



Tax & Regulatory Updates – Key developments of December 2020

A. DIRECT TAXATION

- 1. Central Board of Direct Taxes (CBDT) has extended the due dates for Tax Audits & other reports/ Income Tax Returns and filing applications under Vivad Se Vishwas Scheme:- Press Release dated 30 December 2020 and Notification nos. 92/2020 and 93/2020 dated 31 December 2020**

In response to various representations being made to the CBDT requesting for further extension due to challenges posed by Covid pandemic, CBDT vide the press release dated 30 December 2020 granted further

extension of due dates for various compliances under the Income Tax Law and Vivad se Vishwas Scheme. The extensions are as under:-

- 1) Income Tax returns for the taxpayer being Corporate taxpayer (including foreign companies) or the person who is required to get its accounts audited under the Income Tax Law or any other law (and its partners, if any):- Extended till 15 February 2021
- 2) Income Tax returns for the taxpayers not covered above:- Extended till 10 January 2021
- 3) Tax Audit report under the Income Tax Act:- Extended till 15 January 2021
- 4) Other Audit reports under Income Tax Act like Transfer Pricing audit report, audit report for trusts etc.:- Extended till 15 January 2021
- 5) Last date for making the declarations and issuance of certificate by the Designated Authority under VsV Scheme 2020:- Extended till 31 January 2021

Further, in order to provide relief to the taxpayers in the payment of tax, the due date for making the payment of self assessment tax whose self assessment tax liability is upto Rs. 1 Lakhs has also been extended till 10 January 2021 and 15 February 2021 as the case may be. The Press Release provides that if the self-assessment tax (i.e., after reducing tax deducted/collected at source, advance tax etc.) does not exceed INR 1 lakh, then there shall be no interest if such tax is paid by the extended due date of filing tax return.

Also, CBDT through its Notification nos. 92/2020 and 93/2020 dated 31 December 2020 has notified the extensions granted above.

2. CBDT has extended the disruption period pertaining to general extension of deadlines to 30 March 2021 from 30 December 2020:- Notification nos. 92/2020 and 93/2020 dated 31 December 2020

The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act 2020 provides that the completion of any proceedings or passing of any order or issuance of any notice/intimation/ notification/ sanction/ approval or such other action by any authority or commission or tribunal under a specified act which is falling due between 20 March 2020 to 31 December 2020 (disruption period) can be done on or before 31 March 2021. Now, the CBDT Notifications extend the disruption period to 30 March 2021. The Notifications also state that the relevant compliances can be done by tax authority/ commission/tribunal under the specified acts on or before 31 March 2021.

However, this general extension is not applicable to tax authority which is required to pass transfer pricing orders under the Income tax law. The disruption period for passing transfer pricing orders is extended only to

30 January 2021 and the said compliance needs to be done (i.e. order needs to be passed) on or before 31 January 2021.

3. Income Tax Department assured that no late fees under section 234F will be levied as the filings pursuant to the extended due dates:-

The Income Tax department through its twitter handle assures the taxpayers that no late fees under section 234F of the Income Tax Act will be charged by CPC while processing the returns filed before the updated ITR filing utility is deployed by the department, since the due dates have already been extended. There is a maximum penalty of upto INR 10,000 for late filing of ROI under section 234F.

4. Income Tax Department to resolve difficulty in receipt of Aadhar based OTP for e-Verification:- News Report

As per the news reports, Income Tax department has received grievances on receipt of Aadhaar based OTP for the purpose of e-verification of ITRs. Tax department has confirmed that the issue has been taken up by the authorities for resolution on priority and it has also been clarified that taxpayers can also choose this option to e-verify the return within 120 days from filing of ITR.

https://www.taxsutra.com/news/27310/IT_dept_to_resolve_difficulty_in_receipt_of_Aadhar_based_OTP_for_e-verification

5. Finance Minister has been requested for extension of deadlines for ITR's, Tax Audit / certificates and AGM:- News Report

As per the news reports, multiple industry / professional associations have filed detailed representations before the finance minister, Nirmala Sitharaman to extend the due dates of 31st December and 31st January for filing various reports and ITR's for FY 2019-20. This is on account of major challenges triggered by pandemic for corporates to have the normalcy restored and large number of professionals as well as their staff have suffered Covid infections.

https://www.business-standard.com/article/economy-policy/fm-nirmala-sitharaman-told-to-extend-itrs-tax-audit-and-agm-time-frame-120122400037_1.html

6. Central Board of Direct Taxes released a checklist to assist in filing ITR 7 for AY 2020-21:-

Recently, CBDT released a checklist to avoid mistakes in filing of the ITR 7 for the AY 2020-21. ITR 7 is to be filed by the persons falling primarily under sections 139(4A), 139(4B), 139(4C) and 139(4D) of the Income Tax Act i.e charitable trusts, research associations etc.

7. Income Tax department released instructions for XML generation through Java utility for Tax Filings:-

To cater the needs of taxpayers, Income Tax Department has released instructions regarding how to download java utility and how to use it for generation of XML's for calculating tax more effectively and also to solve the problems of users to generate XML for filing their return of income.

8. Income Tax Department has introduced Jhatpat processing feature for the Income Tax Returns:- News Report

The Income Tax Department through its twitter handle has introduced a 'Jhatpat processing' feature with the tagline "File Karo Jhat Se, processing hogi phat se" on 20 December 2020 for processing of ITR 1 (Sugam - Individual taxpayers) and ITR 4 (taxpayers having income upto a threshold and filing on presumptive basis) for AY 2020-21. This is for faster processing of ROI's and release of refunds quickly. However, the said feature can be possible only when the bank accounts are pre-validated, there are no arrears or income discrepancy or tax deducted at source (TDS) or challan mismatch.

<https://www.cnbctv18.com/personal-finance/income-tax-dept-introduces-jhatpat-processing-feature-heres-all-you-need-to-know-7798881.htm>

9. Income Tax Department issued FAQ's on quoting Unique Document Identification Number by Chartered Accountants:

UDIN is an 18-Digit System generated unique number which has to be generated by a Full-time practicing Chartered Accountants for every document certified/ attested by them. This is to curb the fake certifications by Non-CAs misrepresenting themselves as Chartered Accountants. The Institute of Chartered Accountants of India (ICAI), has made the UDIN mandatory in the following phased manner

- 1) For all Certificates w.e.f. 1 February 2019

- 2) For all GST and Tax Audit Reports w.e.f. 1 April 2019
- 3) For all other Audit, Assurance and Attestation functions w.e.f. 1 July 2019

CBDT has started the process of integration of the systems of the income tax portal with various other government departments / agencies. Taking this forward, Income-tax e-filing portal has completed its integration with the ICAI portal for validation of UDIN generated from ICAI portal by the CAs as per a Press release dated 26 Nov 2020. This is to weed out the fake and incorrect tax audit reports which are not authenticated with the ICAI.

Further, recently the Income Tax Department has released the FAQs in this regard. Some of the key FAQs are as follows:-

- 1) UDIN is mandatory for uploading any Audit Report and CA Certificates form on e-filing portal of tax department.
- 2) A form can be uploaded without UDIN being quoted but then UDIN needs to be generated within 15 days of uploading of form to ensure that the form does not become invalid.
- 3) Sometimes there may be a problem that the form submission page does not get opened which may be because it is taking time to validate UDIN in such case file the form without UDIN and then within 15 days update the UDIN.
- 4) If an error has occurred in a form and the same is updated with UDIN, then the taxpayer should not accept it and before such acceptance file a new form with the same UDIN.
- 5) If it shows that UDIN is consumed, it means the form is accepted by the taxpayer and the same UDIN cannot be used in other form or cannot be used for revision or correction of already submitted form.
- 6) If it shows that UDIN is unconsumed, it means the form is rejected by the taxpayer and can be re-uploaded using the same UDIN.
- 7) If the mistake or error in the form or attachment has been noticed subsequent to taxpayer accepting the form linked to a valid UDIN, then the process is only revising the form with new
- 8) UDIN generated by revoking the earlier generated UDIN of the submitted form.
- 9) If the CA uploads the form without UDIN or fails to update the UDIN within 15 calendar days, but the form uploaded has been accepted by the taxpayer, then the form uploaded will be treated as invalid with all due consequences of law attracted.

10.CBDT issued second set of FAQ's for Vivad se Vishwas Settlement Scheme:- Circular No.21/2020 dated 04 December 2020

Government in the Union Budget 2020 with an aim to curtail the pending litigation introduced the Direct Tax Vivad Se Vishwas Scheme (VsV). In order to administer the scheme, the Direct Tax Vivad Se Vishwas Rules, 2020 were notified on 18 March 2020 with requisite Forms and procedural aspects. Further, to address the queries from stakeholders and provide guidance on the technical and administrative aspects, the Central Board of Direct Taxes (CBDT) issued detailed FAQs vide a clarificatory Circular No. 7 of 2020 dated 4 March 2020 which was rescinded by another Circular No. 9 of 2020 dated 22 April 2020 addressing multiple queries.

Now, to provide additional clarifications, CBDT vide its circular no. 21/2020 dated 04 December 2020 released additional FAQs.

Some of the key clarifications provided in the FAQs are as under:-

- a) If appeal or arbitration is pending before appellate authority as on 31 Jan 2020 but subsequent to date and before filing declaration the appeal was disposed in that case the person is still eligible under VsV scheme and the amount payable shall be calculated in respect of appeal position on 31st January 2020.
- b) VsV can be availed even in cases where the enforceability of an assessment order is stayed by High Court or Supreme Court but in such case Writ/Appeal pending in High Court or Supreme Court is required to be withdrawn by taxpayer.
- c) Settlement of cases under VsV is not possible where appeal or writ filed against revision order u/s 263 of the Act where such order contains general directions and income is not quantifiable. But, where order u/s 263 of the Act has specific directions and income is quantifiable, taxpayer can settle the cases under VsV
- d) VsV cannot be availed in cases where proceedings are pending before Income Tax Settlement Commission (ITSC) or where writ has been filed against order of ITSC.
- e) Taxpayers are eligible to settle appeals pending under Mutual Agreement Procedure (MAP) or where the appeals is pending against the MAP decision.
- f) Cases where Authority for Advance Rulings (AAR) has ruled in favour of taxpayer and department has filed an appeal before HC/SC and total income of taxpayer is quantifiable, in this case only 50% of disputed tax is payable, for such cases taxpayers is eligible for VsV.
- g) If a prosecution is instituted for TDS default before filing of declaration then taxpayers are not eligible for VsV.
- h) Cases where assessee accepts certain additions in an order (giving rise to undisputed tax liability) and appeals against certain additions (giving rise to disputed tax liability) then in such a case if any prepaid taxes being

TDS/TCS being clearly identifiable with the source of income, will be adjusted against tax liability with respect to such income. Further, rest of the pre-paid tax which cannot be clearly identified with the source of income will be apportioned against the remaining tax liability.

i) The cases settled under VSV by the Company then immunity from prosecution with respect to the issue will be extended to the director / partner of the company / firm (being the declarant) in respect of the same issue under section 278B of the Act.

j) Once the required amount of disputed penalty has been paid by the declarant, interest relating to such penalty would be waived.

k) Declaration filed by assessee u/s 4 of Vivad se Vishwas can be revised any number of times before the Designated Authority issues a certificate under section 5(1) of VsV.

i) Appeal pending against the intimation under section 143(1) of the Act is eligible under VsV provided the adjustments made under VsV due to following reasons:-

- disallowance of loss claimed if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139

- disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;

- disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, if the return is furnished beyond the due date specified under sub-section (1) of section 139; or

- addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return.

j) Disputed tax in relation to the additional ground filed in an appeal will be considered in the VsV.

11. VsV scheme challenged in Delhi High Court against CBDT FAQ denying VsV for Settlement Commission cases:

Delhi High Court to hear writ petitions seeking declaration that the FAQ in CBDT Circular dated December 4, 2020, restricting the applicability of Vivad Se Vishwas Scheme on Settlement Commission cases, is ultra vires the provisions of the Direct Tax Vivad Se Vishwas Act, 2020 and violative of right to equality (Article 14) of the Constitution.

As per FAQ No. 63, where proceedings are pending before the Income Tax Settlement Commission (ITSC) or a writ petition has been preferred against the order of ITSC, the benefit of the scheme under the VSV Act shall not be available.

12. As Vivad se Vishwas scheme draws to close, tax officers face the heat:- News Report

A meeting was held last week between Finance Secretary Ajay Bhushan Pandey and the Central Board of Direct Taxes (CBDT) Chairman P C Mody and subsequent to which the tax officers who are displaying subpar performance would be held accountable. In addition, the officers have also been directed to reach out to the central public sector enterprises (CPSEs) to settle disputes under the scheme and also to build communication with the assesseees whose appeals are eligible under the scheme to persuade them to come under the scheme for settling the dispute at the earliest.

https://www.business-standard.com/article/economy-policy/as-vivad-se-vishwas-scheme-draws-to-close-tax-officers-face-the-heat-120120701328_1.html

13. Faceless Income Tax Appeal deter participation in Vivad Se Vishwas Scheme 2020 (VsV):- News Report

As per the news report, taxpayers who want to withdraw their income-tax appeals so that these can be settled under the VsV are facing administrative issues. Under the faceless appeal, presently there are no jurisdictions appearing in the systems of the concerned Commissioner of Income Tax (Appeals) for approval of the withdrawal request. Considering this problem being faced by the taxpayers, department is now coming with an idea of releasing a clarification and asking appellants to upload withdrawal request letters on the national faceless appeals system. Also, government may come up with a clarification shortly on this issue.

14. Income Tax department creates an exclusive e-mail id for raising complaints under Faceless Assessment regime:- Press release

Further to our earlier updates on the introduction of faceless assessment regime under the Income Tax law, the Income tax department has created an exclusive e-mail id that will be monitored closely by a team of officials at National e-Assessment Centre for providing quick redressal to the taxpayer grievances. The said id has been created to raise complaints regarding Sec.142(1) notices including roving questionnaires under this regime and the email id is "feedback.notice.neac@incometax.gov.in"

15. Government releases second round FAQ's on the tax free cash advance in lieu of Leave Travel Concession: Office Memorandum No. 12(2)/2020-E.II(A)

Leave Travel Concession (LTC) Cash Voucher Scheme” (Scheme) announced by the Finance Minister (FM) on 12 October 2020 as one of the measures to boost the demand in the economy which is adversely affected due to the COVID-19 pandemic. First and second set of FAQs were issued in October and November on this scheme and now the government has issued a third set of FAQs providing further clarifications. The consolidated summary of the same is captured below:

Even if an employee has not exhausted the prescribed limit for leave encashment of LTC, an employee can avail the scheme utilizing the applicable LTC fare without opting leave encashment i.e leave encashment is not compulsory.

- 1) If an employee opts for deemed LTC fare without leave encashment and spends less than 3 times the deemed fare then the reimbursement will be calculated on a pro rata basis.
- 2) An employee can avail less than 10 leaves only if it is in accordance with provisions of LTC rules.
- 3) Payment of premium already paid for existing policies does not fall under this category but payment of premium of insurance policies purchased between 01 October 2020 and 31 March 2021 is eligible for reimbursement.
- 4) To claim the benefit under the LTC, the employee is not required to submit original copies, the employee can submit the self attested photocopy bills. But, original bills need to be kept if it is demanded by the officer.
- 5) If an employee is going to superannuation before 31 March 2021 then in such case the bills need to be submitted before the date of superannuation.

16. Central Board of Direct Taxes (CBDT) notifies annual circular for TDS on salaries for FY 2020-21:- Circular No. 20/2020 dated 03 December 2020

On the lines of every year, CBDT recently released a circular which provides guidance on the deduction of TDS from payment of income chargeable under head Salaries during FY 2020-21 with referencing of relevant provisions under the Income Tax Act.

17. Law Ministry in favour of challenging PCA Court verdict in the case of Vodafone:- News Report

As per the news report, the Central Government is likely to challenge the arbitration award announced by the Permanent Court of Arbitration (PCA) in Hague, in the Vodafone tax dispute case and law ministry is also in

favor of the Government of India. The finance Ministry is yet to make a decision as case is referred to Inter Ministerial Group including stakeholders from the Revenue Department, Central Board of Direct Taxes, Department of Economic Affairs, Ministry of External Affairs, Law Ministry etc. The order was made by tribunal in September 2020, wherein it decided that the Indian government's retrospective approach to make a tax collection of Rs. 22,100 crore was a "breach of the guarantee of fair and equitable treatment" guaranteed under the bilateral investment protection pact between India and the Netherlands.

<https://www.cnbctv18.com/telecom/vodafone-arbitration-award-law-ministry-in-favour-of-challenging-the-verdict-7634131.htm>

18. India lost Cairn arbitration and hence would be paying INR 8,842 crores in damages:- News Report

In another major setback for India towards retrospective taxation, India lost the international arbitration against Cairn Plc and would end up paying INR 8,842 Crore as damages which includes the damage on pledged shares sold by the Indian tax department to partially recover the tax dues apart from legal cost. The case pertains to INR 24,500 crore tax demand on the capital gains made by the company under the re-organisation of its business in 2006-07 as alleged by the tax department. The judgement came from the Permanent Court of Arbitration at the Hague citing the reasons that this is not a tax dispute but a tax related investment dispute, hence, it falls under its jurisdiction. As per PCA, India's demand in past taxes is a breach of UK-India Bilateral Investment Treaty.

Separately, there are news reports that India has challenged the Vodafone award last week on the similar issue of retro taxation.

https://www.business-standard.com/article/companies/india-loses-cairn-case-in-arbitration-asked-to-pay-rs-8-000-cr-in-damages-120122300289_1.html

19. Reimbursement of salaries for seconded employees not Fees for Technical Service, thus not liable for deduction of TDS in India:- Abbey Business Services India Pvt Ltd I.T.A. No. 214 of 2014 (Karnataka High Court)

We have covered a brief summary of this important decision from Karnataka High Court on this highly contentious issue as under:

- 1) Abbey Business Services India Private Limited ("Assessee") is an Indian company and a subsidiary of ANITCO Ltd. a group company of Abbey National Plc, UK (ANP). ANP has entered into a secondment agreement with the assessee to facilitate the outsourcing agreement between ANP and a third party service

provider in India as per which the employees of ANP were seconded to India and were functioning under the instructions of the assessee. The salary payment to the seconded employees were made by the ANP and subsequent to which the assessee was making the reimbursement of the salary on which TDS was deducted by the assessee company under section 192 of the Income tax act as an economic employer.

- 2) Assessing Officer in its order held that the entire payment made by the assessee was in the nature of Fees for Technical Services (FTS) and the assessee was liable to deduct the TDS. Thus treated as Assessee in default under section 201(1A) of the Act.
- 3) The High Court in para 11 categorically observed that the seconded employees were working under the complete instructions of the assessee and the employees functions under the control, direction and supervision of the assessee and in accordance with the policies, rules and guidelines applicable to the employees of the assessee. Thus, for all the practical purpose the assessee has to be treated as employer of the seconded employees. Therefore, there is no obligation in law for deduction of tax at source on such reimbursements. Further, the High Court has also distinguished the decision of Centrica India (Del HC) but followed the view of HCL Infosystems (Del HC).

20. Jewellery Exporters seeks relief from Equalisation Levy as they are getting barred by International bids:- News Report

You are aware that in the Finance Act 2020, the government had introduced 2% equalisation levy on the sale of goods and services by / through foreign e-commerce operators. The procurement of rough diamonds from global miners and traders through the e-auction process attracts additional 2 per cent equalisation levy. This has led to global miners amending the contract terms. Some auction houses have barred Indian customers from participating in their June spot auction process, said Colin Shah, chairman, Gem & Jewellery Export Promotion Council.

Jewellery exporters have therefore sought equalisation levy exemption from the finance ministry as new changes to the Income-Tax Act have impacted the procurement of rough diamonds through online auctions. In August, Finance Minister Nirmala Sitharaman had assured the industry that e-trade of rough diamonds would not attract the levy, but the government is yet to issue a clarification.

https://www.business-standard.com/article/markets/diamond-auction-off-limits-jewellery-exporters-seek-equalisation-levy-balm-120120700815_1.html

21. Assocham seeks 200% tax deduction on Covid vaccine development:- News Report

As per the news reports, Industry body Assocham in its pre-budget memorandum to the Finance Ministry seeks 200% deduction in tax computation for the expenditure incurred on research and development of Covid-19 vaccine in budget 2021-22. This will encourage the taxpayers to develop a cure/vaccine against COVID-19 and to cater to the requirement for other basic drugs/any other generic medicines. Further, it is provided that 200% deduction can also be allowed to the donors contributing to the Indian Institutions undertaking vaccination activities.

<https://economictimes.indiatimes.com/news/economy/policy/assocham-seeks-200-tax-deduction-for-expenditure-on-covid-vaccine-development/articleshow/79591732.cms>

22. Fall in direct tax mop-up slows in November on better economic movements:- News Report

Contraction in direct tax collections has narrowed down significantly in November which is a clear sign of revival of the economic activities in the country. Direct tax collections, net of refunds, declined by 25 per cent by the end of November, an improvement from the 31.4 per cent decline in September. Personal income tax saw contraction shrink to 13 per cent by November from 22 per cent seen up to September, on the back of lower issuance of refunds and improvement in economic conditions. Decline in corporation tax collection eased slightly to 36 per cent by November, from 40 per cent by September.

https://www.business-standard.com/article/economy-policy/fall-in-direct-tax-mop-up-slows-in-november-on-better-economic-movements-120120400028_1.html

23. List of Covered Tax Agreements submitted by Germany pursuant to the signing of MLI:-

Recently, Germany has ratified the MLI and submitted its final and revised list of CTA's with the OECD Secretariat with multiple notable names missing in the list vs. the provisional list submitted at the time of signing of MLI.

24. Organisation for Economic Co-operation and Development (OECD) releases Transfer Pricing Guidance on COVID-19 implications:-

OECD has released much awaited Transfer Pricing Guidance on implications of Covid-19 pandemic. The OECD guidance focuses on the following four major issues in brief that are being faced by the organisations:-

1) Transfer Pricing guidance on Comparability Analysis:

- Can loss making comparable be used?
- Under what circumstances are timing issues most pronounced?
- Can budgeted financial information be used to support the setting of ALP?

2) TP guidance on Losses and the allocation of COVID-19 specific costs:

- Can entities operating under limited risk arrangements incur losses?
- Under what circumstances may arrangements be modified to address the consequences of COVID-19?
- How should operational or exceptional costs arising from COVID-19 be allocated between related parties?

3) TP guidance on Government assistance programmes:

- Is the receipt of government assistance an economically relevant characteristic?
- Guidance on other local market features relevant when analysing the transfer pricing implications of government assistance?

4) Advance Pricing Arrangements:

- What impact does COVID-19 have on existing APAs?
- What impact does COVID have on APAs under negotiation?

25. OECD releases jurisdiction-specific information on 'hard-to-value intangibles':-

A total of 40 jurisdictions have submitted their response to the questionnaire issued by OECD after which a detailed jurisdiction-specific information has been released by it in order to achieve a high degree of accuracy on the legislation and administrative practices applicable to transactions involving hard-to-value intangibles (HTVI). The HTVI approach is an outcome of the work done under BEPS Action Plan 8, which is found in the 2015 Final Report for Actions 8-10, aligning Transfer Pricing Outcomes with Value Creation and it was formally incorporated into the OECD Transfer Pricing Guidelines (TPG), as Section D.4 of Chapter VI.

26. OECD releases Public comments on Pillar 1 and Pillar 2:-

OECD has released more than 250 comment letters in response to a request for public feedback on the Report on the Pillar One Blueprint and the Report on the Pillar Two Blueprint on 16 December 2020 which were designed to address the challenges in taxation under the digital economy. The detailed comments can be downloaded from the OECD's website link mentioned below.

Included are letters authored by large multinationals, trade associations such as BIAC and Keidanren; and NGOs, including the BEPS Monitoring Group and Oxfam. Tax advisors, tax advisor trade groups, and academics also weighed in. The comments respond to an October 12 request for stakeholder input by a 137-country coalition known as the Inclusive Framework on BEPS. The Inclusive Framework, an OECD-led body, is trying to reach a common agreement on a new set of international tax rules for multinational groups. The goal is to devise rules that are better suited for new digital business models; however, the latest proposals go far beyond just affecting multinationals in the digital economy.

<http://www.oecd.org/tax/beps/public-comments-received-on-the-reports-on-pillar-one-and-pillar-two-blueprints.htm>

27. Organisation for Economic Co-operation and Development (OECD) Forum on Tax Administration (FTA) holds plenary, focuses on enhancing resilience, certainty, and digital transformation in tax administration:- News Report

The 13th plenary meeting of the OECD Forum on Tax Administration (FTA) was held on 7 and 8 December 2020 where the 53 members discussed multiple issues on tax administration including response to the global pandemic, emerging risks, digital transformation and tax certainty. All the members agreed upon various areas that need immediate attention which includes developing a road map in early 2021 for building and transformation of digital service of tax administration and also to make tax administration more resilient and agile to respond to the current pandemic situation.

Also, it has been decided to bring together senior FTA leaders in 2021 to consider collective FTA support for capacity building in developing countries, in particular around the digitalisation and development of the joint initiative of OECD/UNDP .

<https://www.taxsutra.com/news/27118/OECD-FTA-holds-plenary-focuses-on-enhancing-resilience-certainty-and-digital-transformation-in-tax-administration>

28. Global Forum Secretariat of Organisation for Economic Co-operation and Development delivers new Confidentiality and Information Security Management (ISM) toolkit to assist in the implementation of the Automatic Exchange of Information Standard (AEOI)

Recently, the Global Forum Secretariat has developed a Confidentiality and Information Security Management Toolkit. The toolkit is designed to ensure more developing countries can benefit from AEOI. It provides detailed guidance on implementing the building blocks of a legal and ISM framework that adheres to internationally recognised standards or best practices as required by the AEOI Standard, and ensures the confidentiality of the exchanged information. The toolkit also provides guidance on establishing effective processes to address potential confidentiality breaches.

29. OECD reports on recent developments on Base Erosion and Profit Shifting Multilateral Instrument (BEPS MLI) developments :- News Report

Recently, OECD presented its report on the developments of BEPS MLI developments. The key developments from the report is presented below:-

- a) Bahrain has signed and Chile has deposited with the OECD its instrument of ratification(MLI) on 21 November 2020.
- b) Indonesia and Russia have made notification confirming completion of internal procedures for the entry into effect of the provisions of the MLI with respect to some treaties
- c) Kazakhstan also made notifications on its covered treaties.

Further, as of now 95 jurisdictions have signed the MLI and 57 have already ratified, accepted, or approved the instrument.

<https://mnetax.com/oecd-reports-on-beps-mli-developments-for-bahrain-chile-indonesia-russia-kazakhstan-41527>

30. OECD plans to introduce digital currency tax standards in 2021:- News Report

OECD plans to introduce the digital currency tax standards in 2021 in order to regulate the digital currencies which have gained so much importance in the last decade. Pascal Saint-Amans, the director of the OECD's Centre for Tax Policy Administration stated that the standards would be somewhat similar to the OECD's

common reporting standard (CRS) which were launched back in 2014 for exchanging the financial information between the countries. In October, OECD published a report an overview of emerging tax policy issues, the report presents the key challenges like taxation of hard forks, digital currency definitions, emergence of stablecoins and CBDCs, decentralised finance and taxation of mining income. The OECD has made this decision because most of the OECD's members have shown their desire to regulate digital currencies, including their taxation.

<https://coingeek.com/oeed-to-introduce-digital-currency-tax-standards-2021/>

31. OECD cuts India's FY21 GDP contraction rate to 9.9% from 10.2% earlier:- News Report

OECD has raised prospects of India's economy by pegging contraction at 9.9 per cent, against 10.2 per cent it projected in September. Union Budget 2021-22 is expected to bring more fiscal measures to compensate the challenges faced due to Covid 19. The household consumption has also remained sluggish so far despite various measures announced by the government. Speaking about the rest of the world, the contraction rate is of 4.2 per cent of the global economy.

https://www.business-standard.com/article/economy-policy/oeed-cuts-india-s-fy21-gdp-contraction-rate-to-9-9-from-10-2-earlier-120120101096_1.html

32. Clarification issued by Singapore tax authority for deductibility of digital services taxes:- News Report

Recently, the Inland Revenue Authority of Singapore (IRAS) has provided the clarity on the deductibility of unilateral tax provisions adopted by various countries to address the tax challenges posed by the digital economy. IRAS in its clarification addressed that due to the unilateral measures adopted by different countries, the Companies have started incurring additional taxes overseas.

Deductibility of these unilateral taxes will be based on existing provisions of the Singapore Income Tax Act:-

- 1) If such taxes are imposed as an income tax, then the deduction would be prohibited.
- 2) If such taxes are imposed in the form of turnover taxes (not income taxes), they are generally deductible against income taxable in Singapore

<https://transferpricingnews.com/singapore-tax-authority-clarifies-deductibility-of-digital-services-taxes/>

33. Brazil's Supreme Court takes up taxation of software downloads:- News Report

Brazil's Supreme Court is expected to soon clarify the taxation of software downloads in Brazil. A majority of the 11 justices on Brazil's Supreme Court have concluded in two cases that a software download should be considered services rather than a sale of goods for tax purposes. However, on November 11, newly appointed Justice, Nunes Marques asked for a review of the cases, which stayed the judgment. While the dispute concerns the appropriateness of ISS and ICMS levies, which are Brazilian sales taxes, the Supreme Court's guidance is expected to provide clarity regarding taxes that may be levied on such activities.

<https://mnetax.com/brazils-supreme-court-takes-up-taxation-of-software-downloads-41595>

34. Canada plans digital tax in 2022:- News Report

Canada has also added its name to the list of the countries who have locally announced the digital tax in their respective states in some form or the other. The country is planning to implement the said tax from 1 January 2022 and is expected to raise \$2.6 billion over a period of 5 years. Just like others, Canadian Finance Minister Chrystia Freeland has also justified the act of introducing such tax with the reason that the country wants a system that is fair, where everyone pays their fair share.

<https://www.reuters.com/article/us-canada-budget-tax/canada-plans-digital-tax-in-2022-on-global-tech-giants-such-as-facebook-google-idUSKBN28A2ZM>

35. EU blacklisted countries responsible for less than 2% of the tax losses:- News Report

The EU has adopted a blacklist which is used by its member countries to address what it deems as external risks of tax abuse and unfair tax competition. The list as of now includes 12 jurisdictions that includes Trinidad and Tobago, US Virgin Islands, Fiji etc. The report 'The state of tax justice' has revealed that all these countries are collectively responsible for 1.72% of global tax losses, costing countries over \$7bn in lost tax a year. Whereas EU member states are responsible for 36% of global tax losses, costing countries over \$154bn in lost tax every year.

<https://www.internationalinvestment.net/news/4024432/eu-blacklisted-countries-responsible-tax-losses>

B. CROSS BORDER

1. EU Member States agreed on new tax transparency rules pertaining to digital platforms:-

The EU Member States built a consensus to extend the EU tax transparency rules to digital platforms, making sure that those who earn consideration through the sale of goods or services on platforms pay their proportionate share of tax.

The agreed proposal on administrative cooperation (DAC 7) will ensure that Member States automatically exchange information on the revenues generated by sellers on digital platforms, whether the platform is located in the EU or not. This will not only allow national authorities to identify situations where tax should be paid, but will also reduce the administrative burden placed on platforms, who often have to deal with several, different national reporting requirements. The proposal also strengthens and clarifies the rules in other areas in which Member States work together to fight tax abuse, for example through joint tax audits.

Formal adoption will follow once the European Parliament and the Economic and Social Committee give their opinion. The new rules will apply as from 1 January 2023 onwards.

2. Sri-Lankan Government will ask foreign online platform operators to register with regulators:- News report

Sri Lanka is planning to register foreign digital operators as these the country's Media Minister Keheliya Rambukwella said. In a statement issued through the Director-General of Government Information on December 21, Rambukwella said he wanted to clarify reports that appeared over the weekend where he told reporters the government wanted to register all Social Media users which is incorrect and registration is only for operators.

https://economynext.com/govt-will-not-register-all-social-media-users-only-foreign-operators-keheliya-77106/?utm_campaign=EconomyNext%20News&utm_medium=email&utm_source=Revue%20newsletter

3. Members of European Parliament adopted a resolution setting out changes to be made to the system used to draw up the EU list of tax havens:-

The EU has set up a list of tax havens in 2017, but so far it has failed to live up to its full potential. Thus, the EU has adopted a resolution to change the system of drawing up the EU list of tax havens. The resolution proposes the following changes:-

- 1) Making the process of listing or delisting a country more transparent, consistent and impartial;
- 2) Proposes adding criteria to ensure that more countries get recognized as tax haven and prevent countries from being removed from the blacklist in haste;
- 3) Resolve that states should also be screened to see if they display any characteristics of a tax haven, and those falling foul should be regarded as tax havens too.

<https://www.europarl.europa.eu/news/en/press-room/20201208IPR93318/eu-tax-haven-blacklist-not-catching-worst-offenders>

4. Ireland issues guidance on validity of private rulings issued in 2015 for transactions after 1 January 2021:-

Ireland issues Revenue Policy on the maximum period of validity of Revenue opinions/confirmations, provides information in respect of a review of opinions/confirmations that were issued more than five years ago.

The guidance states that taxpayers who wish to continue to rely on an opinion/confirmation issued by Revenue in the period between January 1 and December 31, 2015, is required to make an application for its renewal or extension on or before March 31, 2021. It clarifies further that renewal or extension applications will be dealt with in the same manner as any request for an opinion/confirmation made in accordance with the published guidance on obtaining an opinion/confirmation from Revenue as set out in Tax and Duty Manuals. The opinion/confirmation may be subject to disclosure with other tax authorities in accordance with EU and OECD initiatives on exchange of information on Tax Rulings.

5. Australian Tax Office releases updated guidance on advance pricing arrangements:-

The Australian Taxation Office (ATO) released an updated Law Administration Practice Statement PSLA 2015/4 on advance pricing arrangements (APAs). This guidance is intended to provide instructions to ATO staff on how they should deal with and administer APAs. The guidance also provides insights into the ATO internal review and approval processes for APAs, which will be of interest to taxpayers.

Since PSLA 2015/4 was released, there has been a significant change in the transfer pricing landscape, both at the OECD level with the BEPS initiative, at the ATO level with numerous Practical Compliance Guidelines (PCGs), and at the policy level with changes to the law for the diverted profits tax (DPT), the multinational anti-avoidance law (MAAL) and anti-avoidance regimes. In addition, there has been some public criticism of the Australian APA program in recent years, including the lack of transparency of internal ATO processes and lengthy delays in approvals. The updated guidance in some ways seeks to address those concerns.

While much of the updated guidance is largely cosmetic in nature, there are a few key changes and updates which will be of interest to companies when evaluating whether an APA would be useful.

6. UK announced that MAP requests under EU Arbitration Convention no longer accepted after 2020:-

HM Revenue & Customs (HMRC) confirmed that the UK will not be a party to the EU Arbitration Convention after 31 December 2020. Thus, mutual agreement procedure (MAP) requests under the EU Arbitration Convention will not be accepted after 2020.

C. INDIRECT TAXATION

1. Due date of filing GST annual return for FY 2019-20 extended till 28 February 2021:- Press Release dated 30 December 2020

As per the press release, the due date for filing the annual return in Form GSTR-9 and reconciliation statement in Form GSTR-9C under the Goods and Services Tax for the financial year 2019-20 has been extended till 28 February 2021 which was 31 December 2020 earlier.

2. Auto-population of e-invoice details into GSTR-1/2A/2B/4A/6A:- GSTN update dated 30 December 2020

The GSTN has issued an update on auto-population of e-invoices in GST returns. For those taxpayers who had started e-invoicing from 01 October 2020, the auto-population of e-invoice data into GSTR-1 (of December 2020) had started from 03 December 2020. In such cases.

- 1) The data in GSTR-1 is available on T+3 day basis, i.e. for example, the data from e-invoices uploaded on 18 December 2020 would be visible in GSTR-1 on 21 December 2020.
- 2) The corresponding reflection of such e-invoice details in GSTR-2A/2B/4A/6A has also started.
- 3) The auto-population of e-invoice data into GSTR-1 is based on date of document (as reported to IRP). For example, a document dated 30 December 2020 is reported to IRP on 03 January, 2021 and where GSTR-1 for December, 2020 is not filed, then the details of that document will be available in the tables of GSTR-1 pertaining to December, 2020. However, if the GSTR-1 for December was already filed by that date, then, the details of such document will be made available in the consolidated excel file downloadable from GSTR-1 dashboard (with error description as 'Return already filed'). The taxpayer may thereupon take necessary action.

Owing to existing validations in GSTR-1, e-invoices reported with below commonly observed issues are not auto-populated in the tables of GSTR-1 but are made available in the consolidated excel file downloadable from GSTR-1 dashboard (with corresponding error description):

- 1) Supplier is found to be of type ISD/NRTP/TCS/TDS;
- 2) Supplier is found to be composition taxpayer for that tax period;
- 3) Document date is prior to Supplier's/Recipient's effective date of registration;
- 4) Document date is after Supplier's/Recipient's effective date of cancellation of registration;
- 5) Invoices reported as attracting "IGST on Intra-state supply" but without reverse charge;

Further, in certain cases, e-invoice details could not be processed (and hence were not auto-populated) due to data structure issues. These errors may be taken note of and shall be avoided while reporting the data to IRP.

- 1) Serial number of item shall not be reported as 'o'
- 2) White space found in POS (Place of Supply State Code), e.g. "8" . Expected values were o8 and 8.

The detailed advisory with methodology of auto-population etc. is already made available on the GSTR-1 dashboard ('e-invoice advisory') and also e-mailed to relevant taxpayers. It may be noted that the auto-population of details from e-invoices into GSTR-1 is only a facility for the taxpayers. After viewing the auto-populated data, the taxpayer shall verify the propriety and accuracy of the amounts and all other data in each field, especially from the perspective of GSTR-1 and file the same, in the light of relevant legal provisions.

3. Amendments to GST Rules:- Notification No. 94/2020-Central Tax dated 22.12.2020

The Government has brought various changes in GST Rules on various aspects which are as under:

Registration

- Biometric based Adhar authentication has been mandatory for obtaining GST registration subject to certain exceptions
- Time period for processing of registration application has been increased from 3 working days to 7 working days
- In case an applicant fails biometric based authentication or opts not to undergo Adhar authentication or where the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of

Assistant Commissioner, deems it fit to carry out physical verification of places of business, the time period of processing of applications has been increased to 30 days

- Furnishing of reasons where the proper officer is not satisfied with the clarification, information or documents furnished for notices issued in registration process has been made discretionary
- Power for cancellation of registration has been expanded to cases where the person (a) avails input tax credit in violation of the provisions of section 16 of the Act or the rules made thereunder; or (b) furnishes the details of outward supplies in FORM GSTR-1 under section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods; or (c) violates the provision of rule 86B
- Opportunity of being heard has been removed in case where the proper officer believes that the registration of a person is liable to be cancelled under section 29 or under rule 21

Input tax credit

- Entitlement of input tax credit on invoices which are not furnished by the supplier has been reduced from 10% to 5%

Returns

- A registered person shall not be allowed to furnish GSTR-1 if GSTR-3B for preceding two months / preceding quarter is not filed
- A registered, who is restricted to utilise ITC as per rule 86B, shall not be allowed to file GSTR-1 if he has not filed GSTR-3B for the preceding tax period

Restriction on Utilization of Input Tax Credit – Rule 86B

Restriction has been placed on setting off more than 99% of tax liability vide Input tax credit where the value of taxable supplies other than exempt supply and zero-rated supply exceeds INR 50 lakhs in a month. The following exceptions have been carved out (a) Where the taxpayer or the proprietor or karta or the managing director or any of its two partners, whole-time Directors, Members of Managing Committee of Associations or Board of Trustees, as the case may be, has paid Income Tax exceeding INR 1 lakh in two preceding financial year (b) Where taxpayer has received refund exceeding INR 1 lakhs under section 54 of CGST Act 2017 (c) Where taxpayer has used electronic cash ledger to pay of liability on outward supplies which cumulatively makes 1% of the total liability up to the said month (d) Where a person is a Government Department, Public Sector Undertaking (PSU), local authority or a statutory body.

4. Auto population of details in Form GSTR-3B from Form GSTR 1 & GSTR 2B:- GSTN Advisory dated 15 December 2020 and 19 December 2020

The GST portal has been modified to enable auto-population of system computed details in Form GSTR-3B, for taxpayers (filing their Form GSTR-1 on monthly basis), from November 2020 Tax Period onwards. Liabilities in tables-3.1 & 3.2 of Form GSTR-3B (except Table-3.1 (d) pertaining to inward supplies liable to reverse charge), are computed by the system on the basis of details of outward supplies as filed in Form GSTR-1 for the tax period Input Tax Credit (ITC) details and details of inward supplies liable to reverse charge, to be reported in Tables-4 and 3.1 (d) respectively, are computed as per system generated Form GSTR-2B for the tax period

The salient features for the same are under.

- 1) The system computed auto populated values are only for assisting the taxpayers in filing their Form GSTR 3B. Taxpayers have to ensure the correctness of the values being reported and filed in Form GSTR-3B.
- 2) The system will prompt the taxpayers with an alert in cases where the variance of the edited values from the auto-populated values is higher than a particular threshold. Taxpayers can change/ edit the auto populated values in Form GSTR-3B.
- 3) In case taxpayer has not filed Form GSTR-1 for the period, system generated summary will display the respective values as 'Not filed'. Similarly, if Form GSTR-2B is not generated for the period, system generated summary will display the respective values as 'Not generated'.
- 4) Table 5 and 6.2 of FORM GSTR-3B is not part of the PDF & will not be auto-populated by the system.

The GSTN team also clarified that it is noticed that the system is giving alert when the taxpayer revises the auto-populated values upward by 10% in table 3.1(d) which pertains to inward supplies attracting reverse charge. This alert is erroneous. The taxpayers may kindly continue to declare their correct liability in Table-3.1(d) pertaining to liability on inward supplies attracting reverse charge and proceed to file GSTR-3B

5. The government said that the duty drawback claims have to be processed within a timeframe of three days:- Instruction No. 21/2020-Customs F. No. 609/41/2018-DBK

In what is set to impact several exporters, the government has reduced the period in which certain benefits have to be accrued to them. The government said that the duty drawback claims have to be processed within a timeframe. The time frame was reduced from 7 days to three days. Duty drawbacks are essentially refunds that can also be set off against future liabilities. Tax experts say that this move is set to improve the cash flow situation of exporters.

https://economictimes.indiatimes.com/news/economy/policy/push-for-exporters-government-claims-will-be-cleared-within-shorter-period-now/articleshow/79778241.cms?utm_source=newsletter&utm_medium=email&utm_campaign=Dailynewsletter&utm_content=Story8&ncode=8a8b1ff714216bd8e7bceb489958a8fa

6. Verification of the Preferential Certificates of Origin in terms of CAROTAR Rules 2020:- Instruction No. 20/2020-Customs F.NO. 15021/18/2020 (ICD)

It is directed that, where a reference for verification is made to the Board in terms of rule 6 of CAROTAR, 2020, same should be complete, and follow the established standard operating procedures, prescribed format and timelines. All proposals for verification should be duly vetted to ensure valid grounds for verification. Further, representation from trade are still being received about difficulties being faced on account of multiple queries or importers being asked to directly seek clarifications from the issuing authorities of the exporting country. Accordingly, officers are advised to be sensitised to ensure that enquiry on origin of imported goods is initiated only where there are sufficient grounds to suspect origin of a good, or where same has been identified as a risk by the Risk Management System. They should be suitably supervised to ensure that unnecessary queries are not raised on account of goods origin, as also advised at para 2.2 of Circular No. 45/2020-Customs, dated 12.10.2020.

7. DGGI unearthed 4689 fake GSTINs & arrested 141 persons:- D.O.No.45/CH(IC)/2020, 14 Dec 2020

DGGI has recently reported that on the anti-evasion front, DGGI formations and the CGST zones have continued their drive against fake invoice usage. They have, so far in the month-long operation unearthed 4689 fake GSTINs and arrested 141 persons and booked cases involving wrongly availed credit of Rs.13447.95 crore. This includes a huge case booked by Surat Commissionerate. Using data mining techniques. the officers, in a single case, narrowed down upon 206 fake entities spread over 10 states who had issued fake invoices to the tune of Rs. 1101 crore thereby passing on ineligible credit of Rs. 154 crore. One person has been arrested.

8. Taxpayers not to wait for auto-population of e-invoice details into GSTR-1 (GSTN updated dated 30 November 2020):

The GSTN in continuation to their previous update dated 13 November 2020, has informed that due to some unanticipated issues, there has been delay in auto-population of e-invoice details into GSTR-1. Hence, taxpayers who had reported e-invoices should not wait for auto-populated data and they are advised to proceed with preparation and filing of GSTR-1 for the months of November, 2020 (before the due date) and for October, 2020 (in case not yet filed, as on date).

The auto-population of e-invoice details pertaining to the period December, 2020 into GSTR-1 (in incremental manner on T+2 day basis) will start in the first week of December. The details of e-invoices pertaining to periods of October and November, 2020, would be processed and made available in incremental manner from 13 December 2020 onwards. The processing and availability of complete data for the months of October and November, 2020 may take upto 2 weeks. The update also stated that the details of e-invoices pertaining to periods of October and November, 2020, would be processed and made available in incremental manner from 13th December 2020 onwards. The processing and availability of complete data for the months of October and November, 2020 may take upto 2 weeks.

9. Standard Operating Procedure (SOP) for verification of taxpayers granted deemed registration:- Instruction No. 4/3/2020-GST dated 27 November 2020

The Board has issued instructions for verification of taxpayers. During the period from 21 August 2020 to 16 November 2020, deemed registration has been granted in many cases where Aadhaar authentication has not been opted for or has failed. These registrations granted on deemed basis require verifications to ascertain that they have genuine business or intends to carry out so. The proper officer shall conduct physical verification of the principal place of business and wherever possible, additional place of business, indicated in GST registration FORM REG-01 of the concerned registrant. During the physical verification, the officer, among other things, would also verify the following details:

- 1) In case the applicant intends to carry out manufacturing activity, whether capital goods, if required for the said manufacturing activity, have been installed.
- 2) Electricity connection, bills paid in the relevant period.
- 3) Size of the premises – whether it is commensurate with the activity to be carried out by the applicant.
- 4) Whether premises is self-owned or is rented and documents relating ownership/ registered lease of the said property. In case of doubt, enquiry may also be made from the landlord/ owner of the property in case of rented / leased premises.
- 5) No of employees already employed and record of their employment
- 6) Aadhaar and PAN of the applicant and its proprietor, partners, Karta, Directors as the case may be and the authorised signatories.
- 7) Bank's letter for up to date KYC.

In addition to the physical verification conducted, the proper officer, in the interest of revenue, would carry out the preliminary financial verification of the registrants by seeking the following documents and carrying out its scrutiny:

- 1) ITRs of the company / LLP from the date of incorporation or for last three financial years, whichever is less. ITRs of proprietor, partners, Karta, etc. may be taken in other cases.
- 2) The status of activity from the date of registration of all the bank account(s) linked to registration; the same may be taken through a letter / undertaking from the applicant. Phone number declared / linked to each of the bank accounts may also be obtained.
- 3) Quantum of capital employed/proposed to be employed (i) Own Funds (ii) Loan Funds: (indicate the names, complete address, PAN and amount borrowed from each such lender separately)
- 4) In case of own funds, also check the audited balance sheet for previous financial year, where available, in addition to the Income Tax Returns
- 5) In case of loan funds check the proposal submitted to the Bank/FI for approval of the loan and the maximum permissible bank finance as per such proposal, where the amount is proposed to be borrowed from a Bank and/or FI.

10. Input tax credit on brand promotions items given to stores to attract GST :- Karnataka AAR in Page Industries Limited in KAR ADRG 54/2020

The Applicant procures materials from the suppliers and avails the input tax credit of GST paid on the same. Thereafter, the applicant under delivery challans without transferring the title of the said goods, shifts the same to their showrooms and showrooms of their distributors/dealers to use in displaying their products. Similarly, to promote their brands and market their products, the Applicant is getting manufactured the marketing items such as carry bag, table calendar, wall calendar, dairy, leather bags with embossing of their brand and wooden pens with engraving of brands etc. and on receipt of the same, the Applicant is discharging the GST. The Applicant approached the AAR on whether input tax credit can be availed on procurement of such items. The Authority held as under.

- 1) Distributable goods which are given to the Franchisees of the Applicant, i.e., related parties, the supply would amount to supply and therefore GST will be charged, as per para 2 of schedule I, and input tax credit can be availed.
- 2) Distributable goods which are given to others, will not entitle the Applicant to avail GST paid as input tax credit

- 3) The procurement of “non-distributable” products qualify as capital goods and not as “inputs” and the Applicant eligible to claim input tax credit on their procurement, but in case if they are disposed by writing off or destruction or lost, then the same needs to be reversed

11. Refund of balance of electronic cash ledger to considered under section 54 and not under section 51(8) :- Kerala High Court in Royale Edible Company vs. The State Tax Officer and Ors. in WP(C).No.22593 OF 2020(Y)

The Petitioner had filed for refund of balance in electronic cash ledger under section 54 of the Act. The claim for refund preferred by the petitioner was rejected citing Section 51 of the CGST Act and pointing out that, inasmuch as there was no excess deduction or erroneous deduction made by the deductor of tax in the instant case, the refund claimed by the petitioner could not be processed in terms of Section 54 of the Act. The Petitioner approached the Court on the ground that the Respondent completely misread the provisions of the Act while rejecting the application for refund preferred by the petitioner.

The Court observed that it is not in dispute that during the period for which the refund was claimed by the Petitioner, there was no outstanding liability towards tax, interest, penalty or any other amount under the Act, and there were excess amounts in the Electronic Cash Ledger of the Petitioner that could be considered for refund to him in terms of the first Proviso to Section 54 of the Act. The Respondent, however, misdirected himself and treated the claim for refund preferred by the petitioner as one relating to Section 51(8) of the Act. It has to be noted that at no stage did the petitioner have a case that the deduction of tax at source by SUPPLYCO/FACT was excessive or erroneous. That being the case, there was no occasion for the Respondent to have considered the application as one traceable to Section 51(8) of the Act. The only exercise that had to be done by the Respondent was to ascertain whether there was a balance in the Electronic Cash Ledger, after meeting the known liabilities of the petitioner towards tax, interest or any other amount under the Act, and if there was such a balance, the refund had necessarily to be granted to the Petitioner.

The Court quashed the order and held that Respondent shall refund the said excess amount to the Petitioner after determining any outstanding liability

12. Entitlement of ITC where invoices reflecting in GSTR-2A and tax paid to vendors – Application for Advance Ruling rejected:- Himachal AAR in Aditya Industries in GST-ARA-HP/2020-21/20870-76

The Applicant has adopted a policy where the payment in relation to tax component charged by the vendor on Tax Invoice (i.e supplier of raw material) is made upon matching the details of inward supplies made by the Applicant from the respective supplier with the details as appearing GSTR 2A of the Applicant, which is a self-generated return on the basis of the data reported by the respective supplier in their return of outward supply i.e. GSTR 1 for the respective month. It is stated that the Applicant has taken all the bona fide steps to ensure that all the conditions to avail Input tax credit is fulfilled and the revenue of the Government is secured at every stage. The Applicant raised the following questions :- (a) Whether the Input Tax credit is admissible to the applicant where the tax collected by the Supplier from the applicant is not paid to the Government in cash but the same is reflecting in GSTR 2A of the Applicant (b) Whether the Input Tax credit is admissible to the Applicant where the tax collected by the Supplier from the applicant is paid to the Government through utilization of ineligible input tax credit but the same is reflecting in GSTR 2A of the Applicant.

The Authority observed that from a careful reading of the questions, all the cases pertain to a scenario where tax has not actually been paid. Even in cases where tax has been paid by the supplier to the government through ineligible input tax credit it would always deemed not to have been paid as tax has not actually been paid to the government. Therefore in view of the provisions of Section 97 of the CGST Act, the authority concluded that it is not allowed to answer the subject question.

13. Legality of GST on lotteries upheld :- Supreme Court in Skill Lotto Solutions Pvt. Ltd. vs. Union of India and Ors., WRIT PETITION (CIVIL) NO.961 OF 2018

The Supreme Court has upheld the validity of imposition of GST on lotteries. The levy was challenged on the ground that inclusion of actionable claim in definition of goods is contrary to the legal meaning of goods and unconstitutional. The Court held that inclusion of lotteries in definition of goods under section 2(52) does not violate any constitutional provision nor it is in conflict with the definition of goods given under Article 366(12). Article 366(12) contains an inclusive definition and the definition given in Section 2(52) of Act, 2017 is not in conflict with definition given in Article 366(12). Therefore, the inclusion of actionable claims in definition of goods was held as legal and constitutional.

The Court also rejected the contention that there was hostile discrimination while taxing lottery, betting and gambling and excluding other actionable claims. The Court relying upon the judgement of State of Bombay Vs.

R.M.D. Chamarbaugwala and Anr. observed that constitution makers who set up an ideal welfare State have never intended to elevate betting and gambling on the level of country's trade or business or commerce. In this country, the aforesaid were never accorded recognition of trade, business or commerce and was always regulated and taxing the lottery, gambling and betting was with the objective. The Court rejected the submission of the petitioner that there is any hostile discrimination in taxing the lottery, betting and gambling and not taxing other actionable claims basis the rationale to tax the aforesaid as above.

14. E-way bill required if goods of the same consignment covered by multiple invoices exceed INR 50,000:- Kerala High Court in Bon Cargos Private Limited vs. The Assistant State Tax Officer in W.A.No.1735-1736 of 2020

The Appellant approached the High Court against the detention order as the goods detained had a value of less than INR 50,000 and thus, there was no requirement to generate E-way bills.

The Court observed that Explanation 2 of rule 138 defines the consignment value of goods to be that declared in an invoice, a bill of supply or a delivery challan including the goods and services tax payable with any Cess charged. Rule 138(1) read with Explanation 2 leads to only one inference that the consignment value has to be determined from the invoice. But when goods of the same consignment covered by multiple invoices exceed the limit of INR 50,000, necessarily there should be generation of e-way bill. Otherwise the mandate for generation of an e-way bill would be defeated and rendered redundant enabling the consignors to issue any number of bills having value below INR 50,000 and consign them in one vehicle. When goods of the same consignor covered by different invoices are consigned together in one vehicle; the value will be the total of that in the multiple invoice. The Appeal was dismissed.

15. Government should look into rule 86A of GST Rules to consider passing of order:- Gujarat High Court in S.S. Industries vs. Union of India in R/Special Civil Application No. 8841 of 2020 With R/Special Civil Application No. 8163 of 2020

The Petitioner had approached the High Court against the order of blocking input tax credit under rule 86A of the GST Rules.

The Court referred to the provisions of the Pre-GST regime wherein the Government had issued guidelines and had also laid down a procedure for provisional attachment to protect the interest of the revenue in certain cases. Section 83 of GST Act which deals with provisional attachment also provides for passing of an order. Rule 86A

which provides power to block input tax credit casts an obligation upon the authority concerned to form an opinion but is silent with regard to passing of any specific order assigning prima facie reasons for invoking Rule 86A. The Court stated that to this extent, the Government needs to look into the matter and issue appropriate guidelines and also lay down some procedure to be followed for the exercise of power under Rule 86A of the Rules.

The constitutional validity of rule 86A was not under challenge therefore, the Court did not examine it. The Court directed the respondents to complete the investigation within a period of four weeks from the date of the receipt of this order and take an appropriate decision whether any case has been made out for issue of show-cause notice under Section 74 of the Act or not.

**16. Directions issued to Railways to include HSN codes in tender for determining GST rates :-
Allahabad High Court in Bharat Forge Limited vs. The Principal Chief Materials Manager
Diesel Locomotive Works & Ors., WRIT - C No. - 17620 of 2019**

The Petitioner approached the High Court for relief in tender process where the bid was not considered as the Petitioner had quoted GST at 18% whereas the awardees had considered GST at 5%. The Railways compared the bids by adding the base value and GST value of the bid. The Court observed that the mentioning of HSN Code in the tender document itself shall resolve all disputes relating to fairness and transparency in the process of selection of bidder, by providing 'level playing field' to all bidders/tenderers in the true spirit of Article 19(1)(g) of the Constitution of India. For any issue relating to the applicability of correct HSN Code or GST rate, it would then be the duty of Respondent to seek clarification from the GST authorities.

The Court directed the Respondent that if the GST value is to be added in the base price to arrive at the total price of offer for the procurement of products in a tender and is used to determine inter se ranking in the selection process, the Respondent would be required to clarify the issue, if any, with the GST authorities relating to the applicability of correct HSN Code of the procurement product and mention the same in the NIT (Notice inviting tender) tender/bid document, so as to ensure uniform bidding from all participants and to provide all tenderers/bidders a 'Level Playing Field'.

17. Amount payable under IGST for detention of goods held as amount payable under CGST and not sum of CGST + SGST :- Kerala High Court in The State of Kerala, The Commissioner of Kerala State GST, The Assistant State Tax Officer vs. Mohammed Shereef and Ors. in RP.No.930 OF 2020 IN WP(C). 23397/2020

The Kerala High Court dismissed a review petition filed by the Government stating that once it was found that the detention was justified, it was incumbent upon the taxpayer to pay not only the amount of INR 25,000/- in terms of Section 129(1)(b) of the CGST Act but also a similar amount under Section 129(1)(b) of the SGST Act since the tax payment under the IGST Act included components of the tax payable under both the CGST and SGST Acts.

The Court rejected the review petition and observed that the power of detention is exercised by virtue of the provisions of Section 20 of the IGST Act read with Section 129 of the CGST Act. There is no reference to the provisions of the SGST Act in Section 20 of the IGST Act, save for the mention in the 4th proviso to Section 20. The 4th proviso would be attracted only in a situation where, in respect of an interstate transaction, there is a liability to pay tax under the IGST Act that includes components of tax under the CGST and SGST Acts or where a penalty based on tax liability is attracted under both of the said enactments.

In the case of an interstate transportation of exempted goods, the phrase used in Section 129 of the CGST Act that is mutatis mutandis made applicable to the IGST Act, is "payment of an amount equal to 5% of the value of goods or 25000 rupees whichever is less". The legislature appears to have used the words "penalty" and "an amount" distinctively and hence, they cannot be seen as amounting to the same thing. When so viewed, the inference is inescapable that the amount to be collected from a person who is found to have transported exempted goods contrary to the provisions of the IGST Act, can only be such amount as is found payable under the CGST Act since it is the provisions of that Act that are to be deemed as enacted under the IGST Act. In other words, there is no provision that requires one to treat the provisions of the SGST Act as forming part of the IGST Act.

18. Supply of consulting services through sub-station engineer / expert of foreign company held as fixed establishment in India held liable to obtain registration :- Odisha AAR in Tokyo Electric Power Company, Holding Inc. in ORDER NO.02/ODISHA-AARJ2020-21

The Applicant had entered into an agreement with an Indian entity, Odisha Power Transmission Corporation Limited (OPTCL), whereby consultants have agreed to provide consultancy services to M/s Odisha Transmission System Improvement Project, Odisha, India. The Applicant will provide and transfer the technical

knowledge in relation to the outdoor GIS equipment to OPTCL's engineer and staffs through the actual consulting activities during the design stage and implementation stage of the Project. The Applicant would provide consultancy services by the expert belonging. As per the time schedule mentioned in the Agreement, his stay in India would be as follows:

| Year/ Month | No. of Days |
|------------------------|--------------------|
| <i>October - 2021</i> | <i>15 days</i> |
| <i>November - 2021</i> | <i>15 days</i> |
| <i>December - 2021</i> | <i>15 days</i> |
| <i>January - 2022</i> | <i>30 days</i> |
| <i>February - 2022</i> | <i>15 days</i> |

A question was raised that whether the Applicant is required to be registered under Odisha Goods and Services Act, 2017 and Central Goods and Services Act, 2017 for the consultancy services rendered to M/s Odisha Power Transmission Corporation Limited?

The Authority observed that the place of supply and the location of supplier is at the project site which is different from the place of business. It is a long-term contract spanning over 46 months followed by 6 months of defects liability period. The Applicant is responsible for providing and transferring the technical knowledge in relation to the outdoor GIS equipment to OPTCL Engineer and staffs through the actual consulting activities during the design stage and implementation stage of the project. In order to carry out the aforementioned tasks, It would depute the support staff and expert belonging at the project site. OPTCL shall provide them access to the project site in respect of which access is required for the performance of the services. The expert so deputed to the project site by the applicant is to be paid at an agreed rate for the aforementioned tasks. That the expert belonging maintains suitable structures in terms of human and technical resources at the sites of OPTCL. It ensures provision of supply of consulting services for the contract period, indicating sufficient degree of permanence to the human and technical resources employed at the sites. It was held that the Applicant is required to obtain registration in India.

19. Consumables used in provision of service do not form part of value of goods supplied:- West Bengal AAR in Lokenath Builders in Case Number 12 of 2020

The Applicant is providing conservancy service to the (i) Station Commander, Bagrakot Military Station, (ii) Office of Chief Medical Superintendent N.F. Railway, Alipurduar Junction and (iii) Sukna Military Station. The applicant seeks a ruling on whether the above supply is exempted in terms of Sl. No. 3 or 3A of Notification No. 12/2017 – Central Tax (Rate) dated 28 June 2017.

The Authority held that in the work orders issued to the Applicant, the recipient describes the nature of the work as removal, collection and disposal of garbage, rubbish, filth etc., sweeping and clearing of roads, drains and open areas, cutting and pruning of tree including removal of undergrowth and foliage on drain and roads, and lifting of dead animals. The applicant performs waste disposal activities by engaging garbage lifting vehicles and other cleaning equipment. There is, however, no reference to any supply of goods in the course of executing the work. The vehicles used and the fuel consumed and the machinery used do not result in any transfer of property in goods to the recipient. Based on the above documents, it may, therefore, be concluded that the applicant's supply to the recipient is a pure service and therefore, exempt under Sl. No. 3 of exemption notification.

20. Indian Government may levy the GST on Bitcoin transactions:- News Report

As per the news report, a proposal has been received by Central Board of Indirect Taxes & Customs (CBIC) from Central Intelligence Bureau (CEIB) to categorize bitcoin as intangible asset and to impose 18% GST on bitcoin transactions. The proposal suggests bitcoin will be treated as a current asset and GST will be charged on margins made on trading. As per the estimation, 18% GST on estimated annual value of all bitcoin transactions of INR 40,000 crore would yield INR 7200 crore as tax revenue.

<https://www.coindesk.com/india-mulls-imposing-18-transaction-tax-on-bitcoin-transactions>

D. REGULATORY

1. Ministry of Corporate Affairs deferred applicability of Companies Auditor's Report Order (CARO) 2020:- Notification No. S.O. 4588(E) dated 17 December 2020

You are aware that the Ministry of Corporate Affairs (MCA) on 25 February, 2020 notified the new CARO wherein significant changes have been made to the existing format of statutory audit report on the lines of recent experiences in ILF&S, PMC bank etc. and some very tricky / onerous reportings are required to be made by a statutory auditor. Earlier, this was applicable from Financial Year 2019-20, however got deferred by an year. MCA now vide its notification dated 17 December 2020 deferred its applicability by one more year i.e. from 01 April 2021.

2. Ministry of Corporate Affairs has relaxed the requirements of online proficiency test in case of Independent directors which was introduced few months back:- Notification No. GSR 774 dated 18 December 2020

MCA has relaxed multiple thresholds in relation to the requirements of compliance with the online self assessment proficiency test wherein the Director is now required to complete this test within 2 years (earlier 1 year) from the addition of the name in data bank of the prescribed institute. Also, the service period requirement of 10 years is now reduced to 3 years for non-applicability of this test alongwith additions of few more institutions where this service is applicable such as statutory corporations etc. Also, the minimum passing percentage has also been reduced to 50% from 60% earlier.

3. Extension of time for holding the EGM through VC or OAVM and passing of certain items through postal ballot:- Circular No. 39/2020 dated 31 December 2020

MCA vide multiple Circulars i.e circular no. 14/2000 dated 8 April 2000, circular no. 17/2000 on 13 April 2020 and circular no. 33/2020 dated 28 September 2020 provided the framework for holding extraordinary general meetings (EGM's) through Video Conferencing (VC) or other audio visual means (OAVM) or passing of certain items only through postal ballot without convening general meeting. The above circulars provide for business to be transacted till 30 September 2020.

Now, MCA vide its Circular no. 39/2020 dated 31 December 2020 has further extended the timeline for holding the relevant EGM's through VC or OAVM or transact relevant business through Postal Ballot upto 30 June 2021 while the other requirements in the above circulars remain unchanged.

4. Ministry of Corporate Affairs (MCA) further extends the last date for filing of Cost Audit Report in form CRA-4:- Circular no. 38/2020 dated 1 December 2020

MCA in continuation of its circular no. 29/2020 dated 10 September 2020 further extends the due date for filing the cost audit form CRA-4 for the FY 2019-20 from 30 November 2020 to 31 December 2020 amid the large disruption caused by the Covid pandemic.

5. Ministry of Corporate Affairs (MCA) notifies Companies (Incorporation) Third Amendment Rules, 2020:- Notification dated 24 December 2020

Recently, MCA vide its notification dated 24 December 2020 inserted a new rule 9A to provide the facility of extension of reservation of name in certain cases through payment of fees on MCA webportal. The extension will be provided as follows:-

- 1) 40 days from date of approval under rule 9 on payment of fees of Rs. 1000 made before expiry of 20 days from date of approval.
- 2) 60 days from date of approval under rule 9 on payment of fees of Rs. 2000 made before expiry of 40 days referred in above.
- 3) 60 days from date of approval under rule 9 on payment of fees of Rs. 3000 made before expiry of 20 days from date of approval.

6. Ministry of Corporate Affairs notifies 17 provisions of Companies (Amendment) Act, 2020:- Notification No. S.O. 4646(E). dated 21 December 2020

Central Government (CG) on 17th March, 2020 presented before the Lok Sabha the Companies (Amendment) Bill, 2020 ("CAB, 2020"). The same was later passed by the Lok Sabha on 19 September, 2020 and by Rajya Sabha on 22nd September, 2020. Recently, MCA vide its notification dated 21 December 2020 notified seventeen provisions of CAB 2020. The 17 provisions include Section 1, 3, 6 to 10, 12 to 17, section 18; 19 to 21, Clause (i) of section 22, 24, 26, 28 to 31, 33 to 39, 41 to 44, 46 to 51, 54, 57, 61 and 63.

Some of the key changes made in the above provisions are as under:-

- 1) Sections 6 to 10 removes the imprisonment for various offenses and substitutes it by penalties and reduces the amount payable as penalty across the board. In certain minor defaults, penal provisions have been removed.
- 2) Section 24 deals with the amendment in the provision relating to Books of account, etc to be kept by the company.
- 3) Sections 46 to 51 deals with the amendment in the provision relating to Promoters, directors, etc., to cooperate with Company Liquidator; Dissolution of company by Tribunal;
- 4) Section 54 deals with Amendment of section 392 relating to the Punishment for contravention by companies incorporated outside India.
- 5) Section 57 deals with the amendment in section 405 relating to Power of the Central Government to direct companies to furnish information or statistics.
- 6) Section 61 deals with the amendment in section 441 relating to Compounding of certain offences.
- 7) Section 63 deals with the amendment in section 450 relating to punishment where no specific penalty or punishment is provided.

7. Ministry of Corporate Affairs (MCA) notifies Companies (Share Capital and Debentures) Second Amendment Rules, 2020:- Notification dated 24 December 2020

Recently, MCA vide its notification dated 24 December 2020 notified the new form SH-7 required to be filed for giving notice to the registrar for any alteration of the share capital.

8. Ministry of Corporate Affairs has amended the Companies (Compromises, Arrangements and Amalgamations) Second Amendment Rules, 2020:- Notification dated 17 December 2020

MCA has defined the meaning of 'Corporate Action' specifically now. Further, a new Rule 26A has been added in relation to Purchase of minority shareholding held in demat form with prescribed conditions.

9. Ministry of Corporate Affairs designates Special Courts under Companies Act 2013:- Notification No. S.O. 4283 dated 27 November 2020

Recently, MCA vide its notification dated 27 November 2020 designates the Special Courts in the States of Maharashtra, West Bengal and Tamil Nadu for the purposes of trial of offences under the Companies Act 2013 for the cases filed by the Securities and Exchange Board of India.

10. Reserve Bank announces opening of Second Cohort under the Regulatory Sandbox:- Press Release: 2020-2021/787, 16 December 2020

RBI announces opening of Second Cohort under the Regulatory Sandbox post announcement of commencement of Test Phase under the First Cohort on Retail Payments vide Press Release dated November 17, 2020, the Reserve Bank now announces opening of Second Cohort under the Regulatory Sandbox (RS) with 'Cross Border Payments,' as its theme. The window for submission of applications for the Cohort shall be open from December 21, 2020 to February 15, 2021. A scanned copy of the application, together with enclosures (maximum size 10 MB), may be forwarded through email. It has also been decided to select 'MSME Lending' as the theme for the Third Cohort, details of which shall be announced in due course.

11. RBI exempts certain accounts from its current account norm:- RBI/2020-21/79 DOR.No.BP.BC.30/21.04.048/2020-21, 14 December 2020

RBI has recently allowed some accounts to be excluded from the ambit of its circular in August in which the regulator had specified certain rules for opening current accounts with banks. On 6 August, the central bank said that borrowers with more than INR 50 crore exposure to the banking system should have an escrow mechanism and only banks managing such escrow accounts can open current accounts. Companies with less than INR 50 crore exposure will have fewer restrictions in opening such accounts.

Upon review, it has been decided to permit banks to open specific accounts stipulated under various statutes and instructions of other regulators/regulatory departments without any restrictions placed in terms of the above-mentioned circular dated 6 August 2020, RBI said. The excluded cases include accounts for real estate projects mandated under Section 4 (2) I (D) of the Real Estate (Regulation and Development) Act, 2016, for the purpose of maintaining 70% of advance payments collected from the home buyers, nodal or escrow accounts of payment aggregators or prepaid payment instrument issuers for specific activities as permitted by RBI under the Payment and Settlement Systems Act, 2007, accounts for settlement of dues related to debit card, ATM card, and credit card issuers or acquirers.

12. RBI to introduce 'Digital Payment Security Controls' guidelines:- RBI Press release

The Reserve Bank of India (RBI) will introduce new Digital Payment Security Controls for regulated entities, to enhance the adoption of digital payments platforms in a more safe and secure manner. The central bank will issue a Draft guideline soon for public comments, it said in its Statement on Developmental and Regulatory Policies on December 4.

The guidelines will be technology and platform agnostic. It is proposed to issue Reserve Bank of India (Digital Payment Security Controls) Directions, 2020 for regulated entities to set up a robust governance structure for such systems and implement common minimum standards of security controls for channels like internet, mobile banking, card payments, among others, it said. At present, banks have to comply with security guidelines set by the RBI, while payment system operators licensed by the central bank have separate guidelines. Further, banks, non-bank companies and third-party apps that provide payments services on top of the National Payments Corporation of India's (NPCI) various payments platforms, like Bharat Bill Payment System (BBPS) or the Unified Payments Interface (UPI), have to follow security guidelines issued by the umbrella payments organisation.

A holistic digital payment security controls guideline from the RBI will create a uniform set of standards, regardless of the type of entity. Albeit, there will be differences in implementation between payments apps and banks depending on the scales at which they each operate.

13. RBI has issued a draft Circular on the manner and restrictions regarding declaration of Dividend by NBFC's:- RBI Press release

In pursuance of the announcements made in the Statement on Developmental and Regulatory Policies dated December 04, 2020, the Reserve Bank of India has released a Draft Circular on Declaration of Dividend by NBFCs. Comments on the Draft Circular from NBFCs, industry participants and other interested parties can be submitted by December 24, 2020.

14. RBI cautions against unauthorised Digital Lending Platforms/Mobile Apps:- RBI Press Release 2020-2021/819 dated 23 December 2020

RBI vide its Press Release dated 23 December 2020 has issued warnings to the individuals and small businesses to be cautious of the unauthorised digital lending platforms/Mobile Apps offering loans. The individuals are further advised not to share or verify the KYC with unidentified persons, unverified/unauthorised Apps documents and immediately report any of such matter to concerned law enforcement agencies or use Sachet portal (<https://sachet.rbi.org.in>) to file an on-line complaint.

15. Ministry of Finance issued Foreign Exchange management (Non-Debt Instruments) (Fourth Amendment) Rules 2020:- Notification No. S.O 4441(E) dated 08 December 2020

The Central Government makes the following rules further to amend the FEMA(Non-Debt Instruments) Rule 2019 which are quoted below:-

1) According to Rule 6(a) of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, a person resident outside India may subscribe, purchase or sell equity instruments of an Indian company in the manner and subject to the terms and conditions that such person who is a citizen of Bangladesh or Pakistan or is an entity incorporated in Bangladesh or Pakistan cannot purchase equity instruments without the prior government approval. Now, Government vide its notification dated 08 December 2020 added a proviso to the above rule to provide that a Multilateral Bank or Fund of which India is a member, shall not be treated as an entity of a particular country nor shall any country be treated as the beneficial owner of the investments of such Bank or Fund in India.

2) In the schedule for the Defence sector, the government notified that for the defence Industry subject to Industrial license under the Industries (Development and Regulation) Act, 1951 and Manufacturing of small arms and ammunition under the Arms Act, 1959, the Sectoral Cap will be 100% (Automatic up to 74% and Government route beyond 74%) wherever it is likely to result in access to modern technology or for other reasons to be recorded.

16. Real Time Gross Settlement System (RTGS) launched by Reserve Bank of India for 24*7*365 days:- Press Release No.2020-2021/748 dated 09 December 2020

Earlier RBI announced in its Statement on Developmental and Regulatory Policies dated 09 October 2020 that RTGS will be available round the clock on all days of the year. Now, RBI has decided to launch this feature which will be available from 00:30 hours on 14 December 2020. India will become one of few countries having RTGS round the clock. This facility will help to extend flexibility to businesses for effecting payments and will enable introduction of additional settlement cycles in ancillary payment systems.

17. Concept of Geographical extension of ESI done away with under the Code on Social Security and all establishments will be covered now:- N-15/14/3/PP/2020-P&D, dated 30 December 2020

A letter has been issued by the ESIC headquarters on the captioned matter while the threshold on applicability of 10 or more person or 20 or more persons (in specific industries) remains unchanged.

18. App-based gig workers seek clarity on how social security schemes will be funded:- Press Note by IFAT

The draft rules on how gig workers and platform workers will be given benefits under the Code on Social Security, 2020 need to clarify how welfare schemes prescribed in the Code will be funded, the Indian Federation

of App Based Transport Workers recommended in a recent press note. The organisation, which represents over 35,000 workers, also said that the government needs to clearly define the conditions and criteria before exempting an aggregator or a class of aggregators from contributing funds to social security. The draft social security rules offer little clarity about the collection of contribution for the Social Security Fund. While the draft rules say that “the Central Government shall identify the source(s) for initial funding/ replenishing the Social Security Fund from time to time,” the process or criteria for this have not been detailed, the organisation noted. It recommended that a fixed timeline be provided about when the government will set up the National Social Security Board for gig and platform workers.

19. Minimum wages threshold revised for the employees employed in the in the Computer Software Industry Sector in the State of Kerala:- Notification G. O. (P) No. 95/2020/LBR

The Kerala state government has issued a Notification on the captioned matter as per section 3 of the Minimum Wages Act, 1948 read with sub-section (2) of section 5 of the said Act wherein the revised rates prescribed under three different Groups A to I. Also, explained the computation of Dearness allowance in such cases.

20. Labour ministry formalises work from home for services sector:-

The labour ministry has formalised work from home for the services sector while leaving it for the employers in the IT sector to mutually decide the work hours for its employees. Besides, to safeguard the IT industry, the ministry has prescribed involvement in unauthorized access of any IT system, computer network of the employer, customer or client as a misconduct under the separate model standing orders for services sector prepared by the government for the first time.

21. Mandatory payment of the contributions to the Karnataka Labour Welfare Fund Act 1965:- Press Note

Recently, Karnataka Labour Welfare Board Bangalore of Government of Karnataka released the press note clarified that it is mandatory for all the factories, plantations workshops, motor, omnibus services and shops and commercial establishments/ ITBT firms employing more than 50 workers, charitable trusts, societies registered under karnataka Societies Registration Act, 1960 etc to remit the contributions as per the Karnataka Labour Welfare Fund Act 1965. Such remittance of the contribution shall be done by online only.

Last date to pay the contribution for calendar year 2020 is 15 January 2021

22. Government will set up Three new National boards soon as proposed under new labour codes:- News Report

The government will soon set up three national boards to determine the minimum wages, social security parameters, and safety and health standards for workers under the new labour codes. The move is aimed at ensuring a smooth rollout of the four labour codes from the next financial year. The government is of the view that these bodies need to be constituted first as they are responsible for determining key elements of the codes, as per a top official.

<https://cfo.economictimes.indiatimes.com/news/three-new-national-boards-for-wage-safety-and-health-proposed-under-new-labour-codes/79750874>

23. Government released the revised draft report on Non Personal Data:- News Report

In September 2019, the Ministry of Electronics & Information Technology constituted a committee of experts to deliberate on the issues related to Non-Personal Data (NPD) and suggest suitable recommendations for its regulation. Further to that, on 12 July 2020, the above constituted Committee released its report for public consultation for the enactment of a legislation for regulation of NPD as well as establishment of an authority under NPD Statute. Now the above committee has released a revised report on the Draft Non Personal Data Framework addressing several concerns raised by the stakeholders for the public consultation.

24. Scheme and Guidelines issued for forwarding proposals for financial support to Public Private Partnerships in Infrastructure under the Viability Gap Funding Scheme:- Notification by Ministry of Finance

The Ministry of Finance has issued a detailed VGF Scheme and its Guidelines to be followed for submitting proposal seeking financial support for Public Private Partnerships in Infrastructure under the Viability Gap Funding Scheme.

Some of the key objectives highlighted are as under:

- The Government of India recognises that there is significant deficit in the availability of physical infrastructure across different sectors and that this is hindering economic development;
- The development of infrastructure requires large investments that cannot be undertaken out of public financing alone, and that in order to attract private capital as well as the techno-managerial efficiencies associated with it, the Government is committed to promoting Public Private Partnerships (PPPs) in infrastructure development;

- The Government of India recognises that infrastructure projects may not always be financially viable because of long gestation periods and limited financial returns, and that financial viability of such projects can be improved through Government support;
- The Government of India has therefore decided to put into effect this Scheme for providing financial support to bridge the viability gap of infrastructure projects undertaken through Public Private Partnerships.

<https://dea.gov.in/sites/default/files/Notification>

**25. Government asks private television channels to follow ASCI guidelines on online gaming and fantasy sports and all such advertisements must carry mandatory warning message:-
Circular No. 4407/13/2019-BC-I, 4 Dec 2020**

The Ministry of Information and Broadcasting has issued an advisory asking all private television broadcasters to follow guidelines issued by the Advertising Standards Council of India (ASCI) for advertisements relating to online gaming, fantasy sports etc. The Ministry has advised that the advertisements should not promote any activity prohibited by statute or law as under:

1. No gaming advertisement may depict any person under the age of 18 years, or who appears to be under the age of 18, engaged in playing a game of ONLINE GAMING FOR REAL MONEY WINNINGS, or suggest that such persons can play these games.
2. Every such gaming advertisement must carry the following disclaimer:
 - a. Print/static: This game involves an element of financial risk and may be addictive. Please play responsibly and at your own risk
 - i. Such a disclaimer should occupy no less than 20% of the space in the advertisement
 - ii. It should also SPECIFICALLY meet disclaimer guidelines 4(i)(ii)(iv) and (viii) laid out in the ASCI code
 - b. Audio/video: “This game involves an element of financial risk and may be addictive. Please play responsibly and at your own risk.”
 - i. Such a disclaimer must be placed in normal speaking pace at the end of the advertisement
 - ii. It must be in the same language as the advertisement
 - iii. For audio-visual mediums, the disclaimer needs to be in both audio and visual formats
3. The advertisements should not present ‘Online gaming for real money winnings’ as an income opportunity or an alternative employment option.
4. The advertisement should not suggest that a person engaged in gaming activity is in any way more successful as compared to others.

26. Relief for Contractors/Developers of Road Sector under Schedule H:- COVID-19/RoadMap/JS(H)/2020, Ministry of Road Transport and Highways

The Ministry's letter dated 3 June 2020 provided certain urgent relief measures to the contractors, concessionaires and developers of road sector in view of situation due to COVID 19 for 3 months. Thereafter, the period of relief measures relating to the relaxation of Schedule-H was extended further upto December, 2020 vide this Ministry's letter dated 6.10.2020.

Representations have been received in the Ministry for further extension of the period of relief measures taken. Accordingly, it has been observed that relaxation of Schedule-H has provided a good liquidity to the Contractors executing the National Highway works which has helped in keeping the pace of construction high even during the Covid-19 pandemic situation. Therefore, the Government has decided to further extend the relaxation of Schedule-H upto 30.6.2021.

27. Mandatory online submission of Annual return by Food Businesses w.e.f Financial Year (FY) 2020-21 under Food Safety and Standards (Licensing and Registration of Food Business) Regulations, 2011 (Food Regulations):- No. 15(31)2020/FoSCoS/RCD/FSSAI dated 18 December 2020

Under the Food Regulations, every manufacturer and importer shall file an annual return in Form D-1 provided in Schedule 2 of the food regulations in respect of each class of food products handled during the previous financial year. In case the licensee is engaged in the business of manufacturing of milk/ milk products half yearly return to be filed. Till now the returns are required to be submitted however now it has been prescribed to file the return online w.e.f FY 2020-21 and the window for the return filing for FY 2020-21 will open from 01 April 2021.

28. India, USA sign Memorandum of Understanding (MoU) on Intellectual Property cooperation:- Press Release dated 3 December 2020

Recently, the Department for Promotion of Industry and Internal Trade (DPIIT) has signed the MoU in the field of Intellectual Property cooperation with the United States Patent and Trademark Office (USPTO), Department of Commerce of the United States of America was signed between the Department for Promotion of Industry and Internal Trade (DPIIT) and United States Patent and Trademark Office (USPTO) on 2 December 2020 by conducting a virtual signing ceremony.

The said MoU aims to achieve the cooperation between the two countries in the following areas-

- a) Collaboration in the training programs and exchanging the expert knowledge on various fields
- b) Resolving the issues in traditional knowledge and developing the best practices related to traditional knowledge databases
- c) Raising awareness on the use of existing IP systems for the protection of traditional knowledge
- d) Exchange of information and best practices on processes for registration and examination of applications for patents, trademarks, copyrights, geographical indications, and industrial designs, as well as the protection, enforcement and use of IP rights
- e) Development and implementation of automation and modernization projects, new documentation and information systems in IP and procedures for management of IP Office services.

29. Director General of Foreign Trade releases provisions for modifying PAN based Importer Export Code (IEC):- Public Notice No. 34/2015-20 dated 24 December 2020

Recently DGFT vide its notification dated 24 December 2020 inserts the following provisions with respect to the modification of PAN based IEC:-

- 1) In case a new PAN is allotted due to the reason of change in constitution i.e. merger, acquisition, liquidation, inheritance etc. then an IEC can be availed against the new PAN if no IEC availed against existing PAN. Previous IEC(s) can also be operationally linked to the PAN/IEC of the new entity.
- 2) An application for linking the obligations under the old/ previous IEC may be submitted online to the jurisdictional RA of the new entity along with supporting documents. Concerned RA after due scrutiny sanction the given linkage. After the approval from RA's, previous IEC(s) shall be treated as surrendered.

30. Crypto Firms invited to participate in MEITY backed Accelerator Program:- News Report

As per the news reports, StartupToScaleUp the startup acceleration program which is supported by the Ministry of Electronics and Information Technology (MEITY) has invited blockchain and crypto currency firms to participate in the second phase of its global acceleration program. In the first program, 10 startups of healthcare and edutech space were selected for the 10 week program which includes workshops, networking with investors and mentors as well as sponsorship to a foreign location for business expansion. Now, the second program is for 10 weeks and the main benefit of the program is that the fees are waived by the MEITY. For the second program,

the MEITY has invited startups in AgriTech, the Manufacturing Tech space, Fintechs involved in blockchain, crypto currency, RegTech, InsurTech, LendTech and other spaces like banking and mobile payments.

<https://www.medianama.com/2020/12/223-cyrpto-firms-meity-accelerator/>

31. Delhi HC asks centre to verify if e-commerce platforms are displaying country of origin of products:- News Report

As per news reports, the Delhi High Court last week directed the Central government to inform it whether e-commerce platforms are displaying the country of origin next to product listings. The response came as the court was hearing a plea seeking e-commerce companies to display country of origin alongside products they sell on their platforms as required under the Consumer Protection (E-Commerce) Rules, 2020, and also the Legal Metrology (Packaged Commodities) Rules, 2011.

https://www.medianama.com/2020/12/223-delhi-hc-ecommerce-country-of-origin/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+medianama+%28Medianama%3A+Digital+Media+In+India%29

32. Haryana Government signs Memorandum of Understanding (MoU) with India Accelerator to aid state's startup ecosystem:- News Report

As per the news report, the government of Haryana signed a Memorandum of Understanding with India Accelerator, an Indian institution with the Global Accelerator Network in order to support and enhance the start-up ecosystem in the state. As per the said MoU, India Accelerator would be sharing its knowledge and expertise in the concerned field with the start-ups that have been registered under the state of Haryana and would further provide free of cost services to those start-ups which are recognised as highly potential.

<https://www.medianama.com/2020/12/223-haryana-mou-india-accelerator/>

33. NPCI launches offline contactless payments feature for RuPay cards:- News Report

The National Payments Corporation of India (NPCI) has launched an offline contactless payments feature for RuPay cardholders recently. RuPay cardholders can now make offline payments at point-of-sale (PoS) devices using Near-Field-Communication (NFC) enabled cards in areas with limited network connectivity, it said. Over the last few months, there has been a push by the NPCI and the Reserve Bank of India to encourage digital payments in an offline mode, particularly due to network connectivity issues in large parts of the country.

The NPCI has also launched a re-loadable wallet for offline contactless payments via RuPay cards, whereby customers can store money in the wallet to make regular retail payments. The feature which is currently enabled for the National Common Mobility Card (NCCMC) will be made available for regular retail payments on a pilot basis, it said. The RuPay NCCMC offline wallet can be used to make payments for transit services metros, bus tickets or cab fares, for instance, which reduces the need for cash and eases the convenience of daily travel.

<https://www.medianama.com/2020/12/223-npci-offline-payments-contactless-rupay-cards/>

34.NITI Aayog's proposal for an Artificial Intelligence Oversight body:- News Report

Recently, Central Government think tank NITI Aayog has made a proposal to set up an oversight body to manage Artificial Intelligence (AI) policy which will lay down guidelines for responsible behavior, and coordinate with sectoral regulators. The body may design standards, guidelines and acceptable benchmarks for priority use cases with sectoral regulators and experts. The government fully recognizes that use of the cases and contexts of AI deployment are evolving over the time and a one-size-fits-all approach is not sustainable. NITI Aayog has also released a draft discussion document on the same which was released in November and the deadline for providing the comments is extended upto 15 January 2021.

<https://www.medianama.com/2020/12/223-niti-aayog-ai-oversight-body/>

35.IRDAI Guidelines on Standard Travel Insurance Policy:- Exposure draft dated 28 December 2020

In order to make available a standard travel insurance product with common coverage and policy wordings across the industry, an exposure draft on “Guidelines on Standard travel insurance policy” along with Standard terms & conditions (Annexure -1), Customer Information Sheet (Annexure- 2) and Use and File format (Annexure-3) has been issued by IRDAI.

All the stakeholders are requested to forward their comments/suggestions on the exposure draft by 6th January, 2021 in the prescribed format. Stakeholders are also requested to suggest a suitable name for the product. The person whose suggested name is selected will be issued a certificate of appreciation by Chairman, IRDAI.

The comments along with the suggested name may be mailed to munshi@irdai.gov.in.

36.Maintenance of records under Insurance Regulatory and Development Authority (Minimum Information Required for Investigation and Inspection) Regulations 2020:- Circular No. IRDAI/INSP/CIR/293/12/2020 dated 8 December 2020

IRDAI vide its circular dated 8 December 2020 has issued guidelines for all the insurers, intermediaries and insurance intermediaries to maintain the records in electronic form to ensure cost effectiveness; and accessibility of these records for investigation and inspection by the /authority. The companies are also directed to take necessary steps to digitize their physical records and hence the companies are also required to indicate the time to the authority within 15 days of the circular date to do the same.

37. The Securities and Exchange Board of India reviews framework of IGP under the ICDR regulations:- SEBI Press Release No. 62/2020 dated 17 December 2020

SEBI vide its press release dated 17 December 2020 has released some key proposals on the proposed changes to the Innovators Growth Platform (IGP) framework which was released in 2019 for capital raising and listing of startups and other new-age firms under Issue of Capital and Disclosure Requirements Regulations (ICDR Regulations) for public consultations.

The key proposals are as follows:

- **Eligibility criteria-** Period of holding of 25% pre-issue capital has been reduced to 1 year from 2 years.
- **Accredited Investors (AIs)-** AIs' pre-issue shareholding may be considered for the entire 25% (instead of present 10%) of the pre-issue capital required for meeting eligibility condition norms. Further, Family trusts may also be included as a part of AI definition.
- **Lock In:** The lock in requirements for AIF Cat –II investors can be exempted provided the shares are held for a period of 1 year from the date of purchase.
- **Differential Voting Rights (DVR):** Listed companies under IGP framework may issue DVR / SR equity shares promoters/founders.
- **Voluntary Delisting:** Delisting may be considered for the companies listed under IGP framework if 75% of the total shareholding are acquired.
- **Migration to Main Board:** Needs to have at least 40% of the capital held by QIBs as on date of application for migration

Details of above mentioned proposals and consultation paper on review of IGP framework are available at below link and the last date for giving comments on the consultation paper is 11 January 2021.

<https://www.sebi.gov.in/reports-and-statistics/reports/dec-2020/consultation-paper-on-review-of-framework-of-innovators-growth-platform-igp-under-sebi-issue-of-capital-and-disclosure-requirements-regulations-2018-48428.html>.

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