



## **Tax & Regulatory Updates – Key developments of August 2021**

### **A. Direct Taxation: -**

#### **1. The Central Board of Direct Taxes ('CBDT') extends due dates for electronic filing of various Forms: - Circular No. 16 /2021 dated 29th August 2021**

The Central Board of Direct Taxes on consideration of difficulties reported by the taxpayers and other stakeholders in filing of certain Forms electronically, has now decided to further extend the due dates for certain forms as listed down as under: -

<b>Form</b>	<b>Duration</b>	<b>Extended Till</b>
The application for registration or intimation or approval for Trust/ Institution under section 12A, 10(23C)	Annually	31 <sup>st</sup> March 2022

or 80G in Form 10A, 10AB		
The Equalisation Levy Statement in Form No.1	For FY 2020-21	31 <sup>st</sup> December 2021
Quarterly statement by authorised dealer in respect of remittances made in Form 15CC	For 1 <sup>st</sup> Quarter of 2021-22	30 <sup>th</sup> November 2021
	For 2 <sup>nd</sup> Quarter of 2021-22	31 <sup>st</sup> December 2021
Self-declaration by Individual to Bank for non-deduction of TDS on interest in Form No. 15G/15H	For 1 <sup>st</sup> Quarter of 2021-22	30 <sup>th</sup> November 2021
	For 2 <sup>nd</sup> Quarter of 2021-22	31 <sup>st</sup> December 2021
Intimation to be made by Sovereign Wealth Fund in respect of investments made by it in India in Form II SWF	For 1 <sup>st</sup> Quarter of 2021-22	30 <sup>th</sup> November 2021
	For 2 <sup>nd</sup> Quarter of 2021-22	31 <sup>st</sup> December 2021
For intimation to be made by a Pension Fund in respect of each investment made by it in India in Form No. 10BBB	For 1 <sup>st</sup> Quarter of 2021-22	30 <sup>th</sup> November 2021
	For 2 <sup>nd</sup> Quarter of 2021-22	31 <sup>st</sup> December 2021
Furnishing of report by constituent entity in Form 3CEAC	Due for filing earlier by 30 November 2021	31 <sup>st</sup> December 2021
Report by a parent entity or an alternate reporting entity or any other constituent entity, resident in India in Form No. 3CEAD	Due for filing earlier by 30 November 2021	31 <sup>st</sup> December 2021
For intimation on behalf of an international group in Form No. 3CEAE	Due for filing earlier by 30 November 2021	31 <sup>st</sup> December 2021

## **2. CBDT extends the last date of payment under Vivad Se Vishwas (VsV) without additional amount to 30th September 2021:- Press release dated 29 August 2021**

Considering the difficulties being faced in issuing and amending Form no 3 which is a prerequisite for making payment by the declarant under VsV Act, CBDT extends the last date of payment without

any additional amount to 30 September 2021 from the existing date notified vide notification dated 25 June 2021 as 31 August 2021. The last date for making the payment with the additional amount under the VsV Act however remains the same i.e., till 31 October 2021.

### **3. Indian Government nullifies retro tax on Indirect transfers and introduced finance bill to amend the Income tax Act: - Finance Bill no. 120 of 2021 dated 05 August 2021**

The Taxation Laws (Amendment) Bill, 2021 has been introduced by the Finance Minister Nirmala Sitharaman in Lok Sabha on 05th August 2021 that proposes to amend the retrospective tax amendment introduced by the government through Finance Bill, 2012 to tax the past Indirect transfers in cases such as the celebrated case of Vodafone acquisition of shares of Hutchison Essar. In 2012, the Indian Government had introduced a retrospective amendment to tax transfer of shares of a foreign company which derives substantial value from the assets situated in India (famously known as the 'Look through principle'). The said amendment led to high profile tax litigation including arbitration invoked under Bilateral Investment Protection Treaties, consequent tax demands and continued litigation, attracting criticism from foreign investors.

The Bill has proposed amendments under the indirect transfer provisions in section 9(1)(i) of the Income-tax Act, 1961 (the Act) making them prospective i.e., from 28 May 2012. The bill provides that no tax demand shall be raised in future on the basis of the said retrospective amendment for any indirect transfer of Indian assets if the transaction was undertaken before 28th May 2012. Any demand raised for indirect transfer of Indian assets made before 28th May 2012 shall be nullified on fulfilment of specified conditions that includes the withdrawal of pending litigation and furnishing of an undertaking to the effect that no claim for cost, damages, interest, etc., shall be filed by the taxpayer and the other conditions that may be prescribed by the government. Further, the bill also provides that the refunds shall be made to affect the said amendment but there would be no interest paid by the government on such amount of refund. The Bill also proposes to amend the Finance Act, 2012 so as to provide that the validation of demand, etc., under section 119 of the Finance Act, 2012 shall cease to apply on fulfilment of the said specified conditions.

### **4. CBDT invites comments on the draft notification for implementing the amendments made by the Taxation Laws (Amendment) Act, 2021 on taxation of Indirect transfers: - CBDT Press Release dated 28 August 2021**

Earlier this month, the government amended the Income-tax Act, 1961 (Income-tax Act) to provide that no tax demand shall be raised in future on the basis of the amendment to section 9 of the Act made vide Finance Act 2012 for any offshore indirect transfer of Indian assets if the transaction was

undertaken before 28 May 2012 i.e the date on which the Finance Bill, 2012 received the assent of the President

The above amendment also provides that the demand raised for offshore indirect transfer of Indian assets made before 28 May 2012 (including the validation of demand provided under Section 119 of the Finance Act 2012) shall be nullified on fulfilment of specified conditions such as withdrawal or furnishing of undertaking for withdrawal of pending litigation and furnishing of an undertaking to the effect that no claim for cost, damages, interest, etc. shall be filed and such other conditions are fulfilled as may be prescribed and the amount paid/collected in these cases shall be refunded, without any interest, on fulfilment of the said conditions.

Now, CBDT vide its draft notification dated 28 August 2021 prescribes the draft rules wherein a new rule 11UE has been introduced to specify the conditions to be fulfilled and the process to be followed to give effect to the above amendment.

Key points in relation to the above rules are as under: -

- An Undertaking in **Form 1** needs to be submitted by the assessee to the jurisdictional Principal Commissioner within a period of 45 days from the publication of the official rules by the CBDT.
- The undertaking is regarding the irrevocable withdrawal of appeals by the declarant pending at any level of authority and also undertaking that such an appeal shall not be made/pursued either by the declarant or any party in the entire group of holding (referred to as interested parties).
- The jurisdictional Principal Commissioner shall within a period of **15 days** either accept and pass an order accepting such declaration in **Form 2** or reject the same after giving a reasonable opportunity of being heard to the declarant.
- After receiving Form 2, the declarant needs to withdraw all the appeals pending at any level and shall file a declaration regarding the same in **Form 3** within a period of **60 days** from the receipt of certificate in Form 2.

\*However, declaration in form 3 is not required where declarant declares in the cases where there is no pending dispute. Some of the cases have been produced below for your reference: -

- i. declarant not filed any appeal or application or petition before any income tax authority or any appellate forum or any High Court or Supreme Court and undertakes not to file any appeal in the future
- ii. filed any appeal or application or petition before any income tax authority or any appellate forum or any High Court or Supreme Court and has irrevocably withdrawn all such appeals or applications or petitions etc.

- iii. not initiated any proceeding for arbitration, conciliation or mediation and no notice has been given thereof under any law for time being in force or under any agreement entered into by India
  - The jurisdictional Principal Commissioner shall issue an order giving directions to the assessing officer in **Form 4** within **30 days** of the receipt of the form 3 or issue of the form 2 as the case may be either pass an order granting the relief to the declarant to the extent of the income arising to the related indirect transfers before 28 May 2012 or reject the same after giving a reasonable opportunity of being heard to the declarant.
  - The directions by the jurisdictional Principal Commissioner in form 4 shall be binding on the assessing officer and shall pass an order and issue the refund to the declarant within a period of 30 days from the receipt of such directions in Form 4.

Any dispute with respect to any of the forms prescribed or any of the directions issued under the rules shall be governed by the Indian Laws and be decided in accordance with the procedures specified under the Act under the exclusive jurisdiction of the relevant income tax authorities, tribunals or courts in India as the case may be.

Suggestions/comments on the draft notification are invited from all stakeholders and the public and can be furnished electronically at the email address [ustpl1@nic.in](mailto:ustpl1@nic.in) latest by 4th September, 2021.

#### **5. CBDT recently notified rule for computation of tax relief on the Book Profits that has been increased significantly due to Advance Pricing Agreement (APA/Secondary Adjustments):- Notification No. 92/2021 dated 10 August 2021**

To provide relief to the taxpayers affected due to the outcome of the Advance Pricing Agreement APA and Secondary Adjustment, the Finance Act, 2021 inserted a new sub-section (2D) to Section 115JB. As per the provisions, the Assessing Officer, on an application by the assessee, shall re-compute the book profit of the past years and tax payable thereon if assessee current year's income has increased due to APA under section 92CC or secondary adjustment under section 92CE. Further, it is also provided that the CBDT may notify the manner for re-computing the book profits of past years.

Now, the CBDT has notified a new rule to the Income-tax Rules, 1962 prescribing the manner for computation of relief in tax payable under section 115JB(1) due to operation of newly inserted sub-section (2D) of section 115JB. In such cases, assessee is required to make an application in Form 3CEEA electronically to claim the aforementioned relief under section 115JB(2D). Form No.3CEEA shall be verified by the person who is authorized to verify the return of income of the assessee company. In these cases, once an application claiming relief had been received by the department, the tax credit allowed to the assessee under section 115JAA shall be reduced by the amount which is equal to the amount of reduction that has been allowed under this rule.

## **6. CBDT establishes Interim Boards for Settlement:- Notification no. 91/2021 dated 10 August 2021**

As you are aware that Government vide Finance Act 2021 has made an amendment with regard to the discontinuation of Income Tax Settlement Commission and introduced new section 245AA to constitute an Interim Board of settlement for the pending cases.

In pursuance of the above amendment, CBDT vide its notification dated 10 August 2021 has established 7 Interim Boards for Settlement having its headquarters at Delhi, Kolkata, Mumbai and Chennai.

## **7. CBDT releases Central Action Plan for FY 2021-22:-**

On the lines of past years, CBDT has released the Central Action Plan for FY 2021-22 with major focus on making a robust system for the faceless assessments and faceless appeals and ensuring quality service delivery to the taxpayers. This year report highlights the importance of timely service delivery to the taxpayer as special point of focus in the current year and provides 16 standards for delivery of service to taxpayers.

### **Some of the key takeaways from the action plan are as under: -**

- Disposal of 100% of appeals pending as on 01 April 2021 that involve demand of Rs.50 crore and above.
- Disposal of 90% of all appeals filed prior to 31 March 2016 (excluding appeals stayed by judicial authorities).
- All appeals filed u/s 143(1) and 154 of the Income-tax Act and pending as on 01 April 2021 shall be taken up on priority for disposal.
- All appeals for which Form 5 under the Vivad Se Vishwas Scheme has been issued to be disposed of within 1 week of issue of Form 5.
- Service Delivery timelines set in the Taxpayers' Charter should be strictly adhered to by field formations. Total 16 key standards for delivery of service to the taxpayer by the Department have been identified. Some of the key timelines are as follows:
  - i. Issue of refund along with interest u/s 143(1) of the Act: - 3 months.
  - ii. Issue of refund including interest from proceedings other than section 143(1) of the Act: - 1 month.
  - iii. Decision on rectification application: - 6 months
  - iv. Decision on application seeking extension of time for tax payment or for grant of instalment: - 1 month.

- v. Issue of Tax Clearance Certificate u/s 230 of the Act.
- vi. Decision on application for no deduction of tax or deduction of tax at lower rate: - 1 month
- vii. Grievance received through CPGRAMs online portal: - Within 30 days of receipt by CBDT

Verification of high-risk data contained in Form 15CA/15CB and Form 15CC.

## **8. National Faceless Assessment Centre issues Standard Operating Procedure (SOP) for penalty under Faceless penalty Scheme 2021:- dated 9 August 2021**

As you are aware that CBDT vide its notification dated 12 January 2021 has notified the Faceless Penalty Scheme 2021 and mandated setting up of National Faceless Penalty Centre/Regional Faceless Penalty Centres (NFPC/RFPC) to conduct penalty proceedings in a faceless manner and impose penalty in cases falling into its scope in a centralised manner similar to Faceless Assessment. Later, CBDT ordered for the setting up of the National Faceless Assessment Centre (NaFAC)/Regional Faceless Assessment Centre (ReFAC).

Recently, NFAC issued SOP for conducting the penalty proceedings covered within the scope of FPS. Some of the key points covered in the SOP are as under: -

### **Reference to NFPC: -**

- All penalties initiated by NaFAC are required to be captured by ITBA and uploading of notice for initiating penalties by the Jurisdictional Assessing Officer (JAO) will be deemed to be as a reference to NFPC.

### **Cleaning of the Stack: -**

FPU will be required to go through the penalty work item to ascertain whether any penalties referred are within the scope of FPS or kept in abeyance or already completed then in such the details thereof may be forwarded immediately to designated e-mail of NaFAC for their transfer to appropriate jurisdiction.

### **Waiver of Penalty u/s 273A: -**

Waiver of Penalty levied/leviable is outside the scope of FPS and are to be considered by Pr. CIT (Jurisdictional). Thus, suitable action for dropping of penalty proceedings in cases where leviable penalty has been waived may be taken after receipt of the order of the Pr. CIT (Jurisdictional).

### **Penalties without base documents: -**

FPU will have access to the case records/documents initiated by NaFAC and Income Tax Authorities (JAO) if base orders are passed on ITBA. However, in cases where the base orders in respect

penalties are not available, then in such case FPU should write to JAO immediately to provide the base orders.

#### **Issue of Show Cause Notice (SCN): -**

SCN issued by FPU is automated and format based where reference is made to penalty section and earlier notice initiating penalty issued to the assessee. The assessee is given opportunity to file a written reply and if required seek personal hearing after filing of written reply through VC. Further, after looking at the timelines, 5 to 7 days time (flexible) should be given to the assessee to respond from the date of issue of notice.

Also, the FPO should preview the date of notice at the time of final generation and amend the date of compliance if required to ensure granting adequate time.

#### **Communication with assessee and third person: -**

FPU may use 'issue letter' functionality to communicate with the assessee or third person, if any further information/clarification is required. Further if required, notice u/s 133(6) or Summons u/s 131 may also be used for the purposes or penalty proceedings. The communications shall go to assessee under digital signature of NaFAC to maintain facelessness.

#### **Draft Penalty Order: -**

Draft penalty order should be well reasoned and speaking. The replies by the assessee should be duly considered and rebutted. Quality Penalty order is the intended outcome of the entire penalty proceedings hence should be given utmost importance.

### **9. The Central Board of Direct Taxes ('CBDT') prescribes "any other person" for verifying returns, authorised representation for companies/LLPs:- Notification no. 93/2021 dated 18 August 2021**

CBDT vide its notification dated 18 August 2021 has notified persons referred in the clauses (c) and (cd) of Section 140 of the Income Tax Act by way of insertion of new rule 12AA. Notified person shall be any person appointed by the Adjudicating Authority for discharging the duties and functions of an interim resolution professional, a resolution professional, or a liquidator, as the case may be, under the Insolvency and Bankruptcy Code, 2016 for the purpose of the verification of the return wherein managing director in the case of the Company and designated partner in case LLP is for any unavoidable reason not able to verify the return.

Further in the same notification, CBDT also inserted new rule 51B to allow the above notified person to appear before the Income Tax as Authorised Representative in the case of the Company or LLP as the case may be.



## **10. CBDT recently notified a new set of rules and new form specify the manner of Computation of income of specified fund:- Notification No. 90/2021 dated 09 August 2021**

Section 10(4D) provides an exemption in respect of the following income accrued or arisen to or received by a specified fund:

- (a) Income from transfer of a capital asset as referred to in Section 47(viiab);
- (b) Income arising from transfer of securities (other than shares in a company resident in India);
- (c) Income from securities issued by a non-resident (not being a PE of a non-resident in India) and where such income otherwise does not accrue or arise in India; or
- (d) Income from a securitization trust which is chargeable under the head 'Profits and gains from business or profession'.

As per the present scenario, exemption under this provision shall be limited to the income attributable to units held by a non-resident, not being the permanent establishment of a non-resident in India. Further, it is also provided in the section that the CBDT shall notify the rules to compute the income attributable to units held by non-residents.

Hence, the board has notified Rule 21AI prescribing manner for computation of exempt income. The board has prescribed a formula to compute income attributable to units held by non-resident (not being the permanent establishment of a non-resident in India) in a specified fund. The specified fund is also required to furnish an annual statement of exempt income in Form No. 10IG electronically under digital signature.

Further, in case of specified funds, section 115AD(1A) provides that concessional tax provided by sub-section 1 to section 115AD shall be only to the extent of income that is attributable to units held by non-resident (not being a permanent establishment of a non-resident in India) calculated in the prescribed manner.

The board has also notified Rule 21AJ determining income of a specified fund attributable to units held by non-residents. The income of a specified fund by way of short-term or long-term capital gains, referred to in section 115AD(1)(b), attributable to the units held by non-resident (not being the permanent establishment of a non-resident in India) shall be calculated in accordance with the specified formula.

Further, the specified fund is also required to furnish an annual statement of income eligible for concessional taxation in Form No. 10IH electronically under digital signature

## **11. The Delhi ITAT issued notice for constitution of benches for the physical and virtual hearings:- Delhi ITAT notice dated 26 August 2021**

The Delhi ITAT vide its notice dated 26 August 2021 issued constitution for hearings through physical and video conferencing mode. The hearings shall be conducted as per the SOP's released by ITAT from time to time which needs to be duly followed by both the parties. The parties are also requested to send emails at [delhi.zone@itat.nic.in](mailto:delhi.zone@itat.nic.in) for receiving the link to attend the Virtual Court Proceedings in their respective cases well in advance. The invitation link for the virtual meet shall be sent by the Registry to both the parties well in advance, at least 1 hour before the scheduled hearing on the given mobile number(s) by SMS/email. Further, for attending the physical hearing guidelines/SOP's dated 19 August 2021 should be followed.

Draft penalty order should be well reasoned and speaking. The replies by the assessee should be duly considered and rebutted. Quality Penalty order is the intended outcome of the entire penalty proceedings hence should be given utmost importance.

The said proposal will have direct impact on the long-running tax disputes with Cairn Energy Plc and Vodafone group. Further, the Indian government has given a very clear Statement of Objects and Reasons as part of the above Bill to acknowledge the decision of Supreme Court in the case of Vodafone in 2012 in their favour on the issue of Indirect transfer including the decisions of Arbitration Tribunal and the criticism that 2012 amendments got from the larger investor community. The government is estimated to refund about Rs 8,100 crore, out of Rs 7,900 crore was from Cairn Energy alone

## **12. Income Tax Department notifies email IDs for registering grievances under Faceless Assessment Scheme:- News Report**

The Income Tax Department with the objective to further strengthen its Faceless Scheme had recently notified three official email IDs for the taxpayers to register their grievances under the faceless or E-assessment scheme.

The grievances can be furnished under three separate email IDs created for the purpose.

**For faceless assessments:** [samadhan.faceless.assessment@incometax.gov.in](mailto:samadhan.faceless.assessment@incometax.gov.in);

**For faceless penalty:** [samadhan.faceless.penalty@incometax.gov.in](mailto:samadhan.faceless.penalty@incometax.gov.in);

**For faceless appeals:** [samadhan.faceless.appeal@incometax.gov.in](mailto:samadhan.faceless.appeal@incometax.gov.in).

Faceless assessment, or e-assessment, was launched in 2019 to streamline tax administration, minimize physical interface from taxmen, increase accountability and introduce team-based assessments.

### **13. Income Tax department is to refund the excess interest charged and late fee that has been collected while filing Income tax return for the AY 2021-22:- News Report**

In order to provide taxpayers compliance relief during the pandemic, the last date for filing ITR for last financial year 2020-21 has been extended till September 30, 2021, from July 31. However, some taxpayers had complained that interest and late fees were charged while filing income tax return (ITR) after the July 31, 2021.

As the new Income tax portal is still under developing stage, the I-T department has issued advisory to the taxpayers to use the latest version of the ITR preparation software or file online and also said that if, for any reason any assessee has already submitted the return with such incorrect interest or late fee, the same will be correctly calculated while processing at CPC-ITR and the excess amount paid, if any, will be refunded to the taxpayers. Hence, such taxpayers are required to check the latest e-filing utility, while filing their ITR. If any errors are still found, then it must be reported to the concerned authorities for necessary resolution.

<https://economictimes.indiatimes.com/wealth/tax/income-tax-department-to-refund-excess-interest-late-fee-paid-while-filing-fy21-itr/articleshow/85250514.cms>

### **14. Government readies Crypto bill and working on overseas listing related tax issue:- News Report**

Finance Minister Nirmala Sitharaman said last week that the Government was working to sort out the tax issues for overseas listing of Indian Companies. There are rumours in the market that the government will allow an exit option for those who had invested in virtual currencies. Although the government had amended the Companies Act to allow direct listing of Indian companies on foreign exchanges, it is yet to undertake a crucial amendment related to capital gains tax on these shares.

<https://timesofindia.indiatimes.com/business/india-business/government-readies-crypto-bill-works-on-listing-tax-issue/articleshow/85394508.cms>

### **15. Direct tax collection jumps by 112 per cent:- News Report**

As per the news reports, gross direct tax collection grew by an unprecedented 112% in Q1, Financial Year 21-22 over the previous year. The report further presents that this is perhaps the fastest growth recorded in decades and the first time in 20 years that 26.7% of the budget target was met in the first quarter. In the past, despite high economic growth rates, first quarter collections never exceeded 18% of the annual budget target.

<https://www.newindianexpress.com/business/2021/aug/05/direct-tax-collection-jumps-by-112-per-cent-2340427.html>

## **B. Cross Border: -**

### **1. Australian Taxation Office releases discussion paper on Tax & TP implications of Inter-Bank Offered Rate reform:- Australian Taxation Office ('ATO') Update**

ATO has released a discussion paper on tax and TP implications of the Inter-Bank Offered Rate (IBOR) reform. The ATO, through this discussion paper, seeks inputs on the tax implications arising from IBOR reform (including cessation of LIBOR). It sets out common tax considerations to be considered by the taxpayers with respect to changes made to certain financial arrangements that are driven by IBOR (all references to IBOR include references to LIBOR) reform. ATO explains that the focus of this discussion paper is on financial arrangements which are capable of being subject to the Taxation of Financial Arrangements (TOFA) regime.

Further, ATO highlights that while regulatory authorities and working groups in various jurisdictions are considering alternative risk-free rates (RFRs) to replace IBORs that will cease, there is still uncertainty as to when some RFRs will be available and how they will impact the operation of financial arrangements. ATO proposes to publish the final guidance on the tax implications arising from IBOR reform as higher-level web-based content on the ATO website. ATO welcomes taxpayers' feedback on the particular format and structure of the final guidance as well as any relevant issues or specific concerns about the matters raised in this discussion paper including any areas of tax law arising from IBOR reform which could be considered to be unclear. ATO is accepting comments on this discussion paper until September 10.

### **2. OECD publishes updated Transfer Pricing country profiles reflecting the current transfer pricing legislation and practices of 20 jurisdictions:- News Report**

OECD has recently released updated TP country profiles reflecting the current transfer pricing legislation and practices of 20 jurisdictions including Australia, Denmark, India etc. The report highlighted that the newly updated country profiles include two new sections, first section relating to TP treatment of financial transactions which reflects the current state of countries' legislation and indicates to what extent their rules follow the OECD TP Guidelines and the second on the application of the Authorised OECD Approach (AOA) to Permanent Establishments.

<https://www.oecd.org/tax/beps/oecd-updates-transfer-pricing-country-profiles-to-include-new-fields-on-financial-transactions-and-permanent-establishments.htm>

### **3. OECD tax Chief says that 'we will eliminate the double taxation':- News Report**

In a recent interview, Pascal Saint-Amans, director of the Centre for Tax Policy and Administration at the OECD said that we will eliminate double taxation and it will happen in a fast manner, in a timely manner, and countries will not feel like their sovereignty has been completely ignored. He further said that the global agreement needs to be finalized and there are a few numbers to firm up.

<https://www.livemint.com/companies/people/we-will-eliminate-double-taxation-says-oecd-tax-chief-11629305887610.html>

### **4. Recently Ireland's Donohoe Says Global Tax Deal 'More Likely Than Ever: - News Report**

Ireland's Finance Minister Paschal Donohoe predicted that world leaders would agree to a global tax agreement that includes a minimum corporate tax rate and Ireland could accept a final settlement although it's a holdout for now. Donohoe said that "It is more likely than ever" that a deal will be struck. He added that "we have some work to do and some engagement". But Donohoe last month reiterated his commitment to keeping Ireland's 12.5% tax rate amid reports the government would accept the increase.

<https://www.bloomberg.com/news/articles/2021-08-04/ireland-s-donohoe-says-global-tax-deal-more-likely-than-ever>

### **C. Indirect Taxation:-**

#### **1. Extension of time limit for filing of application for revocation of cancellation:- Notification no. 34/2021, Central Tax dated 29 August 2021**

The Government has relaxed the limit for making an application for revocation of cancellation of registration which has been cancelled under section 29(2)(a) or section 29(2)(b) during the period from 01 March 2020 to 31 August 2021. The time limit for making such application shall be extended up to the 30 September 2021.

#### **2. Amnesty scheme for waiver of late fee extended upto 30 November 2021:- Notification no. 33/2021-Central Tax dated 29 August 2021**

The Government has amended notification no. 76/2018 dated 31 December 2018, to extend the amnesty scheme for waiver of late fee from 31 August 2021 to 30 November 2021. As per the scheme late fee for GSTR-3B for the months /quarter of July 2017 to April 2021 shall stand waived which is in excess of INR 250 in case where the tax payable is NIL and shall stand waived which is in excess of INR 250 in other cases.

#### **3. Advisory on HSN and GSTR-1 Filing:- GSTN update dated 26 August 2021**

The GSTN has stated that it has been reported by a few taxpayers that HSN used by them for reporting in GSTR-1 is not available in the table 12 HSN drop-down. They have further stated that they are facing issues in adding the required HSN details in table -12 and filing of statement of outward supplies in form GSTR-1 of July 2021. The Government has detailed advisory on the action to be taken by the taxpayers to resolve the said issues at:

<https://tutorial.gst.gov.in/downloads/news/advisoryonhsnandgstr1.pdf>

#### **4. Implementation of rule 59(6) on GST Portal:- GSTN update dated 26 August 2021**

The GSTN has implemented rule 59(6) in the GST portal. This Rule will be implemented on the GST Portal from 01 September 2021. On implementation of the said Rule, the system will check that whether before the filing of GSTR-1/IFF of a tax-period, the following has been filed or not:

(a) GSTR-3B for the previous two monthly tax-periods (for monthly filers), or; (b) GSTR-3B for the previous quarterly tax period (for quarterly filers), as the case may be.

The system will restrict filing of GSTR-1/IFF till GSTR-3B as per rule 59(6) is complied with. Implementation of rule 59(6) on the GST Portal will be completely automated, similar to the blocking & un-blocking of e-way bill as per rule 138E and facility for filing of GSTR-1 will be restored immediately after filing of relevant GSTR-3B. No separate approval would be needed from the tax-officer to restore the facility for filing of GSTR-1. To ensure no disruption in filing GSTR-1/IFF,

taxpayers who have not filed their pending GSTR-3B, especially from period November 2020 and afterwards may do so at the earliest.

#### **5. Blocking of E-Way Bill (EWB) generation facility resumes after 15 August 2021: - GSTN update dated 04 August 2021**

The facility of blocking E way bill generation had been temporarily suspended due to the pandemic. As per Rule 138 E (a) and (b) of the CGST Rules, 2017, the E Way Bill generation facility of a person is liable to be restricted, in case the person fails to file their return in Form GSTR-3B / statement in CMP-08, for a consecutive period of two months / Quarters or more. The government has now decided to resume the blocking of EWB generation facility on the EWB portal, for all the taxpayers from 15 August 2021 onwards. Thus after 15 August 2021, the System will check the status of returns filed in Form GSTR-3B or the statements filed in Form GST CMP-08, and restrict the generation of EWB in case of non-filing of two or more returns in Form GSTR-3B for the months up to June, 2021 and non-filing of 02 or more statements in Form GST CMP-08 for the quarters up to April to June, 2021.

#### **6. Supreme Court upholds that online fantasy sports are 'games of skill':- Special Leave Petition (Civil) Diary No(s). 18478/ 2020**

In a recent order, the Supreme Court has dismissed the Special Leave Petition (SLP) against the judgment passed by the High Court of Rajasthan, wherein it has been held that online fantasy sports are games of skill and not betting/ gambling.

The Apex Court dismissed the SLP citing that treating online fantasy sports as lacking any element of betting or gambling is already settled considering the judgments passed by the High Courts of Punjab & Haryana and Bombay in the cases of Shri Varun Gumber and Gurdeep Singh Sachar and SLPs against these judgments have already been dismissed earlier. The SLP filed by the State of Maharashtra against the Bombay High Court judgement, has been stayed however and finality on the levy of GST on 'actionable claim' in relation to online fantasy sports is awaited. Recently Madras High Court in the case of Junglee Games also held that the ban on online rummy, being a game of skill is ultra vires the Constitution of India.

#### **7. Summons from both Centre and State jurisdiction held as valid: - Madras High Court in Kuppan Gounder P.G. Natarajan vs. Directorate General of GST Intelligence, New Delhi in W.P.No.15708 of 2021**

The Petitioner had challenged summons issued by the Central Government authorities on the basis that section 6(2)(b) provides that where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject

matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

The Court held that the subjects proposed to be dealt with by the State authorities as well as the Central authorities must be one and the same to avail the benefit of Section 6(2)(b) of the Act. Even in such circumstances, if the aggrieved person is of an opinion that the subjects are one and the same, it is for him to establish the same before the competent authority by producing the records.

The very purpose and object of Section 6(2)(b) of the Act is to ensure that on the same subject, the parallel proceedings are to be avoided. Once on a particular subject, the State authority has initiated action under the State Goods and Services Tax Act, then alone, the proper officer under the Central Goods and Services Tax Act are restrained to wait till the finalization of the proceedings initiated by the State authorities. However, in all circumstances, and in respect of various other proceedings, the benefit cannot be claimed by the assesses. It further held that it is to be established that subject matter is one and the same. Mere pendency of proceedings before the State authorities is not a ground to restrain the Central authorities from issuing summons and conduct investigation regarding certain allegations.

**8. No tax demand can be issued or raised when investigation is still in progress: - Telangana High Court in Deem Distributors vs. Union of India and Ors. in WP no. 7063 of 2021**

The Petitioner had approached the High Court against communication by the department directing it to remit the amount availed as input tax credit at the stage of summons itself without following due procedure under Section 74 of the CGST Act. The Court held that section 74(5) gives a choice to the tax payer to make any payment, if he is so chooses, but it does not confer any power on the respondents to make a demand as if there has been a determination of liability of the Assessee and demand tax along with interest and penalty. It further held that no advisory jurisdiction is conferred on the department to issue any 'advices' of the nature issued to the petitioner by the department asking him to pay the amount. The Court directed to refund the amount already paid by petitioner with interest from the date of payment till date of refund within four weeks.

**9. Input tax credit not available on Airconditioning & Cooling system and the Ventilation system: - Gujarat AAR in Wago Private Limited in GUJ/GAAR/R/33/2021**

The query was raised before Gujarat AAR regarding admissibility of input tax credit of GST paid on the procurement of air conditioning & cooling system and the ventilation system. The Applicant contended that irrespective of whether the said goods are movable or immovable property, the goods being plant and machinery ITC should be eligible.



The AAR held that all the different parts of 'Air conditioning and cooling system' after being fitted in the building lose their identity as machines or parts of machines and become a system, namely Air conditioning and cooling system. This AC System is in nature of a system and not machine as a whole and that though each component is dutiable to GST, the air conditioning plant as such is not a good under HSN (customs Tariff Heading). It accordingly held that the central air conditioning system is not a machine. It further held that 'Ventilation system' is a combination of various components and parts resulted into an immovable property and thus ITC is not admissible.

**10. GST not leviable on nominal charges collected by business for canteen from employees:- Gujarat AAR in Re: Tata Motors Ltd. in GUJ/GAAR/R/39/2021 and Dishman Carbogen Amcis Ltd. in GUJ/GAAR/R/22/2021**

The Gujarat AAR has held that employees' portion canteen charges collected by the employer and paid to the canteen service provider will not attract GST. The Applicant submitted that it does not retain with itself any profit margin in this activity of collecting employees' portion of canteen charges. The AAR held that this activity carried out by Applicant is without consideration and hence not chargeable to GST.

The Applicant also submitted that it should be allowed ITC as it is obligatory to provide canteen services under statute. The AAR held that the proviso to section 17(5)(b)(iii) does not apply to section 17(5)(i) and hence, ITC is not permissible.

**11. ITC not allowed on purchases made by Sub-Contractor providing works contract services:- Andhra Pradesh AAR in Karthikeya Projects in AAR No.09/AP/GST/2021**

The Applicant entered into an agreement for the construction of chemical Lab, Office Building and a warehouse for the Contractee. The Applicant is charging 18% GST in the tax invoices issued to the main contractor. The Applicant required clarification regarding the Input tax eligibility on the purchases made on their own account for furtherance of the business.

The AAR held that as per section 17(5)(d) restricts input tax credit of goods and services used by a person for construction of an immovable property (except plant and machinery) on his own account. Thus if a person purchases construction material to provide the construction services by using the said material, ITC shall not be available.

**12. Transfer of business without transfer of liabilities and employees is not a 'going concern': - Andhra Pradesh AAR in SCV Sky Vision in AAR No. 04/AP/GST/2021**

A question was raised on granting exemption to 'Services by way of transfer of a going concern as a whole or an independent part thereof' is applicable on the business transfer undertaken without transfer of liabilities and employees. The Applicant submitted that a business in running condition

and capable of being carried out independently for a business should qualify as a going concern and that non-passing off of past liabilities and employees will not render the business as not in the nature of a going concern. The AAR held that if the company is sold off as a 'going concern', then along with the assets of the company, if there are any liabilities relevant to the business or undertaking, the liabilities too are transferred and held that exemption is not available.

### **13. Double tax for NFTs: Deals may attract GST: - News Report**

The non-fungible token or NFT has attracted the taxman's attention as any purchase of the blockchain digital file will attract goods and services tax (GST). The indirect tax department would seek that the exchanges pay GST on the transaction value, say insiders. NFT arrived in India a few months back and this means that Indians can now buy art, digital goods, YouTube videos or audio files in the format.

[https://economictimes.indiatimes.com/news/economy/finance/double-tax-for-nfts-deals-may-attract-gst-equalisation-levy/articleshow/85381175.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/news/economy/finance/double-tax-for-nfts-deals-may-attract-gst-equalisation-levy/articleshow/85381175.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

### **14. India needs to reduce GST rates for auto sector: Revenue Secretary: - News Report**

Higher taxes on the automotive sector have a negative impact and the government needs to look at the solution. Revenue Secretary Tarun Bajaj said "I quite agree with the automotive sector. Two-wheelers and four-wheelers were not only charged 28 per cent Goods and Services Tax (GST) but we also charged cess, which is much more and as I see it will continue for two more years," while addressing the annual session of Confederation of Indian Industry (CII).

<https://www.timesnownews.com/auto/features/article/india-needs-to-reduce-gst-rates-for-auto-sector-revenue-secretary/798132>

### **15. Supreme Court issues notice to Centre and GST Council on plea seeking constitution of GST Tribunal: - News Report**

The Supreme Court on Friday issued notice to the Central government and Goods and Services Tax (GST) Council after hearing a PIL. The PIL filed before the Supreme Court is seeking appropriate orders and directions to the Centre, including that to constitute GST Tribunal. It has been argued that the period of limitation to file appeal before the Tribunal (90 days) cannot be extended by way of administrative order. The bench also expressed concerns over the mounting vacancies in various tribunals and sought immediate response from the Centre.

<https://www.livelaw.in/top-stories/gst-appellate-tribunal-supreme-court-pulls-up-central-govt-for-indefinitely-delay-of-gst-appellate-tribunal-constitution-179034?infinitiescroll=1>

## **16. Realtors' body CREDAI seeks input tax credit under GST for developers: - News Report**

Realtors' body CREDAI demanded that input tax credit (ITC) under the GST regime should be allowed to developers, saying this could lead to a reduction in housing prices by 10 per cent. It demanded that the government should allow developers to choose between a 12 per cent GST rate with ITC (assessment scheme) and a 5 per cent GST rate without ITC (composition scheme), providing them with the much-needed financial flexibility during these testing times.

[https://www.business-standard.com/article/economy-policy/realtors-body-credai-seeks-input-tax-credit-under-gst-for-developers-121081001405\\_1.html](https://www.business-standard.com/article/economy-policy/realtors-body-credai-seeks-input-tax-credit-under-gst-for-developers-121081001405_1.html)

## **D. REGULATORY: -**

### **1. MCA released updated FAQs on Corporate Social Responsibility (CSR):- Circular No. 14 /2021 dated 25 August 2021**

Over the last 1 year, a number of significant developments have taken place under section 135 of the Act as well in the CSR Rules with an aim to strengthen the CSR ecosystem, by improving disclosures and by simplifying compliances. In response to such amendments, MCA has received several references and representations from stakeholders seeking clarifications on the various issues related to CSR. In view of these amendments, MCA recently released an updated set of FAQs on CSR vide General Circular 14/2021 which supersedes all previous General Circulars/ Clarifications/ Letters of the Ministry on the Subject.

**The updated set of FAQs on CSR by the MCA broadly explains the provisions of the CA 2013 and CSR Rules in respect of the following items and some of the key questions in this respect are as follows:-**

#### **A. Applicability of CSR**

- Whether a holding or subsidiary of a company fulfilling the criteria under section 135(1) has to comply with the provisions of section 135, even if the holding or subsidiary itself does not fulfil the criteria?
- Whether CSR provisions apply to a company that has not completed the period of three financial years since its incorporation?

#### **B. CSR Framework**

- What is the composition of the CSR Committee in different categories of Companies?
- What are the responsibilities of the Board in relation to the CSR provisions?
- What is the role of the Government in the approval and implementation of the CSR programmes/projects of a company?
- What is the role of the Government in monitoring compliance of CSR provisions by companies?

#### **C. CSR Expenditure**

- How is average net profit calculated for the purpose of section 135 of the Act? Whether 'profit before tax' or 'profit after tax' is used for such computation?
- Are administrative overheads applicable only for expenses incurred by the company, or can they be applied to expenses incurred by the implementing agency as well?
- Whether contribution to the corpus of an entity is an admissible CSR expenditure?

- Whether expenses related to transfer of capital asset as provided under rule 7(4) of Companies (CSR Policy) Rules, 2014 will qualify as admissible CSR expenditure?
- If a company cannot take the benefit of set off of excess amount spent in the previous financial year because of non-applicability of CSR provisions, will the excess amount lapse?
- Can CSR expenditure be incurred on activities beyond Schedule VII?
- Whether involvement of employees of a company in their CSR projects can be monetized and accounted for under the head of 'CSR expenditure'?

#### **D. CSR Activities**

- Whether the companies can undertake any CSR activity mentioned under Schedule VII of the Act for the exclusive benefit of their employees, workers and their family members?
- Are activities undertaken by companies outside India for the benefit of resident Indians, permitted as eligible CSR activity?
- How can companies with small CSR funds take up CSR activities in a project mode?

#### **E. CSR Implementation**

- Which entities are eligible to act as an implementing agency for undertaking CSR activities?
- What is the purpose of registration of the implementing agency on the MCA21 portal?
- Whether an ongoing project approved prior to April 01, 2021, may be implemented by an implementing agency not registered on the MCA21 portal?
- Can international organisations act as an implementing agency?

#### **F. Ongoing Project**

- What is the maximum permissible time period for any ongoing project? Can the time period of an ongoing project be extended beyond the permissible period?
- 
- What are the responsibilities of the Board in case ongoing projects are undertaken by the company?

#### **G. Treatment of Unspent CSR Amount**

- Where the company was unable to meet its CSR obligation, but transferred the said unspent amount to any fund included in Schedule VII of the Act, will the same be considered as compliance under section 135?
- Whether disbursement of funds by a company to the implementing agency for the implementation of projects will be considered as spend under section 135(5) and rules made there under?

## **H. CSR Enforcement**

- Will the penal proceedings apply even after the unspent amount has been transferred to the Unspent CSR Account or to the funds mentioned in Schedule VII of the Act?
- What are the penal provisions relating to noncompliance with provisions other than section 135(5) and 135(6) of the Act?

## **I. Impact Assessment:-**

- Which companies are required to undertake impact assessment?
- Whether companies are required to undertake impact assessment for FY 2020-21?
- When two or more companies collaborate for implementation of a CSR project, should the impact assessment carried out by one company be shared with other companies?
- Whether impact assessment reports of all the CSR projects shall be annexed to the annual report on CSR?

## **J. Others:-**

- Is it mandatory for foreign companies to give reports on CSR activities?
- What are the disclosure requirements on the website of the company?

Whether every CSR project irrespective of outlay and percentage to the total CSR expenditure of the company needs to be disclosed on the website of the respective company in terms of rule 9 of the Companies (CSR Policy) Rules, 2014?

## **2. Ministry of Corporate Affairs ('MCA') confirmed that 394 companies stand resolved with 36 per cent realisation of claims by financial creditors under Insolvency and Bankruptcy code, 2016 ('IBC'): - Press Release dated 10 August 2021**

As on June 30th, 2021 Rao Inderjit Singh said in a written reply in Rajya Sabha, 4,540 companies were admitted into Corporate Insolvency Resolution Process (CIRP) under Insolvency and Bankruptcy Code, 2016 (IBC). 394 companies were resolved wherein financial creditors including financial institutions, had total claims amounting to Rs 6.80 lakh crore, out of which Rs 2.45 lakh crore have been realised, which is 36 per cent of their claims. Further, Minister further stated that the insolvency resolution process of the corporate debtor (CD) is market driven and the outcome depends on market forces which varies from case to case and sector to sector. The value realised by creditors depends on available assets at the stage of admission of case under the Code.

### **3. Limited Liability Partnership (Amendment) Bill, 2021 passed in Rajya Sabha: -**

Recently, the central government introduced the Limited Liability Partnership (Amendment) Bill, 2021 in Rajya Sabha which was later passed on 04 August 2021. The amendment bill was introduced to encourage the start-up ecosystem and further boost ease of doing business.

Some of the key amendments introduced in the bill are as under: -

Introduction of the concept of “small, limited liability partnership” in line with the concept of “small company” under the Companies Act, 2013;

- i) To amend certain sections of the Act so as to convert offences into civil defaults and to convert the nature of punishment provided in the said sections from fines to monetary penalties;
- ii) To insert a new section 34A so as to empower the Central Government to prescribe the “Accounting Standards” or “Auditing Standards” for a class or classes of limited liability partnerships;
- iii) To amend section 39 of the Act relating to “compounding of offences” so as to authorise the Regional Director to compound any offence under this Act which is punishable with fine only;
- iv) To insert a new section 67A empowering the Central Government to establish or designate as many “Special Courts” as may be necessary for the purpose of providing speedy trial of offences under the Act;
- v) To amend section 72 of the Act so as to provide more clarity in the provisions when any person aggrieved by an order of “Tribunal” prefers an appeal to the “Appellate Tribunal”;
- vi) To insert a new section 76A so as to provide that the Central Government may appoint as many officers as Adjudicating Officers as it thinks necessary for the purpose of adjudicating penalties under the Act.

### **4. RBI issues draft regulation on Rationalisation of Overseas Investment Regulations under FEMA, 1999: - Press Release 2021-2022/661 dated 9 August 2021**

The Reserve bank of India (RBI) through a Press Release dated 9 August 2021 recently issued draft regulation on Rationalisation of Overseas Investment Regulations under FEMA, 1999. With a view to further liberalize the regulatory framework and also to promote ease of doing business, the RBI decided to rationalize the existing provisions governing overseas investment.

Overseas Investments and acquisition of immovable properties outside India by persons resident in India are presently governed by the provisions contained in Notification No. FEMA 120/RB-2004 dated July 07, 2004 (Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004) and Notification No. FEMA 7(R)/2015-RB dated January 21, 2016 (Foreign

Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations 2015) respectively.

It is proposed to liberalize these provisions and the comments/feedback on the draft rules/regulations are invited from all stakeholders. **They may be forwarded through e-mail by 23 August 2021, with the subject line “Feedback on draft Overseas Investment rules & regulations”.**

- The Draft Foreign Exchange Management (Non-debt Instruments – Overseas Investment) Rules, 2021 has outlined the restrictions on overseas investments. As per the draft, a person resident in India is prohibited from making Overseas Direct Investment (ODI) in a foreign entity engaged in real estate activity, gambling in any form, and offering financial products linked to Indian Rupee except for products offered in an IFSC. Also, the overseas investment will remain prohibited to a foreign entity located in countries/ jurisdictions that are not Financial Action Task Force (FATF) and International Organization of Securities Commissions (IOSCO) compliant country or any other country/ jurisdiction as may be prescribed by the central government, RBI has stated.
- Further the draft Foreign Exchange Management (Overseas Investment) Regulations, 2021 proposes that an Indian entity may lend or invest in any debt instruments issued by a foreign entity subject to such loans duly backed by a loan agreement and the rate of interest shall be charged on an arm’s length basis, among other things.

It may be recalled that in the last few years law enforcement agencies have come across some fugitive economic offenders who have made heavy investment in real estate and have also floated shell companies abroad.

## **5. The Ministry of Finance has recently issued the Foreign Exchange Management (Non-debt Instruments) (Second Amendment) Rules, 2021: - Notification No. S.O. 3411(E)**

The Ministry of Finance vide notification dated 19 August 2021 has issued the Foreign Exchange Management (Non-debt Instruments) (Second Amendment) Rules, 2021 further amending the Foreign Exchange Management (Non-debt Instruments) Rules, 2019. Through this amendment, applications for FDI in private banks having joint ventures or subsidiaries in the insurance sector may be addressed to the Reserve Bank of India for consideration in consultation with the Insurance Regulatory and Development Authority of India to ensure that the limit of foreign investment of 74 percent for the insurance sector is not breached. It is also provided that in an Indian Insurance Company having foreign investment, a majority of its directors, a majority of its Key Management Persons and at least one among the Chairperson of its Board, its Managing Director, and its Chief Executive Officer, shall be Resident Indian Citizens. The rules also require



such insurance companies to have 50 percent of their directors as independent directors unless the chairperson of its board is herself or himself one. In that case at least one-third of its board should have independent directors.

## **6. The Central Government notifies scheme of Remission of Duties and Taxes on Exported Products (RoDTEP) Rates and Guidelines to be effective from 01 January 2021: - Notification No.19/ 2015-20 dated 17 August 2021**

The Central Government on Tuesday notified Remission of Duties and Taxes on Exported Products- **(RoDTEP)** Scheme Guidelines and Rates. This scheme for zero-rating of exports will boost the country's exports and competitiveness in the global markets.

The scheme will be implemented by Customs through a simplified IT system while the rebate will be issued in the form of a transferable duty credit/electronic scrip which will be maintained in an electronic ledger by the Central Board of Indirect Taxes & Customs (CBIC).

### **Scheme's objective is to refund, currently un-refunded**

- i) Duties/ taxes/ levies, at the Central, State & local level, borne on the exported product, including prior stage cumulative indirect taxes on goods & services used in production of the exported product, and
- ii) Such indirect Duties/ taxes/ levies in respect of distribution of exported products.

The rebate under this scheme shall not be available in respect of duties and taxes already exempted or remitted or credited. However, under the scheme, various central and state duties, taxes, among other levies imposed on input products and others are refunded to exporters to boost exports.

Further, RoDTEP support will be available to eligible exporters at a notified rate as a percentage of Freight On board (FOB) value. Rebates on certain export products will also be subject to value cap per unit of the exported product. The rebate will be subject to the receipt of export proceeds within the time allowed under FEMA.

The CBIC will notify the necessary procedures and rules regarding the grant of the RoDTEP claim and implementation issues, including the period for application, manner of application, and other matters on an IT-enabled platform. The e-scrip would be used only to pay customs duty under the First Schedule to the Customs Tariff Act, 1975, i.e. the basic customs duty. There are certain categories of ineligible supplies (including exports by EOU's, FTZ's, EPZ's and SEZ's) as mentioned therein under the notification of which benefit under the scheme is not available. The scheme will take effect for exports w.e.f. 01 January 2021.

Detailed listing of eligible items is provided in the Appendix 4R of the Notification and the overall budget / outlay for the scheme would be finalised by the Ministry of Finance in consultation with the Department of Commerce.

## **7. DGFT revised the principles of restrictions and prohibitions for imports/exports in order to be in line with international agreements: - Notification No. 17/2015-2020 dated 10 August 2021**

As per the recent amendment introduced by DGFT, para 2.07 of Foreign Trade Policy, 2015-2020 has been amended which deals with the principles of Restrictions as follows:

DGFT may through a Notification, impose 'Prohibition' or 'Restriction': –

- On export of foodstuffs or other essential products for preventing or relieving critical shortages and on imports and exports necessary for the application of standards or regulations for the classification, grading or marketing of commodities in international trade.
- On imports of fisheries products, imported in any form, for enforcement of governmental measures to restrict production of the domestic product or for certain other purposes and on imports to safeguard the country's external financial position and to ensure a level of reserves.
- For preventing sudden increases in imports from causing serious injury to domestic producers or to relieve producers who have suffered such injury.
- For protection of public morals or to maintain public order and for protection of human, animal or plant life or health
- For ensuring essential quantities for the domestic processing industry etc.

## **8. Amendments made in Appendix 2K of the Foreign Trade Policy:- Public Notice No. 19/2015-2020, dated 30th July 2021**

DGFT vide Public Notice amended the scale of User Charges and Process for Deposit/ Refund of Application in Appendix 2K of the foreign Trade Policy. The application fee for various services have been classified such as Fees for Application for Importer Exporter Code /Id Card is Five Hundred Rupees, Application for Export License/ SCOMET items for restricted goods is One Thousand Rupees and for other categories as mentioned therein the public notice.

### **Mode of Deposit of Application Fee/Penalty/Any Other Fee:**

- i) The online payment options would include Internet Banking, debit cards, credit cards, UPI or any other payment methods as authorized from time to time.
- ii) The payment is to be made online through the e-Miscellaneous Payments System (eMPS) on the DGFT Website, where the direct online payment option is not available for both online/offline processes.

### **Exemption in respect of application fees also provided to specified applicants under Foreign Trade (Regulation) Rules,1993**

No fees shall be payable in respect of any applications made by such class or category of applicant as specified in foreign trade regulations rules.

**Refund of Application Fees: -**

Application fees shall be fees for processing of the application. Therefore, the fees once received will not be refunded except in following circumstances: -

- i) Where the fee has been deposited in excess of the specified amount.
- ii) Where the fee has been deposited but no application has been made
- iii) Where the fee has been deposited in error but the applicant is exempt from payment of fee.

**9. Ministry of Civil Aviation (MoCA) notifies liberalised Drone Rules, 2021: - Press Release dated 26 August 2021**

Recently, MoCA has notified the Drone Rules 2021 and made it easier and cheaper to operate drones. Earlier in March 2021, MoCA published the UAS Rules, 2021 which were perceived by academia, Startups, end-users and other stakeholders as being restrictive in nature as they involved considerable paperwork, required permissions for every drone flight and very few “free to fly” green zones were available. Considering the feedback, the Government has decided to repeal the UAS Rules, 2021 and replace the same with the liberalised Drone Rules, 2021

**Some of the key features of the liberalised Drone Rules 2021 are as follows:-**

- i) Number of forms reduced from 25 to 5.
- ii) Types of fee reduced from 72 to 4.
- iii) Quantum of fee reduced to nominal levels and delinked with size of drone. For instance, the fee for a remote pilot license fee has been reduced from Rs. 3000 (for large drone) to Rs. 100 for all categories of drones and is valid for 10 years
- iv) No remote pilot licence required for micro drones (for non-commercial use) and nano drones.
- v) No requirement for security clearance before issuance of any registration or licence
- vi) No restriction on foreign ownership in Indian drone companies.
- vii) Import of drones to be regulated by DGFT. 16. Requirement of import clearance from DGCA abolished.

## **10. International Financial Service Centre Authority ('IFSCA') invites applications from eligible entities to set up International Trade Financing Service Platform ('ITFS') at GIFT City:- Press Release dated 23rd August 2021**

The International Financial Services Centers Authority (IFSCA) has invited applications for providing trade financing services from eligible entities desirous of setting up and operating an International Trade Financing Services (ITFS) platform at GIFT City in Gandhinagar, Gujarat. Eligible entities are required to apply in the prescribed format along with supporting documents to IFSCA by 15 September 2021. The ITFS would be an electronic platform for facilitating the trade finance requirements of exporters and importers by providing access to multiple financiers. The platform is expected to be leveraged by exporters and importers across the world for availing trade finance services, thereby making GIFT IFSC a preferred location for international trade financing.

## **11. Piyush Goel, Union Minister of Commerce & Industry has recently said that Indian Start-up ecosystem has potential to make India the Innovation & Invention Hub of the World: - Press Release dated 16 August 2021**

Shri Piyush Goyal presided over a virtual meeting on 16th August 2021, of the “National Start-up Advisory Council”, wherein he said that the Indian start-up ecosystem has the potential to make India the innovation & invention hub in the world. The Indian Government wants to see new start-ups emerge across India especially in Tier-2 and Tier-3 cities. It will catalyse employment generation and strengthen forward as well as backward linkages. He further said that implementation of ideas of financing, mentorship, taxation, etc. will enable us to strengthen our start-up ecosystem further. It can be mentioned here that with nearly 60 unicorns, India has one of the largest start-ups in the entire world. India has achieved 21 unicorns in the last 6 months.

He asked DPIIT to now act as a ‘facilitator’ with open doors, open arms and open mind. He said that the Government is committed to cut red tape, improve ease of doing business and provide financial assistance through start-up seed funds. He said that, our vision expands beyond the traditional models of growth, our aim is to create a New India i.e. an Atma Nirbhar Bharat and Start-ups are the key to building an Atma Nirbhar Bharat with Courage Collaboration & Commitment and to achieve such an ambitious target we need a participative approach from all stakeholders. He said Industry must help create Start-up Superstars by identifying innovators & investing in talent.

## **12. Shri Piyush Goyal conferred the National Intellectual Property Awards 2020:- Press Release dated 17 August 2021**

The National Intellectual Property Awards 2020 held through the virtual meet on 17 August 2021 and Shri Piyush Goyal, Union Minister of Commerce & Industry attended the event along with other

senior officials in the government. During the meeting, the minister said India can be the "Innovation Powerhouse" of the world and Intellectual Property Rights actually translates into India's progress in real-time and extends Intellectual Property Right to India's Prosperity Right.

**The key achievements were as follows:**

- Granting of 28,391 patents in 2020-21
- 14.2 lakh trademark registrations in 4 years (2016-2020) in comparison to 11 lakh during 75 years which represents a very significant surge.
- India's ranking has further improved in the Global Innovation Index to 48th in 2020 as compared to 81st in 2015-16.

Further, to make the nation prosper more, the Office of Controller General of Patents, Designs and Trademarks (CGPD TM) would impart training & awareness to 10 Lakh students in the mission of Azadi ka Amrit Mahotsav during the period of 15 August 2021 to 15 August 2022.

**13. Supreme Court Rules in Favor Of Amazon in Reliance–Future Retail Case, Upholds Singapore Emergency Arbitrator's Award:- Supreme Court Judgement Dated 6 August 2021**

In a setback to the proposed Rs 24,713-crore Future-Reliance deal, the Supreme Court on Friday held that Singapore's Emergency Arbitrator (EA) award restraining Future Retail Ltd (FRL) from going ahead with its merger with Reliance Retail is valid and enforceable and allowed the plea of US e-commerce giant Amazon, which had challenged the said deal.

A bench of Justices R F Nariman and B R Gavai quashed the order passed by a division bench of the Delhi high court, which virtually allowed Kishore Biyani's Future group to go ahead with the deal by staying the single bench order that had directed the group to maintain status quo in view of Singapore's EA award.

The Supreme Court bench also ruled that the order passed by the single bench of the High Court for the enforcement of the Singapore arbitration award was not appealable and could not have been challenged. The bench framed two questions arising out of the corporate battle for adjudication- first whether an award of Emergency Arbitrator under the Arbitration Rules of the Singapore International Arbitration Centre can be deemed to be an order under the Arbitration Act, and second, whether an order passed for enforcement of the award by a single judge of the High Court can be appealed. The Supreme Court passed verdict in favour of Amazon on both counts.

The Supreme Court answered the first question by declaring that full party autonomy is given by the Arbitration Act to have a dispute decided in accordance with institutional rules which can include Emergency Arbitrators delivering interim orders, described as 'awards. Such orders are an

important step in aid of decongesting the civil courts and affording expeditious interim relief to the parties.

#### **14. Cabinet approves Memorandum of Understanding between Institute of Chartered Accountants of India (ICAI) and Institute of Professional Accountants of Russia (IPAR):- Press Release dated 25 August 2021**

The Union Cabinet, chaired by Hon'ble Prime Minister Narendra Modi, has approved the signing of Memorandum of Understanding (MoU) between Institute of Chartered Accountants of India (ICAI) and Institute of Professional Accountants of Russia (IPAR). Approval for the signing of a Memorandum of Understanding between both the Institutes would aid mutual cooperation in the areas of professional accounting training, technical research, professional ethics, advancement of accounting knowledge, and professional & intellectual development.

The proposed Memorandum aims to encourage bilateral collaboration through seminars, conferences, and collaborative activities that benefit both parties, and give updates on the development of the accounting profession in India and Russia in order to promote the profession globally.

#### **15. The Union government is considering a “uniform approach” to regulating online gambling and real money gaming: - Letter by IT Minister to the CM of Andhra Pradesh**

Recently, Andhra Pradesh CM through a letter requested the Central Government to ban online gambling sites due to the concerns of addiction and suicide. As of now, in the area of regulation of online gaming different states laid different legislation. While states have been changing their local gambling laws to regulate online gambling and sites, the betting and gambling industry has been obtaining court orders (like the one issued by Madras High Court) that have made it difficult for states to restrict gambling and betting activities that require some skill. Because of this, now the government is considering a centralised approach to regulating gambling and betting sites.

The union government is considering a “uniform approach” to regulating online gambling and real money gaming, according to a letter by the Minister of Electronics & Information Technology. In the letter, written to Andhra Pradesh Chief Minister YS Jagan Mohan Reddy, IT Minister Ashwini Vaishnav said that “The subject of “betting and gambling” falls under the jurisdiction of the State Governments under Entries 34 and 62 of List II of the Seventh Schedule of the Constitution of India,” but that “the Government is cognizant of the issues arising because of different legislations in different States in the area of regulation of online gaming and the matter is under consideration to have a uniform approach on this matter.”

**Contact Us: -**

Rahul Garg  
Partner  
Corporate Tax & Regulatory

[garg.rahul@asire.in](mailto:garg.rahul@asire.in)

+91 9891091307

Anuj Kakkar  
Partner  
Indirect Tax & EXIM

[kakkar.anuj@asire.in](mailto:kakkar.anuj@asire.in)

+91 9820315318

Tax | Regulatory | M&A

[www.asire.in](http://www.asire.in)

**Office Addresses: -**

**Indian Offices**

**Gurgaon**

529, Fifth Floor, Tower  
B-4, Spaze i-Tech Park,  
Sector-49 Sohna Road,  
Gurgaon 122018,  
Haryana

**Delhi**

R-89, Greater Kailash-1  
New Delhi-110048

**Bangalore**

FF1, Nasco Olives  
Nagayanapalya  
Maruthi Sevenagar-560033

**Overseas Offices:**

**United Kingdom**

The Minister Building  
21 Mincing Lane, London  
EC3R 7AG