Tax & Regulatory Updates – Key developments of August 2022

A. Direct Taxation:-

1. Government notifies conditions for COVID-19 related tax exemptions:- *CBDT Notifications No. 90, 91 & 92/2022 dated 5 August 2022*

On 5 August 2022, the CBDT issued notifications prescribing conditions for claiming exemption in respect of a perquisite by way of reimbursement by the employer for any expenditure for treatment of any illness related to Covid-19. CBDT has also issued a notification outlining the conditions for tax exemption under section 56(2)(x) in respect of amounts received from unrelated persons for treatment of Covid-related illnesses as well as amounts received from an employer or any other person by the family of a deceased person who died as a result of Covid -19 illness. These are discussed further below:

Notification No.90/2022 -

The Finance Act, 2022 had inserted a new sub-clause (c) under clause (ii) of the first proviso to section 17(2) to provide that any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family in respect of any illness relating to Covid-19, shall not be taxable as perquisite in the hands of the employee. The Central Board of Direct Taxes (CBDT) has notifised conditions that shall be fulfilled by the employee seeking the benefit of this sub-clause. This notification shall be deemed to have come into force from Assessment Year 2020-21.

Further, to claim the benefit, an employee is required to submit the following notified documents to the employer:

a) The COVID-19 positive report of the employee or family member, or medical report if clinically determined to be COVID-19 positive through investigations, in a hospital or an in-patient facility by a treating physician of a person so admitted;

b) All necessary documents of medical diagnosis or treatment of the employee or his family member for COVID-19 or illness related to COVID-19 suffered within six months from the date of being determined as COVID-19 positive; and

c) A certification in respect of all expenditure incurred on the treatment of COVID-19 or illness related to COVID-19 of the employee or of any member of his family.

Notification No.91 & 92/2022 -

Section 56(2)(x) states, among others, that if a person gets a sum of money without consideration and the aggregate value of such sum exceeds Rs. 50,000, the entire sum is liable to tax under the head income from other sources. However, certain exceptions have been provided in this respect under proviso to said section. The Finance Act, 2022 had inserted two new clauses, i.e., Clause (XII) and Clause (XIII) under the said proviso,

Clause (XII) provides that any sum of money received by an individual, from any person, in respect of any expenditure actually incurred by him on his medical treatment or treatment of any member of his family in respect of any illness related to COVID-19, shall not be considered as income of such person.

Clause (XIII) provides that where any sum of money received by a family member of a person who died due to COVID-19, the money so received shall not be considered as income of the family member where such money is received from the employer of the deceased person. If the money is received from any other person, the exemption amount shall be limited to Rs. 10 lakh in aggregate.

However, the benefit of both the clauses shall be allowed subject to certain conditions as may be notified by the Government on this behalf. The board has notified the following conditions in this regard:

1. For the purpose of Clause (XII)

An individual shall be required to keep a record of the following document:

a) The COVID-19 positive report of the individual or his family member, or medical report if clinically determined to be COVID-19 positive through investigations in a hospital or an in-patient facility by a treating physician for a person so admitted; and

b) All necessary documents of medical diagnosis or treatment of the individual or family member due to COVID-19 or illness related to COVID-19 suffered within six months from the date of being determined as a COVID-19 positive.

Such an individual shall be required to furnish a statement in Form No. 1 in respect of any amount received for any expenditure actually incurred by him for medical treatment or treatment of any member of his family for any illness related to COVID-19 and the statement in Form no. 1 shall be furnished to the Income-tax Dept. within 9 months from the end of such a financial year or 31.12.2022, whichever is later.

2. For the purpose of Clause (XIII)

To claim the benefit of exemption, the death of the individual should be within six months from the date of testing positive or from the date of being clinically determined as a COVID-19 case, for which any sum of money has been received by the member of the family.

The family member of the individual shall keep a record of the following document:

a) COVID-19 positive report of the individual, or medical report if clinically determined to be COVID-19 positive through investigations in a hospital or an inpatient facility by a treating physician;

b) A medical report or death certificate issued by a medical practitioner or a Government civil registration office, in which it is stated that the death of the person is related to coronavirus disease (COVID-19).

Further, the family member of the individual shall be required to furnish a statement in Form No. A in respect of any sum of money received on death of such an individual and Form No. A shall be furnished to the Assessing Officer within 9 months from the end of such Financial Year or 31-12-2022 whichever is later.

2. CBDT reduces the time limit to verify ITR from 120 days to 30 days for returns filed on or after 01-08-2022:- *CBDT Notification no. 5 of 2022, dated 29 July 2022*

The CBDT vide notification dated 29 July 2022 has decided to reduce the time limit for e-verification or submission of ITR-V in respect of any electronic furnishing of return of income. The CBDT has notified that the time limit for e-verification or submission of ITR-V shall now be 30 days from the date of filing of return of income. Earlier taxpayers were allowed 120 days to verify e-filed returns. **The revised time limit of 30 days will be applicable for ITRs filed on or after 01-08-2022 and the earlier time limit of 120 days would continue to apply if the return of income is electronically filed before 01-08-2022.**

The CBDT has also clarified that:

(a) Where ITR is e-verified/ITR-V submitted within 30 days from the date of filing of the electronic return, the date of filing of return of income shall be considered as date of furnishing of return of income.

(b) Where ITR is e-verified/ITR-V submitted beyond the time limit of 30 days from the date of filing of the electronic return, *the date of e-verification/ITR-V submission shall be considered as the date of furnishing of return of income and accordingly, all consequences of late filing of return shall follow*.

3. Fresh SOPs issued to address taxpayers' conflicts for Faceless assessment:- *F.No. NaFac/Delhi/CIT-1/2022-23/112/92 dated 03 August 2022*

The National Faceless Assessment Centre has issued Standard Operating Procedures (SOPs) for the Assessment Unit, Verification Unit, Technical Unit, and Review Unit under Section 144B of the Income Tax Act's Faceless Assessment provision. Under the new SOP, an Assessing Officer (AO) will propose the computation of income and loss after considering all aspects, i.e., differences and variations in the tax addition made by the department and responses submitted by the assessee before passing the final order in the case, and will prepare an income and loss determination proposal after considering the taxpayers' replies to a show-cause notice and a personal hearing in each case. The faceless unit has also suggested specific timelines for each step of the process.

The department will send a centralized communication to taxpayers in case of non-responsiveness to the notices and suggest key conditions for verifying the assessment case. It should be done if the digital footprint of a "third person" (other than the assessee) is not available. The AO may seek verification, i.e., cross-verification of evidence; examination of books; recording of a statement; examining witnesses; and can seek a special audit in a specific case, such as the nature and complexity of accounts; volume of accounts; doubts about transactions; and the specialised nature of business activity.

The final assessment order must contain specific information, such as if the assessee seeks video conferencing without filing a complete or any submission against show cause, inferences must be made on the basis of which tax variations are being made, among others. As the faceless scheme evolves, it will require continuous reworking to make it viable for taxpayers and to eliminate corruption.

4. ITAT initiates pilot project for intimating filing, defects, hearing & adjournments by email:- *ITAT Notice dated 29 July 2022*

ITAT launches a pilot project at its Delhi, Ahmedabad, Lucknow, and Kolkata benches to send emails to appellants on acknowledgement of filing of appeal, memorandum of defects, and hearing and adjournment notices to appellants, respondents, and departmental representatives, in addition to physical post. The project would be extended to other benches too. Thus, ITAT recommends that stakeholders include valid and proper email addresses and phone numbers in their Memorandum of Appeal or Cross Objection, and it also demands that CIT-DRs/DRs of all benches include standing email addresses.

Further, ITAT notifies a proforma for placing a request for updating the email address and mobile number which is to be used by the parties who filed the appeal or cross objections prior to the amendment of Forms 36/36A by Notification No. 72 dt. Oct 23, 2018 and which are pending before ITAT. For the appeals and cross objections filed after the amendment, the parties may revise the

Forms 36/36A to change the mobile numbers or email addresses. Respondents who desire to disclose or change their mobile number or email address must utilise the proforma provided by ITAT in both situations, regardless of whether the appeal or cross objection relates to the time before or after the amendment.

5. CBDT amends Rule 21AK to include offshore & over-the-counter derivatives for Section 10(4E) exemption:- *Notification no. 87/2022 dated 01.08.2022*

The Finance Act, 2022 has amended section 10(4E) to provide exemption for income arising from the transfer of offshore derivative instruments/over-the-counter derivatives to a non-resident. Now, by issuing notification, the CBDT has incorporated said amendments under Rule 21AK which provides conditions for the purpose of section 10(4E) exemption.

6. CBDT's FT&TR Division releases the International Tax Bulletin for the month of June 2022:- *International Tax Bulletin*

The Bulletin covers a recent study commissioned by South Centre and the Coalition for Dialogue on Africa on comparative revenue effects of the Amount A, Pillar One and UN's Article 12B taxation regimes, the study demonstrates that the revenue effects largely depend on:

(a) design details of the Article 12B regime,

(b) whether the country hosts headquarters of MNEs that may be in scope of Amount A or Article 12B taxation, and

(c) what relief from double taxation, if any, the country will grant to domestic taxpayers subject to taxation under either Amount A or Article 12B regimes.

The Bulletin touches upon the European Parliament Committee's recommendation on taxation of crypto assets and use of blockchain technology to fight tax evasion, the committee calls for fair, transparent and effective taxation and also a clear and broadly accepted definition of crypto assets.

The Bulletin also highlights that Hungary has withdrawn its consent to a European Commission's proposal for a directive on ensuring global minimum level of taxation for multinational groups in the EU, Spain's plans for windfall taxes on banking and energy sectors, Finland's action against companies facilitating tax avoidance scheme and Australia's clarification on crypto currency not being a foreign currency and also recent tax reforms in Chile.

7. Government notifies Bullion Depository Receipts for Sec.47(viiab) exemption:- *Notification No. 89/2022 dated 03 August 2022*

The Central Government vide its notification dated 03 August 2022 notified the 'Bullion Depository Receipt with Underlying Bullion' as security for the purpose of exemption under Section 47(viiab), which provides for an exemption relating to any transfer of a capital asset made by a non-resident on a recognised stock exchange located in any International Financial Services Centre (IFSC) and where the consideration for such transaction is paid or payable in foreign currency. Bullion Depository Receipt with underlying bullion describes as such a bullion depository receipt listed on the International Bullion Exchange (IBE) operating inside the IFSC and is licensed by the Authority under the International Financial Services Centres Authority Act, 2019.

8. Revenue department told to focus on tax arrears:- *News report*

As per the **Report on Standing Committee on Finance**, tabled before the Parliament, it said that the revenue department seems to be "Caught up in the vicious cycle to tax arrears" are outstanding, i.e near about;
INR 18.68 Lakh Crore in DIRECT TAX; and
INR 2.95 Lakh Crore in INDIRECT TAX.
A parliamentary Panel asked the Revenue Department to formulate an action plan and focus for the recovery of the tax arrears which is approx. INR 21 Lakh Crore in total.

9. Books of account and records to be maintained by Charitable Entities notified:- *CBDT Notification No. 94/2022, dated August 10, 2022*

The CBDT issued a notification and introduced a new rule (Rule 17AA) on August 10th, according to which all charitable trusts, institutions, universities and other educational trusts, and medical institutions must keep a detailed set of documents and maintain books of accounts (including cash books, ledgers, and journals), original bills of payment, PAN cards, Aadhar cards, and addresses of voluntary donors and trustees, along with details of loans taken and investments made by them.

As per the notification, trusts and institutions are required to keep track of all projects undertaken, voluntary donations received, funds transferred to others, income from assets and investments, and all purchases made by the trust. It also stated that the assessee's record of properties will require information such as the nature and address of the properties, the cost of acquisition of the asset, registration documents of the asset, documents of transfer of such properties, and the net consideration used in acquiring the new capital asset. In the event of movable property, information on the asset's type and cost of purchase will be required.

This move came two days after the Comptroller and Auditor General (CAG) highlighted serious lapses in tax audits of charitable institutions in an audit report in which it highlighted that certain trusts or institutions are taking undue advantage of the permissible accumulation of 15% of the current year's income and then transferring the rest of the income to other trusts and suggested that the tax department should consider granting registration to educational trusts or institutions on the condition that separate accounts be maintained for educational and non-educational activities. As a result, it requested that the I-T Department change current legislation to prohibit the misapplication of tax exemptions given to charitable trusts, including educational trusts.

In addition, the rules permit the retention of the books of accounts and other records in written, electronic, or digital form, as well as printouts of data stored in either format, as well as on any other kind of electromagnetic data storage device. For better tax scrutiny, the CBDT also mandated that all charitable trusts should maintain records for 10 years following the assessment year.

10. CAG flags data non-sharing between income tax department, MHA to track charitable trusts' foreign receipts:- *News Report*

In order to keep track of Foreign contributions received and their application for the purposes for which they have been received, the income tax department should develop a data exchange mechanism with the Ministry of Home Affairs, according to a 2018 recommendation made by the Public Accounts Committee (PAC) of Parliament. The committee also recommended developing a mechanism to monitor the application of foreign contributions received and issuing a clear set of guidelines in this regard to all Assessing Officers.

However, CAG Audit observed that the Income tax department has still not formulated a data sharing mechanism with the MHA to keep track of Foreign Contributions (FCs) received and their

utilisation for the declared purpose. The Income Tax Act provides tax exemptions to various charitable trusts and institutions and the money received as donations by such entities is required to be applied for the objects for which these trusts or institutions have been set up.

Analysis of data of 6.89 lakh cases pertaining to ITRs for AY 2014-15 to AY 2017-18 revealed that the I-T department scrutinized only 0.25 lakh (3.7 per cent) of the total cases while 6.30 lakh (91.4 per cent) cases were processed under summary manner in an automated environment. However, the audit noted certain deficiencies in the ITD system, which led to incorrect claims of exemption along with the possibility of revenue leakage.

Examination of data of 6.89 lakh cases provided by the Pr.DGIT (Systems) revealed that exemption was allowed in 0.21 lakh cases although registration under Section 12AA of the I-T Act was not available. In the case of foreign contribution, Audit noticed that in 347 cases, the foreign contribution was received by the assessee though the registration details under FCRA were not available. Thus, field validations in the above-related field were not available in the ITR Form-7.

The audit observed that there is no clarity on allowing deduction under Section 80G for donations out of CSR funds. CAG said that as a significant amount is spent by the companies toward CSR activities through the Trusts claiming exemptions under Section 80G, it requires urgent attention of the Department to bring clarity to the issue to ensure that the provisions are interpreted uniformly by the Assessing Officers and to minimise the possibility of litigation.

https://economictimes.indiatimes.com/news/india/cag-flags-data-non-sharing-between-income-tax-department-mha-to-track-charitable-trusts-foreign-receipts/articleshow/93451139.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

11. CBDT issues guidelines for pre-notice procedure under new reassessment regime:- *CBDT Guidelines*

The Central Board of Direct Tax (CBDT) has issued guidelines for initiating reassessment proceedings under the new regime. The Assessing Officer (AO) shall follow the procedure laid down under Section 148A except in categories of cases that are specified in the proviso to Section 148A and shall undertake enquiries on any information received or available with him, suggesting escapement of income, only with prior approval of the specified authority.

The notice issued pursuant to Section 148A(b) shall give the assessee 07 to 30 days to respond, and the notice shall include the details of the information or enquiry conducted to conclude income escapement. The AO shall enclose all relevant information and supporting documents when available; when information is received from the investigation wing, the letter or brief summary, as well as the relevant portion of the report, information about the investigation; and any judicial order on which reliance is placed.

The guidelines also specify the format for obtaining prior approval from a specific authority before passing an order u/s 148A(d), as well as the format of such an order. The section 148A(d) order shall include, among other things, the assessee's details, the timeline of proceedings, a brief of all information/evidence on which a prima facie opinion of income escapement has been reached, a brief of all explanation/contention raised by the assessee, rebuttal of the assessee's reply, whether such reply is acceptable or not, and how the notice does not exceed the statutory limitation u/s 149.

Once an order is passed u/s 148A(d), no further approval is required for issuance of notice under Section 148 w.e.f. 01 April 2022 except for the cases covered by SC ruling in Ashish Agrawal and subsequent CBDT Instruction. The AO should ensure that the instructions/ guidelines/ SOPs specified therein are duly adhered to, further confidential information emanating from FIU, foreign

jurisdictions, LEA shall be governed by respective guidelines and shall endeavor that at the stage of compliance of provision u/s 148A issuance of notice u/s148, all issues even if spread over multiple years are taken up simultaneously and disposed of all such pending matters relating to orders u/s 148A(d) / issuance of notice u/s 148 on continuous basis rather than close to time barring date.

CBDT issues Guidelines for pre-notice procedure under new reassessment regime | Taxsutra

12. DGIT (L&R) reiterates the importance of determining the merit of Revenue Audit Objections cases before proposing SLPs:- *F. No. L/199/2022/1640 dated 8 August 2022*

Officers in the field formation are interpreting the circular to mean that SLP should be filed in all cases of adverse judgments involving Revenue Audit Objection. It has been observed that CCITs are proposing SLPs in many such cases of adverse Court judgments without discussing the judgement on merits. Therefore, the DGIT (Legal & Research) clarified the intent of the CBDT's Circular dated 11 July 2018 by letter dated 8 August 2022 and reiterates that SLP proposals against adverse High Court judgments may be sent, "only if," the case can be contested on merits and not just because of the involvement of an audit objection.

13. Commerce ministry to push for direct tax sops under DESH Bill:- *News Report*

The commerce ministry will flag the merits of its proposal to extend direct tax concessions to units willing to set up shop in the special economic zones (SEZs) under a new regime that would attract fresh investments and that the net gains would outweigh any potential losses, amid fears that the finance ministry could oppose such a plan on the grounds of loss of potential revenue.

The new draft Bill on the Development of Enterprise and Services Hubs (DESH), which will replace the SEZ Act, proposes to freeze the corporation tax at a concessional rate of 15% for all greenfield and certain brownfield units in such "development hubs" until 2032. Also, the Ministry would seek deferral of import duties etc. The new Bill was necessitated to revive interest in these industrial clusters that lost their charm after the government set a sunset date to start operations to be eligible for a phased income-tax holiday for 15 years.

Commerce ministry to push for direct tax sops under DESH Bill | The Financial Express

https://cfo.economictimes.indiatimes.com/news/commerce-ministry-suggests-host-of-incentives-to-revamp sezs/93566226?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2022-08-15&dt=2022-08-15&em=Z2FyZy5yYWh1bEBhc2lyZS5pbg==

14. TCS provisions u/s 206C(1G) don't apply to Non-resident buyer who doesn't have PE in India:- *Notification No. 99/2022, dated 17-08-2022*

Section 206C(1G) provides for the collection of tax at source (TCS) from remittance under the Liberalized Remittance Scheme (LRS) and the sale of an overseas tour package. As per this provision, tax is required to be collected by:

- An authorized dealer who receives an amount for remittance out of India under the Liberalised Remittance Scheme of the Reserve Bank of India; and

- Seller of an overseas tour program package, who receives any amount from a person who purchases such a package.

The Central Government has now notified that the provisions of Section 206C(1G) shall not apply to a buyer who is a non-resident in terms of Section 6 and who does not have a permanent establishment in India. This Notification supersedes earlier Notification dated 30 March 2022.

15. Time-limit for furnishing Form 67 for claiming FTC extended:- *CBDT Notification No. 100/2022/F. No. 370142/35/2022-TPL, dated August 18th, 2022*

The CBDT amended Rule 128(9) and extended the deadline for submitting Form No. 67 until the end of the AY in which the foreign-sourced income is offered for tax or is assessed for tax in India, provided that the return for such AY was submitted within the deadline stipulated under Section 139(1)/139(4). Furthermore, when an updated return is filed in accordance with Section 139(8A), Form No. 67 must be submitted on or before the date the updated return is submitted, to the extent that it relates to the income included therein. The revised rule will take effect on April 1, 2022, and it will be applicable to all claims of foreign tax credit submitted during FY 2022–2023.

16. CBDT notifies Form 29D for claiming tax refund under section 239A:- *Notification No. 98/2022/F. No. 370142/33/2022-TPL, dated 17th August 2022*

The Finance Act 2022 inserted a new section 239A in the Income-tax Act which provides that a taxpayer may file an application within 30 days from the date of payment of such tax before the Assessing Officer to get the refund of tax deducted where under an agreement or other arrangement, in writing, the tax deductible on any income, other than interest, under section 195 is to be borne by the person by whom the income is payable (typically the case of Gross up).

The CBDT has now inserted a new Rule 40G in the Income-tax Rules, 1962 prescribing the manner to get the refund of tax in accordance with section 239A. Rule 40G provides that a claim for refund under section 239A shall be made in Form No. 29D. The application in Form 29D shall be accompanied by a copy of an agreement or other arrangement referred to in section 239A alongwith the rationale for non-applicability of withholding taxes.

17. CBDT amends Rules for Charitable Entities opting to set apart funds for applying in future:- *Notification No. 96/2022 dated 17 August 2022*

The CBDT has amended the Rule 17 and Form 10 by providing accumulation of income by entity approved u/s 10(23C) which comes into effect from 01 April 2023. The Rule provides that the option to be exercised u/s 11(1) in respect of income of any previous year relevant to the assessment year beginning on or after 01 April 2016 shall be in Form No. 9A and further provides that the statement in Form 10 which shall be furnished to the Assessing Officer or the prescribed authority u/s 10(23C). The form shall be furnished before the expiry of the time limit to file the original return of income u/s 139(1). The CBDT has also amended Form 10 incorporating the necessary changes.

18. Finance Ministry plans to review exemption free tax regime to make it more attractive:- *News Report*

The finance ministry is proposing to soon review the exemption-free new tax regime with a view to making it more attractive for individual income taxpayers. Eventually, the government is aiming to establish a system where there are no exemptions and the complex old tax regime with exemptions and deductions is terminated. The Union Budget 2020-21 introduced a new tax regime where taxpayers were given the option to choose between the old regime with various deductions and

exemptions and the new tax regime that offered lower tax rates without exemptions and deductions. The intention behind the move was to provide significant relief to the individual taxpayers and to simplify the income-tax law and as per the sources.

https://www.business-standard.com/article/economy-policy/finmin-plans-to-review-exemption-free-tax-regime-to-make-it-more-attractive-122081400420_1.html

19. Supreme Court adjourned hearing on MFN Clause controversy to October 19, 2022:- *Order dated 23 August 2022*

Supreme Court adjourns hearing in Revenue's SLPs against Delhi HC rulings in cases of **Nestle SA** and **Concentrix Services & Optum Global** to **October 19, 2022**, wherein Delhi HC allowed the benefit of MFN (Most Favored Nation) Clause under India's DTAAs with Switzerland and the Netherlands, respectively, to allow TDS on dividend at lower rate of 5% as provided for in India's DTAAs with Slovenia, Lithuania, and Colombia. The Indian government has taken a position that the said benefit is not automatic and a separate notification is required by the Indian government to grant that benefit under the respective treaties to enable the protocol of the said DTAA's. The SLPs are before the Division Bench of the Supreme Court comprising Justice S. Ravindra Bhat and Justice Sudhanshu Dhulia.

20. Punjab & Haryana High Court entertains challenge against CBDT Instruction on reassessment and grants stay on proceedings:- *P&H HC Order dated 23 August 2022*

Punjab and Haryana HC issues notice on writ petition challenging reassessment proceedings under new regime for AY 2013-14 as time barred and wholly without jurisdiction. Assessee (Individual) was issued reassessment notice originally on April 13, 2021 and thereafter on July 17, 2022 by treating the earlier notice as notice issued under Section 148A(b) whereas the order under Section 148A(d) was passed on July 28, 2022. In pursuant to the same, the Assessee preferred the writ petition before HC. HC notes Assessee's submission that the proceedings are purportedly initiated on the basis of CBDT Instruction dated May 11, 2022 which is "directly in the teeth" of SC ruling in case of Ashish Agrawal and thus, the CBDT Instruction is also under challenge in the present writ petition. HC also notes Assessee's submission that in terms of the proviso to Section 149 as amended w.e.f. April 1, 2021, the notice could not be issued beyond 6 years from the end of AY 2013-2014. HC grants stay on the proceedings until further orders and lists the matter for hearing on December 13, 2022.

21. Calcutta High Court stays reassessment proceedings for AY 2014-15 initiated basis CBDT Instruction:- *Calcutta HC Order dated 25 August 2022*

Calcutta HC entertains writ petition of the assessee challenging the reassessment proceedings under new regime for AY 2014-15 as time barred. Assessee (Company), subjected to reassessment proceedings beyond the period of 6 years and the Revenue justified that the proceedings are initiated based on CBDT Instruction dated May 11, 2022 in its order passed under Section 148A(d). HC observes that admittedly the proceedings are barred by limitation both under the old and new regime as the notice was issued beyond 6 years and opines that the Assessee has been able to make out a prima facie case for an interim order by raising the issue of jurisdiction. HC granted stay on the proceedings until disposal of writ petition and provides time for completion of pleadings and lists the matter for hearing in the month of November 2022.

22. Guidance Note on Tax Audit Report:- *ICAI Guidance Note*

Sec 44AB of the Income Tax Act contains provisions pertaining to the tax audit under the Income Tax Audit. A tax audit is an examination of a taxpayer's books of account and other relevant record. The examination is conducted to ensure that during the tax audit, the person responsible for issuing the tax audit report is expected to verify the financial statements based on which income computation is based are true and fair and particulars furnished in form No. 3CD are true and correct. A tax audit is a measure which is initiated to curb incorrect tax practices. Tax audit is allowed to be carried out only by the practicing-chartered accountants.

This being an onerous responsibility, there was a need for offering guidance on conduct of audit and issuing of tax audit report. To address this requirement the Direct Taxes Committee of the ICAI issued "Guidance Note on Tax Audit u/s 44AB of the Income-tax Act, 1961". The Guidance Note provides guidance to members for conduct of tax audit, making of report and related matters. This publication was last revised in the year 2014. Thereafter, in the year 2018, a publication titled 'Implementation Guide w.r.t. Notification No. 33/2018 dated 20.07.2018 effective from 20.08.2018' was released by the DTC of ICAI. There have been substantial changes in provisions of law and clauses included in the particulars to be furnished in the Form No. 3CD since the last publication.

The Committee recognising this fact decided to bring out this Eighth edition of the Guidance Note. It has been decided to update and incorporate all the changes in the desired clauses which has been taken place in the tax laws, notifications, circulars etc. after due deliberations amongst eminent experts and suggestions received from various stakeholders.

https://www.thehindubusinessline.com/economy/ca-institute-issues-revised-guidance-note-on-tax-audit/article65794425.ece

23. CBDT reviewing its 'faceless' tax assessment scheme:- *News Report*

The faceless system was introduced in 2019 in order to reduce corruption, automate the system and do away with random individual discretion by tax officials. However, many taxpayers have complained about aggressive tax demands and about being denied a hearing to address such problems. According to a person with knowledge of the conversations inside the government, the CBDT is reviewing the operation of its faceless tax assessment systems to ensure field officers do not make aggressive tax demands and permit natural justice to take its course. The review comes in response to an Allahabad High Court decision dated 11 August that provided guidelines for setting up safeguards in response to complaints about the system's purported overreliance on data rather than human connection.

https://www.hindustantimes.com/business/cbdt-reviewing-its-faceless-tax-assessment-scheme-report-101661245716502.html

24. CBDT amends Rule 17CB to replace 'trust or institution' by 'specified person':- *Notification No. 101/2022 dated 22 August 2022*

The Central Board of Direct Taxes (CBDT) has amended the Rule 17CB of Income-tax Rules, 1962 which provides the method of valuation of accreted income for the purposes of section 115TD. As per the amendment the words 'trust or institution' shall be read as 'specified person' wherever they occur in the Rule. A specified person shall have the same meaning as assigned to it in clause (iia) of the Explanation to section 115TD which states that any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv), (v), (vi) and (via) of Section 10(23C); and a trust or institution registered under Sections 12AA and 12AB.

25. Centre mulls cutting tax rates in new income tax regime:- *News Report*

With an aim to make it more attractive for individual income taxpayers, the Centre is working to improve the two-year-old exceptions-free income tax regime by providing lower tax rates after the new system failed to gain traction. Further, the finance ministry is likely to terminate the old personal income tax regime, which offers several deductions and benefits. Experts are of the view that the government's endeavour is to simplify the income tax law and cut litigation, which is seen as complex amid multiple deductions and benefits available to taxpayers.

The Union Budget 2020–21 unveiled a new tax regime, and individual taxpayers were offered the choice to opt for either the old regime with several deductions and exemptions or the new tax regime that gave lower tax rates without exemptions and deductions. Also, tax experts believe that if the rates come down in the new tax regime then it would make the new regime more attractive. In September 2019, the finance ministry rolled out a similar tax regime for corporate taxpayers by considerably lowering rates and removing exemptions.

https://www.livemint.com/politics/policy/govt-weighs-cutting-tax-rates-in-new-i-t-regime-11661366691712.html

26. CBDT urges gamers to pay taxes under new scheme:- *News Report*

Following the discovery of massive tax evasion in the thriving online gaming industry, the tax department wants the winners of such games to use the updated income tax returns (ITR-U) scheme to disclose their incomes and pay the appropriate taxes and interest. According to Nitin Gupta, chairman of the CBDT, players associated with just one gaming portal have netted as much as Rs 58,000 crore in gross winnings in the three years through FY22.

Under the scheme, these individuals will have the option of paying tax at a marginal rate of 30%, along with interest, without any rebates or deductions, and an additional 25-50% on both the tax and interest. If this window is not used, the individuals may face prosecution as well as severe penalties. Further, the CBDT was in the process of issuing clarification on the applicability of the recently introduced Section 194R of the Income Tax Act, which imposes a tax deducted at source (TDS) liability on banks for loans waived through one-time settlements or other schemes, as well as incentives extended to large business customers via credit cards. Also, the tax department is also examining the Supreme Court ruling that held that the 2016 amendment to the Benami Transactions Law cannot be applied retrospectively.

https://www.financialexpress.com/money/cbdt-urges-gamers-to-pay-taxes-under-new-scheme/2644529/

B. CROSS BORDER:-

1. Korea to scrutinize tax evasion via virtual assets:- *News Report*

Korean authorities seized more than WON 53 billion ($47 million) in Bitcoin, Ethereum, and other crypto currencies from 12,000 people accused of tax evasion. Officials called it the largest tax seizure relating to crypto currencies in Korean history. More and more people are reportedly seeking to dodge taxes by investing in virtual assets after relocating their wealth to tax havens, including some countries in the Caribbean Sea or Southeast Asia. The tax agency also highlighted a few cases where

crypto assets were used in money laundering or tax evasion and also conducted a full-fledged inquiry into businesses which are allegedly fanning the inflation through their dubious supply of raw materials.

https://www.koreaherald.com/view.php?ud=20220802000628

2. House Democrats push for Biden's billionaire minimum income tax:- *News report*

As per the reports, House lawmakers are separately pushing another piece of **President Joe Biden's agenda: taxing the ultra-wealthy.** Thus, Reps. Don Beyer, D-Va., and Steve Cohen, D-Tenn., have introduced the Billionaire Minimum Income Tax Act. The Act shall be calling for a 20% levy on households worth more than $100 million.

It means straight away the 20% tax applies to the ***"Total Income"*** which includes earnings and so-called unrealized capital gains, or asset growth, with a credit to avoid double taxation and an optional payment plan, according to the bill, which was introduced with 30 co-sponsors.

3. Public consultation by Singapore tax authority on proposed Amendments to the Income Tax Act: *News Report*

The Ministry of Finance of Singapore proposed a number of amendments to the Income Tax Act 1947 (ITA), including fifteen amendments to clarify existing law, improve tax administration, and revise existing policies, along with eight amendments to give effect to tax measures that were previously announced in the 2022 Budget Statement.

The proposed amendments are set out in the draft Income Tax (Amendment) Bill 2022, and a consultation exercise is underway from 8 June to 6 July 2022 to provide members of the public with the opportunity to weigh in and provide feedback on the proposed amendments.

The Budget 2022 related amendments and some of the more salient non-Budget 2022 related amendments are as follows:

- extending the Aircraft Leasing Scheme until December 31, 2027, which grants an approved aircraft leasing company a reduced tax rate of 8% on income derived from leasing aircraft or aircraft engines as well as qualifying ancillary activities, and withholding the tax exemption on interest and qualifying related payments on loans obtained for the purchase of aircraft or aircraft engines;

- adopting the tax framework for facilitating corporate amalgamations to cover mergers of Singapore-incorporated companies involving a scheme of transfer under section 117 of the Insurance Act 1966;

- extending until December 31, 2025, the tax exemptions for qualified income from qualified project debt securities and qualified foreign income from qualified offshore infrastructure projects/assets received by authorised entities listed on the Singapore Exchange (SGX), but allowing a 10% tax rate concession on qualified income earned by an authorised infrastructure trustee-manager/fund management company from overseeing qualified SGX-listed business trusts or infrastructure funds to lapse;

- improving the progressiveness of personal income tax (PIT) rates by raising the top marginal PIT rates for residents from the year of assessment (YA) 2024 forward to 23% (chargeable income over SGD 500,000 up to SGD 1 million) and 24% (chargeable income over SGD 1 million), as well as raising the PIT rates for specific non-resident individuals' income to 24%;

- extending the withholding tax exemption for income from mediation work carried out in Singapore by non-resident mediators until 31 March 2023, and thereafter, to be taxed at a 10% concessionary withholding tax rate until 31 December 2027 (or alternatively at 24% on net income from YA 2024 onwards) and extending the withholding tax exemption for income from arbitration work carried out in Singapore by non-resident arbitrators until 31 March 2023, and thereafter, to be taxed at a 10% concessionary withholding tax rate until 31 December 2027 (or alternatively at 24% on net income from YA 2024 onwards).

- The adjustment factor applicable to the offsetting of a company's unabsorbed capital allowances, losses and donations in respect of its income taxed at one rate against its income taxable at another rate will also be made applicable to bodies of persons deriving qualifying income from qualifying debt securities.

- Interest income derived from loans of a capital nature will be charged to tax based on contractual interest (which does not include any capital expenses) rather than effective interest, so as to align with general tax principles.

4. Companies face challenges determining Impact of New Minimum Tax:- *News Report*

Tax executives at large U.S. corporations are faced with the difficult task of determining how a new corporate minimum tax, which will increase levies on large businesses that pay less than the 15% tax based on their book or financial-statement income, will affect their companies. The tax, which is set to go into effect in January, will apply to companies based in the United States that report income to shareholders of at least $1 billion over three years and it is a part of the Inflation Reduction Act, was signed into law last week amid criticism from President Biden and Democrats in Congress that certain companies report low tax bills despite high profits.

According to the Joint Committee on Taxation, a nonpartisan committee involved in all aspects of the tax legislative process, the 15% minimum tax could affect approximately 150 companies, with manufacturers expected to account for more than half of the revenue generated by the law. The committee estimates that the tax will raise approximately $222 billion over the course of a decade.

Companies will face uncertainty in determining whether they are among the 150 and how significant the implications may be. Among them are whether the companies have reached the $1 billion threshold and whether the law's adjustments will affect their tax liability, according to tax advisers. Businesses will also have to figure out how to disclose the potential effects of the minimum tax in financial statements before receiving guidance on the law from regulators and other groups, such as the Financial Accounting Standards Board. Furthermore, companies with entities in and outside the United States also lack clarity on which of those entities to include and how much of their financial-statement income to include in the calculation, according to Mr. Gimigliano. Those who are subject to the alternative minimum tax must then compare the 15% rate to their regular corporate tax in the United States and pay the greater of the two.

https://www.wsj.com/articles/companies-face-challenges-determining-impact-of-new-minimum-tax-11661247001?mod=hp_minor_pos7

C. INDIRECT TAXATION:-

1. Direction to the GST Council to consider and take a policy decision in respect of implementation of DIN system by all the states:- *Supreme Court in Pradeep Goyal vs. Union of India & Ors. in Writ Petition (Civil) No. 320 of 2022*

The petition is a PIL which prayed for an appropriate writ, order or direction to the respondents – respective States and the GST Council to take all necessary steps to implement a system for electronic (digital) generation of a Document Identification Number (DIN) for all communications sent by the State Tax Officers to taxpayers and other concerned persons.

The Court observed that in view of the implementation of the GST and as per Article 279A of the Constitution of India, the GST Council is empowered to make recommendations to the States on any matter relating to GST. The GST Council can also issue advisories to the respective States for implementation of the DIN system, which shall be in the larger public interest and which may bring in transparency and accountability in the indirect tax administration.

The Court disposed the present writ petition by directing the Union of India / GST Council to issue advisory / instructions / recommendations to the respective States regarding implementation of the system of electronic (digital) generation of a DIN in the indirect tax administration, which is already being implemented by the States of Karnataka and Kerala.

2. E-invoicing mandatory for businesses exceeding turnover of INR 10 crores:- *Notification no. 17/2022-Central Tax dated 01 August 2022*

The Government has reduced the threshold for issuance of e-invoice to INR 10 crores. Accordingly, registered persons whose aggregate turnover (based on PAN) in any preceding financial year from 2017-18 onwards, is more than INR 10 crores will be mandatorily required to e-invoices w.e.f. 01 October 2022.

3. GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law:- *Circular No. 178/10/2022-GST dated 03 August 2022*

The Government has clarified that there has to be an express or implied agreement; oral or written, to do or abstain from doing something against payment of consideration for doing or abstaining from such act, for a taxable supply to exist. An agreement to do an act or abstain from doing an act or to tolerate an act or a situation cannot be imagined or presumed to exist just because there is a flow of money from one party to another. Unless there is an express or implied promise by the recipient of money to agree to do or abstain from doing something in return for the money paid to him, it cannot be assumed that such payment was for doing an act or for refraining from an act or for tolerating an act or situation. Accordingly, the Government has clarified the following.

- Liquidated damages paid for breach of contract is not supply under GST
- Compensation given to previous allottees of coal blocks for cancellation of their licenses pursuant to Supreme Court Order is not taxable under GST

- Cheque dishonour fine/penalty charged by a power distribution company from the customers is not a consideration and not taxable under GST
- Penalty imposed for violation of laws is not taxable under GST
- Bond amount recovered from an employee leaving the employment before the agreed period are not taxable under GST
- Late payment charges collected by any service provider for late payment of bills is ancillary to and naturally bundled with the principal supply such as of electricity, water, telecommunication, cooking gas, insurance etc. it should be assessed at the same rate as the principal supply.
- Fixed charges collected by a power generating company from State Electricity Boards (SEBs) or by SEBs/DISCOMs from individual customer for supply of electricity is not taxable as electricity is exempt from GST
- Cancellation charges recovered by railways for cancellation of tickets, etc. should be assessed at the same rate as applicable to the service contract, say air transport or tour operator service, or other such services.

4. Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 47th meeting held on 28th – 29th June, 2022 at Chandigarh:- *Circular No. 179/11/2022-GST dated 03 August 2022*

Based on the recommendations of the GST Council in its 47th meeting held on 28th-29th June at Chandigarh, clarifications, with reference to GST levy, related to the following are being issued through this circular.

- Electrically operated vehicle is to be classified under HSN 8703 even if the battery is not fitted to such vehicle at the time of supply and thereby attract GST at the rate of 5% in terms of entry 242A of Schedule I of notification No. 1/2017-Central Tax (Rate).
- S. No. 123 in schedule-I to the notification No. 1/2017- Central Tax (rate) dated 28 June 2017 covers minor polished stones.
- Fresh mangoes, falling under heading 0804, continue to remain exempt from GST under S. No. 51 of notification No. 2/2017-Central Tax (Rate), dated the 28 June 2017
- Supply of treated sewage water, falling under heading 2201, is exempt under GST. Further, to clarify the issue, the word 'purified' is being omitted from the above-mentioned entry vide notification No. 7/2022-Central Tax (Rate), dated the 13 July 2022.
- Nicotine Polacrilex gum which is commonly applied orally and is intended to assist tobacco use cessation is appropriately classifiable under tariff item 2404 91 00 with applicable GST rate of 18% Sl. No. 26B in Schedule III of notification no. 1/2017-Central Tax (Rate), dated the 28 June 2017
- Condition of 90 per cent. or more fly ash content applied only to Fly Ash Aggregates and not to fly ash bricks and fly ash blocks. Further, with effect from 18 July 2022 the condition is omitted from the description.

5. CAG plans to fix GST holes and loopholes:- *News Report*

The Comptroller and Auditor General's (CAG) audit of the GST regime for the year ended March 2021 has flagged certain problems. These include the way refunds are dealt with and failure to detect frauds, systemic weaknesses such as deficiencies in the automated refund module, sanction of suspicious refunds to taxpayers without proper scrutiny, absence of a way to monitor the realisation of export proceeds, and the way the double payment of GST refunds are being tackled. The remedy lies in the correction of business rules, proper implementation of systems and technology, and robust deployment of data analytics that will also minimize any arbitrariness by tax authorities. Frequent changes in the rate structure, though, can unsettle the GST system.

Many of CAG's recommendations have already been acted upon, such as comprehensive profiling of the taxpayers by integrating data from both internal and external systems such as income-tax (I-T), Directorate General of Foreign Trade (DGFT) and corporate affairs ministry, as well as scrutiny involving the risk-based selection of returns (just as in I-T). A real-time system of red-flagging high-risk taxpayers in the refund-related modules to avoid fake input tax credit claims, and a proper module for post-audit refunds to improve monitoring, are also in order. CAG has also pointed to inconsistencies in the GST Network (GSTN) data, such as gaps between taxable value and declared tax liability. An effective review and follow-up system by GSTN to address the causes of data inconsistencies is a must as revenues would go up significantly with a robust GSTN.

https://cfo.economictimes.indiatimes.com/news/cag-plans-to-fix-gst-holes-and-loopholes/93499262?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2022-08-12&dt=2022-08-12&em=Z2FyZy5yYWh1bEBhc2lyZS5pbg==

6. Set up GST tribunal for disputes - Parliamentary panel to Centre:- *News Report*

The Parliamentary Standing Committee on Finance has asked the government to set up an exclusive GST tribunal for settling disputes pertaining to the Goods and Services Tax and noted with concern the various contentious issues arising from the uniform tax regime. The panel, in its report, also took a dim view of fluctuations in the budgetary figures of the Department of Revenue with respect to allocations for GST compensation to states.

The committee noted that the finance ministry had initiated various legislative and administrative measures, besides "special efforts" to realise and recover tax arrears. However, it pointed out that with respect to direct taxes, 94% of the tax arrears fall under the category of 'demand difficult to recover', while for indirect taxes, 88% of arrear demand falls under the category of 'non collectible'.

https://www.tribuneindia.com/news/business/set-up-gst-tribunal-for-disputes-parl-panel-to-centre-418708

7. CBIC issues Passenger Name Record Information Regulations, 2022:- *Notification No. 67/2022 –Customs (N.T.) dated August 8th, 2022*

The CBIC has issued notification and Passenger Name Record Information Regulations, 2022. Now every aircraft is required to register with the proper officer and transfer the passenger name record information. Every aircraft operator shall transfer passenger name record information not later than twenty four hours before the departure time or at the departure time -wheels off.

8. No requirement of advance registration before 5 days of date of expected arrival of import consignment under NFMIMS:- *Notification No. 26/2015-2020 dated August 10th, 2022*

Earlier, the Non-ferrous metal Import Monitoring System (NFMIMS) requires importers to obtain registration not earlier than 60 days and not later than 5 days before the expected date of arrival of import consignment. Now, the DGFT has issued notification to abolish the requirement of advance registration before 5 days of date of expected arrival of import consignment under NFMIMS.

9. Guidelines for Arrest and Bail in Relation to Offences Punishable under the CGST Act, 2017:- *Instruction no. 02/2022-23 (GST-Investigation) dated 17 August 2022*

Board has examined the above-mentioned judgment and has felt the need to issue guidelines with respect to arrest under CGST Act, 2017. Even, under legacy laws i.e. Central Excise Act, 1944 (1 of 1944) and Chapter V of the Finance Act, 1994 (32 of 1994), the instructions regarding exercise of power to arrest had been issued.

Conditions precedent to arrest:

- Since arrest impinges on the personal liberty of an individual, the power to arrest must be exercised carefully. The arrest should not be made in routine and mechanical manner. Even if all the legal conditions precedent to arrest mentioned in Section 132 of the CGST Act, 2017 are fulfilled, that will not, ipso facto, mean that an arrest must be made. Once the legal ingredients of the offence are made out, the Commissioner or the competent authority must then determine if the answer to any or some of the following questions is in the affirmative:
    - Whether the person was concerned in the non-bailable offence or credible information has been received, or a reasonable suspicion exists, of his having been so concerned?
    - Whether arrest is necessary to ensure proper investigation of the offence?
    - Whether the person, if not restricted, is likely to tamper the course of further investigation or is likely to tamper with evidence or intimidate or influence witnesses?
    - Whether person is mastermind or key operator effecting proxy/ benami transaction in the name of dummy GSTIN or non-existent persons, etc. for passing fraudulent input tax credit etc.?
    - As unless such person is arrested, his presence before investigating officer cannot be ensured.

- Arrest should, however, not be resorted to in cases of technical nature i.e. where the demand of tax is based on a difference of opinion regarding interpretation of Law. The prevalent practice of assessment could also be one of the determining factors while ascribing intention to evade tax to the alleged offender. Other factors influencing the decision to arrest could be if the alleged offender is co-operating in the investigation, viz. compliance to summons, furnishing of documents called for, not giving evasive replies, voluntary payment of tax etc.

Procedure for arrest

- Pr. Commissioner/Commissioner shall record on file that after considering the nature of offence, the role of person involved and evidence available, he has reason to believe that the person has committed an offence as mentioned in Section 132 and may authorize an officer of central tax to arrest the concerned person(s). The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) read with section 69(3) of CGST Act relating to arrest and the procedure thereof, must be adhered to. It is, therefore, advised that the Pr. Commissioner/Commissioner should ensure that all officers are fully familiar with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

- The arrest memo must be in compliance with the directions of Hon'ble Supreme Court in the case of D.K Basu vs State of West Bengal reported in 1997 (1) SCC 416 (see paragraph 35). Format of arrest memo has been prescribed under Board's Circular No. 128/47/2019-GST dated 23rd December, 2019. The arrest memo should indicate relevant section (s) of the CGST Act, 2017 or other laws attracted to the case and to the arrested person and inapplicable provisions should be struck off

- A separate arrest memo has to be made and provided to each individual/arrested person. This should particularly be kept in mind in the event when there are several arrests in a single case.

- Attention is also invited to Board's Circular No. 122/41/ 2019-GST dated 05 November 2019 which makes generation and quoting of Document Identification Number (DIN) mandatory on communication issued by officers of CBIC to tax payers and other concerned persons for the purpose of investigation. Any lapse in this regard will be viewed seriously.

- Further there are certain modalities which should be complied with at the time of arrest and pursuant to an arrest, which include the following:
    - A woman should be arrested only by a woman officer in accordance with section 46 of Code of Criminal Procedure, 1973.
    - Medical examination of an arrested person should be conducted by a medical officer in the service of Central or State Government and in case the medical officer is not available, by a registered medical practitioner, soon after the arrest is made. If an arrested person is a female, then such an examination shall be made only by or under supervision of a female medical officer, and in case the female medical officer is not available, by a female registered medical practitioner.
    - It shall be the duty of the person having the custody of an arrested person to take reasonable care of the health and safety of the arrested person.
    - Arrest should be made with minimal use of force and publicity, and without violence. The person arrested should be subjected to reasonable restraint to prevent escape.

Post arrest formalities

- In cases, where a person is arrested under section 69(1)of GST Act, for an offence specified under section 132(4), the Assistant Commissioner or Deputy Commissioner is bound to release a person on bail against a bail bond. The bail conditions should be informed in writing to the arrested person and also on telephone to the nominated person of the person (s) arrested. The arrested person should also be allowed to talk to the nominated person.

- The conditions will relate to, inter alia, execution of a personal bail bond and one surety of like amount given by a local person of repute, appearance before the investigating officer when required and not leaving the country without informing the officer. The amount to be indicated in the personal bail bond and surety will depend upon the facts and circumstances of each case, inter-alia, on the amount of tax involved. It has to be ensured that the amount of Bail bond /Surety should not be excessive and should be commensurate with the financial status of the arrested person.

- If the conditions of the bail are fulfilled by the arrested person, he shall be released by the officer concerned on bail forthwith. However, only in cases where the conditions for granting bail are not fulfilled, the arrested person shall be produced before the appropriate Magistrate without unnecessary delay and within twenty-four hours of arrest. If necessary, the arrested person may be handed over to the nearest police station for his safe custody, during the night under a challan, before he is produced before the Court.

- In cases, where a person is arrested under section 69(1), for an offence specified under section 132(5), the officer authorized to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours. However, in the event of circumstances preventing the production of the arrested person before a Magistrate, if necessary, the arrested person may be handed over to nearest Police Station for his safe custody under a proper challan and produced before the Magistrate on the next day, and the nominated person of the arrested person may also be informed accordingly. In any case, it must be ensured that the arrested person should be produced before the appropriate Magistrate within twenty four hours of arrest, exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

- After arrest of the accused, efforts should be made to file prosecution complaint under Section 132 of the Act, before the competent court at the earliest, preferably within sixty days of arrest, where no bail is granted. In all other cases of arrest also, prosecution complaint should be filed within a definite time frame.

- Every Commissionerate/Directorate should maintain a Bail Register containing the details of the case, arrested person, bail amount, surety amount etc. The money/ instruments/documents received as surety should be kept in safe custody of a single nominated officer who shall ensure that these instruments/ documents received as surety are kept valid till the bail is discharged.

Reports to be sent

- Pr. Director-General (DGGI)/ Pr. Chief Commissioner(s)/ Chief Commissioner(s) shall send a report on every arrest to Member (Compliance Management) as well as to the Zonal Member within 24 hours of the arrest giving details as has been prescribed in Annexure-I. To maintain an all India record of arrests made in CGST, from September, 2022 onwards, a monthly report of all persons arrested in the Zone shall be sent by the Principal Chief Commissioner(s)/Chief Commissioner(s) to the Directorate General of GST Intelligence, Headquarters, New Delhi in the format, hereby prescribed in Annexure-II, by the 5th of the succeeding month. The monthly reports received from the formations shall be compiled by DGGI, Hqrs. and a compiled Zone wise report shall be sent to Commissioner (GST-Investigation), CBIC by 10th of every month.

10. Guidelines on Issuance of Summons under Section 70 of the Central Goods & Services Tax Act, 2017:- *Instruction no. 03/2022-23 dated 17 August 2022*

The Board desires that the following guidelines must be followed in matters related to investigation under CGST:

(i) Power to issue summons are generally exercised by Superintendents, though higher officers may also issue summons. Summons by Superintendents should be issued after obtaining prior written permission from an officer not below the rank of Deputy/ Assistant Commissioner with the reasons for issuance of summons to be recorded in writing.

(ii) Where for operational reasons it is not possible to obtain such prior written permission, oral/telephonic permission from such officer must be obtained and the same should be reduced to writing and intimated to the officer according such permission at the earliest opportunity.

(iii) In all cases, where summons are issued, the officer issuing summons should record in file about appearance/ non-appearance of the summoned person and place a copy of statement recorded in file.

(iv) Summons should normally indicate the name of the offender(s) against whom the case is being investigated unless revelation of the name of the offender is detrimental to the cause of investigation, so that the recipient of summons has prima-facie understanding as whether he has been summoned as an accused, co-accused or as witness.

(v) Issuance of summons may be avoided to call upon statutory documents which are digitally/ online available in the GST portal.

(vi) Senior management officials such as CMD/ MD/ CEO/ CFO/ similar officers of any company or a PSU should not generally be issued summons in the first instance. They should be summoned when there are clear indications in the investigation of their involvement in the decision making process which led to loss of revenue.

(vii) Attention is also invited to Board's Circular No. 122/41/2019-GST dated 5th November, 2019 which makes generation and quoting of Document Identification Number (DIN) mandatory on

communication issued by officers of CBIC to tax payers and other concerned persons for the purpose of investigation. Format of summons has been prescribed under Board's Circular No. 128/47/2019-GST dated 23rd December, 2019.

(viii) The summoning officer must be present at the time and date for which summons is issued. In case of any exigency, the summoned person must be informed in advance in writing or orally.

(ix) All persons summoned are bound to appear before the officers concerned, the only exception being women who do not by tradition appear in public or privileged persons. The exemption so available to these persons under Section 132 and 133 of CPC, may be kept in consideration while investigating the case.

(x) Issuance of repeated summons without ensuring service of the summons must be avoided. Sometimes it may so happen that summoned person does not join investigations even after being repeatedly summoned. In such cases, after giving reasonable opportunity, generally three summons at reasonable intervals, a complaint should be filed with the jurisdictional magistrate alleging that the accused has committed offence under Sections 172 of Indian Penal Code (absconding to avoid service of summons or other proceedings) and/or 174 of Indian Penal Code (non-attendance in obedience to an order from public servant), as inquiry under Section 70 of CGST Act has been deemed to be a "judicial proceedings" within the meaning of Section 193 and Section 228 of the Indian Penal Code. Before filing such complaints, it must be ensured that summons have adequately been served upon the intended person in accordance with Section 169 of the CGST Act. However, this does not bar to issue further summons to the said person under Section 70 of the Act.

11. Registration cancellation without opportunity of being heard is violative of principles of natural justice:- *Apparent Marketing (P.) Ltd. v. State of U.P. - [2022] 141 taxmann.com 265 (Allahabad)*

The assessee was a trader whose business premises were surveyed by revenue and those premises were found closed. Thereafter, another survey was conducted at the assessee's business premises and no adverse material discovered. Later on, the assessee received a notice whereby the registration granted to the assessee under GST Act was proposed to be cancelled and reason mentioned was "Your firm was found bogus in inspection as information received from headquarter." The assessee did not make compliance of the notice and number was cancelled. The application for revocation was filed by the assessee but it was rejected and the appeal was also dismissed. It filed writ petition against the same.

The Honorable High Court observed that GST Act does not contain any provision which provides that registration could be cancelled merely by describing assessee as bogus without any supporting material. It was not a case of department that assessee had not commenced business within six months of grant of registration or he had not furnished returns continuously for six months. The initial SCN issued to assessee was vague as it did not mention any of circumstances mentioned in section 29 or any other specific charge with supporting material. At appeal stage also, the appellate authority erred by ignoring that original proceedings did not contain any permissible reason for cancellation of registration and merely describing assessee as bogus would mean that orders were issued without granting any opportunity to assessee. Therefore, the impugned appellate order along with original orders were set aside.

12. CBIC issued clarification on BCD rate on import of display assembly of mobile phones:- *Circular no. 14/2022 dated August 18th, 2022*

The CBIC has earlier issued notification to prescribe concessional rate of basic customs duty (BCD) at 10% on Display Assembly of mobile phones and Nil BCD on import of inputs or parts for manufacture of Display Assembly. However, various instances of mis-declaration have been reported and the clarification was sought by industry.

Now, the CBIC has issued circular to clarify that 10% BCD shall be levied on import of display assembly of mobile phones along with back support frame of metal or plastic. However, the BCD at rate of 15% shall be levied if the sim tray, battery compartment, fingerprint or any other item is imported with display assembly.

13. CBIC notified exchange rates effective from August 19th, 2022:- *Notification No.70/2022-Customs (N.T.) dated August 18th, 2022*

The Central Board of Indirect Taxes and Customs has notified the rate of exchange of conversion of the foreign currencies into Indian currency or vice versa, with effect from 19th August 2022, for import and export of goods. In this regard, Notification No.70/2022 -Customs (N.T.) dated August 18th, 2022 has been issued in supersession of Notification No.66/2022-Customs(N.T.), dated August 4th, 2022.

14. CBIC examining issues regarding applicability of GST on cross charges:- *Chairman of CBIC*

The Central Board of Indirect Taxes & Customs (CBIC) is examining the issue related to the taxability of activities performed by the office of an organization in one state to the office of that organization in another state. Technically, it is called cross charges which mainly involves remuneration paid to the CEO, CFO, and CXO, besides other top management officials and employees of departments such as human resources and accounting, which are based at the company's headquarters but provide services to all offices located elsewhere.

For the purpose of GST, if any payment is made under an employer-employee relationship, then it is not chargeable to GST and not treated as a supply of service for the purpose of GST because of the employment contract. The issue here also happens to be that the CEO, CXO, or CFO is employed by the main entity and not by a particular GSTent. So, the main entity may have registrations in several states, and the problem is the attribution of that liability across different registrations, on which the Chairman confirms that this issue needs clarification, and they are examining it.

As per the draft circular for the 35th GST Council meeting in 2019, it states that GST law considers a head office in one state and a branch office in another as distinct people, and it emphasises that a taxpayer registered in different states is a distinct person. An employee of a head office (registered as a separate entity) does not provide any service to a branch office, but rather the head office provides service to the branch office. Accounting, IT, human resources, and branch offices in other states will be subject to an 18% GST on the total cost incurred by the head office in providing the service, which includes salary. However, the draft did not get the go-ahead at the officer-level meeting, and it was suggested that the matter be further examined by the Law Committee.

https://www.thehindubusinessline.com/economy/cbic-examining-issue-regarding-applicability-of-gst-on-cross-charges-johri/article65797800.ece

15. GoM readies report on GST Appellate Tribunals:- *News Report*

A group of ministers (GoM) headed by Haryana deputy chief minister Dushyant Chautala and set up by the GST Council has cleared the framework for setting up appellate tribunals to hear disputes, proposing more than one bench in a state. The principal bench of the GST Appellate Tribunal

(GSTAT) is proposed to be set up in New Delhi, while large states can have up to five benches. The industry has repeatedly raised the need for GSTATs, flagging the urgency to expedite disposal of cases. In the absence of these tribunals, GST disputes were going straight to the high courts after adjudication by officials, creating delays and dragging out disputes.

The GoM has agreed with states on relaxing the experience criterion for the appointment of technical members and also recommended that a four-member search and selection committee be set up for the appointment of members to the benches. The selection committee will be headed by either the Chief Justice of India or his representative judge from the top court, along with the president of the GSTAT, a Union government secretary and a state chief secretary.

The GST Council had proposed that each regional bench consist of a judicial officer equivalent to a high court judge and a senior tax officer from either the Centre or state as a technical member, and the appellate body would be headed by former Supreme Court judges or high court chief justices.

https://economictimes.indiatimes.com/news/economy/finance/gom-readies-report-on-gst-appellate-tribunals/articleshow/93668932.cms

16. IGST on ocean freight likely to be scrapped:- *News Report*

The government is considering scrapping integrated goods and service tax (IGST) on ocean freight, and a proposal is likely to be taken up by the GST Council next month that would bring relief to importers awaiting clarity and tax refunds post the judgement. The move comes after the Supreme Court struck down the IGST on ocean freight. A bench of justices dismissed the appeal by the central government against an earlier Gujarat High Court judgement that said that IGST on ocean freight is unconstitutional.

In its ruling, the SC bench also said that the Union and state governments have simultaneous powers to legislate on GST and that the GST Council must work in a harmonious manner to achieve a workable solution. The Gujarat High Court directed the CBIC to refund IGST paid on ocean freight within six weeks with interest. However, there is no formal directive to the officials in this regard.

https://economictimes.indiatimes.com/industry/banking/finance/igst-on-ocean-freight-likely-to-be-scrapped/articleshow/93716398.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

17. Supreme Court held that Government contract winners must share all details for GST assessment:- *News Report*

In response to the Railway Board's appeal for clarification, the Supreme Court stated that all information regarding the bidder who is awarded a government contract must be shared with the relevant Goods and Services Tax (GST) jurisdictional officers in order to enable them to correctly assess tax liability. The Supreme Court further held that the bidder must specify the correct Harmonized System of Nomenclature (HSN) code and the corresponding GST rate.

https://economictimes.indiatimes.com/news/economy/finance/govt-contract-winners-must-share-all-details-for-gst-assessment-sc/articleshow/93739454.cms

18. Finance Ministry approaches Supreme Court for additional 30 days for opening special window for transitional credit claim under GST:- *News Report*

The Supreme Court has ordered to open the GST system, enabling the claim of transitional credit for two months beginning on 1st September and ending on 31st October. In order to comply with the

demands of the taxpayers and the instructions of the Apex Court, GSTN, the technical backbone of the GST, must make improvements to the system.

Now, the application was submitted before the Apex Court seeking to keep the facility for 90 days from October to December this year. The application also lists technical factors and challenges with system modifications imposed on by the filing of monthly returns. According to the application, the government wants to avoid taxpayer hassles and ensure that the portal operates without disrupting the regular process for filing returns.

https://www.taxscan.in/gst-transitional-credit-filing-from-october-till-december-centre-approaches-supreme-court/201771/

19. Summary in Form DRC-01 can't be a substitute of SCN under section 74(1):- *Juhi Industries (P.) Ltd. v. State of Jharkhand - [2022] 141 taxmann.com 416 (Jharkhand)*

A search was conducted in the premises of the petitioner for irregular claim of input tax credit. Thereafter, the proceedings were started with issuance of summary show-cause notices in Form DRC-01. However, no show cause notice under Section 74(1) was issued and served upon the petitioner but the department issue order against the petitioner and confirmed tax demand, interest and penalty. It filed writ petition and challenged the orders passed against it.

The Honorable High Court noted that Rule 142(1) (a) of CGST Rules provides that the summary of show cause notice in Form DRC-01 should be issued "along with" the show cause notice under Section 74(1). The word "along with" clearly indicates that in a given case show cause notice as well as summary thereof both have to be issued. However, in the instant case, summary of show cause notice was issued in Form GST DRC-1 and order was issued under section 74(9). The summary of show cause notice in Form DRC-01 was not a substitute to show cause notice under section 74(1). Therefore, the impugned show cause notice was not fulfilling ingredients of a proper show cause notice and it was in violation of principles of natural justice. Thus, the impugned notice and order were liable to be set aside and department was granted liberty to initiate fresh proceedings from same stage in accordance with law.

20. CBIC notifies Customs (Compounding of Offences) Amendment Rules, 2022:- *Notification No. 69/2022-Customs (N.T.) dated August 22nd, 2022*

The CBIC has notified Customs (Compounding of Offences) Amendment Rules, 2022 to amend the Customs (Compounding of Offences) Rules, 2005 and fix the compounding amount for offences covered under Section 135AA relating to protection of data. The compounding amount shall be 1 lakh rupees for the first offence which shall be increased by 100% of this amount for each subsequent offence. It has also been provided that if the offence is punishable only under Section 135AA, the immunity from prosecution shall be granted.

D. REGULATORY:-

1. IT ministry to conduct quarterly audit of compliance by social media firms:- *News Report*

At present, social media platforms are required to disclose their compliance with IT rules 2021 every month where they disclose action taken by them in response to various grievances. According to an official source, Meity has now put in place a mechanism to audit compliance of social media intermediaries under IT rules every quarter where the ministry will verify whether social media companies are reporting about grievances raised to them correctly and their action taken is in sync with the laid out rules. The government has proposed to set up an appellate panel which will have power to overrule decisions taken by social media companies with respect to any grievance.

https://economictimes.indiatimes.com/news/india/it-ministry-to-conduct-quarterly-audit-of-compliance-by-social-media-firms/articleshow/93341990.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

2. RBI to enable Bharat Bill Payment System to process cross border inbound bill payments:- *RBI Press Release dated 05 August 2022*

The Reserve Bank has proposed to enable Bharat Bill Payment Service (BBPS) to accept cross-border inward payments to facilitate NRI's to pay for utility, education and other bills on behalf of their families in India. This will also benefit the payment of bills of any biller onboarded on the BBPS platform in an interoperable manner. Earlier, payments through BBPS were only available to customers in India. Experts see this as a positive way as it will ease the way for remittance to Indian institutions. BBPS offers an interoperable platform for standardised bill payment experience, centralised customer grievance redress mechanism, uniform customer convenience fee, etc. and over 20,000 billers have been onboarded on the system and more than eight crore transactions are processed on a monthly basis. However, BBPS is currently accessible only for residents in India.

3. RBI temporarily raises the limit for ECBs from USD 750 million to USD 1500 million per Financial Year:- *Notification No. FEMA.3(R)(3)/2022-RB, dated July 29, 2022*

Under the automatic ECB route, eligible borrowers are allowed to raise funds through their AD banks, without approaching the RBI, as long as the borrowing is in conformity with the prudential parameters of the ECB framework such as minimum maturity requirements and the overall dynamic ceiling.

As per Notification, RBI has increased the limit of ECBs, the limit of USD 750 million or equivalent per financial year is temporarily increased to USD 1500 million or equivalent.

Note: This dispensation (Relaxation/exemption) will be available for ECBs raised till December 31, 2022.

4. Mandatory e-filing of Non-Preferential Certificate of Origin extended till 31st March 2023:- *Trade Notice No. 15/2022-23 dated August 1st, 2022*

The DGFT has issued trade notice to extend the mandatory e-filing of Non-Preferential Certificate of Origin (CoO) till 31st March 2023. It is also informed that during the transition period, the existing systems of processing non-preferential CoO applications in manual/paper mode are being allowed.

5. Validity of Status Certificate issued in FY 15-16 & 16-17 extended till 30th September, 2022:- *Public Notice No. 21/2015-20 dated August 5th, 2022*

The DGFT has issued public notice to further extend the validity of the Status Holder Certificates issued in Financial Year 2015-16 & 2016-17 under FTP 2015-2020 by three months and now these certificates shall be valid till 30th September, 2022.

6. SEBI Issues framework for automated deactivation of trading accounts in cases of inadequate KYC:- *Circular No. SEBI/HO/EFD1/EFD1_DRA4/P/CIR/2022/104*, dated *29th July, 2022*

The Circular has been issued on Framework for automated deactivation of trading and Demat accounts in cases of inadequate KYCs. SEBI has observed that in some cases accurate/updated addresses of clients are not maintained and thus mandates, address form a critical part of the Know Your Client ("KYC") procedures. Therefore, every address recorded for the purpose of compliance with KYC procedure has to be accurate. An intermediary has to update the address from time to time. Further, to ensure that the client furnishes accurate/updated details of address and to ensure that KYC details are correct, a framework is proposed, where SEBI instructs MII's to serve physical show cause notice (SCN) or order, issued by the SEBI.

7. SEBI lays down a framework to curb inadvertent trades by designated persons by freezing their PAN during trading window closure:- *CIRCULAR No. SEBI/HO/ISD/ISD-SEC-4/P/CIR/2022/107 05.08.2022*

SEBI has asked exchanges/depositories to develop a system wherein PAN of a Co.'s designated persons (DP) can be frozen for a specific period to curb inadvertent trades during the trading window closure. Now, the designated depository will provide access to a listed Co. on a portal specifying trading window closure period. The portal will auto-populate details of DPs like PAN and name. The listed Co. will update PAN of DPs to be frozen and "start and end date" of trading window closure period. To begin with, the provisions of this circular shall be applicable to declaration of financial results of the listed company that is or was part of benchmark indices i.e. NIFTY 50 and SENSEX from the date of implementation of this circular. Said SEBI

Further, to begin with, the restriction on trading shall be for on-market transactions, off-market transfers and creation of pledge in equity shares and equity derivatives contracts (i.e. Futures and Options) of such listed companies. This circular shall come into force with effect from the quarter ending September 30, 2022

8. SEIS benefits can't be denied to exporters merely for not having IEC registration at time of export of services:- *Smarte Solutions (P.) Ltd. v. Union of India - [2022] 141 taxmann.com 60 (Bombay)*

The petitioner exported the services but it did not have a valid IEC number. However while applying for the reward/benefit under the scheme, it had obtained an IEC number and applied accordingly. The benefit was denied to the petitioner on the ground that the eligibility criteria of Clause 3.08(f) of the FTP has imposed additional restriction of having IEC number at the time of rendering services. The petitioner filed writ petition against the same.

The Honorable High Court observed that the proviso to section 7 of the Foreign Trade (Development and Regulation) Act, 1992 does not lay down that the IEC number is essential at the time of rending services. The requirement of IEC number would be only for taking benefits under the scheme. Therefore, it would be abundant clear that the eligibility criteria of Clause 3.08(f) of the FTP has imposed additional restriction of having IEC number at the time of rendering services which was not intent or purport of the statute. Therefore, the said condition was against the principal legislation and therefore, it can't be termed as of mandatory nature for availing benefits under the scheme. Thus, the petition was allowed and the Court directed to consider the petitioner's application without insisting for an active IEC number at the time of rendering services.

9. The Competition (Amendment) Bill, 2022 was introduced in Lok Sabha on August 5, 2022:- *Key Highlights of the Competition (Amendment) Bill, 2022*

The Competition (Amendment) Bill, 2022 was introduced in Lok Sabha on August 5, 2022. The Bill seeks to amend the Competition Act, 2002. The key amendment includes a) Expansion of scope of the combinations to include transactions with a value above Rs. 2000 crores b) Reduction in the time period for approval of combinations from 210 days to 150 days c) Modification in the definition

of control for the purpose of classification of combination d) Expansion of the scope of Anti-competitive agreements e) Provision w.r.t Settlement and Commitment in anti-competitive proceedings. The key highlights of the Bill are discussed in detail as under:

1. Expansion of scope of the combinations to include transactions with a value above Rs. 2000 crores {Section 5]

Section 5 of the Act explains circumstances under which acquisition, merger or amalgamation of enterprises would be taken as combination of enterprises. Bill seeks to amend section 5 of the Act to insert new clauses (d) and (e) to provide that if the value of any transaction in connection with acquisition of any control, shares, voting rights, etc., exceeds Rs. 2,000 crore, it would require filing a notice of combination before the Commission and to empower the Central Government to exempt certain transactions from the requirement to file combination notice under the Act. It further provides to substitute the Explanation to define the terms of turnover, value of transaction, etc.

2. Reduction in the time period for approval of combinations from 210 days to 150 days [Section 6]

As per extant norms, any combination shall not come into effect until the CCI has passed an order or 210 days have passed from the day when an application for approval was filed, whichever is earlier. Now, the Bill has proposed to reduce the time limit from 210 days to 150 days. Thus, any combination shall not come into effect until the CCI has passed an order or 150 days have passed from the day when an application for approval was filed, whichever is earlier.

3. Modification in the definition of 'control' for the purpose of classification of combination [Section 5]

As per section 5 of the Competition Act, 2002, for the purpose of classification of combinations, the term "control" includes controlling the affairs or management by –

(a) one or more enterprises, either jointly or singly, over another enterprise or group;

(b) one or more groups, either jointly or singly, over another group or enterprise;

Now, the bill has proposed to modify the definition of control. Thus, for the purpose of classification of combinations, the term "control" means the ability to exercise material influence over the management or affairs or strategic commercial decisions by one or more enterprises or one or more groups over another group or enterprise.

10. Exposure Draft on Compendium of Social Audit Standards issued by ICAI:- *ICAI Press release, dated 5 August 2022*

The Sustainability Reporting Standards Board of ICAI has created a draft preface to the social audit standards pursuant to the notification dated July 25, 2022 issued by SEBI in order to regulate the profession of social auditors.

As per the above notification, the Institute of Chartered Accountants of India (ICAI) has been entrusted with the responsibility of being Self- Regulatory Organization for regulating the profession of Social auditors. In this regard, Sustainability Reporting Standards Board of ICAI has developed following-

(i) Draft Preface to the Social Audit Standards

(ii) Draft Framework for the Social Audit Standards

(iii) Draft Social Audit Standards (SAS) on all the sixteen thematic areas specified in the above mentioned notification.

Comments on this exposure draft are sought by ICAI latest by 26 August 2022.

https://www.icai.org/post/srsb-ed-compendium-of-social-audit-standards-for-comments

11. Recommendations of the Working Group on Digital Lending set up by RBI:- *RBI Press Release, dated 10 August 2022*

As per the Reserve Bank of India (RBI) press release dated 10th August, 2022, it has firmed up a regulatory framework to support orderly growth of Credit Delivery through Digital Lending. The panel was already set up in January, 2021 by RBI to implement this framework. There were concerns raised that some businesses have emerged which, if not mitigated, may erode the confidence of members of public in the digital lending ecosystem. The concerns primarily relate to unbridled engagement of third parties, mis-selling, breach of data privacy, unfair business conduct, charging of exorbitant interest rates, and unethical recovery practices. Against this background, the Reserve Bank had constituted a Working Group on 'digital lending including lending through online platforms and mobile apps' (WGDL) on January 13, 2021.

In this endeavour, the Reserve Bank has encouraged innovation in the financial system, products and credit delivery methods while ensuring their orderly growth, preserving financing stability and ensuring the protection of depositors and customer's interest. Therefore, recently, innovative methods of designing and delivery of credit products and their servicing through Digital Lending route have acquired prominence.

The universe of digital lenders is classified into three groups –

i. Entities regulated by the RBI and permitted to carry out lending business;

ii. Entities authorized to carry out lending as per other statutory/regulatory provisions but not regulated by RBI;
iii. Entities lending outside the purview of any statutory/ regulatory provisions.

In the above backdrop, RBI has examined the recommendations made by the Working group. Recommendations accepted for immediate implementation and the consequent regulatory stance are enclosed as Annex-I to the report. Certain highlights of the requirements being mandated to be followed by Regulated Entities (REs), their Lending Service Providers (LSPs), Digital Lending Apps (DLAs) of REs, DLAs of LSPs engaged by REs, are as follows:

a. Customer Protection and Conduct Issues –

i. All loan disbursals and repayments are required to be executed only between the bank accounts of borrower and the RE without any pass-through/ pool account of the LSP or any third party.

ii. Any fees, charges, etc., payable to LSPs in the credit intermediation process shall be paid directly by RE and not by the borrower.

iii. A standardized Key Fact Statement (KFS) must be provided to the borrower before executing the loan contract.

iv. All-inclusive cost of digital loans in the form of Annual Percentage Rate (APR)6 is required to be disclosed to the borrowers. APR shall also form part of KFS.

v. Automatic increase in credit limit without explicit consent of borrower is prohibited.

vi. A cooling-off/ look-up period during which the borrowers can exit digital loans by paying the principal and the proportionate APR without any penalty shall be provided as part of the loan contract.

vii. REs shall ensure that they and the LSPs engaged by them shall have a suitable nodal grievance redressal officer to deal with FinTech/ digital lending related complaints. Such grievance redressal officer shall also deal with complaints against their respective DLAs. The details of the Grievance redressal officer shall be prominently indicated on the website of the RE, its LSPs and on DLAs, as applicable.

viii. As per extant RBI guidelines, if any complaint lodged by the borrower is not resolved by the RE within the stipulated period (currently 30 days), he/she can lodge a complaint under the Reserve Bank – Integrated Ombudsman Scheme (RB-IOS)7.

b. Technology and Data Requirements

i. Data collected by DLAs should be need based, should have clear audit trails and should be only done with prior explicit consent of the borrower.

ii. Option may be provided for borrowers to accept or deny consent for use of specific data, including option to revoke previously granted consent, besides option to delete the data collected from borrowers by the DLAs/ LSPs.

c. Regulatory Framework

i. Any lending sourced through DLAs (either of the RE or of the LSP engaged by RE) is required to be reported to Credit Information Companies (CICs) by REs irrespective of its nature or tenor.

ii. All new digital lending products extended by REs over merchant platforms involving short term credit or deferred payments are required to be reported to CICs by the REs.

- Recommendations, though accepted in-principle, which require further examination are listed as Annex-II of the report.

- Recommendations which require wider engagement with the Government of India and other stakeholders in view of the technical complexities, setting up of institutional mechanism and legislative interventions are listed in Annex-III of the report.

- All the regulated entities of RBI are advised to be guided by the regulatory stance conveyed in this press release. It shall be noted that any kind of outsourcing arrangement involving a RE and LSPs/DLAs shall be subject to the extant guidelines on outsourcing. The REs are advised to ensure that the LSPs/DLAs also implement the requirements set out in Annex-I, as applicable and the onus of ensuring implementation of the requirements will rest with the REs. Detailed instructions will be issued separately.

12. New SOPs to implement revised WFH guidelines under SEZ Rules, 2006 notified subsequent to the Guidelines issued by the Ministry of Commerce in July:- *Instruction No. 110, dated 12 August 2022*

On 14 July 2022, the Ministry of Commerce had notified specific work from home (WFH) rules as part of Special Economic Zone (SEZ) Rules, 2006. These rules laid down the process, conditions, compliances, etc. for availing of WFH benefits by IT and ITeS SEZ units and certain listed categories, such as employees being temporarily incapacitated, travelling or working offsite, of all other SEZ units. There were however multiple concerns raised by the Industry in implementation of the said guidelines. Hence, as a further step to ensure the uniform implementation of the WFH rules, the Ministry of Commerce has now notified standard operating procedures (SOPs) for the implementation of WFH facility by the jurisdictional Development Commissioner (DC), SEZ.

The key aspect of the SOPs for the implementation of WFH for SEZ units are as under:

- Units intending to or implementing WFH should formulate and adopt a WFH scheme and submit an application to the relevant DC, SEZ, notifying its adoption 15 days in advance through the registered email to the concerned DC, SEZ with a copy to the specified officer.

- Email IDs and contact details, including office address where the application needs to be submitted must be published on the SEZ or DC, SEZ website.

The application to have a covering note duly signed by the authorised signatory of the unit along with a worksheet as an attachment, containing the following particulars:

a) Date of application.

b) Total number of employees (including contractual) of the unit.

c) Whether WFH is being sought for all employees or specific categories of employees.

d) If the WFH scheme intends to cover 50% or any higher percentage, the details, namely, the name and designation, SEZ or unit identity card number with validity or expiry date and details of laptops and other assets assigned to the employee, of all the employees intended to be covered.

e) Undertaking ensuring attendance at the unit based on the percentage provided in the scheme and approved.

f) Details of employees eligible to opt for WFH.

g) Duration for which permission is being sought (permission can be sought for a maximum of one year at a time).

- To ensure compliance with the new rules, for the existing employees, as an exception, 90 days from 14 July 2022 is provided for furnishing the required information for the continued availment of WFH facility. Units need to ensure that removed electronic assets are duly accounted for in appropriate records.

- In case of new employees (who have joined the unit on or after 14 July 2022), provisional permission to be granted immediately and to be regularised within 15 days of such approval in terms of the WFH rule.

- WFH applications are to be processed and approved within 15 days, and if no communication is received within 15 days, the application is deemed to have been approved.

- Discretion extended to DC, SEZ to be exercised to enable and allow the seamless implementation of the WFH scheme by the units (as they are currently operating at 90% WFH and need sufficient time to scale down gradually). Hence, approval should not be denied or revoked without extending an opportunity to the unit to be heard.

- The requirement of endorsement of certificate by the specified officer will be implemented in a manner that avoids any hardships to the employees who are engaged in WFH.

- The units may seek flexibility in using the WFH facility as per their operational needs; using the 50% employees limit or such other percentage as approved by the DC will be at the discretion of the unit. The unit needs to self-certify that at any point of time, the approved percentage of employees are working physically from the unit premises and maintain suitable attendance records for verification by the authorities.

- Monthly employee data (previous month data) is to be used for calculating the 50% limit. For employees working in shifts, the shift-wise monthly data of the previous month is to be used for such calculation.

- A unit may revise the WFH scheme at any time with a condition of submitting such revised scheme at least 15 days before the said scheme is intended to be put into effect.

13. Application for revision of order passed by a competent authority under FCRA to be filed via e-mode only:- *Notification no. 21022/23(04)/2021-FCRA-III*

The Government has mandated that an application for revision of order passed by a competent authority under the Foreign Contribution (Regulation) Act, 2010 shall be made in electronic form only. The revision application is to be filed by visiting https://fcraonline.nic.in by paying fee of Rs 3,000/-.

14. ROCs to conduct physical verification of registered office of companies:- *MCA Notification, dated 18.08.2022*

The Ministry of Corporate affairs (MCA) has notified Companies (Incorporation) Third Amendment Rules, 2022 vide Notification dated 18.08.2022, and inserted Rule 25B, after Rule 25A of Companies (Incorporation) Rules, 2014;

The rule 25B shall pertain to the Physical verification of the Registered office of the Companies as under:

1. The Registrar of Companies (ROC), based upon the information or documents made available on MCA 21, shall visit the address of the registered office of the company and may cause the physical verification of the said registered office, in presence of two independent witnesses of the locality.

2. The Registrar shall carry the documents as filed on MCA 21 in support of the address of the registered office of the company for the purposes of physical verification and to check the authenticity of the same by cross verification with the copies of supporting documents of such address.

3. The Registrar shall take a photograph of the registered office of the company while causing physical verification of the same.

4. The Report of the physical verification shall be prepared in the prescribed format.

5. Where the registered office of the company is found to be not capable of receiving and acknowledging all communications and notices, the Registrar shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of relevant documents, if any, within a period of thirty days from the date of the notice before taking further actions in accordance with the provisions of section 248 of the Act.

This amendment by MCA will enable ROCs an absolute and unconditional power to physically verify the registered office address of the Companies registered with the MCA and it is also fully functional as per section 12(9) of the Companies Act, 2013.

Sub-Section (9) of section 12 of Companies Act, 2013 are as under:

If the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may cause a physical verification of the registered office of the company in such manner as may be prescribed and if any default is found to be made in complying with the requirements of sub-section (1), he may initiate action for the removal of the name of the company from the register of companies.

15. RBI releases Discussion Paper on Charges in Payment Systems for public consultation:- *Press Release, dated 18.08.2022*

The Reserve Bank of India (RBI) on Wednesday sought views from the public with respect to the fees and charges in payment systems, with an aim to make such transactions affordable as well as economically remunerative for the entities involved. This announcement is in respect to the Press Release on the statement on Developmental and Regulatory Policies, dated 08.12.2021, wherein the

various developmental and regulatory policy measures relating to (i) regulation and supervision; (ii) financial markets; and (ii) payment and settlement systems, has been mentioned.

The focus of RBI's initiatives in the payment systems has been to ease frictions which may arise from systemic, procedural or revenue related issues. While there are many intermediaries in the payment's transaction chain, consumer complains generally about high and non-transparent charges. Charges for payment services should be reasonable and competitively determined for users while also providing optimal revenue stream for the intermediaries.

To ensure this balance, it was considered useful to carry out a comprehensive review of the various charges levied in the payment systems by highlighting different dimensions and seeking stakeholder feedback. The Payment system includes, NEFT, IMPS, RTGS, UPI, Debit cards, Credit Cards and prepaid payment Instruments.

Therefore, RBI has released a discussion paper on "Charges in Payment Systems" for public feedback. Feedback may be provided in respect of questions raised therein, including other relevant suggestions, through email on or before October 3, 2022.

16. MCA tightens norms for record keeping by companies:- *MCA Notification, dated 5th August, 2022*

The Ministry of Corporate affairs (MCA) has notified Companies (Accounts) Fourth Amendment Rules, 2022. We have listed down the comparison of *"Companies (Accounts) Rules, 2014, in Rule 3"* prior and after to the amendments as under: -

Rule 3: Manner of Books of Account to be Kept in Electronic Mode

	Prior to Amendment Rule 3 of Companies (Accounts) Rules, 2014	**After the Amendment** Rule 3 of Companies (Accounts) Rules, 2014
Sub Rule (1)	The books of account and other relevant books and papers maintained in electronic mode shall remain ***accessible in India*** so as to be usable for subsequent reference.	The books of account and other relevant books and papers maintained in electronic mode shall remain ***accessible in India, at all times***, so as to be usable for subsequent reference.
Sub Rule (5)	There shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law: Provided that the back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in	There shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law: Provided that the back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically

	India on a ***periodic basis***.	located in India on a ***daily basis***.
Sub Rule (6)	The company shall intimate to the Registrar on an annual basis at the time of filing of financial statement- (a) the name of the service provider; (b) the internet protocol address of service provider; (c) the location of the service provider (wherever applicable); (d) where the books of account and other books and papers are maintained on cloud, such address as provided by the service provider.	The company shall intimate to the Registrar on an annual basis at the time of filing of financial statement- (a) the name of the service provider; (b) the internet protocol address of service provider; (c) the location of the service provider (wherever applicable); (d) where the books of account and other books and papers are maintained on cloud, such address as provided by the service provider. ***(e) where the service provider is located outside India, the name and address of the person in control of the books of account and other books and papers in India.".***

Therefore, one can opine from this new amendment that, back-up of the books of account/other books & papers maintained in electronic mode, including at a place outside India, shall be kept in servers physically located in India on a daily basis. Further, as per our understanding, the Companies are required to give details in e-form AOC-4 of persons authorized in India, for control of books of account and other books of papers maintained in electronic mode.

17. SEBI lays down guidelines for overseas investment by Alternative Investment Funds (AIFs) and Venture Capital Funds (VCFs):- *Circular dated 17 August 2022*

It states that AIFs/VCFs shall file an application with SEBI for allocation of investment limit in the format specified and done away with the requirement of the overseas investee company to have an

Indian Connection, and specifies that "AIFs/VCFs shall invest in an overseas investee company, which is incorporated in a country whose securities market regulator is a signatory to the International Organisation of Securities Commission's Multilateral Memorandum of Understanding…or a signatory to the bilateral Memorandum of Understanding with SEBI.

It barrred AIFs/VCFs from investing in overseas investee companies incorporated in a country identified in the public statement of the Financial Action Task Force, and clarifies that if an AIF/VCF liquidates investment made in an overseas investee company previously, the sale proceeds received from such liquidation to the extent of investment made in the said company, shall be available for reinvestment. Also, it states that AIFs/VCFs shall transfer/sell the investment in overseas investee company only to the entities eligible to make overseas investments, as per the extant guidelines issued under FEMA. Lastly, it underscores that AIFs/VCFs shall furnish the sale/divestment details of the overseas investments to SEBI in the specified format, within 3 working days of the divestment, for updating the overall limit available to them.

18. FAQs on V3 Company Forms (Director KYC, Charge & Deposit Forms) issued by MCA:- *MCA FAQs dated 16 August 2022*

The Ministry of Corporate Affairs (MCA) issued FAQs on 16 August 2022 in respect of Director KYC, Charge & Deposit forms for company are required to be filed in Version 3 post log in on the MCA21 V3 Portal and other remaining company forms will be continued to be filed in the same manner as earlier in Version 2 which is effective from 31 August 2022. Set 1 forms covering 9 forms viz CHG-1, CHG-4, CHG-6, CHG-8, CHG-9, DIR-3 KYC E-form, DIR-3 KYC web, DPT-3 and DPT-4 which are being migrated to V3 while remaining Company forms are still in the V2 portal, and this phased migration is done to enable smooth transition of the portal.

Forms in V2 must be filled out and uploaded to the portal, whereas forms in V3 must be filled out online. This enables user convenience, including the ability to save a half-filled form and file it later. Furthermore, in V2, there was only a My Workspace which had a list of notices from the MCA and circulars issued by them. In V3, there is a personalised "My Application" feature which allows one to view all the forms filed by them till date along with their status, such as pending for DSC upload and payment, under processing, paying fees, resubmission, etc. When a user logs in to V3, the login is through their email id, whereas in V2 it was possible with their user id.

19. MCA advisory on Business User Registration on the MCA21 V3 system:- *News Report*

As the MCA21 V3 system, which includes 9 company e-forms (namely, DIR3-KYC Web, DIR3-KYC Eform, DPT-3, DPT-4, CHG-1, CHG-4, CHG-6, CHG-8, and CHG-9) is set to go live on August 31, 2022, filings for the aforementioned 09 e-forms will cease on the current MCA21 V2 system on August 15, 2022, at 12:00 AM. As part of the revised procedure, it is a requirement that the user be registered as a "Business User" on the MCA21 portal before engaging in any e-filing service or DSC registration/association service. The process to upgrade/create your account as a Business User is explained in detail in the FAQ and webinars hosted on mca.gov.in and the same can be accessed on the MCA21 Portal for a smooth e-filing experience.

Further, before registering on the new portal, the following points are to be noted:

a) If you are already a user of the MCA portal and have a working "user ID" and "password." Please login using your existing ID.

b) After successfully logging in, go to the profile update page by clicking on your user name in the top right corner. Details about your current accounts, including user type and personal details, will be displayed.

c) If your user type is "Registered", please edit your profile to become a Business User—Director/Designated Partner.

d) If you are new to the MCA portal, please register as a business user under the "Director/Designated Partner" role by following the registration process.

Additionally, DSC must be associated after signing up as a business user with the Director/Designated Partner role. To do this, navigate to MCA Services, then click on FO Services, and then click on the DSC association service. For any additional information, please refer to the FAQs, Demo video, and instructions shared in this regard on mca.gov.in.

20. Revised ODI Rules and Regulation notified:- *Notification No. G.S.R. 646(E) dated August 22, 2022 and FEMA 400/2022-RB dated August 22, 2022*

Overseas investments by persons resident in India enhance the scale and scope of business operations of Indian entrepreneurs by providing global opportunities for growth. Such ventures through easier access to technology, research and development, a wider global market and reduced cost of capital along with other benefits increase the competitiveness of Indian entities and boost their brand value. These overseas investments are also important drivers of foreign trade and technology transfer thus boosting domestic employment, investment and growth through such interlinkages. Therefore, keeping with the spirit of liberalisation and to promote ease of doing business, The Central Government (CG) and the Reserve Bank of India (RBI) has issued the Overseas Investments Rules and Regulations ('OI Guidelines') dated 22 August 2022.

Introduction of New Rules and Regulations on ODI by Reserve Bank of India:

Foreign Exchange Management (Overseas Investment) Rules, 2022 have been notified by the Central Government vide Notification No. G.S.R. 646(E) dated August 22, 2022 and Foreign Exchange Management (Overseas Investment) Regulations, 2022 have been notified by the Reserve Bank vide Notification No. FEMA 400/2022-RB dated August 22, 2022 **in supersession** of the Notification No. FEMA 120/2004-RB dated July 07, 2004 [Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) 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].

KEY CHANGES:AS PER NEW ODI RULES AND REGULATIONS, 2022

A. DEFINITIONS

- **Foreign entity (Replacing JV and WOS with Foreign Entity)**; the extant concept of Joint Venture (JV) and Wholly Owned Subsidiary (WOS) is substituted under the new regime with the concept of foreign entity, which means an entity formed or registered or incorporated outside India, including in International Financial Services Centre (IFSC) in India, that has limited liability.
- **'Limited liability'** would mean a structure such as a limited liability company, limited liability partnership, etc. where the liability of the person resident in India is clear and limited.
- **"Strategic sector"** shall include energy and natural resources sectors such as Oil, Gas, Coal, Mineral Ores, submarine cable system and start-ups and any other sector or sub-

sector as deemed fit by the Central Government. **Note:** The restriction of limited liability structure of foreign entity shall not be mandatory for entities with core activity in any strategic sector.

- **"control"** means the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders' agreements or voting agreements that entitle them to ten percent or more of voting rights or in any other manner in the entity.
- **"Indian entity" (Replacing 'Indian Party' with 'Indian entity)**–The extant concept of Indian party ('IP') where all the investors from India in a foreign entity were together considered as IP, has been substituted with the concept of Indian entity where each investor entity shall be separately considered as an Indian entity.
- **"Subsidiary"/ "Step down subsidiary (SDS)"** of a foreign entity means an entity in which the foreign entity has control and the structure of such subsidiary/SDS shall comply with the structural requirements of a foreign entity.Therefore, the investee entities of the foreign entity where such foreign entity does not have control (as defined above) shall not be treated as SDSs and therefore need not be under any reporting requirements. **Note:** Such Subsidiary/SDS shall also have limited liability where the foreign entity's core activity is not in the strategic sector.
- **Overseas Portfolio Investment ('OPI')** is now defined as: 'Investment, other than ODI, in foreign securities, but not in any unlisted debt instruments or any security issued by a person resident in India who is not in an IFSC'.
- **"Equity capital"** means equity shares or perpetual capital or instruments that are irredeemable or contribution to non-debt capital of a foreign entity, which is in the nature of fully and compulsorily convertible instruments. Accordingly, any instrument which is redeemable or non-convertible or optionally convertible shall be treated as debt for the purpose of OI Rules/Regulations/Directions.
- **Bonafide business activity'** has been defined to mean any business activity permissible under any law in force in India and the host country or host jurisdiction, as the case may be.
- **"Overseas Direct Investment (ODI)" means**

(i) acquisition of any unlisted equity capital or subscription as a part of the Memorandum of Association of a foreign entity, or

(ii) investment in 10% or more of the paid-up equity capital of a listed foreign entity, or (iii) investment with control where investment is less than 10% of the paid-up equity capital of a listed foreign entity.

Explanation: Once an investment in a foreign entity is classified as ODI, the investment shall continue to be treated as ODI even if such investment falls below 10% of the paid-up equity capital or the investor loses control in the foreign entity.

B. STRUCTURE OF THE GUIDELINES

a. The ODI Rules govern investment in equity and immovable property, and the ODI Regulations govern investment in debt instruments.

b. The ODI Rules have general provisions applicable to all overseas investments in equity capital and specific schedules for different classes of investment, viz.

i. ODI by Indian Entity (Schedule I)
ii. OPI by Indian Entity (Schedule II)
iii. OI by Resident Individuals (Schedule III)

iv. OI by Others (AIF, Mutual Funds, VCF, Trusts and Societies) (Schedule IV)
v. OI in IFSC (Schedule V)

C. KEY HIGHLIGHTS

1. **Exemptions from applicability of OI Rules/Regulations/Directions:** The provisions contained in the OI Rules/Regulations/Directions shall not apply, and general permission shall be available for acquisition or transfer of any investment outside India made as per rule 4 of the OI Rules.
2. **Approval from the Central Government:** The applications for overseas investment/financial commitment in Pakistan/other jurisdiction as may be advised by the Central Government from time to time or in strategic sectors/specific geographies in accordance with rule 9 of OI Rules shall be forwarded by the AD banks from their constituents to the Reserve Bank as per the laid down procedure for onward submission to the Central Government.
3. **Approval from the Reserve Bank:** Financial commitment by an Indian entity, exceeding USD 1 (one) billion (or its equivalent) in a financial year shall require prior approval of the Reserve Bank even when the total financial commitment of the Indian entity is within the eligible limit under the automatic route.
4. **Round-tripping structures:** Person resident in India has now been permitted to invest in a foreign entity that has invested or invests into India, directly or indirectly, up to 2 layers of subsidiaries, without RBI approval.'
5. **Net-Worth:** The definition of 'Net-worth' has been aligned with clause (57) of section 2 of the Companies Act, 2013 which includes securities premium. Clarity has also been provided as to computation of Net-worth in respect of OI by registered partnership firms and LLP.
6. **Acquisition by way of gift:** A resident individual has been permitted to gift foreign securities to his relative resident in India without RBI approval. Further, a resident individual is permitted to receive foreign securities by way of gift from a person resident outside India, subject to compliance with the provisions of Foreign Contribution (Regulation) Act, 2010 ('FCRA').
7. **ODI in Start-ups:** Any ODI in start-ups in accordance with rule 19(2) of OI Rules shall not be made out of funds borrowed from others. The AD bank, before facilitating the transaction, shall obtain necessary certificate in this regard from the statutory auditors/chartered accountant of the Indian entity/investor.
8. **Requirement of No Objection Certificate ('NOC'):** Any person resident in India whose account is classified as Non-Performing Assets (NPA), or as a wilful defaulter by any bank, or is under investigation by a financial service regulator or investigative agency, will have to obtain a NOC from the lender bank or regulatory body or investigative agency, before making any such financial commitment or undertaking disinvestment.**Note:** Where an Indian entity has already issued a guarantee in accordance with the FEMA provisions before an investigation has begun or account is classified as NPA/wilful defaulter and subsequently is required to honour such contractual obligation, such remittance due to the invocation will not constitute fresh financial commitment and hence NOC shall not be required.
9. **Restriction on acquisition or transfer of immovable property outside India**– Save as otherwise provided in the Act or this rule, no person resident in India shall acquire or transfer any immovable property situated outside India without general or special permission of the Reserve Bank:
   Provided that nothing contained in this rule shall apply to a property–

   (i) held by a person resident in India who is a national of a foreign State;
   (ii) acquired by a person resident in India on or before the 8th day of July, 1947 and continued to be held by such person with the permission of the Reserve Bank;

(iii) acquired by a person resident in India on a lease not exceeding five years.

10. **Reporting obligations:**
i. UIN now needs to be obtained prior to making first remittance or acquisition of equity capital in a Foreign Entity, whichever is earlier.

ii. APR filing only if ODI investment is made by a person resident in India holding more than 10% of equity capital or has control in the Foreign Entity or has any other financial commitment in the Foreign Entity other than by way of equity.

iii. Late Submission Fee (LSF) introduced for delays in reporting up to three years.
iv. The ODI Regulations prohibit additional financial commitment in a foreign entity or transfer of such investment till any delay in reporting has not been regularise.

21. Benami Act amendments are substantive & punitive in nature, cannot be retroactive:- *Supreme Court Order, dated 23 August 2022*

The Supreme Court on Tuesday ruled that, The Benami Transactions (Prohibition) Amendment Act, 2016, is a substantive law and therefore cannot be applied retrospectively and the authorities cannot initiate or continue criminal prosecution or confiscation proceedings for transactions entered into prior to the coming into force of the amended legislation.

The top Court while holding section 3(2) and section 5 of the Benami Transactions (Prohibition) Act, 1988 as vague and arbitrary, said the continued presence of an unconstitutional law on the statute book does not prevent it from holding that such unconstitutional laws cannot ensure to the benefit of or be utilized to retroactively amend laws to cure existing constitutional defects.

A bench of three Judges Chief Justice N V Ramana**,** Krishna Murari and Hima Kohli (Headed by **Chief Justice N V Ramana**) said that, "In view of the fact that this Court has already held that the criminal provisions under the 1988 Act were arbitrary and incapable of application, the law through the 2016 amendment could not retroactively apply for confiscation of those transactions entered into between September 5, 1988, to October 25, 2016, as the same would tantamount to punitive punishment, in the absence of any other form of punishment,"

This verdict came on the appeal of the Centre challenging the **Calcutta High Court** judgement in which it was held that the amendment made in the 1988 Act in 2016 would be applicable with prospective effect but **the centre had contended that the 2016 Act would be applicable retrospectively.**

The apex court said that the legislature has the power to enact retroactive/retrospective civil legislation under the Constitution. However, **Article 20(1) mandates that no law mandating a punitive provision can be enacted retrospectively**, The SC held that-

"Section 3 (criminal provision) read with Section 2(a) and Section 5 (confiscation proceedings) of the 1988 Act are overly broad, disproportionately harsh, and operate without adequate safeguards in place. Such provisions were stillborn law and never utilized in the first place. In this light, this Court finds that Sections 3 and 5 of the 1988 Act were unconstitutional from their inception,"

The SC also said that, the taint of benami is not applicable on the individual but it covers the benami property in its ambit and the additional wealth created out of that benami property unless proved otherwise. Therefore, the provisions for punitive actions would be initiated for recovering any

proceeds of such benami property. Concerning the provision of forfeiture under Section 5 of the 2016 Act, the top court said being punitive in nature, can only be applied prospectively and not retroactively.

https://www.cnbctv18.com/legal/benami-act-2016-does-not-have-retrospective-effect-sc-14572762.html

22. MCA amends Form STK-1, STK-5, and STK-5A:- *Notification No. G.S.R. 658(E), Dated 24.08.2022*

The MCA has amended Form STK-1, Form STK-5, and Form STK-5A. Now Registrar of the Company (RoC) can issue notice for removal of the name of the company if it finds that a company is not carrying any business or operation from the registered office as revealed during the conduct of the physical verification of the registered office of the company u/s 12(9) of the Companies Act, 2013. Accordingly, Form STK-5, and Form STK 5A (i.e. Public Notice by RoC) has also been changed.

Under section 12(9) of the Companies Act, 2013, the Registrar, if has a reasonable cause to believe that the company concerned is not carrying on business in a proper manner, can do a physical verification of a company's registered office in the manner as may be prescribed. Earlier, the MCA had notified the Companies (Incorporation) Third Amendment Rules, 2022. A new rule 25B has been inserted prescribing the manner of physical verification of the registered office of the company.

23. In case of the death of Karta of HUF his name will be replaced by new Karta in the Beneficial Owner account:- *Circular No. SEBI/HO/MRD/MRD-POD-2/P/CIR/2022/114, Dated 26-08-2022*

The SEBI has modified the norms w.r.t opening of the Demat account in case of HUF. As per the amended norms, in case of death of HUF's Karta, the name of the deceased Karta in the Beneficial Owner (BO) account shall be replaced by the new Karta of the HUF who shall be the eldest coparcener in the HUF or a coparcener who is appointed as Karta by an agreement entered between all the coparceners of the HUF.

Further, the Depositories are advised to communicate to SEBI the status of implementation of the provisions of the circular in their Monthly Development Report. Earlier, the new Karta was appointed by HUF's members who shall be the senior most member of the family.

Disclaimer:

The content of this document and any views expressed therein are provided for information purpose only, and should not be construed as legal advice on any subject matter. Tax and regulatory laws are subject to changes from time to time and as such any changes may affect the content contained in this document. Readers should seek consultation with Asire professional or obtain their own independent advice before taking any action or making any decision on any of the matter contained in this document. The Firm expressly disclaims all liability to any person who enters into any arrangement, takes any action, or not to take any action based on any or all the contents of this document. This document is not intended or written to be used, and it cannot be used, for the purpose of avoiding any taxes and any other liability / compliance due to any regulator in or outside India.

Contact Us: -

Rahul Garg

Partner

Corporate Tax & Regulatory

garg.rahul@asire.in

+91 9891091307

Anuj Kakkar

Partner

Indirect Tax & EXIM

kakkar.anuj@asire.in

+91 9820315318

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

Overseas Offices:

United Kingdom

The Minister Building

21 Mincing Lane, London

EC3R 7AG