option to insert the figures from Assessment Year 2008-09 and not for the prior period.

Schedule MATC						
Computation of tax credit under section 115JAA						
1	Tax under section 115JB in assessment year 2018-19 (1d of Part-B-TTI)					1
2	Tax under other provisions of the Act in assessment year 2018-19 (2f of Part-B-TTI)					2
3	Amount of tax against which credit is available (enter 2 - 1) if 2 is greater than 1, otherwise enter 0)					3
4	Utilisation of MAT credit Available [Sum of MAT credit utilised during the current year is subject to maximum of amount mentioned in 3 above and cannot exceed the sum of MAT Credit Brought Forward]					
S.No	Assessment Year (A)	Gross (B1)	Set-off in earlier years (B2)	Balance Brought forward (B3)=(B1)-(B2)	MAT Credit Utilised during the Current Year (C)	Balance MAT Credit Carried Forward (D)=(B3) - (C)
i	2008-09					
ii	2009-10					
iii	2010-11					
iv	2011-12					
v	2012-13					
vi	2013-14					
vii	2014-15					
viii	2015-16					
ix	2016-17					
x	2017-18					
xi	2018-19 (enter 1 -2, if 1>2 else enter 0)					0
xii	Total					
5	Amount of tax credit under section 115JAA utilised during the year [enter 4(C)xii]					5
6	Amount of MAT liability available for credit in subsequent assessment years [enter 4(D)xii]					6

• Error in the utility of Form ITR-7

As per the provisions of the Income-tax Act, 1961, the Trust having income below the basic taxable limit i.e. Rs 2,50,000/- is not required to pay any tax. The ITR-7 utility computes the tax at the maximum marginal tax rate (@ 30%) which needs to be corrected. The utility does not provide for such basic exemption. The screen shots of the same are appended hereto for your ready reference.

Screen Shot of Income below exemption limit in ITR-7

The screenshot shows the ITR-7 2018-19 form. The 'Validation' panel on the right indicates 0 errors. The form fields are as follows:

Sl. No.	Description	Amount
11	Income chargeable under section 11(3) read with section 10(21)	0
12	Income claimed/ exempt under section 13A or 13B in case of a Political Party or Electoral Trust (Item No. 11 of Schedule LA or Item No. 6vii of Schedule ET)	0
13	Income not forming part of item no. 7 & 11 above	0
14	Gross Income [7 + 11 + 13v - 8 - 9 - 10 - 12]	195000
15	Losses of current year to be set off against 13v (total of 21v, 31c and 41c of Schedule CYLA)	0
16	Gross Total Income (14 - 15)	195000
17	Income chargeable to tax at special rate under section 111A, 112 etc. Included in 16	0
18	Deduction u/s 10AA	0
19	Deductions under chapter VIA (limited to 16-17)	0
20	Total Income [16 - 18 - 19]	195000
21	Income which is included in 20 and chargeable to tax at special rates (total of col(i) of schedule S1)	0
22	Net Agricultural Income for rate purpose	0
23	Aggregate Income (20 - 21 + 22) (applicable if (20-21) exceeds maximum amount not chargeable to tax)	195000
24	Anonymous donations, included in 23, to be taxed under section 115BDC @ 30% (DIII of schedule VC)	0
25	Income chargeable at maximum marginal rates (23-24)	0

Screen Shot of Tax Computation in ITR utility

The screenshot shows the Tax Computation section of the ITR utility. The fields are as follows:

Sl. No.	Description	Amount
10	Net tax liability (8 - 9c)	60255
11	Interest and fee payable	8252
12	Aggregate liability (10 + 11e)	68507
13	Taxes Paid	0
14	Amount payable (Enter if 12 is greater than 13e, else enter 0)	68510
15	Refund (If 13e is greater than 12), (refund, if any, will be directly credited into the bank account)	0
16	Do you have a bank account in India (Non-residents claiming refund with no bank account in India may select NO) ? *	Yes
a)	Bank Account in which refund, if any, shall be credited	
1	IFS Code of the bank	HDFC150333
	Name of the Bank	HDFC Bank Ltd
	Account Number (the number should be 9 digits or more as per CBS system of the bank)	123456789933

It is stated that lot of time is being spent for verification of the ITR and non-availability of corrected utility to upload the Return of Income.

6. Slow down of Website

The website www.incometaxindiaefiling.gov.in is working very slow and the generation of Form No. 26AS from TRACES portal also takes time due to frequent updations of the entries and non-availability of the entries of TDS claimable in Form No. 26AS. This also delays the filing of return of income.

Since after filing the ITR, the processing errors generated also takes years and years to rectify the same. For free and hassle-free filing, the time limit of filing of return is required to be extended.

7. Reconciliation of GST and amounts relating to GST to be mentioned in the ITR

The figures for claims and credits are required to be reported in SCH-BS as well as SCH-PL and will have the significant impact on the profitability of the assessee. Unless and until the matching of these figures is completed, the audit will not be complete. The auditor will have to spent significant time in reconciliation of the figures. Also, the reconciliation of FORM-9C has been notified by the GST Department on September 13, 2018. Since this form has the direct link with the ITR, it becomes mandatory for the tax payer to comply with this requirement and thereby reducing the time available with the tax auditor as well as the assessee.

8. Recent notification no. 43 and 44 both dated 10.09.2018 under the GST law extending time limits for filing of GSTR 1 will not enable finalisation of true accounts before 31st October, 2018:

The Government by notification nos. 43 and 44 both dated 10.09.2018 has extended the time limits for filing GSTR 1 both for quarterly as well as monthly returns including for the periods from July, 2017 to 31st March, 2018. The GSTR 1 includes supplies by the suppliers of goods and services. As far as the recipient of goods, expenses and capital assets are concerned, there is an online form GSTR 2A on the GST Website which is on the lines of TDS Form No. 26AS under the Income-tax Rules. Under the system, details furnished by suppliers in GSTR 1 will automatically reflect in GSTR 2A of the recipients and depending upon the details furnished by the suppliers the recipients may have to re-adjust their accounts in respect of purchases, expenses, capital assets and input credits for the concerned period and all these will impact the financial statements. Therefore, effectively, the financial statements w.r.t. purchases, expenses and capital assets would be finalised only by 31st October, 2018.

Further, the tax payers will be also be occupied in compliances under the GST law due to such extended date.

In fact, the frequent and far reaching changes in the GST law and procedural aspects alone are taking substantial time of the businessmen particularly the SMEs.

Suggestion

- *In view of the above reasons and the reasons stated in our earlier representations, we suggest and request that the due date of filing returns of income under section 139(1) of the Income-tax Act, 1961 for assesseees mentioned under clause (a) of Explanation 2 to section 139(1) and also the 'specified date' for filing tax audit reports be extended from 30th September, 2018 to 31st October, 2018 for AY 2018-19 as also the due date for filing tax audit reports.*
- *For the tax audit reports relating to A.Y 2019-20, may we request you to make the utility available by 1st April, 2019 to enable our members to smoothly e-file the tax audit reports in time. We also request you to have a consultative meeting with ICAI before releasing the schema so that the issues that may arise can be foreseen and taken care of, thereby facilitating smooth e-filing of tax audit reports.*

We would be very grateful if your good self would take an early action in this regard which will be very helpful for the taxation fraternity and also for the trade & industry.

A suitable notification may be issued to this effect at the earliest.

With Warm Regards

-Sd-

**Chairman, Direct Taxes Committee
The Institute of Chartered Accountants of India**