EY Tax and Regulatory Alert

May 2021

Prepared for ACMA

Contents

S. No.	Particulars	Description
Part A	**Key Tax Updates**	
1.	**Goods and Services Tax (GST)**	Key Circulars and Notifications ▶ Notification 07/2021 dated 27th April 2021 ▶ Notification 08/2021 dated 1st May 2021 ▶ Notification 09/2021 dated 1st May 2021 ▶ Notification 10/2021 dated 1st May 2021 ▶ Notification No 11/2021 dated 1st May 2021 ▶ Notification No 12/2021 dated 1st May 2021 ▶ Notification No 13/2021 dated 1st May 2021 ▶ Notification No 14/2021 dated 1st May 2021 ▶ Notification No 15/2021 dated 18th May 2021 ▶ Circular No 148/04/2021-GST CBEC-20/06/04/2020-GST dated 18th May 2021
2.	**Customs and Foreign Trade Policy**	Key Circulars and Notifications ▶ Circular No 09/2021- Customs dated 8th May 2021 ▶ Circular No.10/2021-Customs, F.No. 450/28/2016-Cus-IV, Dated 17th of May, 2021 ▶ Instruction No 10/2021- Customs dated 13th May 2021 ▶ Trade Notice No 03/2021-22 ▶ Trade Notice No 04/2021-22 ▶ Trade Notice No 05/2021-22
3.	**Direct Tax**	Key circulars and notifications ▶ CBDT notifies rules, form and procedure for withdrawal of pending application before Settlement Commission ▶ CBDT issues thresholds for triggering “significant economic presence” in India ▶ Central Government permits receipt of cash of INR 2 lakhs or more for entities providing COVID-19 treatment ▶ CBDT notifies format, procedure and guidelines for furnishing Statement of Financial Transactions with respect to interest income, dividend income and capital gains for specified reporting entities ▶ CBDT extends time period for filing of appeal before CIT(A), raising objections before DRP, furnishing tax belated or revised returns for tax year 2019-20, etc. ▶ CBDT extends time limits of various direct tax compliances pertaining to tax year 2020-21 ▶ Central Board of Direct Taxes issues rule prescribing methodology for determining fair market value of undertaking transferred under a slump sale ▶ CBDT grants further extension for filing of appeal before Commissioner of Income-tax (Appeal) in line with the Supreme Court directives.

4.	**Regulatory**	Key Circulars and Notifications ▶ Reserve Bank of India ("RBI") categorizes sponsor contribution from an Indian Party ("IP") to an Alternative Investment Fund ("AIF") as overseas direct investment ("ODI")
Part B	**Judicial Precedents**	
	Goods and services Tax (GST)	
1.	**Roshni Sana Jaiswal vs Commissioner of Central Taxes, GST Delhi (East) [W.P.(C) 2348/2021 & CM No. 6860/2021]**	Ruling wherein the Delhi HC directs release of Bank accounts provisionally attached by the Revenue linking that petitioner is involved in the ineligible transaction carried out by Milkfood Ltd (Taxable Person) with its suppliers. The court cited absence of material available with Revenue.
	Customs & TP	
1.	**Inox India Pvt Ltd vs Union of India [C/SCA/15886/2018]**	Ruling wherein it was held by the Gujarat HC that procedurality cannot hamper the substantive right of the party and the award under MEIS license was given even if the declaration of intent was not made on the shipping bills
	Direct Tax	
1.	**Indian Oil Petronas Pvt. Ltd [TS-324-Tribunal-2021(Kol)]**	Kolkata Tribunal applies beneficial tax treaty rate on dividend income for dividend distribution tax
2.	**PQR Gmbh [TS-861-AAR-2019]**	AAR held that taxability of share buy-back covered by Sec. 46A, not eligible for exclusion u/s 47(iv)

INDIRECT TAX

Part A - Key Indirect Tax updates

Goods and Services Tax

This section summarizes the regulatory updates under GST for the month of May 2021

- **Notification 07/2021 dated 27.04.2021** issued by CBIC states that the companies shall be permitted to furnish the Form GSTR 3B, Form GSTR 1 or Invoice Furnishing Facility by verifying through Electronic Verification Code(EVC). This option is valid till 31st May, 2021.

- **Notification 08/2021 dated 01.05.2021 was issued for lowering the rates of interest on the basis of the turnover for the months of March'21 and April'21.**

- For the taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year, the interest rate is 9 per cent for the first 15 days from the due date and 18 per cent thereafter

- For the taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return as specified under sub-section (1) of section 39, the interest rate is Nil for the first 15 days from the due date, 9 per cent for the next 15 days, and 18 per cent thereafter

- For the Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return as specified under proviso to sub-section (1) of section 39, the interest rate is Nil for the first 15 days from the due date, 9 per cent for the next 15 days, and 18 per cent thereafter

- For the Taxpayers who are liable to furnish the return as specified under sub-section (2) of section 39, the interest rate is Nil for the first 15 days from the due date, 9 per cent for the next 15 days, and 18 per cent thereafter.

- **Notification 09/2021 dated 01.05.2021 was issued by CBIC for waiving the late fees on Form GSTR 3B on the basis of turnover for the GSTR 3B returns of March'21 & April'21**

- For the taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year, the late fee is waived for a period of Fifteen days from the due date of furnishing return.

- For the Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return as specified under sub-section (1) of section 39, the late fee is waived for Thirty days from the due date of furnishing return.

- For the Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return as specified under proviso to subsection (1) of section 39, the late fee is waived for Thirty days from the due date of furnishing return.

- **Notification 10/2021 dated 01.05.2021** issued by CBIC states that the due date to file Form GSTR 4 for FY 2020-21 is extended to 31st May 2021

- **Notification 11/2021 dated 01.05.2021** issued by CBIC states that due date to furnish declaration in Form ITC-04 for the period 1st January 2021 to 31st March 2021 is extended to 31st May 2021.

- **Notification 12/2021 dated 01.05.2021** issued by CBIC states that the due date to furnish outward supplies under Form GSTR 1 for April 2021 is extended to 26th May, 2021

- **Notification 13/2021 dated 01.05.2021** issued by CBIC states that the Provisions of Rule 36(4) will apply cumulatively for April & May,2021 and the Form GSTR 3B of May 2021 shall be furnished with cumulative adjustment of Input Tax credit of the said months.

- **Notification 14/2021 dated 01.05.2021** issued by CBIC is for extension of time limit for compliance or completion of any action by any authority or person specified in, or prescribed or notified under the CGST Act or IGST Act(i.e completion of any proceeding, passing of any order, appeal etc), which falls during the period 15th April 2021 to 30th May 2021, till 31st May 2021.

- Any time limit for completion of any action, by any authority or by any person, specified in, or prescribed or notified under rule 9 of the CGST Rules, 2017, falls during the period from the 1st May,2021 to the 31st May, 2021, shall be extended to 15th June, 2021

- Where a notice is issued for rejection of refund claim and the time limit to issue order for the same falls during the period 15th April 2021 till 30th May,2021, time limit for issuance of order shall be extended till 15 days from receipt of reply of notice or 31st May,2021, whichever is earlier.

- **Notification 15/2021 dated 18.05.2021** issued by CBIC introduced the following changes:

- In rule 23, in sub-rule (1) of the CGST Rules,2017,the provisions for extension of the date of submission of revocation of cancellation with the approval of Additional Commissioner or the Joint Commissioner or the Commissioner in exercise of powers under proviso to subsection (1) of Section 30 have been introduced. This provision has also been introduced in Form GST REG-21 which is for the revocation for cancellation of registration.

- In rule 90, sub-rule (3) the notifies the non-inclusion of the time period between the date of filing the refund claim under Form GST RFD-01 & the date of communication of deficiencies in Form GST RFD-03 in the total time period of 2 years as specified under section 54 sub-section (1), in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies.

- The amendment introduced in sub-rule (4) of Rule 90 is that The applicant may, at any time before issuance of provisional refund sanction order in FORM GST RFD-04 or final refund sanction order in FORM GST RFD-06 or payment order in FORM GST RFD-05 or refund withhold order in FORM GST RFD-07 or notice in FORM GST RFD-08, in respect of any refund application filed in FORM GST RFD-01, withdraw the said application for refund by filing an application in FORM GST RFD-01W. Further, on submission On submission of application for withdrawal of refund in FORM GST RFD-01W, any amount debited by the applicant from electronic credit ledger or electronic cash ledger, as the case may be, while filing application for refund in FORM GST RFD-01, shall be credited back to the ledger from which such debit was made

- An amendments is also made in Rule 92, wherein the proviso in sub- rule 1 is omitted and a new proviso shall be inserted which states that where the proper officer or the Commissioner is satisfied that the refund is no longer liable to be withheld, he may pass an order for release of withheld refund in Part B of FORM GST RFD- 07

- Rule 96 sub-rule (7) has been amended to include that the order under FORM GST RFD-06 shall be passed after passing an order for release of withheld refund in Part B of FORM GST RFD-07

- Rule 138E has been amended to include outward movement of goods of any registered person in its scope.

- **Circular No 148/04/2021-GST CBEC-20/06/04/2020-GST dated 18th May, 2021** introduced the Standard Operating Procedure for implementation of the provision of extension of the time- limit to apply for revocation of cancellation of registration under section 30 of the CGST Act, 2017 and rule 23 of the CGST Rules, 2017 - reg.

Customs and Foreign Trade Policy (FTP)

This section summarizes the regulatory updates under Customs and FTP for the month of May 2021

- **Circular No 09/2021- Customs dated 8th May 2021** issued by CBIC has taking cognizance of the difficulties reported by the Trade and industry and the importance of facilitating Customs clearance process. Hence, the Board has decided to restore the facility of acceptance of an undertaking in lieu of bond by Customs formation from the date of issuance of this circular. Importers and exporters availing this facility shall ensure that the undertaking furnished in lieu of bond is replaced with a proper bond by 15.07.2021.

- **Circular No.10/2021-Customs, F.No. 450/28/2016-Cus-IV, Dated 17th of May, 2021** is drawing attention towards the changes brought in vide Amendment Rules 2021 notified vide Notification No. 09/2021-Customs (N.T.) so as to make certain amendments in existing Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 (hereinafter referred to as "IGCR Rules, 2017") that took effect from 2nd February, 2021. All the persons who are following the ICGR Rules will have to comply with the amendments as elucidated in this circular as well as Notification No. 09/2021-Customs (N.T.).

- **Instruction No 10/2021- Customs dated 13th May 2021** was issued by CBIC in light of the difficulties of liquidity faced by the taxpayers due to COVID-19 . A "Special Refund and Drawback Disposal Drive" was introduced with the objective of priority processing and disposal of all pending Customs refund, IGST refund and Customs Duty Drawback claims. It is expected that during this period all refund and drawback claims that are pending as on 14th May 2021 shall be disposed. It is taking place from 15th May 2021 to 31st May 2021.

- However, the following points are considered before processing the refund claims:

  - Though the decision to process pending refund claims has been taken with a view to provide immediate relief to the taxpayers, due diligence is to be done before granting the refunds and drawback. All the relevant legal provisions, notifications, circulars and instructions must be followed while processing these claims

  - For facilitation of exporters, all communication should be done over email, wherever email id of the applicant is available
  - All deficiency memos may be reviewed and refund / drawback may be considered on merit.

- **Trade Notice No 03/2021-22:** As part of IT Revamp of its exporter/importer related services, DGFT has introduced a new online module for filing of electronic, paperless applications for export authorizations **with effect from 17.05.2021.** All applicants seeking export authorization for restricted items may apply online by navigating to the DGFT website (https://www.dgft.gov.in) -> Services -> Export Management Systems -> License for Restricted Exports.

- Accordingly, applications for issuance as well as for amendment/re-validation of export authorization will need to be submitted online as per the above link and export authorizations 2 for restricted items(Non-SCOMET) will continue to be issued from DGFT HQ, Udyog Bhawan, New Delhi through new module **with effect from 17.05.2021.** It may further be noted that all pending applications will be migrated to this new system and will be processed at DGFT(HQ).

- **Trade Notice No 04/2021-22** states that the Regional Authorities of DGFT will not insist on valid RCMC (in cases where the same has expired on or before 31st March, 2021) from the applicants for any incentives/ authorizations till 30th September,2021.

- The EPCs will collect the applicable fees for FY 2021-22 on restoration of normalcy.

- **Trade Notice No 05/2021-22** is for the introduction of an online e-EPCG Committee Module on the DGFT Website, a new module as a part of IT Revamp, for receiving applications for seeking relaxation in policy/procedure in terms of para 2.58 of FTP 2015-20.

- Hence, the applications for seeking relaxation under the EPCG Committee would be accepted through online mode only. No manual applications would be applowed.

- The members of the trade can login to the portal, fill in the requisite details in the form, upload the necessary documents and submit the application after paying the requisite fees. The system will generate a file number which can be used for tracking purposes through the portal.

- The Directorate will issue online deficiency letters calling for any additional information required and the exporter would be able to reply to the deficiency letters online.

- The entire processing of the application and communication of the decision of the committee would be in online mode only.

Direct Tax

Part-A Key Direct Tax updates

Background

1) CBDT notifies rules, form and procedure for withdrawal of pending application before Settlement Commission

- The Indian Tax Law (ITL) contained separate set of provisions for settlement of proceedings pending with the tax authority before Settlement Commission (SetCom). SetCom is one of the alternate dispute resolution mechanisms. The ITL provides for a separate mechanism for making application before SetCom, acceptance or rejection of such application, settlement of cases, waiver of penalty and immunity from prosecution, etc.

- Recently, the Finance Act (FA) 2021 had discontinued the operation of SetCom immediately with effect from 1 February 2021. For valid pending applications as on 31 January 2021, an Interim Board for Settlement was proposed to be set-up for the limited purpose of disposal of pending applications and/or for passing rectification orders.

- Simultaneously, the ITL also grants an option to the taxpayer whose application is pending before SetCom as on 31 January 2021 and who does not wish to pursue application with Interim Board for Settlement, to withdraw such application within three months from the date of commencement of FA 2021 in the prescribed manner. Once such application is withdrawn, the proceedings before SetCom shall abate and thereupon, proceedings before the tax authority from which application to SetCom was originated earlier stand revived as if no application for settlement was made.

- The CBDT, vide Notification No. 40/2021 dated 30 April 2021, has now prescribed the rules, procedure and form for withdrawal of applications pending before SetCom.

CBDT Notification:

- The CBDT has notified following procedure for the withdrawal of pending settlement applications:

  1. The application for withdrawal shall be made in Form No.34BB within three months from the date of commencement of FA 2021 i.e. up to 30 June 2021.

  2. The said form is to be, mandatorily, submitted electronically in accordance with the procedures, formats and standards as specified by the prescribed tax authority and, thereafter, a signed copy of the said form shall be uploaded in the manner as specified.

  3. The form shall be verified by the person who is authorized to verify tax return of the applicant under the ITL.

- The CBDT Notification is effective from 30 April 2021.

2) CBDT issues thresholds for triggering "significant economic presence" in India

Background of new nexus rule

- In India, emerging remote business models without any physical presence in India remained outside the realm of the ITL due to the restrictive scope of the definition of BC in India, which failed to cover remote presence/activities of an NR in India.

- Pursuant to BEPS discussions, India introduced equalization levy (EL) in 2016 on online advertisement-related service and subsequently expanded its scope substantially

in 2020 to cover e-commerce supply and service. The EL is intended to operate outside the framework of current tax treaty framework. Furthermore, the income from activities covered by EL are exempted from income-tax.

- Further, vide Finance Act, 2018 (FA 2018), India expanded the concept of BC to include a new nexus rule based on SEP.

Description of SEP as new nexus rule

As per SEP provisions, a BC will be constituted in India based on below parameters:

a) Revenue-linked condition: Any transaction in respect of any goods, services or property carried out by an NR with any person in India, including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the tax year exceeds the amount as may be prescribed; or

b) User-linked condition: Systematic and continuous soliciting of its business activities or engaging in interaction with such number of users in India as may be prescribed.

- SEP will be determined independent of whether the agreement for such transactions or activities are entered into in India or the NR has a residence or place of business in India or the NR renders services in India.

While SEP provisions were originally intended to become applicable from tax year 2018-19 onwards, considering the on-going international discussions to tax DE, SEP provisions were deferred and subsequently made applicable from tax year 2021-22 onwards.

Public consultation on revenue and user-based thresholds for triggering SEP

- The threshold of "revenue" and "number of users" in India (as stated above in (a) and (b) conditions) were to be prescribed by the CBDT.
- In this regard, the CBDT issued a Notification dated 13 July 2018 inviting suggestions/comments from stakeholders and the general public.

Suggestions/comments were invited on the following aspects:

- Revenue-threshold of the transaction in respect of physical goods or services carried out by an NR in India.
- Revenue-threshold of the transaction in respect of digital goods or services or property, including provision of download of data or software carried out by an NR in India.
- Threshold for number of "users" with whom an NR engages in interaction or carries out systematic and continuous soliciting of business activities in India through digital means.

Final notification providing thresholds for trigger of SEP:

Pursuant to the public consultation, the CBDT has issued a Notification dated 3 May 2021 prescribing the revenue and user thresholds for applicability of SEP provisions as under:

- For revenue-linked condition stated in (a) above, a revenue threshold of INR 2 crores (INR 20 million) shall be applicable
- For user-linked condition stated in (b) above, a user threshold of 3 lakhs (0.3 million) shall be applicable

These thresholds are effective from 1 April 2022 i.e., tax year 2021-22 onwards which aligns with the effective date of SEP provision.

Impact analysis:

- By notifying the revenue and user thresholds, the CBDT has put the SEP provisions into operation.
- This will be of relevance to NR taxpayers from countries/territories which do not have bilateral or multilateral treaty with India dealing with double taxation of income – it being clear that SEP nexus rule is subject to treaty obligation. If they satisfy the revenue or user thresholds as notified, the business income earned from India will become taxable in India. This will also trigger consequent procedural provisions of tax withholding for the payer as also filing of returns in India for the NR taxpayer.
- While SEP provisions were introduced in the background of BEPS discussions to tax DE, the language of the SEP provisions is broad and is likely to impact conventional transactions and activities even if they are not carried out digitally. Accordingly, the following business activities of NRs, who are not covered under tax treaties, may be impacted
- However, if the activities of NR taxpayers are covered by EL, then such income is specifically exempted from income-tax and, hence, will not be impacted by the expanded scope of BC through SEP.
- To recollect, the expanded scope of BC does not override a tax treaty, which follows the traditional PE definition. Hence, unless the tax treaty is renegotiated and expanded through a bilateral or multilateral instrument to include provisions similar to SEP, the SEP provisions in the ITL will not impact NR taxpayers from treaty jurisdictions. The applicability of EL to such taxpayers needs separate evaluation.

3) Central Government permits receipt of cash of INR 2 lakhs or more for entities providing COVID-19 treatment

Background

- In an endeavor to move towards a cashless economy and to curb the menace of black money, various legislative steps have been taken under the ITA. In furtherance of the initiative, Finance Act, 2017 introduced provision for prohibition of receipt by modes other than the prescribed banking channels and electronic modes2. The provision states that no person shall receive an amount of INR 2 lakhs or more, (a) in aggregate from a person in a day; (b) in respect of a single transaction; or (c) in respect of transactions relating to one event or occasion from a person, otherwise than through such prescribed banking channels or electronic modes.
- Receipt of any amount in contravention of the provision, without a reasonable cause, is liable to a penalty of a sum equal to the amount of such receipt.
- However, the restriction does not apply to receipt (a) by government; (b) by any banking company, post office savings bank or co-operative bank; (c) transaction of receipt of loan or deposit specifically prohibited under other provision of the ITA; and (d) by any person or receipt as may be notified by the CG.
- Hitherto, the CG exercised its powers to grant exemption to persons like business correspondents of banks, white label automated teller machine operators, issuer of prepaid instruments, etc.
- In further exercise of the powers granted under the provision, the CG has issued the Notification to exempt entities providing COVID-19 medical treatment for a specific period.

CG Notification:

The Notification prescribes that receipt of amount of INR 2 lakhs or more other than by prescribed modes by following entities shall be exempt from prohibition to receive cash:

- Hospitals
- Dispensaries
- Nursing homes
- COVID care centers
- Other similar medical facilities providing COVID-19 treatment to patients

- The exemption is applicable for receipts during the period 1 April 2021 to 31 May 2021.

- The above entities are required to obtain PAN/Aadhar of patient and payee and the details of relationship between patient and payee.

4) CBDT notifies format, procedure and guidelines for furnishing Statement of Financial Transactions with respect to interest income, dividend income and capital gains for specified reporting entities

Background

- The Indian Tax Law (ITL) casts an obligation upon specified taxpayers including government agencies, banks and other institutions to submit SFT to tax authority containing information of certain financial transactions undertaken during the tax year, within two months from the end of the said tax year.

- In order to facilitate pre-filling of tax returns, the CBDT issued a notification no. 16/2021 dated 12 March 20215 which cast an obligation on specified taxpayers (such as depositories , recognized stock exchanges etc.) to submit new SFT capturing details of capital gains on sale of listed securities or units of mutual funds, dividend and interest income.

- Now, the CBDT Notifications have prescribed the form, frequency and manner of furnishing such SFT for different categories of income stream.

CBDT Notifications:

- The CBDT Notifications cast reporting obligation on certain specified taxpayers in relation to certain specified transactions. We have summarized below the relevant specified transaction:

Other procedural aspects

- The CBDT has provided detailed guidelines for preparation and submission of SFTs. Separately, guidelines are also prescribed for data structuring and validation of data.

- SFT shall be signed, verified and furnished by person who is registered as 'Designated Director' by the taxpayer. In case if the reporting person is a non-resident taxpayer under the ITL, SFT shall be signed, verified and furnished by any person who holds valid power of attorney from such Designator Director.

- Any inaccuracy and defects noticed by the reporting entities or communicated to the reporting entities shall be rectified by filing correction/deletion statement as per the prescribed procedure.

- Reporting entities are also advised to provide the details furnished in SFT to the counter parties being shareholders, mutual fund holders, etc. as the case may be, so as to enable them to reconcile the information available in their respective Annual Information Statement (i.e. Form No. 26AS).

- Reporting entities are required to document and implement appropriate information security policies and procedures to ensure safety of submitted information and their easy retrieval.

Nature of Income	Reporting entity	Relevant notification	Other relevant points
Dividend Income	Corporate taxpayer paying dividend	Notification No. 1/2021 dated 20 April 2021 and effective from said date	▶ To be submitted on or before 31 May of the immediately following tax year in which transaction took place ▶ Total amount of dividend distributed during the tax year shall be reported qua each recipient shareholder

5) CBDT extends time period for filing of appeal before CIT(A), raising objections before DRP, furnishing tax belated or revised returns for tax year 2019-20, etc.

▶ Due to the outburst of COVID-19 pandemic in India from March 2020, the Central Government had provided, from time-to-time, substantial relaxations to taxpayers and tax authority in relation to various compliances under the ITL. The initial relaxation was granted vide 'The Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2020 and subsequently multiple extensions were granted to taxpayers and tax authority for the ease of compliance under the ITL.

CBDT Circular:

The CBDT, in view of severe pandemic situation (second wave of COVID-19), has now granted extension to taxpayers in relation to following compliances under the ITL:

S.No.	Compliances	Due date as per ITL	Extension granted to	Extended compliance date
1.	Filing of appeal before CIT(A)	30 days from the date of tax authority's order	Cases where due date for filing appeal before CIT(A) is falling on 1 April 2021 or thereafter	31 May 2021 or due date as per ITL, whichever is later
2.	Filing of objections before DRP against draft assessment order	30 days of receipt of draft assessment order by taxpayer	Cases where due date for filing objections before DRP is falling on 1 April 2021 or thereafter	31 May 2021 or due date as per ITL, whichever is later
3.	Furnishing tax returns in response to notice for reopening	Generally, 30 days subject to a lower time limit, if any specified in the notice for reopening	Cases where due date for furnishing such tax return is falling on 1 April 2021 or thereafter	31 May 2021 or due date as per ITL, whichever is later
4.	Furnishing belated or revised tax return	On or before 31 March 2021	Extension granted in respect of returns for tax year 2019-20	On or before 31 May 2021
5.	Payment of taxes withheld and furnishing of challan-cum-statement in relation to specified transactions	Payment, along with challan-cum-statement, shall be made within 30 days from the end of the month in which tax was deducted	Taxes withheld in March 2021 on (a) payment for transfer of immovable property where consideration is INR 5M or more; (b) payment of rent by individual or Hindu Undivided Family (HUF) where monthly rent exceeds INR 0.05M; (c) payment for works contract, commission, etc. by individual or HUF where payment exceeds INR 5M;	On or before 31 May 2021
6.	Filing of statement containing particulars of persons who do not possess PAN and with whom specified financial transactions were undertaken	30 April 2021	-	On or before 31 May 2021

6) CBDT extends time limits of various direct tax compliances pertaining to tax year 2020-21

Background

- In order to provide relief to taxpayers against severe impact of second wave of COVID-19 pandemic, the CBDT, vide the Circular, has exercised its general powers under the ITL and granted relaxations to taxpayers for various direct tax related compliances.

Circular:

The Circular provides extension in the due dates of the following compliances due on part of the taxpayer as under:

S.No.	Particulars	Brief Description	Original due date as per ITL	Extended due date as per circular
1.	Statement of Financial Transaction (SFT) under Rule 114E of the Income Tax Rules, 1962 (the Rules) for tax year 2020-21	Specified taxpayers are required to submit an SFT annually capturing details of certain specified transactions such as purchase/sale/exchange of goods or property or right or interest in a property, interest income, dividend income, etc.	31 May 2021	30 June 2021
2.	Statement of reportable account under Rule 114G of the Rules for calendar year 2020	Statement of reportable account shall be furnished on an annual basis by a reporting financial institution in respect of each reportable account registered or maintained by it	31 May 2021	30 June 2021
3.	Statement of taxes withheld in last quarter of tax year 2020-21	The ITL imposes an obligation of withholding of taxes on the taxpayer making specified payments such as salary, rent, payment to non-resident etc. Such taxpayers are also required to submit a statement of taxes withheld on a quarterly basis	31 May 2021	30 June 2021

S.No.	Particulars	Brief Description	Original due date as per ITL	Extended due date as per circular
4	Statement of taxes withheld on contributions paid by trustees of an approved superannuation fund for tax year 2020-21	The trustee of an approved superannuation fund has to withhold taxes at the time of payment of any contribution, including any interest thereon to an employee. Further, an annual statement setting out the particulars of the fund, contributions repaid to the employee, along with details of withholding of taxes, have to be furnished by the trustee	31 May 2021	30 June 2021
5	Statement of taxes withheld or collected by government deductors for May 2021	Where tax has been deducted/collected by government deductors, it has to be deposited with the Central Government by issuing transfer vouchers. A statement comprising details of such transfer vouchers has to be furnished on a monthly basis.	15 June 2021	30 June 2021
6	Certificate of taxes withheld by employer in Form No. 16 to employees for tax year 2020-21	The employer is required to furnish annually to its employees a certificate in Form No. 16 in relation to taxes withheld in respect of salary	15 June 2021	15 July 2021

Extensions in relation to filing of tax returns, audit reports and transfer pricing report for tax year 2020-21:

S.No.	Particulars	Normal due date as per ITL	Extended due date as per circular
A	**In relation tax returns:**		
1	Taxpayers who are required to furnish transfer pricing report (including partners of a taxpayer being a firm who is covered in this category)	30 November 2021	31 December 2021
2	Taxpayers who are required to get their accounts audited (including partners of a taxpayer being a firm who is covered in this category) and not covered in Sr. No 1 above	31 October 2021	30 November 2021
3	Other taxpayers not covered in Sr. 1 or 2 above (e.g. individuals, firms not liable to audit etc.)	31 July 2021	30 September 2021
4	Belated/revised tax returns	31 December 2021	31 January 2022

S.No.	Particulars	Normal due date as per ITL	Extended due date as per circular
B	**In relation to audit/transfer pricing reports:**		
5	Tax audit report	30 September 2021	31 October 2021
6	Transfer pricing report in respect of international/specified domestic transactions	31 October 2021	30 November 2021

- Additionally, even the due date for payment of self-assessment (SA) tax, but not exceeding INR0.1m, without interest has been correspondingly extended till the revised due date of return filing for taxpayers at Sr. No. 1 to 3 above. This relief is not available if the SA tax exceeds INR0.1m.

- Further, in case of resident taxpayer being senior citizen not having any business/professional income, the SA tax paid up to the original due date of filing of tax return shall be deducted while computing the above threshold limit of INR0.1m. In other words, the SA tax paid up to original due date shall be treated as advance tax and no interest shall be levied on such amount for belated filing of return.

7) Central Board of Direct Taxes issues rule prescribing methodology for determining fair market value of undertaking transferred under a slump sale

Background

FMV computation introduced by Finance Act, 2021

- The special mode of capital gains computation for slump sale involves reduction of "net worth" of the undertaking from full value of consideration (FVOC) accruing or received on transfer of the undertaking.

- Prior to amendment by FA 2021, the FVOC was the actual consideration accruing or received on transfer of undertaking (subject to variation, if any, on application of transfer pricing provisions).

- However, FA 2021 also amended the capital gains computation provisions to provide that FMV of the undertaking transferred, as on date of transfer, shall be deemed to be the FVOC received or accruing to taxpayer for purpose of computing capital gains on slump sale of the undertaking.

- Furthermore, the amended section also provides that the manner in which the FMV of the undertaking shall be computed will be prescribed by CBDT.

- This amendment was also made effective from 1 April 2020 i.e. tax year 2020-21.

  In exercise of powers granted under the amended provisions, vide Notification No. 68/ 2021 dated 24 May 2021, CBDT has now prescribed Rule 11UAE. This rule provides for the methodology to determine FMV of the undertaking transferred by way of slump sale, which in turn will be considered as FVOC for purpose of capital gains computation thereof.

Scope of the FMV Valuation Rules – Rule 11UAE

- Rule 11UAE provides that FMV of the undertaking, transferred by way of slump sale, for purpose of capital gains computation, shall be higher of:

  (i) FMV1 – FMV of the capital assets transferred by way of slump sale determined as per formula prescribed; or

  (ii) FMV2 – FMV of the consideration received or accruing as a result of transfer by way of slump sale determined as per formula prescribed.

- The valuation date for computing the FMV is the date of slump sale.

Computation of FMV1 – FMV of capital assets transferred by way of slump sale

- Formula: FMV1 = A+B+C+D–L

- Constituents:

  (i) A = Book value of all assets (other than jewellery, artistic work, shares, securities and immovable property), as appearing in the books of account of undertaking

transferred, as reduced by the following amount which relate to such undertaking:

(a) Any amount of income tax paid, as reduced by the amount of tax refund claimed under the ITL, if any;

(b) Any amount shown as an asset including the unamortized amount of deferred expenditure which does not represent the value of any asset.

(ii) The components B, C and D represent values of various assets to be taken, as excluded in A, which appear in books of account of the undertaking transferred as follows:

Component	Asset	Valuation
B	Jewellery Artistic Work	• Price it would fetch on sale in open market • It should be basis valuation report from a registered valuer
C	Shares and securities	• FMV as determined under Rule 11UA • Refer annexure for valuation methodology prescribed in Rule 11UA
D	Immovable property	• Stamp duty value adopted or assessed or assessable by any authority of government, for purpose of payment of stamp duty

(iii) L = Book value of liabilities as appearing in books of account of undertaking transferred by way of slump sale, but not including the following amounts relatable to such undertaking:

(a) Paid-up capital in respect of equity shares;

(b) Amount set apart for payment of dividends on preference shares and equity shares, where such dividends have not been declared before the date of transfer at a general body meeting of the company;

(c) Reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart toward depreciation;

(d) Amount representing provision for taxation other than the amount of income tax paid, if any, less the amount of income tax claimed as refund, if any, to the extent of excess over tax payable with reference to the book profits, in accordance with the tax law applicable thereto;

(e) Amount representing provisions made for liabilities other than ascertained liabilities;

(f) Amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares.

(iv) The above valuation methodology under FMV1, for valuing the asset given up (i.e. undertaking), closely follows Rule 11UA which provides for computation of FMV for various assets, especially unquoted equity shares, for purpose of certain anti-abuse provisions under the ITL dealing with taxation in the hands of the transferor (capital gains tax) as well as the transferee (gift taxation) in case of transfer or acquisition at less than the FMV.

Computation of FMV2 – FMV of consideration received or accruing as a result of transfer of undertaking under slump sale

- Formula: FMV2 = E+F+G+H

- Constituents:

(i) E = Monetary consideration received or accruing as a result of transfer;

(ii) The components F, G and H relate to values of non-monetary consideration received or accruing pursuant to transfer of undertaking to be determined as under:

Component	Consideration received	Valuation
F	• Jewellery • Artistic work • Shares and securities	• FMV as determined under Rule 11UA (1) • Refer annexure for valuation methodology prescribed in Rule 11UA (1)
H	Immovable property	• Stamp duty value adopted or assessed or assessable by any authority of Government, for purpose of payment of stamp duty
G	Any other property	• Price such property would fetch on sale in open market • It should be basis valuation report from a Registered Valuer

Effective date of Rule 11UAE

- Surprisingly, the Notification does not explicitly state the effective date of new Rule 11UAE.
- Accordingly, it would be reasonable to interpret that it is effective from date when its Notification is published in the Official Gazette i.e. 24 May 2021.

8) CBDT grants further extension for filing of appeal before Commissioner of Income-tax (Appeal) in line with the Supreme Court directives

Background

- Recently, the CBDT had issued Circular No. 8/2021 dated 30 April 2021 providing for extension in time limit for multiple compliances due on the part of taxpayers [including time limit to file appeal before CIT(A)] under the Income Tax Laws (ITL). Amongst others, the CBDT provided that for the cases where the terminal date to file appeal before CIT(A) is falling due on 1 April 2021 or thereafter, such due date shall stands extended to 31 May 2021 or original due date as per ITL, whichever is later.

- **SC directives on extensions:**

  - Taking cognizance of COVID-19 pandemic, the SC last year vide its order dated 23 March 2020 had *suo moto* granted open extension to taxpayers. Amongst others, the SC granted open extension in period of limitation (as prescribed under any general or special laws) to file any petition/ application/ suit/ appeal/ other proceedings in all courts/ tribunals across India with effect from 15 March 2020 till the further order.

  - Subsequently, the SC has passed directives on 8 March 2021 to put rest to the general extension granted by its earlier order 23 March 2020.

  - Due to extraordinary situation caused by the sudden outburst of second wave of COVID-19, the SC vide order dated 27 April 2021 has again restored its earlier order of 23 March 2020 (and revoked its order dated 8 March 2021) and directed that period of limitation, as prescribed under any general or special laws, in respect of all judicial or quasi-judicial proceedings , whether condonable or not, shall stand extended till further orders.

CBDT Circular:

  - CBDT vide Circular No. 8/2021 dated 30 April 2021 while providing extension for filing appeal before CIT(A), granted extension till 31 May 2021 which was in conflict with the open-ended extension provided by the SC vide order dated 27 April 2021.

  - In order to remove confusion, the CBDT has now clarified that if any compliance is governed by different relaxations, the taxpayer is entitled to the relaxation, which is more beneficial to the taxpayer.

  - Accordingly, the limitation period for filling appeal before CIT(A) shall be governed by the SC order dated 27 April 2021 and shall remain extended openly until further order of the SC.

Key Regulatory amendments

This section summarizes the regulatory updates for the month of May 2021

Reserve Bank of India ("RBI") categorizes sponsor contribution from an Indian Party ("IP") to an Alternative Investment Fund ("AIF") as overseas direct investment ("ODI")

The RBI has passed a circular stating that any sponsor contribution from an IP to an AIF set up in an overseas jurisdiction, including International Financial Services Centres (IFSCs) in India, as per the laws of the host jurisdiction, will be treated as ODI.

Accordingly, IP, is permitted to set up AIF in overseas jurisdictions, including IFSCs, under the automatic route provided it complies with the provisions of the extant ODI regulations pertaining to an IP making investment/ financial commitment in an entity engaged in the financial services sector.

Source: A.P.(DIR Series) Circular No. 04 dated 12 May 2021

Part B- Case Laws

Goods and Service Tax

1. Roshni Sana Jaiswal vs Commissioner of Central Taxes [W.P.(C) 2348/2021 & CM No. 6860/2021]

Subject Matter: Ruling wherein the Delhi HC directs release of Bank accounts provisionally attached by the Revenue citing absence of material available with Revenue linking that petitioner is involved in the ineligible transaction carried out by "Milkfood Ltd" (Taxable Person) with its suppliers

Background and Facts of the case

- The Petitioner is a director on the Board of Directors of the Company "Milkfood Ltd" between 2006 and 2008. The petitioner is also a shareholder in the company for 14.33% stake. She also drew a salary of INR 1.5 crores per annum for the Financial Year 2019-20

- The Revenue had received an information that "Milkfood Ltd" was availing Input Tax Credit against fake invoices & hence, commenced investigation under Section 67 of the CGST Act,2017 against "Milkfood Ltd".

  - "Milkfood Ltd" had availed ITC to the extent of INR 85 Crores based on fake invoices. The Revenue had arrested those persons who controlled the entities who furnished fake invoices to "Milkfood Ltd" and also, coercive proceedings were triggered against the directors/ employees of "Milkfood Ltd".

- During the course of Investigation, statements of those persons who controlled the entities and enabled "Milkfood Ltd" to claim ITC were recorded. Hence, the voluntary statement of the petitioner had also been recorded. She had stated that she had acted as the director of the company from 2006 to 2008 and since then, she had been acting in the capacity of a mentor/ adviser. She had also stated that she had received 1.5 Crores for FY 2019-20 for providing "Strategic Guidance" to "Milkfood Ltd". Further, she had accepted the fact that she held an equity stake of 14.33% in "Milkfood Ltd"

- Accordingly, the Revenue attached the property of the petitioner under Section 83(1). Aggrieved by this, the petitioner approached the Delhi High Court by way of an instant writ petition.

Discussion and findings of the case

- The petitioner contended that the proceeding under Section 83 against the petitioner is without jurisdiction since the petitioner does not fall within the definition of "taxable person". The taxable person is "Milkfood Ltd".

- It was also contented that before triggering the provisions of Section 83, there must be a pending proceeding under the provisions of Section 62 or Section 63 or Section 64 or Section 67 or Section 73 or Section 74 of the Act. Further, before taking recourse to Section 83, the department must form an opinion that attachment of the petitioners bank account was necessary to protect the interest of revenue.

- Hence, an objection was filed by the petitioner under section 159(5) which was disposed off by the Revenue on 19.04.2021.

- In this regard, the court observed that the exercise of the power under Section 83 of the CGST Act,2017 was without jurisdiction. In this case, one of the jurisdictional ingredients, which is missing, is that the petitioner is not a taxable person.

- The Court also referred to Subsection (1) of Section 83 which states that the provisional attachment can be ordered only *qua* property, including bank account, belonging to the taxable person. Further, as per section 2(107) of the Act, only that person can be a taxable person, who is registered or liable to be registered as per the Act. It was thus, observed by the Court that it was not even the case of the Revenue that the recipient was registered or liable to be registered. Hence, the proceeding failed on this score.

- The Court also held that the Revenue had also failed to place any material which would show that they had applied their mind to state that the provision had to be taken as a recourse, to protect its interest of the revenue.

- The Court also held that there was nothing in the statement of the petitioner which would show she had purported the illegal transactions carried out between "Milkfood Ltd" and its suppliers.

Ruling

- In light of the above observations by the Court, it was ruled that the attachment of the petitioners bank accounts, which is otherwise a "draconian" step was unsustainable. In the zeal to protect the interest of the revenue, the respondent cannot attach any and every property, including bank accounts of persons, other than the taxable person.

Customs and Foreign Trade Policy (FTP)

1. Inox India Pvt Ltd vs Union of India [C/SCA/15886/2018- HC of Gujarat]

Subject Matter: Ruling wherein it was held that procedurality cannot hamper the substantive right of the party and the award under MEIS license was given even if the declaration of intent was not made on the shipping bills

Background and Facts of the case

- The unit of the petitioner is located at Kandla Special Economic Zone (hereinafter referred to as 'KASEZ') and they are engaged in the manufacture and export of Cryogenic Tanks and Vessels and such other specially manufactured items as per the Special Economic Act and its allied rules and regulations.

- The Petitioner was granted MEIS license for an amount of Rs. 21.34 lakhs against their exports already from their unit located at KASEZ. Under the above license, reward under the MEIS at the rate of 2% from FOB value of export was the entitlement of the petitioner. Accordingly, the exporter exported two numbers of cryogenic tanks for liquefied gases under the shipping bill dated 30.03.2015 for the FOB value of Rs. 10,68,26,000/- equivalent to 17,23,000 US$.

- The Petitioner subsequently applied for registration of license to KASEZ, however no response was received for 7 months. Thereafter, it received a letter stating that the authorization had been suspended until further clarification is received from the office

- of DGFT, New Delhi whether such SEZ units which are non-Electronic Data Interface (EDI) ports can also receive such benefits on the shipping bills prior to 01.06.2015 and that too, without declaration of the intent on the shipping bills.

- On 29.09.2016, the petitioner had been intimated denial of the substantial benefit to the petitioner. The petitioner was also advised by the Custom House Agency to seek an amendment in the shipping bills by the customs authorities as the same is permissible for the exports only. Accordingly, the request for amendment certificate for shipping bills for adding declaration of their intent was requested for, so that, the benefit under the MEIS could be made available.

Discussions and findings of the case

- The petitioner contends that the declaration of intent was not necessary to be made on the shipping bill as in view of the mandate made applicable under the relevant policy and circular, this came into being only w.e.f. 01.06.2015. Further, it had also held that CBEC had issued a clarificatory circular which stated that MEIS benefits were not granted due to technical error for the period from 01.04.2015 to 31.05.2015 and the feasible copies of the free shipping bills can be submitted to claim the same and accordingly, they were granted to one and all. Hence, they should not be denied the benefit.

- The petitioner also emphasized that the subsequent benefit cannot be admitted or denied because of mere technical reasons. When the purpose of such policy is to encourage the export and when there is no doubt about the export having been made as declared by the petitioner, the technicality should not rule the substantial entitlement.

- On the contrary, the Authorities held that the Export Shipments filed under all categories of the Shipping Bills would need the declaration on the shipping bills in order to be eligible for claiming rewards under the MEIS to an extent that the parties intend to claim rewards under the MEIS. Such declaration would be also required for export shipment under any of the schemes of FTP and in case of shipping bills other than free shipping bills, such declaration of intent would be mandatory w.e.f 01.06.2015. Further, they also contended that the the unit needed to give declaration of intent for claiming MEIS benefits for exports prior to 01.06.2015 i.e. between the period 01.04.2015 to 31.05.2015

- The Authorities had also stated that the window for manual filing for shipping bills for claiming MEIS benefits was allowed for a period from 01.04.2015 to 31.05.2015 due to teething problems in on-line filing. The condition for intimating intent for claiming MEIS benefits had not been waived and the intent must have been indicated for claiming such benefits.

- The Hon'able High Court referred to the Paragraph 3.14(a) which states that that mandatory declaration of intent is made a necessity for claiming reward under the MEIS under any of the schemes for export shipment. Such declaration is a must and in case of shipping bills other than free shipping bills, such declaration was made mandatory w.e.f. 01.06.2015. During the period of manual shipping bills from 01.04.2015 to 31.05.2015 condition for intimating the intent for claiming MEIS benefits had not been waived and the intent must have been clear for claiming the benefits

- Moreover, the Court made reference to the cases of **Kedia (Agencies) Pvt. Ltd. vs. Commissioner of Customs [2017 (348) ELT 634 (Del.),** where it held that the omission in the declaration of intent may not be held fatal to the case of the petitioner when otherwise all relevant materials were available with the authority. The Hon'able HC also referred to the case of **M/s Raj and Company (supra)** where it was held that lapse in procedurality shall not take away a substantial right, and the petitioner was allowed to amend the shipping bills under Section 149 of Customs Act.

- The Court further stated that if this Court accepts the version of the Authority that for exports made from 01.04.2015 to 31.05.2015, declaration of intent was a must from 01.06.20215 and that would not exclude the exports made prior thereto, on account of the export having been made, fulfilling all requirements and with no disputes in that regard, the objective of promotion of export cannot be overlooked.

- The Court further held that Exports made from SEZ unit would come under free shipping bills and here also, export was made from SEZ Kandla unit. For free shipping bills to be converted in to MEZS bill, ratio of Messrs Gokul Overseas (supra) would be applicable.

Ruling

- Basis above, it was held that the procedurality not to hamper the substantive right of the party. Hence, the ruling was passed in the favour of the petitioner.

Part B – Case Laws

Direct Tax

1. Indian Oil Petronas Pvt. Ltd [TS-324-Tribunal-2021(Kol)]

Subject matter: Kolkata Tribunal applies beneficial tax treaty rate on dividend income for dividend distribution tax

Background

- Taxation of dividend income under the ITL has been subject to various amendments from time to time. Pre-1997, a classical system of taxation was prevalent wherein dividends were taxed in the hands of shareholders and companies declaring dividends were required to withhold taxes on dividend income.

- From the year 1997 to 2020 (except for April 2002-March 2003) the classical system was done away with and DDT regime under section 115-O of the ITL existed. As per this regime, the company declaring dividend was made liable to pay taxes on dividends declared/distributed or paid. Consequently, such dividend income was regarded as exempt in the hands of the shareholders under the ITL. Recently, vide Finance Act 2020 (FA 2020), DDT regime was abolished, and the classical system of taxation was restored.

- The legislative intent for switch over to DDT regime provides that the classical system of taxation involved administrative inconvenience and DDT levy would involve single-point taxation.

Facts of the case

- The Taxpayer, an Indian company, is engaged in the business of manufacturing, trading and bottling of liquefied petroleum gas (LPG).

- During the tax years 2012-13 and 2013-14, the Taxpayer distributed dividends to its non-resident shareholder, a Malaysian company.

- As per the provisions of India-Malaysia DTAA, dividends paid by an Indian company to a Malaysian resident, being the beneficial owner, is liable to withholding tax at the rate of 5% in India. However, such dividend income shall be taxable as per the ITL if the beneficial owner has Permanent Establishment (PE) in India and such income is effectively connected to such PE.

- During the appellate proceedings before the Tribunal on certain issues under the ITL, the Taxpayer raised additional ground of appeal wherein it was appealed that the DDT payable in respect of dividend paid to tax resident of Malaysia should be computed as per the rates prescribed in the India-Malaysia DTAA @5% and not as per rates prescribed in the ITL @ 15% (plus applicable surcharge and cess).

Tribunal Ruling

The Tribunal allowed admission of the additional issue on legal ground and based on the below reasonings ruled that the beneficial rate as per India-Malaysia DTAA shall be applicable on the DDT payable by the Taxpayer and remitted the matter back to the tax authority for fresh adjudication after examining relevant provisions of the India-Malaysia DTAA.

- Under the ITL, the taxes are required to be withheld based on “rates in force” which is defined as the rates specified in the ITL or rates specified in the relevant DTAA, whichever is more beneficial.

- As per the charging provisions of the ITL, the distributed income, which represents dividend, is chargeable as income in the hands of shareholders. However, the incidence of tax is shifted to company paying dividends only for administrative convenience.

- Further, the company paying dividend is the person responsible for distributing dividend income among the shareholders including the non-resident shareholders and, hence, the rate of tax to be paid on such dividend income would be governed by the tax rate specified in the DTAA (being more beneficial).

- DDT is a tax on dividend income and not on undistributed profits of the company. Dividend constitutes income in the hands of the shareholders, which is chargeable to tax under the ITL in the form of DDT.

- Once dividend is chargeable to tax under the ITL, income tax including the additional income tax should be charged at the rate specified in the ITL or DTAA, whichever is more beneficial.

- The above conclusion is not contrary to the ratio laid down by the SC decisions in cases of Godrej & Boyce and Tata Tea (supra).

- The Tribunal observed that principles laid down by SC decisions in the cases of Godrej & Boyce and Tata Tea (supra) are not contradictory to each other for the following reasons:

  - The SC, in case of Tata Tea, held that entirety of income distributed is dividend subject to DDT even if partially paid out of agricultural income of the company. Since dividend is income, it is chargeable to tax as income of the recipient.

  - The SC, in the case of Godrej & Boyce, ruled that the dividend income was exempt in the hands of the shareholder and, hence, any expense in relation to such exempt income cannot be regarded as deductible. Incidentally, the SC held that tax incidence on dividend income was in the hands of the payer company and not in the hands of recipient shareholders and, thus, the same did not form part of the total income of the shareholder. While the shareholder triggered limitation of disallowance of expenditure, the SC did not hold that dividend per se is not taxable.

  - Both the SC rulings held that dividend income is taxable. Once dividend income is regarded as taxable, the conclusion is that the taxability of an income has to be considered from the perspective of the recipient, since the term “income” can only have a logical relevance qua the recipient of a certain sum of money or its equivalent; and not the payer thereof. The term “income” cannot be reconciled qua the payer.

  - Although the incidence of tax on dividend income is borne by the payer under the ITL, it is a fact that DDT is only a mechanism through which the rate of tax can be calculated from the perspective of the recipient of dividend income.

  - Though optically, the SC decision in the case of Godrej & Boyce may appear to be contra to the subsequent ruling in the case of Tata Tea, in substance, the decision does not convey any contradictory view as expressed by the SC in the case of Tata Tea in the context of the issue on hand.

- Further, both the rulings were rendered by two- judge benches of the SC with one judge being common in both the benches.

- Reliance was placed on another Tribunal ruling wherein it was ruled that the DDT rate shall be the rate specified in DTAA on dividend distributed by company to non-resident shareholders, being beneficial than the rate under the ITL.

2. PQR Gmbh [TS-861-AAR-2019]

Subject matter: AAR- Taxability of share buy-back covered by Sec. 46A, not eligible for exclusion u/s 47(iv)

Background

- The applicant, PQR Gmbh is incorporated and registered in Germany, and is engaged in executing contracts for assembly and supervision of paint shops for various automobile companies. PQR India Pvt. Ltd (PQR India) is a wholly owned subsidiary of the applicant with 99.99984% of share holding along with 0.00016% holding through its nominee, PQR International Gmbh. PQR India proposed to buy back its shares from the applicant in accordance with the provisions of Section 77A of the Companies Act, 1956.

Questions before AAR

- Whether in the facts and circumstances of the case ,would the transfer of share in PQR India by the Applicant to wholly owned subsidiary, PQR India, in the course of the proposed buy – back of shares, be exempt from tax in India in the hands of the Applicant, in view of the provisions of Section 47(iv)?

- On the facts and in the circumstances of the case, MAT as contemplated u/s 115JB is applicable to the capital gains arising to the Applicant from the proposed buy-back of shares?

- Where on the facts in circumstances of the case, the gains arising to the Applicant on account of proposed transfer of shares, in the course of buy-back of shares by PQR India, is not taxable in India under the Act, whether the applicant is entitled to receive the amount on buy-back of shares without any deduction of tax at source?

AAR Ruling

- AAR noted that provisions regulating buy-back of shares are contained in section 77A, 77AA & 77B of the Companies Act, 1956, inserted by the Companies (Amendment) Act, 1999 and under the Income tax Act, amendments was brought in section 2(22) by excluding buy-back of shares from the definition of dividends specifically taxing the same as capital gains u/s 46A. AAR observed that CBDT Circular No. 779 of 1999 and Circular No. 03 of 2016 have made it abundantly clear that the purpose of inserting Section 46A and amending section 2(22) is to avoid unnecessary litigation and to bring clarity on the matter.

- AAR noted that transfer of capital asset by a holding company to subsidiary company is covered u/s 47(iv) and transfer of capital asset by a subsidiary to a holding company was brought in u/s 47(v), however, it is nowhere indicated that such share buy-back were ever contemplated to be covered u/s 47.

- AAR highlighted that legislative intent for enactment Section 46A was to tax share buy-back transaction as capital gains in the hands of the shareholder and not as deemed dividend u/s 2(22). Remarked that if the provision was to be subject to Section 45 and 47, the legislature would have expressly provided the same in the Section itself. Further, held that if exemption u/s 47(iv) is to be read into section 46A, the stated

objective of garnering tax from such transaction would not be achieved since there is already no deemed dividend tax on such transaction u/s 2(22).

- AAR noted that exclusion of share buy-back transaction from Section 47(iv) would not make that Section less effective as there are numerous situations which would fall under 47(iv) i.e. transfer of capital assets such as land, building, plant and machineries, intangible, transfer of share of other entities, etc.

- AAR observed that provisions of section 47A(1) read with Section 49 and Section 155(7B), form a scheme, wherein the exemption provided u/s 47(iv) is withdrawn in certain situations. Further observed Section 77A(7) of the Companies Act 1956 which provides that where upon buys-back, it shall extinguish and physically destroy the securities so bought back within 7 days of the last date of completion of buy-back. Held that there is no further capital gains tax that can be imposed as the capital asset itself ceases to exist after the buy-back, thus making sections 47A, 49 and 155(7B) redundant.

- AAR cited the ruling of apex court in Sharat Babu Digumarti vs Govt. of NCT Delhi, (MANU/SC/1592/2016) wherein it was observed that that special provision prevails over the prior general provisions. Held that in the instant case, the special provision u/s 46A would prevail over the general provision of section 45 r.w.s 47(iv).

- AAR relied on AAR ruling in RST, (AAR 1067 of 2011), where it was held that section 46A is not subjected to section 47 which at best only overrides section. 45.

- Highlighted that in the case of Papilion Investment Pvt. Ltd [TS-6077-HC-2009(BOMBAY)-O] it was held that non obstante clause in section 47 covers only section 45 and not section 46A and that section 46A is a special provision brought in with a specific objective to tax share buy-back transactions.

- AAR exclaimed that the plea of the applicant that beneficial provisions be liberally construed is appreciated, however not tenable as statute should be interpreted having regard to the intendment of purpose behind the statute. Remarked that facts are squarely covered under the special provision of section 46A and not under section 47(iv).

- AAR rejected applicant's reliance on decision in case of PNB Finance Ltd. [TS-96-SC-2008-O] as it did not relate to buy back of shares or address the controversy of section 46A vs section 45 r.w.s. 47(iv).

- On taxability of profits u/s 115JB, AAR clarified that explanation 4 provides that this section is not applicable to a foreign company if applicant does not have a permanent residence in India, highlighted that PQR India was held to be applicant's PE and holds, "capital gains is taxable u/s 46A in the hands of applicant under the normal provisions …the final liability would be lesser of two amounts i.e. one under normal provision and other u/s 115JB";.Further held that PQR India is liable to withhold taxes u/s 195 on the consideration payable for the buy-back of shares.

- With regards to applicability of Section 195, AAR held that PQR India would liable to withhold taxes on the consideration payable for the buy-back of shares.

Our offices

Ahmedabad
2nd floor, Shavlik Ishaan
Near. C.N Vidyalaya
Amba wadi
Ahmedabad – 380 015
Tel: +91 79 6608 3800
Fax: +91 79 6608 3900

Bengaluru
12th & 13th floor
"U B City" Canberra Block
No.24, Vital Malia Road
Bengaluru - 560 001
Tel: +91 80 4027 5000
+91 80 6727 5000
Fax: +91 80 2210 6000 (12th floor)
Fax: +91 80 2224 0695 (13th floor)

Ground Floor, 'A' wing
Devisee Chambers
11, O'Shaughnessy Road
Langford Gardens
Bengaluru – 560 025
Tel: +91 80 6727 5000
Fax: +91 80 2222 9914

Chandigarh
1st Floor
SCO: 166-167
Sector 9-C, Madhya Marg
Chandigarh - 160 009
Tel: +91 172 671 7800
Fax: +91 172 671 7888

Chennai
Tidal Park
6th & 7th Floor
A Block, No.4, Rajiv Gandhi Salami
Tar Amani, Chennai – 600 113
Tel: +91 44 6654 8100
Fax: +91 44 2254 0120

Delhi NCR
Golf View Corporate
Tower – B
Sector 42, Sector Road
Gurgaon – 122 002
Tel: +91 124 464 4000
Fax: +91 124 464 4050

3rd & 6th Floor, Worldmark-1
IGI Airport Hospitality District
Atrocity New Delhi – 110 037
Tel: +91 11 6671 8000
Fax +91 11 6671 9999

4th & 5th Floor, Plot No 2B
Tower 2, Sector 126
NOIDA - 201 304
Gautam Bodh Nagar, U.P.
Tel: +91 120 671 7000
Fax: +91 120 671 7171

Hyderabad
Oval Office
18, labs Centre
Hitech City, Madhapur
Hyderabad – 500 081
Tel: +91 40 6736 2000
Fax: +91 40 6736 2200

Jamshedpur
1st Floor,
Shanti Niketan Building
Holding No. 1, SB Shop Area
Bistoury, Jamshedpur – 831 001
Tel: + 91 657 663 1000

Kochi
9th Floor "ABAD Nucleus"
NH-49, Maraud PO
Kochi - 682 304
Tel: +91 484 304 4000
Fax: +91 484 270 5393

Kolkata
22, Camaca Street
3rd Floor, Block C"
Kolkata - 700 016
Tel: +91 33 6615 3400
Fax: +91 33 6615 3750

Mumbai
14th Floor, The Ruby
29 Senapati Bapat Marg
Dadar (west)
Mumbai - 400 028
Tel: +91 22 6192 0000
Fax: +91 22 6192 1000

5th Floor Block B-2
Nylon Knowledge Park
Off. Western Express Highway
Goregaon (E)
Mumbai - 400 063
Tel: +91 22 6192 0000
Fax: +91 22 6192 3000

Pune
C—401, 4th floor
Pinch-hit Tech Park
Yeravda (Near Don Bosco School)
Pune - 411 006
Tel: +91 20 6603 6000
Fax: +91 20 6601 5900

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

For more information, please visit
www.ey.com/india

EY refers to the global organization and may refer to one or more of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization.

Ernst & Young LLP is one of the Indian client serving member firms of EYGM Limited. For more information about our organization, please visit www.ey.com/india.

Ernst & Young LLP is a Limited Liability Partnership, registered under the Limited Liability Partnership Act, 2008 in India, having its registered office at 22 Camaca Street, 3rd Floor, Block C, Kolkata - 700016

- This work product has been prepared by EY LLP on the basis of a scope of work agreed with the Automotive Components Manufacturers' Association of India (ACMA), and does not purport to be all-inclusive or to contain any information that a prospective reader may expect or desire. Accordingly, if made available to ACMA's members or any other person or entity, this work product is solely for their information and should not be used, circulated, quoted, relied upon, or otherwise referred to for any other purpose, nor included or referred to in whole or in part in any document without EY LLP's prior written consent.
- The information in this document has been printed on the basis of data from various EY subscribed databases, media reports, publicly available information, internal data and other reliable sources believed to be true. While every effort is made to ensure the accuracy and completeness of information contained, EY LLP takes no guarantee and assumes no liability for any errors or omissions of the information.
- Due to the dynamic nature of the subjects covered by this document, readers of this document are cautioned that (a) any information contained in this document may not be current after the date hereof, and (b) any forward-looking statements are not predictions and may be subject to change without notice.
- Information in this publication is intended to provide only a general outline of the subjects covered, on the basis of a scope of work agreed with ACMA. It should neither be regarded as comprehensive nor sufficient for making decisions, nor should it be used in place of professional advice. EY LLP accepts no responsibility for any loss arising from any action taken or not taken by anyone using this material.
- This disclaimer forms an integral part of this work product.

EY contacts for ACMA Knowledge Partnership:

- Rakesh Batra, National Automotive Sector Leader – rakesh.batra@in.ey.com / +91 124 464 4532