



Tax & Regulatory Updates – Key developments of November 2020

A. DIRECT TAXATION

- 1. Central Board of Direct Taxes released the Standard Operating Procedures (SOPs) for Assessment Unit (AU), Verification Unit (VU), Technical Unit (TU) and Review Units (RU) of Regional e-Assessment Centres (ReACs):- F.No. Pr. CCIT(NeAC)/2019-20/343 dated 23 November 2020**

CBDT has released the detailed 47 page SOPs to the ReAC's for implementation by the respective AU, VU, TU and RU. The said SOPs provides the guidance on multiple points for the implementation of the Faceless Assessment throughout the country.

Key aspects covered in the SOPs are listed below for your reference:-

- 1) Issue of the initial questionnaire u/s 142(1) and the time limit for replying the same and it also mentions specifically not to call any information from the assessee that is already available with the department so that the burden of compliance can be reduced. You are aware that its a standard practice in the tax office to call for basic documents like ITR, Tax audit etc. to initiate the assessment proceedings.
- 2) Grant of adjournment to initial notice u/s 142(1) on request of taxpayer or a suo-moto adjournment by the department in order to make sure that the sufficient time is given to assessee.
- 3) Procedure to do best judgement assessment u/s 144 where non-compliance to any notice u/s 142(1) where it has been emphasised that the department should exhaust all possible means before adopting this route.
- 4) Cases where the penalty may be imposed in the assessee for making any non-compliance to the notice u/s 142(1).
- 5) How the questionnaire will be prepared along with Additional questionnaire.
- 6) Handling of cases where taxpayers are not responding.
- 7) Manner of reference to Technical Unit in the prescribed formats.
- 8) Manner of response by TU to the AU so that the jurisdictional High Court's view is clearly mentioned in the order on the technical issues and department's view in the assessment order (external legal expert can also be consulted with approvals). Also, the database TU to build for having a common view of issues at NeAC level and database to refer to technical issues.
- 9) Approach by TU in case of Valuation related references (external valuation experts can also be appointed with approvals).
- 10) Manner of handling of reassessment cases u/s 147.
- 11) Manner of withholding refund u/s 241A.
- 12) Manner of physical verification wherever required.
- 13) Manner of handling of reference cases to FT&TR to seek information from other countries.
- 14) Manner and scope of verification by RU related to records examined by AU, incorporation of facts and law in the order including relevant case laws, arithmetical checking.
- 15) Manner of granting the Personal hearing which can be granted by CCIT, ReAC basis the written request of taxpayer in response to the Draft Order wherein the taxpayer disputes the facts captured by the AU - it appears that Draft assessment order would come for an opportunity for the hearing.

2. CBDT to validate Unique Document Identification Number (UDIN) generated by Chartered Accountants from the portal of Institute of Chartered Accountants of India (ICAI) at the time of uploading of Tax Audit Reports:- Press Release dated 26 November 2020

ICAI vide its notification dated 2 August 2019 made generation of UDIN mandatory for every kind of certificate/tax audit report and other attestations made by the members. 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. This integration will help in weeding out the fake and incorrect tax audit reports which are not authenticated with the ICAI.

3. 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) dated 10 November 2020

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 set of FAQs were issued in October on this scheme and now the government has issued a second set of FAQs providing further clarifications. The consolidated summary of the same is captured below:

- 1) The scheme is applicable in respect of one LTC during the block year, if the same is exhausted the person can't opt for this scheme.
- 2) If an employee does not have leave balance which is required for availment of leave encashment for LTC, the person can claim benefit of scheme without leave encashment.
- 3) If an employee has claimed hometown LTC in FY 2018-19 with Leave Encashment, then he can claim LTC cash voucher scheme self for block year 2020-21 and remaining family members from block 2018-19 provided it does not exceed the 60 days time limit eligible for leave encashment
- 4) If employee avails LTC fare without leave encashment but spend equal to or less than 3 times of the deemed fare then the reimbursement will be on Pro rata basis.
- 5) The purchase on EMI loan is also eligible provided that it has been affected after the order dated 12.10.2020.
- 6) Payment can be made by cheque/DD/RTGS.
- 7) If an employee has exhausted 60 days of leave encashment he cant further avail 10 days of leave encashment.
- 8) Autonomous bodies can implement this scheme provided they are already implementing the scheme similar to this scheme.
- 9) The employee can also get advance equal to 100% of leave encashment and 50% of value deemed fare.

- 10) If a person has availed one LTC in 2019 then he can also get another remaining LTC under the new scheme.
- 11) Even if the purchase is made through an E-commerce platform it is eligible and the purchases will be tracked through digital payments made by persons.
- 12) Even if you have purchased before exercising the option, then it will be counted as reimbursement if it is made between 12.10.2020 to 31.03.2021.
- 13) The advance needs to be settled on or before 31st March 2021.
- 14) The receipt / invoice can be in the name of spouse or family members who are eligible for LTC fare as declared in the service records.

4. Central Board of Direct Taxes (CBDT) condones delay in filing of Form No. 10BB for AY 2016-17 & subsequent years:- Circular No. 19/2020 dated 03 November 2020

As per section 10(23C) read with rule 16CC of the income tax rules, where the total income of every fund trust or institution or any university or other educational institution or hospital or other medical institution without providing any exemption exceeds the minimum amount which is not chargeable to the tax in any previous year is required to get its accounts audited and file such audit report in the form no. 10BB electronically along with the return of the income. Failure in the filing of the form 10BB may disentitle such trust or institutions for claiming the exemption under section 10(23C).

However, CBDT/ Field authorities have received the representations that 10BB have not been filed with the return of the income for AY 2016-17 and AY 2017-18 and requested to condone the delay.

Thus, CBDT vide its circular dated 03 November 2020 has decided to provide the following relief:-

- 1) For the cases relating to the assessment years prior to AY 2018-19, the Commissioners of Income-Tax are authorized to admit such applications and before entertaining such applications shall satisfy himself that there were reasonable cause prevented the assessee from filing of the such applications within stipulated time.
- 2) For the cases that relates to the AY 2018-19 or any subsequent assessment years, the Commissioners of Income-Tax are authorized to admit such belated applications of condonation of delay and decide on merits

5. Karnataka High Court affirms Special Bench's Biocon ruling on the important issue of allowing ESOP discount as expense u/s 37 of the Act:- Biocon Limited TS-608-HC-2020(Kar)

Facts of the case in brief:-

- 1) Biocon Limited ("Assessee" or "the Company") is a company engaged in the business of manufacture of Enzymes and Pharmaceuticals Ingredients. Assessee floated a scheme i.e. Employees Stock Option Plans (ESOP) and constituted a trust. Shares were transferred to the trust at face value and the employees of the assessee were given the option to buy the shares within the time prescribed under the scheme and subject to the terms and conditions mentioned therein.
- 2) In the Return of income, the assessee has claimed the difference between the market price and allotment price as a discount and claimed the same as an expenditure under section 37 of the Income Tax Act over the vesting period.
- 3) During the course of the assessment, the assessing officer disallowed the claim of the assessee on the ground that the assessee did not incur any expenditure and ESOP discount represented a contingent liability since there is no certainty of options getting vested in the employees and/or employees exercising the options.
- 4) The assessee against the order of the assessing officer filed an appeal before the Commissioner of Income Tax (Appeals) {"CIT(A)"}. CIT(A) dismissed the appeal of the assessee. Assessee further appealed before the Tribunal. The division bench of the Tribunal referred the case to the Special Bench ("SB").
- 5) The SB ruled that ESOP discount is a deductible expenditure and not a contingent or notional expenditure. Further, ESOP discount is part of an employee's remuneration which is paid to the employees in order to compensate for their continuity of services to the company and hence ESOP discount is allowable as an expenditure.

Aggrieved by the decision of the special bench, the department filed an appeal before the High Court.

Observations of the High Court:-

The High Court affirmed the SB ruling that ESOP discount is a deductible expenditure u/s 37 of the Act and not a contingent or notional expenditure and observed the following:-

- 1) For the purposes of business deduction, expenditure need not necessarily be incurred in cash and actual pay-out is not a prerequisite to claim the deduction. Incurrence of an obligation is also an expenditure allowable as business deduction.
- 2) By undertaking an obligation to issue shares at a discounted premium at a future date, the assessee has incurred an obligation towards remunerating the employees for their services, which is nothing but expenditure.

- 3) ESOPs provided to the employees with the objective of to earn the profits by securing the consistent services of the employees and not with the object of raising the capital. Thus, it cannot be equated with the short receipt of premium on issue of shares.
- 4) As held by the Supreme Court in the case of **CIT v. Woodward Governor (India) Pvt. Ltd. (2009) 179 taxman 326 (SC)**, expenditure also includes a “loss”. Hence, issuance of shares at a discount, where the Company absorbs the difference between the market value of shares and the discounted issue price, constitutes an expenditure allowable as business deduction.
- 5) The employees have a definite right to 25% of the shares every year on vesting and the assessee is bound to allow the vesting of 25% of the options. Thus, ESOP discount is not a contingent liability but is an ascertained liability.
- 6) Assessee has claimed the deduction of ESOP discount over the vesting period in accordance with the accounting in the books of accounts which are prepared in accordance with the SEBI guidelines

6. Income Tax Appellate Tribunal (ITAT), Chennai released suggestions to be followed by Assessee/ Counsel/ Departmental Representatives from 09 November 2020:-

Recently ITAT Chennai has issued an administrative order with the suggestions to be followed by Assessee/ Counsel/ Departmental Representatives from 09 November 2020 for conducting hearings in the matters. The brief of the guidelines are as follows:-

- 1) Adjournment request or application to be sent by email latest on the previous day of hearing before 4.00 P.M
- 2) In case of submission of voluminous paper book or submissions of more than 10 pages, the same to be filed 3 days prior to the hearing (Hard Copy either physically filed or sent by post/ courier) so that the same quarantined for 2 days.
- 3) Any paper book or case law or submission of maximum upto 10 pages can be sent by email latest on the previous day of hearing before 4.00 P.M

7. Indian economy will see a double digit growth next fiscal:- News Report

Former Chief Economic Adviser, Arvind Virmani while addressing a virtual event organised by PHDCCI said that Indian economy will bounce back strongly and grow in double digits in the next fiscal year. He said that the central government has already introduced some noteworthy reforms like Goods and Service Tax, Insolvency and Bankruptcy Code etc but there are still some reforms required to re-accelerate the economic growth.

<https://economictimes.indiatimes.com/news/economy/finance/indian-economy-will-see-double-digit-growth-next-fiscal-former-cea-arvind-virmani/articleshow/79285032.cms>

8. Centre planning mechanism to solve tax issues in real time:- News Report

The Finance minister, Nirmala Sitharaman while addressing National MNC's Conference 2020 organised by Confederation of Indian Industry mentioned that the government's intention is to build real-time mechanisms to settle the tax matters and prevent them from becoming a tax dispute as there have already been a large number of cases that are pending in Indian courts and everyone is pretty much aware of the time that it takes to solve the cases in Indian courts. The government is looking to make such a system that will allow the assessee an option to settle the tax matter when the demand is finalised and in return, the assessee could get incentive like immunity from penalty and a waiver of interest on tax dues. Furthermore, she also talked about the Alternative Dispute Resolution mechanism i.e. Advance Pricing Agreements (APAs) are taking too much time and it should be expedited otherwise the very purpose of the APAs will be defeated.

https://www.business-standard.com/article/economy-policy/centre-planning-mechanism-to-solve-tax-issues-in-real-time-fm-sitharaman-120112301398_1.html

9. Income Tax portal showing GST turnover to better compliance:- News Report

Finance Act 2020 had introduced a new Section 285BB under the income tax act to replace the existing format of the Form 26AS to a completely new Avatar. CBDT vide its notification dated 28 May 2020 has notified a new Rule 114-I laying down a format with the following info:

- i) Additional Basic info - Mobile No., Email, Date of Birth / Inc.
- ii) Taxes deducted / collected at source
- iii) Specified Financial Transactions that would cover under sec. 285BA
- iv) Payment of taxes such as advance tax etc.
- v) Demand and refunds
- vi) Pending proceedings
- vii) Proceedings already completed
- viii) Any other information such as information received from other countries under Exchange of Information article in DTAA or any other matter, in the interest of revenue.

Taking the above forward, CBDT vide its order dated 29 September 2020 authorizes the Principal Director General of Income-tax or the Director-General of Income-tax to upload information relating to GST return in the annual information statement in Form 26AS within three months from the end of the month in which the information is received by him.

Pertaining to the above amendments, some media reports were floating that this will lead to additional compliance burden on the taxpayers. On this the Government has clarified that it is aimed at providing additional information to the taxpayers and also force the taxpayers to report correct turnover and pay fair income tax on the same. The new Form 26AS is also expected to weed out filers who are involved in fake invoice rackets as their income tax profiles are not commensurate with GST turnover.

<https://www.financialexpress.com/economy/income-tax-portal-showing-gst-turnover-to-better-compliance-govt/2129794/>

10. Vivad Se Vishwas scheme garners Rs 72,480 Crore tax to government so far and an e-campaign launched by the Government to promote the scheme:- News Report

Vivad Se Vishwas scheme has proved to be a major success for the government as a total of Rs. 72,480 collection has been made by the government so far. As per the news report, a total of 45,855 declarations have been filed under the scheme till date till 17 November 2020. Recently the government has extended the deadline for payment under the scheme till 31 March 2021 from 31 December 2020.

Also, the government in the last few days have started sending emails to the taxpayers particularly those in whose cases some demands are pending in the records of Income tax department. This is to promote the scheme and inform taxpayers about the scheme, guiding and facilitating them in filing of declarations and removing any difficulties faced by them in availing the scheme

<https://www.financialexpress.com/economy/vivad-se-vishwas-scheme-garners-rs-72480-cr-tax-to-govt-so-far/2131462/>

11. A decade of tax holiday: Financial companies explore to move outstanding units to GIFT city:- News Report

Several multinational financial services companies engaged in global banks, asset management companies, insurance companies etc. are exploring options to move their outsourcing units and other back office operations to the Gujarat International Finance Tech-City (GIFT) in order to enjoy a tax holiday of 10 years. All the entities engaged in financial services qualify for a 100% tax holiday in respect of their back-office operations in IFSC and hence if they opt for the lower corporate tax rate of 22% on which they are not required to pay the MAT and locate their back offices in the IFSC, they can enjoy the full tax benefit of 100% on their income.

<https://economictimes.indiatimes.com/news/company/corporate-trends/a-decade-of-tax-holiday-financial-companies-explore-to-move-outsourcing-units-to-gift-city/articleshow/78985284.cms>

12. Production Linked Scheme (PLI) for the mobile manufacturing likely to ensure Rs 80,000 crores in the tax revenue:- News Report

With the extension of PLI scheme to the mobile manufacturing companies, the Indian tax authorities are expected to realise a sum of Rs. 80,000 crores over the next five years in which the major chunk of the Goods and Services tax which is expected to realise a total of 72,000 crores as the mobile phone comes under the bracket of 18% rate and while the remaining part of approx 10,000 crores to come from the corporate tax and miscellaneous. Apart from this, it is expected approximately more than two lakh direct jobs are expected to be created over the next five years while indirect employment opportunities are expected to number nearly three times that.

As per the news report, five mobile companies that have been approved under the PLI are Samsung, Foxconn, Hon Hai, Rising Star, Wistron and Pegatron.

<https://www.financialexpress.com/economy/pli-scheme-for-mobile-manufacturing-likely-to-ensure-rs-80k-cr-in-tax-revenues/2121190/>

13. India loses \$10.3 billion every year due to tax abuse by MNCs:- News Report

As per a recent State of Tax Justice report, India is losing over \$10.3 billion in taxes every year because of tax abuse by MNCs and evasion by private individuals. Out of the total \$10.3 billion, 10 billion is lost to the MNCs and remaining is lost to the individuals. According to the report, cumulatively all the countries in the world are losing over \$427 billion in tax each year to international corporate tax abuse and private tax evasion. The report further provides that India is most vulnerable to illicit financial flows in the form of FDI and listed Mauritius, Singapore and the Netherlands as the trading partners which are most responsible for this vulnerability. The State of Tax Justice report has been published by the Tax Justice Network, together with global union federation Public Services International and the Global Alliance for Tax Justice.

https://www.business-standard.com/article/economy-policy/india-losing-10-3-bn-in-taxes-per-year-due-to-tax-abuse-by-mncs-report-120112001332_1.html

14. PFRDA would propose higher Income Tax deduction on NPS contributions for private, state government employees:- News Report

As per the news report, Pension Fund Regulatory and Development Authority (PFRDA) for the next budget will propose the government to increase the employers contribution limit to 14% under National Pension Scheme tax free for all the categories of subscribers. Currently, the 14% limit is given u/s 80CCD(2) only to the central government employees and for the other employees it is 10%. The limit is calculated on the salary which is basic plus dearness allowance. Further, it has also been reported that PFRDA will ask the government to extend the benefit of tier-II NPS account as tax free for all subscribers.

</money/personal-finance/higher-income-tax-deduction-on-nps-proposed-for-private-state-govt-employees-11605521093051.html>

15. No relief for start-ups on ESOP taxation:- News Report

The Department for Promotion of Industry and Internal Trade (DPIIT) requested the Department of Revenue for relaxing the rules that start-ups employees to pay the tax on the ESOPs at the time of exercise which is linked to the start-ups getting registration with Inter-Ministerial Board (IMB) to be eligible for the tax benefit. The said request has been turned down by the Department of Revenue as per media reports citing the reasons that such benefits provided to the start-ups have been misused for creating shell companies as per the evidence

available with the Ministry of Finance and hence, due diligence by IMB is critical before granting any such tax benefit. Further, the start-ups have already been provided with enough reliefs and benefits for the employment and wealth creation by amending the definition of the start-up itself, which now covers a large gamut of organisations.

<https://www.cnbctv18.com/startup/no-relief-for-start-ups-on-esop-taxation-registration-with-imb-7450011.htm>

16. ITAT disposed of 7,251 cases via virtual hearings during the Pandemic period:- News Report

ITAT President Justice PP Bhatt has recently said that 7,251 cases have been disposed through virtual hearings across the country during the pandemic period as against the 3,378 new cases filed with the ITAT. He mentioned that Virtual Benches have been set up throughout India which are used for case hearings during Covid-19. He also mentioned that a new e-filing portal is ready which shall facilitate e-filing of appeals, documents and other applications by the litigants. Also, Physical notice boards are being replaced by digital screens displaying the constitution of benches, cause list and other information.

<https://www.financialexpress.com/money/itat-disposes-of-7251-cases-during-covid-19-pandemic-via-virtual-hearings/2125486/>

17. Centre seeks time to decide whether to appeal the international arbitration award in Vodafone's case:- News Report

As per the news report, the Central Government has sought time from the Delhi High Court to respond whether they want to move forward and challenge the decision of the international tribunal's decision given in favor of Vodafone. 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.business-standard.com/article/pti-stories/centre-asks-for-time-for-decision-on-appealing-against-int-l-arbitration-award-in-vodafone-s-favour-120111701083_1.html

18. NRIs in tax havens told to prove residency status- News Report

A number of NRIs have been asked by the income tax officials to show their non-resident standing for evaluation years 2013-14 to 2017-18 as such individuals allegedly had not disclosed their international properties located outside India. In addition to this, if such individuals fail to reveal their non residency standings with the valid proof then their returns for these previous years as mentioned before could also be

reopened as the data obtained by the Indian income-tax authorities indicates that these individuals had substantial offshore property or earnings which they haven't disclosed. Liability to pay tax in India depends on the residential status as given under section 6 of Income tax Act, 1961.

<https://www.universalpersonality.com/nris-in-tax-haven-data-told-to-prove-residency-status>

19. UN releases revised Draft of New Article 12B on automated Digital Services:

Revised Draft on New Article 12B on Automated Digital Services (ADS) taxation released by UN committee. The original draft was introduced in Aug 2020.

The following Key changes are highlighted below:-

- 1) Specifically excludes payments qualifying as “royalties” under Article 12 from the definition of ADS.
- 2) In the exhaustive list of services considered as ADS, online search engines have been included.
- 3) Modification of Negative List for the expression "income from automated digital services".
- 4) To have a modest rate of tax i.e 3% or 4%.
- 5) Modified article gives clarity on computation of qualified profits and explains "Where segment-wise accounts are not maintained by the beneficial owner, the overall profitability ratio of the beneficial owner will be applied to determine qualified profits."
- 6) In case the beneficial owner belongs to a multinational enterprise group, the profitability ratio shall be that of the business segment of the group relating to income.
- 7) A new proviso is added with a view to neutralize the possible reduction of the profitability due to tax-driven related party transactions in the multinational group.
- 8) For calculation of profitability ratio, the profit to be used would be profit before tax as per accounts of beneficial owners, or the consolidated accounts of the MNE group with tax-to-book adjustments.

20. Indian Finance Minister calls for Consensus on Digital taxation:- News Report

Finance Minister, Nirmala Sitharaman while addressing BRICS (Brazil, Russia, India, China, South Africa which make up the BRICS group) finance ministers and Central bank governors emphasised strongly the need for a consensus solution on digital taxation as it will help in ensuring fairness, equity and sustainability of Tax systems. The time frame to arrive at the said consensus as a part of BEPS framework has been pushed to mid 2021. The OECD last month released a blueprint for two pillars regarding the digital tax framework.

https://www.business-standard.com/article/economy-policy/fm-calls-for-consensus-on-taxing-digital-firms-like-google-facebook-120110901490_1.html

21. Even after US threats, France to impose digital tax for 2020:- News Report

On March 6, 2019, the French government released a proposal for a 3 percent tax on revenues generated by some companies from certain digital services (the DST). The French parliament passed Digital Service Tax (DST) bills on April and May 2019 and agreed on a final bill in July. Later, then United States President Donald Trump has assailed the tax as unfairly targeting the tech heavyweights of the US and threatened to impose the import duties of 25 percent on \$1.3 billion worth of French products. Then last year France Government reached a deal with the US government to suspend collection of the tax while seeking a global digital tax deal under the program of the Organisation for Economic Co-operation and Development (OECD). In October 2020, the OECD acknowledged that no deal on Digital Tax is likely before next year. Thus, as per the news report, the French Government will go ahead and apply the digital levy this year itself.

<https://economictimes.indiatimes.com/news/international/world-news/france-risks-us-ire-with-vow-to-impose-digital-tax-this-year/articleshow/79410430.cms>

22. G20 leaders again pledge to reach international tax deal:- News Report

Digital tax has been one of the hot topics this year without any doubt and the discussion on the same does seem to end any soon. This year OECD's meeting on digital tax didn't reach any agreement as there was a lack of consensus between the countries. The G20 leaders although welcomed the Pillar one and Pillar two reports and acknowledged the same in the virtual meetings hosted by Saudi Arabia. Furthermore, as per news reports, all the leaders are committed to resolve the remaining issues and reach a global and consensus-based solution by mid-2021.

<https://mnetax.com/g20-leaders-again-pledge-to-reach-international-tax-deal-but-outcome-uncertain-41479>

23. UK draft tax proposals include hybrid mismatch fixes, R&D tax credit cap:- News Report

UK government released proposed additional tax legislation for Finance Bill 2021 which includes amendments to the hybrid mismatch regime applicable to multinational groups and a proposed new cap on research and development (R&D) tax relief. The hybrid mismatch proposal is designed to ensure that the law operates proportionately and as intended. The R&D tax credit proposal aims to prevent abuse of the credit by small and medium-sized businesses by capping the annual deduction. The measure limits the amount of payable R&D tax credit which a small and medium-sized entity can claim to £20,000 plus 300% of its total Pay as you Earn (PAYE) and National Insurance Contributions liability for the period.

<https://www.google.com/url?sa=D&q=https://mnetax.com/uk-draft-tax-legislation-includes-hybrid-mismatch-fixes-rd-tax-credit-cap-41326&ust=1605948120000000&usg=AOvVaw1mLQsMDPMqexELy7wgYOeg&hl=en-GB>

24.MNC's to give feedback to centre on OECD proposal of global digital tax: News Report

The centre has asked the MNC's about their concerns regarding the OECD's proposal to charge cross jurisdiction tax under BEPS Framework. India needs to submit the suggestions to the OECD by December. However, MNC's are planning to make direct representations to OECD asking for the current system to stay.

The Centre has sought feedback on OECD's pillar1 and Pillar 2 approaches. Due to this large corporations and MNCs could face more domestic tax liability under the new proposed system, and will likely boost countries like India in their plans to tax digital companies. Smaller companies and start-ups with lower revenue levels may however still escape the net. The framework was earlier expected in December 2020 but now is pushed to mid-2021.

<https://www.moneycontrol.com/news/business/centre-asks-mnacs-for-feedback-on-oecd-proposal-of-global-digital-tax-report-6065181.html>

25.MNC's targeted by UK in the latest drive to curb tax avoidance and increase in tax collections:- News Report

As per the news report, the british government has launched a crackdown on multinationals suspected of wrongly reducing their UK tax bills by shifting profits to other countries warning them of investigations and potentially large penalties. It has been reported that the UK tax authority has written to many companies to review their transfer pricing agreements under which businesses allocate profits between different countries in an effort to minimise their tax liabilities. It is estimated that 2,000 largest businesses with operations in the UK may owe an additional £34.8 billion in tax relating to the 2019-2020 financial year up from £29.9 billion in 2018-2019. In the letter it has been requested to submit information about their transfer pricing to its disclosure tool. HMRC is following up immediately with investigations for the majority of businesses that did not register with its disclosure tool.

<https://www.google.com/url?sa=D&q=https://www.irishtimes.com/business/economy/uk-targets-multinationals-in-latest-move-on-tax-avoidance-1.4410457&ust=1605948120000000&usg=AOvVaw32OIRX3Jozl2gmunL8tftn&hl=en-GB>

26.Digital tax proposal of European union may be delayed:- News Report

Olaf Scholz, the German finance minister recently said that European Union proposals for digital tax may take more time for worldwide consensus. He also said that there will be no global agreement on digital taxation till the end of the year, which he said was important since it will provide more time to the process. He is of the view that by mid 2021, the digital tax proposal may get acceptance worldwide and they are working in the same direction to get the required agreement. EU countries agreed to lay out a plan for digital taxation at the start of

2021, but it will now be delayed if more is given to international negotiations. It is important to have overall because if some countries will only apply digital taxation then companies can simply relocate to avoid it.

<https://www.irishtimes.com/business/economy/european-union-digital-tax-proposal-may-be-delayed>

27. Spain targeting big e-commerce companies through a new tax on digital services: News Report

The new tax is a unilateral response to the current lack of international consensus and falls, at 3%, on previously not taxable events. It will enter into force next January 16th 2021.

Tax on certain digital Services (DST) is an entirely new tax based on the understanding that the current international taxation rules, primarily focused on physical presence, were not designed to address today's business models centered on intangible assets, data and knowledge.

DST Law, thus, aims at taxing in Spain the value attached to certain digital services provided these are rendered by relevant digital players (whether established in Spain, in another EU member state or in a third country), with a material digital presence in Spain. In order to qualify two revenue thresholds must be exceeded: (i) Global yearly net revenues above euro 750 million and (ii) Spanish yearly taxable income per DST above euro 3 million.

Some of the main features of Spanish DST are as follows:-

- 1) DST is an indirect tax levied on certain digital services rendered by legally defined taxpayers with the intervention of users located in Spain.
- 2) 3 digital services fall in DST purview :- (a) On-line Advertising services,(b) On-line Intermediary services and (c) Data Transfers.
- 3) DST is levied at a rate of 3% on the amount of revenues, as determined by the law, excluding VAT, obtained by the taxpayer from taxable digital services.
- 4) DST is accrued when the services are rendered, executed or completed, or upon total or partial collection, in the case of anticipated payment, and must be settled on a quarterly calendar basis.

<https://www.jdsupra.com/legalnews/spain-targets-bigtech-with-new-tax-on-88606/>

28. Tax Amnesty plan sees total tax claim of Rs. 1.2 Trillion:- News Report

The rolling out of Vivad se Vishwas scheme for settling direct tax disputes has generated interest among public and private sectors with a total tax claim of Rs. 1.19 trillion. Finance Secretary Mr. Ajay Bhushan Pandey said that the government received 43000 cases from the private sector involving Rs.13000-14000 crores. The remaining cases are of the public sector. The response to the scheme indicates it will fetch dividends for the government to reduce tax litigation.

The Centre has taken several steps to reduce tax litigation, including offering a scheme to settle legacy disputes relating to excise and service taxes. It also raised the monetary threshold for the tax department to file appeals at various judicial platforms.

The government is on a drive to ensure the scheme covers as many disputes as possible and field officers have been asked to reach out to parties and help them sign up for it.

<https://www.livemint.com/news/india/tax-amnesty-plan-sees-1-2-tn-cases-11604364841681.html>

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B. INDIRECT TAXATION

1. Clarifications on Quarterly Return Monthly Payment Scheme to be implemented w.e.f. 01 January 2021:- Circular no. CBEC-20/01/08/2020 -GST dated 10 November 2020

Various issues related to notifications issued to implement the Quarterly Return Monthly Payment (QRMP) Scheme have been examined. In order to explain the Scheme in simple terms and in order to ensure uniformity in implementation across field formations, the CBIC has issued the following clarifications under section 168 (1) of the GST Act.

i) A registered person who is required to furnish a return in FORM GSTR-3B, and who has an aggregate turnover of up to INR 5 crore in the preceding FY, is eligible for the QRMP Scheme. The aggregate annual turnover for the preceding FY shall be calculated in the common portal taking into account the details furnished in the returns by the taxpayer for the tax periods in the preceding FY.

ii) Facility to avail the Scheme on the common portal would be available throughout the year. A registered person can opt in for any quarter from first day of second month of preceding quarter to the last day of the first month of the quarter. In order to exercise this option, the registered person must have furnished the last return, as due on the date of exercising such option. Registered persons are not required to exercise the option every quarter. Where such option has been exercised once, they shall continue to furnish the return as per the selected option for future tax periods, unless they revise the said option.

iii) For the first quarter of the Scheme i.e. for the quarter January, 2021 to March, 2021, it has been decided that all the registered persons, whose aggregate turnover for the FY 2019-20 is up to INR 5 crore and who have furnished the return in FORM GSTR-3B for the month of October, 2020 by 30 November, 2020, shall be migrated on the common portal. The remaining taxpayers will be able to opt for the Scheme once the FORM GSTR-3B as due on the date of exercising option has been filed.

iv) The facility for opting out of the Scheme for a quarter will be available from the first day of the second month of preceding quarter to the last day of the first month of the quarter.

v) The option to avail the QRMP Scheme is GSTIN wise and therefore, different GSTINs on the same PAN have the option to avail the QRMP Scheme for one or more GSTINs.

vi) For each of the first and second months of a quarter, a registered person who has opted for quarterly filing will have the facility (Invoice Furnishing Facility- IFF) to furnish the details of such outward supplies to a registered person between the 1st day of the succeeding month till the 13th day of the succeeding month. After the 13th of the month, this facility for furnishing IFF for previous month would not be available. The said details of outward supplies shall, however, not exceed the value of INR 50 lakhs in each month.

vii) The said facility is not mandatory and is only an optional facility made available to the registered persons under the QRMP Scheme. The details of invoices furnished using the said facility in the first two months are not required to be furnished again in FORM GSTR-1.

viii) The registered person under the QRMP Scheme would be required to pay the tax due in each of the first two months of the quarter by depositing the due amount in FORM GST PMT-06, by the 25th day of the month succeeding such month. While generating the challan, taxpayers should select “Monthly payment for quarterly taxpayer” as a reason for generating the challan. The said person can use any of the following two options provided below for monthly payment of tax during the first two months -

a) Fixed Sum Method: A facility is being made available on the portal for generating a pre-filled challan in FORM GST PMT-06 for an amount equal to 35 per cent. of the tax paid in cash in the preceding quarter where the return was furnished quarterly; or equal to the tax paid in cash in the last month of the immediately preceding quarter where the return was furnished monthly.

b) Self-Assessment Method: The said persons, in any case, can pay the tax due by considering the tax liability on inward and outward supplies and the input tax credit available, in FORM GST PMT-06. In order to facilitate ascertainment of the ITC available for the month, an auto-drafted input tax credit statement has been made available in FORM GSTR-2B, for every month.

ix) Any claim of refund in respect of the amount deposited for the first two months of a quarter for payment of tax shall be permitted only after the return in FORM GSTR-3B for the said quarter has been furnished.

x) For registered person making payment of tax by opting Fixed Sum Method, no interest would be payable in case the tax due is paid in the first two months of the quarter by way of depositing auto-calculated fixed sum amount by the due date. If while furnishing return in FORM GSTR-3B, it is found that in any or both of the first two months of the quarter, the tax liability net of available credit on the supplies made /received was higher than the amount paid in challan, then, no interest would be charged provided they deposit system calculated

amount for each of the first two months and discharge their entire liability for the quarter in the FORM GSTR-3B of the quarter by the due date.

xi) For registered person making payment of tax by opting Self-Assessment Method Interest amount would be payable as per the provision of Section 50 of the CGST Act for tax or any part thereof (net of ITC) which remains unpaid / paid beyond the due date for the first two months of the quarter.

2. High Courts rule that interest recoverable on net-basis w.e.f. 01.07.2020 which is period prior to amendment of section 50

Various High Courts have held that interest under section 50 of the GST Act shall be recoverable on net-basis w.e.f. 01.07.2017. A summary of various High Court Ruling is given below.

- 1) The Bombay High Court in **KLT Automotive and Tubular Products Limited Through its Director Mr. Jubin Thakkar vs. Union of India and Others** in WRIT PETITION (L) NO.983 OF 2020 has held that interest under section 50 of the Central Goods and Service Tax Act, 2017 is to be levied on the next tax liability as answered by the Board in the administrative instructions dated 18.09.2020 by categorically stating that the interest would be on the net cash tax liability for the period prior to the amendment i.e., from 01.07.2017 to 31.08.2020
- 2) The Madras High Court in **Maansarovar Motors Private Limited vs. The Assistant Commissioner, The Superintendent of GST & Central Excise, The Branch Manager** in W.P.Nos. 28437 of 2020 has held that the amendment by insertion of proviso of Section 50 of the CGST Act is intended to be retrospective. The Board has extended a waiver of recovery for the past period in line with the decisions of the Council (vi) Notification dated 18.09.2020, that cemented the long line of assurances of the GST Council and the Board in letter and spirit.

3. Blocking of IEC by GST officers held to be illegal and invalid:- Bombay High Court in Siddharth Mandavia vs. Union of India and Ors. in WRIT PETITION (L) NO.2901 OF 2020

The GST department had carried out investigations of the Petitioner and alleged that the Petitioner has utilized fake ITC to discharge his IGST liability on export of goods with an intention to get ineligible refund and thus to defraud government exchequer. In view of the investigations, the bank account of the Petitioner was provisionally attached and IEC code was blocked. The Petitioner approached the High Court for release of bank accounts and unfreeze the IEC code.

The Court observed that from a reading of section 8(1) Foreign Trade (Development and Regulation) Act, 1992, it is seen that the Director General or the authorized officer after calling for the record and after giving a notice in writing to the person concerned informing him of the grounds on which his IEC number is sought to be suspended or cancelled and after giving him reasonable opportunity of making a representation in writing and a personal hearing, if sought for, either suspend or cancel the IEC number granted to that person. It is trite that when a law requires a thing to be done in a particular manner, it has to be done in that particular manner and recourse to any other manner is necessarily forbidden.

Suspension and cancellation of importer exporter code number can be done only under FTDR Act by the DGFT or by his authorized officer for the reasons specified and in the manner provided in section 8 of the said Act. The Respondents arrayed in this petition are neither the DGFT nor his authorized officer. Prima facie, they are not empowered either to suspend or cancel the importer exporter code of the petitioner, the only two measures provided under law. There is no provision for blocking of importer exporter code, that too by an authority which is not competent either to suspend or cancel such code.

Accordingly, blocking of IEC of the petitioner by any authority other than the DGFT or by his authorized officer under section 8 of the FTDR Act was held as unauthorized, unwarranted and without jurisdiction.

4. Effective date of registration certificate for conversion of the provisional registration to a permanent registration held as date of provisional registration :- Kerala High Court in case of Madhav Motors vs. State Tax Officer, Deputy Commissioner of State Tax , GSTN, GST Council, The Nodal Officer for State GST in Writ Petition Nos.5238 of 2020

The Petitioner is a dealer in Automobiles, and applied for registration under GST Act on 28.06.2017 and he got provisional registration u/s 139(1) of GST Act. Further, he had applied for permanent registration and attempted to upload TRAN-1 for the purpose of claiming ITC i.r.t. tax paid on closing stock that was available at the time of introduction of GST regime. But he could not login to the GST portal as he had not received a permanent registration certificate. The Petitioner was granted a fresh registration under the GST Act vide certificate dated 04.01.2020 which indicated that the date of liability of the petitioner is recognised by the respondents as 01.07.2017. Noticing the said discrepancy in the registration certificate, the petitioner preferred a request before the respondents for change in the effective date of the registration certificate from 04.01.2020 to 01.07.2017. The said request of the petitioner was rejected. Hence, the Petitioner filed this writ petition. It must be mention here that the provisional registration granted to the petitioner was not formally cancelled by the respondents by following the procedure envisaged under the Act for cancellation of the provisional registration. Under such circumstances, the petitioner continued to function under the provisional registration granted to him, although the absence of a permanent registration resulted in a situation where he could not

upload the returns and other documents enabling him to claim input tax credit in respect of the tax paid stock of material that was available with him.

The Court observed that the provisional registration granted to the petitioner was not formally cancelled by the respondents by following the procedure envisaged under the Act for cancellation of the provisional registration. Under such circumstances, the petitioner continued to function under the provisional registration granted to him, although the absence of a permanent registration resulted in a situation where he could not upload the returns and other documents enabling him to claim input tax credit in respect of the tax paid stock of material that was available with him. Further, the respondents were aware of the fact that the Petitioner fell under the category of dealers who were taking refuge under the transition Clause - Rule 24 of the GST Rules - that enabled existing dealers under the KVAT regime to register themselves as dealers under the GST regime. The respondents, however, stipulated the validity of the permanent registration as commencing only from 04.01.2020.

The Court held that when the provisional registration granted to the petitioner was not cancelled through the procedure contemplated under the Act and Rules, and the respondents had granted a regular registration on 04.01.2020, the permanent registration must relate back to the date of the provisional registration and the petitioner ought to be entitled to upload the returns for the past period and to avail eligible input tax credit based on the returns uploaded by him.

5. Permission to record statement in virtual mode denied:- Delhi High Court in P.V. Rao vs. Senior Intelligence Officer, Directorate General of GST Intelligence & Ors. in W.P.(C.) No. 8975/2020

The Petitioner is the CFO of a company is engaged in the business of providing online courses, classes etc. through its website and mobile applications by the brand name “BYJU’S”. The Respondent summoned the Petitioner, requiring him to tender his statement and present evidence before him. The Petitioner represented that, owing to his ill health and the rising number of COVID-19 infections across the country, it was not safe for him to travel to New Delhi for recording of his statement, and requested that he be permitted to appear through video conference. The said request was declined and the Petitioner was directed to present himself for tendering statement. The Petitioner once again informed the authorities that he will be unable to appear on the said date, owing to his health issues. In these circumstances, the Petitioner has approached the Court seeking a writ of Mandamus for directing Respondent to record his statement through video conference.

The Court observed that the Courts of this country including the Supreme Court as well as this Court have adopted measures to reduce physical presence of the lawyers and litigants, and several social-distancing

guidelines have been issued by several health authorities as well as the Government of India. In this process, the use of the modern technologies has been put to use for dispensation of justice by the Courts. However, current situation is different as the statement to be recorded is not during trial before a court of law. The evidence being recorded at this stage would impact the entire investigation of tax evasion. Judicial interference at this threshold stage, in such matters relating to investigation, has to be exercised with circumspection. The concept of balance of convenience, therefore, cannot be tilted in favour of the Petitioner to be allowed to appear through video conferencing, merely because travelling from Bengaluru to New Delhi would be a risk factor for the Petitioner of contracting COVID-19. The Writ Petition was dismissed.

6. Detention of goods held valid where e-way bill expired at the time of detention and not extended:- Kerala High Court in Renjilal Damodaran Proprietor, M/S. Damu and Sons Sales Corporation vs. The Assistant State Tax Officer, The Commissioner of State Tax in WP(C).No.24819 OF 2020(B)

The goods being carried by the Petitioner were detained as the e-way accompanying them were found to be expired. The Petitioner challenged the detention on the ground that the validity of an e-way bill can be extended within eight hours from the time of its expiry and accordingly, the petitioner had time till 8 am on 06.11.2020 for extending the validity of the e-way bill, whereas the detention was at 1.30 am on 06.11.2020.

The Court observed that the validity of the e-way bill could have been extended within eight hours from the time of its expiry and the petitioner choose not to do so and there is no merit in the contention that he did not extend the validity of the e-way bill because by that time the goods had already been detained by the respondent. The fact that the respondent had detained the goods did not prevent the petitioner from extending the validity period of the e-way bill, and producing a copy of the extended e-way bill before the authority for the purposes of seeking a clearance of the goods. The Court held that the detention was valid.

7. Demand of tax set aside for not being uploaded on the GST portal:- Madhya Pradesh High Court in Shri Shyam Baba Edible Oils vs. The Chief Commissioner in W.P. No.16131/2020

The Petitioner filed a petition that while raising the demand of tax vide summary of order dated 18.09.2020, the foundational show-cause notice/order No.12 dated 10.06.2020 qua financial year 2018-2019 and tax period April, 2018 to March, 2019, was never communicated to the petitioner who is an individual registered under GST Act.

The Court observed that a bare perusal of Rule 142 of GST Rules reveals that the only mode prescribed for communicating the show-cause notice/order is by way of uploading the same on website of the revenue. It is

trite principle of law that when a particular procedure is prescribed to perform a particular act then all other procedures/modes except the one prescribed are excluded. The Court held that the statutory procedure prescribed for communicating show-cause notice/order under rule 142 has not been followed by the revenue, the impugned demand dated 18.09.2020 pertaining to financial year 2018-2019 and tax period April, 2018 to March, 2019 deserves to be and is struck down.

8. Amount received by owner or its agent towards sale of flats liable to GST:- Karnataka AAR in Sri B R Sridhar in KAR ADRG 55/2020

The Applicant approached the AAR for seeking clarity on whether the total amounts received by the Applicant towards the advances or sale consideration of the flats fallen to his share of 40% in terms of the JDA dated 19.05.2016 and the subsequent Area Sharing Agreement dated 03.01.2018, are not amenable for payment of GST, since Applicant has sold or agreed to sell or gifted the flats after obtaining Occupancy Certificate dated 26.08.2019 and that Applicant has not received any part of the sale consideration prior to the said date of occupancy certificate.

The Authority observed that the developer had the sole and exclusive right of marketing the entire project. The Applicant is silent about the fact that whether the developer had executed any sale deeds on behalf of the Applicant in respect of the applicant's share of units/flats. Thus if the Applicant themselves or the developer on behalf of the Applicant have sold the Applicant's share of units/flats prior to issuance of completion certificate, then the transactions amount to supply of "Works Contract Service" are liable to GST.

The Authority held that amounts received by the Applicant, either by himself or through his agents, towards sale of their share of flats are not eligible to GST, if and only if the entire consideration related to such sale of flats is received after the issuance of Completion Certificate dated 26.08.2019.

9. RCM applicable on Maintenance and Repair Contract provided by Foreign service provider:- West Bengal Appellate AAR in M/s IZ Kartex in Case No. 02/WBAAAR/APPEAL/2020

The Appellant a foreign company had entered into a contract of repair and maintenance of electric rope shovel with BCCL (Bharat Coking Coal Ltd.) The Appellant raised invoices against BCCL inclusive of tax. The Appellant was necessitated to open a branch in India in 2018 for processing of payment and they got registration under the CGST/SGST Act 2017. BCCL required the Appellant to revise the invoices by reducing the tax element paid by BCCL under reverse charge mechanism.

The Appellant had filed for an AAR and raised the question i.e., who is liable to pay tax in the aforesaid circumstances and whether it is legally justified by BCCL to deduct GST from payments made to the foreign

company. The AAR observed and passed the order of Advance Ruling and held that the supply of service to BCCL in terms of MARC is not an import of service. The Appellant is in appeal against the said order of AAR. The Appellate AAR after considering the material on record made the following observations.

- 1) That the AAR has not considered / discussed the terms of the agreement which says, inter alia, that the entire control of the activities would rest with the foreign entity, which had entered into an agreement with BCCL. The AAR has not taken into consideration the fact that the Appellant is providing service to BCCL since 2015, whereas the domestic entity has come into existence in 2018 only.
- 2) As per section 2(7) of IGST Act, it is clear that the registered place of business cannot be termed a fixed establishment. The domestic entity IZ-KARTEX is registered with GST authorities and hence, going by the definition, it cannot be termed a fixed establishment. In that sense, the decision of the AAR does not hold good in legal terms
- 3) The Appellant has entered into the MARC with BCCL. They have deployed DDP-N, an Indian company as the subcontractor. DDP-N in turn, issues invoice to the Appellant. Again, the Appellant is raising bills on BCCL against supply of service. Hence, it is amply clear that the service is being provided by the Appellant's foreign entity.

The Authority modified the earlier passed order of AAR and held that the supply of service by the Appellant to BCCL qualifies as "import of service" and GST is payable on such import of service by BCCL under reverse charge mechanism in terms of Notification No. 10/2017-Integrated Tax (Rate) dated 28.06.2017.

10. Rate of GST on sale of Micafungin Sodium as bulk drug:- Karnataka Appellate AAR in M/s Biocon Ltd. in KAR/AAAR-06/2020-21

The Appellant is engaged in the manufacturing of generic active pharmaceutical ingredients (APIs), novel biologics, biosimilar insulins and antibodies which is further used for injections by customers. In the present case, the SEZ unit of the Appellant manufactures "Micafungin Sodium" and sells the same as bulk drug to third party DTA units, who in turn use it for injections.

According to Appellant, Micafungin Sodium falls in Entry No. 180 of Schedule I of Rate Notification which provides that drugs or medicines covered under List 1 appended to the said schedule are leviable to GST at the rate of 5% (2.5% SGST and 2.5% CGST). The Appellant filed for application of advance ruling and the Karnataka AAR held that the Micafungin Sodium is not covered under Entry no. 180 of Schedule I and thus not entitled for concessional rate of GST @ 5% as the bulk drug cannot be directly administered as injection. The Authority held that the concessional rate of GST is applicable only to the product Micafungin Sodium which is ready for administering by way of injection. The Appellant filed appeal against the order of AAR in respect of following

question - Whether the sale of Micafungin Sodium in bulk Drugs by the DTA unit of the applicant is covered under Serial No. 114 of Entry No. 180 of the Rate Notification No 01/2017 Central Tax (R) and therefore, is leviable to GST at the rate of 5%

The Appellate Authority made the following observations:

- 1) The terms “bulk drug” and “drug” have not been defined either in the rate notifications or in the GST laws. However, the same have been defined in the Drugs (Price Control) Order, 1995. As per the said Order, the term ‘drug’ also includes ‘bulk drug’.
- 2) The Central Drugs Standards Control Organisation (CDSCO), the authority which approves new drugs in India, has granted approval for the drug “Micafungin Sodium for Injection” of strength 50mg and 100mg, for the treatment of patients with candidemia, acute disseminated candidiasis, abscess and esophageal candidiasis, etc. The approval given is for the drug which is to be administered only as an injection. Therefore, although Micafungin Sodium is a bulk drug, its use can be only by way of injection as there is no statutory approval given for using the drug in any other form.
- 3) A drug which carries as a suffix the phrase “for injection” signifies that the drug is in the form of a dry solid and becomes suitable for use as an injection only upon addition of a suitable vehicle. On the other hand, a drug with a suffix “Injection” merely indicates that it is a liquid preparation which does not need any other medium to make it suitable for injection. In this case, the Micafungin Sodium supplied by the Appellant is in the form of a lyophilised powder. The lyophilized powder gets reconstituted to its original form for injection with the addition of a suitable vehicle which in this case is Sodium Chloride. Therefore, the Micafungin Sodium supplied by the Appellant is the drug “Micafungin Sodium for Injection”. Further, the phrase “for injection” used in the Notification is only an indication of the form in which the drug is supplied i.e. in a dry solid form.

Accordingly, the Karnataka Appellate AAR held that the sale of Micafungin Sodium is covered under Serial No. 114 of Entry No. 180 of the Rate Notification No 01/2017 IT (R) / CT (R) and therefore, is leviable to GST at the rate of 5%

11. Charges collected by Cooperative Society held as liable to GST:-Maharashtra Authority for Advance Ruling in M/s Apsara Co-Operative Housing Society Ltd. in MAH/AAA/RS-SK/28/2020-21

The Appellant is a Co-operative Housing Society, registered under the Maharashtra State Co-operative Society Act 1960. The main objects of the Appellant as per the By-laws are enumerated as under: (a) To obtain the conveyance from the promoter, in accordance with the provision of the Ownership Flats Act and the Rules made

thereunder, of the right, title and interest, in the Land with buildings thereon; (b) To manage, maintain and administer the property of the Society; (c) To raise funds for achieving the objective of the Society; (d) To undertake and provide for, on its own account or jointly with Co-operative Institution, social, cultural, or recreative activities; (e) To do all things necessary or expedient for the attainment of the objects of the Society, specified under the Bye-laws. For the purpose of obtaining the above objectives of the Society, the Appellant raises fund by collecting contributions from the members of the Society, which are also called charges- in terms of the Bye-laws.

The Appellant had filed an Advance Ruling application before the Maharashtra AAR, seeking clarifications on the following issues: (i) Whether the said activities carried out by the Appellant would amount to supply, and whether the same are liable to the GST (ii) Whether they are correctly discharging the GST liability, for which they provided the illustrative invoices raised on the members of the society. The MAAR passed a ruling, wherein it was held that the activities carried out by the Appellant would amount to supply in terms of Section 7(1)(a) of the CGST Act, 2017, and accordingly would attract GST. The Appellant had filed an appeal against the said order of MAAR.

The Appellate Authority upheld the order of MAAR basis the following:

- 1) The activities performed by the Appellant are entirely oriented towards providing facilities, benefits or convenience to its members, whether it is obtaining the conveyance of the right, title or interest from the promoter, or management, maintenance or administration of the property of the society, which are shared jointly by all the members of the society, or undertaking various social, cultural and recreational activities for the members. Therefore, all these activities would get covered under the definition of the term “business” as provided under Section 2(17)(e) of the GST Act.
- 2) The ruling of Hon’ble Supreme Court in the case of State of West Bengal & Ors. Vs. Calcutta Cub Limited in Civil Appeal No.4184 of 2009 would not apply as the judgement has been pronounced in the matter of the Sales Tax, the provisions of which are entirely different and distinct from the provisions of the GST law, where the term “supply” has been envisaged in place of the term “sale”, which was prevalent under the erstwhile Sales Tax laws, for the purpose of the taxability of any transaction.
- 3) The ruling of the Appellate Authority in the case of the M/s. Lions Club of Poona Kothurd was distinguished on facts in as much as the activities undertaken by the clubs in those cases, for which they have been charging ‘membership fee’ in the form of the reimbursement of the expenditures incurred by them while

performing the charitable activities, were purely administrative in nature and no benefits and facility, whatsoever, have been provided by those clubs

Accordingly, the Appellate Authority held that the activities carried out by the Appellant would amount to supply in terms of Section 7(1)(a) of the CGST Act, 2017, and the same would be liable for GST subject to the condition that the monthly subscription / contribution charged by the society from its members is more than INR 7500 per month per member and the annual aggregate turnover of the society by way of supplying of services and goods is also INR 20 lakhs or more.

**12. Detention of goods merely because the vehicle is in the wrong destination is not sustainable :-
Telangana High Court in Sree Rama Steels vs. The Deputy State Tax Officer and Ors. in Writ
Petition No. 4873 of 2020**

A vendor had raised an invoice / delivery challan dt.26.01.2020 on the petitioner in which he charged IGST at the rate of 18. The vendor entrusted the goods to a transporter for transporting the goods from the vendor's factory at Telangana to the Petitioner's premises at Andhra Pradesh. After entrusting the goods to the transporter, but before petitioner received the goods, the Petitioner got an order for supply of the said goods from M/s.Laxmi Narasimha Constructions, Proddatur, and that he accordingly sold the same to the said buyer by raising tax invoice dt. 27.01.2020 on the buyer and also generating e-Way Bill dt. 27.01.2020 for transportation of the said goods from the Petitioner's business premises at Proddatur to the customer's premises also at Proddatur. The buyer requested the Petitioner to deliver the goods directly to their shop work site in Telangana. In order to save transport expenditure and time in getting the goods transported, the Petitioner telephonically instructed the driver of the vehicle to take the goods to buyer's premises at Telangana stating that tax invoice and e-Way Bill generated by petitioner on the buyer were also being sent.

The Respondent inspected the vehicle and on the ground that the documents are for transporting the goods to Andhra Pradesh but the vehicle was proceeding to deliver the goods at Telangana, the Respondent detained the same by issuing an order of detention in Form GST-MOV06 dt. 27.01.2020 by mentioning the ground 'wrong destination is noticed'. The Petitioner filed the writ seeking relief that the detention and subsequent tax and penalty paid is illegal.

The Court observed that it is not as if when goods are in transit there is a prohibition of their sale by the purchaser to a third party. In fact the court can take judicial notice that it is quite a common thing and a well-recognized trade practice. If the intention of the Petitioner to unload the goods at Telangana is pursuant to a

request from its buyer to deliver at the latter's Job work site and not to evade the tax or contravene any provision of law, no adverse inference can be drawn against the petitioner.

13. Confiscation of goods and vehicle on the ground that the documents that accompanied the transportation of the goods were found to be defective held as illegal :- Kerala High Court in Veer Pratab Singh, Chetan Maganlal Sabhaya vs. State Of Kerala and Ors.

A consignment of scrap that was being transported from Coimbatore to Gujarat from the 1st petitioner, as consigner, to the 2nd petitioner, as consignee, was detained by the respondents at Kodumuda in Palakkad. The detention notice issued to the petitioners indicates that the reason for detention was that the documents that accompanied the transportation of the goods were found to be defective. The respondents, however, obtained evidence that suggested that the loading of the consignment was effected in Palakkad, within the State of Kerala, and not in Coimbatore.

The Court observed that while the respondents were justified in detaining the goods and the vehicle, based on the material that was available with them which clearly showed that the transportation undertaken by the petitioners, of the goods in question, was not necessarily from Coimbatore as was declared in the invoice and the e-way bill that were produced by the petitioners, the said material does not point to any intention to evade tax, more so when, there is nothing to doubt the genuineness of the declaration of the petitioners that the goods were consigned to Gujarat from Coimbatore, or any material to suggest that the ultimate destination of the goods was any place other than Gujarat. Even assuming that the goods were loaded from Palakkad, were destined to Gujarat, it is the IGST that had to be paid by the 1st petitioner/consigner of the goods. To that extent, therefore, it cannot be said that there was any intention to evade payment of tax because the tax liability, in either event, would be the same. The Court therefore quashed order of confiscation under section 130, and the respondents were directed to pass orders under Section 129(3) of the GST Act, after hearing the petitioners, within a week from the date of receipt of a copy of this judgment.

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C. REGULATORY

1. Central Government issued Draft Rules under the Occupational Safety, Health and Working Conditions Code 2020 for public consultation:-

Recently the Central Government issued the draft Rules under the Occupational Safety, Health and Working Conditions Code 2020 on 19 November 2020. The said code consolidates 13 existing acts regulating health, safety and working conditions such as The Factories Act, 1948, the Mines Act 1952 and the Contract Labour (Regulation and Abolition) Act 1970. The draft rules provide for provisions relating to safety, health and working conditions of the Dock Workers, Building or other construction workers, Mines workers, Inter-State Migrant worker, Contract labour, Working journalist, Audio-visual workers and Sales promotion employees.

Some of the key points of the draft rules are as under:-

- 1) The wages shall be disbursed through bank transfer or electronic mode only.
- 2) The rules provide for conditions related to safety of women employment in all establishments for all types of work before 6 am and beyond 7 pm with their consent.
- 3) Every employee is to be provided with the appointment letter in prescribed format including designation, category of skill, wages, avenue for achieving higher wages/higher position etc. to within three months of coming into force of the rules. No employee to be employed unless he has been provided with the appointment letter.
- 4) For every employee working in the of factory, dock, mine and building or other construction work completed the age of 45 years an annual health check up to be conducted at fee of cost by employer.
- 5) The rules provide for Single electronic registration, license and annual integrated return for an establishment.
- 6) In every establishment employing 500 or more workers, a Safety committee is required to be constituted to provide opportunity for the workers to represent their concern on occupational safety and health matters.
- 7) Presently less than 30 minutes of work is counted as no overtime but in the draft rules it has been provided that a fraction of an hour between 15 to 30 minutes shall be counted as 30 minutes.

Stakeholders are invited to provide objections and suggestions on the draft rules which can be submitted within 45 days from the date of the notification i.e. 03 January 2021 to **fasli@dgfasli.nic.in** and **shivkant.kr@gov.in** via email or to Shri Shivakant Kumar, Under Secretary to the Government of India, Ministry of Labour and Employment, Room No: 17, Shram Shakti Bhawan, Rafi Marg, New Delhi.

2. Central Government issued Draft Rules under the Code on Social Security 2020 for public consultation:-

Recently the Central Government issued the draft Rules under the Code on Social Security 2020 on 13 November 2020. Code on social security was passed in parliament on 22 September 2020 which will subsume the following 9 existing laws:-

- 1) The Employees' Compensation Act, 1923
- 2) The Employees' State Insurance Act, 1948
- 3) The Employees Provident Fund and Miscellaneous Provisions Act, 1952
- 4) The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959
- 5) The Maternity Benefit Act, 1961
- 6) The Payment of Gratuity Act, 1972
- 7) The Cine Workers Welfare Fund Act, 1981
- 8) The Building and Other Construction Workers Welfare Cess Act, 1996
- 9) The Unorganised Workers' Social Security Act, 2008

Some of the key points of the draft rules are as under:-

a) Under the code it has been provided that for availing any benefit under any of the social security schemes framed under the Code, the worker needs to be registered. The draft rules provide for Aadhaar based registration including self-registration by unorganised workers, gig workers and platform workers on the portal of the Central Government. Each aggregator will share the monthly details of their gig workers or platform workers electronically in order to generate Unique Registration Number or temporary registration number on the central government portal. They also have to "link their database" with the unique registration number issued "to facilitate registration" of their gig and platform workers on the central government portal.

b) Payment of gratuity for the employee hired under a fixed term arrangement.

c) Single electronic registration of an establishment including cancellation of the registration in case of closure of business activities.

d) Manner of payment of contribution by the aggregators through self-assessment. The Code on Social Security for the first time recognised the gig economy i.e. gig workers, platform workers, and aggregators, and made space for their benefits around life and disability cover, accident insurance, health and maternity benefits, etc. Aggregators such as Zomato, Uber, and Ola, will have to contribute between 1–2% of their annual turnover to such social security funds for workers, this amount will be capped at 5% of the total amount payable to gig workers and platform workers. The central government will designate the agency that will administer the fund,

the agency has to maintain a statement of accounts and notify the central government of it. The Social Security Fund will be audited by the CAG of India

Under the code, the government will set up a 25-member National Social Security Board for Gig Workers and Platform Workers. This board will make recommendations on formulating schemes for gig workers and platform workers and will monitor such schemes. It will also advise the centre on issues that arise out of the code's administration. Formation of such a board was laid out in the Code, but it was unclear whether there would be a separate, dedicated board for gig and platform workers.

Apart from the above ten members (including the chair and vice-chair), the Code also provided for 15 more members to be nominated by the central government: 5 representatives each from aggregators, and gig workers and platform workers, nominated by the central government.

e) Manner and conditions for exiting of an establishment from EPFO and ESIC coverage.

Stakeholders are invited to provide objections and suggestions on the draft rules which can be submitted within 45 days from the date of the notification i.e. 28 December 2020 to rahul.bhagat@ips.gov.in or via email to Rahul Bhagat, Director, Ministry of Labour and Employment, Room No.302, Shram Shakti Bhawan, Rafi Marg, New Delhi-110001.

3. Standard Operating Procedure issued by DPIIT for processing FDI Proposals:- Notification No.1/8/2016-FDI Policy dated 9 November 2020

Recently the Ministry of Commerce and Industry issued the revised Standard Operating Procedure (SOPs) for processing the Foreign Direct Investment Proposals that require Government Approvals. The key points in relation to the revised SOP are as under:-

a) The applicant shall make the application (list of documents is enclosed as Annexure 1) as per the format and requirements under the Foreign Investment Facilitation Portal (FIFP) and upload documents as required. No requirement to submit the physical copies in case of digitally signed applications however in other cases, applications need to submit within 7 days of the filing of an online application with an extension possible for 7 more days.

b) After a proposal is filed online, DPIIT will identify the concerned Administrative Ministry/Department and e-transfer the proposal within 2 days to the concerned Administrative Ministry/Department.

- c) The proposal will be circulated online within **2 days** by DPIIT to the Reserve Bank of India (RBI) for comments. Further, proposals for foreign investment requiring security clearance would additionally be referred to the Ministry of Home Affairs (MHA) for comments. MHA will make the comments within 6 weeks from the online receipt of the proposal. Further, all proposals would be forwarded to the Ministry of External Affairs (MEA) for information. MEA may give their comments within the stipulated time period, wherever necessary.
- d) Specific issues of proposals requiring clarification from the point of view of FDI Policy will be referred to DPIIT for clarification with the approval of the Secretary of the concerned Administrative Ministry/Department.
- e) DPIIT will provide clarification within 2 weeks on specific issues of FDI Policy as may be referred by the Competent Authority.
- f) Ministries/ Departments consulted on the proposal shall upload their comments on the portal within 4 weeks from the online receipt of the proposal.
- g) Once the proposal is complete in all respects which should not be later than 6 / 8 weeks (in cases where comments of MHA have been sought) from the receipt of the proposal.
- h) The Competent Authority shall within the next 4 weeks process the proposal for decision and convey the same to the applicant i.e. the overall process should take 10 / 12 weeks. Approval/ rejection letters will be sent online by the Competent Authority to the applicant, consulted Ministries/Departments and DPIIT
- i) In respect of proposals where the Competent Authority proposes to reject the proposals or in cases where conditions for approval are stipulated in addition to the conditions laid down in the FDI Policy or sectoral laws/regulations, concurrence of DPIIT shall compulsorily be sought by the Competent Authority within ten (10) weeks/ twelve (12) weeks (in cases where comments of MHA have been sought from security clearance point of view) from the receipt of the proposal.
- j) With regard to proposals involving mergers/ demergers/ amalgamations of companies in India, approval(s) of NCLT/competent authority as applicable and required under Companies Act, 2013 and rules thereunder and/or any other rules/regulations, needs to be obtained before the grant of FDI approval in such cases.

k) If an applicant proposes to surrender an approval letter granted to the investee entity/investor, then the concerned administrative Ministry/Department may accept the withdrawal of the approval letter after the applicant submits such declaration in original signed by the authorized representative of the applicant clearly explaining the reasons for such withdrawal/surrender. Further, an acknowledgement in this regard has to be sent to the applicant clearly indicating the date from which the approval letter stands withdrawn.

Note:- Proposals involving total foreign equity inflow of more than Rs 5,000 crore, the Competent Authority shall place the same for consideration of Cabinet Committee on Economic Affairs (CCEA) within the above timelines. The letter conveying the decision of the CCEA will be issued within 1 week of receipt of the decision of the CCEA.

4. Twelve key Announcements made under Aatmanirbhar Bharat Abhiyaan 3.0:- Press Release of 12 November 2020

This is to update you all on the key announcements made by the Indian Finance Minister ('FM') on 12 Nov 2020 under Aatmanirbhar Bharat Abhiyaan 3.0. The main focus area of this Abhiyaan is to aid job creation, and boost the stressed sectors such as real estate and infrastructure sectors, rescuing the economy out of a historic contraction. Before announcing this FM gave a brief on the economic situation and progress on Aatmanirbhar Bharat packages 1.0 and 2.0.

i. Boost for Employment by Aatmanirbhar Bharat Rozgar Yojana

A new scheme Aatmanirbhar Bharat Rozgar Yojana (PMRPY) is launched for creation of new employment opportunities. The scheme will be applicable for the EPFO registered organisations if new employees have been added comparing the employees as on September 2020 whose wages are less than INR 15,000 per month. For organisations having 50 or less employees minimum 2 new employees and for organizations having more than 50 employees, minimum 5 employees must be added. Under this scheme, Central Government will provide the subsidy for 2 years of 24% of wages (12% for both employee and employer) for organisations having 1000 employees or less and 12% of the wages (employee share) for organisations having more than 1000 employees. This scheme will be operational from 01 October 2020 till 30 June 2021.

ii. Launch of ECLGS 2.0

Extension of the Emergency Credit Line Guarantee Scheme (ECLGS 1.0) till 31 March 2021. A new scheme called Guaranteed Credit for supporting Stressed Sectors to utilize 100% guaranteed collateral free additional credit at capped interest rates to 26 stressed sectors identified by Kamath Committee plus health care sector

with credit outstanding of above Rs. 50 Crore and upto Rs. 500 crore as on 29 February 2020. The scheme will be available till 31 March 2021. Tenure of additional credit to be five years and this will have one year moratorium on principal repayment.

iii. Rs. 1.46 lakh crore boost for Atmanirbhar Manufacturing Production-linked incentives for 10 Champion Sectors

Government of India earlier approved Production-Linked Incentives Scheme (PLI) for only 3 sectors. Now it has extended the same to 10 Champion Sectors for boosting Atmanirbhar Manufacturing. This will cover an incentive of Rs. 1.46 lakhs crores. These sectors are covered in the detailed update no. 2 below.

iv. Rs 18,000 crores additional outlay for PM Awaas Yojana (PMAY) –Urban

A lot of measures have been taken this year to revive the Housing and Real Estate Sector. So, in order to make further progress, Rs 18,000 crores will be provided over the Budget Estimates for 2020-21 for Prime Minister Awaas Yojana – Urban (PMAY-U) that will help in 12 lakhs houses to be grounded and 18 lakhs to be completed. This will provide additional 78 lakhs jobs.

v. Support for Construction & Infrastructure- Relaxation of Earnest Money Deposit (EMD) & Performance Security on Government Tenders

The performance security on contracts has been reduced to 3% from 5-10% and shall be extended to the ongoing projects and also to the public sector enterprises. Earnest Money Deposit (EMD) will be replaced by Bid Security Declaration. Relaxation shall be given till 31 December 2021 from General Financing Rules.

vi. Demand booster for Residential Real Estate and Income Tax relief for Developers & Home Buyers:- Press Release dated 13 November 2020

Currently, Section 43CA of the Income-tax Act, 1961 ('the Act') provided for deeming of the stamp duty value (circle rate) as sale consideration for transfer of immovable property in the case the circle rate exceeded the declared consideration by 10%. Consequentially, stamp duty value was considered in case of buyer under section 56(2)(x) of the Act. In order to provide further relief to the real estate developers and buyers, the above difference limit of 10% has been further extended to 20% for the period 12 November 2020 to 30 June 2021. This will only be applicable in only primary sale of residential units of value up to Rs. 2 crore. The above

relief shall also be allowed to buyers of these residential units under section 56(2)(x) of the Act for the said period.

Amendment under the Income Tax Act will be made in the due course.

vii. Rs 1.10 lakh crore Platform for Infra Debt Financing – Rs 6000 crores Equity infusion in NIIF Debt Platform

Actual investments made by 3 NIIF funds in downstream funds, platforms and operating companies is Rs 19,676 crores. NIIF Strategic Opportunities Fund has set up a Debt Platform comprising an NBFC Infra Debt Fund and an NBFC Infra Finance Company. The Platform has a Loan book - Rs 8000 cr & deal pipeline of Rs. 10,000 crores. NIIF AIFL (AA rating) and IFL (AAA rating) will raise INR 95,000 crores debt from market, including project bonds. By 2025, will provide infra project financing of ~INR 110,000 crores. NIIF has already invested nearly Rs 2000 crores in equity of the Platform. Government will invest Rs 6000 crores as equity and rest of equity will be raised from private investors.

viii. Support for Agriculture of Rs 65,000 crores for subsidised Fertilisers

With a view of increased estimated usage of Fertilisers of 17.8% over the actual usage in 2019-20 of 571 lakh metric tonnes. Government has provided Rs 65,000 crores to ensure adequate availability of fertilisers to farmers to enable timely availability of fertilisers in the upcoming crop season.

ix. Boost for Rural Employment – Enhanced outlays under PM Garib Kalyan Rozgar Yojana

PM Garib Kalyan Rozgar Yojana is in progress in 116 districts. Rs 37,543 crores has been spent on this till date. Additional outlay of Rs. 10,000 crores will be provided for PM Garib Kalyan Rozgar Yojana in the current financial year for accelerating growth in the rural economy. Mahatma Gandhi National Rural Employment Guarantee Act 2005 (MGNREGA) was provided with Rs 61,500 crore in Budget for 2020-21. Rs.40,000 crore was additionally provided in Atma Nirbhar Bharat 1.0.

x. Boost for Project Exports - Rs 3000 crore to EXIM bank for Lines of Credit

Exim Bank extends Lines of Credit (LOC) on behalf of the GOI, as assistance to developing countries under the IDEAS scheme mandating recipient countries to import 75% value of LOC covering projects like Railways, power, transmission, road and transport, auto and auto components, sugar projects etc. Rs. 3000 crore will be

released to EXIM banks for promotion of project exports under IDEAS Scheme.

xi. Capital and Industrial Stimulus

Rs.10,200 crore additional budget outlay will be provided towards Capital and industrial expenditure towards-

- Domestic defence equipment
- Industrial incentives
- Industrial infrastructure
- Green energy

xii. R&D grant for COVID Vaccine Development

Rs. 900 crore provided for Covid Suraksha Mission for Research and Development of Indian Covid Vaccine to Department of Biotechnology.

5. Cabinet approves introduction of the Production Linked Scheme (PLI) to 10 key Sectors for enhancing India's Manufacturing Capabilities and Exports:- Press Release dated 11 November 2020

PLI Scheme was launched by the Central Government in March 2020 earlier this year to make India a Manufacturing and Export hub. The scheme provides financial incentive to boost domestic manufacturing and attract large investments. This is in addition to the concessional income tax rate of 17% introduced by the government last year for new manufacturing companies. Currently, PLI scheme is applicable for the manufacturing of mobile phones, pharma products and medical equipment sectors. Now, the Union cabinet under the chairmanship of Prime minister has given its approval to introduce the said scheme for the 10 key sectors as under:-

- 1) Advance Chemistry Cell (ACC) Battery - INR 18,100 crores
- 2) Electronic/Technology Products (Product line: Semiconductor Fab, Display Fab, Laptop/ Notebooks, Servers, IoT Devices, Specified Computer Hardware) - INR 5,000 crores
- 3) Automobiles & Auto Components - INR 57042 crores
- 4) Pharmaceuticals drugs (Product lines for 14 products under three different categories specified) - INR 15,000 crores
- 5) Telecom & Networking Products (Product line: i. Core Transmission Equipment, ii. 4G/5G, Next Generation Radio Access Network and Wireless Equipment, iii. Access & Customer Premises Equipment (CPE), Internet

- of Things (IoT) Access Devices and Other Wireless Equipment iv. Enterprise equipment: Switches, Router) - INR 12,195 crores
- 6) Textile Products: (Man made fibre and Technical textiles) - INR 10,683 crores
 - 7) Food Products (Product line: i. Ready to Eat / Ready to Cook (RTE/ RTC), ii. Marine Products, iii. Fruits & Vegetables, iv. Honey, v. Desi Ghee, vi. Mozzarella Cheese, vii. Organic eggs and poultry meat) - INR 10,900 crores
 - 8) High Efficiency Solar PV Modules - INR 4,500 crores
 - 9) White Goods (ACs & LED) - INR 6,238 crores
 - 10) Speciality Steel (Product line: i. Coated Steel, ii. High Strength Steel, iii. Steel Rails, iv. Alloy Steel Bars & Rods) - INR 6,322 crores

The PLI scheme will be implemented by the concerned ministries/ departments. The final proposals of PLI for individual sectors will be appraised by the Expenditure Finance Committee (EFC) and approved by the Cabinet. It is expected that extension of the PLI scheme will make Indian manufacturers globally competitive and attract investment in the areas of core competency.

6. Reserve Bank of India (RBI) discontinues 17 Returns/Reports filings under FEMA:- Circular No. 5 dated 13 November 2020

Recently, RBI with an aim to improve the ease of doing business and reduce the cost of compliances decided to discontinue 17 returns/ reports with immediate effect. The returns discontinued majorily include reports/ returns filed by AD Category-I, II and custodians. Some of the reports/ returns discontinued are as under:-

- a) Extension of Liaison Offices (LOs)
- b) Extension of Project Offices (POs)
- c) Market value of FII Investment in India on fortnightly basis
- d) Market value of FII Investment in India on Monthly basis
- e) FII holdings as percentage of floating stock

7. RBI allows one additional escrow account in a different scheduled commercial bank- RBI Notification No. RBI/2020-21/68 dated 17 November 2020

RBI vide its circular dated 17 November 2020 has provided the relaxations in the instructions under the existing regulations which provide for allowing the authorized Prepaid Payment Instruments (PPI) Issuers and Payment Aggregators / Gateways to maintain one additional escrow account in a different scheduled commercial bank. Some of the other relevant changes in the existing instructions are as under:-

- a) The migration for shifting the escrow account from one bank to another shall now be possible only after prior intimation to the RBI.
- b) Entries from the additional escrow account are permitted but this should be avoided as far as possible and if it is done then the auditor certificate should clearly mention such transactions.
- c) As per the current regulations, a certificate from the auditor is required on quarterly basis and is required to be submitted certifying that the entity has been maintaining adequate balances in the escrow account. Now, when the additional escrow account is maintained then it should be ensured that the CA certificate includes balances from both the accounts and the same auditor is appointed for audit of both the escrow accounts.

8. RBI directions relating to opening of Current Accounts-Time Extension for Compliance: Notification No. RBI/2020-21/62 DOR.No. BP.BC.27/21.04.048/2020-21 dated 02 November 2020

RBI issued a circular DOR.No.BP.BC/7/21.04.048/2020-21 on 6 August 2020 according to which all banks were advised to comply with the said circular in respect of existing current and CC/OD accounts and to ensure such compliance should be done within a period of 3 months, so according to that due date shall be 5 November 2020. However, RBI received various references seeking clarifications regarding operational issues for maintenance of current accounts. These are being examined and will be clarified by FAQ's.

So it has been decided to extend the date of compliances till 15 December 2020. All other instructions mentioned in earlier circular dated 6 August 2020 remain unchanged.

9. Suggestions invited for New Foreign Trade Policy (FTP):- Trade Notice No. 34/2020-21 dated 12 November 2020 issued by DGFT

You are aware that the existing FTP which was issued for the period 2015 till 2020 got extended by one year (i.e. till 31 March 2021) by the government on account of disruption caused due to Covid pandemic.

As we are in the second half of FY 2020-21, the Government has accordingly initiated the drafting / consultation process for the new FTP. Accordingly, the DGFT has asked for suggestions/inputs from various stakeholders and to collate, analyze and for ease of processing the suggestions/inputs received, a Google Form has been created on the below link;

https://docs.google.com/forms/d/e/1FAIpQLSfqbqk3fkW1XRIFvxBZdLDdBS3Y_1cuMKeHFNyulTucODXGgq/viewform

Stakeholders are requested to send their suggestions/inputs only through above-mentioned Google Form, rather than email or paper based submissions within fifteen days from the date of issue of this Trade Notice i.e. by **27 November 2020**.

We are collating the responses from our clients on the policy to provide a comprehensive response / suggestions to the Government considering the importance attached to this policy. Hence, you may share the suggestions with us and we will compile the same accordingly.

10. Linking/Registration of IECs in the new revamped DGST Online Environment – Trade Notice No. 33/2020-21 dated 28.10.2020 issued by DGFT

DGFT services are planned to be introduced into the new DGFT IT platform. The platform would be accessible through the existing website: <https://dgft.gov.in>. The online processes relating to entire lifecycle of Advance Authorisation, EPCG & DFIA including their paperless Exports Obligation Discharge (EODC) shall be rolled out soon. The new online system will have a two-way communication between the DGFT and the exporter/importer and would allow the applicant to apply, monitor the status of the applications, reply to the deficiencies, raise queries etc. The following action points are listed for exporters and importers

- 1) The new platform is accessible through user-based IDs for applying online. IEC holders are encouraged to create login IDs preferably well before the roll out of next phase of the platform in the 2-3 weeks
- 2) For user ID creation, mobile number/email ids will be a mandatorily required and the same will be authenticated by OTP/email based authentication process.
- 3) Users would be required to link their login IDs to their specific IEC. The process of linking would be available post login through an authentication process using a DSC or Aadhaar based e-Sign. Only the Aadhaar e-sign of the proprietors/directors/partners/Karta etc. as mentioned on their IEC may be used for Aadhaar based authentication.
- 4) Post linking of the IEC, the IEC holders are required to complete the IEC auto-validation process by using 'Modify IEC' process after logging in.
- 5) IEC holders are further required to update the Profile details using the 'Manage Profile' option. Details related to Industrial Registrations, Export Performance details and other should be duly filled in. Please note that the profile updation is an automatic process and does not require any approval or fees.
- 6) IEC holders are requested to go through Help manuals & Frequently Asked Questions (FAQs) available on the new DGFT website under the 'Learn' section.

For further guidance, please refer to the Help Manuals & FAQs available under <https://dgft.gov.in> > Learn > Application Help & FAQs . For any further assistance you may utilize any of the following channels –

- (i) Raise a ticket for your Complaints, Suggestions or Feedback using the feature under <https://dgft.gov.in> > Services
- (ii) Call the toll-free Helpline number 1800-111-550
- (iii) Send an email to dgftedi@nic.in

11. Govt allocated funds for MEIS for FY 2019-20 and for 9 months of FY 2020-21:- OFFICE MEMORANDUM F.No. 605/58/2015-DBK(PL-II), dated 12 November 2020

The Competent Authority has approved the allocation of an amount of Rs. 39,097 Crore for MEIS benefits for exports made during the FY 2019-20. Further, allocation totalling Rs. 15,555 Crore for MEIS benefits for exports made during the period 01.04.2020 to 31.12.2020 is conveyed with the approval of the Competent Authority. The allocations are utilized for issuance of duty credit scrips only for exports made during the respective periods i.e Rs. 39,097 Crore for FY 2019-20, Rs. 10,555 Crore for the period 01.04.2020 to 31.08.2020 and Rs. 5000 Crore for the period 01.09.2020 to 31.12.2020.

To ensure that MEIS allocations for FY 2019-20 and for FY 2020-21 (April to December, 2020) are not exceeded, DGFT should review the MEIS outgo periodically and share scrip issuance data on a regular basis with this Department. Further, keeping in mind the ongoing stress on Customs revenues, it is suggested to limit the issuance of MEIS duty credit scrips in this financial year. Accordingly, DGFT Is requested to issue MEIS scrips upto a total value of Rs. 16,000 Crore in FY 2020-21. Issuance of remaining scrips may be spread over the subsequent financial years through an appropriate mechanism.

12. Extension of duration of Emergency Credit Line Guarantee Scheme:- Ref No. 3014/NCGTC/ECLGS NCGTC dated October 31 2020

The Emergency credit line guarantee scheme was a specific response to the unprecedented situation COVID-19. It seeks to provide much needed relief to the MSME sector by incentivizing them. Earlier the scheme was applicable to all loans sanctioned from the date of issue of guidelines by National Credit Guarantee Trustee company limited (NCGTC) to 31 October 2020, or till an amount of Rs. 3,00,000 crore sanctioned under the Guarantee Emergency Credit Line(GECL), whichever is earlier. Now the time limit has been extended for the scheme from 31 October 2020 to 30 November 2020.

The scheme GECL is for providing 100% guarantee coverage for additional working capital terms loans (in case of Banks and FIs) and additional term loans (in case of NBFCs).

13. New Guidelines for the OSP (Other Service providers)- Department of Telecommunication notification dated 05 November 2020

The Department of Telecommunications vide its notification dated 05 November 2020 has released the new guidelines for the OSPs. The guidelines are expected to reduce the compliance burden from the OPSs and are significantly promoting the motto of ease of doing business in India and open up the ITes/BPO sector and as the experts are saying, making India the "Back office" of the world and perhaps in some cases even the "Front Office". The guidelines have been revised during the course of this pandemic situation. The key highlights of the new policy are as follows.

- 1) Earlier the companies were required to deposit a bank guarantee of Rs. 1 crore which is no longer required.
- 2) No registration will be now required for OSP centres in India.
- 3) OSPs can now work from home or from anywhere in India and the same shall be treated as extended agent position or remote agent of the OSP.
- 4) The definition of OSP now covers only the Companies / LLP's etc. who are engaged in providing 'Voice based' BPO services.
- 5) No Bank Guarantee whatsoever would be required for any facility or dispensation.
- 6) EPABX at foreign location in case of international OSP (providing services to overseas clients) will be allowed. However, the OSP will take all the necessary measures to comply with the requirements of relevant provisions of Indian laws including applicable data privacy laws.

OSP shall maintain a copy of CDR and System logs in storage at any of its OSP centres in India

14. Reserve Bank of India (RBI) to allow no approval to foreign law firms/companies or foreign lawyers to open offices in India:-Circular No. RBI/2020-21/69 A.P.(DIR Series) No.7 dated 23 November 2020

Recently, the Supreme Court of India while disposing of a case held that advocates enrolled under the Advocates Act 1961 alone are entitled to practice law in India and that foreign law firms/companies or foreign lawyers cannot practice the profession of law in India. Accordingly, RBI vide its circular dated 23 November 2020 directed the AD Category – I banks not to grant any approval to any branch office, project office, liaison office or other place of business in India under FEMA for the purpose of practicing legal profession in India. Further, the banks shall bring to the notice of the RBI in case any such violation of the provisions of the Advocates Act comes to their notice.

15. Extension of the time limit for uploading/online submission of the Annual Returns for the financial year 2019-20 under Foreign Contribution (Regulation) Rules:- Notification No. II/21022/23(15)/2020-FCRA-III dated 23 November 2020

As per Rule 17 of the Foreign Contribution (Regulation) Rules, 2011, every person who receives foreign contribution is required to submit an annual FCRA return in Form FC-4 within nine months of the closure of the financial year. Recently, the ministry of home affairs had also amended the Foreign Contribution (Regulation) Act, 2010 and introduced the Foreign Contribution (Regulation) Amendment Act 2020. As per the amended act, the FCRA registered associations and prior permission (PP) holders as well as prospective seekers of registration or PP are required to meet some new conditions and hence it will take some time to fulfill such conditions and get through the process. Thus, in order to relieve the burden of the deadline for submitting the FCRA return, the ministry vide its notification dated 23 November 2020 has extended the timeline for submitting the FCRA return for FY 2019-20 up to 30 June 2021

16. Employees Provident Fund Organisation (EPFO's) clarified on misleading article published in newspaper:- Press Release dated 19 November 2020

EPFO in its latest press release clarified on an article published in a section of media on 18 November 2020 under the caption "EPFO subscribers, firms down in Oct" is incorrect and unsubstantiated. The published article claimed a decline of 30,800 contributing establishments with EPFO in October 2020 from September 2020 and simultaneous decline of 1.8 Million contributing members in October from the previous month.

EPFO clarified that the data published does not match with the official EPFO database. EPFO data shows there has been continuous growth in all months except April and May 2020 and there has been a continuous growth trend in net payroll additions till August 2020. On 20th every month, EPFO publishes the Payroll data and the Payroll data for any wage month is taken after one month from the due date for filing ECR. Thus, the data for September, 2020 for which the due date for filing of ECR is 15 October 2020 and shall be taken only on 15 November 2020 and that for October, 2020 the due date is 15 November 2020 which is taken on 15 December 2020.

Due to this flexibility, to be able to file ECR even after due date, EPFO's contributory member and establishment data for any wage month remains dynamic. Thus, concluding a count of contributory members and establishments for October 2020 as on 16 November 2020 is premature and totally erroneous.

17. Ministry of Commerce and Industry issued Patents (2nd Amendment) Rules, 2020: Notification no. G.S.R.689(E) dated 04 November 2020

The Ministry of Commerce and Industry vide its notification dated 4th November 2020 has published the Patents (2nd Amendment) Rules, 2020 to further amend the Patents Rules, 2003. The Amendment is brought under Rule 7(3) which prescribes the fees for grant of patents this sub rule has been substituted as follows:

- In case an application processed by a natural person or startup or small entity is fully or partly transferred to a person other than a natural person, startup or small entity, the difference, if any, in the scale of fees between the fees charged from the natural person, startup or small entity and the fees chargeable from the person other than a natural person, startup or small entity in the same matter, shall be paid by the new applicant with the request for transfer.

- Further, an explanation after sub-rule 3 has been inserted which states that a start-up or small entity, having filed an application for a patent, ceases to be a startup or small entity due to the lapse of the period during which it is recognized by the competent authority, or its turnover subsequently crosses the financial threshold limit as notified by the competent authority, no such difference in the scale of fees shall be payable.

18. Central Government amends Government of India (Allocation of Business) Rules, 1961:- Notification S.O. 4040(E) dated 09 November 2020

The Central Government vide its notification dated 09 November 2020 amended the Government of India (Allocation of Business) Rules, 1961 to include the films and audio visuals programmes made available by online content providers as well as News and current affairs content on online platforms under the purview of the Ministry of Information and Broadcasting. This means that online streaming platforms such as Netflix, Amazon Prime Video, Disney+ Hotstar etc. as well as digital news media will come under the purview of the Ministry of Information and Broadcasting from a regulatory standpoint.

19. International Financial Services Centres Authority (IFSCA) Authority approves the International Financial Services Centres Authority (Banking) Regulations, 2020 (IFSC Regulations):- Press Release dated 11 November 2020

IFSCA after the detailed deliberations in its meeting dated 11 November 2020 has approved the IFSCA Regulations, 2020. Banking is one of the major area of IFSC and a self-contained regulation will help the IFSC in reaching its desired potential.

Some of the key aspect of the regulations are as follows:-

- i) Establishing the requirements for setting up IFSC Banking Units (IBUs).
- ii) Person resident outside India having net worth not less than USD 1 Million is permitted to open foreign currency accounts in any freely convertible currency at IFSC Banking Units (IBUs).
- iii) Residents of India having net worth not less than USD 1 Million is now permitted to open foreign currency accounts in any freely convertible currency at IFSC Banking Units (IBUs).
- iv) IBUs now permitted to carry the activities including credit enhancement, credit insurance and sale, purchase of portfolios, engage in factoring and forfaiting of export receivables and undertake equipment leasing, including aircraft leasing.

20. Amendments to guidelines for preferential issue and institutional placement of units by listed InvITs:- Circular No. SEBI/HO/DDHS/DDHS/CIR/P/2020/232 dated 17th November 2020

SEBI through circular no. SEBI/HO/DDHS/DDHS/CIR/P/2019/143 dated 27 November 2019 issued guidelines for preferential issue and institutional placement of units by listed InvITs. Now, SEBI vide its circular dated 17 November 2020, has made the following amendment:-

Earlier the preferential issue of units is not possible to any person who has sold or transferred units during 6 months preceding the relevant date, but now an explanation has been inserted to provide that even any person belonging to sponsors transfers or sold units during 6 months preceding the relevant date then the sponsors shall also be ineligible for preferential allotment.

21. Securities and Exchange Board of India issues guidelines for rights issue by unlisted InvITs to raise funds- SEBI:- Circular No. SEBI/HO/DDHS/DDHS/CIR/P/2020/223 dated 04 November 2020

Recently, SEBI vide its circular dated 04 November 2020 has issued the guidelines for rights issue of units by an unlisted Infrastructure Investment Trust (InvIT).

Some of the Key highlights of the said guidelines are as follows:-

- i) The minimum allotment to any investor shall be 1 crore.
- ii) The issuer needs to disclose objects of the issue, related-party transactions, valuation, financial details, review of credit rating and grievance redressal mechanism in the letter of offer.
- iii) The issuance shall also be subject to the various conditions such as none of the respective promoters or partners or directors of the sponsor or manager or trustee of the InvIT is a fugitive economic offender and

should not have been barred from the securities market. In-principle approval of the stock exchanges for listing of units proposed to be issued also needs to be obtained by the issuer first.

iv) The investment manager will have to decide the issue price which shall be disclosed in the offer letter and he also has to make arrangements for distribution of the application form along with letter of offer to all unit holders which needs to be done 5 days prior to the opening of the issue

v) The issue shall be kept open for at least 3 days but not more than the 15 days.

vi) Within the 15 days of the closing date, the issuer has to file an allotment report with Sebi providing details of the allottees and allotment made.

22. Government is making rules for easy foreign listing of Startup and MSME's:- News Report

- The Ministry of Corporate Affairs (MCA) is finalising the rules for the listing of unlisted companies in foreign jurisdictions, so that it becomes possible for start-ups and small and medium enterprises to raise capital abroad. The MCA wants to keep the threshold for direct foreign listing at a level that is attractive and feasible for companies. The plan is to allow such listing in 8 jurisdictions including Gujarat international finance tech (GIFT) city to be one of them.

- These rules focus on smaller companies which should also get a chance to go abroad and access cheaper capital. It is an efficient measure and will reduce costs of transaction in terms of legal fees, taxation, and other structural costs of operating in two countries.

- It is expected that rules will be introduced later this month. The criteria for allowing companies to avail of this provision will include profitability, net worth, paid-up capital, and turnover. Anyone with a negative net worth will not be allowed to list. Any company wanting to list abroad will have to fill in a single form called LEAP- Listing for Equity Shares in Permissible Jurisdictions and submit it to the MCA to obtain its permission.

- The restriction of dual listing is also removed by MCA and a new umbrella scheme for foreign listing will be introduced and the rules will roll out later.

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