



Tax & Regulatory Updates – Key developments of October 2020

A. DIRECT TAXATION

1. Central Board of Direct Taxes notifies the Equalisation levy (Amendment) Rules, 2020: Notification No. 87/2020 dated 28 October 2020

As you are aware that the Finance Act, 2020 has expanded the scope of Equalisation Levy w.e.f 01 April 2020 to cover the consideration received/receivable by NR e-commerce operators for e-commerce supply of goods or services provided to specified persons (E-comm. EL) subject to certain conditions at the rate of 2% on the amount of consideration received/ receivable by NR e-commerce operators. The Government introduced the Equalisation levy in 2016 at the rate of 6% on the payments made by specified persons to a non-resident (NR) for availing online advertisement and related services (Digital EL).

Further, CBDT Introduced Equalisation Levy Rules, 2016 (EL rules) on 27 May 2016 which provided the manner of payment, form for furnishing annual statement of specified service, forms for filing an appeal before the appellate authorities. Now, to implement the E-comm. EL, government made amendment to the above rules and notified Equalisation levy (Amendment) Rules, 2020.

The key changes introduced in EL rules are as below:-

- 1) Now, annual statement can be furnished electronically through digital signature or electronic verification code (EVC). However, the procedures for filing annual statements electronically, revision of statements, generation of EVC etc. are yet to be notified.
- 2) Under the previous part b of Form 1, assessee in the case of 6% EL is required to furnish information for each service provider. However, part b of the form 1 notified for the E-comm. EL, the e-commerce operator is not required to provide transaction wise information and is only required to provide quarterly details of consideration received/ receivable and the EL.
- 3) Form No. 3 wherein the appeal is filed with the Commissioner of Income-tax (Appeals), earlier there was no requirement to provide details on disputed amount of EL, interest and penalty. Now the form has been amended and such details are required to be provided.

2. CBDT Notified Cut-off date under VSV scheme and also extended the timeline for payment:- Notification No. 85/2020 dated 27 October 2020 and Circular No. 18/2020 dated 28 October 2020

In order to provide some relief to the taxpayers for settling the disputes CBDT extended the timeline under Vivaad se Vishwas scheme for payment without additional amount to 31st March 2021. The last date for making the declaration has also been notified as 31st December 2020.

However, the above notification has led to a confusion for the taxpayers in the cases where the period of 15 days allowed for the payment of disputed tax is expiring on or before 31 March 2021. In order to clear such confusion, CBDT vide its circular dated 28 October 2020 clarified that in such cases assessee can make payment by 31 March 2021 without any requirement to pay additional tax. Any payment post such a date would require payment of additional tax of 10% of disputed tax.

3. CBDT extends consumption based Leave Travel Concession exemption to non-central government employees:- Press Release dated 29 October 2020

Earlier in October 2020, the Government vide OM No F. No 12(2)/2020 EII dated 12 October 2020 allowed payment of cash allowance equivalent to LTC fare to Central Government employees subject to fulfilment of certain conditions. Ministry of Finance has thereafter provided clarifications on 20 October 2020 on the mechanics of this scheme. Now, CBDT vide its press release dated 29 October 2020, has extended such clarifications to the non government employees as well. The benefit to the non-central government employees shall be given subject to the following conditions

- 1) The employee must exercise the option in the applicable block year of 2018-21
- 2) The employee must spend a sum of at least 3 times of the value of the deemed LTC fare on the purchase of goods/services carrying a GST rate of 12% or more and the payment shall be made through digital mode between 12 October 2020 and 31 March 2021.
- 3) Voucher indicating the GST number of the supplier and the GST amount paid.
- 4) If the employee spends less than 3 times of the value of deemed LTC fare, then the entitlement shall be given proportionately.
- 5) Further, it has been clarified in the press release that an employee who has exercised an option to pay income tax under concessional tax regime under section 115BAC of the Income-tax Act, 1961 shall not be entitled for the above benefit.

4. Central Government extends the due date for furnishing the Income Tax Returns and Audit Reports:- Press Release dated 24 October 2020

In view of the challenges faced by taxpayers in meeting the statutory and regulatory compliances due to the outbreak of COVID-19, the Government brought in the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 ('the Ordinance') on 31st March 2020 which, inter alia, extended various time limits. The Ordinance has since been replaced by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act. Further, Government issued a Notification on 24th June 2020 which extended the due date for all Income Tax Returns for the FY 2019-20 to 30th November, 2020.

Now, in view of various representations received by the Government for extension of due dates for annual compliances for FY 2019-20 due to challenges posed by Covid pandemic, the Government has given extensions as under vide a Press Release dated 24 October 2020:-

- 1) Taxpayers liable for Tax Audit (including their partners) and the Taxpayers where Transfer Pricing audit report is applicable, can file their annual income tax return by 31 January 2021.

- 2) Other taxpayers (non-audit and non-TP cases) can file their income tax return by 31 Dec 2020.

- 3) Due date of furnishing Tax audit report and other certifications / reports extended to 31 Dec 2020 i.e. 1 month before the due date of filing tax return.

The above extensions should certainly grant a big relief to the taxpayers to comply appropriately.

5. I-T department keeps tolerance range for transfer pricing unchanged:

Due to the disruption caused on account of Covid-19, businesses are highly impacted and the IT Department also kept the tolerance range as given under section 92C of Income Tax Act, 1961 for Transfer Pricing unchanged for FY 2019-20. It means there will be no taxation Relief for businesses having Related Party Transactions as the tax department doesn't change the tolerance range and keep them at 1% tolerance range for wholesale trading and 3% range for all other transactions undertaken during the financial year ending March 31, 2020.

6. CBDT issues guidelines on exercising the powers of survey u/s 133A: Order No:- 187/3/2020-ITA-I dated 19th October 2020

CBDT on 16th October 2020 vide Order No. 275/29/2020-IT(B) has issued certain guidelines for avoding any coercive/intrusive tax recovery and in pursuance of The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act 2020 and suppression of the order u/s 119, the Income tax authority for the purpose of exercising the power of survey u/s 133A issued the following guidelines:

- 1) Under various charges like TDS Charge, Central Charges, International Taxation Division, NeAC/NFAC Units, Exemption charge and I&CI Charge the survey will be conducted after approval of collegium and certain officers will only be allowed to conduct the surveys. CBDT has specified the officers who will be part of these collegiums.
- 2) According to the latest amendment, the surveys can only be conducted by the officers of Investigation wing or TDS charge and such action of survey shall be taken only as the last resort.
- 3) The Pr.CCIT/CIT/PDIT/DIT of Investigation wing or TDS charge to ensure that the survey does not go beyond the scope approved by the collegium of the concerned Pr.CCIT / CCIT (TDS) / DGIT (Inv.).
- 4) The surveys conducted by the investigation wing independently need to be approved by DGIT(Inv.)
- 5) In the event of any disagreement between the officers of the collegium, the issue would be resolved by the Pr.CCIT of the region.

7. Re-notification of ITR Forms needed after CBDT clarification on Schedule 112A:- News report

As you are aware that the CBDT vide its press release dated 26 September 2020 clarified that there is no requirement in the return of income for scrip wise reporting in case of short-term/business income arising from share transactions. This clarification however seems not aligned with the ITR forms available.

Prior to 1st April 2018, LTCG arising from the transfer of a long-term capital asset being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust were exempt but from 1st April 2018, govt. introduced Sec 112A wherein the said LTCG that exceeds Rs. 100000/- subjected to tax @10% but keeping in mind the investors interest, Govt. grandfathered all the gains on mutual funds/ equity until the introduction of new section (January 31, 2018 in this case) will be exempt from taxation. Hence, CBDT clarified that disclosure of scrip wise details in the income tax returns are required only in cases where such gains are grandfathered and not in all cases but this clarification seems not to correspond with the notified income tax return namely ITR-2, ITR-3, ITR-5, ITR-6 as there is no column in the

relevant ITR Forms for furnishing the consolidated details of long term capital gain in cases where section 112A is applicable.

<https://www.financialexpress.com/money/income-tax/re-notification-of-itr-forms-needed-after-cbdt-clarification-on-schedule-112a/2098684/>

8. Strict guidelines issued by CBDT to avoid coercive/Intrusive survey tax recovery: Order No. 275/29/2020-IT(B) dated 16 October 2020

In pursuance of CBDT's letter F.No.275/29/2020-(IT(B) dated 21 September 2020 wherein para 2(ii) stated that with respect to any coercive action like attachment and any intrusion action like recovery survey etc. by Assessing officers or the Tax recovery officers, separate guidelines are being issued and in continuation to the other laws (Relaxation and amendments of certain provisions) Act, 2020, the CBDT has now issued the following guidelines:

- 1) Any coercive/intrusive measures for recovery of tax demands should be taken only after exhaustion of other means of recovery as mentioned in the above letter of 21st September.
- 2) It restricted the recovery surveys to non-traceable/unresponsive taxpayers.
- 3) Surveys can now be conducted only by the officers of the Investigation or TDS wing.
- 4) Setting up a 2 member collegium of Pr.CCIT/CCIT rank for monitoring and approval of surveys for cases other than TDS.
- 5) There will be no collegium in case of TDS charges. The survey in this case will be done after the approval of CCIT(TDS) or if no CCIT(TDS) than by Pr. CIT.
- 6) Recovery of central charges under the jurisdiction of CCIT will be conducted by the officers of investigation wing after approval of collegium of CCIT(central) and DGIT(Investigation).
- 7) In the event of any disagreement in the collegium, the issue would be resolved by Pr. CCIT of the region.
- 8) Officers of TDS or investigation wing will involve AO or TRO concerned and the survey will be conducted by the established survey guidelines.
- 9) Mandates Pr.CCIT/CIT for monitoring of survey to ensure that it's restricted to the scope approved by the collegium

- 10) Survey team to prepare a report and upload the same on ITBA as per survey Manual and also send a copy to AO/TRO concerned.
- 11) To strictly comply with the Second Schedule, Survey Manual, and Guidelines for attachment of movable/immovable properties.

9. Finance Minister announces measures of Rs 73,000 crore to stimulate consumer spending: Press release dated 12th October, 2020

The Union Minister for Finance & Corporate Affairs, Nirmala Sitharaman announced a demand stimulus package worth Rs. 73,000 crore to stimulate consumer spending in the Indian economy in an effort to fight the slowdown due to COVID-19 pandemic following lockdown. The key aspects of the package are the following:

1) CONSUMER SPENDING-

A. Leave Travel Concession (LTC) Cash Voucher Scheme:- Under this scheme, the Government has given an option to take cash payment in lieu of **one LTC** during 2018-21 to its employees. An employee, opting for this scheme, will be required to buy goods / services worth 3 times the fare and 1 time the leave encashment before 31 March 2021. The scheme also requires that money must be spent on goods attracting GST of 12% or more from a GST registered vendor through digital mode. The employee is required to produce a GST invoice to avail the benefit. The payment of fare to the employee will be **tax free** and this benefit of spending against the LTC is also allowed to the employees of Public sector banks, PSU's, State government and **Private sector** provided that they follow the guidelines of the Central Government.

B. Special Festival Advance Scheme- Under this scheme all Central Government/ State Government employees (whether gazetted or non-gazetted) can now get an interest-free advance of Rs.10,000 through RuPay Card, to be spent by 31 March, 2021 on the choice of their festival. Employees can pay this amount in maximum 10 instalments. The Government will bear the bank charges of the card. This will generate demand of around Rs. 12000 crore.

2) CAPITAL EXPENDITURE-

A. Special Assistance to the States: The central government is issuing a special interest-free 50-year loan to States of Rs.12,000 crore Capital Expenditure to be used by 31 March 2021. The Scheme consists of 3 Parts.

Part - 1 consists of Rs. 200 crore each for 8 North East States amounting to a total of Rs. 1600 crore and Rs. 450 for Uttarakhand and Himachal Pradesh each totalling to Rs. 900 crore.

Part - 2 consists of Rs. 7,500 crore for remaining states, as per 15th Finance Commission devolution.

Both Part 1 and Part 2 of interest-free loans given to States are to be spent by 31st March, 2021 and 50% will be given initially, the remaining 50% will be given upon utilization of the first 50%. Unutilised funds will be reallocated by the Central Government.

Part - 3 provides for Rs. 2,000 crore will be given to those states which fulfill at least 3 out of 4 reforms spelled out in Aatma Nirbhar Bharat Package (ANBP) vide Department of Expenditure's Letter F.No. 40(06)/PF-S/17-18 Vol. V dated 17th May 2020. Further, Rs 2,000 crore is over and above other borrowing ceilings.

Following are the features of this Scheme:

- i) It can be used for new or ongoing capital projects needing funds and / or settling contractors' / suppliers' bills on such projects.
- ii) This funding will be over and above all other additional borrowing ceilings given to states
- iii) Bullet repayment after 50 years, no servicing required for 50 years
- iv) CAPEX to be spent by 31 March 2021

B. Enhanced Budget Provisions: For smooth functioning of government business, an additional budget of Rs. 25,000 crore, in addition to Rs. 4.13 lakh crore given in Union Budget 2020, is being provided for Capital Expenditure on roads, defence, water supply, urban development and domestically produced capital equipment., allocations will be made in forthcoming Revised Estimate discussions of Ministry of Finance with concerned ministries.

10. Option for another stimulus package is open: News Report

Finance Minister, Nirmala Sitharaman has recently said in a media interaction that the option for another stimulus package has not been closed which gives the hope that there could be one more package for the businesses that are badly impacted by the pandemic. The Government also announced steps last week to stimulate consumer demand, including advance payment to government employees of part of their wages this festive season and trying to increase more capital spending to support the pandemic hit economy.

They also allowed the employees to spend tax exempt leave travel allowances on goods and services. Government will also shore up investment by spending extra Rs. 25,000 crore on roads, ports and defence projects, and offering Rs 12,000 crore in interest-free 50-year loans to state governments for spending and these measures will create additional demand of Rs.73000 Crore. There is high expectation that the government might come up with another package as the previous one did not give the required support to the economy.

<https://economictimes.indiatimes.com/markets/stocks/news/not-closed-the-option-of-another-stimulus-package-nirmala-sitharaman/articleshow/78751231.cms>

11. Government to provide Tax Sops to critically affected sectors: News Report

Government is planning to provide tax related incentives to critically affected sectors along with sectors like green energy and startups which they want to encourage. The government will be very cautious while giving tax sops/reliefs in the upcoming budget as they need to keep an eye on the fiscal deficit too. The Government knows that various industries need tax reliefs but the revenue for the government was low this year due to Covid-19 pandemic, which will lead to giving tax reliefs only to critically affected sectors by the government. Reason being, the borrowing of the government has been increased from budgeted Rs. 7.8 Lakh crore to Rs. 12 Lakh crore whereas the direct tax collection is 31% lower and indirect tax collection is 11% lower as compared to last year.

<https://www.newindianexpress.com/business/2020/oct/10/govt-will-give-tax-sops-only-to-critically-affected-sectors-2208362.html>

12. Raise taxes on very rich to stimulate economy (Nobel Laureate Joseph Stiglitz's advice):- News Report

Nobel laureate, Joseph Stiglitz replied to a query raised by Mr. Sanjiv Mehta, Chairman Hindustan Unilever during an interaction organised by the Federation of Indian Chambers of Commerce & Industry's (Ficci's) West Bengal state council that "If you can't get resources, one way of dealing with it is, raise taxes on the very rich – you have a lot of billionaires in India – and if you spend that money well, it actually stimulates the economy"

https://www.business-standard.com/article/economy-policy/contain-the-covid-19-pandemic-use-your-money-well-joseph-stiglitz-to-govt-120100501401_1.html

13. Govt rules out rollback of digital tax- News Report

As you are aware, Indian government from 01 April 2020 has expanded the scope of equalisation levy to include a 2% levy on all online sale of goods or services into India by non-resident e-commerce operators. As per the news report, the government has received a lot of requests to roll back the digital tax by the industry but the government is in no mood to entertain such requests and has rejected them all with the reasons that it is a valid tax that covers all the foreign companies and does not point out any specific countries and hence there is no reason for India to pull it back.

<https://www.moneycontrol.com/news/business/economy/exclusive-govt-stands-defiant-rules-out-rollback-of-digital-tax-6005321.html>

14. Equalisation levy posts 35% growth; overall tax collection remains muted- News Report

Despite the overall collection of direct tax going down this year due to the pandemic situation, the equalisation levy has managed to make some good collection for the Income Tax Authorities, as it posted a 35% growth in this financial year. The levy made a collection of Rs 738 crore after the second-quarter instalment deadline against Rs 545 crore collected in the same period last year.

https://www.business-standard.com/article/economy-policy/equalisation-levy-posts-35-growth-overall-tax-collection-remains-muted-120101000017_1.html

15. Finance ministry to seek other ministries' views on whether India should appeal against the arbitration award in the Vodafone tax case- News Report

Finance ministry is seeking advice from other ministries on whether India should appeal against the arbitration award in the Vodafone tax case. India has the option of filing an appeal against the decision of the Hague-based Permanent Court of Arbitration (PCA) at the Singapore-based appellate tribunal. The Ministry has to look upon both sides of the coin because if India goes for arbitration then it might discourage the foreign investors and on the other hand, the government officials are of the view that the award pertained to the bilateral investment treaty (BIT) between India and the Netherlands and should not cover the taxation issues and hence India should push for the arbitration.

<https://economictimes.indiatimes.com/industry/telecom/telecom-news/finance-ministry-to-seek-other-ministries-views-on-whether-india-should-appeal-against-the-arbitration-award-in-the-vodafone-tax-case/articleshow/78902733.cms>

16. Govt may not implement international tribunal's order on Vodafone under BIPA as it curtails Government's sovereign right to tax- News Report

The Indian government has said that Vodafone International arbitration tribunal's order impinge on its sovereign right to tax and the said ruling unacceptable to it and may not immediately implement it. The government is also considering challenging the order, which cited a violation of the India-Netherlands Bilateral Investment Protection Agreement, or may not implement it. Government sources said that it was important to seek a legal recourse in the Vodafone case as in future too companies may invoke BIPA provisions on other aspects. This is another pinching point for the government as this bilateral investment agreement is for protection and facilitation of investment. It has nothing to do with tax policy. A tax claim cannot be used to invoke BIPA as per the officials of the government.

<https://timesofindia.indiatimes.com/business/india-business/sovereign-right-to-tax-govt-may-not-implement-international-tribunals-order-on-vodafone/articleshow/78651557.cms>

17. Clarification on Vodafone Arbitration Appeal- Press Release dated 15 October 2020

The Ministry of Finance issued a Press Release dated 15 October 2020 wherein it mentioned that a speculative news story being circulated in some section of media claiming that the Attorney General of India has given an opinion in favour of not appealing against the Vodafone Arbitration award is totally incorrect and without any factual basis. Award along with all options are under examination within the Ministry and further courses of action will be decided based on such examination as per the said press release.

18. Tax only domestic income of foreigners, industry bodies suggest Finance Ministry: News Report

As per the news report, recently Assocham, CII, FICCI and the US India Strategic Partnership Forum (USISPF) approached the Finance Ministry seeking exemption of personal tax of expats individuals who have not been citizens of India for at least three years. This proposal is being sent to the Finance Ministry for pre-Budget consultations, to tax only domestic sourced Income i.e. only local income of expats living in India for extended periods to invest or manage FDI or bring in managerial and technical expertise should be taxed and give them exemption on their foreign Income to boost FDI's in India as Singapore and China also followed the same path to achieve 4% of its GDP as FDI in its boom phase.

<https://www.moneycontrol.com/news/business/tax-only-domestic-income-of-foreigners-industry-bodies-suggest-finance-ministry-report-6019131.html>

19. UN releases revised draft on new Article 12B on 'Automated Digital Services' with Commentary: Dated 10th October, 2020

UN Committee of Experts on International Co-operation in Tax Matters (UN Committee) releases an amended draft paper on New Article 12B on taxation of 'Income from Automated Digital Services' with commentary, revised by the Drafting group based on the comments received. The Revised Draft on new Article 12B excludes payments qualifying as “royalties”

under Article 12 from the definition of ADS and recommends a modest rate of 3% or 4% for taxation. At the 21st meeting of the Committee to be held between 20 October to 29 October discussion will be there on the amended Draft and decide on future course as to “how best to take the matter forward including on the proposed text”.

<https://www.taxsutra.com/news/26651/UN-releases-revised-draft-on-new-Article-12B-on-Automated-Digital-Services-with-Commentary>

20. OECD Digital Tax Project slows: News Report

The Digital Tax has been one of the hot topics this year and has been in the headlines from the past two years and the implementation of the same does not seem likely any soon as the OECD plans to reach global consensus for taxing digital services have been delayed with no agreement now likely before mid-2021, which could lead to increase in damaging tax and trade disputes, which would undermine tax certainty and investment.

The OECD’s economic impact analysis suggests up to 4% of global corporate income tax (CIT) revenues, or \$100bn of revenue gains annually, could result from implementation of the global minimum tax under pillar two.

It has been more than 2 years since OECD has been trying to map a strategy around it and the wait does not seem to end any time soon as there have been no political agreements as yet, as confirmed by Pascal Saint-Amans, head of tax policy at OECD. He further added that the OECD is not expecting to finalise the digital tax proposal in 2021 as well, despite the fact that the governments are under immense public pressure to finalise the said deal.

“The glass is half full: the package is nearly ready but there is still no political accord,” said Pascal Saint-Amans, head of tax policy at the Paris-based Organization for Economic Cooperation and Development.

<https://www.accountancydaily.co/oecd-digital-services-tax-project-slows>

<https://economictimes.indiatimes.com/corporate/no-deal-on-global-digital-tax-this-year-says-oecd/articleshow/78630779.cms>

21. OECD's work on the multinational tax avoidance pushed to mid 2020- News Report

OECD had released the blueprint reports on "Two Pillar" earlier this month to make the tech giants pay their fair share of tax in the markets where they operate. OECD made a consensus-based multilateral solution involving both the pillars that would lead to a favourable environment for the investment and growth in case of absence of any agreement by the Inclusive Framework. Further, G20 ministers are also committed enough to further progress on both pillars and urged the Inclusive Framework to address the remaining issues with a view of reaching a global and consensus-based solution by mid-2021.

<https://www.zdnet.com/article/oecd-work-on-multinational-tax-avoidance-pushed-to-mid-2021/>

22. Australia proposes an amendment in the Corporate Residency Test on the lines of POEM provisions in India: News Report

Australian Government through its budget paper 2020-2021 proposed an amendment in its Corporate residency test to provide that a company that is incorporated offshore will be treated as an Australian tax resident if it has a 'significant economic connection' to Australia. It further stated that the test will be satisfied if the company's core commercial activities are undertaken in Australia and its central management and control is in Australia. Both these conditions are to be met simultaneously and the revised rule will have effect from the first income year after the date of assent of the enabling legislation.

<https://www.taxsutra.com/news/26618/Australia-proposes-amendments-to-corporate-residency-rules-includes-significant-economic-connection-test:->

23. Spain to hike taxes on large companies, high earners in 2021 budget: News Report

Due to the Covid-19 outbreak, economy of Spain is expected to shrink an unprecedented 11.2% this year and tax revenues due to 7.6%, so to fund increased spending on social care and infrastructure this year the Spain government is looking to hike taxes on large companies and

high earners so that they will boost 2021 budget revenue by approx. 6.8 billion euros (\$8.04 billion). Further, the Prime Minister Pedro Sanchez said that, this budget cannot be postponed. This budget is essential for the modernisation and recovery of our economy.

- 1) Budget 2021 is expected to reduce tax exemptions to 95% from 100% for dividends from subsidiaries earned by big corporations, while real-estate investment trusts will face a minimum tax rate of 15% of earnings.
- 2) 2% point increase on income tax for high-earners will only apply to those making more than 300,000 euros a year, up from an initial threshold of 130,000 euros.

https://www.business-standard.com/article/international/spain-to-hike-taxes-on-large-companies-high-earners-in-2021-budget-120102701461_1.html

24. France to collect its Digital Tax this year: News Report

French Minister of Finance, Bruno Le Maire made the country's intent very clear to collect the Digital Service Tax (DST) this year in December 2020. The said tax was approved by French parliament on 11 July 2019 which applies to the digital companies having global revenues of EUR 750m (USD 880m) or more and French sales of at least EUR 25m. The rate of tax shall be 3% on the revenue on the services mentioned above. Such an action by France is a consequence of the failure of OECD to reach upon an agreement on digital taxation this year.

https://www.taxnews.com/news/France_To_Collect_Its_Digital_Services_Tax_This_Year_97847.html

25. Philippines Government introduced Taxation on Digital Transactions: News Report

In order to ameliorate the current economic situation due to Covid 19 outbreak, the Philippines Government is looking forward to introducing tax on digital transactions as these transactions are scaling up in the current scenario. The Government is currently deliberating on House Bill (HB) No. 7425 (Value-added Tax on Digital Transactions) which will substitutes 2 bills i.e. HB No. 6765 which covers the scope of supply of goods and services through the use of electronic or digital means and HB No. 6944 proposed to impose on all digital service providers a digital

service tax of 6% of their gross sales from digital services rendered to Philippine-based consumers.

The new bill HB 7425 seeks to expand the definition of VAT to include the sale of goods and services including those which are electronic in nature and covers the scope of online advertisements, digital services in exchange for regular subscription fee, and online services through IT infrastructure. Under the current VAT law and applicable regulations, VAT is imposed based on the place of performance of the service rendered, and not where the buyer of the service is located. Thus, VAT is imposed on services performed within the Philippines. Under the proposed bill, a non-resident digital service provider shall be liable for assessing, collecting, and remitting the VAT on transactions that occur through its digital platform. Such digital service providers shall be liable for the sale of goods or services through an online platform, to a buyer who resides in the Philippines and who acquires taxable services in the Philippines.

<https://news.bloombergtax.com/daily-tax-report-international/philippines-taxation-of-digital-transactions>

26. Malaysia refines its Service Tax on Imported Digital Services: News Report

Malaysian Government introduced a 6% service tax on imported digital services (SToDS) from 01 January 2020. The introduction took most Malaysian businesses by surprise since unlike similar to Goods and Services Tax (GST) or Value-Added Tax (VAT) regimes in other countries, the Malaysian SToDS regime imposes the tax on both individual and business consumers in Malaysia. Business raised various concerns regarding the implications of the widening of the service tax net to capture cross-border supplies of digital services and the Malaysian government has since then introduced measures to refine the SToDS regime in response to the concerns raised.

a) Preventing Double Taxation:- Service tax is also imposed on imported taxable services under the pre-existing business-to-business (B2B) regime that came into force on 01 January 2019. Malaysian businesses which acquire imported taxable services are required to account for 6% service tax on such taxable services via a reverse charge mechanism under the B2B regime.

There were concerns that Malaysian businesses could be subject to double taxation on the same service where the service falls within the scope of “digital services” under the SToDS regime and “taxable services” under the B2B regime. To prevent double taxation, Govt. introduced a reverse charge exemption for imported taxable services for businesses, so that businesses required to deduct service tax under RCM obligation need not to do that if they procure services from the Foreign service Provider. This would mean that imported digital services would only be subject to service tax once and there should be no double taxation on the same service even if the imported digital service also falls within the scope of “taxable services” under the B2B regime.

b) Refund Mechanism for Local Service Providers:- To remove the cascading effect, the Royal Malaysian Customs Department (Customs) announced a special refund for local service providers who have paid service tax to an Foreign Service Provider (FSP) so that he can claim a refund by offsetting the amount of service tax paid to the FSP against the amount of service tax that the local service provider collects from customers in respect of the service provided by the local service provider.

c) Exemption for certain services:- In order to encourage the consumption of these services in Malaysia, the government had decided to exempt certain services that may fall within the definition of “digital services,” for example online distance learning services. In addition to this, the Minister also prescribed that online newspapers, journals and periodicals are exempted from service tax, and this exemption includes printed digital versions of online newspapers, journals and periodicals which fall within the prescribed customs tariff codes.

d) Intra Group Relief:- With the introduction of SToDS, no provision for Intra Group Relief has been provided which causes a lot of problems for the FSP providing services to their related companies in Malaysia. To provide relief, government introduced an intra-group relief under the SToDS regime, with effect from 14 May 2020 subject to the condition that the FSP does not also provide the same digital service to another person in Malaysia outside of the FSP’s group of companies.

<https://news.bloombergtax.com/daily-tax-report-international/malaysia-refines-its-service-tax-on-imported-digital-services>

27. Colombia publishes MAP guidance for resolution of tax treaty disputes: News Report

For providing resolution of cross-border tax disputes, the Colombian tax authority recently issued a guidance which also contains the information required to initiate a mutual agreement procedure (MAP) request. This document provides assistance to taxpayers if taxation is not in accordance with the relevant tax treaty and deals with transfer pricing adjustments, determination of residence, withholding tax applied, determination of the existence of a permanent establishment, and application of anti-abuse provisions. Under MAP guidance, the Colombian Government will ask within 45 days from receipt of a MAP request for additional information from the taxpayer and will notify the request for acceptance or denial within 90 days following the receipt of completed application.

MAP agreements may be implemented at any time by submitting a copy of the MAP agreement signed by the Colombian tax authority and specifies for how to make request, denial of MAP request, coordination with other procedures, and the charges and penalties related to the MAP. MAP can also be requested before the tax is assessed if tax isn't in accordance with the treaty.

<https://mnetax.com/colombia-publishes-map-guidance-for-resolution-of-tax-treaty-disputes-40679>

B. INDIRECT TAXATION

1. Updates from 42nd GST Council meeting:- CBIC Press Release dated 05 October 2020

The 42nd GST Council meeting was held on 05 October 2020. The main recommendations are summarized below.

- 1) Levy of Compensation Cess to be extended beyond the transition period of five years i.e. beyond June, 2022, for such period as may be required to meet the revenue gap.
- 2) Centre is releasing compensation of INR 20,000 crore to States towards loss of revenue during 2020-21 and an amount of about INR 25,000 crore towards IGST of 2017-18 shortly.
- 3) Enhancement in features of return filing in such a way that the timely filing of GSTR-1 statement alone would be sufficient as the return in FORM GSTR-3B would get auto prepared on the common portal. The following recommendations are made in this regard:
 - Due date of furnishing quarterly GSTR-1 by quarterly taxpayers to be revised to 13th of the month succeeding the quarter w.e.f. 01 January 2021;
 - Auto-generation of GSTR-3B from GSTR-1s by auto-population of liability from own GSTR-1 and of input tax credit from suppliers' GSTR-1s w.e.f. 01 January 2021 and for quarterly filers w.e.f. 01 April 2021;
 - Mandatory filing of FORM GSTR 1 before FORM GSTR-3B w.e.f. 01 April 2021.
 - Taxpayers having aggregate annual turnover of less INR 5 crore to be allowed filing of returns on a quarterly basis with monthly payments by such taxpayers to be implemented w.e.f. 01 January 2021. Such quarterly taxpayers would, for the first two months of the quarter, have an option to pay 35% of the net cash tax liability of the last quarter using an auto generated challan.
- 4) HSN/SAC at 6 digits for supplies of both goods and services for taxpayers with aggregate annual turnover above INR 5 crores and for others HSN/SAC at 4 digits for B2B supplies of both goods and services for taxpayers

2. Clarification on rule 36(4) for February 2020 to August 2020 :- Circular no. F. No. CBIC/20/06/14/2020-GST dated 09 October 2020

The Board has issued circular stating that clarifications issued earlier vide Circular No. 123/42/2019-GST dated 11 November 2019 shall still remain applicable, except for the cumulative application as prescribed in proviso to rule 36(4) of the CGST Rules. Accordingly, all taxpayers are advised to ascertain the details of invoices uploaded by their suppliers under section 37(1) of the CGST Act for the periods of February, March, April, May, June, July and August, 2020, till the due date of furnishing of FORM GSTR-1 for September, 2020 as reflected in GSTR-2As. The cumulative amount of ITC availed for the said months in FORM GSTR-3B should not exceed 110% of the cumulative value of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under section 37(1) of the CGST Act, till the due date of furnishing of the statements in FORM GSTR-1 for September, 2020.

The excess ITC availed arising out of reconciliation during this period, if any, shall be required to be reversed in Table 4(B)(2) of FORM GSTR-3B, for September, 2020. Failure to reverse such excess availed ITC on account of cumulative application of rule 36(4) of the CGST Rules would be treated as avilment of ineligible ITC during the month of September, 2020.

3. Clarification regarding GSTR-9 and GSTR-9C for FY 2018-19:- PIB Press Release dated 09 October 2020

Certain representations have been received stating that the auto populated GSTR 9 for the year 2018-19 (Tables 4, 5, 6 and 7) also includes the data for FY 2017-18. However, this information for FY 2017-18 has already been furnished by the taxpayers in the annual return (GSTR9) filed for FY 2017-18 and there is no mechanism to show the split of two years (2017-18 & 2018-19) in FORM GSTR-9 for 2018-19.

It is clarified that the taxpayers are required to report only the values pertaining to FY 2018-19 and the values pertaining to FY 2017-18 which may have already been reported or adjusted are to be ignored. No adverse view would be taken in cases where there are variations in returns for taxpayers who have already filed their GSTR-9 of FY 2018-19 by including the details of supplies and ITC pertaining to FY 2017-18 in the Annual return for FY 2018-19.

**4. Due date for GSTR-9 and GSTR-9C for FY 2018-19 extended to 31.12.2020 :-
Press Release by PIB Delhi dated 24 October 2020**

It has been decided to extend the due date for filing GSTR-9 / GSTR-9A and GSTR-9C for Financial Year 2018-19 from 31 October 2020 to 31 December 2020. The extension has been made in view of numerous representations received by Government regarding the need to extend due date for filing Annual Return (FORM GSTR-9) and Reconciliation Statement (FORM GSTR-9C) for 2018-19 on the grounds that on account of the COVID-19 pandemic related lockdown and restrictions, normal operation of businesses have still not been possible in several parts of the country.

Notifications to give effect to this decision would follow.

5. Clarifications on manufacturing and other operations undertaken in bonded warehouses under Section 65 of the Customs Act, 1962 :- Circular No. 48/2020- Customs dated 27 October 2020

The issues raised by the trade and the recommendations of the Committee on manufacturing have been examined. To bring in greater regulatory clarity and certainty for investors, Board has decided to clarify the following issues:

1. Removal of goods for job work by a bonded unit

- Only inputs are allowed to be sent out from a Section 65 unit for job work. The capital goods can be sent outside the Section 65 unit for repair, with the permission of the bond officer. The job work shall be subject to the following conditions:

(i) The goods upon import should be first deposited in the Section 65 premises and duly accounted for before the same is sent for job work.

(ii) It should be possible to establish the identity/ correlate the goods after job work with those sent for job work.

(iii) On completion of the job work, the goods can be brought back to the Section 65 unit or exported/ cleared to DTA from the job worker's premises. In case the goods are exported/ cleared to DTA from the job worker's premises, the procedure as per Regulations 14 and 15 of MOOWR 2019, as applicable shall be followed and the date of removal from job workers premise shall be deemed to be the date of removal from the warehouse.

(iv) Scrap, waste or remnants generated during the job work shall be either returned to the Section 65 unit or cleared from job-worker's premises on payment of applicable duties.

(v) The procedure and timeline for the return of goods sent for job work under Section 65 unit will be in line with GST provisions, as the Section 65 Unit is also a GST registrant.

(vi) The account to be maintained under Circular No. 34/2019-Customs dated 1st October 2019 will be kept updated as regards job work at all times.

- Removal of moulds, jigs, tools, fixtures, tackles, instruments, hangers, patterns and drawings for job work by a bonded unit shall be allowed to be sent to the premises of a job worker, subject to due accounting of the goods by the Section 65 unit in the account specified. Such goods will be used by the job worker exclusively for the concerned Section 65 unit. The procedure and timeline will be in line with the GST provisions.
- It may also be noted that the bond to be executed by a Section 65 unit, prescribed through the aforementioned circular, stays in full force notwithstanding the removal of goods for job work from a Section 65 unit

2. Job work for others by a bonded unit.

- The issue has been examined with a view to enhance capacity utilization and acknowledging the realities of manufacturing environment where various units support each other in producing the final product. It is clarified that a Section 65 unit being a GST registered unit,

can perform job work operations and shall maintain due accounting of such job work as per the provisions of GST law.

- In case any imported inputs which are warehoused are consumed during the job work process, duty shall be paid on such goods (i.e. the warehoused goods) by filing Ex-Bond Bill of Entry, when such job worked goods are returned to the principal/owner. In case the goods after job work are exported from the premises of the Section 65 unit, the import duty on the warehoused goods used for the job work need not be paid as per section 69 of the Customs Act, 1962.

3. Whether a bonded unit can procure goods from FTWZ

- Vide para 14 of Circular No. 34/2019-Customs dated 1st October 2020, Board has clarified that the objective of Section 65 is to enable manufacture and other operations in customs bonded warehouses. For this purpose, the units should be able to procure required raw materials, consumables, capital goods etc., imported or procured from domestic market.
- There are no restrictions imposed on sourcing of goods by units operating under Section 65. Moreover, the units are GST registrants, which are also allowed to procure goods from SEZ/FTWZs. In view of the foregoing, it is clarified that a Section 65 unit may source capital goods or inputs from a SEZ/FTWZ, following the applicable procedures.

6. Penalty not imposable under section 171(3A) prior to 01.10.2020 :- National Anti-Profiteering Authority in Shri Abhishek , Director General of Anti Profiteering, Central Board of Indirect Taxes & Customs vs. M/s Signature Global developers Pvt. Ltd. in Case No. 63/2020

The DGAP had conducted an investigation and found that the Respondent had not passed on the benefit of additional Input tax credit to Shri Abhishek and other home buyers under a housing project in the name of “Synera”. It was held that the Respondent had profiteered an amount of Rs. 1,42,06,267/- by not reducing the price of flat between the period from 01.07.2017 to 31.12. 2018 and therefore, had committed offence under section 171(1).The

Respondent was issued notice dated 27.12.2019 asking him to explain why the penalty mentioned in Section 171 (3A) read with Rule 133 (3) (d) should not be imposed on him.

The Authority observed that the Respondent, in compliance to Order No. 60/2019 dt. 21.11.2019, had passed the benefit of the additional ITC to his customers along with the Applicant No.1 and the same has been verified by the Haryana State GST (Jurisdictional Officer). It is also revealed that vide Section 112 of the Finance Act, 2019 specific penalty provisions have been added for violation of the provisions of Section 171 (1) which have come in to force w.e.f. 01.01.2020 vide Notification No. 01/2020-Central tax dated 01.01.2020 by inserting Section 171 (3A) in the CGST Act, 2017. Since, no penalty provisions were in existence between the period w.e.f. 01.07.2017 to 31.12.2018 when the Respondent had violated the provisions of Section 171 (1) of the CGST Act, 2017, the penalty prescribed under Section 171 (3A) cannot be imposed on the Respondent retrospectively. Accordingly, the notice dated 27.12.2019 issued to the Respondent for imposition of penalty under Section 177 (3A) of the CGST Act, 2017 is hereby withdrawn and the present penalty proceedings launched against him are accordingly dropped.

7. Liaison office required to obtain registration under GST:- Karnataka AAR in M/s Fraunhofer-Gesellschaft Zur Forderung Der Angewandten Forschung in KAR ADRG 50/2020

The Applicant, incorporated in Germany, undertakes the business of promoting applied research and established their liaison office in Bangalore, India (“Liaison office / LO “), under the permission of RBI, to act as an extended arm of the head office and to carry out the activities that are permitted by RBI. In view of this the applicant sought advance ruling in respect of the following questions: (a) Whether the Activities of a liaison office amount to supply of services? (b) Whether a liaison office is required to be registered under CGST Act, 2017? (c) Whether liaison office is liable to pay GST?

The Authority observed that the definition of person under GST is very wide in scope and covers every artificial juridical person, not falling within any of the above. A juridical person is a non-human legal entity recognized by law with duties and rights. We observe that the RBI has

recognized the applicant and conferred on them certain duties along with placing certain restrictions and thus, LO is a person as per GST Act. The Authority further referred to explanation (c) of section 15 – “persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, however described, shall be deemed to be related” and held that the Applicant (LO) and their head office (HO) are deemed to be related persons.

It further observed that liaison activity falls under section 2(17)(b) i.e., any activity or transaction in connection with or incidental or ancillary to any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit. It is to be noted that the definition of business for the purpose of GST is derived from its definition in the Act and RBI’s injunction on business for the Applicant can’t decide the scope of business for the purpose of GST. In view of the above, the AAR held that the Applicant is involved in the business.

The Authority also held that the Applicant (LO) and their head office (HO) shall be treated as establishments of distinct persons, in terms of Section 8 and therefore the Applicant (LO) and their head office (HO) are distinct persons and the activities performed by them can’t be called export of services. The Authority held that services provided by the LO to the HO will be intermediary services as per section 2(13) of the IGST Act as the Applicant is facilitating supply between the HO and Indian customers and they have a mandate from RBI for this purpose.

The Authority passed the ruling that (a) the liaison activities being undertaken by the applicant (LO) in line with the conditions specified by RBI amount to supply under Section 7(1)(c) of the CGST Act 2017 (b) The applicant (LO) is required to be registered under CGST Act 2017 (c) The applicant (LO) are liable to pay GST if the place of supply of services is India.

8. Reimbursement of expenses to holding company to attract GST at 18% under reverse charge:- Tamil Nadu AAR in ICU Medical LLP in TN/23/AAR/2020

The Applicant is engaged in the business of software development for the infusion system manufactured by its Ultimate Holding company ICU Medical Inc., hereinafter referred as ICU Inc., having its place of business in USA. ICU Inc., has entered into an agreement with Wells Fargo Bank, located in USA to provide Credit Card to the employees of ICU Inc. and its subsidiaries located globally. The card is provided to the employees based on their need to travel on business. These cards are not an entitlement nor reflective of title or position. The applicant's employees are also provided with such credit card issued by Wells Fargo Bank. They do not have any agreement with the bank regarding the issue of credit cards. Their employees use this card for incurring expenses towards tickets, food and accommodation during their travel and for paying admin related expenses. ICU Inc., downloads and shares the monthly statement with the Applicant, for them to book the said expenses in their books. These expenses are booked as an intercompany transaction, debiting the corresponding expenses and crediting the inter-company payable. ICU Inc. settles the monthly credit card liability with Wells Fargo Bank for all locations globally. An invoice is raised by ICU Inc., on the applicant for the credit card liability settled by it with the bank. The applicant settles the credit card liability paid by ICU Inc., to the bank in the form of reimbursement of expenses at actual. There is no agreement per se between ICU Inc., and the applicant towards such arrangement of settlement of credit card liability paid by ICU Inc., by way of reimbursement.

The applicant submitted that there is no contractual agreement with ICU Inc towards rendering of any service by ICU Inc and it is only an internal policy, that ICU Inc., settles the monthly credit card liability with Wells Fargo Bank for all locations globally; that there is no consideration flowing to ICU inc. in response or due to inducement of any supply of service from ICU Inc.; that the transaction with ICU inc., does not satisfy the conditions as related to definition of "supply, service & Recipient".

The Authority observed that ICU Medical Inc. has entered into an agreement with Wells Fargo for using credit card facilities by the employees of the group companies, affiliates etc. for business related expenses. The billing of these transactions are made by Wells Fargo to ICU Medical Inc. However, there is another separate transaction between ICU Medical Inc. and the Applicant. It is evident that this is a separate transaction between the applicant and ICU Medical

Inc. for the services of providing the credit cards to the employees of the applicant which are to be used only for business related activities. Therefore, the transaction in question is a 'Supply' as per Section 7 of the Act.

It further observed that ICU Medical Inc. has an agreement with Wells Fargo, billing by Wells Fargo is done to ICU Medical Inc., payment to Wells Fargo is also done by ICU Medical Inc. The applicant does not come into the picture for any transactions with Wells Fargo. As per company policy, the cards are the property of ICU Medical Inc. and can be revoked at any time. From this it is evident that ICU Medical Inc. is making the supply of the credit cards to the applicant, for use of its employees, on its own account and not as an 'Intermediary'.

Accordingly, it was held that the reimbursement made by the Applicant will attract GST under reverse charge mechanism as it amounts to import of services.

9. Contract for energy saving held as composite supply of goods and services and value of goods:- Karnataka Appellate AAR in M/s Karnataka State Electronics Development Corporation Limited in KAR/AAAR-04/2020-21

The Appellant is engaged into providing street lighting services, under the Energy Performance Contract (ESCO contract) to the Thane Municipal Corporation (TMC), Thane for a period of 7 years. The ESCO contract is on shared saving model and is to reduce the overall consumption of electricity in street lighting. The Appellant has to operate and maintain 12,000 street lighting fixtures & respective feeder panels i.e. installation of LED fixtures, smart electric panels for automation, metering & comprehensive maintenance. The role of the Appellant are (a) Removal of the existing street lights and handing over the same to TMC (b) Installation of LED street lights on existing street light poles (c) Installation of new smart feeder electrical panels compatible with LED fixtures at its own cost (d) Operation and maintenance of the said LED street lights during the tenure of the contract.

During the personal hearing, the Counsel for the Appellant submitted that the value of the goods involved is less than 25% by taking the total value of the composite supply (although there is a periodic billing cycle). The Authority held that they are not convinced with this submission. The Authority held that the Appellant has not been able to establish that the value of the goods

component supplied as per the ESCO contract will be less than 25% of the value of the entire contract. The terms of the ESCO contract and the submissions made by the Appellant do not establish beyond doubt that the value of the supply of goods in this contract will always be less than 25% of the total cost of the supply under the contract. The burden of proving the eligibility to the exemption is on the Appellant to show that his case comes within the parameters of the exemption notification and the Authority held that the onus has not been adequately discharged by the Appellant. Accordingly, the Authority held that the Appellant is not entitled to exemption under sr. no. 3A of notification no. 12/2017

The Appellate AAR held that the services are of composite supply of goods and services.

10. Department's Appeal against transition of Education Cess, SHEC and Krishi Kalyan Cess against Output GST Tax Liability allowed:- Madras High Court in Assistant Commissioner of CGST and Central Excise and Ors. vs. Sutherland Global Services Private Limited in Writ Appeal no. 53 of 2020

The Madras High Court has allowed department's appeal against the order of a single member bench allowing transition of cesses in GST and held that such transition is not permissible. The Court observed that the character of the levy in the form of Cess like Education Cess, Secondary and Higher Education Cess, and Krishi Kalyan Cess was distinct and stand-alone levies, and their input credit even under the CENVAT Rules which were applicable mutatis mutandis did not permit any such cross Input Tax Credit, much less conferred a vested right, especially after the levy of these Cesses itself was dropped. The Court also observed that explanation 3 to Section 140 could not be applied in a restricted manner only to the specified subsections of Section 140 of the Act mentioned in the Explanations 1 and 2 and as a tool of interpretation, Explanation 3 would apply to the entire Section 140 of the Act and since it excluded the Cess of any kind for the purpose of Section 140 of the Act, which is not specified therein, the transition, carry forward or adjustment of unutilized Cess of any kind other than specified Cess, viz. National Calamity Contingent Duty (NCCD), against Output GST liability, could not arise.

Accordingly, the Court allowed the appeal of the revenue and held that the assessee was not entitled to carry forward and set off of unutilized cesses against the GST Output Liability under section 140 of the CGST Act, 2017.

11. Intimation under section 74(5) requires mandatory payment of interest and penalty:- Kerala High Court in Muhammed Kochukuddiyil Isha Shaefi vs. State Tax Officer & Ors. in Writ Petition 20468 of 2020

The Petitioner challenged intimation that was issued to her in terms of Section 74(5) of the KGST Act read with Rule 142(1A) of the SGST Rules, whereby she was intimated of the tax, penalty and interest payment that she was required to make in the event of her opting to make such payment to avoid a show cause notice under section 74(1) of the Act. The Petitioner contended that she ought not to be asked with a liability to pay interest thereon, and 15% of the penalty, in as much as the tax amount conceded by her has become payable only from the date on which the intimation was issued to her. Effectively, she prayed that she must be permitted to avail the option envisaged under section 74 without paying the interest and penalty amounts that are stipulated as conditional payments for avoiding the show cause notice envisaged under the said provision.

The Court observed that what is offered to the Petitioner under the provision of section 74(5) is an option of either (i) paying the tax intimated by the statutory authorities, together with interest thereon and a fixed amount towards penalty, in which event a show cause notice would not follow or (ii) denying her liability to tax, interest and penalty and contest the show cause notice that would follow. The Petitioner wants to opt for the former course and simultaneously obtaining an exemption from the requirement of payment of interest and penalty amounts intimated to her by the Department. The scheme under section 74 is optional to a taxpayer, the taxpayer is either to opt for it or look away from it. If she opts for the scheme, she has to comply with the terms under which the option is made available under the statute and cannot seek a variation of the said scheme. Accordingly, the writ petition was dismissed.

12. Place of supply for construction of pipeline held as location of registered recipient:- West Bengal AAR in Maninder Singh (under Trade Name Mideast Pipeline Products) in Case Number 11 of 2020

The Government of India and The Government of Bangladesh have signed a Memorandum of Understanding for construction of an oil pipeline from Siliguri in India to the depot of the Bangladesh Petroleum Corporation (BPC) at Parbatipur in Bangladesh. The work will be monitored by Ministry of External Affairs (MEA), Government of India, which has engaged M/s Numaligarh Refinery Ltd (NRL) as the implementation agency. NRL has awarded the applicant the contract for the installation of the pipeline by HDD method.

The Applicant inter alia raised a query whether the supply of service to NRL for the above construction in Bangladesh is an export and exempt under the GST Act.

The Authority observed that the Applicant is making a composite supply involving the transfer of property in goods in the course of the construction of immovable property, namely pipeline for transportation of hydrocarbon. As both the supplier and the recipient are located in India, the place of supply shall be India in terms of the proviso to section 12(3) of the IGST Act. Accordingly, it held that the supply is not an export of service.

13. Liability to pay service tax on mobilisation advance arises on issuance of bill:- CESTAT Mumbai in Gammon India Ltd vs. Commissioner of Service Tax – V in Service Tax Appeal No: 87483 of 2016

The CESTAT held that payment of service tax on mobilisation advance arises when the same is adjusted on issuance of bills and not at the time of receipt of the same. The CESTAT observed that several contracts provide for the payment to be made at different, pre-determined stages of performance and are generally, subject to evaluation of the work undertaken. It is also seen that such evaluation is not undertaken until after the execution of the work in relation to the taxable service has commenced and that all the contracts, while linking such measurable stages, provide for payment of only 90% of the contracted amount for the entirety of the work.

The 'mobilization advance' is adjusted against the final payment due and is not linked to the work but as a pledge of the contract between the appellant and principal. It is also subject to furnishing of prescribed 'bank guarantee'; there is no connection with the performance of the contract. It is not in dispute that the 'mobilization advance', carrying interest, is granted to enable the contractor to prepare for undertaking the contracted work. The subsequent adjustment with the final payment due does not suffice to construe this as an advance payment for the work to be done merely because the recipient and payee happened to be the provider of service. The payment of 'mobilization advance' is but a separate financial transaction within the contract for providing of service and, within the limits laid down by the Hon'ble Supreme Court in Intercontinental Consultants and Technocrats Ltd, is not permitted to be included in the 'gross amount' envisaged in section 67 of Finance Act, 1994.

14. Initiation of investigation would bar taxpayer to approach AAR as it tantamount to pending proceeding:- Karnataka Appellate AAR in Fresh Food (India) Private Limited in KAR/AAAR/02/2020-21

The Appellant had approached the Appellate AAR against order passed by the AAR that parotas should be classified under 2106 and 1905. The department submitted that certain crucial facts have been brought to their notice by the DGGI, Chennai Zonal Unit which implies that the AAR had been misled into admitting the application in as much as the Appellant had withheld information regarding the commencement of investigations against them on the issue of classification of the impugned products.

The Appellant raised an objection that investigation is not a proceeding disbaring an AAR argument. The Authority observed that the term 'proceeding' is a very comprehensive term and generally speaking means a prescribed course of action for enforcing a legal right and hence it necessarily embraces the requisite steps by which a judicial action is invoked. The process of investigation in tax administration is such a step towards the action of issuing a show cause notice which culminates in a decision. Investigation is activated when there is enough predication to show that there is an alleged tax evasion. The essence of investigation is to carry out an in-depth review of the taxpayer's records and activities to ensure that the tax due to the government is not lost in evasion. Therefore, commencement of investigation in terms of

Section 67 of the CGST Act, can be said to be the start of a proceeding to safeguard the government revenue and accordingly, held that the usage of the words “any proceeding” in the proviso to Section 98(2) of the CGST Act will encompass within its fold the investigation launched by the agencies.

On Appellant’s argument that jurisdiction can be challenged in an appeal the Authority observed that it is well settled that reason to believe that the question on which an advance ruling was sought was not pending in any proceedings in the case of the applicant under the Act is a jurisdictional fact and only on its satisfaction, the AAR acquires jurisdiction to give a ruling on the question. It held that an objection to jurisdiction can be raised at any time even in appeal proceedings.

Another argument of the Appellant was that any point raised by the Department in the absence of an appeal of their own cannot be entertained by the Authority. The Authority observed that it is trite law that when one comes for justice one should come with clean hands and the Appellant was guilty of having not revealed the fact of an investigation pending against them by the DGGI, Chennai Zonal Unit on the issue of classification of Parota at the time of applying for an advance ruling.

Accordingly, the Authority held that the ruling passed by the AAR is void ab intio as the matter is pending in a proceeding.

C. REGULATORY

1. Department for Promotion of Industry and Internal Trade (DPIIT) releases the consolidated Foreign Direct Investment Policy (FDI):- DPIIT File Number 5(2)/2020-FDI Policy Dated the October 15, 2020

DPIIT has released the updated Consolidated FDI Policy circular amending the Consolidated FDI Policy Circular of 2017. The amended policy has consolidated the changes introduced to India's FDI regulation since the previous policy was implemented in 2017. These include respective press notes issued by the Department for Promotion of Industry and Internal Trade (DPIIT) and RBI regulations over the last three years. Also, the consolidated policy incorporates restrictions notified earlier in the year on FDI coming in from overseas entities or citizens belonging to neighboring countries that share a land border with India, to prevent opportunistic takeovers of firms whose operations and finances may have suffered during the lockdowns and due to the general impact of the COVID-19 pandemic.

Some of the other key highlights of the Consolidated FDI Policy 2020 are as under:

- 1) 26 % cap on equity / FDI has been introduced in the segment that covers digital news (uploading or streaming of news and current affairs through digital media), which also requires government approval. This brings it at par with the investment cap on newspaper and periodical publications and the publication of Indian editions of foreign magazines dealing with news and current affairs, which are also subject to the government approval route.
- 2) The definition of 'control' has been amended to control on management or policy decisions, exercisable by a person acting individually or in concert, directly or indirectly, including by

virtue of their shareholding or management rights or shareholders agreements or voting agreements.

- 3) The obligation to file Form FC-TRS in case of the acquisition of shares by a non-resident investor on the stock exchange, under the FDI scheme, will now vest with such non-resident. There was lot of uncertainty around this point as to who is responsible for the compliance in such case.
- 4) The consolidated circular also mandates e-commerce marketplace entities with FDI to obtain and maintain a report of statutory auditor by September 30 every year for the preceding financial year confirming compliance of the e-commerce guidelines.

2. Indian companies may get nod to list in 7 countries:

The Ministry of corporate affairs (MCA) and the department of economic affairs have agreed to do away with the contentious clause of dual listing, which required a company to list in India as well as overseas. As a result, a company can directly list in one of the seven markets including the US, the UK and Japan. While the list will be expanded later, Hong Kong is excluded from the list.

Allowing global listing of Indian entities is seen as a major change in the government's stance as policy makers were earlier wary of letting companies tap global capital markets directly. As a first step, the Modi administration has amended the Companies Act, which will be followed by umbrella guidelines by the finance ministry and rules for unlisted companies by the MCA and those for listed entities by Sebi. The revenue department is separately going to address the tax issues as the government is seeking to ensure the first listing by an Indian entity in the early part of next year.

To facilitate global listing, the government will prescribe norms in a way that the company has to be either profitable, or report operating profits during the preceding three years or should have paid-up capital, funds in the security premium account and tangible and intangible assets above a specified value.

https://economictimes.indiatimes.com/markets/stocks/news/indian-companies-may-get-nod-to-list-in-7-countries/articleshow/78692218.cms?utm_source=newsletter&utm_medium=email&utm_campaign=Dailynewsletter&utm_content=Story3&ncode=8a8b1ff714216bd8e7bceb489958a8fa

3. Statistics of Foreign Direct Investment issued by the Government: Press Release dated 20 October 2020

The following encouraging trends in India's FDI Investment released by the Government as an endorsement of its status as a preferred investment destination amongst global investors:

- 1) In the last 6 years (2014-15 to 2019-20) total FDI inflow grew by 55%, i.e. from US\$ 231.37 billion in 2008-14 to US\$ 358.29 billion in 2014-20.
- 2) During April to August, 2020, total FDI inflow is US\$ 35.73 billion which is the highest ever for the first 5 months of a financial year and 13% higher as compared to the first five months of 2019-20 (US\$ 31.60 billion).

4. Government of India announced and released the guidelines of the Scheme for grant of ex-gratia payment of difference between compound interest and simple interest for six months to borrowers in specified loan accounts (1.3.2020 to 31.8.2020):- Letter No. F.No. 2/12/2020- BOA.I dated 23 October 2020

The Government of India announced the Scheme for grant of ex-gratia payment of difference between compound interest and simple interest for six months to borrowers in specified loan accounts during the period 01 March 2020 to 31 August 2020 ("the Scheme") on October 23, 2020. The scheme mandates ex-gratia payment to certain categories of borrowers by way of crediting the difference between simple interest and compound interest during the above period by mentioned lending institutions. The key details of the scheme are as under:-

a) Applicability:-

The scheme will be applicable to all leading institutions which must be either a banking company, or a Public Sector Bank, or a Co-operative Bank i.e. an Urban Co-operative Bank or a State Co-operative Bank or a District Central Co-operative Bank, or a Regional Rural Bank, or an All India Financial Institution, or a Non-Banking Financial Company or a Housing Finance Company registered with RBI or National Housing Bank as the case may be. A Non-Banking Financial Company— Micro Finance Institution should be a member of a Self-Regulatory Organisation (SRO) recognised by RBI.

b) Eligibility:-

Borrowers in the following segments/ class of loans having sanctioned limits and outstanding amount of not exceeding Rs 2 crore (aggregate of all facilities with lending institutions) as on 29 February 2020

- i) Housing loans,
- ii) Education loans
- iii) Credit card dues
- iv) Automobile loans
- v) MSME loans,
- vi) Consumer durable loans
- vii) Personal loans to professionals
- viii) Consumption loans

c) Benefit under the Scheme:-

Ex-gratia payment of the difference between the simple interest and compound interest to the above class of borrowers in respective accounts irrespective of whether such borrowers have

fully availed or partially availed or not availed the moratorium on repayment of the respective loans.

Further, the guidelines also prescribes mode of calculation of the simple and compounded interest rate, rate of the interest, claim processing etc.

5. Govt plans to extend Production Linked Incentive (PLI) scheme to 7-8 more sectors to promote manufacturing: News Report

As you are aware, PLI was launched by the government earlier this year to make India a manufacturing and export hub. Currently, PLI scheme is applicable for the manufacturing of the mobile phones, pharma products and medical equipment sectors. The scheme provides financial incentive to boost domestic manufacturing and attract large investments. Economic Affairs Secretary Tarun Bajaj said while addressing a virtual CII conference said that with the enthusiasm seen by the ongoing PLI Scheme the Government is looking forward to extend the scheme to 7-8 more sectors to promote Domestic Manufacturing.

<https://cfo.economictimes.indiatimes.com/news/govt-plans-to-extend-pli-scheme-to-7-8-more-sectors-to-promote-manufacturing-dea-secretary/78804796>

6. Government notified Draft rules on Industrial Relations Code, 2020 for suggestions and comments:- Notification No. F. No. Z-20025/26/2015-LRC dated 29 October 2020

Recently, the Ministry of Labour and Employment released the Industrial Relation (Central) Rules, 2020 in relation to the draft rules on Industrial Relations Code, 2020. The Industrial Relations Code 2020 was one of the three codes notified by the government in september 2020.

The draft rules suppress the following rules:-

- 1) the Industrial Tribunal (Procedure) Rules, 1949;
- 2) the Industrial Tribunal (Central Procedure) Rules, 1954;
- 3) the Industrial Disputes (Central) Rules, 1957; and
- 4) the Industrial Employment (Standing Orders) Central Rules, 1946

Objections and suggestions in the performa provided in the draft rules, if any, with regard to the above rules may be addressed to Shri Sanjeev Nanda, Under Secretary to the Government of India, Ministry of Labour and Employment, Room No. 17, Shram Shakti Bhawan, Rafi Marg, New Delhi-110001 or by email – sanjeev.dom@nic.in.

Last date of objections and suggestions is 28 November 2020.

7. Government to hire experts for framing rules of three labour codes- News Report

As you are aware that, the Government in September 2020 the following three codes:-

- a) Industrial Relations Code, 2020
- b) Code on Occupational Safety, Health & Working Conditions Bill, 2020
- c) Social Security Code, 2020

Now as per the news report, the government is planning to hire consultants on a contractual basis to help it in framing the rules for the above three codes as it is planning to implement the said labour codes along with the Code on Wages 2019 from 01 April 2021. Apart from framing the rules, the consultants shall also be responsible for assisting the committee which is tasked to frame rules, in the legal matters besides work related to other legislative initiatives of the ministry. The two experts are being sought at the level of joint secretary and director or deputy secretary level

https://economictimes.indiatimes.com/news/economy/policy/govt-to-hire-experts-for-framing-rules-of-three-labour-codes/articleshow/78719686.cms?action=profile_completion&&em=Z2FyZy5yYWh1bEBhc2lyZS5pbG==

8. Framework for recognition of a Self-Regulatory Organisation for Payment System Operators: Circular RBI/2020-21/58 dated 22 October 2020

Reserve Bank of India (RBI), as part of its sixth Bi-monthly Monetary Policy Statement - 2019-20 (dated 6 February 2020), under Statement on Developmental and Regulatory Policies had announced putting in place a framework for establishing a Self-Regulatory Organisation (SRO) for Payment System Operators (PSOs). The central bank had placed a draft framework for public comments and based on the comments and suggestions received, on 22 October, 2020 finalised the framework for grant of recognition as a SRO.

RBI believes that self-governance helps in industry-wide smooth operations and ecosystem development, therefore the Reserve Bank of India's Payment and Settlement Systems Vision 2019-21 envisaged the setting up of a SRO for PSOs. The key takeaways of the said guidelines are as under:

1) Interested groups / association of PSOs (banks as well as non-banks) seeking recognition as an SRO may apply to the Chief General Manager, Department of Payment and Settlement Systems, Central Office, 14th Floor, Shahid Bhagat Singh Marg, Fort, Mumbai – 400 001. The applications shall comply with the instructions laid down in the Framework.

2) An SRO is a non-governmental organisation that sets and enforces rules and standards relating to the conduct of member entities in the industry, with the aim of protecting the customer and promoting ethical and professional standards. The SRO is expected to resolve disputes among its members internally through mutually accepted processes to ensure that members operate in a disciplined environment and even accept penal actions by the SRO. An ideal SRO would function beyond the narrow self-interests of the industry and address larger concerns, such as protecting customers, furthering training and education and strive for development of members, the industry and the ecosystem as a whole.

3) Regulations, standards, dispute resolution and enforcement by an SRO get legitimacy not just by mutual agreement of its members, but also by the efficiency with which self-regulation is perceived to be administered. Such regulations supplement, but do not replace, applicable laws or regulations.

4) An SRO is expected to have the following characteristics in order to gain the trust and confidence of its members:

- Authority, derived from membership agreements, to set behavioural and professional standards and enforce them on the members;
- Objective and well-defined processes to make rules and enforce them among members;
- Standardised procedures for handling conflicts and disputes, as well as methods to resolve them through a transparent and consistent dispute resolution mechanism;
- Effective means of oversight over its members and ensuring that they adhere to the rules and regulations of the industry as also mutually accepted ethical and professional standards of behaviour; and
- Develop surveillance methods for effective monitoring.

5) Eligibility for recognition of an SRO by RBI:

The SRO shall be set-up as a not-for-profit company under the Companies Act, 2013.
- Only regulated payment system entities, viz, banks and non-bank PSOs can be members of an SRO.

- The SRO shall be professionally managed with clear bye laws.
- The memorandum / bye laws of the SRO shall specify the criteria for admission of members and the functions it will discharge. It shall also provide for the manner in which the Board of Directors (governing body) would function.

- The Board of Directors and management of the SRO shall satisfy the fit and proper criteria (FPC) on an ongoing basis.

- At least one-third of members in the Board of Directors shall be independent and not associated with member institutions.

- The Board shall frame a code of conduct to be followed by its members.

6) The recognised SRO shall promptly inform RBI about any violation that comes to its notice, of the provisions of the Payments and Settlement Systems Act, 2007 or any other guidelines / regulations / directions issued by RBI.

7) The recognised SRO shall conduct or promote research and development for creating a secure and safe payments ecosystem.

8) The recognised SRO shall be invited for periodical interactions with RBI, and shall reasonably be expected to look at the larger picture of the segment / industry in offering its views / inputs / suggestions. The SRO shall strive to address concerns beyond the interest of its membership, viz. to protect customers, participants and other stakeholders in the ecosystem.

9. Streamlining of QR Code Infrastructure by RBI: Circular No. RBI/2020-21/59 dated 22 Oct, 2020

RBI had constituted a Committee (Chairperson : Prof Deepak Phatak) to review the current system of Quick Response (QR) Codes in India and suggest measures for moving towards interoperable QR Codes. After examining the recommendations of the Committee and the feedback received from public consultation, the following has been directed under Section 10 (2) read with Section 18 of the Payment and Settlement Systems Act, 2007:

- i. The two interoperable QR codes in existence – UPI QR and Bharat QR – shall continue as at present.
- ii. Payment System Operators (PSOs) that use proprietary QR codes shall shift to one or more interoperable QR codes; the process of migration shall be completed by March 31, 2022.
- iii. No new proprietary QR codes shall henceforth be launched by any PSO for any payment transaction.
- iv. RBI shall continue a consultative process to standardise and improve interoperable QR codes, to enable beneficial features identified by the Committee.
- v. PSOs may take initiative to increase awareness about interoperable QR codes.

10. RBI Issued Foreign Exchange Management (Margin for Derivative Contracts) Regulations, 2020:- Notification No. FEMA.399/RB-2020 dated 23rd October 2020.

Reserve Bank of India made the following regulations to promote orderly development and maintenance of foreign exchange market in India:-

1. The regulations will be called Foreign Exchange (Margin for Derivative Contracts) Regulations, 2020.

2. As per the directions issued by the RBI authorised dealers

i) May post or collect margin in India and outside India on their own account or on account of a customer in a permitted derivative contract entered with a person resident outside India in a certain form and manner as specified by RBI.

ii) Receive or post interest on their own account or on behalf of the customers for permitted derivative contracts entered with a person resident outside India.

3. Under these regulations prohibition is implemented so that no person shall be allowed to post or collect margin of derivative contracts and pay or receive interest on such margin without prior approval of the Reserve Bank.

11. Research Committee of ICAI has invited comments on Exposure Draft of 'Guidance Note on Accrual basis of Accounting':

The Research Committee of the Institute of Chartered Accountants of India has invited comments from the stakeholders on the recently hosted **Exposure Draft of 'Guidance Note on Accrual basis of Accounting' as issued by Research Committee.**

The complete text of the exposure draft is available at <https://resource.cdn.icai.org/61222research49803.pdf>. The last date for comments is **October 18, 2020**. Comments may be submitted over email at research@icai.in or in hard form at the following address:

Secretary, Research Committee

The Institute of Chartered Accountants of India,

ICAI Bhawan

Indraprastha Marg,

New Delhi – 110002

12. Extension of MSME Loan Interest subvention Scheme:- Circular No. RBI/2020-21/48 dated 7th October 2020:

- The government of India had launched the Interest Subvention Scheme for Micro, small and medium enterprises (MSMEs) in November 2018 and Scheduled Commercial Banks to be eligible for lending for two financial years i.e. 2018-19 and 2019-20. Under the scheme, all the GST registered MSMEs were eligible to have 2% interest subvention during the period of its validity. The coverage of the scheme is limited to all term loans and working capital to the extent of Rs. 100 lakhs. This Scheme is now extended till 31st March 2021 vide notification no. RBI/2020-21/48 issued on 7th October, 2020.

- Further, the government has removed the necessity of UAN(Udyog Aadhar Number) for units that are registered under GST. Also, if GST is not required for an entity, they can submit their Income Tax PAN. Else, they need to have their loan account recognised as an MSME by the concerned bank. Earlier an entity needed to have a valid UAN (Udyog Aadhaar Number) and a valid GSTIN to be eligible to receive the benefits under the scheme.

13. ISRO's draft Space Communications policy and implementation norms for satellite communication- News Report

The Indian Space Research Organisation (ISRO) has released a draft space based communication policy,2020 which shall replace the 22 years old Satcom Policy, 1997. The policy would have a significant impact on the private players in the satellite communications industry. It may also make it easier for private players like Airtel to introduce satellite broadband in under-served areas through satellite constellations like OneWeb. Indian companies can purchase spectrum and other orbital resources from “designated PSU/CPSE under DOS (Department of Space) on commercial basis subject to availability.

The norms say that only Indians may get authorisations from the DoS for running a satellite-based communications service. Any Indian service provider/user can avail the space based communications only on the authorized space based systems

https://www.medianama.com/2020/10/223-isro-space-communications-policy-in-space/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+medianama+%28Medianama%3A+Digital+Media+In+India%29

14. Government starts private consultation to amend Copyright Act: News Report

As per the news report, the Registrar of Copyrights has indicated that the government may soon make amendments to the Copyright Act. An amendment of the Copyright Act could have significant ramifications for technology policy issues like digital rights management, online piracy, statutory licensing, intermediary liability, and live performances online are issues that the industry may push to formalise changes.

The last date for submission of the comments is set as 30 November 2020 by the copyright registrar.

<https://www.medianama.com/2020/10/223-copyright-act-amendment-consultation/>

15. Government introduced The Patent (Amendment) Rules, 2020:- Notification No. G.S.R. 652(E). dated 19 October 2020

The Government vide its notification dated 19 October 2020, introduced Patents (Amendment) Rules, 2019 and bring out the following key changes:-

a) Rule 21 of the rules require to file the priority document, where the applicant in respect of an international application designating India has not complied with certain regulations under the Patent Cooperation Treaty. Earlier such priority document was required to file within three months from the end of the calendar year. Now this document is required to file within 6 months from the end of financial year.

b) In the form, instead of providing exact details of quantum and value accrued to the patentee through manufacturing and import into India, patentees are now permitted to mention approximate value and revenue accrued.

c) A single form may be filed in respect of multiple patents provided all of them are related patents, wherein the approximate revenue or value accrued from a particular patented invention cannot be derived separately from the approximate revenue or value accrued from related patents, and all such patents are granted to the same patentee.

16. Exposure Draft of IRDAI (Insurance Advertisements and Disclosure) Regulations, 2020: Dated 20 October 2020

Reference is drawn to IRDA (Insurance Advertisements and Disclosure) Regulations, 2000 which were notified in the year 2000, and for which two minor amendments were effected in 2010 and 2015 respectively. To ensure that the insurers, intermediaries or insurance intermediaries are adopting fair, honest and transparent practices while issuing advertisements and avoid practices that tend to impair the confidence of the public, this Exposure Draft has been issued:

1. Some definitions have been modified like advertisements and rationalisation of certain other definitions.
2. The term 'Insurance Intermediary' has been aligned with the provisions of the IRDA Act, 1999 as amended in 2015.
3. Various types of Advertisements such as Institutional Advertisements, Invitation to inquire, Invitation to contract and Joint Sales Advertisements have been incorporated in the new regulations.
4. Suitable provisions have been introduced for governing publication of Ranking and Awards by Insurance companies.
5. With a view to consider the recent development in technology, changes have been made in the new and emerging medium or mode used for circulation of Insurance advertisements and option to unsubscribe.

6. Scope of the term 'Misleading Advertisement' has been enlarged.
7. Onus for enforcing compliance on advertisement endorsed by third parties has been cast on Insurance companies for compliance.
8. Provisions have been incorporated to allow advertisements in different languages, without change in content from that of the base version, with the filing of a certificate.

17. Insolvency and Bankruptcy Board of India (IBBI) notifies format for serving a copy of Application for initiation of Corporate Insolvency Resolution Process (CIRP):- Circular No. IBBI/LAD/35/2020 dated 29 October 2020

IBBI vide its circular dated 29 October 2020 notifies the format for serving a copy of application to the board for initiation of CIRP. Rule 4,6 and 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules requires an applicant to be filed by financial creditor, operational creditor and corporate creditor respectively to file an application against the corporate debtor for initiation of the corporate insolvency resolution process and send the copy of the application filed with the Adjudicating Authority.

The format for serving a copy of the application online to the Board has been made available on the website at at <https://www.ibbi.gov.in/intimation-applications/iaaa>.

The format for submission is at **Annexure A**. Also, a step-by-step guide for submission of the application is at **Annexure B**.

18. MHA extends guidelines for re-opening:- Order dated 27 October 2020

The Ministry of Home Affairs vide its order dated 27 October 2020 has issued the guidelines that will remain in force till 30 November 2020. Key highlights of such guidelines are as follows

- Lockdown shall continue to be implemented strictly in the Containment Zones till 30th November, 2020 which shall be determined by the District authorities and only essential activities shall be allowed in such zones.

- No local lockdown shall be imposed by the state governments without proper consultation with the central government
- Vulnerable persons, i.e., persons above 65 years of age, persons with co-morbidities, pregnant women, and children below the age of 10 years, are advised to stay at home, except for meeting essential requirements and for health purposes.

The current situation demands a self disciplinary behaviour on part of the citizens and need to follow the Jan Andolan launched by the Prime Minister, Shri Narendra Modi on 8th October 2020 on COVID-19 appropriate behavior to follow three mantras namely wear your mask properly, wash your hands frequently and maintain safe distance of 6 feet.

19. Cabinet approves Memorandum of Cooperation between India and Japan in the field of Information and Communication Technologies:- Press Release dated 29 October 2020

The Memorandum of Cooperation (MoC) has been signed between India and Japan with regard to Information and Communication Technologies (ICTs). The memorandum covers the various fields like 5G network, telecom security, Submarine cable, standard certification of communication equipment, utilization of latest Wireless Technologies and ICTs, ICTs capacity building, Public Protection and Disaster Relief, Artificial Intelligence (AI) / Block Chain, Spectrum Chain, Spectrum Management, Cooperation on Multilateral platforms etc.

It will enhance the bilateral cooperation between the two nations in the field of communications and would bring a great opportunity for India to get into the global standardization process.

MOC would further help in realizing the mission of Atmanirbhar Bharat by development of the startup ecosystem and also promoting human capacity building in the field of ICTs.

20. Uttar Pradesh aims top slot in ease of doing business ranking:

After catapulting itself to the second position, the state of Uttar Pradesh is now eyeing the top slot in the State Business Reform Action Plan (BRAP) 2019 - Ease of Doing Business Ranking, the state's Cabinet Minister Sidharth Nath Singh has said. "The UP government came up with new policies with focus on 'ease of doing business' particularly in food processing, electronics, textiles and pharmaceutical sectors," he said. As a result, the state jumped to number two position, from number 12, in terms of 'ease of doing business' in India, Singh added.

He was discussing the plan of UP in an event organised by the UP Chapter of the PHD Chamber of Commerce and Industry in collaboration with Indo-Canada Chamber of Commerce, the PHDCCI said in a press release on Friday.

https://economictimes.indiatimes.com/news/economy/indicators/uttar-pradesh-aims-top-slot-in-ease-of-doing-business-ranking/articleshow/78705750.cms?action=profile_completion&&em=Z2FyZy5yYWh1bEBhc2lyZS5pbG==

21. Commerce Minister pitched for increase in the bilateral trade between India and US:- News Report

Commerce and industry minister, Piyush Goyal made a very welcoming gesture for the US investors to make India a target investment destination. While speaking at the India Chamber of Commerce USA's Summit on global financial and investment leadership this week, he assured that the target of bilateral trade with US of USD 500 billion is pretty much possible as the stats clearly shows that the bilateral trade between the two countries grew from USD 126 billion in 2017 to USD 145 billion in 2019.

In addition to this, he also assured that India is looking at logistics reform to bring down the cost of logistics and doing several tax reforms alongwith a single window clearance system.

<https://www.financialexpress.com/economy/piyush-goyal-rolls-out-red-carpet-for-american-investors-woos-us-businesses-with-low-corporate-tax-reforms/2100723/>

22. Securities and Exchange Board of India (SEBI) interacts with the investors and other stakeholders from USA:- Press Release dated 28 October 2020

SEBI chairman Shri Ajay Tyagi interacted with various stakeholders including the investors in the Indian capital markets from USA and briefed them about the recent growth in the capital markets and the attractiveness of the Indian markets despite the COVID impact and the recent surge in foreign investment into India through the FPI route. The increase in the FPIs every year shows the interest of the foreign investors in the Indian markets out of which one-third investments belong to the US which clearly depicts the importance/role of USA in Indian economic growth.

The various incentives announced by SEBI were also being appreciated by the investors that included direct listing proposals and creation of new products like REITs and InvITs. Further, the participants emphasized the need for early finalization of direct listing proposal; development of the corporate bond market; reforms in the IPO regulations; digitization of processes

23. SEBI issued guidelines for listing of the Depository Receipts (DRs) in the International Financial Services Centre (IFSC):- Circular No:- F. No. 87/IFSCA/DRs/2020-21 dated 28 October 2020

SEBI in 2015 issued the guidelines for issue of capital, including depository receipts (DRs) in IFSCs. Now, SEBI vide its circular dated 28 October 2020 has decided to enact the regulatory framework for listing of DRs in the IFSC. The framework enables the eligible listed companies to raise capital through issuance and listing of DRs on the stock exchanges in GIFT IFSC. Additionally, the framework enables eligible companies having DRs listed on any exchange in a Financial Action Task Force (FATF) compliant jurisdiction to list and trade such DRs on the stock exchange(s) in GIFT IFSC as an additional venue for trading without any fresh public offering.

**24. Processing of applications for registrations of AIFs and launch of schemes:
Circular No.-SEBI/HO/IMD/DF6/CIR/P/2020/209 dated 22 Oct, 2020**

SEBI vide its circular dated 22 October, 2020 issued framework for processing of applications for registrations of Alternative Investment Funds (AIFs). While processing the application, it has been observed that the Manager of AIF often proposes to set up an Investment Committee to provide investment recommendations or advice to the Manager. In some applications, the Investment Committee is mandated to approve the investment decisions of the AIF. Pursuant to the approval of SEBI Board, the **SEBI (Alternative Investment Funds) Regulations, 2012** (“AIF Regulations”) have been amended to provide that the Manager may constitute Investment Committee (by whatever name it may be called) to approve investment decisions of the AIF, subject to certain conditions. Such Investment Committees may consist of internal members (employees, directors or partners of the Manager) and/ or external members.

a) SEBI has written to Government and RBI seeking clarity on the applicability of clause (4) of Schedule VIII under FEM (Non-debt Instruments) Rules, 2019 to investment made by an AIF whose Investment Committee approves investment decisions and consists of external members who are not ‘resident Indian citizens’.

b) Pending Clarifications, the applications for registration of AIFs and launch of new schemes shall be dealt with as under:

1. The applications wherein Investment Committee proposed to be constituted to approve investment decisions of AIF includes external members who are ‘resident Indian citizens’, shall be duly processed.
2. The applications wherein Investment Committee proposed to be constituted to approve investment decisions of AIF includes external members who are not ‘resident Indian citizens’, shall be considered only after receipt of clarification of points mentioned above.

25. SEBI cautions Investors against unsolicited investment tips:- Press release dated 14 October 2020

It has been noticed that a lot of unsolicited messages containing stock tips/ investment advice with respect to listed companies are being increasingly circulated through bulk SMS, websites and social media platforms to the investors and the general public recommending to deal in specific stocks of listed companies, indicating target prices and giving fraudulent, misleading/false information relating to listed companies, inducing them to deal in these stocks. Such messages are not only detrimental to the interest of the investors but also adversely affects the integrity of the securities market.

Hence, all investors and the general public are advised/ cautioned not to rely on such unsolicited stock tips / investment advice. Investors are further advised to exercise appropriate due diligence before dealing in the securities market.

26. SEBI extended the facility for conducting extraordinary meetings via video conferencing or other Audio Visual means for unit holders of INVITs and REITs: Circular No.:- SEBI/HO/DDHS/DDHS/CIR/P/2020/201 dated 08 October 2020

SEBI vide circular no. SEBI/HO/DDHS/DDHS/CIR/P/2020/102 dated 22 June 2020 has given a facility to unit holders of INVITs and REITs for conducting meetings of unitholders via video conferencing or other Audio visual means. This facility was made available for annual meetings to unitholders to be conducted during calendar year 2020. For the meeting other than annual meetings, this facility of conducting meetings through video conferencing or other Audio visual means was provided till 30 September 2020.

SEBI received representations for extending the date of facility and they have extended the same till 31 December 2020.

27. Finance Minister holds 4th Review meeting on Capital Expenditure of Central Public Sector Enterprises:- Press Release dated 19 October 2020

Union Minister for Finance & Corporate Affairs, Nirmala Sitharaman held the above mentioned review meeting along with CMDs of 14 CPSEs belonging to these Ministries. CAPEX target for FY 2020-21 is Rs. 1,15,934 crore. While reviewing the performance of CPSEs, she said that

CAPEX by CPSEs is a critical driver of economic growth and need to be scaled up for the FYs 2020-21 & 2021-22. The Finance Minister asked the concerned Secretaries to closely monitor the performance of CPSEs in order to ensure the capital expenditure to the tune of 75% of the capital outlay by the end of Q3 of FY 2020-21 and make appropriate plans for it.

She further expounded that more coordinated efforts are required at the levels of Secretary of concerned Ministries and CMDs of CPSEs to achieve CAPEX targets.

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